

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13629 of 2016.

Anil Laxman Janmali

.... Petitioner.

V/s.

The Principal Secretary Urban
Development Deptt. & Ors

.... Respondents.

Mr R.D. Soni i/by Ram & Co. for the Petitioner.

Mr V.P. Malvankar, A.G.P. "A" Panel for Respondent No. 1 to 4.

CORAM : A.S. OKA &
ANUJA PRABHUDESAI, JJ.

DATE : 23rd JANUARY, 2017

P.C. :

1) Heard learned Counsel appearing for the petitioner.
The first prayer in this petition is that the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the ULC Act') on the basis of notices issued under sub-sections (1), (3) and (5) of Section 10 stand abated in view of coming into force of the repeal of the ULC Act in State of Maharashtra, with effect from 29th November, 2007. The second prayer is a consequential prayer for declaration that the lands subject-

matter of this petition are free from restrictions under the U.L.C. Act. There are other consequential reliefs sought in the petition.

2) As it is disclosed in the petition, in respect of the lands subject-matter of this petition, the present petitioner filed Writ Petition No. 7418 of 2007. The challenge in the said petition under Article 226 of the Constitution of India, was to the notice dated 31st July, 2007 issued by the Additional Collector and Competent Authority under the ULC, Nasik in exercise of the powers under sub-section (5) of Section 10 of the ULC Act. Under the said notice, the petitioner was called upon to deliver possession of the lands subject-matter of this petition within 30 days. Pages 49 to 52 of this petition show that the possession of the lands subject-matter of this petition was handed over by the petitioner on 29th September, 2007. In the possession receipt signed by the petitioner on 29th September, 2007, he has stated that he has handed over the possession of the lands subject to the earlier petition filed by the petitioner. Subsequently, on 18th January, 2008 the earlier petition was withdrawn by the petitioner. No liberty was

granted to file a fresh petition. Now, in this petition it is contended that the possession handed over as recorded in the documents Exh. "G" dated 29th September, 2007 is a paper possession and in fact, the petitioner continues to be in possession till the date of the repeal i.e. 29th November, 2007. Reliance is placed on various documents to show that the petitioner continues to be in possession.

3) As stated earlier, when earlier Writ Petition No. 7418 of 2007 was pending in which there was a challenge to the notice under sub-section (5) of Section 10 of the ULC Act, the petitioner delivered possession of the lands subject-matter of this petition by mentioning that he was delivering it subject to the outcome of the said petition. As stated earlier, on 18th January, 2008, the earlier petition was unconditionally withdrawn. The possession receipt signed by the petitioner admittedly mentions that possession was handed over subject to the outcome of the earlier petition. As the earlier petition is unconditionally withdrawn, now it is not open for the petitioner to say that on 29th September, 2007 he did not deliver the actual possession of the vacant land held in excess

of ceiling limit and that he continues to be in possession till 29th November, 2007. The prayer for abatement of the proceeding under ULC Act can be considered provided the petitioner was not dispossessed till 29th November, 2007.

4) The notice of possession dated 31st July, 2007 under sub-section (5) of Section 10 of the ULC Act which was the subject matter of challenge in the earlier petition is also challenged in this petition.

5) Therefore, in this petition under Article 226 of the Constitution of India, we cannot allow the petitioner to urge that on 29th November, 2007 he was not dispossessed. The said grievance was not made when the earlier petition was unconditionally withdrawn on 18th January, 2008. The said contention is not open to the petitioner. As the said contention is not open to the petitioner, the prayer for abatement of the proceedings on the basis of the Repeal Act cannot be granted. Accordingly, the writ petition is rejected.

(ANUJA PRABHUDESAI, J)

(A.S. OKA, J)