

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

WRIT PETITION NO. 4770 OF 2021

Petitioners

1. Acres and Meters Infrastructure,
a Registered Partnership Firm bearing
: Registration No.NG000003406, through its
Authorized Partner Shri Rajesh Bodele,
having its Office at Plot No.3, Suman Apartment,
Canal Road, Giripeth, Nagpur
2. Sudhir s/o Giridhar Dupare,
Aged about 53 years, Occupation : Business
Private Service,
Resident of Plot no.124, Jogi Nagar, Bhagwan
Nagar, Nagpur 440 027.
- Versus –

Amended as per
Order of this
Hon'ble Court
dated 01/02/2023.

Respondents

1. State of Maharashtra,
Through its Secretary,
Department of Urban Development, Mantralaya,
Madam Cama Road, Mumbai : 440 032.
2. The Additional Collector and
the Competent Authority (Urban Land Ceiling),
having its Office at Civil Lines, Nagpur – 440 001
3. The Tahsildar, Tahsil Hingna, Nagpur,
having its Office at the Tahsil Office, Nagpur.

Mr. A. A. Naik, Advocate for the Petitioners.

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

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

DATE : **8th MARCH, 2023.**

J U D G M E N T : (Per M.W. Chandwani, 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 (hereinafter referred to as “Principal Act” for brevity) have abated in view of the provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “Repeal Act” for brevity). Consequent declaration is also sought to declare that the land of Khasra Nos. 71/1 and 72/2 Mauza Wanadongri does not vest in State Government.

03] Petitioner No.1 is a partnership firm and is an owner of land Kh. Nos.71/1 and 71/2, admeasuring 26700 square meters, situated at Mouza Wanadongri, Nagpur. Petitioner No.1 purchased the said land from one Jaswinder Kaur Gurmitsingh Chawla and Kailash Pandurang Thakre by registered sale-deeds dated 23/10/2015 and 5/12/2015, respectively.

04] The land was originally belonged to one Giridhar Dupare and his brothers jointly as an ancestral property. In ULC Case No.2296/76 Giridhar Dupare had filed a statement of vacant land owned by Dupare Family under Section 6(1) of the Principal Act. The competent authority declared the aforesaid land of Dupare Family as surplus vacant land vide notification dated

19/01/1989 issued under Section 10(1) of the Principal Act. Thereafter, notification under Section 10(3) of the Principal Act also came to be issued declaring the deemed acquisition of the said land by the Government of Maharashtra without mentioning the date on which the land will vest in State Government. A notice under Section 10(5) of the Principal Act for taking possession of the said land without mentioning the date on which the possession would be taken, has also been issued.

05] It is the case of petitioners that no steps, thereafter, were taken by the Government in the above ULC case. No possession of the excess land was ever taken nor compensation was paid. Dupare brothers remained in possession of the aforesaid land. Thereafter, legal heirs of Dupare brothers sold the land to one Jaswinder Kaur Gurmitsingh Chawla and Kailash Pandurang Thakre, from whom, petitioner No.1 purchased the aforesaid land. Now, petitioner No.1 is in possession of the said property.

06] Respondent No.2 has contended in affidavit-in-reply that the notification under Section 10(3) of the Principal Act was issued in ULC Case No.2226/76 in respect of the aforesaid land. The notice under Section 10(5) of the Principal Act was also issued and possession of the land was sought to be delivered. It is contented that by way of the notification issued under

Section 10(3) of the Principal Act, the aforesaid land is vested in the Government of Maharashtra. The subsequent sale-deeds being void *ab initio* do not stand, therefore, he sought rejection of the petition.

07] We have heard the learned Counsel Mr. A.A. Naik appearing on behalf of the petitioners as well as the learned Additional Government Pleader Mr. A.S. Fulzele for respondent Nos.1 to 3. We have also given our due consideration to the provisions of the Principal Act and the Repeal Act. We have also gone through the record and proceedings of ULC Case No.2226/76, produced by learned Additional Government Pleader Mr. Fulzele.

08] Indisputably, the proceedings under the Principal Act vide ULC No.2226/76 came to be initiated on filing a statement by Giridhar Dupare and brothers under Section 6 of the Principal Act. The land about area of 20700 square meters came to be declared as an excess land and, accordingly, the notification and the notice for possession under Section 10(3) of the Principal Act for vesting the land in State Government was issued. The notice under Section 10(5) of the Principal Act, for taking possession of the aforesaid land also came to be issued.

09] Notably, the notification issued under Section 10(3) of the Principal Act shows that though the declaration has been made that the land will be

vested in the Government of Maharashtra, in the notification, column of the date of vesting of the land in the Government of Maharashtra is left blank. Likewise, though by the notice issued under Section 10(5) of the Principal Act the intent of taking possession of the excess land is shown, column of the date on which the possession will be taken over is also found blank. We find from the Roznama of the proceedings that though the directions were given to the Tahalisdar to take possession of the land, nowhere it is recorded that the possession of the land is ever taken. This is also substantiated by the undisputed fact of petitioner No.1's possession on the aforesaid land. These facts unequivocally demonstrate that no further steps were taken in ULC Case No.2226/76. The original owners remained in possession of the declared excess land.

10] Having found the above said undisputed facts, we now proceed to briefly notice the relevant legal provisions of the Principal Act and the Repeal Act.

11] The Principal Act was enacted in the year 1976. The primary objects and purpose of the Principal Act was to provide for imposition of ceiling on holding of vacant land in urban agglomerations, for acquisition of land in

excess of ceiling limit and to regulate such land. Under the Principal Act, the excess land was being acquired by the State Government by initiating proceeding under the Principal Act. Thereafter, the Parliament enacted the Repeal Act. So far as the State of Maharashtra is concerned, the Repeal Act came into force with effect from 29.11.2007. Sections (2), (3) and (4) of the Repeal Act are relevant for the present purpose.

12] By Section 2 of the Repeal Act the Principal Act is repealed.

13] Section 3(1)(a) of the Repeal Act, which provides for a saving clause, throws light on this, by stating that the repeal shall not affect the vesting of any vacant land in the State Government by the Principal Act, the possession of which has been taken over by the concerned State Government. This is further qualified in Section 3(2) of the Repeal Act which states that vacant land vested in the State Government by the Principal Act, the possession for which has not been taken over, shall be restored only, once any compensation paid to the land-holder has been returned. In other words, vesting of vacant lands under sub-section (3) of section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved.

14] Section 4 of the Repeal Act provides that all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate. The proviso to Section 4 says that the proceedings will not abate if the proceedings are relating to sections 11,12,13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

15] It is clear from the aforementioned legislative provisions that the question of pending proceedings and possession of the excess land is absolutely material to a full adjudication of the controversy before us. This is because, if the possession of the excess land is not taken by the State Government, any pending proceedings for acquisition of excess land under the Principal Act are liable to abate, as per Section 3 and Section 4 of the Repeal Act.

16] Here, in notification under Section 10(3) of the Principal Act the date on which the excess land will vest in the State Government under Section 10 of the Principal Act is not mentioned. Neither the compensation is paid nor the possession of the said land was taken by the authority on behalf of

the State Government. Thus, the proceedings of ULC Case No.2226/76 have not been completed and were pending on the day on which the Repeal Act came in to force. The case in hand is also not covered by the proviso of Section 4 of the Repeal Act. Even, the proceedings of ULC Case No.2226/76 will not be saved under Section 3 of the Repeal Act. In view of the matter, we are of the view that the pending proceedings of ULC Case No.2226/76 have abated in wake of Section 4 of the Repeal Act.

17] The Apex Court in case of *U.A. Basheer vs. State of Karnataka and another – (2021) 5 SCC 313* and of this Court in the cases of *Smt. Kantadevi Narang and others vs. State of Maharashtra and others in Writ Petition No.5054/2021* and *Jai Industrial Corporation vs. State of Maharashtra - 2016(1) Bom. C.R. 93*, have held that if the possession of the excess land was not taken from the original owner till the date on which the Repeal Act came into force, pending ULC proceedings abate.

18] Before parting, let us deal with technical objection raised in the petition. Initially, an objection on locus of petitioner No.1, who purchased the aforesaid land by virtue of two sale-deeds was sought to be challenged. In view of the impleading one of the legal heirs of Giridhar Dupare and others as petitioner no.2, the challenge to the locus does not survive.

19] To conclude, we declare that in view of the provisions of Sections 3 and 4 of the Principal Act, the proceedings in ULC Case No.2226/76, insofar as it pertains to the land admeasuring 20700 square meters from Original Survey No.1/2, situated at village Wanadongri, Tahsil Hingna, District Nagpur owned by petitioner No.1, have abated. Consequently, the said land does not vest in State Government. Respondent No.2 shall take consequential steps.

20] Rule is made absolute in the aforesaid terms. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)