

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

**WRIT PETITION NO.5672 OF 2013**

Dilip Dinkar Kadam & Ors.

.. Petitioners

Vs

Kolhapur Municipal Corporation & Ors.

.. Respondents

...

Mr. S. G. Deshmukh i/b. Mr. Rakesh S. Patil for the Petitioner.

Mr. A. I. Patel, AGP for the Respondent Nos. 1 and 2.

Mr. Abhijit M. Adagule for the Respondent No. 3.

**CORAM : A. S. OKA &  
SMT. VIBHA KANKANWADI, JJ.**

**DATE : 25/07/2017.**

**PC. :**

1] It is not in dispute that one Ushadevi Dinkarrao Kadam was the owner of land bearing Survey No. 1009/1B admeasuring about 2 Acres and 20 Gunthas, at Kasba Karveer, Kolhapur. The said Ushadevi died on 7<sup>th</sup> October, 1999. The Petitioners are the legal representatives of the said Ushadevi. The first three Petitioners are the sons of Ushadevi and the fourth Petitioner is the daughter of Ushadevi.

2] It is not in dispute that a return/statement under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”) was filed by the said Ushadevi. Thereafter, an order was made under Sub-section 4 of Section 8 of the ULC Act declaring that Ushadevi was holding vacant land admeasuring 8117 Sq. mtrs. in excess of the prescribed ceiling limit. On 3<sup>rd</sup> August, 1977 a notification under Sub-section 1 of Section 10 of the ULC Act was published in the Government Gazette dated 11<sup>th</sup> August, 1977 declaring that the said Ushadevi was holding an area of 8117 Sq. mtrs (for short “the said

land”) in excess of ceiling limit. It appears from the affidavit-in-reply by Shri Sanjay Shankarrao Shinde, Resident Deputy Collector, Kolhapur, that an application for grant of exemption in respect of said land was made by the said Ushadevi by invoking Section 20 (1) of the ULC Act. By an order dated 1<sup>st</sup> June 1979, the said Application was rejected. It appears that a notification dated 31<sup>st</sup> July 1979 under Sub-section 3 of Section 10 of the ULC Act was issued which was published in the Government Gazette dated 16<sup>th</sup> August 1979. The case of the contesting Respondents is that a notice under Sub-section 5 of Section 10 of the ULC Act dated 1<sup>st</sup> September 1979 was served to Ushadevi and on 12<sup>th</sup> October 1979, the possession of the said land was taken over on the basis of a notice under Sub-section 5 of Section 10. Their case is that under a separate Panchanama, the possession was handed over to the Kolhapur Municipal Corporation. It is also not in dispute that an order under Section 11 of the ULC Act was passed on 7<sup>th</sup> December 1980 by the Competent Authority, Urban Agglomeration, Kolhapur holding that compensation of Rs.8117/- was payable. The said order directed that 25% of the ceiling price should be paid in cash and the balance amount should be paid negotiable bonds redeemable after expiry of 20 years carrying interest @ of 5% per annum.

3] The main contention raised in this petition is that the possession of the said land which was declared as vacant land held by the said Ushadevi in excess of ceiling limits was never taken over in accordance with Sub-section 5 of Section 10 of ULC Act and that there is nothing placed on record to show that a notice under Sub-section 5 of Section 10 was served to said Ushadevi. The submission of the learned counsel appearing for the Petitioner is that as the possession was not taken over in accordance with Sub-section 5 of Section 10 of ULC Act, in

view of the Repeal of the ULC Act in the State of Maharashtra with effect from 29<sup>th</sup> November 2007, the said land is no more vesting in the State Government or the Municipal Corporation. His submission is that information furnished by the Kolhapur Municipal Corporation under the Right to Information Act, 2005 shows that there is no document available with the Municipal Corporation regarding taking over the possession of the said land. He submitted that contradictory stand has been taken as regards the reservation on the said land by the Municipal Corporation and the State Government. He would, therefore, submit that even assuming that Municipal Corporation is in possession, an order of restoration of possession will have to be passed. Lastly, it is submitted that there is nothing placed on record to show that compensation was paid to Ushadevi.

4] We have carefully considered the submissions. Order under Section 11 of the ULC Act dated 17<sup>th</sup> December 1980 passed by the Competent Authority has been annexed to the petition. The material part of the said order reads thus :-

*AND WHEREAS the notice u/s. 10 (5) was served upon the holder calling her to hand over the possession of the said land to the Tahsildar, Karvir and the Tahsildar Karvir has taken the possession of the said land and hands over to Kolhapur Municipal Corporation for the purpose of Primary School and playground.*

*AND WHEREAS the possession was taken over and handed over to Kolhapur Municipal Corporation for the purpose of Primary School and Playground on 12-10-1979.*

To the affidavit of Shri Sanjay Shankarrao Shinde filed on behalf of the State Government, a copy of application dated 18<sup>th</sup> August 1988 submitted by the said Ushadevi to the Competent Authority

Kolhapur Urban Agglomeration is annexed. The said application is signed and verified by the said Ushadevi. There is an endorsement on the said application that the contents thereof were read over and explained to Ushadevi in vernacular language. The clause 3 of the said application, reads thus:

3. *The stipulated interest as mentioned in the order dated 17.12.80 is not included in total amount of Bonds.*

5] Thus Ushadevi was fully aware of the order dated 17<sup>th</sup> December 1980 at least on 18<sup>th</sup> August 1988. As stated earlier, the said order dated 17<sup>th</sup> December 1980 containing a recital that a notice under Sub-section 5 of Section 10 of ULC Act was served to Smt. Ushadevi who was the holder of the land and that possession of the said land was taken over and handed over to Kolhapur Municipal Corporation on 12<sup>th</sup> October, 1979. Though Ushadevi was fully aware of the order dated 17<sup>th</sup> December, 1980 at least as on 18<sup>th</sup> August 1988 which records that notice under Sub-section 5 of Section 10 was served to her and possession was taken over, during her life time, she never challenged the said order or the action of the authorities under ULC Act. In the order dated 17<sup>th</sup> December 1980, there is a recital which refers to the notification under Sub-section 1 of Section 10 issued on 3<sup>rd</sup> August 1977. The notification under Sub-section 3 of Section 10 was published in the Government Gazette dated 16<sup>th</sup> August 1979. As per Sub-section 3 of Section 10 of the ULC Act, on the publication of notification under Sub-section 3 with effect from such date as may be specified in declaration, the land shall be deemed to have been acquired by the State Government. It is specifically provides that upon publication of such declaration in Official Gazette, such land shall be deemed to have been

vesting absolutely in the State Government free from all encumbrances. Thus, Ushadevi during her life time was aware that by virtue of the declaration dated 31<sup>st</sup> July 1979 under Sub-section 3 of Section 10 in Government Gazette dated 16<sup>th</sup> August 1979, the said land was vested in the State Government. Perusal of the said notification annexed to the affidavit of the State Government shows that it is specifically provides that with effect from 10<sup>th</sup> August, 1979, the land shall be deemed to have been acquired by the State Government. As stated in the petition, the said Ushadevi was admittedly the exclusive owner of the said land. She was alive till 1999. During her life time, she never challenged any of the steps taken under Section 10 and the act of taking over possession. Now in this petition filed in the year 2013, her legal heirs have challenged the notifications under Sub-section 1 and Sub-section 3 of Section 10 of the ULC Act.

6] Therefore, now it is not at all open for the legal heirs of the Ushadevi who are claiming through Ushadevi to contend that the notification under Sub-section 1 and Sub-section 3 of Section 10 are bad in law and that a notice under Sub-section 5 of Section 10 ULC are not served to the Ushadevi. It is not open for them now to contend in a Writ Petition under Article 226 of the Constitution of India that the possession of the said land was not taken over on 12<sup>th</sup> October 1979 or that it was unlawfully taken over.

7] Thus, the Petition is completely devoid of any merit. The Petitioner's predecessor had lost title in respect of the said land way back on 10<sup>th</sup> August 1979. She was fully aware that the possession of the land has been taken over in the year 1979 after service of notice under Sub-section 5 of Section 10 of the ULC Act. The application dated 18<sup>th</sup> August 1988 shows that Ushadevi was offered compensation.

8] In any case, in view of vesting under Sub-section 3 of Section 10, the fact whether compensation was paid to Ushadevi or not completely irrelevant.

9] In view of the aforesaid factual position, it is not necessary to deal with the issue of reservation on the said land.

10] Hence, the writ petition is rejected.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)