

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

WRIT PETITION NO.5054 OF 2021

Petitioners : 1. Smt. Kantadevi w/o Bansilal Narang,
Aged about 72 years, Occupation : Household.
2. Shri Sanjay s/o Bansilal Narang,
Aged about 49 years, Occupation : Business.
3. Shri Sameer s/o Bansilal Narang,
Aged 47 years, Occupation : Business.
4. Mrs. Geetika w/o Sanjay Narang,
Aged about 46 years, Occupation : Household.
All r/o Plot No.30/3, Dhantoli, Nagpur.
5. Shri Bhojraj s/o Nagorao Pawanikar,
Aged about 70 years,
R/o. Plot No.38, Chintamani Nagri No.2,
Omkar Nagar, Besa Road, Nagpur – 440 027.
– Versus –

Amended as per
Court's order dated 17/11/2022 →

Respondents : 1. The State of Maharashtra,
through Principal Secretary, Department of
Urban Development and Urban Land Ceiling,
Mantralaya, Mumbai -32.
2. The Divisional Commissioner,
Nagpur Division, Civil Lines, Nagpur.
3. The Collector and Competent Authority,
ULC, Nagpur, Collectorate Compound,
Civil Lines, Nagpur.
4. Tahsildar, Nagpur Gramin,
Opp. Panchayat Samiti, Civil Lines, Nagpur.

Mr. S.M. Puranik, Advocate for the Petitioners.

Mr. A.S. Fulzele, Additional Government Pleader for the Respondents.

CORAM: **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**

DATE : **17th NOVEMBER, 2022.**

ORAL JUDGMENT : (Per A.S. Chandurkar, J.)

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties.

02] The petitioners seek a declaration that the proceedings initiated under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “Act of 1976”) have abated in view of the provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short “Act of 1999”). Consequently, the notification dated 22/12/2005 issued under Section 10(3) of the Act of 1976 as well as the notice dated 06/02/2006 issued under Section 10(5) of the Act of 1976 are sought to be quashed.

03] The facts in brief are as under :

It is the case of the petitioners that pursuant to two sale-deeds dated 19/09/2001 and 09/11/2001, they have purchased land admeasuring 24000 sq. ft. from Survey No.87, situated at Mouza Bhokara, Tahsil Nagpur (Rural). Thereafter, their names were mutated in the revenue record. Subsequently, a portion of the aforesaid land admeasuring 2400 sq. ft. was acquired for widening of the road by the Ministry of Road Transport and Highways, New Delhi. Award dated 29/10/2016 came to be passed

thereafter. The petitioners at that stage got knowledge of the proceedings under the Act of 1976 and were informed that 713.94 sq. mtrs of that land was declared as surplus vacant land. Remaining land of 1486.06 sq. mtrs. was permitted to be retained as per the ceiling limits. Order under Section 8(4) of the Act of 1976 was passed on 11/01/1984. It was further seen that notice under Section 10(1) of the said Act was issued on 23/01/1986. Subsequent notice under Section 10(3) of the Act of 1976 came to be published on 22/12/2005. Notice under Section 10(5) of the Act of 1976 was issued on 06/02/2006 and it is the case of the petitioners that the possession of the land continued with the petitioners. The petitioners thus applied to the Collector seeking directions to correct the revenue record and delete the name of the State thereon. On 23/04/2019, the Collector recommended the correction of the revenue record on the ground that possession of the said land had not been taken pursuant to the notice issued under Section 10(5) of the Act of 1976. The Divisional Commissioner to whom the said recommendation was made, however, did not accept the same on 07/01/2020 on the ground that the said transaction in favour of the petitioners had taken place after the proceedings under Section 10 of the Act of 1976 had been initiated. Being aggrieved by the said communication, the present writ petition has been filed seeking the declaration as referred to herein above.

04] Mr. S.M. Puranik, learned Counsel for the petitioners submitted that the Collector had rightly found that on the date when the Act of 1976 stood repealed, the petitioners were in possession of the land in question. Though notice under Section 10(5) of the Act of 1976 had been issued, it was never served on the land owners and there was no material to show that the possession of the said land has been taken by the State. The Collector rightly found that in view of the law laid down by this Court in 2008 (5) Bom CR 746 (Voltas Ltd. & anr. vs. Additional Collector & Competent Authority & ors.), the proceedings had lapsed in view of the Act of 1999. The Divisional Commissioner was not justified in refusing to permit the revenue record to be corrected. The transaction in question could not be said to be illegal and assuming that the said transaction was contrary to the provisions of the Act of 1976, the co-owner had been impleaded as petitioner No.5 and he had also sought the requisite declaration. The learned Counsel also placed reliance on the decision in 2021 AIR(SC) 1048 (U.A. Basheer through G.P.A. Holder vs. State of Karnataka and Another) and the judgment of the learned Single Judge of the Madras High Court in Writ Petition No.12415 of 2013 (G. Janakiraman and others vs. The Principal Commissioner and Secretary of Land Reforms and others). It was thus submitted that considering the settled position of law, the proceedings under the Act of 1976 had lapsed and the

petitioners were entitled for necessary declaration.

05] Mr. A.S. Fulzele, learned Additional Government Pleader for the respondents opposed the aforesaid submissions. According to him, though possession of land in question was not taken as per the report of the Tahsildar, the objection raised was that as the original owners of the property had not been impleaded as party, the petitioners were not entitled to the relief as sought. It was submitted that the Divisional Commissioner was justified in refusing to permit correction of the revenue record insofar as the land admeasuring 713.94 sq. mtrs. was concerned. The writ petition was, therefore, liable to be dismissed.

06] We have heard the learned Counsel for the parties and we have perused the documents on record. At the outset, it may be mentioned that when the writ petition was heard on 12/10/2022, an objection to the locus of the present petitioners who had purchased the aforesaid land by virtue of two sale-deeds was sought to be challenged. The petitioners, therefore, were permitted to take necessary steps if they desired to implead their vendor as a co-petitioner. Accordingly, Civil Application No.2493 of 2022 was moved and the prayer made therein has been granted. It is thus clear that the co-owner of the aforesaid land, which is the subject matter of dispute, is before the

Court as petitioner No.5. We, therefore, find that the petitioners Nos.1 to 4 along with petitioner No.5 have got locus to seek the prayers as made in the writ petition. The challenge can thus be considered on merits.

07] On the factual aspect, there is no dispute that the Collector had called for report of the Tahsildar on the aspect of possession. The Tahsildar visited the site on 16/01/2019 and submitted his report stating that on that day, the petitioners were in possession of the land in question. The Collector in his communication dated 23/04/2019 after considering the judgment of this Court in *Voltas Ltd. & anr. (supra)* has referred to the Government Resolution dated 12/05/2010 in which it was stated that with regard to land of which possession was not taken, the name of the State of Maharashtra should be deleted from the revenue record. He, therefore, recommended similar action to be taken. The Divisional Commissioner, however, refused to act on the said representation and accept the same on the ground that the sale-deed has been executed in the year 2001 prior to issuance of notice under Section 10(3) of the Act of 1976. In this regard, we note that a similar question was considered by the Madras High Court in the case of *G. Janakiraman & ors. (supra)*. After finding that actual physical possession had not been taken, the declaration as prayed for came to be granted. The Hon'ble Supreme Court in the case of *U.A. Basheer (supra)* has noted the

importance of physical possession being taken while considering the effect of the Act of 1999. The Division Bench of this Court in *Voltas Ltd. (supra)* has clearly laid down that in absence of possession being taken pursuant to notice under Section 10(5) of the Act of 1976, the effect of the Repeal Act of 1999 would result in lapsing of said proceedings. The decision in (2016) 12 SCC 493 (State of Uttar Pradesh and others vs. Adarsh Seva Sahkari Samiti Limited) that was relied upon by the learned Additional Government Pleader is clearly distinguishable for the reason that after the land was declared as surplus, it was allotted to the Development Authority and that Authority had developed a park on the said land. It is in that background that the declaration as sought was not granted. In the present case, it is an admitted fact that the possession of the said land was never taken from the original owner/petitioner No.5 or the present owners/petitioners Nos.1 to 4. We therefore, find that in the light of the law laid down in *Voltas Ltd. (supra)*, the petitioners are entitled for the declaration as sought.

08] Accordingly, it is declared that in view of the provisions of the Act of 1999, the proceedings in ULC Case No.1492/1976 insofar as it pertains to the land admeasuring 24000 sq. ft. from Survey No.87 situated at Mouza Bhokara, Tahsil Nagpur (Rural) owned by petitioner Nos.1 to 4 have abated. Consequently, the notification dated 22/12/2005 issued under Section 10(3)

of the Act of 1976 as well as notice issued under Section 10(5) of the Act of 1976 on 06/02/2006 are set aside. Respondent No.4 shall take necessary consequential steps by making entries in the 7/12 extract of the aforesaid land within a period of four weeks of receiving a copy of the judgment. Rule is made absolute in the aforesaid terms. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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