

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

WRIT PETITION NO. 2864 OF 2020

PETITIONER :- Draupadabai Widow of Shivdas Rmteke,
Aged 85 years, Occup.Nil, R/o.Sidharth
Nagar, Ward No. 24, Teka Naka Nagpur.
At present House No.214, "Priyanka Dhanya
Bhandar" Takshana Building. Panchaseel
Nagar, Nagpur.

...VERSUS...

RESPONDENTS :-

1. The State of Maharashtra, through its
Secretary, Department of Revenue and
Forest, Mantralaya, Mumbai-440032.
2. Divisional Commissioner, Nagpur
Division Nagpur, G.P.O, square, Civil
Lines, Nagpur 440001.
3. The Collector, Urban Land Ceiling,
Nagpur Civil Lines, Nagpur, 44000.

Mr.PW.Wathore, counsel for the petitioner.
Ms.K.S.Joshi Addl.G.P for respondent Nos.1 to 3.

**CORAM : SUNIL B.SHUKRE &
G.A.SANAP, JJ.**

DATE : 14.09.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1) Heard.

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

3) It appears that the petitioner has filed this petition, under the impression that part of her land bearing Khasra No.147/4 and 148/18 has been wrongly and illegally retained by the respondents under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "Act of 1976") and therefore, has sought declaration that the action of the respondents in not following due procedure of law for retention of the land of the petitioner suffers from grave error and gross negligence and thus, is unfair and illegal. Under this impression, the petitioner has also made another prayer directing the respondents to deliver vacant possession of this land situated at Mouja Nari, P.H.No.11, Tahsil Nagpur (Urban), District Nagpur, admeasuring 0.81 HR by removing the encroachments upon the said land by the respondents.

4) Learned AGP submits that all the reliefs cannot be granted by this Court, as no possession of the land has been

obtained by the respondents for the reason that there was no notification issued under Section 10(3) of the Act of 1976 declaring that the excess vacant land, which is the subject matter of this Writ Petition, is deemed to have been acquired by the Central Government and is deemed to have vested absolutely in the State Government free from all encumbrances with effect from the specified date and as such, no possession as contemplated under Section 10(5) of the Act of 1976 was taken over by the Government.

5) Shri. P.S.Wathore, learned counsel appearing for the petitioner, submits that the 7/12 extract entries would show that the possession is with the State Government and therefore, it is the duty of the State Government to deliver the possession of the land in question by ensuring that all encroachments standing on it are removed by it.

6) We do not think that the submission to the extent of the liability of the State Government to return the vacant possession of the land urged before us by the learned counsel for

the petitioner can be accepted, if one takes into consideration the facts narrated in the report dated 03.09.2019, submitted to the Divisional Commissioner, Nagpur by the then Collector/Competent Authority under the Act of 1976

7) The report dated 03.09.2019, clearly shows that no action either under Sub-section (1) or (3) or (5) of Section 10 of the Act of 1976 was ever taken by the Competent Authority with the result that the actual possession of the land continued to remain with the land holder, i.e. the petitioner. Therefore, no direction for delivering vacant possession of the subject land can be issued to the respondents. But, it can certainly be declared by this Court that now the proceedings initiated by the Competent Authority under the provisions of the Act of 1976 on account of no notification having been issued under Section 10 (3) of the Act of 1976 and Urban Land (Ceiling and Regulation) Repeal Act, 1999, coming into force on 22.03.1999, have stood lapsed and the subject land of the petitioner is now free from any liability under the Act of 1976, and we do declare so. Accordingly, we also declare that, this land stands reverted to the petitioner, which,

however, shall be the subject to the provisions of any law other than the Act of 1976, if applicable to it.

8) The Writ Petition is partly allowed in above terms.

9) Rule accordingly. No costs.

(G.A.SANAP, J)

(SUNIL B. SHUKRE, J)