



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

Writ Petition No.2292 of 2023

Rajesh S/o Madhukarrao Motghare,]
Age 60 years,]
Occupation – Business,]
R/o 7, Hingulambika Society,]
Near Gorkhede Complex,]
Hajari Pahad, Nagpur-06.] **... Petitioner**

Versus

- 1. State of Maharashtra,**]
through its Secretary,]
Urban Development Department,]
Mantralaya, Mumbai-32.]
]
- 2. The Additional Collector and**]
Competent Authority under the]
Urban Land (Ceiling and]
Regulation) Act, 1976,]
Collector Office,]
Civil Lines, Nagpur.]
]
- 3. The Maharashtra Area and**]
Housing Development Corporation]
(MHADA),]
through its Chief Executive Officer,]
Nagpur Gruhanirman Bhawan,]
Near MLA Hostel, Civil Lines,]
Nagpur.] **... Respondents**

Shri S.P. Dharmadhikari, Senior Advocate, with Shri P.D. Sharma, Counsel for Petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for Respondent Nos.1 and 2.

Shri P.P. Kothari, Counsel for Respondent No.3.

CORAM : A.S. CHANDURKAR & ABHAY J. MANTRI, JJ.

Date on which arguments were heard : 27th October, 2023

Date on which judgment is pronounced : 1st December, 2023

[PRONOUNCEMENT THROUGH VIDEO CONFERENCE]

JUDGMENT (PER A.S. CHANDURKAR, J.) :

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

2. The challenge raised in the present writ petition is to the communication dated 9-6-2015 that has been issued by the Urban Development Department by which the land admeasuring 1 hectare and 3 ares from Survey No.92/3, Mouza Hajari Pahad, Tahsil Nagpur has been transferred in favour of the third respondent- Maharashtra Housing and Area Development Authority (for short, 'MHADA'). The subsequent communication dated 6-11-2015 issued by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act of 1976') permitting MHADA to take over possession of the aforesaid land is also under challenge.

3. It is the case of the petitioner that the land admeasuring 2 hectares and 35 ares from Survey No.92/1 of Village Hajari Pahad was owned by one Radhabai Motghare. Said Radhabai Motghare

expired in the year 1983 and was survived by her son Madhukarrao. After the death of Madhukarrao, the petitioner, his son, is prosecuting the present proceedings. Under the provisions of the Act of 1976, the land to the extent of 10,268 square meters was declared as surplus in ULC Case No.247 of 1976. On the basis of the notice dated 20-1-1983 published under Section 10(1) and the notice dated 24-2-1983 published under Section 10(3) of the Act of 1976, it was urged that the possession of the surplus land was taken away from the original owner. The said land was then allotted to Uranium Corporation of India on 16-12-1982 for construction of residential premises for their employees. In the meanwhile, the original owner of Survey No.93 had filed Special Civil Suit No.358 of 1993 raising a challenge to the proceedings under the Act of 1976 initiated against that land. The said suit was decreed on 14-2-1996 and the authorities were directed to re-open the aforesaid proceedings. According to the petitioner, the physical possession of the land in question was never taken by the Uranium Corporation of India. In the meanwhile, on the basis of the recommendation of the one-man Hon'ble Justice Batta (Retd.) Committee, the allotment made in favour of the Corporation was held to be illegal. The Act of 1976 came to be thereafter repealed on 29-11-2006. It is thus the case of the petitioner that since the possession of the surplus land was not taken in accordance with the provisions of Section 10(5) and (6) of

the Act of 1976, the proceedings had abated and the petitioner continued as the owner of the said premises. It is in this backdrop that the allotment of the aforesaid land to MHADA is under challenge.

4. Shri S.P. Dharmadhikari, learned Senior Advocate for the petitioner, submitted that the possession of the surplus land was required to be taken in the manner prescribed by Section 10(5) and (6) of the Act of 1976. Unless it was shown that the actual physical possession of the land in question was taken in accordance with the provisions of the Act of 1976, the original owner would not be divested of his title. Referring to the notice dated 31-3-1983 stated to be issued under Section 10(5) of the Act of 1976, it was submitted that the date for taking over possession was fixed as 15-4-1983. In the original record, there was no endorsement of service of this notice dated 31-3-1983 on the predecessor of the petitioner. Referring to the provisions of Section 10(6) of the Act of 1976, it was submitted that if the possession of the land was not voluntarily surrendered by the owner, then the course prescribed by Section 10(6) of taking forcible possession could be adopted. On the record, there was no document to indicate that any such notice was issued under Section 10(6) of the Act of 1976. Reference was made to the possession receipt executed by the Tahsildar on 15-4-1983 to submit that the same did not bear the signature of Radhabai. It was

thus clear that since the possession of the land in question had not been shown to have been taken in accordance with the modality prescribed under the Act of 1976, the proceedings in question had lapsed. Possession had to be taken *de-facto* and not *de-jure*. In this regard, the learned Senior Advocate placed reliance on the decisions in ***Vinayak Kashinath Shilkar* Versus *Deputy Collector and Competent Authority and others* [(2012) 4 SCC 718]** and ***State of U.P. Versus Hari Ram* [AIR 2013 SC 1793]** and submitted that the prayers made in the writ petition ought to be granted.

5. Shri A.A. Madiwale, learned Assistant Government Pleader for the respondent Nos.1 and 2, opposed the aforesaid submissions. He referred to the original record of the proceedings under the Act of 1976 and submitted that the possession of the surplus land had been taken in accordance with law. He referred to the affidavit-in-reply filed on behalf of the Competent Authority under the Act of 1976 as well as the adjudication of Special Civil Suit No.94 of 2000 that was filed against the predecessor of the present petitioner. Since the present petitioner had deposed in the said proceedings and admitted that the possession had been lawfully lost, it was not permissible to contend otherwise. The possession had been taken in accordance with the provisions of Section 10(5) of the Act of 1976 and hence there was no question of resorting to the provisions of Section 10(6) of the Act of 1976. It was prayed that the writ petition be dismissed.

6. Shri P.P. Kothari, learned counsel for MHADA, also opposed the submissions made on behalf of the petitioner. According to him, in the light of the clear admission made by the petitioner while deposing on behalf of his predecessor in Special Civil Suit No.94 of 2000, the petitioner was precluded from taking a contrary stand in the present proceedings. The Civil Court had recorded a clear finding that the possession had been lawfully taken from the predecessor of the petitioner. Reference was made to Exhibit 134 which was the evidence of the present petitioner. Since the petitioner and his predecessor had lost possession in the year 1992 itself, as stated in Paragraph 15 of Exhibit 134, there was no basis whatsoever for the petitioner now to contend that the physical possession was never taken. The petitioner's father Bhaiyyaji @ Madhukarrao did not challenge the loss of physical possession during his lifetime and this issue was sought to be raised after his death. The learned counsel then invited attention to the order of allotment of the aforesaid land in favour of MHADA vide order dated 9-6-2015. He also invited attention to the communication dated 1-2-2016 that was issued by Bhaiyyaji during his lifetime in which it was stated that 40% of the surplus land could be allotted to the land holder while 60% of such land could be utilized by MHADA. In the said communication also the petitioner's father did not raise any grievance of having forcibly lost possession. Since the possession was voluntarily handed over

under Section 10(5) of the Act of 1976, there was no question of any notice being issued under Section 10(6). It was urged that the petitioners sought to raise various disputed questions and in view of the decision in *Francis Joseph Ferreira and others Versus The Additional Collector and Competent Authority and another* [2010(4) *ALL MR 330*], its cognizance could not be taken in writ jurisdiction. Reference was also made to the decisions in *State of Assam Versus Bhaskar Jyoti Sarma and others* [2015 5 SCC 321] and *Parvatibai wd/o Dashrath Behar and another Versus State of Maharashtra and others* [2019 6 Mh.L.J. 743]. It was thus urged that in the light of the material on record, no relief could be granted to the petitioner.

7. We have heard the learned counsel for the parties at length and we have also perused the original record that was produced by the learned Assistant Government Pleader for the respondent Nos.1 and 2. It would be necessary to first refer to certain undisputed facts that are available on record. Land bearing Survey No.92/1 came to be bequeathed in favour of one Smt. Radhabai Motghare on 7-8-1940 by virtue of a registered will. Said Smt. Radhabai Motghare sold a portion of the said land to M/s. Ramhill Co-operative Housing Society Ltd. Since the land in question was in excess of the permissible holding, it was subjected to proceedings under the Act of 1976. In that regard, notice under Section 10(3) of the Act of 1976 was issued on 24-2-1983 and thereafter notice under Section 10(5)

of the Act of 1976 was issued on 29-3-1983. Smt. Radhabai Motghare expired on 15-9-1983. So also, Bhaiyyaji expired on 14-5-2019. Since the petitioner in the present proceedings seeks restoration of the aforesaid land to the extent of 10,268 square meters from Survey No.92/1 by urging that the proceedings under the Act of 1976 have abated on the ground that the possession continued with the land-owner, reference is being made only to that extent of the land which is the subject-matter of the proceedings under the Act of 1976.

8. In the proceedings under the Act of 1976, Smt. Radhabai Motghare had submitted her statement under Section 6(1) of the Act of 1976. By an order dated 4-12-1982, the Competent Authority permitted Smt. Radhabai Motghare to retain 1,500 square feet land as her half share. The other half share was shown to be belonging to Shri Bhaiyyaji Motghare. He filed his statement under Section 6(1) of the Act of 1976 on 13-5-1983. Said Shri Bhaiyyaji was permitted to retain 1,500 square feet land after declaring the remaining land to be in surplus. Bhaiyyaji was the son of Smt. Radhabai. M/s. Ramhill Co-operative Housing Society Ltd. filed Civil Suit No.94 of 2000 against Bhaiyyaji and his legal heirs as well as other defendants claiming a declaration that it had absolute title to the subject land by virtue of sale-deeds dated 1-6-1982, 15-9-1982, 24-9-1982 and 29-9-1982 executed by Smt. Radhabai in its favour. In the said suit,

the predecessor of the petitioner, Bhaiyyaji, was arrayed as defendant No.1 while the petitioner was arrayed as defendant No.1(b). In the said suit, the present petitioner filed his affidavit in lieu of evidence vide Exhibit 134. He referred to the proceedings under the Act of 1976 and in Paragraph 6 of the said affidavit, he deposed that the surplus land of Radhabai was allotted to Uranium Corporation of India, after which the Corporation was in possession since 6-2-1992. In Paragraph 9, it was stated that on the date of filing of the affidavit, MHADA was in possession thereof. In Paragraph 15 of the said affidavit, it was stated that the possession of the said land was taken by the State Government pursuant to the notice issued under Section 10(5) of the Act of 1976. Paragraph 15 being relevant is reproduced hereunder :

“15] Insofar as the surplus land belonging to Smt. Radhabai is concerned, a Notification under Section 10(1) was published on 20.01.1983. The said Notification was followed by Notification under Section 10(3) dated 24.02.1983 with the result that the surplus land of Radhabai vested with the State Government. The notice of possession under Section 10(5) was issued on 15.04.1983 and the possession of the land was duly taken by the State Government. The said land (surplus land belonging to Smt. Radhabai) was allotted and handed over to Uranium Corporation of India. The physical possession was handed over on 06.02.1992.

Special Civil Suit No.94 of 2000 came to be decided on 10-1-2023 and the same came to be dismissed on merits.

The voluntary deposition made by the present petitioner in the said suit indicates that possession of the subject land was taken pursuant to the notice issued under Section 10(5) of the Act of 1976 by the State Government. There is no grievance whatsoever raised either by the predecessors of the petitioner in that regard. It is pertinent to note that the petitioner claims interest in the said land through Smt. Radhabai and she had also not raised any protest in that regard.

9. Insofar as the stand of Bhaiyyaji is concerned, it may be noted that on 1-2-2016, he had made a representation with regard to the allotment of the surplus land in favour of MHADA. In the said representation, though it is stated that the possession of the said land was taken over without following due process of law, it appears that during his lifetime, no steps were taken in that regard.

It is also pertinent to note that after declaration of a portion of the land to be surplus, the value of the said land was determined under Section 11 of the Act of 1976. The said surplus land was valued at Rs.41,072/- in 1983. From the aforesaid amount, Rs.10,270/- was received by Smt. Radhabai on 6-2-1992 and Rs.30,800/- was received by her legal heirs on 15-3-1993. This would indicate that the amount of compensation towards the value

of the surplus land was accepted by the legal heirs of Smt. Radhabai without raising any protest.

10. The aforesaid factual aspects would indicate that during the life-time of Smt. Radhabai or Shri Bhaiyyaji, no protest was raised to the taking over of possession of the surplus land pursuant to the notices issued under Sections 10(3) and 10(5) of the Act of 1976. These notices were issued on 24-3-1983 and 29-3-1983. It is true that the notice issued under Section 10(5) of the Act of 1976 indicates that the possession of the said land was to be taken on 15-4-1983 which is prior to thirty days of issuance of the notice. The endorsement of service of the said notice does not appear to be available on the record produced before the Court. The question therefore to be considered is whether in these facts the petitioner is entitled to any relief in the light of the disputed issue as regards manner of handing over possession as well as the considerable delay in approaching this Court by filing the present proceedings.

11. We find from the record that the original land owner Smt. Radhabai and thereafter Shri Bhaiyyaji during their life-time did not raise any protest to the taking over of possession of the subject land. On the contrary, the amount of compensation determined as value of the surplus land was accepted. The present petitioner has failed to explain the delay in raising a challenge for seeking a declaration as regards abatement of the present proceedings. Though the

possession was lost in the year 1983, the legal redress is now being sought after almost forty years since this writ petition has been filed on 31-3-2023. Even if the petitioner seeks a relief that the allotment of the land in favour of MHADA as made on 9-6-2015 be set aside, it is seen that the principal relief sought is with regard to declaration of abatement of the proceedings under the Act of 1976. The Division Bench in *Francis Josheph Ferreira and others* (supra) has held that such a disputed issue as regards the manner of losing possession cannot be adjudicated in writ jurisdiction.

At this stage, reference can be made to the decision in *Kapilaben Ambalal Patel and others Versus State of Gujarat and another [(2021) 12 SCC 95]* arising out of proceedings held under the Act of 1976. The original owners as well as their successors sought to raise a challenge to the manner of taking over possession of the surplus land on 20-3-1986. It was their case that without following the procedure prescribed by Section 10(5) of the Act of 1976, the possession was shown to have been taken from them. The learned Single Judge allowed the writ petition preferred by the land-owners and granted the declaration as sought. The Division Bench in appeal however considered the aspect of delay and noticed that the panchanama dated 20-3-1986 was sought to be questioned only in the year 2001 which was after about 14 years. After referring to various decisions including the decisions in *Shivgonda Anna Patil*

Versus. State of Maharashtra [(1999) 3 SCC 5] and *Municipal Council, Ahmednagar Versus Shah Hyder Beig [(2000) 2 SCC 48]*, the appeal was allowed and the writ petition was dismissed on the ground that a belated challenge was being raised by the land-owners. The said decision was challenged before the Hon'ble Supreme Court. It was found that after possession was shown to be taken from the land-owners on 20-3-1986, the proceedings under Section 11 of the Act of 1976 were undertaken in which the land-owners were noticed. There was no objection raised to the aspect of taking over possession in an improper manner. It was held that there was no explanation whatsoever from the land-owners for not disputing the manner in which possession was taken. After referring to the decision in *Larsen & Toubro Ltd. Versus State of Gujarat [(1998) 4 SCC 387]*, the Hon'ble Supreme Court declined to reverse the conclusion recorded by the Division Bench that the writ petition preferred by the land-owners was hopelessly delayed and suffered from laches. The ratio of the aforesaid decision is clearly attracted herein.

12. We therefore find firstly that there is inordinate delay that did not explain as well as laches on the part of the petitioner in approaching this Court for seeking a declaration as to abatement of the proceedings under the Act of 1976. Further, the original land-owners during their life-time did not raise any protest to the manner of taking over possession of the said land under Section

10(5) of the Act of 1976. Coupled with the aforesaid is the admission of the petitioner in unequivocal terms as regards the manner of voluntary possession being taken over by the State Government after the land was declared as surplus. Though the learned Senior Advocate for the petitioner sought to buttress his submissions with regard to the illegality in the manner of taking over possession by relying upon the decisions in *Vinayak Kashinath Shilkar* and *Hari Ram* (supra), we find that the facts of the present case disentitle the petitioner from any discretionary relief under Article 226 of the Constitution of India since the claim suffers from inordinate delay and laches besides seeking adjudication of a disputed question of fact. As we have found that the petitioner is not entitled to the relief of declaration of abatement of the proceedings under the Act of 1976, it is not necessary to go into the challenge raised to the communication dated 9-6-2015 issued by the Urban Development Department making available the aforesaid land to MHADA as well as the communication dated 6-11-2015 issued in that regard.

13. For aforesaid reasons, we are not inclined to grant the relief sought by the petitioner herein. The writ petition is therefore dismissed. Rule stands discharged with no order as to costs.