

CORAM : ANOOP V. MOHTA, &
MANISH PITALE, JJ.

RESERVED ON : NOVEMBER 15, 2017

PRONOUNCED ON : NOVEMBER 20, 2017

JUDGMENT [PER : MANISH PITALE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for the Respondents. By consent of parties, petition is taken up for final hearing.

2. The Petitioner has filed this writ petition claiming that he is entitled to land bearing R. S. No. 4A / 7, admesuring 2,473.40 sq. mtrs. situated at Jadhavvadi, Karvir, District Kolhapur, being reverted to him, in view of repeal of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the “said Act”), as the Respondent – State failed to take physical possession of the said land, despite proceedings under Section 6, 8 and 10 of the said Act.

3. The Petitioner is owner of 2,473.40 sq. mtrs of land in the above mentioned survey being R.S. No. 4A / 7 in district Kolhapur. Respondent No. 2 had undertaken proceedings under the provisions of the said Act, on the basis of return and statement filed by the

Petitioner under Section 6 of the Act and upon inquiry an order was passed by Respondent No. 2 under Section 8(4) of the Act, holding that the Petitioner was in possession of 473.40 sq. mt. vacant land in excess of the ceiling limit in the aforesaid land R.S. 4A/7 in district Kolhapur.

4. Pursuant to the said finding, a notification was published under Section 10(1) of the said Act regarding the excess land held by the Petitioner. This notification was published on 11.2.1982 and thereafter, Respondent No. 2 did not take any further action for taking possession of the said excess land. After about 25 years i.e. on 21.5.2007, Respondent No. 2 issued a notification under Section 10(3) of the said Act stating that the said vacant land in excess of the ceiling limit admeasuring 473.40 sq. mtrs. was deemed to have been acquired by the State Government with effect from 31.5.2007. Thereafter, on 27.11.2007, Respondent No. 2 issued a notification under Section 10(5) of the said Act, calling upon the Petitioner to deliver possession of the said land, immediately to the Tahsildar Karvir, district Kolhapur.

5. On 29.11.2007 the State of Maharashtra adopted the

Urban Land (Ceiling & Regulation) Repeal Act, 1999, as a result of which the Urban Land (Ceiling & Regulation) Act, 1976 stood repealed in the State of Maharashtra. The Petitioner has filed this writ petition stating that actual physical possession of the said land was never taken by the Respondents and that he continues to be in possession of the same. The Petitioner therefore, prays that in view of the repeal of the said Act, the said land has reverted back to him and that the Respondents cannot have any claim upon the same.

6. Mr. Rahul Walvekar, learned counsel appearing for the Petitioner has submitted that position of law regarding effect of the repeal of the said Act in cases where actual possession of the land has not been taken, is no more *res integra*. According to him, the judgment of this Court, in the case of *Voltas Ltd. & Anr., Petitioners Vs. Additional Collector & Competent Authority & Ors., Respondents*,¹ completely supports his contention and that in view of failure of the Respondents to take possession of the land, this writ petition deserves to be allowed.

7. Mr. S. B. Kalel, learned AGP appearing for the

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Respondents has submitted that in pursuance of the notification dated 27.11.2007 issued under Section 10(5) of the said Act, *de jure* possession of the land was taken and mutation entry was made, recording the name of the State Government in the revenue record. He contended that in view of these facts, no relief can be granted in the petition.

8. This Court in its judgment in the case of *Voltas Ltd. (supra)* has considered the question of the effect of Repeal Act, particularly in cases where actual physical possession of the land was not taken before 29.11.2007, when the Repeal Act came into effect in the State of Maharashtra. The provisions of the said Act have been discussed in detail in the said judgment, and it has been held as follows:

“11. ... Thus, after 29.11.2007, the provisions of sub-section (5) and sub-section (6) of Section 10 of the Principal Act are not available to the State Government, therefore, in relation to that land with respect to which declaration under subsection (3) of Section 10 of the Principal Act has been made but possession has not been taken, the Competent authority will not be entitled to make an order directing the person in possession of the land to deliver the possession to the Government nor the Competent authority would be entitled to take possession under sub-section (6) of Section 10 of the Principal Act on failure of the person in possession

to deliver the possession.”

And

“In our opinion, therefore, it is clear from the provisions of the Repeal Act that as a result of the Repeal Act neither any proceedings can continue nor the State Government can claim that the land continued to vest in it if possession of the land in relation to which declaration under sub-section (3) of Section 10 of the Principal Act has been made, has not been taken before 29.11.2007. In other words to claim that vesting of the land in the State Government is saved, it will have to be shown by the State Government that the possession of the land in accordance with the provisions of the Principal Act has been taken by the Government before 29.11.2007.”

Thus, it is clear that in cases where actual physical possession of the land has not been taken by the State Government under Section 10(6) of the Act before 29.11.2007, the said land cannot be said to have vested in the State Government, and therefore, the State can have no claim upon the same. The crucial fact in such cases is as to whether actual physical possession has been taken by the State Government before 29.11.2007.

9. In order to ascertain the said crucial fact in the present case, a reference to the affidavit-in-reply of the Respondents is necessary. In para 4 thereof, the Respondents have stated as follows:

“4. ... However, I say that the Urban Land (Ceiling and

Regulation) (Repeal) Act, 2007 came in force and as such notification dated 27.11.2007 issued under section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 could not be proceeded with and actual and physical possession have not been taken.”

Once, it is admitted by the Respondents that the notification dated 27.11.2007 issued under Section 10(5) of the said Act could not be proceeded with and actual physical possession was not taken, it is clear that the Petitioner herein is entitled to the relief claimed in the petition. The Respondents are not justified in refuting the claim of the Petitioner on the ground that *de jure* possession was taken by the State Government, and that the revenue record also came to be mutated in the name of the State Government in respect of the said land. Mere mutation entries in the revenue record cannot be the basis for denial of relief to the Petitioner, whose case is clearly covered by the aforesaid judgment of this Court in the case of *Voltas Ltd. (supra)*.

10. In the light of the above, the writ petition is allowed and it is held that since the Respondents failed to take actual physical possession of the aforesaid land before repeal of the said Act i.e. on 29.11.2007, the said land reverts back to the Petitioner and the Respondents have no right, title or interest in the said land. Rule is

accordingly made absolute in the aforesaid terms, with no order as to costs.

Sd/-
[MANISH PITALE, J.]

Vinayak Halemath

Sd/-
[ANOOP V. MOHTA, J.]