

Uday S. Jagtap

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

WRIT PETITION NO. 1060 OF 2021

Vijay Sawliram Shinde	]	
Aged 75 years, R/at Adgaon	]	
Taluka & Dist. Nashik	]	.. Petitioner

Vs.

1. The Principle Secretary,	]	
Urban Development, Mantralaya,	]	
Mumbai and Ors.	]	
2. The Collector, Nashik	]	
3. The Additional Collector and	]	
Competent Authority,	]	
Nashik Urban Agglomeration	]	
4. The State of Maharashtra	]	.. Respondents

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Mr. R.D. Soni i/b Ram & Co. for the petitioner
Mrs. S.S. Bhende, AGP for respondent - State

**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, J.J.**

DATED : 4th AUGUST, 2021

JUDGMENT :- (Per : Prithviraj K. Chavan, J.)

1. Heard learned Counsel for the parties.
2. Learned Counsel for the respondents waive service.

3. Rule.
4. By consent of learned Counsel for the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.
5. Shorn of unnecessary details, the facts germane for disposal of this petition are summarized as under :-
6. The petitioner is an owner of land bearing Gat No. 565/2 situate at Adgaon, Dist. Nashik, admeasuring 3400 sq.meters, which is a part of larger piece of land admeasuring 5400 sq.meters (for short "subject land"). This land belonged to petitioner's father. The petitioner being the legal heir along with one Sawliram, became the owner of the said land. Said Sawliram filed return of his holding under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULC Act") in respect of the vacant land held by him and his family. The respondent no.2 by an order dated 01.12.1993 declared 3400 sq.meters of excess vacant land in the hands of said Sawliram and his family. The petitioner, therefore, contends that the total vacant land held to be in possession of said Sawliram was 7400 sq.meters, out of which two units of 2000 sq.meters each were held to be retainable land in the hands of said Sawliram as the owner and the petitioner herein.
7. It is contended that possession of the excess land

admeasuring 3400 sq.meters continued with the petitioner as no acquisition proceedings were initiated by the respondents under Section 10(1), 10(3) and 10(5) of the ULC Act *qua* the excess land in possession of the petitioner.

8. The ULC Act of 1976 came to be repealed on 29.11.2007. In view of the same, in case, any land excess in respect of which the possession was not taken by the State of Maharashtra on 29.11.2007 then, proceedings under the ULC Act initiated prior to the said date would stand abated and the excess land would become free from any restrictions on holding in the hands of the owner as is the case of the petitioner.
9. The petitioner proposed to develop the said land and, therefore, applied to respondent no.2 – The Collector, Nashik for grant of non-agricultural permission. The petitioner addressed a letter to the respondent no.3 on 17.07.2018 for grant of NOC for the purpose of non-agricultural permission. The petitioner, *inter alia*, requested respondent no.3 for hearing on his application dated 09.03.2018 for issuance of non-agricultural permission in respect of the excess land.
10. The petitioner has further contended that by a Circular dated 07.06.2011 issued by the State of Maharashtra, wherein it has been clarified that where the proceedings under Section 10(3), 10(5) of the ULC Act were not initiated in respect of the excess land and the possession has not been taken by the

State Government on the date of repeal of the Act i.e. 29.11.2007, NOC for dealing with such excess land by the land owner would not be required from the competent Authority under the ULC Act. Despite excess land admeasuring 3,400 sq.meters continued in the possession of the petitioner, it is contended that the Government had recorded entry in the other rights column of 7x12 extract of the subject land to the effect that pursuant to the return filed under Section 6(1) of the ULC Act, an area of 3400 sq.meters was declared as excess in the hands of the petitioner. The petitioner had, therefore, by a letter dated 17.07.2018 called upon the respondent no.3 to delete the said entry from the other rights column of 7x12 extract. However, it remained as it is. The petitioner moved an application dated 24.01.2019 to the *Talathi* to delete the entry.

11. By communication dated 21.04.2018, the respondent no.2 expressed his inability to grant permission to convert the subject land into non-agricultural by stating that in other rights column of record of rights in respect of subject land, there was a reference that the matter is pending in this Court. Due to the inaction on the part of the respondents, the petitioner is deprived of developing the said land and exploiting the commercial potential in view of the fact that the petitioner's proposal for permission to convert the said land into non-agricultural is not being processed by the respondents.

12. The petitioner has approached this Court by filing a Writ Petition (St.) No. 23211 of 2019 seeking writ of mandamus directing respondent no.2 to process his application dated 09.03.2018 for grant of non-agricultural permission in respect of the subject land admeasuring 3400 sq.meters *inter alia* sought a mandamus directing the respondents to forthwith delete the remark in the 7x12 extract. A Division Bench of this Court by an order dated 26.09.2020 directed the respondent – Collector to pass a speaking order on the petitioner’s application dated 09.03.2018 as well as the application for deletion of remarks within 4 weeks from the date of service of additional documents and after hearing the petitioner. Despite there being an order of this Court, it is contended that the respondent – Additional Collector and the competent Authority informed the petitioner that the earlier Application dated 09.11.2018 which was directed to be decided by this Court was already rejected by an order dated 18.01.2019. However, it remained to be communicated to the petitioner. It is contended that respondent no.2 even on subsequent occasion observed that there was no change in the circumstances after passing the earlier order and the entry of excess holding under the ULC Act in the record of rights of the petitioner’s land, could not be deleted since the entry was made under the ULC Act when it was in force in the State of Maharashtra.
13. The respondents in their affidavit-in-reply reiterated most of the facts contended in the petition. However, in the

additional affidavit-in-reply, the respondents have categorically admitted that no notices under Section 10(3) and 10(5) of the ULC Act were issued and further admitted that the respondents have not taken physical possession of the subject land. This admission by the respondents puts at rest the whole controversy.

14. The learned Counsel for the petitioner has rightly placed reliance upon a judgment of this Court in the case of ***Gopalrao s/o Shiva Ikhankar Vs. State of Maharashtra, 2019 (3) Mh.L.J. 101***, which governs the field and is squarely applies to the given set of facts. In the said case, the petitioner was the land owner, who was in continued possession and cultivation of the subject land. The revenue record and communications sent by the land owners to the Government indicate that the land owners were and are in physical possession of the subject land, which is under cultivation for their livelihood. The Government had failed to prove that they have taken the possession of the subject land before the repeal of ULC Act. It was held that the petitioner became owner of the entire land and respondent – State cannot continue to treat or recognize it as surplus or excess vacant land. Similar is the view taken by another Division Bench of this Court in case of ***Dattatraya Raut Vs. State of Maharashtra, 2021 (2) ABR 400***. A reference is made in the said judgment with regard to the case of ***Voltas Ltd. 2008 (5) ALL MR 537*** wherein a similar question was considered. The relevant paragraph reads thus:-

“8. This Court in its judgment in the case of Voltas Ltd. [2008(5) ALL MR 537] (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. **** 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. [2008(5) ALL MR 537] (supra).”*

15. It can thus be seen that despite repeal of the ULC Act w.e.f. 29.11.2007 and even after a laps of 13 years, the respondents have ignored the legal position and the ratio laid down in the decisions supra.
16. The impugned orders, therefore, need to be quashed and set aside.

ORDER

- (i) Rule is made absolute in terms of prayer clauses (a) and (b), which reads thus ;-

(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Writ of Certiorari, thereby quashing and setting aside the impugned order dated 18.01.2019 (Exh.L hereto) and order dated 04.11.2020 passed by Respondent No.2 (Exh.M hereto) thereby rejecting the Petitioner's application for grant of N.A. permission as also for deleting the entry in the 7x12 extract in respect of the Petitioner's excess land admeasuring 3400 sq. meters bearing Gat No.565/2 situated at Nashik.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order and direction in the nature of Writ of Mandamus thereby directing the Respondents to allow the Application dated 9.3.2018 along with application dated 24.1.2019 annexed as Exh.F hereto and grant permission for non-agricultural use of the said land admeasuring 3400 sq. meters bearing Gat No.565/2 situated at Nashik.

- (ii) Petition is disposed of in the aforesaid terms.
- (iii) No order as to costs.
- (iv) Parties to act on an authenticated copy of this order.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K. TATED, J.)