

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

WRIT PETITION NO. 68 OF 2022

1. Anil Natthuji Pantavne,
Aged about 56 years,
Occupation: Business and Agriculturist.
R/o. Gawli Pura, Kamptee,
District Nagpur.
2. Vijay Sukhdeoiji Chavhan,
Aged about 52 years, Occupation-Agriculturist,
R/o. Jattarodi, Nagpur.

..... **PETITIONERS**

...VERSUS...

1. State of Maharashtra, through Secretary
Housing and Special Assistance Department,
Mantralaya, Mumbai-32.
2. The Additional Collector and
Competent Authority (ULCRA),
Nagpur.
3. The Collector, Nagpur,
Civil Lines, Nagpur.
4. The Tahsildar, Kamptee,
District Nagpur.

..... **RESPONDENTS**

Shri C.V.Kale, Advocate for petitioners.
Shri N.R.Patil, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- JULY 06, 2022.

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

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioners who claim to be the owners of New Khasra No.232/2 Mouza Ghorpad, Tq. Kamptee, District Nagpur admeasuring 1 H 08 R pursuant to the sale deed dated 09.12.2004 having purchased the same from the daughter of the original owner - Ganpati Faguji Wanjari seek a declaration that the proceedings initiated by the respondents under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the said Act) have lapsed.

3. According to the petitioners the said land was shown to be in possession of Ganpati Faguji Wanjari when the notice under Section 10(5) of the said Act was issued on 08.11.2007. It is the case of the petitioners that said Ganpati Faguji Wanjari had expired on 25.05.1997 and hence the notice dated 08.11.2007 was invalid. Further, the date on which the possession was to be taken over was also not indicated in the notice issued under Section 10(5) of the said Act. According to the respondents, the possession was taken over on 09.11.2007 by making necessary mutation entries. In the light of the aforesaid, the petitioners have sought declaration that the aforesaid proceedings have lapsed since the possession of the said land declared as surplus has not been taken in accordance with the provisions of the said Act.

4. Shri C.V.Kale, learned counsel for the petitioners submits that the notice dated 08.11.2007 was issued in the name of dead person and no date was mentioned for taking possession thereof. Such notice under Section 10(5) of the said Act ought to stipulate period of 30 days for taking possession. By relying upon inspection report filed by the Tahsildar, it is urged that the period of 30 days had not lapsed between the issuance of notice under Section 10(5) and the action taken under Section 10(6) of the said Act. Placing reliance on the decision in *State of U.P. vs. Hari Ram* [**AIR 2013 SC 1793**] and the decision of this Bench in Writ Petition No.3520 of 2016 (*Mustafa Khan s/o Kayum Khan and ors vs. State of Maharashtra, and others*) decided on 08.12.2016, it is submitted that the petitioners are entitled for declaration as sought.

5. Shri N. R. Patil, learned Assistant Government Pleader for the respondents relying upon the affidavit in reply and opposed the aforesaid submissions. According to him, the sale deed standing in the name of the petitioners was invalid in view of the provisions of Section 5(3) read with Section 10(4) of the said Act. Since the Notification under Section 10(3) of the said Act published on 05.09.2006 and the notice under Section 10(5) of the said Act was issued on 08.11.2007, the petitioners were not entitled for any such declaration.

6. On hearing the learned counsel for the parties and perusing the documents on record including the copy of the sale deed dated 09.12.2004 which is

taken on record and marked 'A' for identification, it is clear that the petitioners have purchased the aforesaid land from the daughter of the original owner. Notice under Section 10(5) of the said Act dated 08.11.2007 was issued to Ganpati Faguji Wanjari who had expired on 25.05.1997. This notice therefore is no notice in the eyes of law as it was issued in the name of the dead person. There is also no date mentioned when the possession would be taken over. In the absence of any valid notice issued under Section 10(5) of the said Act, it cannot be said that the said land has completely vested with the State pursuant to the provisions of the said Act. Legal position in this regard is clear from the observations in paragraph 39 of the decision in *Hari Ram* (supra). Similarly the decision in *Mustafa Khan* (supra) also supports the stand of the petitioners.

7. In that view of the matter, it is declared that the proceedings under the said Act pertaining to the land in question have abated in view of the provisions of Section 3 of the Repeal Act, 1999 which came into force on 29.11.2007. Consequential upon such declaration, the respondents shall correct the mutation entries by removing the entry pertaining to the possession being taken by the respondents pursuant to the provisions of the said Act.

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

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)