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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6257 of 2016

Ashok Laxman Harpale & Anr

..Petitioners.

Vs

The State of Maharashtra & Ors

..Respondents.

Mr. S.M. Gorwadkar, Senior Advocate i/by Sujah H.
Gangal, Advocate for the Petitioners.

Ms. R.A. Salunkhe, A.G.P.for the State.

CORAM: NARESH H. PATIL & SMT.

BHARATI H.DANGRE, JJ.

RESERVED ON : 31st July, 2017.PRONOUNCED ON : 8th August, 2017.

(3:00 p.m. in Chamber)

P.C. (PER: SMT. BHARATI H. DANGRE,J)

1) The petitioners have approached this Court praying for a declaration that the un-executed order dated 30th May, 2006 in ULC Case No.301-HA and proceeding under Section 10 (3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”) dated 29th July, 2007 has been abated and become inoperative against the petitioners' land at village

Phursungi, Taluka Haveli, District Pune and the said land be treated as freehold by correcting the revenue record.

2) Perusal of the writ petition reveals that several grounds have been pleaded in the writ petition in respect of as to whether the lands of the petitioners can be included in the category of “agriculture zone” and hence outside the scope of the Urban Agglomeration. However, the primary point urged in the writ petition is that the possession of the land was not taken and the petitioners continued the possession of the surplus land and since the ULC Act of 1976 was repealed by adopting Act No. 15/1999 of the Parliament by the State Legislature on 29th November, 2007, the proceedings in respect of land of the petitioners stand abated.

3) It is not in dispute that in respect of the petitioner's land “Returns under Section 6 (1) of the ULC Act” were filed on 1st April, 2006 and it was numbered as “ULC Case No.301-HA. It is also not in dispute that the statement under section 8 of the Act was issued on 30th May, 2006 declaring 33,200 sq. meters land as surplus. It is also not in dispute that on 9th September, 2007 respondent No.2 published a notice under Section 10 (1)

of the Urban Land Ceiling Act and further on 29th August, 2007 notification under Section 10 (3) of the ULC Act, 1976 was published in respect of the lands which were declared surplus.

On 29th November, 2007 the ULC Act of 1976 was repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (15 of 1999) (for short “the Repeal Act”) and the petitioners claimed to be in possession of the land on 29th November, 2007.

4) This Court on 11th July, 2017 recorded the contentions raised by the Counsel for the petitioners that the issue which is required to be looked into whether the possession of the suit land was taken prior to 29th November, 2007. In compliance, we directed the learned A.G.P. to seek instructions.

In compliance, the Collector and the Competent Authority, Pune, Urban Agglomeration, Pune filed an affidavit on 24th July, 2017. In the said affidavit, the following statement is made :-

3. *“Without prejudice to the above, I say that the petitioner is aggrieved by the Order dated July 29, 2007 under Section 10 (3). however, the State Government in its letter dated May 12, 2010 has intimated all the urban agglomerations that this Hon'ble Court*

in case of Voltas Vs. State of Maharashtra, has laid down that if the State Government has taken possession of excess land on or before November 29, 2007, the said action is valid. Otherwise in case of lands whose possession is not taken before the aforesaid date, the proceedings under the ULC Act stand abated. In pursuance of the said letter, the In-charge, Additional Collector & Competent Authority, Pune Agglomeration, Pune by his Order dated May 30, 2011 has issued a Notification, thereby cancelling the Notification under Section 10 (3) of the Urban Land (Ceiling & Regulations) Act, 1976. I am annexing to this Affidavit as Exhibit "1" copy of the said Notification. This Notification is published in Government Gazette at page 3351 of the Government of Maharashtra Gazette dated November 03 to 09, 2011. The said Notification is at Exhibit "2".

4. In this regard, the Talathi, Fursungi, by his report, that was received by the Additional Collector & Competent Authority on May 30, 2011 has reported that the lands that are subject matter of the aforementioned notification do not indicate ULC proceedings and, therefore, there is no question of mutating the revenue record. I am annexing to this Affidavit as Exhibit "3" copy of the said Report. In the light of the above, the writ petition may be disposed of."

5) In view of the affidavit of the State, the undisputed position is that the State has not taken over possession of the surplus land and therefore the proceedings will have to be

treated as “abated” under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Section 4 of the Repeal Act, 1999 reads as follows :-

S.4 :- Abatement of legal proceedings.--

All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

6) By this time, the position of law in regard to the effect of the Repeal Act, 1999 has been crystallized in respect of the lands of which the possession has not been taken over by the State Government on the date of Repeal of ULC Act, 1976. In the case of **Voltas Ltd. & Anr Vs. Additional Collector & Competent Authority & Ors**, reported in (2008) 5 **Bom.C.R. 746**, the Division Bench of this Court held in Paragraph 11 to the following effect:-

11. “Now so far as those lands which are owned by the petitioners in relation to which a notification under Sub-section (3) of Section 10 of the Principal Act was issued and the order under Sub-section (5) of Section 10 of the Principal Act was made are concerned, it is the provisions of Section

3 of the Repeal Act which are relevant. Reading of Section 3 of the Repeal Act shows that it is a saving clause and Sub-section 1(a) of Section 3 of the Repeal Act saves vesting of any vacant land under Sub-section (3) of Section 10 of the Principal Act, possession of which has been taken over by the State Government. In other words, vesting of vacant lands under Sub-section (3) of Section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved. In the present case, it is an admitted position that though declaration under Sub-section (3) of Section 10 of the Principal Act was made, the possession of the land was not taken over by the Government or by the Competent Authority. Therefore, on bare reading of the provisions, it can be said that by virtue of repeal, vesting of the land of the first petitioner in the State by virtue of declaration made under Sub-section (3) of Section 10 of the Principal Act, is not saved. A submission on behalf of the State Government was made that by virtue of declaration made Sub-section (3) of Section 10 of the Principal Act in relation to the petitioners' land, the land has vested in the Government, but there is no provision in the Repeal Act which divest the State Government of the ownership of the land. In our opinion, this submission has no substance. Firstly, because the purpose of enacting Section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government and out of the vacant lands that might have vested in

the State Government by virtue of declarations made under Sub-section (3) of Section 10 of the Principal Act, only vesting of those lands in the State Government of which possession has been taken has been saved. Therefore, by necessary implication it follows that vesting of those lands in the State Government under Sub-section (3) of Section 10 of the Principal Act of which possession has not been taken has been repealed or made ineffective. Vesting of the lands in the State Government had occurred because of the Principal Act which has been repealed...”

7) The Hon'ble Apex Court in case of **Vinayak Kashinath Shilkar Vs. Deputy Collector and Competent Authority & Ors** reported in (2012) 4 Supreme Court Cases 718, while dealing with the similar issue observed in Paragraphs 9,10 and 11 as under :-

9. “It is clear from the above provisions that where the possession of the vacant land has not been taken over by the State Government or 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.”

10. “We are fortified in our view by a

recent decision of this Court in Ritesh Tewari and Anr. v. State of Uttar Pradesh and Ors. (2010) 10 SCC 677. This Court in Ritesh Tewari : (2010) 10 SCC 677 considered the matter thus:

“14. Shri Jayant Bhushan, learned Senior Counsel appearing for the Appellants has submitted that as the State Government had not taken possession of the land in exercise of its powers under Section [10\(6\)](#) of the 1976 Act, on coming of the 1999 Act into force, the proceedings stood abated and the Respondents have no business to interfere with the peaceful possession and enjoyment of the property.

15. We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any court/authority under the 1976 Act, stood abated automatically on coming of 1999 Act into force, provided the possession of the land involved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. : (2000) 6 SCC 325, Ghasitey Lal Sahu v. Competent Authority, Mukarram Ali Khan v. State of U.P. : (2007) 11 SCC 90 and Sulochana Chandrakant Galande v. Pune Municipal Transport :

(2010) 8 SCC 467.

11. In view of the legal position enunciated by this Court in Ritesh Tewari : (2010) 10 SCC 677 and the factual situation that the possession of the subject land has not been taken by the Government of Maharashtra, we are satisfied that the Appellant was entitled to the relief in terms of para 9 (b) in the Writ Petition and the High Court ought to have declared that the proceedings under the Act in relation to the subject property stood abated. Now it is declared accordingly.

8) In the light of the aforesaid position of law crystallized by this Court, as well as the Hon'ble Apex Court, relief sought by the petitioners needs to be granted and the writ petition deserves to be allowed in view of the statement made on the affidavit by the State Government that the State has not taken over possession of the surplus land of the petitioners as on 29th November, 2007.

9) Consequently, the writ petition needs to be allowed and in the light of the above factual matrix of the matter and it is declared that the impugned order dated 30th May, 2006 and notice under section 10 (3) of the ULC Act are abated and the petitioners are entitled for declaration that the petitioners' land

is no longer the surplus under the ULC Act of 1976 and in the light of legal position enumerated above the said land is to be treated as freehold land belonging to the petitioners.

10) In the result, the writ petition is allowed in terms of prayer clause (b).

(SMT. BHARATI H. DANGRE,J) (NARESH H.PATIL,J)