

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

WRIT PETITION NO. 2513 OF 2021

M/s. Shruti Promoters, through its
Partner Dr. Prakash Jain,
Aged about 72 years, Occupation -Business,
R/o. Dhantoli, Nagpur.

..... **PETITIONER**

...V E R S U S...

1. The Collector, Nagpur and
Competent Authority (ULC)
Nagpur, Office of the Collector,
Nagpur.
2. Deputy Collector, Nagpur and
Officer In-charge (ULC), Nagpur Office of
the Collector Nagpur.
3. Tahsildar Nagpur, City Nagpur.
4. Udaram s/o Gendlal Khadgi,
Aged about 54 years, Occupation-Agriculturist.
5. Rajesh s/o Gendlal Khadgi,
Aged about 43 years, Occupation-Agriculturist
Both R/o. Near Sameer Kirana Store,
Hazaripahad, Nagpur.
6. Smt. Prabha Sunil Sheete,
Aged about 48 years, Occ.: Household,
R/o. Mamta Apartment, Virar, Thane.
7. Smt. Tara Dinkar Padade,
Aged about 50 years, Occupation-Household.
R/o. Survey No.34, Wadachi Wadi,
Hadapsar, Pune.

8. Smt. Kusum Shreehari Mandlik,
Aged about 55 years, Occupation-Agriculturist.
R/o. Near KTM Hall, Kalmeshwar,
District Nagpur.
9. Indubai Vishvanathji Tapre,
Aged about 62 years, Occupation-Agriculturist,
R/o. Near Corporation School,
Hazaripahad, Nagpur.

..... **RESPONDENTS**

Shri Anand Jaiswal, Senior Advocate with Mrs. (Dr.) Renuka S. Sirpurkar, Advocate for petitioner.

Shri A.M.Deshpande, Additional Government Pleader for respondent nos. 1 to 3.

Shri M. G. Bhangde, Senior Advocate with S/Shri M.P.Khajanchi and M.I.Dhatrak, Advocates for respondent nos. 4 to 9.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.

ARGUMENTS WERE HEARD ON : 12/04/2022

JUDGMENT IS PRONOUNCED ON:02/05/2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule is made returnable forthwith and heard the learned Advocates for the parties.

2. The petitioner, a partnership firm through its partner challenges the communication dated 02.11.2020 issued by the Deputy Collector, Nagpur and Officer In-charge (Urban Land Ceiling) - respondent no.2 whereby the said respondent has issued directions to the Tahsildar, Nagpur to take necessary steps pursuant to the

order dated 05.05.2016 passed in Writ Petition No.1514 of 2002 by taking possession of land in excess of 7350 square meters which was in possession of Vidarbha Handicraft Artisans Welfare Association (VHAWA) and thereafter transfer the same in the name of the State of Maharashtra. A challenge is also raised to the order dated 05.07.2021 passed by the Collector, Nagpur and Competent Authority (Urban Land Ceiling) - respondent no.1. By that order the proceedings preferred by the petitioner for challenging the communication dated 02.11.2020 have been rejected by observing that the issues raised by the petitioner had flavour of civil dispute and were required to be raised before the appropriate forum. In addition, the Tahsildar was directed to record the names of the respondent nos. 4 to 9 and also hand over possession of 11824 square meters of land from Khasra Nos.79/3 and 80/3 of Mouza Hazaripahad, Nagpur.

3. At the outset reference to certain relevant facts having bearing on the challenge as raised are required to be referred to. Land bearing Khasra Nos.79/3 and 80/3 admeasuring 21500 square meters alongwith other lands were the subject matter of proceedings under the Urban Land Ceiling Act, 1976 (for short, 'the Act of 1976') vide ULC Case No.1608/1976. The entire land was sanctioned under

the Talegaon-Dabhade scheme. On 15.02.1995 land admeasuring 23289 square meters was shown as falling in Government share. According to the petitioner 19174 square meters of that land was allotted to VHAWA from Khasra Nos.79/3 and 80/3. Subsequently under the Talegaon-Dabhade Scheme, the layout was revised on 08.06.2001 and the government share was reduced to 15765 square meters. From that share, land admeasuring 14738 square meters was handed over to VHAWA. In proceedings under Section 34 of the Act of 1976 the Government share was further reduced to 7349 square meters by an order dated 20.03.2002. The land forming Government share was allotted to VHAWA and revised layout plan was sanctioned. The order passed under Section 34 of the Act of 1976 was challenged by VHAWA in Writ Petition No.1514 of 2002. It was the case of the petitioner that one of its partners represented the original owner - Gendlal Khadgi as a power of attorney holder. The original owner was arrayed as respondent No.3 in that writ petition. On 17.04.2002 this Court directed the parties to maintain status-quo as regards possession. In that writ petition a compromise petition was filed by which VHAWA was to accept 7350 square meters of land by giving up the earlier paper possession of 19174 square meters of land. On that compromise, Writ Petition No.1514 of

2002 was disposed of on 05.05.2006.

4. It is further the case of the petitioner that after the compromise was recorded the same was duly implemented and revised layout map was sanctioned. The petitioner contends that pursuant to the compromise, the interest of the original owner was legally transferred in its favour as the petitioner had already purchased the said land. On 13.12.2006 a possession receipt to that effect was executed by the original land owner. Thus, according to the petitioner the rights of the parties to the proceedings in Writ Petition No.1514 of 2002 were duly satisfied and the order dated 05.05.2006 passed in the said writ petition was fully implemented.

5. On 13.07.2018 which is after almost twelve years from the execution of the possession receipt in the year 2006, a notice was issued on behalf of respondent nos. 4, 5 and 7 to 9 to the petitioner stating therein that property bearing Khasra Nos. 79/3 and 80/3 amongst other lands were in peaceful possession of those respondents and sale deeds dated 02.05.1998 and 26.04.2005 operating in favour of the petitioner were not binding on those respondents. The petitioner replied to the aforesaid notice on 01.09.2018 through its counsel. It appears that thereafter on

19.11.2019 the respondents nos. 4 to 9 made a complaint to the Deputy Collector and Competent Authority under the Act of 1976 that as the compromise entered into in Writ Petition No.1514 of 2002 had not been duly complied with, the same be accordingly complied by handing over possession of land admeasuring 11800 square meters from Khasra Nos. 79/3 and 80/3. On 02.11.2020 the Deputy Collector acting on the complaint as made by the respondent nos. 4 to 9 issued a communication to the Tahsildar and directed him to take necessary steps for obtaining possession of land in excess of 7350 square meters from VHAWA and transfer the same in the name of State Government. A report was accordingly directed to be submitted. This communication is under challenge in the present writ petition.

6. Pursuant to the aforesaid communication, the Tahsildar on 06.11.2020 directed the City Survey Officer, Nagpur to measure the lands from Khasra Nos.79/3 and 80/3 to enable the directions issued on 02.11.2020 to be complied with. On 13.11.2020 the City Survey Officer informed the Tahsildar that as of date land admeasuring 1H 19R and 7/12 extracts in that regard showed the name of the petitioner and that there was no order on record by which the name of the State Government was deleted. It was also observed that as

per the order passed in Writ Petition No.1514 of 2002 it was necessary to enter the name of the State Government against those lands. On 26.11.2020 possession of 7403.57 square meters land was shown to be taken by the Tahsildar in terms of the communication dated 02.11.2020. On that basis necessary mutation entries were carried out in respect of land admeasuring 1H 19R from Khasra Nos. 79/3 and 80/3. This correction was made on 29.11.2020. In the meanwhile, the petitioner sought information under the provisions of the Right to Information Act, 2005 and it was thereafter supplied copy of the communication dated 02.11.2020. The petitioner thereafter through its partner filed an objection before the Collector alongwith various documents. A request was made for grant of hearing alongwith a prayer to restore the name of the firm in the property card. The Collector on 22.12.2020 directed status-quo to be maintained during the pendency of the adjudication of the said complaint. In the meanwhile, the petitioner preferred an appeal before the Additional Commissioner, Nagpur against the communication dated 02.11.2020. On 04.01.2021 the petitioner was informed that there was no provision for filing an appeal against such communication and hence that appeal was not entertained.

7. The petitioner then prosecuted the proceedings before the Collector by filing written notes of arguments. The respondent no.4 also filed his say in the matter. Ultimately on 05.07.2021 the Collector passed an order in the proceedings initiated by the petitioner. He held that the issues raised by the petitioner were in the nature of civil dispute and the same ought to be raised before an appropriate forum. He also held that the two sale deeds in favour of the petitioner were without seeking permission of the High Court in the context of the orders passed in Writ Petition No.1514 of 2002. He held that there was no merit in the objection raised by the petitioner. A further direction was issued to the Tahsildar to record the names of respondent nos. 4 to 9 in the record of rights and hand over possession of 11824 square meters of land to them in compliance with the order passed in Writ Petition No.1514 of 2002 dated 05.05.2006. This order is also under challenge in the writ petition.

8. Shri Anand Jaiswal, learned Senior Advocate for the petitioner submitted that the communication dated 02.11.2020 was issued by the Deputy Collector without having any jurisdiction under the Act of 1976. On repeal of the Act of 1976 it was not permissible for the Deputy Collector to have exercised any jurisdiction in the

proceedings that had attained finality pursuant to the order dated 05.05.2006 passed in Writ Petition No.1514 of 2002. The compromise entered into therein had been fully worked out and after a lapse of almost twelve years, there was no legal propriety in seeking to issue the directions as were issued in the impugned communication. Those directions had been issued without any notice to the petitioner which was in breach of principles of natural justice. The revenue records showed the name of the petitioner and it was the petitioner who was in possession of the subject land. Without hearing the petitioner a direction to delete its name from the revenue records and also to take possession of land from it was not sustainable in law. It was thus submitted that the impugned communication dated 02.11.2020 was liable to be set aside.

As regards the order dated 05.07.2021 passed by the Collector is concerned, the learned Senior Advocate submitted that in the appeal preferred by the petitioner against the communication dated 02.11.2020 written objections alongwith written notes of arguments were placed before the Collector on 01.12.2020, 21.12.2020, 18.01.2021 and 15.02.2021. The respondent no.4 had placed his version on record on 15.05.2021. The Collector without considering any of the objections as raised by the petitioner passed

an order dated 05.07.2021. Having noted that the issues raised by the petitioner were of civil nature and were required to be adjudicated before the appropriate forum, there was no justification in holding that there was no merit in the objections raised by the petitioner and thereafter rejecting the same. There was no question of seeking any permission of the High Court while executing the sale deeds dated 02.05.1998 and 26.04.2005. It was further submitted that there was no occasion for the Collector to direct the Tahsildar to record the names of the respondent nos. 4 to 9 in the record of rights and also hand over possession of 11824 square meters land to them in compliance of the order in Writ Petition No.1514 of 2002. The Collector could not have assumed jurisdiction under Notification dated 21.07.2016 as was sought to be now justified. The scope of that Notification did not empower the Collector to issue directions as were issued in the order dated 05.07.2021. On these counts, it was submitted that the communication dated 02.11.2020 as well as the order dated 05.07.2021 were liable to be set aside.

9. Shri M.G.Bhangde, learned Senior Advocate for the respondent nos.4 to 9 opposed the aforesaid submissions. Referring to the events that transpired in the scheme proceedings under the Act of 1976, the issuance of the communication dated 02.11.2020

and passing of the order dated 05.07.2021 the same were sought to be supported by contending that these were steps taken towards implementation of the order dated 05.05.2006 in Writ Petition No.1514 of 2002. The two sale deeds dated 02.05.1998 and 26.04.2005 on the basis of which the petitioner was claiming title were not brought to the notice of this High Court in Writ Petition No.1514 of 2002. Since the order dated 05.05.2006 continued to operate and the non-compliance thereof was of a continuing nature, the Authorities were justified in taking steps to ensure that the said order was implemented in its true letter and spirit. It was pointed out that the respondent no.3 in Writ Petition No.1514 of 2002 was not the partner of the petitioner firm as urged but it was Gendlal Khadgi. He was represented by the partner of the petitioner firm as his power of attorney holder. Such representation did not give said partner any right in the property.

It was then submitted that the Notification dated 21.07.2016 was not challenged by the petitioner. Acting under the powers conferred by that Notification the impugned action had been taken under the Act of 1976. Reference was made to the judgment of the Full Bench of this Court in ***Maharashtra Chamber of Housing Industry, Mumbai and others vs. State of Maharashtra and another*** 2014 (6) Mh.L.J. 829 as well as the

order passed by the Honourable Supreme Court in Civil Appeal No.558 of 2017 (*Maharashtra Chamber of Housing Industry vs. The State of Maharashtra and others.*) that arose from the judgment of the Full Bench. Since the two sale deeds on which the petitioner was claiming title were void and did not confer any legal title to the petitioner, the Authorities were justified in directing possession of the land in question to be handed over to the respondent nos.4 to 9. It was also pointed out that the documents by which the power of attorney was granted to the partner of the petitioner firm were not duly registered but were merely notarised. Same was the situation with regard to the relinquishment deed dated 14.06.1999.

10. On the aspect of grant of hearing to the petitioner before the issuance of the communication dated 02.11.2020, it was submitted that the mutation entries showing the name of the petitioner were pursuant to the sale deeds dated 02.05.1998 and 26.04.2005. Such mutation entries were not pursuant to the order in Writ Petition No.1514 of 2002. Grant of hearing would have been an empty formality since the Authorities had merely taken steps to implement the order passed in Writ Petition No.1514 of 2002. Prejudice caused to the petitioner was not pointed out. Reference was made in that context to the decision in ***Dharampal Satyapal***

Limited vs. Deputy Commissioner of Central Excise, Gauhati and others (2015) 8 SCC 519. It was further submitted that post decisional hearing was sought by the petitioner by moving the Collector. Since the Collector heard the objections raised by the petitioner and passed the order dated 05.07.2021, it was not open for the petitioner to urge that there was absence of grant of hearing by the Deputy Collector before issuing the communication dated 02/11/2020. It was further submitted that if the impugned communication dated 02.11.2020 and impugned order dated 05.07.2021 were set aside, same would result in revival of the illegal mutation entries standing in favour of the petitioner. If such consequence was to occur on setting aside the impugned communication and the order, the Court ought not to exercise writ jurisdiction. Reference was made in that regard to the decision ***Dayal Shankardas Harchandani and others vs. Municipal Corporation for the City of Ulhasnagar and others 2017 (6) Mh.L.J. 75.*** The Collector had rightly observed that the objections raised by the petitioner were of civil nature and the same were required to be adjudicated before the proper forum. The question of title had not been decided and the Collector had merely ensured the compliance of the order passed in Writ Petition No.1514 of 2002. It

was also submitted that on account of inaction of the Authorities in ensuring compliance of the terms of compromise prejudice had been caused to the respondent nos. 4 to 9 and not to the petitioner as it had no legal right in the aforesaid lands. By not delivering possession of the subject land to the respondent nos. 4 to 9, the same was a continuing wrong and in view of the decision ***Firm Ganpat Ram Rajkumar vs. Kalu Ram and others 1989 Supp (2) SCC 418*** there was no question of the action taken for implementation being belated or barred by time. It was thus submitted that there was no case made out to interfere in writ jurisdiction and the writ petition was liable to be dismissed.

Shri A.M.Deshpande, Additional Government Pleader for the respondent nos. 1 to 3 adopted the contentions raised on behalf of the respondent nos. 4 to 9. He also referred to the affidavit in reply filed by the respondent nos. 1 to 3. He too submitted that the writ petition was liable to be dismissed.

11. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. We have thereafter given due consideration to the rival submissions as urged. There are voluminous documents placed on record indicating the events that have transpired in proceedings under the Act of 1976.

The legal effect of the orders passed in Writ Petition No.1514 of 2002 alongwith the compromise petition has also been urged by the learned Senior Advocates for the parties. For considering the challenge as raised it would be sufficient to refer to certain material aspects. Writ Petition No.1514 of 2002 that was filed by VHAWA for challenging the order passed under Section 34 of the Act of 1976 was disposed of on 05.05.2006 by accepting the compromise petition between the VHAWA, the Deputy Collector/Competent Authority (Urban Land and Ceiling) and the land owner-Gendlal Khadgi. The present proceedings are seen to have been initiated by issuance of legal notice dated 30.07.2018 by the respondent nos. 4, 5 and 7 to 9. Those respondents contended that they were the owners of their retainable shares from various lands including Khasra Nos. 79/3 and 80/3. The partner of the petitioner firm and his family members were called upon not to interfere with the possession of the said respondents on the basis of the sale deeds dated 02.05.1998 and 26.04.2005. This notice was replied by the petitioner on 01.09.2018 denying the stand as taken by the said respondents. It is thereafter on 19.11.2019 that the respondent nos. 4 to 9 made an application before the Deputy Collector/Competent Authority (Urban Land Ceiling) stating that the terms of compromise

entered into in Writ Petition No.1514 of 2002 had not been complied with till date. It was stated that VHAWA had not handed over possession of 11800 square meters of land to the said respondents who were the legal heirs of Gendlal Khadgi. It was therefore requested that the order passed in Writ Petition No.1514 of 2002 be complied with and that the petitioner had no legal right in those lands. Acting on this request dated 19.11.2019, the Deputy Collector/Competent Authority (Urban Land Ceiling) directed the Tahsildar to take possession of land exceeding 7350 square meters from VHAWA subject to its measurement by the City Survey Office and thereafter the excess land be shown in the name of the State Government.

The petitioner being aggrieved by the aforesaid directions issued by the Deputy Collector/Competent Authority (Urban Land Ceiling) challenged the communication dated 02.11.2020 before the Collector. The Collector on 05.07.2021 did not interfere with the said communication but instead directed the Tahsildar to hand over possession of 11824 square meters of land to the respondent Nos.4 to 9 and also record their names in the revenue records.

12. It would be convenient to first consider the petitioner's

challenge to the order dated 05.07.2021 passed by the Collector. It is seen that the petitioner being aggrieved by the communication dated 02.11.2020 issued by the Deputy Collector/Competent Authority (Urban Land Ceiling) approached the Collector by raising various objections on 01.12.2020. The objections in detail state the manner in which the title of the aforesaid lands vested with the petitioner in view of the sale deeds dated 02.05.1998 and 26.04.2005. Various documents alongwith a synopsis indicating the right of the petitioner was placed before the Collector. There was a response of the respondent no.4 also on record. However, the order dated 05.07.2021 does not refer to any of the contentions raised by the petitioner nor does it reflect consideration of the documents on the basis of which the petitioner was claiming a right to the subject land. A specific ground was raised that after repeal of the Act of 1976 the proceedings could not have been re-opened after a lapse of a long period of time. Despite observing that the issues raised by the petitioner were of a civil nature, the Collector has concluded that there was no merit in the objections raised by the petitioner. It is evident from the order dated 05.07.2021 that documentary material placed before the Collector alongwith the submissions indicating the legal right of the petitioner have not been adverted to.

Without doing so, it has been held that the aforesaid sale deeds were got executed despite the order of status-quo in Writ Petition No.1514 of 2002. It may be noted that the initial sale deed is dated 02.05.1998 while the order of status quo as regards possession is dated 17.04.2002. The order of status-quo had been directed to be maintained as per the possession receipt. The order dated 05.07.2021 therefore is liable to be set aside for failure to consider the objections as raised and for issuing various directions against the petitioner without adjudicating upon the stand of the petitioner in that regard.

13. Another relevant aspect that cannot be ignored is that in the objections raised by the petitioner before the Collector a challenge was raised to the direction issued to the Tahsildar to include the names of respondent nos.4 to 9 in the record of rights and also hand over possession of 11,824 square meters of land to them. In other words, the petitioner had approached the Collector since it was aggrieved by the communication dated 02.11.2020 issued by the Deputy Collector/Competent Authority (Urban Land Ceiling) which directed the Tahsildar to take possession of land in excess of 7,350 square meters. In the proceedings preferred by the

petitioner against that communication, a direction has been issued by the Collector to the Tahsildar to take possession of land that was in possession of the petitioner and to hand over the same to the respondent nos. 4 to 9. The petitioner has thus been put in a worse position than it was pursuant to the communication dated 02.11.2020.

14. Yet another reason that makes the order dated 05.07.2021 vulnerable is that the Collector having opined that the dispute raised by the petitioner was of civil nature, he ought to have directed the parties to have the same resolved before the Civil Court. However, despite observing so, the sale deeds dated 02.05.1998 and 26.04.2005 have been held to have no legal effect by holding that they were executed without seeking permission of the High Court. Thus, on one hand it has been held that there was no merit in the objections raised by the petitioner and on the other hand the sale deeds standing in the name of the petitioner have been set aside. The aspect of inaction on the part of the respondent Nos.4 to 9 for the period from 2006 to 2018 raised by the petitioner as well as the jurisdiction to re-open the proceedings after repeal of the Act of 1976 has also gone unconsidered. For all these reasons, we find that the order dated 05.07.2021 passed by the respondent no. 2 is

unsustainable in law.

15. In that view of the matter, the order dated 05.07.2021 passed by the Collector is set aside. The proceedings are remanded to the Collector to re-consider the application dated 11.12.2020 preferred by the petitioner against the communication dated 02.11.2020 issued by the Deputy Collector/Competent Authority (Urban Land Ceiling) in accordance with law. It is clarified that this Court has not examined the validity of the action taken by the Deputy Collector/Competent Authority (Urban Land Ceiling) and all contentions in that regard raised by the petitioner as well as by the respondents are kept open for being considered by the Collector. Till such adjudication by the Collector is completed, the status of the properties in question shall be maintained as it is.

Rule is made absolute in aforesaid terms with no order as to costs.

At this stage learned counsel for the respondent Nos.4 to 9 prays that the present order be kept in abeyance for period of eight weeks. This request is opposed by the learned counsel for the petitioner.

Considering the nature of directions as issued, the request as made by the said respondents is rejected.