

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

WRIT PETITION NO.7050 OF 2014

Savita Narsing Tupe & Ors. .. Petitioners.
Vs.
State of Maharashtra & Ors. .. Respondents.

**WITH
WRIT PETITION NO.7659 OF 2016**

Dattatraya Tukaram Tupe & Ors. .. Petitioners.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr. A.Y. Sakhare, Senior Advocate i/b Mr.Prashant P. Kulkarni for the petitioners in WP No.7050 of 2014.

Mr. R.S. Apte, Senior Advocate with Ms. Shirin Shaikh i/b Raval Shah for the petitioners in WP No.7659 of 2016.

Mr. A.B. Vagyani G.P with Ms.Aparna Vhatkar AGP for the Respondent Nos.1 and 2.

25/7/2017 Mr. S.M. Gorwadkar, Senior Advocate i/b Mr.Sujay H. Gangal for Respondent Nos.3, 5, 8, 9, 10 and 13.

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

RESERVED ON : 21ST APRIL, 2017

PRONOUNCED ON : 6TH JUNE, 2017

JUDGMENT (PER A.K.MENON, J.)

1. Rule. Returnable forthwith. By consent taken up for final disposal.

2. This common order disposes of two Writ Petition. For the sake of convenience the brief facts in Writ Petition No.7050 of 2014

are being referred to : The petitioners claim to be the co-owners of the agricultural lands bearing Survey Nos.94, 168, 169 and 170 at village Manjari, Taluka Haveli, District Pune admeasuring about 30 acres of land believed to be the agricultural land and ancestral property of the petitioners and other co-owners. The village Manjari is said to be in close proximity with the city of Pune. Petitioner Nos.2a and 2b claim through Sarubai Tukaram Tupe, one of the co-owners who expired on 2nd February, 2012. Petitioner No.2a and 2b are the beneficiaries of the Will left behind by Late Sarubai Tukaram Tupe. Petitioner No.1 was original Petitioner No.11 in Writ Petition No.10425 of 2014 (which was since been disposed of) by this Court. The Respondent Nos.1 and 2 are the State of Maharashtra and Additional Collector and Competent Authority, Pune. Respondent Nos.3 to 13 (excluding respondent no.4) are other claimants and petitioners in Writ Petition No.10425 of 2011.

3. It is the petitioners' case that when the Urban Land (Ceiling and Regulation) Act, 1976 ("ULCRA") came into effect on 17th February, 1976, the said land was in an agricultural zone and therefore the provisions of the ULCRA did not apply. In 1987, the said land became part of a residential zone and therefore, the provisions of the ULCRA became applicable from the year 1987. No returns under Section 6(1) of the ULCRA were filed since according to the petitioners the land was being cultivated and continues to be cultivated till the date of the petition.

4. On 29th November, 2006 an offence was registered with the Deccan Gymkhana police station, Pune under C.R. No.622 of 2006 against nine accused persons for fabricating an order dated 6th December, 2000 purporting to be one passed under the provisions of Section 8(1) of the ULCRA in respect of several lands including the said land. It was alleged that the signature of the Competent Authority was forged and the names of 53 land holders, including the names of the present petitioners, were mentioned therein although none of the petitioners had filed returns under Section 6(1) of the ULCRA. It is the petitioners' case that the Criminal Investigation Department of the State of Maharashtra had concluded that the petitioners are not involved in the said offence.

5. By virtue of the said FIR vide order dated 1st March, 2007 the petitioners were directed by the Respondent no.1 to maintain status quo in respect of the lands mentioned in the order dated 1st March, 2007, pending investigation, into the alleged offence. The petitioners along with other co-owners of other land by Writ Petition No.10425 of 2011 challenged the order dated 1st March, 2007. The Writ Petition came to be disposed of on 11th January, 2012 by directing the petitioners therein to file representations before the State Government/ Competent Authority which were to be decided within six weeks. In the meanwhile the Competent Authority

under the ULCRA called for a report from the Investigating Officer as to whether the petitioners were involved in the offence. It transpires that the Investigating Officer had informed the Competent Authority that the petitioners' complicity has not been established.

6. The grievance of the petitioners is that till date the representations of the petitioners made pursuant to the order of the Court in Writ Petition No.10425 of 2011 have not been decided. Meanwhile Respondent No.3 is believed to have submitted an application to the Hon'ble Chief Minister, who held the Urban department portfolio at the material time and requested him to decide the issue. It is grievance of the petitioners that although a detailed report has been submitted by the Competent Authority on 18th May, 2013 indicating that the petitioners had not filed any returns, the State Government has not taken any decision on the representations and as such was in contempt of the aforesaid order dated 11th January, 2012 passed by this Court in Writ Petition No.10425 of 2011.

7. On 29th November, 2007 the Urban Land (Ceiling and Regulation) Repeal Act, 1999 was brought into force. All the lands of which possession was not taken under the provisions of the ULCRA became freehold land and proceedings under ULCRA have since abated. Since the petitioners had not filed the returns or

proceedings under the ULCRA, no scheme was sanctioned or approved under Section 20 of the repealed Act.

8. After filing of the petition, the petitioners received a letter dated 12th December, 2014 from the 2nd respondent to the effect that the proposal for development could not be granted and that the respondents have not considered the various grounds taken by the petitioners in the representations and written submissions. According to the petitioners, the 2nd respondent had passed an order without verifying the facts of the case and relying upon some proceedings pending in the Apex Court which pertained to a scheme sanctioned under the provisions of ULCRA but which had no bearing on the present set of facts.

9. The learned counsel for the petitioners submitted that while passing the order dated 12th December, 2014, the 1st and 2nd respondents had not considered the fact that the Economic Offences Wing had vide a report dated 20th December, 2012 informed the 2nd respondent that the petitioners were not connected with the alleged offence and in that view of the matter, the 1st and 2nd respondent have released land at Serial Nos.47, 48 and 49 mentioned in the fabricated ULCRA order. In the aforesaid circumstances, it is stated that the impugned letter of 12th December, 2012 demonstrates non application of mind, having ignored a report of the State CID confirming that none of the

petitioners were involved in the offence of fabricating the order of exemption.

10. It was further submitted in the case of *Parshuram Kashinath Joshi vs. State of Maharashtra*¹ the Division Bench of this Court to which one of us (A.S. Oka, J) is a party has observed that merely because an inquiry was underway it cannot be a ground to not entertain the application for grant of development permission under Section 45 of the MRTP Act. In that case also the charge-sheet had been filed after the investigation. The petitioners therein were not connected with the offence. The learned counsel for the petitioners submitted that the instant case is covered by the decision in *Voltas Ltd. and Anr. vs. Additional Collector and Competent Authority, Thane & Others*² and that the decision of the Supreme Court in *Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority & Others*³. It was submitted that even as on date of the petition, the petitioners are engaged in cultivation of the land and 7 X 12 extract indicate the nature of crops being cultivated. The learned counsel for the petitioners further submitted that by virtue of the Repeal Act, 1999 being brought into force on 29th November, 2007 and the said lands having not taken possession of, the same are free hold lands and the respondents are barred from claiming the land.

1 Writ Petition No.1972 of 2013

2 2008 5 B.C.R. 746

3 2012 4 SCC 718

11. On behalf of the State, an affidavit of Sambhaji Shivajirao Chavan dated 20th August, 2015 has been filed to oppose the petition. The reply states that the petitioners have filed a common representation on 27th January, 2012. This common representation had been decided vide order dated 12th December, 2014. It merely records that the fabricated order "630T" contains reference to the said lands and since the Deccan Gymkhana Police Station had registered FIR No.622 of 2006, the permission sought could not be granted.

12. This Court had vide order dated 27th April, 2016 observed that the affidavit in reply filed by the State Government did not deal with the averments in the Writ Petition and the State should file a detailed affidavit pointing out the stage of investigation and secondly, whether the lands of the petitioners are involved in the FIR and the report should be given by the police in respect of the said complaint. It is pursuant to these directions that the affidavit of the Collector dated 25th March, 2017 has been filed. In his affidavit Saurabh Avadh Rao, Collector Pune has stated that the crime is still being investigated but a copy of "Certificate B" annexed to the said affidavit indicates that Order 630T is not pertaining to the property belonging to Dayaram Tukaram Tupe (Respondent No.3 herein) and others including the petitioners. The deponent further states that nobody can give clean chit to any land owner unless the

investigation is complete.

13. Furthermore, on behalf of the Superintendent of Police E.O.W, C.I.D Pune, the affidavit of one Seema Sathe, Assistant Police Inspector has been filed which records that the deponent has carefully gone through the investigation and charge-sheet in respect of the said C.R. No.622 of 2006 and in the capacity of the present Investigating Officer conducting further investigation and she has been authorised to file her affidavit. It is submitted that the charge-sheet has been filed against eight accused. The investigation is in progress and the fabricated ULCRA certificate contains references of various survey numbers including 94/2A/1/10 and 94/2A/1/14. From the affidavit it is evident that no charge-sheet has been filed against any of the present petitioners.

14. Having considered the various submissions, we find that present petition involves two issues. Firstly, the effect of the Repeal Act/entitlement of the present petitioners to claim the lands as freehold lands. Secondly, the effect of the complaint filed before the Deccan Police Station, Pune. Apropos the first issue, the facts of the present case are clearly covered by the decision of this Court in Voltas Ltd. (supra) which holds that if possession of the vacant land is not taken before 29th November, 2007, vesting of the land is inconsequential. As a result the Competent Authority cannot make an order directing the present petitioners to surrender or deliver

possession of the land to the State.

15. Mere vesting of the land pursuant to the Sub-Section 3 of Section 10 of the ULCRA without actually having taken possession under Sub-Section 6 of Section 10 of the Act would not entitle the State Government to act in furtherance of the provisions of the ULCRA since these provisions are not available on repeal in the absence of actual possession having been being taken prior to 27th November, 2007. In the circumstances the State Government will not be in a position to take possession of the lands under the ULCRA. The State has not been able to demonstrate that vesting of the land in the State was conclusive. Respondent Nos.1 and 2 have been unable to demonstrate that the possession of the land has been taken in accordance with the provisions of the ULCRA before the effect date of the Repeal Act i.e. 29th November, 2007.

16. In the circumstances the ratio in *Voltas Ltd. (supra)* will clearly apply. It may also be noted that clause 3 of the Repeal Bill revealed that there was an intention to protect vesting even of lands of which delivery has been taken, but the Repeal Act does not contain any provisions dealing with the lands in relation notice under Sub-Section 5 of the Section of the Act. This aspect has been dealt with in the judgment of *Voltas Ltd (supra)* when the Court noted that the legislature has not intended vesting of lands with the State of which possession is not taken.

17. Furthermore, in Vinayak Kashinath Shilkar (supra) the Supreme Court observed that in paragraph 10 reads thus :

“10. It is clear from the above provisions that where 5 the possession of the vacant land has not been taken over by the State Government by any person duly authorised by the State Government in this behalf or by the Competent Authority, the proceedings under the Act would not survive. Mere vesting of the vacant land with the State Government by operation of law without actual possession is not sufficient for operation of Section 3(1)(a) of the Repeal Act.”

In view of the aforesaid reiteration, there can be no manner of doubt that when possession has not been taken, the present case mere vesting of the land will not entitle the State to claim the land. In these circumstances the petitioners are entitled to succeed. The petitioners' contention apropos vesting must be accepted.

18. The next issue to be considered is the effect of the pendency the trial in C.R. No.622 of 2006. The Deccan Gymkhana Police Station has registered offences under Sections 420, 457, 468,

472, 201, 203, 109, 114 read with 14 of Indian Penal Code on 29th October, 2006 in relation to fabrication of the ULCRA order 630T dated 6th December, 2000. It is evident from the record of the Competent Authority and the report dated 18th June, 2013 which incorporates the police report that the names of the present petitioners have not been mentioned in the charge-sheet. The petitioners are not accused of involvement in the fabrication of the order or other fraudulent acts. That the petitioners had not applied for exemption in respect of other lands is also not in dispute. Mere inclusion of the petitioners land by description in the fabricated document without prima face evidence of the petitioners' complicity will not justify denying the petitioners their right accruing by virtue of repeal of ULCRA. More so when the factual position indicates that the possession of the lands have not been taken and the petitioners have not been named in the charge-sheet.

19. Pendency of the complaint and the trial need not detain the petitioners' application for use of the land. Admittedly, possession of the land is still with the petitioners. It is the petitioners' case that they are still cultivating the land. This contention has not been denied. Furthermore, in case of Parshuram Joshi (supra), it was observed that in the facts of that case, that an application has been made for grant of occupancy certificate which was kept pending. The Court held that the application could not be

rejected though a CID inquiry was in progress. If the document is alleged to be fabricated then the present case as well trial of the C.R. 622 of 2006 can continue as none of the petitioners have been named as accused.

20. In yet another case in Writ Petition No.3695 of 2014 (Anil Nemichand Bafna & ors. vs. The Collector Pune), this Court observed that mere inclusion of the petitioners' land in the list of cases forming part of a report of a One man Committee appointed was no ground for keeping the petitioners' application for grant of non agricultural use pending subject to right of the State Government to take appropriate proceedings in accordance with law. In that petition the District Collector or the Revenue Officer was directed to consider the application for grant of non agricultural use and decide the application in accordance with law.

21. Similarly in Writ Petition No.5871 of 2014, (Kantilal Nathmal Baldota & Ors. vs. The Collector, Pune) it was found that the case of the petitioners was not covered by the category of fabricated and forged documents and not subject matter of investigation by the police and no charge-sheet had been filed by the police. In the present case the stand of the respondents in the affidavit in reply of Saurabh Avadh Rao is no ground to keep the application of the petitioners pending.

22. In Writ Petition No.7659 of 2016, the 1st petitioner is Dattatraya Tukaram Tupe. He has challenged the order dated 1st March, 2007, 15th March 2007 and 12th December 2014 passed by the 2nd respondent under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULCRA") and seeks a Writ and direction to the respondents to decide the representation filed by the petitioners with respect to the said lands. The lands are being common in Writ Petition No.7050 of 2014 and Writ Petition No.7659 of 2016 the facts are almost identical. The 1st to 5th petitioners in Writ Petition No.7050 of 2014 are 3rd, 4th, 6th, 10th and 11th respondents in Writ Petition No.7659 of 2016.

23. Since possession of the said lands have not been taken, the provisions of the repeal Act are of no avail to the respondents. None of the petitioners in either petition are mentioned in the charge-sheet as evident from the copy of the charge-sheet dated 25th November, 2010 and there being only 8 accused persons, none of the petitioners have been shown as the accused. Furthermore, in an affidavit dated 7th April, 2017 of Ms.Seema Sathe, Assistant Police Inspector EOW, CID filed in Writ Petition No.7659 of 2016, the deponent has stated that, in the investigation conducted into the offence, the role and complicity of total eight accused have been established. The petitioners' names did not figure. The petitioners have also filed an affidavit dated 10th April, 2017 in this Writ Petition confirming that the charge-sheet was filed on 25th November, 2010

and that there are no allegations against the petitioners in connection with fabrication of the order under ULCRA.

24. Accordingly, we pass the following order :

(i) The impugned communications dated 1st March 2007, 15th March 2007 and 12th December, 2014 are set aside.

(ii) The Respondent Nos.1 and 2 are directed to decide the representation filed by the petitioners in Writ Petition No.7050 of 2014 and Writ Petition 7659 of 2016 dated 27th January, 2012 preferably within a period of two months from today.

(iii) The petitioner's application for development permission shall be considered in accordance with law and shall not be refused on the ground of pendency of C.R.No.622 of 2006 or on the ground that the bearing Survey No.94, 168, 169 and 170 at village Manjari, Taluka Haveli, District Pune find mention in ULCRA order "630T".

(iv) This Order will not prevent the 1st respondent from taking appropriate proceedings in accordance with law in relation to other plots of land.

(v) There will be no order as to the costs.

(vi) The petitions are disposed of in the above terms.

(A.K. MENON, J.)

(A.S. OKA, J.)