

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4279 OF 2019

1. Dattatray s/o Ramchandra Raut,
aged 58 years, Occ. Agriculturist.
2. Dyaneshwar s/o Waman Raut,
aged 40 years, Occ. Agriculturist.
3. Pravin s/o Waman Raut,
aged 28 years, Occ. Agriculturist.
4. Purushottam s/o Ramchandra Raut,
aged 55 years, Occ. Agriculturist.
5. Smt. Nirmala s/o Shankar Raut,
aged 26 years, Occ. Agriculturist.
6. Chakradhar s/o Waman Raut,
aged 26 years, Occ. Agriculturist.
7. Krushna s/o Purushottam Raut,
aged 28 years, Occ. Agriculturist.
8. Kunal s/o Purushottam Raut,
aged 25 years, Occ. Agriculturist.
9. Surekha d/o Dilip Sherje,
aged 32 years, Occ. Agriculturist.
10. Sheetal Chandrashekhar Adhau,
aged 34 years, Occ. Agriculturist.
11. Nikita Nilesh Dehankar,
aged 34 years, Occ. Household.
12. Pratiksha d/o Dattaraj Raut,
aged 19 years, Occ. Education.
13. Shakshi d/o Dattaraj Raut,
aged 18 years, Occ. Education.

14. Jayshree Purushottam Raut,
aged 29 years, Occ. Agriculturist.

All are R/o Godhani (Railway),
Tah. and District Nagpur.

...PETITIONERS

Versus

1. State of Maharashtra,
through its Secretary, Ministry of Urban
Development, Mantralaya, Mumbai – 32.
2. Special Land Acquisition Officer/
Competent Authority-cum-Deputy Collector
(Urban Land Ceiling), Civil Lines, Nagpur.
3. Collector, Nagpur District,
Civil Lines, Nagpur.
4. Tahsildar, Tahsil Office, Nagpur (Rural),
District – Nagpur.
5. Nagpur Housing and Area Development Board (MHADA),
through its Management Director, Civil Lines,
Nagpur – 440001.

...RESPONDENTS

Shri A.P. Tathod, Advocate for the petitioners.
Shri V.A. Thakare, A.G.P. for respondent Nos. 1 to 4.
Shri P.N. Kothari, Advocate for respondent No.5.

.....

**CORAM : DIPANKAR DATTA, CJ AND
PUSHPA V. GANEDIWALA, J.
DATED : FEBRUARY 01, 2021.**

JUDGMENT (PER : PUSHPA V. GANEDIWALA, J.) :

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. Shri V.A. Thakare, learned A.G.P, waives notice on behalf of respondent Nos. 1 to 4.

3. Shri P.N. Kothari, learned counsel, waives notice on behalf of respondent No.5.

4. In this petition, the petitioners have sought declaration that as the surplus land acquisition proceedings vide ULC Case No. 2715/1976 initiated by the respondents under the provisions of The Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULC Act, 1976") is lapsed, the petitioners are entitled to continue with their possession in respect of lands bearing Survey Nos. 27/1, 26/1 and 26/3, situated at Mouza Gorewada, Tah. and District Nagpur.

5. It is stated that the father of the petitioners was the original owner and in possession of the agricultural lands as

stated above. The father of the petitioners expired long back, and the petitioners inherited the subject lands, being his legal representatives.

6. The respondents initiated proceedings under the provisions of the ULC Act, 1976. The Competent Authority under the ULC Act, 1976 directed the father of the petitioners to submit the statement under Section 6(1) of the ULC Act, and in pursuance thereof, he had submitted the statement of objection on 11/12/1985.

7. On the basis of the aforesaid statement, and upon enquiry, an order was passed by respondent No.2 under Section 9 of the ULC Act, 1976 on 06/04/1993, and final statement was prepared and served upon the father of the petitioners wherein the land admeasuring 16713 square meters was shown as surplus land of the land owned by the petitioners' father.

8. Thereafter, a notification under Section 10(1) of the ULC Act, 1976 was also issued on 06/04/1993, and the same was also published in the Government Gazette.

9. The core submission of the petitioners is that though the final declaration was published under Section 10(3) and the notice under Section 10(5) of ULC Act, 1976 was issued to the father of the petitioners calling upon him to handover the physical possession, none of the authorities, including the respondents, have taken any steps to take possession of the surplus land, either from the father of the petitioners or from the present petitioners till today.

10. On 29/11/2007, the State of Maharashtra adopted The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short “Repeal Act”), as a result of which, the ULC Act, 1976 stood repealed in the State of Maharashtra. The petitioners have filed this petition stating that the actual physical possession of the lands was never taken by the respondents, and that they continue to be in peaceful possession of the

same. The petitioners have therefore prayed that in view of repeal of the ULC Act, 1976, the subject lands reverted to them, and that the respondents cannot have any claim upon the same.

11. Shri Tathod, the learned counsel for the petitioners, submitted that in cases where actual possession of the land has not been taken before 29/11/2007, when the Repeal Act came into effect in the State of Maharashtra, the said land cannot be said to have vested in the State Government and therefore, the State can have no claim upon the same. In support of his submission, the learned counsel has relied on the judgment of the co-ordinate Bench of this Court in the case of *Dhondiram Babu Ghodake Vs. The State of Maharashtra & Anr.*, reported in 2018(7) ALL MR 784, wherein this Court has relied on the judgment of the co-ordinate Bench of this Court in the case of *Volta Ltd. & Anr. Vs. Additional Collector & Competent Authority & Ors.*, reported in 2008 (5) Bom. C. R. 746, and held as under :

“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).”

12. Respondent Nos.2 and 3, in their affidavit-in-reply, in para 9 have stated that the notification under Section 10(3) of the ULC Act, 1976 which was published by the Office of the Competent Authority ULC, Nagpur on 02/11/1989, is cancelled by the respondent No.1 - Urban Development Department, Mantralaya, Mumbai, vide communication dated 12/05/2010, and in consequence of the same, the said notification under Section 10(3) is revoked, and the same has been published in the Government Notification dated 01/07/2010.

13. The affidavit-in-reply on behalf of respondent Nos. 2 and 3 would further reflect that respondent No.2 have called upon a report from respondent No.5 MHADA with regard to the actual possession of subject lands. In the report, respondent No.5 MHADA reported that possession of the lands in question was received on 12/02/1990 by the Office of MHADA. The lands in question are presently shown to be reserved in Development Plan of Nagpur City for the purposes of Cattle Stable and Dairy Farm and therefore, MHADA could not develop the Housing Accommodation Scheme over the land in question. Consequently, MHADA could not deposit the amount of compensation in the Office of respondent Nos. 2 and 3.

14. Affidavit-in-reply further reflects that the Tahsildar, Nagpur city, vide correspondence dated 24/09/2019, reported that the lands in question are recorded in the name of MHADA in current 7/12 extracts, and upon spot inspection of the lands in question, it is found that actual physical possession of the lands is with the petitioners.

15. Shri Kothari, learned counsel for respondent No.5 MHADA, also submits that even though the de jure possession of the surplus land is shown to have been in the name of MHADA in the revenue records, the said land, being of reserved category in the Development Plan of Nagpur City for the purposes of Cattle Stable and Dairy Farm, and since MHADA could not develop the Housing Accommodation Scheme over the land in question, MHADA could not deposit the amount of compensation in the office of respondent Nos.2 and 3. The learned counsel does not dispute the claim of the possession of the petitioners over the subject surplus land.

16. Considering the aforesaid reply on behalf of respondent Nos.2 and 3, and considering the submissions of Shri Kothari, learned counsel, since the notification under Section 10(3) of the ULC Act, 1976 published by the Office of the Competent Authority ULC, Nagpur is revoked by the present respondents, and the same is also published in the official gazette, consequently, the possession of the subject lands remained with the petitioners.

17. In this view of the matter, the Writ Petition is allowed and it is held that since the notification under Section 10(3) of the ULC Act, 1976 has been revoked in ULC Case No. 2715/1976 and at no point of time actual physical possession was taken resulting in the possession of surplus land continuing with the petitioners, the respondents have no right in respect of the said land. Rule is accordingly made absolute in terms of prayer clauses (i) to (iii) of the petition. There shall be no order as to costs.

(JUDGE)

(CHIEF JUSTICE)

Sumit