

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

***APPEAL FROM ORDER NO.376 OF 2021
WITH
INTERIM APPLICATION NO.3150 OF 2021***

Chhaya Suresh Jadhav and Ors. ...Appellants
Vs
The Addl. Collector and Competent
Authority (ULC) Brihanmumbai and Ors. ...Respondents

***WITH
APPEAL FROM ORDER NO.380 OF 2021
WITH
INTERIM APPLICATION NO.3154 OF 2021***

Chhaya Suresh Jadhav and Ors. ...Appellants
Vs
Dy. Collector (Enc-Rem), Malad
and Ors. ...Respondents

...

Mr. Prasad S. Dani, Senior Advocate i/by Ms. Sonali G. Sase
for the Appellants in both Appeals.

Smt. Pallavi Dabholkar, AGP for the State.

Mr. Girish S. Godbole, Senior Counsel with Ms. Pooja Kshirsagar
Kane i/by Mr. Mehul Rathod for R.No.4 in AO/376/21 and for
Respondent No.3 in AO/380/21.

Mr. Ashish Kamat i/by Mr. Ashish A. Gatagat and Mr. Animesh
Singh for R.No.4 in AO/376/21 and for R.No.3 in AO/380/21.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : APRIL 6, 2022.
PRONOUNCED ON: APRIL 13, 2022.

P.C. :

Though these two Appeals From Order are arising out of two different orders, in two suits, yet, facts therein, being interwoven and overlapping, same are disposed of by common order.

Briefly stated facts of the case leading to, First Appeal From Order No.376 of 2021 are as under;

1 One, Dhaklya Warli was protected tenant in land Survey No.260/1. Ziparibai Dhaklya Warli, wife of Dhaklya Warli, is predecessor-in-title of the appellants/plaintiffs. Deputy Collector, Urban Land Ceiling, Gr. Bombay vide order Under Section 8(4) of Urban Land Ceiling Act, 1966 ('ULC, 1966 for short), held that deceased, Dhaklya Warli and his wife Smt. Zipribai Warli, both constitute one 'family', within the meaning of Section 2(f) of the ULC Act and therefore, were entitled to retain land admeasuring 500 sq.mtrs. only. In consequence, land admeasuring 2746.60 sq.mtrs. of

land Survey No.260/1, CTS 660 at Village: Malad/Borivali was declared, 'surplus vacant land' (hereinafter called 'Suit Land' for short). Following that, Notification under Sub-section (1) of Section 10 was issued on 29th August, 1988. It was followed by Notification under Section 10(3) of the ULC Act published on 30th March, 2005, whereby Suit Land deemed to have acquired and vested absolutely in the Government of Maharashtra, free from all encumbrances. Whereafter, on 15th February, 2006, Deputy Collector and Competent Authority issued a notice dated 15th February, 2006 to Ziparibai, under Section 10(5) of the ULC Act by which, Land Survey Officer, was empowered to take over; possession of the suit land on 21st March, 2006. In the meanwhile (before taking possession), Ziparubai Warli passed away on 8th March, 2006. Yet, pursuant to the notice, possession of the suit land was allegedly handed over by the plaintiff no.5 (Grand daughter of Ziparibai) to the City Survey Officer, Mr. Katkar on 21st March, 2006. Simultaneously, a panchanama of possession, was allegedly drawn in presence of plaintiff nos.1 and 5. On the same date, City Survey Officer vide letter dated 21st March, 2006 submitted a report of having taken possession, to Deputy

Collector and Competent Authority. In consequence, revenue records were altered relating to Suit Land. Plaintiff's case, is although Notice under Section 10(5) of the ULC Act, panchanama and possession note, bear signature of plaintiff nos.1 and 5, same were taken on misrepresentation of facts. In fact, plaintiffs would assert, actual possession was not taken on 21st March, 2006, as claimed by the State and their uninterrupted possession in the Suit Land continuous throughout. On 29th November, 2007, the State of Maharashtra adopted Urban Land (Ceiling & Regulation) Repeal Act, 1999. In 2009, plaintiffs had filed Writ Petition No.2497 of 2009, contending and claiming that, in view of saving clause, contained in Section 3(1) of the Repeal Act, what was saved is, vesting of land in the State Government under Sub-section (3) of Section 10 of the ULC Act, possession of which was already taken over by the Government. Therefore, contended, though Suit Land vested in the State Government, but since its possession was not taken, vesting wiped out. Writ Petition was opposed by the Deputy Collector and Competent Authority on the ground, that after service of notice under Section 10(5) of the ULC Act, the office of the Authorised Officer,

took over the possession of the suit land on 21st March, 2006, through Jaya Santosh Andher (Plaintiff No.5), grand-daughter of Ziparibai, in presence of three panchas. The petitioners (Plaintiffs) disputed this fact. In consideration of the disputed question of facts, the Division Bench held, thus;

“ In these circumstances, this would not be proper coram to consider that aspect. It will be open to the petitioner if they have got any grievance in respect of Survey No.260/1 (Suit Land) to file independent proceedings by way of suit or other remedy which they may have.”

2 With the above observation, petition was disposed of on 21st June, 2010. Since then, plaintiffs, claim they were in uninterrupted and peaceful possession of Suit Property. It appears, plaintiffs were apprehending dispossession and therefore, on 1st April, 2014, appellants, issued a notice to State of Maharashtra, Principal Secretary, Urban Development Authority, Additional Collector and Competent Authority (ULC), under Section 80 of the Civil Procedure Code, 1860 calling upon them, to restrain their officers from giving threats of evicting plaintiffs from the suit property. After which, plaintiffs instituted the Long Cause Suit No.1421 of 2014 (‘First Suit’

for short) in June, 2014 against the State and its officers seeking following two reliefs;

“a) that this Hon’ble Court be pleased to declare that, the Defendants are not entitled to evict and/or dispossess the Plaintiffs from the suit property viz., land together with structures, bearing Survey No.260, Hissa No.1, C.T.S.No.660, admeasuring about 2746.50 sq.mtrs., situate, lying and being at General Arunkumar Vaidya Marg, Village Malad, Taluka Borivali, Mumbai Suburban District, pursuant to the Possession Receipt dated 21/3/2006, and Panchanama dated 21/03/2006.

b) that the Defendants, their officers, employees, agents, and/or servants be restrained by a permanent order and injunction of this Hon’ble Court from interfering, obstructing and/or disturbing the Plaintiffs’ peaceful use, occupation and possession of the suit property, viz. Land together with structures, bearing Survey No.260, Hissa No.1, C.T.S. No.660, admeasuring about 2746.50 sq.mtrs. Situate, lying and being at General Arunkumar Vaidya Marg, Village Malad, Taluka Borivali, Mumbai Suburban District, or any portion thereof, pursuant to the Possession Receipt dated 21/03/2006 and Panchanama dated 21/03/2006;”

3 Pending suit, in Notice of Motion No.1723 of 2015, plaintiffs sought, temporary injunction to restrain the defendants/State, from evicting the plaintiffs and/or disturbing their possession in the suit land. Pending Motion, learned trial Court, vide

order dated 10th July, 2014, directed plaintiffs and defendants to maintain the position, as it is, till defendants put up their reply to the Notice of Motion. However, after hearing the parties, vide order dated 27th September, 2021, learned trial Court dismissed the Notice of Motion. That order is challenged in Appeal From Order No.376 of 2021, under Order 43 Rule 1(r) read with Section 104 of the CPC. This one, is First Appeal From Order.

4 **Facts leading to Second Appeal From Order No.380 of 2021:**

This appeal arises from the order dated 27th September, 2021 in Notice of Motion No.934 of 2015, in Second Suit No.846 of 2015. This suit was filed on 25th March, 2015 in the following stated facts and circumstances;

5 On or around 6th February, 2015, Deputy Collector (Encroachment) pasted a public notice on the suit property, to the effect that, on 23rd February, 2015, survey team, would visit the suit property for carrying out survey of, “slum areas”, for certification of

Annexures-II (Certificate of Eligibility of slum dwellers on the Suit Land) pursuant to Slum Rehabilitation Scheme submitted by the Pragati Co-operative Housing Society (Proposed), respondent no.3. After which, plaintiffs by advocate's notice dated 12th February, 2015 apprised, Deputy Collector of interim order dated 10th July, 2014, that was passed in First Suit, whereby parties were directed to maintain status-quo in respect of the Suit Property. Thus, requested Deputy Collector, not to proceed with the survey of the Suit Land. In spite of it, Deputy Collector, vide reply dated 12th March, 2015 informed plaintiffs' advocate, that the order dated 10th July, 2014 does not preclude the Deputy Collector from conducting the survey, as it would not change or alter the status of the Suit Property and also for the reason, that, Deputy Collector (Encroachment) was not party to the Suit. With these assertions, Deputy Collector pasted second public notice dated 20th March, 2015, on the Suit Property and informed, slum dwellers that survey would be conducted on 27th March, 2015. It is plaintiffs' case that, although part of the Suit Property, was occupied by the encroachers, neither the Suit Property nor part of it was declared as 'Slum Area' within the meaning of

Section 2(g) of the Maharashtra Slums Act ('Slum Act' for short). Yet, to confirm this fact, plaintiffs relied on a letter dated 9th April, 2014 (Page 83 Exhibit "A") . It is evident from the said letter, that Slum Rehabilitation Authority was of the opinion, that for want of, declaration of 'Slums Area', it would be improper to sanction Rehabilitation Scheme of proposed society forwarded through, developer, M/s. Rahat Construction and particularly when Slums were on private land. However, apprehending that Slum Rehabilitation Authority would, proceed with implementation of the Scheme, appellants instituted Second Suit No.846 of 2015 in March, 2015, seeking declaration that defendants are not entitled to implement any Slum Rehabilitation Scheme on the Suit Property. Pending suit, plaintiffs moved an application seeking order to restrain the authority, from implementing the Slum Rehabilitation Scheme.

6 The learned trial Court, after hearing the parties, declined the interim relief and dismissed Notice of Motion No. 934 of 2015 in Suit No. 846 of 2015 (Second Suit) by order dated 27th September, 2021. This order is subject matter of Appeal From Order No. 380 of

2002 (Second Appeal From Order).

7 Heard learned counsel for the Parties. Perused the impugned orders.

8 The Appeals give rise to two questions;

(1) Whether, plaintiffs have prima-facie, shown violation of Section 10(5) of the ULC Act and the procedure followed by the State preceding taking over possession of the Suit Land on 21st March, 2006, was inherently wrong i.e. “without following due process of law” ? AND

(2) Whether in absence of declaration under Section 4 of the Slums Act, authority could implement the Slum Rehabilitation Scheme in the suit land ?

(3) Whether orders call for interference ?

. It may be noted that in both the suits throughout and till date, order directing the parties to maintain status-quo is in force.

9 Indisputably, while deciding the surplus vacant land,

under the ULC Act, the Competent Authority held that the original holder, Shri Dhaklya L. Warli (Predecessor-in title of the Plaintiff) was alive on the relevant date and, therefore, his major daughters were not entitled to separate share during the lifetime of Dhaklya Warli. Thus, held deceased Dhaklya Warli and his wife Smt. Ziparibai D. Warli, constitute a 'family' in relation to Suit Land and, were entitled to retain land admeasurng 500 sq.mtrs. only.

10 Section 10 of the ULC Act contemplates procedure to be followed for acquiring vacant land in excess of ceiling limit. Herein, vide notice dated 15th February, 2006, under Sub-Section (5) of Section 10 of the ULC Act, Ziparibai was called upon to surrender or deliver possession of suit land to Authorised Officer on 21st March, 2006. I have perused two copies of notice. One is office copy of the said notice at Exhibit "E"; whereas Notice allegedly acknowledged by plaintiff no.5 is at Exhibit 10. Neither of these notices, reveal, when, it was served on plaintiff no.5. According to State, notice was issued to Ziparibai but served and

acknowledged by Plaintiff No.5. Therefore, before serving it on Plaintiff No.5, State ought to have shown, that despite, attempt to serve it, on Ziparibai, it could not be served and therefore, as a last resort, it was served on Plaintiff No.5. This fact is neither pleaded nor there is evidence to that effect. Admittedly, Ziparibai expired on 8th March, 2006, i.e., after issuing notice, but before the date, scheduled for taking over possession of the suit land viz. 21st March, 2006. Yet, possession was allegedly taken over in pursuance of notice on 21st March, 2006, when noticee (Ziparibai) was not alive. This itself shows, inherent defect in procedure and proof of violation of Section 10(5) of the Act. Against these admitted facts, contention of the State is that, notice was served on plaintiff no.5 and thereafter, she delivered the possession. These arguments are contrary to the averments in the Written Statement of the State. Paragraph 7 of the Written Statement says, Notice at Exhibit “E” under Section 10(5) was received by Ziparibai; whereas paragraph no.9 say, though notice was issued to Ziparibai, it was served on her legal heir, Smt. Jaya (Plaintiff No.5). It means, notice was served, after the death of Ziparibai.

At the first place, there is no evidence on record suggesting as to when and on which date, notice was served on plaintiff no.5. That to say, whether before or after Ziparibai's death. As per Written Statement, it was served on Plaintiff No.5 as legal heir of Ziparibai. If that was the case, the State ought to have issued notice to plaintiff no.5 for handing over possession of the Suit Land. However, that was not done. Assuming the notice was served on Plaintiff No.5 as heir of Ziparibai, it is not known, as to how the State ascertained that plaintiff no.5 was legal heir of Ziparibai. Thus, on, primary evaluation of these facts, it is to be held, State has not followed 'just' and 'fair' procedure. Besides, notice at Exhibit "E" (Office Copy) overleaf contains a instruction, that, if owner of the land does not remain present to deliver the possession, it could be taken unilaterally. Herein, it is not State's case that possession of the Suit Land was taken pursuant to the powers under Sub-Section (6) of Section 10 of the ULC Act. At any rate, there is one more aspect, which strengthens plaintiffs' case, that physical/actual possession of the Suit Land was not taken. Herein, the trial Court while granting ad-interim

relief in First Suit has re-produced arguments of State's Counsel in paragraph 5, which read as under;

“ The crux of the matter in hand is whether possession of the Suit Land has been handed over to the State prior to 29th November, 2007 (date on which Repeal Act adopted in the State of Maharashtra). On one hand, plaintiffs show, their possession and on the other hand, defendants show possession receipt dated 21st March, 2006. The learned counsel for the State argued that no physical possession is shown in favour of the defendants but there is symbolic possession and hence, plaintiffs are not entitled to get ad-interim relief.” (emphasis supplied).

. Thus, primary evaluation of documents/pleadings and observations of the trial Court (re-produced above) leads me to hold that State has not followed fair and just procedure, while acquiring the Suit Land. It is settled law that procedure established by law means right, just and fair procedure and not arbitrary fanciful or oppressive; otherwise it would be no, procedure at all and requirement of Article 21 would not be satisfied. Thus, the ‘procedure established by law’ has the same significance as the ‘due process of law’ as held in the case of **Maneka Gandhi v. Union of India**. In this case, although the State has placed on record, notice issued under Section 10(5) of the

ULC Act, possession receipt and the panchanama, nevertheless, prima-facie, procedure allegedly followed was inherently wrong and affected the process of taking over possession. More so, there is serious doubt, as to whether the State had followed the procedure preceding taking over the actual possession or was it just a symbolic possession, shown on papers. Therefore, in the interest of justice, it is essential to afford opportunity to the plaintiffs and the State to prove their case by leading evidence on these disputed questions of facts. Conversely, refusing relief to plaintiffs would cause serious prejudice to their rights. For all that reasons, I hold, plaintiffs have made out a prima-facie case; balance of convenience tilts in their favour and would suffer irreparable loss if the injunction is refused. Therefore, order impugned in the Appeal From Order No.376 of 2021 calls for interference. _____

11 Learned counsel appearing for the respondents submitted that First Suit neither challenges the notice issued under Sub-section (5) of Section 10 of the ULC Act nor the panchanama

nor possession receipt, dated 21st March, 2006, which conclusively prove, factum of taking over possession on 21st March, 2006. Submission is, the suit simplicitor for declaration, that the defendants are not entitled to evict and/or dispossess the plaintiffs from the Suit Property without their being a challenge to the notice issued under Section 10(5), possession note and the panchanama, was not maintainable. In support of this submission, reliance was placed on the judgment of the Apex Court in the case of **T.V. Ramakrishna Reddy 2021 SCC OnLine Supreme Court 674**. In the cited case, question fell for consideration was, whether the suit simplicitor for permanent injunction without claiming declaration of title as filed by the plaintiffs was maintainable. The Hon'ble Apex Court relying on the judgment of **Ananthula Sudhakar (2008) 4 SCC 594** has held that *'where the plaintiff's title is not in dispute or under the cloud, a suit for injunction could be decided with reference to the finding on possession. Thus, held that if the matter involves complicated questions of facts and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for*

*declaration of title, in stead of deciding the issue in a suit for mere injunction.*⁹ Therefore, even in this case, it is open to the trial Court to relegate the plaintiffs to the remedy by filing comprehensive suit for declaration of title if found necessary. In this case, although the plaintiffs have not specifically challenged notice and the possession receipt dated 21st March, 2006, nevertheless, perusal of the plaint clearly shows that plaintiffs have denied the execution of the possession receipt and the panchanama contending that actual possession was never taken. Thus, in substance, plaintiffs have also challenged these three documents, which could be seen if the prayer clauses (1) and (2) of the suit are read together. Therefore, judgment in the case of **T.V.Ramakrishna (Supra)** does not help the respondents. Next submission is, the plaintiffs herein had filed Writ Petition in 2009 and challenged the acquisition. In the said Writ Petition, the State had filed reply and produced a copy of notice issued under Section 10(5) of the ULC Act, possession receipt and panchanama dated 21st March, 2006. The said Petition was disposed of on 21st June, 2010 granting liberty to petitioner, to file independent

proceedings. Thus, argued, in spite of knowing these facts, way back in 2009, plaintiffs did not dispute and/or challenge the, factum of possession of the Suit Property being taken over by the State, within reasonable time. Mr. Godbole, learned counsel for Respondents, would rely on the judgment of the Apex Court in the case of **State of Assam 2015 (5) Supreme Court Cases 321** to contend that since alleged violation of Section 10(5) of the ULC Act has been challenged nearly after five years, it must be construed that the plaintiffs deemed to have waived their right under Section 10(5) of the Act. In my view, the facts in case of, **State of Assam (Supra)** were different than the case in hand. In the said case, Notification under Section 10(1) was issued on 16th May, 1984. Thereafter, in November, 1984, father of the respondents sold the land to six persons under six different sale deeds. In 1987, the State issued a Notification under Section 10(3) of the ULC Act to the effect that surplus land of the father of the respondents belonged to the Government. The physical possession was taken on 7th December, 1991. The subsequent owners challenged the proceedings but were unsuccessful upto the

Supreme Court. In 2003, the State allotted the excess land to Guwahati Metropolitan Development Authority, on 12th December, 2003. Urban Land (Ceiling and Regulation) was repealed on 6th August, 2003. On 25th December, 2003, Guwahati Metropolitan Development Authority was handed over allotted land. This action was challenged before the High Court. The Single Judge upheld the allotment in favour of Guwahati Development Authority. Whereas, in Appeal, Division Bench of the High Court reversed findings of the Single Judge and ordered restoration of the possession of land. In back-drop of these facts, the Hon'ble Apex Court has held in paragraph 16 as under;

“16 The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real

prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.”

12 Facts in this case are altogether different than the facts in the cited case. Herein, evidence relied on by the State to contend that possession was taken over on 21st June, 2006, itself, was uncertain and not free from doubt for the reasons stated above. For that reason, merely because plaintiffs did not challenge the possession receipt or the panchanama soon after writ petition was disposed of, by itself would not preclude the plaintiffs from asserting their rights over the Suit Property.

13 In so far as impugned order in Second Appeal From Order No.380 of 2021 in Second Suit is concerned, this Court is constrained to observe that Deputy Collector (Demolition) and the Competent Authority appointed under Section 3 of the Slums Act overstepped its’ jurisdiction by ignoring ad-interim order passed in the First Suit by which, defendants (State) and plaintiffs were directed to maintain status-quo in relation to Suit Property. Letter

dated 12th March, 2015 addressed by the authority to the plaintiffs' advocate, submitting that interim order in the First Suit would not bind him, being not party to the suit is nothing but contemptuous approach. How could authority say, the ad-interim order would not bind it, although it was binding on the State. In any case, for want of Notification under Section 4, declaring the Suit Property a Slum Area, respondents could not have proceeded to verify the eligibility of the slum dwellers for their rehabilitation. Even otherwise, at the material time when the Slum Authorities proceeded with the public notice, order of the trial Court in the First Suit directing the State and the plaintiffs to maintain the status-quo in relation to the Suit Property, was in force.

14 For the foregoing reasons, following is the order;

- a. Appeal From Order No.376 of 2021 and Appeal From Order No.380 of 2021, are allowed.
- b. Impugned orders, dated 27th September, 2021, passed in Notice of Motion No.1723 of 2015, in Long Cause Suit

No.1421 of 2014 is quashed and set aside.

c. Impugned order dated 27th September, 2021, passed in Notice of Motion No.934 of 2015, in Short Cause Suit No.846 of 2015 is quashed and set aside.

d. Pending suit, respondents in both the suits are restrained from obstructing plaintiffs' possession in the Suit Land.

e. Pending Short Cause Suit No.846 of 2015, respondents shall not proceed, with to implement Rehabilitation Scheme on the Suit Land.

f. Having regard to facts of the case, learned Trial Court, shall make an endeavour to dispose of both the suits i.e., Long Cause Suit No.1421 of 2014 and Short Cause Suit No.846 of 2015, expeditiously, and preferably on or before 31st May, 2023.

e. The trial Court shall decide the suits on merits, without being influenced by the impugned order and this order.

f. Appeals are allowed and disposed of.

15 As the appeals itself are disposed of, nothing survives
in the applications therein and same are also disposed of.

(SANDEEP K. SHINDE, J.)