

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6390 OF 2016**

Sharanbasappa Shivappa Patil
since deceased thru LRs
(1)Smt.Chandrammabai Sharanbasappa
Patil and others .. Petitioners

V/s

The State of Maharashtra
and others .. Respondents

...

Mr.Ramdas Sabban i/b Amarnath Boddul, Advocate for the
petitioners.
Mr.PP. Kakade, AGP for the State.
Mr.Sandesh Patil with Mr.D.P. Singh, Advocate for respondent
nos.4 and 5.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATED: 24th JANUARY, 2017

P.C.:-

1 This is a second round of litigation from the same
family whose lands were acquired under the Urban Land (Ceiling
& Regulation) Act, 1976. The proceedings were initiated in the
year 1981 culminating into an award and the possession of the

Tilak

lands having being taken on 19th May 1982. The original owner was one Shivappa Patil who was the grand-father of the petitioner. The petitioner is a legal heir of one of the sons of the original owner – Sharanbasapa Shivappa Patil. One Siddharam Shivappa Patil – son of the original owner (Shivappa Patil) had approached this Court in Writ Petition No.7180 of 2014 raising a similar challenge as in the present petition. By a judgment and order dated 15th/16th December 2015, a Division Bench of this Court (Coram : A.S.Oka and G.S.Patil, JJ) dismissed the Writ Petition with costs of Rs.50,000/-. The observations as made in the said judgment by the Division Bench in paragraph nos.13 to 17 and 27 to 32 are required to be noted and which read thus :

“13 We have given our careful consideration to the submissions. On 26th March 1981, an order was made by the Competent Authority under the ULC Act in exercise of the powers under Sub-Section (4) of Section 8 of the ULC Act declaring that the original owner was holding a vacant land admeasuring 2,17,446 Sq. Metres in excess of the ceiling limit. It appears that the original owner preferred an Appeal under Section 33 of the ULC Act against the said Judgment and Order. There was an order made on 17th March 1982 by the Collector in the Appeal. The relevant part of the said order reads thus:

“..... On 10-2-1982 she has filed a application personally stating therein that she has already given her willingness for transfer of 6-acres of land without any compensation admeasuring 24300 sq. mtr. Out of S. No. 219 of Solapur to All India Radio for setting up a Radio Station at Solapur

with the Dy. Collector & Competent Authority, Solapur Urban Agglomeration, Solapur. She has further stated that she has no objection to declare excess vacant land of 6-acres out of the above Survey Number adjacent to old Kumbhari Road at North-East corner of the said S.No. 219. In view of these facts there seems no objection to consider the request of the applicant. As regards other points pressed on behalf of the appellant in his original appeal memo it is stated that the same will be considered at the time of final hearing of the case.

ORDER

In view of the pursis given by the appellant and reasons discussed above the appeal is rejected so far as the lands of 6-acres declared surplus out of S.NO.219 of Solapur and the order of the Dy. Collector & Competent Authority, Solapur Urban Agglomeration, Solapur, passed under No. SR.II.1695, dt.26-3-1981 is hereby confirmed to the extent of declaring 6-acres of surplus vacant land out of the said survey number. The stay granted vide this office order No. ULC.Appeal 8/81, dt.2-6-1981 is hereby vacated to the extent of 6-acres land of S. No. 219 of Solapur. The appellant should be informed accordingly by R.P.A.D.”

(underlines supplied)

14 Thus, the Appellate Authority has specifically recorded that on 10th February 1982, the original owner filed an application in person stating therein that she has already given her willingness to transfer 6 Acres of land (admeasuring 24,300 Sq. Metres) without any compensation out of Survey No. 219 of Solapur to the All India Radio for setting up a Radio Station at Solapur. The order records that she had no objection to declare area of 6 Acres out of Survey No. 219 adjacent to old Kumbhari road on North-East corner of the said Survey No. 219 as vacant land held in excess of ceiling limits. Relying upon the application dated 10th February 1982 made by the original owner, the Competent Authority dismissed the

Appeal as far as the said land admeasuring 24,300 Sq. Metres is concerned by holding that the said land is declared as surplus out of Survey No. 219. The Petitioner has not come out with the case that the said order of 17th march 1982 was ever challenged. Hence, the said order has become final. The said order records an unqualified statement made by the original owner in her application dated 10th February 1982 that she has given her willingness to transfer the area of 24,300 Sq. Metres out of Survey No. 219 to All India Radio for setting up a Radio Station at Solapur without compensation. Thus, the said land admeasuring 24,300 Sq. Metres was surrendered by the original owner expressly without claiming any compensation.

15 Apart from the original owner herself, her another son and the Petitioner's brother, Gurunath, who was at the relevant time a Member of the Maharashtra Legislative Assembly addressed a letter dated 16th October 1981 to the District Collector of Solapur stating that he was willing to offer on his own lands bearing Survey No. 220 and or Survey No. 219 held by the original owner to the All India Radio for setting up a Radio Station at Solapur. The said Gurunath also addressed a letter dated 8th November 1981 to Mr. Sandippanji Thorat, a Member of the Parliament making the same offer. He stated in the said letter that he was willing to give the said land to the All India Radio without claiming any compensation. On the basis of the said letter, Mr. Thorat addressed a letter to the then Minister for Information and Broadcasting. In turn, the Joint Secretary of the Ministry of the Information and Broadcasting of the Government of India by his letter dated 11th January 1982 requested the Secretary of the Housing and Special Assistance Department, the Government of Maharashtra to examine the matter and to allot the said land to the All India Radio. A letter dated 21st January 1982 was addressed by the Joint Secretary of the Housing and Special Assistance Department, the Government of Maharashtra to the Competent Authority, Solapur under the ULC Act recording that the said Gurunath has addressed a letter to the Hon'ble Minister giving his consent to acquire the land belonging to him

admeasuring 6 Ares out of Survey Nos. 219 or 220. There is a letter dated 28th January 1982 addressed by the Director General of Information and Public Relations of the Government of Maharashtra to the Secretary to the Government of India, Ministry of Information and Broadcasting. Even in the said letter, the offer made by Gurunath was reproduced and a request was made to consider the said offer. Thus, the letter dated 10th February 1982 was submitted by the original owner to the Competent Authority under the ULC Act is not the only document which suggests that there was a conscious decision taken not only by the original owner of handing over the area of 24,300 Sq. Metres without any claim for compensation for setting up a Radio Station at Solapur, but also by her son Gurunth who specifically offered to give land admeasuring 24,300 sq. metres out of Survey No. 219 without any compensation to the All India Radio. As pointed out earlier, the order 17th March 1982 passed by the Competent Authority has attained finality, under which an area of 24,300 Sq. Metres out of Survey No. 219 was declared as excess land on the basis of a specific statement made by the original owner that she was willing to transfer the said land, without any compensation, to the All India Radio for setting up a Radio Station at Solapur.

16 From the order dated 17th March 1982 passed by the Appellate Authority, it is very clear that the Appeal was kept pending but the same was rejected in relation to the area of 24,300 Sq. Metres. The Appeal was kept pending as under the order passed under Sub-Section (4) of Section 8 of the ULC Act, an area of 2,15,946 Sq. Metres was declared as a vacant land held by the original owner in excess of the ceiling limit.

17 The order of the Appellate Authority was acted upon and possession of the area of 24,300 Sq. Metres was taken over by the Nayab Tahasildar on 26th May 1982. The possession receipt signed by the original owner records that she has willingly handed over the area of 24,300 Sq. Metres to the State Government and she has no

grievance about the same. The possession receipt is also signed by the present Petitioner as well as his brother Gurunath. The date of possession receipt is 26th March 1982. Thus, the possession of an area of 24,300 Sq. Metres was taken over on the basis of the order dated 17th March 1982 passed by the Appellate Authority under the ULC Act. We must note here that the order of the Competent Authority dated 17th March 1982 notes an unconditional and unqualified statement in writing by the original owner to transfer the area of 24,300 Sq. Metres without any compensation to the All India Radio. The said order does not mention that any condition was imposed by the original owner in the letter dated 10th February 1982. This is relevant as one of the letters addressed by the said Gurunath Patil recites that he was offering the land bearing Survey No. 219 by way of donation to the All India Radio subject to the condition of displaying the name of his father on the building to be constructed by the All India Radio. When the said letter was submitted by Gurunath, the original owner was very much alive. Thus, the original owner did not challenge the order dated 17th March 1982 and on the contrary, on the basis of the said order willingly handed over the possession of area of 24,300 Sq. Metres to the Nayab Tahasildar. The original owner died on 6th February 1992. During her lifetime, she made no grievance about the order dated 17th March 1982 and the possession delivered on 26th May 1982. As stated earlier, even after her demise, neither the Petitioner nor his brother, Gurunath challenged the said order of the Appellate Authority.

27 Thus, the argument that the documents and facts which are suppressed are not material deserves to be rejected. The submission of the learned counsel appearing for the Petitioner is that this Court should do substantial justice. Considering the facts narrated above and the conduct of the Petitioner, the only way of doing substantial justice will be to dismiss the Petition and direct the Petitioner to pay exemplary costs.

28 The learned counsel appearing for the Petitioner relying upon a decision of the Apex Court in the case of *Venkateswara Rice, Ginning & Groundnut Oil Mill Contractors Company* (Supra). The learned counsel appearing for the Petitioner relied upon paragraph 9 of the said decision by contending that this Court cannot set aside the order dated 29th April 2010 passed by the Coordinate Bench of this Court in the earlier Writ Petition. The said submission is completely misconceived and deserves to be rejected in the light of law laid down by the Apex Court in the case of *S.P.Chengalvaraya Naidu* (Supra). By suppressing material documents and facts, the Petitioner has played fraud upon this Court and the fraud played by the Petitioner has vitiated all proceedings initiated at the instance of the Petitioner.

29 As recorded earlier, this Petition was earlier adjourned to enable the learned counsel appearing for the Petitioner to take instructions whether the Petitioner is desirous of prosecuting this Petition.

30 The learned counsel appearing for the Petitioner gave an usual excuse that the Petitioner is an illiterate person. The manner in which proceedings are filed by the Petitioner shows that the Petitioner is not an innocent illiterate person. Even on the first Petition filed in the year 2010, the Petitioner has signed in English. In the written submissions, the learned counsel appearing for the Petitioner tried to contend that for his mistake, the Petitioner should not suffer. This submission is perhaps made as the same learned counsel was representing the Petitioner in the earlier Petition also. While issuing notice through another Advocate on 6th May 2014, the Petitioner has suppressed the same material facts and documents. Hence, the Petitioner is not at all innocent.

31 Now the question is what should be the amount of costs. Considering the extent of the acts of suppression, and the fact that the Petitioner has taken this Court on a ride, we would have been justified in directing the Petitioner to pay costs of an amount not less than Rs.

5,00,000/-. However, we cannot ignore that the Petitioners predecessor made a donation of the said land admeasuring 24,300 Sq. Metres to All India Radia for setting up a Radio Station at Solapur. This is the only reason that we are quantifying the costs at Rs. 50,000/-.

32 Hence, the following order:

- (a) The Writ Petition is rejected;
- (b) We direct the Petitioner to pay costs quantified at Rs. 50,000/- within a period of two months from today. A sum of Rs. 25,000/- shall be paid to the State Government and the remaining sum of Rs. 25,000/- shall be paid to Dr. Praveen Gedam, the then Collector of Solapur who for the first time noticed the acts of suppression;

For reporting compliance regarding order of payment of costs, the Petition shall be listed on 26th February 2016.

2 Further, Siddharam Patil had challenged the said order by approaching Supreme Court in Special Leave Petition No. 3390/16. By an order dated 15th February 2016, the Special Leave Petition came to be rejected.

3 Despite the above, Mr.Sabban, would however, insist that the petitioner nevertheless has approached this Court for the first time though the member of the same family. We see that similar contentions are raised as in the earlier petition filed by Siddhram. Having considered the facts and circumstances of the

case, we are not inclined to again revisit the issues on merits in this second round. In our opinion, all these issues as being urged by the petitioner, stand concluded in the decision of Division Bench of this Court, in the writ petition filed by Siddharam as noted above.

4 It is an admitted position that the petitioner is a Member of the joint family. The lands were held as property of the joint family. One of the members of the joint family was before this court in the first round and has failed upto the Supreme Court. We are of the clear view that another co-owner cannot espouse the same cause and initiate fresh proceedings. Petition is devoid of merits and is accordingly dismissed.

6 At this stage, Mr.Patil, learned counsel for respondent nos.4 and 5 would insist that costs be imposed on the petitioner as this is a frivolous petition. However, we do not impose costs.

(G.S.KULKARNI, J)

(CHIEF JUSTICE)