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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10546 OF 2015**

Dattatray Pandurang Patil – Kapadnis and Ors. ... Petitioners
Vs.
The Tahsildar, Nashik and Ors. ... Respondents

Mr. Tushar N. Sonawane for the Petitioners.
Mr. Manish Pabale, AGP for the Respondent Nos.1 to 3.

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

DATE : 29th MARCH, 2017

PC.

1 Rule. The learned AGP waives service for the respondents.
Considering the narrow controversy involved in the Petition, the same is
forthwith taken up for final disposal.

2 The Petitioners are claiming to be the owners of the land
bearing survey No.989/2 situated at Nashik, Taluka and District Nashik.
According to the case made out by the petitioners, out of the said land,
an area of 1478.74 square meters was declared as vacant land held by
the petitioners in excess of ceiling limit on the basis of an order made
under Sub-Section (4) of Section 8 of the Urban Land (Ceiling and
Regulation) Act, 1976 (for short “ULC Act”).

3 The petitioners filed Regular Civil Suit No.60 of 2012 in the Court of Civil Judge, Senior Division, Nashik. The contention of the petitioners is that the entry of the name of the State Government in revenue records in respect of the said land on the basis that the possession of the said land was taken over on 5th November, 2007 is illegal. The suit was contested by the defendant (Collector) District, Nashik. The suit was decreed by the judgment dated 20th February, 2015.

4 The learned Civil Judge, Senior Division framed the following material issues :-

“	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Do the plaintiffs prove exclusive possession of the excess land admeasuring 1478.74 Square Meters on the date 05/11/2007?	Redundant.
2)	Do the plaintiffs further prove that, the proceeding of the defendant U/Sec. 10(3) and 10(5) of the Maharashtra Urban Ceiling Regulation Act by the defendant for taking possession of excess land is illegal?	... Yes.
3)	Does the defendant prove actual possession of suit excess land has been taken on 05/11/2007?	... No.
4)	Are the plaintiffs entitled for declaration?	... Yes.
5)	What order and decree?	The suit is decreed.”

5 While dealing with the Issue No.3, the learned Civil Judge held that the defendant (Collector) has failed to prove that the possession of the excess land was taken over on 5th November, 2007. Therefore, the learned Judge proceeded to pass the decree on the following terms :-

- “1. The suit is decreed.
2. It is hereby declared that the name of defendant mutated with the Revenue Record on the strength of Possession Receipt Exh.17 dated 5/11/2007 in pursuance of letter of Tehsildar, Nashik bearing No. जा.क.स.ऑ./युएलसी कब्जा/2007, dated 06/11/2007 is illegal.
3. Parties to bear their own costs.”

6 On the basis of the said judgment and decree, an application dated 17th June, 2015 was made by the petitioners (plaintiffs in the aforesaid suit) to the Tahsildar, Nashik. The prayer in the said application is for deleting the name of the State Government and for restoring the name of the petitioners. The grievance made in this Petition under Article 226 of the Constitution of India is that no action has been taken on the basis of the said application.

7 The submission of the learned counsel appearing for the petitioners is that notwithstanding the fact that decree dated 20th

February, 2015 has attained finality, the Tahsildar has failed to give effect to the said decree by carrying out necessary amendment in the revenue records. The learned AGP has no instructions.

8 We have considered the submissions. If judgment and decree dated 20th February, 2015 is in force and is in operation, the effect will have to be given to the said decree. However, today the learned AGP has no instructions on the issue whether the decree has become final.

9 Therefore, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the petitioners or their authorised representative to appear before the Tahsildar, Nashik on 17th May, 2017 at 11.00 am. On that day, the Petitioners or their representatives will produce a certified copy of the judgment and decree in R.C.S. No.60 of 2012 along with an office copy of the application made by them on 17th June, 2015;
- (ii) The petitioners shall file an affidavit on that day stating that as per their knowledge the judgment and decree

dated 20th February, 2015 has become final;

- (iii) The Tahsildar shall ascertain whether judgment and decree dated 20th February, 2015 has become final and whether the same continues to be operative;
- (iv) If he finds that the said judgment and decree is in force, he shall take appropriate action on the basis of the said judgment and decree in terms of the application dated 17th June, 2015 made by the petitioners. Appropriate action shall be taken by the Tahsildar within a period of two months from the date fixed for appearance of the petitioners;
- (v) Rule is partly made absolute on above terms. There will be no order as to costs;
- (vi) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J)

(A.S. OKA, J)