

shiv/ssp

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

WRIT PETITION NO.5106 OF 2010

Vijay Kisan Kate .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr. S.M. Gorwadkar, Senior Advocate with Mr.Mankirat Singh with Mr.Sujay H. Gangal for the Petitioner.
Mr. A.B. Vagyani, G.P WITH Mr. Manish M. Pabale A.G.P for the Respondent No.1.
Mr. Kumar Saste for the Respondent No.3.
Mr. Nitin P. Deshpande with Ms.Bhagyashree Bhosale for the Respondent No.5.
Mr. G.S. Godbole with Mr.Purushottam G. Chavan for the Respondent No.6.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 24TH AND 25TH APRIL, 2017

P.C.: (PER A.S.OKA,J.)

1. The Writ Petition was taken up for final disposal in view of the observations made by the Apex Court in the order dated 7th October, 2016.

2. With a view to appreciate the submissions canvassed across the bar, basic factual controversy will have to be noted. The petitioner claims to be an owner of various properties described in clause (b) of paragraph 3 of the present writ petition. According to the case of the petitioner, after his birth, certain properties (as mentioned in clause (d) of paragraph

3) out of the properties set out in clause (b) paragraph 3 were sold by his grandfather Jayaji Kate. The petitioner is relying upon genealogy of his family at the time of coming into force of the Urban Land (Ceiling and Regulation) Act, 1996 (for short "the ULC Act").

3. According to the case made out in the petition, statements/returns under Sub-Section 1 of Section 6 of the ULC Act were filed. On 15th April, 1981, on the basis of the statements submitted under Sub-Section 1 of Section 6 of the ULC Act, the Competent Authority passed a common order under Sub-Section 4 of the Section 8 of the ULC Act. By the order dated 15th April, 1981, four members of the family of the petitioner who filed returns were held entitled to retain a total area 4000 square meters of vacant land (1000 square meters each) out of their total land holding. An area of 37,569.06 square meters was declared as the land held in excess of ceiling limits. According to the case of the petitioner, under the development plan sanctioned under the Maharashtra Regional and Town Planning Act, 1966, certain areas out of the holding of the petitioner's family were shown under reservation.

4. In the petition, it is pointed out that on 27th December, 1989 the Competent Authority published a declaration under Sub-Section 1 of Section 10 of the ULC Act. There were two appeals preferred by the family members of the petitioner

challenging the order under Sub-Section 4 of Section 8 of the ULC Act. Both the appeals were dismissed on the point of limitation. The orders passed on appeals have been confirmed in the Writ Petition filed by the petitioner's father. The case made out in the petition is that though a notification under Sub-Section 3 of Section 10 of the ULC Act dated 18th June, 1991 was published and though on 23rd October, 1991 a notice under Sub-Section 5 of Section 10 of the ULC Act was issued, no notice under Sub-Section 6 of Section 10 of the ULC Act was issued to the petitioner's family. The purported possession panchnama has been recorded by the Competent Authority, in absence of the petitioner and his family members under which the possession of the excess vacant land of 34069 square meters bearing survey No.11/1 was purportedly taken over and was allotted to the fifth respondent – the Maharashtra Housing and Area Development Authority.

5. The main contention in the writ petition is that after the Act repealing the ULC Act came into force on 29th November, 2007 in the State of Maharashtra, the proceedings initiated under the ULC Act stood lapsed or abated as the possession of the vacant land held in excess of ceiling limit was never taken over in accordance with Sub-Section (5) read with Sub-Section (6) of Section 10 of the ULC Act.

6. It is contended in the petition that the acquisition proceedings were initiated by the 2nd

respondent for acquiring an area of 1106 square meters out of Survey No.11/1 and an award under Section 11 of the Land Acquisition Act was made on 26th March, 2008. It is pointed out that though vacant land in excess of ceiling limit was purportedly allotted to the fifth Respondent, the legal possession thereof has not been handed over to the said Respondent. In fact, the contention is that possession of the excess land has not been taken over in terms of Sub-Sections 5 and 6 of Section 10 of the ULC Act.

7. The first challenge in this petition under Article 226 of the Constitution of India is to the order dated 20th April, 1992 by which a part of the said land was allotted to the fifth respondent. The entire petition is founded on the basis that in view of the repeal of the ULC Act, all the proceedings under the ULC Act in respect of the excess land determined under the order dated 15th April 1981 (for short "the said land") stood abated.

8. This petition is opposed by the various respondents by filing reply. Firstly, we must point out the stand taken by the State Government. There is an affidavit in reply filed on 20th July, 2010 by Shri Bhanudas P. Gaikwad, the Deputy Collector and Competent Authority, Pune Urban Agglomeration, Pune. In the said affidavit of Shri Gaikwad, it was contended that a notification under Sub-Section 3 of Section 10 of the ULC Act was issued on 18th June, 1991 for the land

bearing Survey No.11/1 (part) admeasuring 34069 square meters (the said land). But the lands bearing Survey Nos.25/30 and 17/8 were not included. The said notification under Sub-Section 3 of Section 10 was published on 4th July, 1991. Reliance is placed on a notice issued under Sub-Section 5 of Section 10 on 23rd October,1991 calling upon the petitioner to give possession of the excess vacant land. It is pointed out that by the order dated 2nd December, 1991 the excess vacant land admeasuring 34069 square meters (the said land) was allotted to the fifth respondent. The said officer has pointed out that one Ramchandra Jayaji Kate, Uncle of the petitioner filed the Writ Petition No.1402 of 1992 before this Court. The said writ petition was withdrawn. Thereafter the said Ramchandra Jayaji Kate, the petitioner herein and another filed one more writ petition which was rejected. It is pointed out that the present petitioner suppressed the important fact that his father Kisan Jayaji Kate, and he himself along with others filed a revision under Section 34 of the ULC Act against the order dated 15th April, 1981 and that the said revision application came to be dismissed. The petitioner's father filed a Writ Petition in this Court for challenging the decision of the State Government under Section 34 of the ULC Act which petition also came to be dismissed by the order dated 14th June, 2004. The copies of the notices issued under the ULC Act have been annexed to the affidavit in reply.

9. Shri Vivek Bapurao Patil, Executive

Engineer filed a reply on behalf of the fifth respondent. It is stated in the reply that on 20th April, 1992 the vacant land (the said land) held in excess of ceiling limit was placed in possession of the Pune Housing and Area Development Board. It is stated that the fifth respondent is in actual possession of the land. It is pointed out that measurement was carried out by the fifth respondent on 19th March, 1993. It is contended that though the fifth respondent is not in a position to execute any housing scheme on the land under dispute, the fifth respondent is entitled to the benefits of TDR, additional FSI or compensation from the Pimpri Chinchwad Municipal Corporation. Various documents has been annexed to the affidavit.

10. Shri Prakash Thakur on behalf of the Pimpri Chinchwad Municipal Corporation filed a reply dealing with the issue of reservation of the land under the Maharashtra Regional and Town Planning Act, 1966. It is contended that for the acquisition of a portion of the said land, a notification under Section 6 of the Land Acquisition Act, 1894 was issued by the Competent Authority on 30th June, 2005. It is alleged that on 25th April, 2008 the possession of the land reserved for burial ground was handed over to the Pimpri Chinchwad Municipal Corporation by the Land Acquisition Officer. There is an affidavit in rejoinder filed by the petitioner dealing with all the aspects.

11. There is an affidavit filed by the sixth

respondent for opposing the petition in which the conduct of the petitioner of suppressing material facts has been pointed out.

12. The main issue which arises for consideration is whether before 29th November, 2007 the possession of the excess vacant land (the said land) was taken over in terms of Sub-Section 5 and Sub-Section 6 of Section 10 of the ULC Act. The other issue is whether considering the conduct of the petitioner, he should be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India.

13. The submission of the learned senior counsel for the petitioner is that firstly the possession of the said land was never taken over and the fifth respondent was never placed in possession. When the attention of the learned senior counsel was invited to the application dated 8th May 1992 submitted by the petitioner's father and others seeking restoration of the possession of the said land, he submitted that by filing an affidavit, the petitioner has explained the same. He submitted that only on the basis of the last sentence in the said application, it cannot be inferred that the father of the petitioner and others have accepted that they have been dispossessed. He submitted that the prayer for restoration is in the context of the stand of the State Government that the allotment of the said land has been made to the fifth respondent and therefore, the prayer in the said application is in substance for cancellation of the said allotment.

He submitted that if the possession of the said land was taken over, there was no occasion to acquire a portion of the said land under the provisions of the Land Acquisition Act, 1894, on the basis of the reservation shown in the development plan at the instance of the third respondent-Municipal Corporation.

14. The learned senior counsel invited our attention to the decision of the Apex Court in the case of State of Uttar Pradesh vs. Hari Ram¹ and in particular what is held in paragraphs 34 to 40. His submission is that the Apex Court has held that the word 'may' used under sub-section 6 of section 10 will have to be construed as 'shall'. He submitted that paragraph 37 makes it very clear that a notice of dispossession under sub-section 6 of section 10 is required to be served before an action of forcible dispossession is taken. Without prejudice to his contention that the possession was not taken over, he submitted that in any event, the possession was not taken over in accordance with sub-section 5 read with sub-section 6 of section 10 of the ULC Act. He submitted that the notice dated 23rd October 1991 purportedly issued under sub-section 5 of section 10 was not served to the petitioner. The notice directs the Tahsildar to take possession. He submitted that a further delegation was made by the Tahsildar in favour of the Circle Officer and Village Talathi. He submitted that the Circle Officer, the Village Talathi and the City Survey

¹ (2013) 4 SCC 280

Officer signed the Panchnama recording taking over possession of the said land. He submitted that an action under sub-section 6 of section 10 could have taken only by the Competent Authority and there was no power vesting in the Competent Authority of authorizing any other Officer to take the action of dispossession. In the present case, the delegate of the Competent Authority has made further delegation. He invited our attention to various decisions of the Apex Court holding that when a statute vests a power in a particular authority to do a particular act, the said act has to be done by that particular authority and by no one else. He submitted that the law laid down by the Apex Court is very clear. If a statute requires a particular thing to be done in a particular manner, the same shall be done in that manner and in no other manner. He would, therefore, urge that the alleged action of forcible dispossession is not in accordance with sub-section 6 of section 10. Hence, the Act repealing the ULC Act will apply to the said land as the possession thereof was not taken over on or before 29th November 2007 in accordance with sub-section (5) and (6) of Section 10.

15. The submission of the learned AGP as well as the learned counsel for the fifth respondent is that forcible dispossession under sub-sections 6 of section 10 was made as per a Notice issued by the Competent Authority and only the ministerial act of dispossession was by the Circle Officer and Village Talathi. Therefore, their submission is that there

is no delegation made by the Competent Authority.

16. The submission of the sixth respondent is essentially based on suppression of the material facts by the petitioner. It is pointed out that Writ Petition No.1404 of 1992 was filed by the petitioner which was unconditionally withdrawn. Emphasis laid by the sixth respondent is on the suppression of fact of filing of Writ petition No.1540 of 1992 by the petitioner's father and two others for challenging the order dated 5th March 1992. By order dated 6th April 1992, the said Writ Petition was dismissed on merits. Our attention is invited to the various averments made in the said Writ Petition. The submission is that once the challenge to the notice of dispossession was negatived by this Court, it was not necessary to issue a fresh notice and an action of dispossession could have been straight way taken. As stated earlier, it was pointed out that not only the fact of filing a Writ Petition was suppressed but even the fact of filing a revision against the order of the Appellate Authority by the petitioner's father was also suppressed.

17. We have carefully considered the submissions. It is not disputed that the petitioner's father filed a Writ Petition No.1404 of 1992 for stay of the notice of dispossession dated 17th March 1992. By the order dated 30th March 1992, the said writ petition was allowed to be withdrawn. The learned senior counsel for the petitioner has not disputed

that the petitioner's father and two others filed Writ Petition No.1540 of 1992. A copy of the said Writ Petition is on record. We have perused the said writ petition. The said petition refers to the order dated 15th April 1981 under sub-section 4 of section 8 of the ULC Act. It refers to the order dated 5th March 1992 passed in the Appeals against the order dated 15th April 1981. The Appellate Authority by the order dated 5th March 1992 confirmed the order dated 15th April 1981 passed by the Competent Authority declaring the said land as the vacant land held in excess of ceiling limit. The first challenge in the said Writ Petition was to the order dated 5th March 1992 passed by the Appellate Authority by which the appeals were dismissed and the order passed under sub-section 4 of section 8 was confirmed. Interim relief was sought on the basis of the Notice issued on 17th March 1992 for preventing dispossession. By the notice dated 17th March 1992, the petitioner's father and others were called upon to remain present on 27th March 1992 at 11 a.m for delivering the possession of the excess vacant land (the said land). As noted earlier, the said Writ Petition was dismissed on merits by a Division Bench of this Court by an order dated 6th April 1992.

18. We have perused the said order dated 6th April 1992. The effect of the said order is that the order of the Appellate Authority which confirmed the order under sub-section 4 of section 8 was upheld by this Court. In the said Writ Petition, there was no

specific grievance as regards the illegality of the notice of dispossession dated 17th March 1992. In our view, the fact of filing of the writ petition ought to have been disclosed in this petition. The effect of dismissal of the said petition is that the action of the Competent Authority of initiating action of dispossession was upheld. In fact, on 5th May 1992 an application was made by the petitioner's father and other co-owners for restoration of the said land. In the year 1996, the petitioner's father, the present petitioner and others filed a Revision Application under section 34 of the ULC Act for challenging the order dated 15th April 1981. The said order was challenged by them by way of filing two Appeals and the order of the Appellate Authority confirming the order dated 15th April 1981 was upheld by this Court by the order dated 6th April 1992 in Writ Petition No.1540 of 1992. The said revision Application was dismissed by the order dated 19th September 2003 by the State Government. Writ Petition No.3989 of 2003 was filed by the present petitioner and others for challenging the order of the Revisional Authority. The said Writ Petition was dismissed by the order dated 14th June 2004 as a Writ Petition earlier filed against the order of the Appellate Authority was dismissed.

19. Thereafter, another notice dated 18th April 1992 was served on the father of the petitioner and five others based on the order dated 6th April 1993 passed by the Division Bench in the aforesaid petition. They were called upon to remain present on 20th April 1992 for delivering the possession of

the said land. There is some dispute raised about the service of the said notice.

20. Before we come to the issue of compliance with sub-sections (5) and (6) of section 10 of the ULC Act, it will be necessary to note the law laid down by the Apex Court in the case of Hari Ram (supra). Paragraphs 34 to 39 which are relevant for consideration read thus:

"Peaceful dispossession

34 Sub-section (5) of Section 10 for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35 If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no

voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36 The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary-can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e taking

possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37 The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

38 The above reasoning is in consistence with the 1983 Directions which have been issued by the State Government in exercise of the powers conferred under Section 35 of the Act. The Directions clearly indicate the procedure for taking possession of the vacant land in excess of the prescribed ceiling limit, which reads as under:

The Uttar Pradesh urban Land Ceiling (Taking of Possession, Payment of Amount and

Allied Matters) Directions, 1983 (Directions issued by the State Government under section 35 of the 1976 Act):

"In exercise of the powers under Section 35 of the Urban land (Ceiling and Regulation) Act, 1976 (33 of 1976), the Governor is pleased to issue the following directions relating to the powers and duties of the competent authority in respect of amount referred to in Section 11 of the aforesaid Act to the person or persons entitled thereto.:

1.Short title, application and commencement -

These Directions may be called the Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983

(2) The provisions contained in this direction shall be subjected to the provisions of any directions or rules or orders issued by the Central Government with such directions or rules or orders.

(3) They shall come into force with effect from the date of publication in the gazette.

2 Definitions -

3 Procedure for taking possession of vacant land in excess of ceiling limit -

(1)The competent authority will maintain a register in For No.ULC-I for each case regarding

which notification under sub-section (3) of Section 10 of the Act is published in the gazette.

4. (1)

(2) An order in Form No.ULC-II will be sent to each landholder as prescribed under sub-section (5) of Section 109 of the Act and the date of issue and service of the order will be entered in Column 8 of Form No.ULC-I.

(3) On possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10 of the Act, entries will be made in a register in Form No.ULC-III and also in Column 9 of Form No.ULC-I. The competent authority shall in token of verification of the entries, put his signatures in Column II of Form No.ULC-I and Column 10 of Form No.ULC-III

Form No.ULC-1

Register of Notice u/s 10-(3) and 10(5)

1	2	3	4	5	6	7	8	9	10	11
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Sl No	Sl.No .of regis ter of recei pt Sl.no .of regis ter of takin g posse ssion	Cas e num ber	Date of Noti unde r sect -ion 10(3)	Land to be acqu ired Vill age Moha li	Date of taki ng over poss essi on	Rema rks	Signatur e of competen t authorit y			
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Form NO. ULC-II

Notice order u/s 10(5)

(See clause (2) of Direction (3)

In the Court of Competent Authority

U.L.C.

No.....

Date

Sri/Smt.....T/o

In exercise of the powers vested un/s 10(5) of the Urban Land Ceiling and Regulation Act, 1976 (Act No.33 of 1976, you are hereby informed that vide Notification No..... dated under section 10(1) published in Uttar Pradesh Gazette dated following land has vested absolutely in the State

free from all encumbrances as a consequence Notification u/s 10(3) published in Uttar Pradesh Gazette dated Notification No..... dated ... With effect from you are hereby ordered to surrender or deliver the possession of the land to the Collector of the District Authorised in this behalf under Notification No.324/II-27-U.C.77 dated February 9, 1977, published in the gazette, dated March 12, 1977, within thirty days from the date of receipt of this order otherwise action under sub-section (6) of [Section 10](#) of the Act will follow.

Description of Vacant Land

Location	Khasra number	Area	Remarks
	identification		
1	2	3	4

Competent Authority

.....
.....

Dated.....

No.
Copy forwarded to the Collector with the request that action for immediate taking over of the possession of the above detailed surplus land and its proper maintenance may, kindly be taken an intimation be given to the undersigned along with copy of certificate to verify.

Competent Authority

....."

39 Above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land."

(underline supplied)

21. Paragraph 38 refers to directions issued by the State of U.P for taking possession of the excess land. The said directions will have no application in the present case.

22. It is true that the Apex Court has held that if the person to whom a notice under sub-section 5 of section 10 is served refuses to surrender or to give possession, recourse will have to be taken to forcible dispossession under sub-section 6 of section 10. In paragraph 37, it is held that the word 'may' used in sub-sections 5 and 6 shall be construed as 'shall'. It is true that in paragraph 37, the Apex Court held that it is necessary to issue a notice of taking forcible possession under sub-section 6 of section 10 of the ULC Act. The submission of the learned senior counsel for the petitioner in short is that in this case, the possession is not taken over in terms of sub-section 6 of section 10, and therefore, the

Repeal Act will apply. Sub-sections 5 and 6 of section 10 read thus:

"(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), 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 authorized by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation — in this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government" , in relation to —

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government."

23 Under sub-section 6 of section 10, the Competent Authority is entitled to take possession of the vacant land or cause it to be given to the State Government and or any person in this behalf, if any person refuses to comply with an order made under sub-section 5 of section 10. The Competent Authority is defined under clause (d) of section 2 of the ULC Act. The Competent Authority includes an Officer authorized by the State Government by a notification in the Official Gazette to perform functions of the Competent Authority for a particular period.

24 There is no dispute that the notice/order under sub-section 5 of section 10 dated 23rd October 1991 was issued by the Competent Authority to all concerned. By the said notice, the noticees were called upon to surrender the land described in the said notice. The said notice specifically states that the noticees are required to surrender or deliver possession on 2nd December 1991 to the Tahsildar, Taluka Haveli who was duly authorized by the Government. Further part of the notice states that in the event of the failure to deliver possession to the State, steps will be taken for taking forcible possession. We have already quoted sub-sections 5 and 6 of section 10. Under sub-section 5, a power is conferred on the Competent Authority by a notice in writing to order any person who may be in possession of the excess land to surrender or to deliver possession to any person

duly authorized by the State Government in this behalf. In the present case, there is no challenge in the petition to the fact that the Tahsildar was duly authorized by the State Government as stated in the notice dated 23rd October 1991. As per sub-section 6 of section 10, if the person to whom notice under sub-section 5 is issued fails to deliver possession, the Competent Authority is entitled to take forcible possession and cause it to be given to any person authorized by the State Government. The power of taking forcible possession is conferred under sub-section 6 of section 10 on the Competent Authority. It means that the direction to take forcible possession has to be issued by the Competent Authority and not by any other Officer or Authority. It cannot mean that forcible possession should be taken over personally by the Competent Authority. An Officer duly appointed as Competent Authority can always appoint Government Officers to take actual possession as per his order. Notice under sub-section (5) of section 10 dated 23rd October 1991 itself contains an order of forcible dispossession passed by the Competent Authority as it is stated therein that in the event there is a refusal or failure to surrender or deliver possession, steps will be taken to take possession by use of force, if necessary. Clause 2 of the said notice directs the Tahsildar to watch the date of possession personally and to depute the Circle Officer or Talathi and concerned staff for taking over possession. If the order of dispossession would have been passed by the Talathi or the Circle

Officer, the argument of illegal forcible dispossession had some merit. However, in the present case, the action of dispossession has been taken on the basis of the order of the Competent Authority under sub-section 6 of section 10. The Notice dated 23rd October 1991 has been issued by the Competent Authority under sub-section 5 of Section 10 which provides for the consequences of the failure to deliver or surrender possession voluntarily. All that the Apex Court requires is that before a drastic action under sub-section (6) is taken, the persons sought to be dispossessed should be specifically put to the notice that forcible possession under sub-section 6 will be taken. The Notice dated 23rd October 1991 fully complies with the said requirement. Action of dispossession as recorded in the panchnama is done at the instance of the Competent Authority on the basis of the order of dispossession passed by him. We may note here that on 17th March 1992, a notice was issued to the petitioner's father and others informing them that the possession will be taken over on 24th March 1992. Ad-interim relief was granted on the basis of the said notice in Writ Petition No.1540 of 1992 filed by the petitioner's father which was dismissed by the order dated 6th April 1992. Therefore, the Competent Authority issued a fresh notice dated 18th April 1992 to the petitioner's father and others informing them that the possession of the said land would be taken over on 20th April 1992. Even the said notice was duly served to the petitioner's father. Accordingly, on

20th April 1992, the possession was taken over under a Panchnama. In view of the notices dated 23rd October 1991, 17th March 1992 and 18th April 1992, there was a compliance made with the requirement of sub-sections (5) and (6) of section 10.

25 Now, we come to the issue of whether physical possession was taken over. Panchnama of taking over possession records that physical possession was taken over and was handed over to the fifth respondent. Now, we turn to the application dated 8th May 1992 submitted by the petitioner's father and five others. The last paragraph of the said application read thus :

"Whatever remains with the applicant, taking into consideration the genology attached herewith shows that the case deserve to be closed and accordingly the same may kindly be closed and possession given to Housing Board may be cancelled and restored to the applicant."

26 The application specifically contains a prayer that the possession given to the Housing Board may be cancelled and the land be restored to the applicants. Therefore, the explanation given by the petitioner that the application does not contain any admission of dispossession deserves to be discarded as the portion quoted above shows that the petitioner's father and five others were aware that the possession was with the fifth respondent and

therefore, there is a specific prayer made for cancellation of allotment and for restoration of possession.

27 The conduct of the petitioner of suppressing the fact of filing earlier petitions and the application made by his father for restoration of possession is sufficient to refuse the relief to the petitioner in a petition invoking the exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

28 Nevertheless, we have examined the submissions made on merits as regards applicability of Repeal Act. On the basis of the discussion made above and the findings recorded, we have no hesitation in holding that the possession of the excess land in question was taken in accordance with sub-sections (5) and (6) of section 10 before the Repeal Act came into force in the State of Maharashtra. Hence, we find that the petitioner has absolutely no case. It is not necessary for us to go into the issue whether the State Government handed over possession of the land to the fifth respondent. We have not made any adjudication on the issue of alleged allotment of a part of the said land to the sixth respondent. Suffice it to say that prayers (b) and (c) which are the only substantive prayers cannot be granted.

29 Accordingly, we pass the following order:

(I) Writ Petition is rejected with no order as

to costs;

(II) At this stage, the learned senior counsel for the petitioner seeks continuation of ad-interim relief granted on 2nd July 2010. The said prayer is opposed by the learned counsel for the respondents. Considering the fact that Ad-interim relief is operative from 2nd July 2010, the same is extended till 31st July 2017.

(A.K.MENON,J.)

(A.S.OKA,J.)