

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8837 OF 2016

M/s. R. Engineering through its Partner
Chandrashekhar Gajanan Pore ... Petitioner
Vs.
Additional Commissioner, Pune Division and others ... Respondents

Mr. Chaitanya Nikte for Petitioner.
Ms P. J. Gavhane, AGP for Respondents No.1 to 3 and 6.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 22, 2018

P.C. :

Heard Mr. Nikte, learned Counsel for the petitioner and Ms Gavhane, learned AGP for respondents No.1 to 4 and 6.

2. By order dated 24.04.2017, leave to delete respondent No.5, on the ground that the petitioner has purchased the property from her and that she is not the contesting respondent, was granted. Mr. Nikte submits that as the papers were not traceable, he could not delete respondent No.5. He assures that during the course of the day, he will delete name of the respondent No.5.

3. Rule. Ms Gavhane waives service on behalf of respondents No.1 to 4 and 6. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. The Petition was heard on 24.04.2017. The submission made on behalf of the petitioner that the Authorities below failed to appreciate that the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'U.L.C. Act') was repealed and that the possession of the property namely, Gat No.159/3/A admeasuring 30 Ares is not taken from the

petitioner was recorded. The learned AGP was directed to file affidavit placing on record whether in fact the possession of property in question was taken from the petitioner or not. The matter was thereafter heard on 28.09.2018. In the order, reference is made to the affidavit of the Assistant Collector and Sub- Divisional Officer, Khed, Pune, where it is stated that petitioner is in possession of the property in question. With the assistance of the learned Counsel appearing for the parties, I have perused the affidavit dated 06.11.2017 filed by Ayush Prasad, Assistant Collector & Sub-Divisional Officer, Khed. In paragraph 6, it is stated that upon his making enquiry through Circle Officer, Alandi, petitioner was found in possession of the suit land. As despite repeal of U.L.C. Act, petitioner continues to be in possession of the property in question, the Authorities below were not justified in passing the impugned orders. In paragraph 5 of the order dated 29.06.2015, Additional Commissioner, Pune Division, Pune, after referring to the fact that U.L.C. Act was repealed, observed that the property in question is declared as surplus land and the said declaration continues.

4. In my opinion, the Authorities below failed to consider that the petitioner continues to be in possession of the suit land despite repeal of the U.L.C. Act. In view thereof, the impugned orders cannot be sustained and as such, are liable to be set aside. Hence Petition succeeds. Impugned orders are set aside. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(R. G. KETKAR, J.)