

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.341 OF 2012**

KRISHNAKANTH S PARIKH

Of mum, Indian Inhabitant, residing at 33,
“Vrindavan”, Hatkest Society, NS Road No.5,
JVPD Scheme, Mumbai 400 056

...Plaintiff

~ VERSUS ~

1. THE STATE OF MAHARASHTRA

Through the office of the Additional Collector
and Competent Authority (ULC), Greater
Bombay, having their office at New
Administrative Building, 10th Floor, Opposite
Mantralaya, Mumbai 400 032

**2. THE MUNICIPAL CORPORATION OF
GREATER MUMBAI,**

A statutory body incorporated under the
Bombay Municipal Corporation Act, 1888, and
having its head office at Mahapalika Marg, For,
Mumbai 400 001

3. MAHANAGAR TELEPHONE NIGAM LTD,
MTNL Bhavan, Near Strand Cinema, Colaba
Market, Colaba, Mumbai 400 005

4. THE PRINCIPAL SECRETARY,
The Urban Development Department, State of
Maharashtra, having its office at Mantralaya,
Mumbai 400 032

...Defendants

APPEARANCES

FOR THE PLAINTIFF

Mr Nitin Thakkar, Senior Advocate,
a/w Mr Tejas Vora, Mr DR Mishra,
i/b GK Vora & Sagar Kasar.

FOR DEFENDANTS NOS. 1
AND 4

Ms Jyoti Chavan, AGP.

FOR DEFENDANT NO.3

Ms SI Shah, i/b SI Shah & Co

CORAM: G.S. PATEL, J

DATED: 1ST AUGUST 2017

ORAL JUDGMENT:

1. This matter was assigned to me by an administrative order on a request made by the parties. The matter was part-heard prior to a previous change in assignment.

2. I have heard Mr Thakkar and Mr Vora for the Plaintiff and Ms Chavan, AGP, for the Defendants Nos. 1 and 4, the principal contesting opponents. With their assistance I have gone through the record and considered the documents and evidence. I have also considered their submissions and the authorities cited.

3. For the reasons that follow, I believe I must hold for the Plaintiffs and against Defendants Nos. 1 and 4. The plaint seeks a declaration that the Plaintiff is the sole and absolute owner of a substantial tract of land described in paragraph 1 of the plaint. The second prayer is for a declaration that the Plaintiff is, was and

continues to be in possession of this property. The third prayer is to declare that a possession receipt or 'taba pavati' and a panchanama purported to be dated 28th November 2005, respectively Exhibits "X" and "Y" to the plaint, are bad in law, null and void. I propose to decree the suit in terms of all three prayers with a slight modification or moulding.

4. Before I proceed further, I must note that this is not a case where other than a declaration the Plaintiff was able to seek any other relief. Indeed, given the facts as they appear, this is all that the Plaintiff could have sought, and no other relief was possible.

5. The property in question is a tract of land. There are two plots: Survey No. 41(part), CTS No. 626/13 of 809.13 sq mtrs and Plot No. CTS 626/15, of 4018.9 sq mts. These lands are at village Oshiwara in Andheri District in the Mumbai suburbs.

6. The original owner of this property (among others) was one Madhukanta Sundarlal Parikh. She died on 12th January 2007. The present Plaintiff obtained probate to a Will dated 1st December 2003 that she had left behind, and it is on the basis of this that he claimed to have succeeded to her estate including the suit property.

7. The two plots in question form part of a larger layout of survey No. 41(part) and CTS No. 626. Madhukanta Parikh purchased these (and other) plots by a conveyance dated 21st October 1968. In 1984, under the draft Development Plan of the Mumbai Metropolitan Region, the first of the two plots, CTS No.

626/13 was brought under a reservation for an educational complex. The other plot, CTS No.626/15, was placed under reservation for a telephone exchange. MTNL is the 3rd Defendant to the suit.

8. By an order dated 15th December 1987, out of the total landholding of 8,142.77 sq mtrs, an area of 6832.77 sq mtrs was exempted under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 (“ULC Act”). Then, by an order dated 2nd February 1988 issued under Section 8(4) of the ULC Act, the entire surplus vacant land of 6,382.77 sq mtrs was exempted and only 500 mtrs of the total of 8,142,77 sq mtrs was allowed to continue in retention by the owners. It was clarified that no notification under Section 10(1) of the ULC Act would be issued while the exemption continued in force.

9. On 11th April 1988, a notice under Section 9 of the ULC Act was published.

10. On 9th December 1988 there followed a corrigendum to the notice under Section 8 (correcting areas) and by this the two lands CTS No. 626/13 and CTS No. 626/15 aggregating in all to 5,273.1 sq mtrs were declared surplus vacant land and the rest of the land was allowed to be retained by the owners in retention. Thus, CTS No. 626/13, under a reservation for an educational complex and CTS No. 626/15, under a reservation for a telephone exchange were also declared as surplus vacant land, though erroneously, both being under reservations by then.

11. On 13th January 1999 the exemption under Section 20 was withdrawn pursuant to the corrigendum and, resultantly a notification under Section 10(1) of the ULC Act was published on 27th April 2000 in the Government Gazette dated 2nd November 2000. By this notification, the owners were directed to lodge their objections or interest, if any in the suit land within thirty days of publication in the Government Gazette. The notification also contemplated that the proposed date for hearing of these objections would be after the expiry of these thirty days. The notification itself contained no date of a hearing. Interestingly, this date is left blank and it is so seen even in the original document. There is no evidence at all of any hearing. By an order dated 27th April 2000 the final statement under Section 9 of the ULC Act came to be issued. The owners were required to surrender CTS No. 626/13 and CTS No. 626/15 as surplus vacant land. A notification dated 18th July 2003 under Section 10(3) of the ULC Act followed and this was published in the Government Gazette on 21st August 2003. It was declared that with effect from 20th July 2003 the land would be deemed to have vested free from all encumbrances, charges and reservations in the State of Maharashtra.

12. We come now to the first of the relevant dates in this dispute and that is the notice under Section 10(5) of the ULC Act. This was issued on 24th March 2005. This fixed a date of 28th April 2005 at 11.30 a.m. for taking vacant possession. The notice was served on 7th April 2005. About this, there has never been any dispute. There was a discrepancy in the areas, but I will put that aside for the present. It seems that pursuant to this notice, one Ramdas Bavlekar, later DW2 on behalf of Defendants Nos. 1 and 4, and one SG

Sawant from the ULC Department went to the suit lands to take possession. Madhukanta Parikh was not present. The Plaintiff was. He lodged an objection. Possession was not taken. These facts are recorded in a panchanama dated 28th April 2005, one that was tendered by Bavlekar during his cross-examination (now marked Exhibit D1/3, at page 560). Admittedly, therefore, no possession was taken on 28th April 2005.

13. In view of this, another notice under Section 10(5) of the ULC Act, this time dated 24th October 2005, was issued and another date of 28th November 2005 was fixed for taking possession. This notice was served on the owner of the land on 4th November 2005. Again there is no dispute about this date of service of the notice.

14. The Plaintiff contends that on 28th November 2005, he as the son and authorized representative of the original owner, Madhukanta was present on the site. He waited for quite some time. Nobody from the State Government attended to take possession. Thus, according to the Plaintiff, possession was taken either on 28th April 2005 or on 28th November 2005.

15. Consequently, according to the Plaintiff, as on 6th December 2007, the date when the Urban Land Ceiling and Repeal Act 1999 (“**the ULC Repeal Act**”) was published in the Government Gazette, possession was still with the owners. That Act came into force in Maharashtra on 29th November 2007 and since then the ULC Act 1976 ceased to apply. This is the appointed date and

possession was not taken by Defendants Nos. 1 and 4 from the Plaintiff and the original owner on or before the date of passing of the ULC Repeal Act, 29th November 2007. Thus, all proceedings, according to the Plaintiff, stood abated in relation to the suit land, which fell outside the ambit of the ULC Act.

16. All the Defendants entered written statements. The written statement of Defendants Nos. 2 and 3, respectively, the MCGM (for whose benefit there was the reservation of an educational complex) and MTNL (for whose benefit the reservation place was of a telephone exchange) are immaterial. It is the case of the Defendants Nos. 1 and 4 that must be examined. The written statement at pages 151 to 203 of the compiled record has annexed to it a number of orders and a copy of a possession receipt at Exhibit 9. It may be noted that these exhibit numbers are not the exhibit numbers in evidence but, following the original side procedure, copies of documents annexed to the pleadings. This document at Exhibit 9 is the taba pavati, later marked as Exhibit D1/5, at page 565, and it purports to show possession as having been taken on 28th November 2005 of both plots although there is some discrepancy as to the actual area.

17. In the written statement, Defendants Nos. 1 and 4 claimed that all the land had vested in the State Government and that possession of these lands was taken in accordance with the possession receipt on 28th November 2005. The Defendants accepted that no possession was taken on 28th April 2005.

18. Issues were struck on 2nd July 2015. These are set out below with my findings against each:

No.	Issue	Answer
i.	Whether the Plaintiff proves that the Plaintiff was and continues to be in physical possession of the Suit property described in the Suit?	Yes
ii.	Whether the Plaintiff proves that Taba Pavti and Panchanama purportedly dated 28th November, 2005 (Exhibits -X and Y to the Plaint) relied on by Defendant Nos. 1 and 4 are got up documents and therefore null and void?	Yes
iii.	Whether Defendant Nos.1 and 4 prove that Defendant Nos. 1 and 4 have taken physical possession of the Suit land i.e. surplus vacant land on 28th November, 2015 as alleged or otherwise?	No
iv.	What orders and reliefs?	Suit decreed as below

19. The Plaintiff led his own evidence. Defendants Nos. 1 and 4 first examined one Kamlakar Bhagwanrao Phand, the Additional Collector and Competent Authority under the ULC Act. They then examined Ramdas Bavlekar, an erstwhile maintenance surveyor.

20. The record indicates that both sides put several documents into evidence. The Plaintiff's documents were marked in Court from Exhibit "P1" to Exhibit "P15". Three documents were marked "X", "X1" and "X2" for identification. Various documents came to be marked by the Commissioner appointed to record evidence. Before the Commissioner these documents were marked for identification. I took them up for marking before proceeding with the rest of the case. I have indicated these markings in the Commissioner's Report and this is to be found in Volume C at pages 365 and 366. The documents marked "X" to "X18" by the Commissioner (not to be confused with the documents marked "X", "X1" and "X2" for identification by the Court) were finally numbered as follows:

Sr No	Exhibit No. by Commissioner	Exhibit No and page as marked by Court	Description of Document
1.	Exhibit "X-1"	P 16/536	Final statement u/Sec 9 of ULC Act, dated 11.04.1988
2.	Exhibit "X-2"	P17/541	Copy of Page No. 1762 of Government Gazette, published for month from July to December 2000
3.	Exhibit "X-3"	P18/542	Revised final statement u/Sec. 9 of ULC Act, dated 27th April 2000
4.	Exhibit "X-4"	D1/1/547	Notice u/Sec. 10 (5) of ULC Act, dated 19th March 2005
5.	Exhibit "X-5"	P19/551	Property card of Survey Nos.

Sr No	Exhibit No. by Commissioner	Exhibit No and page as marked by Court	Description of Document
			626/13 & 626/15
6.	Exhibit "X-6"	Not marked, allowed to be referred, being a court document/ 554	Copy of affidavit dated 26th February 2009 filed in Writ Petition No. 1346 of 2008
7.	Exhibit "X-7"	D1/2 558	Notice under Section 10 (5) of the ULC Act, dated 28.03.2005 addressed to Smt. Madhukanta S. Parikh;
8.	Exhibit "X-8"	D1/3 560	Panchnama dated 28.04.2005;
9.	Exhibit "X-9"	D1/4 561	Notice under Section 10 (5) of the ULC Act, dated 24.10.2005 addressed to Smt. Madhukanta S. Parikh, received by the witness on 31.10.2005;
10.	Exhibit "X-10"	D1/5 565	Taaba Pavti dated 28.11.2005;
11.	Exhibit "X-11"	D1/6 566	Letter dated 18.06.2007 issued by the office of the District Collector, Mumbai to the office of the Superintendent, Land Records, Mumbai Suburban District;
12.	Exhibit "X-12"	D 1/7 567	Letter dated 18.04.2007 issued by the office of the Addl. District Collector and Competent Authority, ULC to the office of the District Collector, Fort Office;
13.	Exhibit "X-13"	D1/8 569	Letter dated 19.06.2007 from the office of the

Sr No	Exhibit No. by Commissioner	Exhibit No and page as marked by Court	Description of Document
			Superintendent, Land Records, Mumbai Suburban District to the Office of the City Survey Office, Andheri along with copy of letter dated 18.06.2017 issued by the office of the District Collector, Mumbai to the office of the Superintendent, Land Records, Mumbai Suburban District as Annexure;
14.	Exhibit "X-14"	D1/9 572	Property Extract of C.T.S. No. 626/15;
15.	Exhibit "X-15"	D1/10 574	Letter dated 27.02.2009 from the office of the City Survey Office, Andheri to office of the City Survey Office, Malad;
16.	Exhibit "X-16"	D1/11 575	Letter dated 18.02.2009 addressed by the office the Addl. District Collector and Competent Authority, ULC, Bandra to City Survey Office, Andheri
17.	Exhibit "X-17"	D1/12 577	Copy of the Certified Copy of Map showing C.T.S. Nos. 626/13 and 626/25
18.	Exhibit "X-18"	<i>Not marked in evidence</i>	Copy of letter/report dated 30th November 2005

21. Mr Thakkar on behalf of the Plaintiff submits that the first two issues framed, and the burden of which is clearly on the Plaintiff, can be decided simply on the basis of a few documents and

the settled law. No great examination of the evidence is necessary for this purpose.

22. It is the Plaintiff's case that possession of the lands in question was never taken by the Defendants Nos. 1 and 4 at any time in the manner prescribed by law. According to the Plaintiffs, section 10(5) requires strict compliance. Substantial compliance is not sufficient. But it is clear that even the documents produced by the Defendants do not show that possession was taken as required by law. Little is achieved by looking at the oral testimony. The documents required to be looked at are the panchanama, the taba pavati or possession receipt, the property cards and the two notices in regard to possession to be taken. The panchanama dated 28th April 2005 in question is Exhibit "D1/3" at page 560. The possession receipt, Exhibit "D1/5" is at page 565, dated 28th November 2005. The manner in which the possession is said to have been taken in November 2005 is, to put it mildly, less than optimal. The property cards are Exhibit "P1/9" at page 551 and the notices of 28th March 2005 and 24th October 2005 under Section 10(5) of the ULC Act are, respectively, "D1/2" at page 225 and "D1/4" at page 561. The final document is the property extract at "D1/9" at page 572.

23. Mr Thakkar's submission on the question of possession is that the first section 10(5) notice was issued on 28th March 2005. It was served to the Plaintiff only on 7th April 2005.

24. Sections 10(5) and 10(6) of the ULC Act reads thus:

Section 10 (5): Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

Section 10 (6): If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

25. Mr Thakkar submits that following the decision of a Division Bench of this Court dated 9th November 2011 in Writ Petition No. 1461 of 2009 *Johnson & Johnson Ltd & Ors v State of Maharashtra & Anr*,¹ the law is settled that the possession cannot be taken prior to the expiry of the thirty day period from the date of service. I may only note that in cross-examination, the Defendants' witness has repeatedly said that under Section 10(5), the thirty day period is from the date of issuance of the notice. This is evidence in the teeth of the statute and in fairness Ms Chavan does not attempt to defend this. Paragraphs 8 and 9 of the decision in *Johnson & Johnson* read thus:

"8. The learned counsel appearing for the Respondents referring to the words "within 30 days" submits that this is the maximum time that can be allowed to the person in possession to deliver possession, but the Authority is

1 Writ Petition No. 1461 of 2009, decided on 9th November 2011.

competent to prescribe even lesser time for doing so. In our opinion, however, the submission is not well founded. Section 10(5) contemplates the time to be given to the person in possession is 30 days and that period he is entitled to have to deliver possession. So far as the present case is concerned, the relevant portion of the notice dated 16.08.2007 reads as under:

"Now therefore you are hereby directed that for taking possession of this land Government of Maharashtra have authorized City Survey Officer/ Superintendent of Land Records Mumbai and you have to hand it over to them on 27/8/2007 at 330 p.m and it may be given in their possession. Please take note that if you fail to hand over the possession or refuses then exparte possession of the land will be taken by using force."

9. From the above-quoted portion of the notice, it is clear that by that notice, the land holder has been directed to hand over possession on 27.08.2007 and if he fails to hand over possession or refuses to hand over possession, then exparte possession can be taken. This shows that 30 days time is not given to the land holder to hand over possession. Section 10(5) lays down that the person in possession shall have 30 days time to deliver possession. During that time he can arrange his affairs so that possession of the land can be handed over or he may adopt such legal proceedings as the law permits to protect his possession. The provision does not confer power on any Authority to curtail the period of 30 days which the person in possession is to be given to deliver possession. The Supreme Court has considered the phrase "within such period" used in Section 5 of the Limitation Act in its

judgment in the case of *Ramlal vs. Rewa Coalfields Ltd.* (AIR 1962 SC 361). The observation of the Supreme Court in that judgment in para 8 is relevant. It reads as under:

“(8) Does the context in which the expression occurs in S. 5 justify the said interpretation? If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which S. 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so prima facie it appears unreasonable 1 AIR 1962 SC 361 that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of S. 5. The context seems to suggest that “within such period” means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under S. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the

party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would, in our opinion, be repugnant in the context. We would accordingly hold that the learned Judicial Commissioner was in error in taking the view that the failure of the Appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness." (*emphasis supplied*)

The Supreme Court has held that when a statute allows a period to a person to do a certain thing that person is entitled to do the thing during that period and if he does that thing even on the last day of the permitted period nobody can ask him why he did not do it earlier. The Authority which issued the notice in the present case thus had no power to direct the Petitioner to deliver possession on 27.08.2007 because it curtailed the period to which the Petitioner was entitled under the law. Perusal of the provisions of Section 10(6) shows that the Authority become entitled to take possession only on failure of the person in possession to deliver possession within 30 days. Thus for the Authority to get the power

to take possession under Section 10(6) a period of 30 days must lapse between the date of the service of notice and the date on which possession is taken under Section 10(6). In fact, no time has been given to the land holder to deliver possession. He has just been indicated the date on which he has to deliver the possession. **By that notice, the land holder has been asked to deliver possession on 27.08.2007. It is thus clear that the land holder will have at his disposal time upto 27.08.2007 to deliver possession. However, it is the case of the State Government that possession was taken on 27.08.2007 itself at 3.30 pm. By that notice, the land holder was directed to deliver possession on 27.08.2007 at 3.30 pm. Thus, even assuming that the notice issued under Section 10(5) is a valid notice, then also the Authority will become entitle to take possession only after 3.30 pm on 27.08.2007.** However, the possession receipt which is relied upon by the State Government shows that the possession was taken exactly at 3.30 pm 27.08.2007. It is thus clear that possession notice issued under Section 10(5) does not comply with the provisions of Section 10(5). What is further to be seen is that it is an admitted position that the State Government had made an exemption order in the year 1983 and that order was amended by the State Government on 12.08.1986, after declaration of surplus land was made under Section 8(4). Once an exemption order is made under Section 20, declaration of surplus land made would become ineffective and cannot be implemented. If the possession of surplus land is taken, even after grant of extension, it will nullify the exemption order. Both the orders i.e the order declaring the land as surplus and the order exempting the land from the provisions of the Urban Land Ceiling Act are made under the same Statute and, therefore, the order granting exemption will have to be

implemented and not the order declaring the land as surplus, because exemption under Section 20 is made only if there is land in excess in the holding of the holder and it exempts that excess land from the provisions of the Act. It is thus clear that looking at the matter from any point of view, the action of the State Government of contending that they are in possession of the land under the Urban Land Ceiling Act cannot be held to be valid. It is apparent that possession of the land which is alleged to have been declared as surplus under the Urban Land Ceiling Act was not taken in accordance with law before 27.11.2007. Therefore, following the judgment of the Division Bench of this Court in *Voltas Ltd. Vs Additional Collector and Competent Authority & ors.* (2008 (5) Bom. C.R. 746) it will have to be held that all proceedings under the Urban Land Ceiling Act lapsed on repeal of the Urban Land Ceiling Act. It is held that the Authorities could not have taken possession of the land on 27.08.2007 in view of the exemption order. **In any case on 27.08.2007 possession of the surplus land was not taken in accordance with law.** Therefore, in law, the Petitioner continue to be in possession of the land which was declared as surplus even after 27.11.2007 when the Urban Land Ceiling Act was repealed in the State of Maharashtra. Hence all proceedings under the Act lapsed."

(Emphasis added)

26. There is also no doubt that the provisions of Section 10(5) must be strictly followed.²

² *G Manikamma & Ors vs Roudri Cooperative Housing Society Limited & Ors*, (2014) 15 SCC 197.

27. Ms Chavan has referred to a decision of a Division Bench of this Court in *Adi Dara Patel & Ors V SR Jondhale & Ors.*³ I have considered this carefully. *Adi Dara Patel* was also cited and followed in *Chhaganlal Khimji and Co Ltd v State of Maharashtra and Ors.*⁴ The finding in *Johnson & Johnson* has not been disturbed, as indeed it could not have been, as that is the earlier decision and it is one by a bench of coordinate strength, and was binding on the later benches. I have also considered the authorities referred to in *Adi Dara Patel*, viz., *Vinayak Kashinath Shelkar v Deputy Collector*,⁵ and *State of Uttar Pradesh v Hari Ram*.⁶ The decision in *Johnson & Johnson Ltd* is binding and has not been disapproved.

28. The consequence of this, so far as the first notice is concerned is that the Government could not have taken possession on 28th April 2005. It could have taken possession only on 7th May 2005. Admittedly no possession was taken either in April or May 2005.

29. This carries forward to the next notice dated 24th October 2005. This was served on 4th November 2005. Thus, following *Johnson & Johnson*, possession could not have been taken before 4th December 2005. Yet the Government says that it took possession on 28th November 2005.

3 Writ Petition 1468 of 2009, decided on 22nd April 2016.

4 Writ Petition No. 598 of 2012, decided on 27th October 2016.

5 (2012) 4 SCC 718.

6 (2013) 4 SCC 280.

30. The possession receipt at page 565 has the signatures of two officers. It mentions the date of 28th November 2005. It is quite evident that no possession as required in law could possibly have been taken on that date. For completeness, let us consider the panchanama at page 560, Exhibit “D1/3” dated 28th April 2005. It is the Plaintiff’s case that no one attended on that day. It is the case of Defendants Nos. 1 and 4 that no one being present, possession could not be taken. The document will not carry the matter much further.

31. Mr Thakkar has taken me through portions of the evidence of the Defendants’ witnesses in regard to possession. But whatever the witness says cannot change what is noted on the documents produced by the Government themselves.

32. This leaves us with the property cards and here the property card at Exhibit “P19”(page 551) contains a truly puzzling entry because in formal print (i.e. not handwritten) it says that possession was taken on 28th April 2005. Indeed that is not even the Government’s case. This is sought to be explained as being a mistake — but what might the correction to that mistake be? According to the Government, the mistake is in saying 28th April 2005 rather than 28th November 2005; but even the 28th November 2005 date is incorrect and possession could not have been taken in law on that date.

33. This, then, is the entirety of the conspectus of the matter. Unless the Government is able to establish that it took possession in

a manner demanded by law, it cannot claim to be in possession of these properties. To do so, it must show that there was strict compliance with Sections 10(5) and 10(6). It must show that taking of possession was on no date earlier than 30 days from date of service of the notice. The taking of possession must be properly witnessed. It must show that possession was taken within the time provided by the statute and not otherwise. This is not demonstrated.

34. Returning to the reliefs sought in the suit, and to the issues framed, it is evident from this analysis that issue No. 1 must be answered in the affirmative. So far as issue No. 2 is concerned, I will answer it in the affirmative but exclude the words “and got up” because that would necessarily mean that the Plaintiffs have been able to establish fraud or forgery rather than mistake. That is a much higher standard. It is entirely possible that these may have been errors of commission and omission. That is a fair distance from saying that the documents are fabrications or forgeries.

35. The Defendants Nos. 1 and 4 are unable to establish actual possession and if issue No. 1 is answered in the affirmative, issue No. 3 will automatically fail.

36. The suit will, therefore, stand decreed in terms of prayer clauses (a), (b) and in terms of prayer clause (c) except the words “and got up”.

37. The suit is decreed in these terms. Drawn up decree dispensed with.

38. In the facts and circumstances of the case and especially having regard to the fairness of Ms Chavan's approach, there will be no order as to costs.

(G. S. PATEL, J)