

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

WRIT PETITION NO.4810 OF 2019

1. Sau. Kusum Hiranman Mahadule,
Aged 63 years, Occ: Household
R/o. Munje Layout, Hill Top, Pandharabodi,
Road, Near bada Ganpati, Nagpur.
2. Sau. Vimal Alias Kamal Upasrao Mohurle,
Aged 65 years, Occ. : Household
R/o. Bhamti, Juni Vasti,
Behind NIT Garden, Trimurtinagar,
Nagpur.
3. Sau.Sushila Shalikram Thakre,
Aged 51 years, Occ.: Household
R/o. New Nildoh, Near Zilla Parishad School,
Tah. Ningna, Nagpur.
4. Sau. Nanda Duryodhan Moharle,
Aged 48 years, Occ.: Household
R/o. Sasane Layout, Behind Godawari Hardware,
Near Nala, Jaitala, Nagpur.

..... **PETITIONERS**

..V E R S U S..

1. State of Maharashtra, through Principal Secretary,
Urban Development Department and ULC,
Mantralaya, Mumbai-32.
2. Additional Collector & Competent Authority,
Urban Land Ceiling,
Nagpur.
3. ~~The Tahsildar, Kamthi,~~ Tahsildar, Hingna,
~~Tah. Kamthi, District Nagpur.~~ Tahsil-Hingna, District-Nagpur.

Corrected as per
Court's order
dated 21.07.2023

4. ~~The City Survey Officer, Deputy Superintendent of Land Record, Hingna Kamthi, Tah. Kamthi, District Nagpur.~~ Tahsil-Hingna, District-Nagpur.

..... **RESPONDENTS**

Shri S.M.Puranik, Advocate for petitioners.

Ms. K. R. Deshpande, Assistant Government Pleader for respondents.

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

DATE : 1st APRIL, 2022

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

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

2. The petitioners seek a declaration that the proceedings initiated by the respondent nos.1 and 2 under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act of 1976) have abated for the reason that the respondents have not taken possession of the land stated to be surplus.

3. The petitioners are the legal heirs of one Shri Deorao Nikude who expired on 19.09.1997. After death of Deorao, the names of his legal heirs were mutated in the revenue records. The family owns field Survey No.22 admeasuring 2H 43R at Mouza Nagalwadi, Taluka Hingna, District Nagpur. The provisions of the Act of 1976 were made applicable to the aforesaid land

and hence the petitioners' father filed return under Section 6(1) of the Act of 1976 on 14.09.1976. An order under Section 8(4) of the Act of 1976 was passed on 20.08.1987 declaring 22,814.57 square meters as surplus land after permitting the petitioners' father to retain 1500 square meters of land including their dwelling house. According to the petitioners, thereafter no steps were taken by the respondents in the said matter and the family members continued in possession of the entire land. On 29.11.2007 the Act of 1976 was repealed. Despite the fact that the petitioners' father expired on 19.09.1997 the notices under Section 10 (3) and 10(5) of the Act of 1976 were shown to be issued in the name of their father. The date of taking possession was not indicated in the notice dated 02.11.2007 and within a period of four days the mutation entries were carried out on 06.11.2007. In this backdrop the petitioners seek the aforesaid declaration.

4. Shri S.M.Puranik, learned counsel for the petitioners submitted that Notification under Section 10(3) of the Act of 1976 does not bear any date. Similarly notice issued under Section 10(5) of the Act of 1976 on 02.11.2007 also does not indicate the date when the possession was taken. As per provisions of Section 10(6) of the Act of 1976 statutory period provided is of thirty days but on 06.11.2007 itself the mutation entries were carried out illegally showing the possession to have been taken in favour of the State

Government. It was asserted that even today the petitioners continue in possession and in view of the decisions of this Court in *Voltas Ltd. and another vs. Additional Collector and Competent Authority, Thane and Others 2008(5) All MR 537, Gopalrao and others vs. The State of Maharashtra and others 2019 (3) Mh.L.J. 101* and *Smt. Tarabai Tulshiram Meshram vs. State of Maharashtra and others, 2020(2) Mh L. J. 440* as the possession of the surplus land has not been taken by the respondents, the proceedings under the Act of 1976 have abated. It is therefore submitted that the declaration as prayed for be granted.

5. Smt. K. R. Deshpande, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. Relying upon the affidavits filed on record, it was submitted that after complying with all statutory requirements, the possession of the land in question was taken. It could not be said that the proceedings had abated for that reason. The mutation entries as taken showed the name of the State Government which indicated that it was in possession of the same. It was thus submitted that there was no case made out to interfere in the writ petition.

6. We have heard the learned counsel for the parties at length and we have perused the documents on record. Since it was the specific assertion of

the petitioners that possession of the surplus land was never taken from them and the affidavit filed on behalf of the Collector did not clarify the said position, this Court on 18.02.2021 in paragraph 6 directed as under:

“6. The Collector has not clarified in the affidavit as to exact manner in which possession of land of Petitioners was taken except denying the contentions of the Petitioners. The learned Assistant Government Pleader on the earlier occasion had taken instructions and orally stated that no record exists. If the Collector has taken a stand on affidavit that assertion of the Petitioners of having possession of land is denied, then he is expected to justify the said stand or accept the fact that possession of land was not taken. This cannot be a matter of interpretation. The Collector will file an affidavit placing on record the categorical stand of the competent Authority as to whether possession of land of the Petitioners was taken on or before the date when the Act of 1976 was repealed or it was not so taken. Since petition is pending since long time, the affidavit be filed before 25 February 2021.”

Pursuant thereto an affidavit has been filed on behalf of the Collector. Its perusal indicates that in view of provisions Section 10(5) of the Act of 1976 mutation entries were taken on 06.11.2007 and it was the State Government which was in possession thereof. As the possession was taken prior to 29.11.2007 which was the date of repeal of the Act of 1976, the proceedings had not abated. It is however seen that there is no document on record to indicate when the possession of surplus land was taken from the petitioners. Though notice under Section 10(5) of the Act of 1976 is dated 02.11.2007, the date when the possession of the land was to be taken is not indicated in that

notice. Under the provisions of Section 10(6) of the Act of 1976 minimum period of thirty days has been provided for taking such possession. The mutation entries however have been taken prior to that period and according to the respondents the mutation entries have been made on 06.11.2007. Thus, despite opportunity granted to place on record relevant documents to indicate the actual possession being taken, no material document indicating the same is placed on record.

7. Legal position in this regard stands well settled and the same indicates that even if declaration under Section 10(3) of the Act of 1976 is made but the possession of the surplus land is not taken before 29.11.2007, by virtue of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, the Repeal Act) the land in question would revert back to the owner. The decisions relied upon by the learned counsel for the petitioners support the contentions as urged. Thus in absence of any material whatsoever to indicate the taking over of possession of the surplus land before 29.11.2007, it is clear that the proceedings under the Act of 1976 have abated.

8. Hence for the aforesaid reasons, the following order is passed:

(i) The writ petition is allowed. It is declared that the proceedings of ULC Case No.1512/1976 have abated in view of provisions of Section 4 of the Repeal Act. The names of petitioners and other legal heirs of Deorao Nikude as

owners and occupiers of Survey No.22/2 be restored by deleting the name of Government of Maharashtra, if there is no other legal impediment.

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

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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