

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1617 OF 2018

Vijayamala Babu Satvekar & Ors.

..Petitioners

V/s.

The Collector and Competent Authority
& Ors.

.. Respondents

Mr.Shah Hussain Dawoodsaheb Shaikh-Power of Attorney
Holder of Petitioners-present in Court.

Ms.A.A. Purav, AGP for Respondent-State.

Mr.G.H. Keluskar for Respondent No.3.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 8th JANUARY 2019

P.C.

1. Yesterday we have extensively heard Mr.Ashutosh Kulkarni, the learned counsel for the petitioner, Mr.Keluskar, learned counsel for respondent No.3 and learned AGP for respondent Nos.1,2 and 4.

2. Having considered the rival submissions and having gone through the petition along with annexures thereto, we

expressed that there is no merit in the petition and that we were inclined to dismiss the same.

3. Mr.Kulkarni, learned counsel for the petitioner thereafter requested this Court to adjourn the matter today to seek instructions from his client. It is pertinent to note that the Power of Attorney holder of the petitioner Nos.1 to 7 was also present during the course of hearing and entire hearing was concluded in his presence.

4. When the matter was called out today, the Power of Attorney of the petitioner Nos.1 to 7 appeared and submitted that Mr.Ashutosh Kulkarni has given his No Objection to him and he wants to engage the services of another lawyer. He accordingly, requested to adjourn the matter and he also categorically states that since Shri Kulkarni was not able to convince the Court on merits and hence he desires to take assistance of other counsel.

5 We note with disapproval that since hearing of the matter is concluded, it is not open for the Constituted Attorney of the petitioner to take No Objection from his counsel and ask for time to engage services of another lawyer. We deprecate such practice and are left with no option than to reject his request.

 In the above facts and circumstances we are disposing of this petition by the present order.

6 By the petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a declaration that the provisions of Urban Land Ceiling Act, 1976 are not applicable to the suit property of the petitioners and that all the proceedings under the said Act be declared to be lapsed and the property is liable to be treated as free-hold property, free from all encumbrances.

 It is thus prayed that the respondents be directed to drop all the proceedings initiated under the ULC Act in relation to the property of the petitioners.

7 On perusal of the petition, the facts disclose that the owner of the land bearing Survey No.9/12, 3, 4, 5, 4377, 4380 was one Bhau Satvekar. Out of the total land held by him, land admeasuring 25498.08 sq.m was declared as an excess land. An order under sub-section (3) of Section 10 of the ULC Act was passed on 25th March 1979 and a notice of possession under sub-section (5) of Section 10 of the ULC Act was issued on 8th November 1979. The case of the Municipal Council is that on 25th February 1980, the possession of the excess land was taken over in accordance with sub-section (5) of Section 10 of the ULC Act and the erstwhile Municipal Council was placed in possession of the area admeasuring 11,740.00 sq.m and the name of the erstwhile Municipal Council of Miraj was mutated in *kabjadar* column in 7/12 extract.

Son of Bhau Satvekar by name Kisan, instituted a Civil Suit in the Court of Civil Judge, Jr. Division at Miraj on 15th March 1982. In the said suit, the Municipal Council of Miraj and Bhau (father) were impleaded as defendants. It was contended that the land which was declared as excess was a joint family property and a relief was sought for perpetual

injunction restraining the erstwhile Municipal Council of Miraj and his father from interfering with his possession. Bhau filed a written statement supporting Kisan. The Suit came to be decreed and perpetual injunction was granted, which was carried in Appeal by the Municipal Council before the District Court, Sangli. The District Court, Sangli confirmed the judgment and decree of the trial Court and the Second Appeal came to be instituted before the High Court by the Municipal Corporation which is the successor of erstwhile Municipal Corporation of Miraj.

8 Kisan Satvekar had also approached the State Government under Section 34 of the ULC Act and invoked its revisional jurisdiction. The State Government dismissed the Revision Application on 25th November 1997. Against this dismissal, he filed a Writ Petition which was numbered as Writ Petition No.2698 of 1998 which came to be withdrawn by him on 27th April 2000. Another application was made by Kisan before the State Government seeking review of the order dated 25th November 1997 and the Hon'ble Minister of the State, by his order dated 14th May 2003 set aside the order passed by the

State and remanded the matter to the Competent Authority for giving effect to the share of Kisan and his brothers and sisters. It directed the competent authority to pass a fresh order under sub-section (4) of Section 8 of the ULC Act. Before the said order could be implemented, an application was made by Kisan and on 6th July 2004, the allotment of land made to erstwhile Municipal Council was set aside. Writ Petition was filed by Corporation challenging the said order and this Court passed an ad-interim order and Rule was issued.

9 On perusal of the entire proceedings relating to the property of the petitioners, we have observed that the petitioners have subjected themselves to the proceedings under the ULC Act and it is for the first time after a lapse of approximately 30 years, he is raising a new contention that the land in question at the relevant time, was not included in the Master Plan of Miraj Municipal Council. In support of his contention he relies upon the Government Resolution dated 21.08.1996, copy of which is annexed at Exhibit-H (Page 106 of the petition), the copy of the Development Plan which is at

Exhibit-I (page No.109 of the petition). With the help of the said plan the petitioner contends that the land in question is not included in the Master Plan of the Miraj Municipal Council.

10 With the help of Mr.Kulkarni and Mr.Keluskar, learned counsel appearing for the respective parties, we had minutely gone through the development plan yesterday and told Advocate Kulkarni that the land in question is very much within the limits of the Master Plan of the Miraj Municipal Council. We had, therefore, expressed that we are not in a position to accept the contentions of the petitioners. In any case, this point could not be allowed to raise after the lapse of 30 years.

In the Second Appeal filed by the Miraj Municipal Council which was heard by this Court with a writ petition filed by the Sangli Miraj Kupwad City's Municipal Corporation, the Division Bench of this Court by its judgment dated 13th August 2014 has allowed the Second Appeal and quashed and set aside the impugned judgment and decrees. The Division Bench of this Court clearly recorded a finding that the possession of the

excess land of the petitioner was taken over in accordance with sub-section (5) of Section 10 of the ULC Act before the Repeal Act came into force in relation to the State of Maharashtra. The Court also recorded a finding that clause (a) of sub-section(1) of section 3 of the Repeal Act would apply and the Repeal would not affect the vesting of the excess land in the State under the provisions of sub-section (3) of Section 10 of the ULC Act and therefore, the order of allotment made in favour of erstwhile Municipal Council continues to be valid. In light of the clear cut finding recorded by the Division Bench of this Court, we do not feel that we are duty bound to consider the contention raised in the present petition and specifically about the applicability of the provisions of ULC Act and also on objection being raised for the first time that the land do not fall within the limits of the Miraj Municipal Council. We do not find any merits in both the contentions and resultantly, we dismiss the writ petition.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)