

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

WRIT PETITION NO. 1357 OF 2014

Mr. Pankaj S. Parikh	}	
Age: 57 years, Occ. Business,	}	
Residing at 303, Vikas	}	
Chamber, Link Road,	}	
Mith Choky, Malad (W),	}	
Mumbai 400 064.	}	Petitioner

versus

1. The Additional Collector	}	
and Competent Authority	}	
(ULC), 5 th floor,	}	
Administrative Building,	}	
Near Chetana College,	}	
Bandra (E), Mumbai 400 051	}	
	}	
2. The State of Maharashtra	}	
through its Urban and	}	
Revenue Department	}	
400 051	}	
	}	
3. The City Survey Officer	}	
Goregaon, Mumbai	}	
summons be served through	}	
the AGP, Bombay High Court,	}	
Mumbai 400 023	}	Respondents

Mr. Sandesh D. Patil for the petitioner.

Mr. Manish Upadhye - AGP for
respondent nos. 1 to 3.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- SEPTEMBER 21, 2016

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

1. Heard the learned counsel appearing for the parties. Rule. Respondents waive service. By consent Rule made returnable forthwith.
2. By this petition, under Article 226 of the Constitution of India, the petitioner seeks a declaration that respondent nos. 1 and 2 have no right, title and interest in a immovable property/land bearing CTS No. 531, Survey No. 20, Hissa No. 13 of Revenue Village Valnai, Taluka Borivali, District Mumbai. The consequential directions are to delete the name of the second respondent from the property register and/or card and substitute it with that of the petitioner.
3. The proceedings are under the then Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the ULC Act”). The petitioner in this writ petition claims to be a constituted attorney of one Hasmat Jamal Ghanchi and Abdul Latif K. Shaikh. They are partners of M/s. Skyline Enterprises. At the same time, the petitioner claims to be the constituted attorney of one Babu Bhaskar Bhandari and others. The respondents to this petition are the State of Maharashtra and the competent authority under the ULC Act.

4. It is the case of the petitioner that the Bhandari family was the owner of this land and some others. The petitioner is, however, concerned with the above described land. It is stated that one Smt. Gunjubai Manik Bhandari and others had filed a return and on the basis of statements under section 6(1) of the ULC Act so also some preliminary inquiry and measurement, a draft statement under section 8(2) of the ULC Act was drawn. The objections were invited and ultimately, an order was passed under section 8(4) of the ULC Act. As per the said order, the above land and to the extent of 1367.3 square meters was declared to be retainable property. The balance was obviously surplus vacant land. After taking into consideration the statement under section 8(4), a final statement under section 9 was prepared. It is the case of the petitioner that this statement has attained finality. It has not been altered, amended or modified by any order. The petitioner submits that the retainable property was dealt with by Gunjubai Bhandari and others. They entered into an agreement with M/s. Skyline Enterprises dated 22nd April, 2002. It was duly registered in the office of the Sub-Registrar of Assurances, Borivali. Smt. Gunjubai and others executed a power of attorney in favour of M/s. Skyline Enterprises which includes a power to appoint any other person as their agent/attorney. The said M/s. Skyline Enterprises was

not in a position to develop the property. It assigned the property for development purpose to the petitioner vide two separate development agreements dated 4th April, 2006 and 16th April, 2006. Two separate power of attorneys were also executed in favour of the petitioner on 16th April, 2006. Both the agreements as well as the power of attorneys were duly registered in the office of the Sub-Registrar of Assurances, Borivali, Mumbai. The reason for division of the property was that there were two separate agreements. The petitioner states that in pursuance of the development agreement he applied for permission for development of the said property. An Intimation of Disapproval (IOD) was granted on 3rd March, 2007. The petitioner claims that the Municipal Corporation also sanctioned the plans and granted commencement certificate dated 26th April, 2007. Pursuant to this permission, the petitioner made construction of plinth level in this property/land.

5. It is the case of the petitioner that there is no voluntary surrender nor the petitioner was forcibly dispossessed. The petitioner is in possession. It is the case of the petitioner that when the petitioner applied for and obtained the property card in relation to this land, it was revealed that the name of the State of Maharashtra is entered therein. That is because a letter of

possession dated 18th October, 2006 was issued, pursuant to which, this name was inserted.

6. The claim of the petitioner is that after obtaining information regarding the proceedings under the ULC Act, it was revealed that the competent authority had issued one letter dated 18th October, 2006 in the name of Vasant Manik Bhandari. That is styled as a notice under section 10(5) of the ULC Act, thereby calling upon the addressee to surrender the property on 31st October, 2006 at 2.30 p.m. There is no endorsement on the notice that it is served. It is stated that the respondents have contended before the municipal authorities that the State Government's name is entered in the property card on the basis of this notice. Thus, barring this notice or a self styled document, there is no proof of the possession having been surrendered on the date mentioned in the notice, namely 31st October, 2006. There is nothing to suggest that the petitioner's possession of the property was disturbed. Once, except this document, there is nothing on record to indicate that the possession of the land was taken prior to the repeal of the ULC Act in the State of Maharashtra with effect from 29th November, 2007, then, the declaration as prayed be granted.

7. Mr. Patil learned counsel appeared before us for the petitioner and raised several contentions. Before we refer to them, it would be appropriate to peruse the contents of the affidavit in reply filed by respondent nos. 1 and 2. It is filed by the Additional Collector and Competent Authority (ULC). He is deposing on the basis of the original record. He states that the petitioner does not have any cause of action to approach this Court. He has not approached this court with clean hands. The writ petition suppresses relevant and material facts and is, therefore, liable to be dismissed.

8. It is stated that one Vasant Manik Bhandari submitted/filed statement under section 6(1) of the ULC Act on 13th August, 1976. That statement was made on behalf of Vasant Bhandari. That statement led to an order being passed by the ULC Authority under section 8(4) of the ULC Act dated 29th October, 1986. That was challenged by filing a revision application under section 34 of the ULC Act by M/s. Skyline Builders as constituted attorney of original owners on 6th February, 1990. The petitioner has acquired purported development rights from M/s. Skyline Builders by two separate development agreements. That was despite the fact that the property was not exempted under the ULC Act. The concerned authority passed an order on the

revision application dated 6th February, 1990 and directed that a final statement be issued. That is how the final statement under section 9 was issued on 11th June, 1990. Thus, the property was not retainable by the original owners, but liable to be handed over to the ULC authorities. Despite knowing these facts, the petitioner executed an agreement with the said M/s. Skyline Builders and being fully aware of the proceedings under the ULC Act is bound by the same and cannot seek relief contrary to it. It is stated that the entire procedure under the ULC Act was followed and a notification was published in the official gazette under section 10(3) of the ULC Act on 25th May, 2006. On publication of such notification, the land vests in the Government. There is nothing more required to be done. Thereafter, the competent authority issued notice to original owner Vasant Manik Bhandari and others to surrender and deliver possession of the land. That notice is dated 18th October, 2006. The co-owners, however, did not bother to comply with the notice. The possession of the land was taken over on 31st October, 2006. The authorities prepared a panchanama of the land and took over possession. It is thereafter on 6th November, 2006 that the name of the State Government was entered in the property register card. In para 16 of this affidavit, it is asserted that the petitioner was not in possession of the said land. The possession has

already been taken over and prior to the repeal of the ULC Act. Therefore, the repeal of the ULC Act does not affect the proceedings in any manner. The petitioner has misled the authorities and suppressed the filing of statement under section 8(4) of the ULC Act as also the revisional order. The petitioner was well aware that the land is declared as surplus vacant land and yet, by misguiding the authorities, got the order dated 27th March, 2002 (Exhibit-A to the petition). It is stated in para 20 of this reply affidavit as under:-

“20. It may be further pertinent to note that one M/s. Rajiv Harmalkar and Company appointed by the Petitioner had vide Application dated 13th March, 2012 stated that their client was ready to pay the market value of the area admeasuring 1098.25 square meters excluding the area of DP Road admeasuring about 269.05 square meters. Accordingly the proposal for the aforesaid Application has been submitted with a detailed report to the Urban Land Development Department, State of Maharashtra on 30th March, 2012 and necessary action has been requested to be taken by the Authorities. The outcome of the said Application has been awaited. However, in view of the said Application, it is very clear that the Petitioner has no ground to challenge and not entitled to any relief and if at all the State Government to decide on the Application dated 13th March, 2012, the necessary action shall be taken on the basis of Orders passed therein.”

9. On the basis of the above assertions, it is claimed that the writ petition be dismissed.

10. After this material was placed before us on the earlier occasions and brief submissions were canvassed by Mr. Patil, we

passed an order directing production of the original record. A Division Bench, of which, one of us (S. C. Dharmadhikari, J.) was a party, directed on 12th August, 2016 that the original record be produced so as to consider the submission of the petitioner that physical possession was never taken prior to the date of the repeal of the ULC Act in the State of Maharashtra. The original records were produced and on 2nd September, 2016 we passed a further order allowing the petitioner to inspect the same by seeking appointment with the Registrar, High Court (Original Side). The matter was placed for passing orders today. Today as well, an affidavit styled as additional affidavit of the petitioner was taken on record. That refers to the original record and certain pages therein. It also refers to certain documents forming part of the original record.

11. Mr. Patil learned counsel appearing for the petitioner firstly submitted that in absence of any direction from this court, the petitioner was not able to obtain copies of the documents in the original file and record. However, the petitioner would proceed to argue the case, as he is raising legal contentions on the basis of the inspection notes and the contents of this additional affidavit. Mr. Upadhye appearing for the respondents states that he proceeds on the basis of denials.

12. Thus, the essential contention of the petitioner's counsel is that in the absence of any notice and opportunity to the original owner and as required by the law, it cannot be said that the possession of the land, which is declared as surplus vacant land, was obtained. The law, according to Mr. Patil, not only declares that on issuance of the notification under sub-section (1) the competent authority may, by notification published in the official gazette of the State concerned declare by notification published under section 10(1) with effect from such date as maybe specified in the declaration, the surplus vacant land/excess vacant land be deemed to have been acquired by the State Government. Mr. Patil submits that therefore, on issuance of and publication of the notification under sub-section (1) of section 10 and thereafter consideration of the claims of the persons interested in the vacant land, it is for the competent authority to determine the nature and extent of such claims and pass such orders as it deems fit. That is permissible under sub-section (2) of section 10. After this exercise, by sub-section (3) of section 10, there is discretion in the competent authority to issue a notification and publish it in the official gazette so as to vest the excess vacant land in the State. However, by sub-section (4) of section 10, it is evident that during the period commencing from the date of publication of the notification under sub-section (1) and ending

with the date specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land, including any part thereof specified in the notification and any such transfer made in contravention of this provision shall be deemed to be null and void. No person shall alter or cause to be altered the use of such excess vacant land. Mr. Patil contends, therefore, that the petitioner's agreements and which have attained finality and would enable him to substitute or step into the shoes of the original owners and thereafter maintain this writ petition. There is, therefore, no substance in the allegation made in the affidavit in reply that the petitioner has suppressed relevant and material facts.

13. Apart from this, according to Mr. Patil, even if everything until the publication of the declaration in the official gazette under sub-section (3) of section 10 of the ULC Act is legal and valid, yet, by sub-section (5) of section 10, the vacant land, which is vested in the State under sub-section (3) has to be taken over. Meaning thereby, the possession of the same has to be taken over by the competent authority. For that purpose, it is mandated to issue a notice in writing ordering any person, who may be in possession of that land, to deliver possession thereof to the State

Government or to any person duly authorised by the State Government in this behalf within 30 days of the service of the notice. The petitioner has asserted that he was in possession of the land. His agreements were legal and valid as on the date of issuance of the notice within the meaning of sub-section (5) of section 10. That is dated 18th October, 2006. However, the contents of the additional affidavit would demonstrate that the petitioner was never dispossessed. The notice may have been issued and a copy thereof is in the file. However, a clear endorsement in the file would indicate that the notice could not be served. The remarks in the file are that neither by personal service nor by registered post acknowledgment due or any other mode the notice was served as claimed. Further, there is nothing in the record which would indicate that the panchanama or possession receipt bears any endorsement of independent persons. Mr. Patil concedes that there is no particular form prescribed for obtaining possession or evidencing the same. Yet, the very purpose of drawing up a panchanama is that the possession of the property is taken in the presence of two independent and impartial persons who have nothing to do or are not concerned with the land. Thus, unilateral or one sided statement of the authorities does not divest the owners of their rights in the property. Mr. Patil submits that the notice under

section 10(5) is held to be mandatory. It is only when a person refuses or fails to comply with the order therein that the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary. Mr. Patil relies upon the additional affidavit to submit that there is a notice issued to Mr. Vasant Bhandari. However, there is an endorsement that because the address was incomplete, it could not be served. Then, Mr. Patil relies on page 361 of the original record to submit that possession of some slums was taken. There were never any slum on the property. There is yet another letter written on 13th October, 2006 that the possession of the land was taken on the date mentioned in the notice, namely, 18th October, 2006. If the notice indicates that the possession was to be taken on 31st October, 2006, then, a letter dated 13th October, 2006 could not have been addressed at all. Even the panchanama and possession receipt does not bear signature of any person from whom the possession is taken. There is nothing in that document which would prove the identity of panchas. There are no signatures of any panchas on the panchanama. Reliance is also placed by Mr. Patil on page 499 of the original record. Thus, the thrust of his submissions is that the possession was not taken and

which has to be actual physical possession. That was not taken prior to the repeal of the ULC Act in the State of Maharashtra. Assuming that it was taken on 31st October, 2006, it was taken within the period of 30 days from issuance of the notice under section 10(5). If that is dated 18th October, 2006, the 30 days' time has not expired on 31st October, 2006. Therefore, obtaining possession in this manner is contrary to law.

14. There is a compilation of judgments tendered by Mr. Patil, including a judgment delivered by a Division Bench of this court, to which both of us were party, in the case of *Adi Dara Patel and Ors. vs. Mr. S. R. Jondhale*¹, decided on 22nd April, 2016. He would submit that the said judgment is distinguishable on facts. He relied upon the view taken by another Division Bench of this court in the case of *The Bank of Baroda Employees Arunoday Co.op. Hsg. Soc. Ltd. vs. State of Maharashtra*², decided on 21st November, 2011 to submit that this court has endorsed the view taken therein and held in *Adi Dara Patel* (supra) that the *Bank of Baroda* case (supra) is distinguishable on facts. However, in the present case the dictum in *Bank of Baroda* (supra) applies and the view taken in *Adi Dara Patel* (supra) is distinguishable on facts. Therefore, this judgment and order would not bind this court.

1 Writ Petition No. 1468 of 2009

2 Writ Petition No. 2119 of 2008

15. On the other hand, the learned AGP submits that consistent with the affidavit in reply, it is evident that none of the owners are coming forward. As usual and found in *Adi Dara Patel's* case (supra), the builders and developers interested in challenging the concluded proceedings under the Principal Act file such petitions belatedly. In the present case, if the possession is taken as early as on 31st October, 2006 and the land vests in the State, then, filing of a writ petition on 27th November, 2013 would show that the owners were never interested. They never came forward and challenged the concluded proceedings. Some people enter into an agreement in relation to the lands which are declared as surplus vacant lands and vesting in the State. It is they who then proclaim that the owners never received any notice and are, therefore, aggrieved by the fact that the ULC Act has deprived them of their right, title and interest in the property. Mr. Upadhye submits that this court, therefore, should view such cases with circumspection and with doubt. The claim should be genuine and bonafide. We should not mechanically accept the facts narrated and particularly when there is suppression and keeping back of vital and crucial documents. Hence, he would submit that this court must rely on the fact that the official record speaks for itself. There is already, in the file, an order passed under section 8(4) of the ULC Act. That records that the

properties have been inherited by Vasant Bhandari and and Gunjubai and other heirs of late Manik Dhulya Bhandari, who died in 1969. As per the draft statement, land admeasuring 9522.9 square meters was provisionally declared as surplus vacant land. That was provisional. The preliminary hearing into the draft statement was fixed on 23rd July, 1986. During the hearing, one Rangnekar, authorised architect appeared and stated that he has submitted written objections to the draft statement vide his letter dated 21st July, 1986 and requested for consideration of the same. It is that written objection, which contains this stand and dealt with in the order under section 8(4) of the ULC Act. However, while scrutinising the objections and contentions of the surplus vacant land holders, the competent authority found that in the draft statement, the declarants were allowed to retain land admeasuring 1000 square meters out of CTS Nos. 571, 23/6 of Valnai. However, the declarants have requested to allow them to retain the land bearing CTS Nos. 574, 575/1, 575 and 576 towards the plinth, land appurtenant and additional land appurtenant of the existing authorised structures. The order states that the certified true copy of the city survey plan was perused. That records that the structure bearing CTS Nos. 574 and 575/1 are shown in black ink in the city survey plan. These structures can be accepted as authorised and the

area under structures, land appurtenant and additional land appurtenant can be considered. The declarants are therefore allowed to retain land admeasuring 1719.9 square meters comprised in CTS Nos. 574, 575, 575/1 and 576 of Village Valnai. The remaining land admeasuring 280.1 square meters is allowed from CTS No. 571. It is in these circumstances and by excluding certain land bearing Survey No. 24/4 holding was declared in terms of the order. By that order, 7717.3 square meters is declared as surplus vacant land, according to the learned AGP. The final statement under section 9 and the notification under section 10(1) was directed to be issued vide order dated 29th October, 1986.

16. It is in these circumstances that the learned AGP would rely on the order passed in revision under section 34 of the ULC Act. That was on the basis of the revision application filed by Budhaji Dhulya Bhandari and others. The revision application claimed that they should be allowed the benefit of ceiling limit in addition to the area of the land treated as non-vacant on account of authorised residential structures from CTS Nos. 574, 575, 575/1 and 576. The revisional authority perused the entire original record, according to Mr. Upadhye and passed a detailed order. That detailed order, copy of which is annexed to the affidavit in

reply, directs that the order under section 8(4) is set aside and the competent authority is directed to issue a revised final statement under section 9 in the light of observations therein and after offering an opportunity to the revisional petitioners to indicate their choice in respect of the retainable land admeasuring 5500 square meters. The competent authority would be at liberty to adopt further steps. The learned AGP produces the relevant record and to indicate as to how on the basis of the observations and findings in the revisional order the revised final statement was issued and thereafter the notification under section 10(1) was issued. Further, declaration under section 10(3) was issued and which was duly published in the official gazette on 24th April, 2006. On and from 8th May, 2006, the surplus vacant land is deemed to have vested in the State. The learned AGP, therefore, submits that there is complete record as to how the possession of this land was taken after issuance of notice under section 10(5). None of the Bhandaris or partners of M/s. Skyline Builders raised any objection to these proceedings. On 31st October, 2006, the possession receipt is prepared. The possession of land was taken on that date. The signature of one who has taken over possession, appears on the document. If the panchanama is also perused, it would be evident that no fault can be found therewith. The Skyline Builders, who claim to be

constituted attorney of the owners are happy of the revisional order. If the petitioner came into the picture only after the two agreements dated 4th April, 2006 and 16th April, 2006, which are executed after 16 years of the revisional order, then, it is clear that the petitioner is suppressing the relevant and material facts. He could not have deposed about the correctness, legality and validity of proceedings which concluded with final statement under section 9 on 11th June, 1990. Once the property was not retainable by the original owners and is liable to be handed over to the ULC authority and throughout the petitioner does not show as to how he is in physical possession of the property, then, all the more this court should, following the judgment in *Adi Dara Patel* (supra), dismiss the writ petition. There are clear disputed questions of fact. The property has vested in the State and is now completely in its domain. The property register card is issued on 6th November, 2006. Belatedly and as an afterthought, none of the orders can be questioned. Once there are publication of declaration and notification in the official gazette, then, its contents cannot be questioned.

17. After perusing the writ petition and all the annexures thereto so also the original records, the legal provisions and the decisions brought to our notice, we are of the view that the writ petition deserves to be dismissed.

18. Our reasons follow.

19. The petitioner has, in the body of the petition itself, stated that he is carrying on business. He is carrying on business possibly of building and developing the properties. The petitioner, surprisingly, in para 2 of the petition, states that he is the constituted attorney of Gunjubai Manik Bhandari and others, who are owners of the property. The petition concerns the property bearing Survey No. 20, Hissa No. 13, CTS No. 531. In the final statement dated 11th February, 1990, the details of the vacant land which the person desires to retain are indicated in part 'D'. That refers to Village Valnai, Taluka Borivali and Survey Nos. are 23/4, 23/6 and corresponding city survey numbers. 5500 square meter land was claimed by the owners to be retainable land. Survey Nos. 23/15, 20/13, 23/9, 23/6, 23/11 and 23/15 with corresponding survey numbers and admeasuring 5195.9 squarer meters is indicated in part 'F' of this statement as identity of lands to be surrendered. It is, therefore, undisputed that Vasant Manik Bhandari and other did not desire to retain this land, but agreed with the direction and order preparing the final statement. We have to consider the grievance of a person who has dealt with the excess vacant land. Pertinently, the petitioner does not state in the writ petition anything, but its title

indicates that he is not the constituted attorney of the Bhandaris'/original owners alone but all partners of M/s. Skyline Enterprises. The petitioner, in para 3 of the petition shows that the property in question, which is admeasuring about 1367.3 square meters, which is the area of CTS No. 531, was declared to be retainable land. However, the records speak otherwise. This is not the retainable land, but clearly a surplus vacant land and forming part of the larger area of 5195.9 square meters. Yet, the petitioner proclaims in the further part of this petition that the final statement under section 9 was prepared. In para 4, the petitioner states that the said statement attained finality and has not been altered, amended or modified by any order. We are sorry to state that this is a misleading and factually incorrect statement to say the least. If the affidavit in reply and original record, which was allowed to be perused by the petitioner's counsel reveals that M/s. Skyline Enterprises obtained some authorities from the original owners, filed revision application and invoked the jurisdiction of the State under section 34 of the ULC Act, then, in the absence of any contrary document on record, we cannot accept the statement or version of the petitioner or his counsel. It is incorrect, therefore to urge that the petitioner obtained any right in relation to a retainable land. The petitioner dealt with a surplus vacant land with open eyes.

The petitioner was aware that Skyline Builders entered into an agreement for development of the land with Gunjubai and others. That was an agreement dated 22nd April, 2002 and copy thereof is annexed as Annexure 'B' to the petition. If one peruses Annexure 'B', it is evident from the same that the schedule thereto refers to all that piece and parcel of land or ground bearing Survey No. 20, Hissa No. 13 admeasuring 14.1/4 gunthas equivalent to 1367.3 square meters as per property card with four structures. It is stated in first schedule of this agreement, which has been signed by Babu Bhaskar Bhandari and others and Hasmat Jamal Ghanchi and Abdul Latif Shaikh that the said land was owned by one Manik Bhandari. It is stated that Gunjubai and others appeared to have agreed to sell the larger property to one M/s. Jagruti Construction in the year 1979. This property is described at page 27 in recital (a). In recital (d), however, it is conceded that the agreement with M/s. Jagruti Construction has not been acted upon and abandoned. That is barred by limitation and not enforceable in law. The owners are seized and possessed of or otherwise well and sufficiently entitled to the said larger property along with four structures standing thereupon. These owners were desirous of assigning the development rights in respect of the said property upon the portion of the said larger property to the developers subject to owners rights to retain with the owners

other portion of the said larger property along with the said four structures by allowing the developers to utilise the entire permissible FSI of the said larger property excluding the FSI already consumed by the said four structures. The agreement then contains the covenants. This agreement is dated 22nd April, 2002. Pertinently, this agreement does not refer to any proceedings under the ULC Act. It is, therefore, a very contingent and a doubtful right to say the least surviving in the owners, which the petitioner seeks to obtain from M/s. Skyline Enterprises. It is stated in para 6 of the petition that M/s. Skyline Enterprises was not in possession of the property. Thereafter, they assigned the said property for development to the petitioner vide two separate development agreements referred in para 6 of the petition, copies of which are annexed as Annexure 'D' collectively to the petition. How the petitioner, thereafter, obtained the Intimation of Disapproval / Commencement Certificate (IOD/CC) from the Municipal Corporation of Greater Mumbai and made construction on the property, when it had not only vested in the State, but possession of which was already taken, as is evident from the documents produced and relied upon by Mr. Upadhye, has not been clarified to us at all. The petitioner claims to be in physical possession and relies upon the photographs to show the same. However, what we have from the

memo of the petition itself that it contains guarded statements about possession of the petitioner. The petitioner does not refer to the entire factual position and as emerging from the record. He refers to documents selectively, but does not disclose several others, which are relevant and material. There is substance in the contentions of the learned AGP, therefore, that the petition ought to be dismissed for suppression of relevant and material facts.

20. However, the petitioner's counsel having argued and very vehemently on the basis of the record that the possession of the property was never taken prior to the repeal of the Act coming into force in the State that we considered the same. Firstly, we do not find how, when the petitioner having openly dealt with not with the portion of the land styled as retainable, but excess vacant land, can claim, on the strength of the two development agreements that he has right, title and interest in the property. His claim of being in physical possession follows two development agreements of 2006. Pertinently, the date of these two agreements has to be noted. They are dated 4th April, 2006 and 16th April, 2006. The agreement with M/s. Skyline Enterprises and Bhandaris' is dated 22th April, 2002. The record reveals that the notification under section 10(1) was published in the official

gazette. That was dated 6th May, 2000, but published in the official gazette on 12th October, 2000. The land was thus to be vested in the State. There is a contemporaneous record of this publication in the order of the Additional Collector and Competent Authority under the ULC. That is dated 16th July, 2005. That concerns cancellation of an order under section 20 of the ULC Act. That order was passed on the application of one Lancelot D'souza, who is the power of attorney holder. He is the power of attorney holder of Vasant Manik Bhandari. Thereafter, what we find is that there is a declaration published on 24th May, 2006 under section 10(3) of the ULC Act. That vests the land with effect from 8th May, 2006 in the State. Thus, the surplus vacant land, which includes the petition land vests in the State from this date. Knowing fully well the legal consequences flowing therefrom that M/s. Skyline Enterprises and the petitioner entered into a deal. Once they entered into a deal in relation to the land vested in the State, then, we must, as rightly submitted by the learned AGP, be circumspect and careful in accepting the version of the petitioner. More so, when the original owners or M/s. Skyline Enterprises have never controverted the record and papers therein.

21. What we have, therefore, on record is the submission made by the petitioner, who is stated to have entered upon the property pursuant to the development agreement in favour of M/s. Skyline Enterprises. M/s. Skyline Enterprises and the petitioner, therefore, have clearly connived at bringing about a situation where a land vesting in the State completely is taken away from its control and domain. The petitioner, therefore, claims in the writ petition and in the additional affidavit that no notice was issued to Vasant Bhandari. However, what we have and very carefully perused is the State's record. That record contains a letter dated 13th October, 2014 from the petitioner and addressed to the first respondent to this writ petition. The subject of this letter is rectification of acquisition of non-surplus vacant land under section 10(1), 10(3) and 10(5) of the ULC Act. That is a letter received on 3rd November, 2014. In that letter, after setting out as to how the petitioner has knowledge of the proceedings under the ULC Act, surprisingly, mentions that an order under section 8(4) was passed on 29th October, 1986. Notification under section 10(1) was issued on 7th April, 2000 and revised ULC order was passed on 27th March, 2002. The petitioner refers to the second notification under section 10(1) issued on 24th April, 2006. Pertinently, it refers to a notice under section 10(5) dated 18th October, 2006, but the petitioner states

that this notice is asking him to deliver possession of surplus vacant land to the Government on 31st October, 2006. If the owner has not received any such notice till the date of addressing this letter of 13th October, 2014, then, how it is the petitioner who makes a reference to a further step and which is claimed to be of approval of plan, grant of C. C. etc. If the surplus vacant land was dealt with in this fashion by the petitioner, then, he knows that it was not and could not have been ever transferred to him. The petitioner has referred in this letter to the notice dated 18th October, 2006 asking delivery of possession to the Government on 31st October, 2006. However, conveniently refers to it as addressed to him. Even if it is addressed to him, then, it is apparent that on 13th October, 2014 and much after lodging of this writ petition, the petitioner was aware that the surplus vacant land was taken over by the competent authority and he could not establish that lack of requisite notice. We have clearly noted from the scheme of the Act as to how section 10(1) contemplates an issuance of a notification, whereupon, section 10(2) follows. Section 10(3) is a declaration which is to be issued by the competent authority and containing the deemed date of vesting. We are, therefore, not surprised that such petition is one more in the series of litigation of builders and developers, who obtain some records and conveniently suppressing others, claim

before this court that the possession of the land was not taken from the owner or person in possession prior to the Repeal Act coming into force. The surplus vacant land has already vested in the State. The petitioner does not even stop at this, but goes ahead and addresses letter dated 10th June, 2015 to the Chief Minister of the State.

22. The petitioner claims that he is entitled to apply for cancellation of the entry in the property register card. The Chief Minister's office is prompt in directing the authorities to offer its comments on the request of the petitioner. What we find is that all this is an afterthought and particularly upon dismissal of two Special Leave Petitions by the Hon'ble Supreme Court of India. The last dismissal order being in the case of *Bank of Baroda* (supra). However, what we find is that though the petitioner is aware of the proceedings and concluded under the Principal/ULC Act has challenged the validity of the proceedings on the ground of absence of notice to the Bhandaris/M/s. Skyline Enterprises. M/s. Skyline Enterprises has not made any such claim. What we find that from the documents and which are relied upon by Mr. Patil from the original record is that he says that endorsement at page 499 would show that the notice under section 10(5) has not been served. He relies upon the endorsements in the negative.

However, these endorsements have to be read in their entirety. Against several columns, there are entries made. As against query that whether notice under section 10(5) has been served on the Bhandaris, the entry is 'Yes'. Whether the notice has been duly served and delivered, the entry is 'Yes'. Whether the holder has expired or otherwise, the endorsement states that he has not expired. The notice has been served by hand delivery. It is clearly stated that there is no signature on the panchanama nor does the same bear the name of the panchas. However, there is a letter from Rajiv Harmalkar and Company at page 501 of the original record dated 13th March, 2012. That is addressed on behalf of the client Rajiv Harmalkar, who is the consulting architect of Hasmant J. Ghanchhi, partner of M/s. Skyline Enterprises. He states that his client has obtained area of 1367.30 square meters of CTS No. 531 as a land within ceiling limit. However, para 1 of this letter states that it is the land within ceiling limit and not surplus vacant land. On the basis of this stand, M/s. Skyline Enterprises obtained approvals from Municipal Corporation of Greater Mumbai and got the plans approved. It is M/s. Skyline Enterprises who has constructed the plinth of the building. Thereafter, when it approached the concerned City Survey Office for obtaining the information of the property card, it found the name of the Government of

Maharashtra as owner. Pertinently, File No. 1, which is reference no. 1 of this letter is nothing but an order under section 8(4) dated 29th October, 1986, which revealed to this Hashmant Ghanchi how the Government's name has been entered as owner. He says that there are two numbers of 6(1) cases/files in existence and two orders under section 8(4) have been issued by the Department, namely, the competent authority. In one of the said files, the area of Cts No. 531 has been shown as surplus vacant land and in another file the same area has been shown as W. C. L. For the same land, there should not be two orders under same section of the ULC Act. When the competent authority issued second order, it should have verified from record of the office whether application filed under section 6(1) was in existence or not for the same land and same family, namely, Gunjubai Bhandari and others. Therefore, there is a mistake on the part of the competent authority in passing two orders for the same land. However, he gives up this claim and states that he is ready to pay ready reckoner value of the land of 2002. The values of the land, therefore, should be informed to him and thereafter, steps should be taken to cancel the notices under sections 10(3) and 10(5) and inform the City Survey Officer to delete the name of the Government. He annexes the area statement. Therefore, M/s. Skyline Enterprises was aware that

there are notices issued under section 10(5). They are aware that the land is surplus vacant land. They are aware by their own letter, through their constituted attorney dated 13th March, 2012 that the land has not only vested in the State but the actual physical possession thereof has already been taken. They question none of the steps. It is surprising that they continue to deal in the land despite the agreements in favour of the petitioner. Far from there being two orders under section 8(4) of the ULC Act, we have two versions and completely divergent, from two builders and developers, who are interested in the property. It is very unfortunate that people are bold enough to make assertions never made by the owners. The version of builders are based on perusal of some record and they claim that the lands have not vested in the State and prior to the repeal of the ULC Act. There is a letter in the file and detailed correspondence with Premnivas Tenant Association. They also evinced interest in the land and they were ready to pay ready-reckoner price as well.

23. We are, therefore, not in agreement with Mr. Patil that the possession of the land was not taken. In the file, in fact, there are clear proceedings and which would indicate that not only the possession was taken, but measures were initiated to pay

compensation. There is an order passed under section 11(7) read with 14 of the ULC Act in that regard. Once the original record comes before the court and it is allowed to be perused by parties, then, we find that there is a clear advantage. When we find the entire and bulky record has not been perused carefully even by the deponent of the affidavit filed on behalf of the respondents before us, then, it is unsafe and unwise to rely upon only that affidavit. That is why we called for the original record.

24. The original record, therefore, reveals that at no point of time Bhandaris have any objection to the proceedings under the ULC Act. They were happy with the revised order passed. There is a clear reference to the revised order dated 27th March, 2002 in the file. However, that is not only concerning the subject land. That relates to claim of Hashmant Ghanchi. Hashmant Ghanchi, claiming as a declarant, has filed a declaration relating to these lands and on the basis of statement under section 6(1) and after preliminary inquiry, measurements and draft statement under section 8(2) of the ULC Act calling upon the owners to prefer objections to the said draft statement. There was a hearing held on 26th March, 2002. The proceedings were closed thereafter. What we find is that the final statement came to be prepared. As far as the remarks in the final statement are concerned, we do

not think that the said Hashmant Ghanchi, though a recipient of the order passed and styled as revised order under section 8(4) of the ULC Act, has taken any advantage of the endorsement or the prior observations flowing from this order. It is, therefore, evident that the land, which is subject matter of the petition is a surplus vacant land, in relation to which, all the proceedings have been concluded. They have been concluded prior to the repeal of the ULC Act coming into force is also evident. The petitioner cannot make much capital of the date in the letter at page 359 of the record. The date is 13th October, 2006. However, that is a clear typographical error. Vide the letter, the City Survey Officer is informing the Additional Collector and Competent Authority that after his communication was received, the steps have been taken by the City Survey Officer. He personally visited the site and took possession of the surplus vacant land. The further steps have also been taken to enter the name of the Government in the property register card. He is forwarding the relevant documents and the endorsement in the property register card for information of the Additional Collector. This letter bears the signature of the City Survey Officer and below the signature, the date written is 13th November, 2006. The competent authority has stamped the acknowledgment date/date of receipt as 20th November, 2006. Therefore, it is not as if the possession of the

land was taken on 13th October, 2006. The documents accompanying this communication would show that there is a record of the possession at site. The record indicates that the notice was duly served. The possession was taken on 31st October, 2006. On the date on which possession was taken, there were huts or slum like structures on the property. Therefore, it is not as if it is a slum area, much less a declared slum. There is a panchanama and also a possession receipt. True it is that the panchanama does not indicate the names of the panchas nor contains their signatures, but the possession receipt clearly refers to all the details, including the signature of the officer taking possession. This contemporaneous record must be perused in its entirety. One single document cannot be read in isolation. It is apparent that notice under section 10(5) was duly prepared and served. It was sought to be served on Vasant Manik Bhandari. The record indicates that the address was incomplete. However, pursuant thereto, the notice came to be served and that is also apparent from the version appearing in the letter addressed by Hashmant Ghanchi to the State. It is clear that the file contains another endorsement and which is the further notice dated 9th January, 2007 directing the Bhandaris and Vasant Manik Bhandari to remain present for the proceedings to determine the compensation. In this notice, it is stated that

possession of the land was taken on 31st October, 2006 in the absence of the said Vasant Bhandari and ex-parte. Pertinently, on 29th January, 2007, the petitioner, as constituted attorney of Gunjubai and others addressed a letter to the competent authority and stated in the same as under:-

“Respected Sir,

We are Power of Attorney holders of Mrs. Gunjubai Manik Bhandari and others who are the owners of land in Malad bearing S. No. 20 H. No. 13, CTS No. 531 of village Valnai, Taluka Borivali admeasuring 1367.30 Sq. Mtrs.

We had applied for ULC NOC on 13/8/1976 and accordingly we had been issued an order u/s 8(4) of the ULC (C & R) Act bearing ULC NOC No: C/ULC/6(i)/D-XV/SR-IX-872/78 dated 27-3-2002 by your office under which the above land is mentioned as **NON-SVL** land, a copy of which we are attaching herewith as **Annexure-I** for your kind reference.

But to our surprise, when we applied for a fresh P. R. Card, we came to know that the said above land is acquired by Maharashtra Government as per your order issued u/s 10(5) of ULC (C & R) Act of 1976 under the ULC No: C/ULC/D-V/SR/X 923/930.

The layout plans for the above said land is already approved under CHE/1220/LOP and the approval of building plans is already in process under CHE/8329/BP(WS) AP and the scrutiny fees for the same has already been paid.

We cannot understand as to how a NON-VSL land can be defined as SVL in the same department with a different ULC file number and it gets acquired under the same different ULC file number. We would like to protest against the same and request you to kindly look into the matter urgently and set aside the said order.

This land is already sold to us through registered Development Agreement and the acquisition of the above said land is bad in law.

Kindly give us a hearing for the above matter for the sake of justice before paying the compensation for acquisition for the said land to any parties representing the above said land.

Sincerely,

Mr. Pankaj S. Parikh

**C. A. to Mrs. Gunjubai Manik
Bhandari and Others.”**

25. This would clearly indicate that the petitioner was aware of the proceedings. In none of these communications emanating from the petitioner, it is asserted that the physical possession is with him. Once there has been no objection or complaint from the original owners nor have they questioned the legality and validity of the concluded proceedings under the Principal Act, then, we cannot accept the arguments of Mr. Patil. We are satisfied from the perusal of the record and which must be seen in its entirety that due compliance was made with all the legal provisions, including section 10(5) of the Act.

26. This is a case covered by the judgment in the case of *Adi Dara Patel* (supra). One paragraph thereof cannot be read in isolation. In *Bank of Baroda's* case (supra), it was held on facts that the possession was not taken from the petitioner, who was in physical possession prior to the repeal of the Principal Act in the State. At the same time, in the case of *Adi Dara Patel* (supra), the

Division Bench makes a reference not only to the case of *State of U. P. vs. Hari Ram*³, but also the later judgment of the Hon'ble Supreme Court of India which in terms holds that much capital cannot be made of the documents not indicating and in clearest terms whether physical possession was obtained or not. This court has referred to that judgment as well. That judgment clearly makes reference to *Hari Ram's* case (supra) and all prior decisions, including on the point of taking possession.

27. It is in these circumstances and when it is conceded that there is no form prescribed for panchanama as also possession receipt, then, all the more, we have no hesitation in rejecting the contentions of the learned counsel appearing for the petitioner. Moreso, when his version is not truthful and honest, suppression of material facts is writ large in these proceedings.

28. As a result of the above discussion, the writ petition fails. Rule is discharged. However, there would be an order to pay costs quantified at Rs.1 lac to be paid by the petitioner within a period of six weeks from today to the respondents. Else, and in default, the same be recovered as arrears of land revenue.

³ (2013) 4 SCC 280

29. The original records shall be returned to Mr. Upadhye provided Mr. Upadhye replaces the same with certified true copies.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)