

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2197 OF 2010

ROSA SAMSON	)	... Petitioners.
R/o. Plot No.55, Hindu Co-op.Hsg.Society,	)	
Lohagaon, Pune.	)	
Through the power of attorney holders :	)	
1. Ritesh Bellara	)	
2. Avinash Khatanhar	)	
Both R/o. C-5, Shrishti Centre,	)	
Ramwadi, Pune -14.	)	

V/s.

1. State of Maharashtra	)	... Respondents.
Urban Development Dept.	)	
Mantralaya, Mumbai 400 032.	)	
	)	
2. Competent Authority,	)	
Pune Urban Agglomeration, Pune.	)	

Ms. Soumya Shrikrishna a/w. Ms. Mansi Patel i/by Udwadia & Co. for the Petitioners.

Mr. N. C. Walimbe, AGP for Respondent Nos. 1 and 2.

**CORAM : ANOOP V. MOHTA AND
P. R. BORA, JJ.**

DATE : 17th JANUARY, 2017

ORAL JUDGMENT : (Per : Anoop V. Mohta,J.)

1 Called out from final hearing board. Heard finally
by consent of the parties.

2 The Petitioner, Rosa Samson is now aged 95, has prayed for final order in the matter in view of the judgment of the Division Bench of this court in **Voltas Limited and Ors. vs. Additional Collector & Competent Authority, 2008 (5) Bom. C.R.746**, wherein after considering the rival submissions and position of law under the Urban Land (Ceiling and Regulation) Act, 1976, and specifically the provisions 5 and 10 thereof, the Division Bench principally on the foundation of actual possession with the original owner has recorded the findings in para 16 of the judgment as under :

“16. In the result, for the reasons recorded, the petition succeeds and is allowed. It is held that as a consequence of the Repeal Act, further proceedings pursuant to the order made by the State Government dated 30.10.2006 abate and can no longer be proceeded further. That all further proceedings under the provisions of the Principal Act in relation to the land of the petitioner no.1 mentioned in the declaration made under sub-section (3) of Section 10 of the Principal Act lapses and those lands no longer vest in the State Government. Rule made absolute accordingly. No order as to costs.”

3 The Petitioner, as averred in the background of the litigation, has been able to place on record the justification to show that till the date actual physical possession of the property in question is with her and the respondent government is not in actual physical possession of the property. Her said stand was on the foundation of following events :

i) That the petitioner is a citizen of India and is residing at aforesaid address, is seeking directions to Respondents not to implement order dated 21.11.2008 issued u/sec. 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976 in the name of Sudha Sukhtankar, vendor of Petitioner in respect of the lands at final Plot No.55, S.No.199 + 204 + 205 + 206(P) + 207 (P) of village Lohagaon, Tal. Haveli, District: Pune for the reason that the Respondents have no jurisdiction to acquire the vacant land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 in view of the repeal of the said Act by adoption of Parliament Act 15 of 1999 by the State Legislature of the Maharashtra on 29.11.2007 and all the proceedings under the said Act of 1976 have been abated and the aforesaid land be treated as “Freehold Land” of Petitioner.

ii) That the Petitioner is the owner of the land at final plot No.55, S.No.199 + 204 + 205 + 206(P) +

207(P) of village Lohagaon, Tal. Haveli, District: Pune admeasurign 3465 sq. Meters and that on 27.09.1979 she purchased the said land from the erstwhile owner Sudha Sukhtankar by the registered deed No. 1930 /79.

iii) That on 17.2.1976, the Urban Land (Ceiling & Regulation) Act, 1976 was promulgated in the Country. As per the said Act, vacant land holders in “Urban Agglomeration” were not to hold excess than the respective prescribed ceiling limits. The Competent Authority was expected to decide the surplus Urban vacant land holding of the holders under the said Act. Accordingly vendor of Petitioner filed return u/sec. 6(1) of the ULC Act for.

iv) That on 12/7/1978, the Respondent No.2 declared area of 1504.58 sq. meter out of the aforesaid land as surplus vacant land u/sec. 8(4) of the ULC Act.

v) That on 27/9/1979, the Petitioner purchased the said land from the holder Sudha Sukhtankar by Registered Deed of Conveyance No. 1930/79.

vi) That on 31/5/1983, A notification u/section 10(5) was issued by Respondent No. 2 in the name of Sudha Sukhtankar. However, actual possession was not taken by

Respondent No. 2 from Petitioner. The land is still in possession of Petitioner. The said order u/sec. 8(4) of the ULC Act was challenged by Petitioner u/Sec. 34 of the ULC Act in Revision before Respondent No.1. However, the proceedings were conducted in the name of erstwhile owner Sudha Sukhtankar as her name was in the record of Respondent Nos. 1 and 2.

vii) That on 3/11/2007, the order dated 12.7.1978 and the notification u/sec. 10(3) and 10(5) of the ULC Act were set aside and the matter was remanded to Respondent No. 2 for the fresh inquiry.

viii) That on 29/11/2007, the ULC Act of 1976 was repealed by adopting Act 15/1999 of Parliament by the State Legislature. All the proceedings under the Act 1976 have been abated. The possession of land final Plot No.55, S.No.199 + 204 + 205 + 206(P) + 207(P) of village Lohagaon, Tal. Haveli, District: Pune was and is with Petitioner. There was no scheme u/sec. 20 of the repealed Act with respect to the said land. Therefore, the aforesaid land became “freehold land” of the Petitioner and there was no occasion for Respondent No. 2 to hold fresh inquiry u/sec. 8(4) of the ULC Act. The Respondent No. 2 ought to have dropped the inquiry.

ix) That on 22/11/2008, after the repeal of the Act on 29.11.2007, the Respondent No.2 in the fresh inquiry held that Petitioner held 404.58 sq. meter land as vacant land. It was specifically observed that the actual possession of the surplus vacant land was with Petitioner. Respondent no. 2 had proceeded to declare vacant land in holding of Petitioner under the provisions of the Repealed Act in respect of the aforesaid land even after 29.11.2007 when Respondent No. 2 should have declared the aforesaid lands as the “Freehold” lands of the holders on account of Repeal of the ULC Act, 1976.

4 Being aggrieved by the aforesaid order dated 21.11.2008 issued u/sec. 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976, which stands repealed, and also by the inaction of both the Respondents to treat the aforesaid land as “Freehold”. The Petitioner has approached this Hon'ble Court under Article 226 of the Constitution of India for necessary directions.

5 In the affidavit-in-reply dated 9th April, 2010 filed on behalf of respondent nos.1 and 2, the respondents opposed the prayers made by the petitioner and submitted that she is unable to justify her case of physical possession, revolving around the entries so required. The possession of the property was taken by the State Government. However, after

considering the documents and findings given by the authority under section 34 of the Act, whereby it has been clearly recorded and conceded that “However, the concerned department has not paid the amount of possession right regarding the said area. Also, the possession of land has not been given to department. Today, the said area is in possession of statement holder”. In the affidavit-in-rejoinder dated 4th May, 2010, the petitioner has reiterated and re-submitted her stand of physical possession with her and her entitlement is made out. In the additional affidavit-in-reply dated 7th August, 2010, wherein in para 5 it has been averred by the respondents as under :-

“5. I have gone through the order passed by the State Government in Revision Application under Section 34 of the ULC Act. It is true that, it says that the possession of the land is with the landowner, this is most probably because the petitioner suppressed these documents from the said authority and the Competent Authority proceeded on this footing because it found itself bound by the finding of the State Government. Since the legality of the said order is not in issue, I am merely pointing out the facts as they reveal from the record.”

6 In view of the above factual position on record supported by the documents and even affidavit so filed and in the present facts and circumstances of the case, we are inclined to hold that the case is made out by the petitioner of the protection, as required/declared by this court in **Voltas Limited** (supra). This court has also passed similar orders in the matter on the foundation of physical possession with the owner. The submission that the SLP is pending in the Apex Court against the judgment in **Voltas Limited** (supra) that itself, in our view cannot be the reason to overlook the provisions of the law with regard to the effect of the possession with the land owner at the relevant date and its effect and the consequences of the repealed Act.

7 Therefore, taking over all view of the matter and considering the scheme of the Act and the facts of the present case and in the background of the affidavit and documents on record, referring to the possession which is with the petitioner, we are inclined to allow this petition.

8 The petition is allowed in terms of prayer clauses (b) and (c). No costs.

Prayer clauses (b) and (c) are reproduced below :

(b) Respondents be directed not take any action for implementation of order dated 21.11.2008 in view of the Repeal of the Urban Land Ceiling and Regulation Act, 1976 by adoption of Central Act 15/1999 by the State Legislature on 29.11.2007 as the same is nullity.

(c) The order dated 12.07.1978 and the order dated 21.11.2008 in ULC Case No. 1262-SU be quashed as the same had abated and have become inoperative against Petitioner's land at S. No. 199 + 204 + 205 + 206(P) + 207(P) of village Lohagaon, Tal. Haveli, Dist. Pune.

Rule is made absolute accordingly.

(P. R. BORA,J.)

(ANOOP V. MOHTA J.)

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