



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

CIVIL WRIT PETITION NO. 3435 OF 2023

Smt. Meerabai w/o Shalikram
Chaudhari

...Petitioner.

Vs.

The State of Maharashtra
through its Chief Secretary
and Others

...Respondents.

Mr. Syed Ateeb for the Petitioner.

Mr. A. A. Madiwale, Assistant Government Pleader for
Respondent Nos. 1 to 3.

Mr. Girish A. Kunte for Respondent No.4

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

**ARGUMENTS HEARD ON : 02/11/2023
ORDER PASSED ON : 22/12/2023**

P.C. : (*Per A.S. Chandurkar, J.*)

1] Heard.

2] The Petitioner has filed this Writ Petition under Article 226 of the Constitution of India, seeking a declaration that the proceedings initiated under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, "the Act of 1976") with regard to the land located in Khasra No.35/2 Mouja Wanjari, District Nagpur have abated in view of the provisions of the

Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, “the Act of 1999”). The Petitioner also seeks to challenge the Award passed by the Collector in Acquisition Case Nos. 171 and 179/A-65 of 1966-67 as being null and void. The Petitioner also prays that a direction be issued to restrain the Respondents from entering into and trespassing in the land admeasuring 0.85 Ares of Khasra No.35/2 since it is a private property.

3] We have heard the learned Counsel for the parties at length and with their assistance, we have perused the documents placed on record. It would be first necessary to refer to the relevant proceedings that have been held with regard to Survey No.35. The record indicates that Survey No.35 was admeasuring 21 Acres 04 Gunthas or 8 Hectares 51 Ares. Insofar as land from Khasra 35/2 to the extent of 13 Acres 28 Gunthas / 5 Hectares 38 Ares / 53807.3472 square meters is concerned, the same came to be declared as surplus under an order passed under the Act of 1976 on 05/05/1977. This land was transferred in favour of the Nagpur Improvement Trust under Section 23 of the Act of 1976 and its possession was handed over to it on 28/10/1980. The Nagpur Improvement Trust paid an amount of Rs 1,19,736.36 for the said purpose. Under an Award dated 09/02/1984, land to the extent of 7.76

Acres came to be acquired for the Wanjari Housing Accommodation Scheme of the Nagpur Improvement Trust. The said proceedings were held under Section 39 of the Nagpur Improvement Trust Act, 1936. After acquiring the aforesaid land along with various other lands, totally admeasuring 10.34 Acres, compensation was paid to the land owners.

4] According to the Petitioner, insofar as 0.85 Ares land from Khasra No.35/2 is concerned, her name continues in the revenue record and it is thus urged by the Petitioner that since the said land is still in possession of the Petitioner, it would mean that its possession was never taken by the Authority under the Act of 1976. On this premise, it is urged that the proceedings under the Act of 1976 have abated in view of Section 3 of the Act of 1999 as the possession continues with the Petitioner even today.

5] Having considered the pleadings of the parties as well as the documents on record, we find that there is a serious factual dispute with regard to Petitioner's possession over 0.85 Ares land from Khasra No.35/2. In this context, it would be necessary to refer to averments in paragraphs 12 and 13 of the Writ Petition which read as under:-

“12] It is further submitted that the even though the 1:73 HR land of the petitioner declared surplus out of the total land 2.85 HR, still the petitioner is holding remaining 0.85 R the petitioner possesses all the record of the rights regarding remaining 0.85 R land situated at wajari the copies of the same is attached herewith and marked as **Annexure-5.**”

“13] It is submitted that the petitioner was in peaceful possession of the whole 2.85 HR land till yesterday but the respondent no.3 without any authority trespassed the land holding by the petitioner in respect of land admeasuring 0.85 R and disrupted the fencing poles of the petitioner with the collusion of the respondent no.6 police station officials (who were not authorised to do so) and therefore petitioner is been threatened to dispossessed the land of which she is absolute holder of the land, copies of the photos in respect of the trespass and illegal act done by the respondent no.3 are annexed and marked as Annexure-6 and furthermore who is legally unpowered to retain the land declared surplus and vacant in (ULC act) by virtue of the Repealing Act, the entire proceedings stand abated.”

In reply to these averments, Nagpur Improvement Trust in its affidavit-in-reply has in paragraph 12 stated as under:-

“12] That, the documents placed on records by the answering respondent clearly reveals that, there is developed layout of NIT is in existence at disputed site, on the contrary the copy of 7/12 extract which is placed on records by the petitioner herself at Annexure : 5 (Page No.45) clearly appears that, there are houses of NIT. On this ground the contempt proceedings requires to be initiated against the petitioner for filing false affidavit only to deceive this Hon’ble Court. On this ground entire petition deserves to be dismissed with heavy exemplary cost.”

In paragraph 18 of its affidavit-in-reply, it has been further stated as under

“18] That, as per the factual position as per the story of alleged dispossession which is narrated in para No.13 of the petition is far from truth. As the petitioner never in possession at any point of time, no documents placed on records to show settle possession of the petitioner, therefore, the

entire petition suffers”

From the aforesaid averments of the rival parties, it is evident that the factual assertion made by the Petitioner of she being in possession of 0.85 Ares land has been specifically disputed by the Nagpur Improvement Trust. According to them, the possession of the subject land was taken from the land owners and the same is presently with the Nagpur Improvement Trust

6] It is also necessary to note that insofar as land admeasuring 7.76 Acres is concerned, the document dated 02/05/1984 indicates that possession of that land was taken from the predecessor of the Petitioner, Shri Vasantrao Chavan and was handed over to the Nagpur Improvement Trust. Similarly, the document dated 28/10/1980 indicates that possession of 53807 square meters land from Khasra No. 35/1 was taken over by the Tahsildar and it was then allotted to the Nagpur Improvement Trust. The Petitioner seeks to rely upon the 7/12 Extracts of the said land to urge that she continues in possession, whilst this aspect is specifically denied by the Nagpur Improvement Trust. The Petitioner has also filed a complaint in that regard on 29/05/2023 against the said

Authority. We may also note that in the revenue proceedings, the Town Planning Officer, Nagpur on 24/08/2023 while deciding an Appeal against the Order dated 08/07/2022 has observed in clear terms after referring to the contentions of the rival parties that unless the dispute with regard to title and possession is got resolved from Civil Court, it would not be feasible to decide the proceedings.

7] This Court in *Francis Joseph Ferreira & Ors vs. The Additional Collector & Competent Authority & Anr.* **2010 (4) ALL MR 330** has held that when the aspect of possession is disputed between the parties, the proper course available would be to seek resolution of the same through Civil Court since the same would require recording of evidence. We find that a somewhat similar situation arises in the present case. Unless a categorical finding as regards Petitioner's possession of 0.85 Ares land is recorded, the declaration sought by the Petitioner that the proceedings under the Act of 1976 have abated and relief claimed by the Petitioner cannot be granted. The basis on which the Petitioner seeks relief is that she continues in possession despite the declaration under the Act of 1976 of the said land being declared surplus. The Petitioner has placed on record various documents along with pursis dated 08/11/2023 as well

as Civil Application CAW No.3259/2023 seeking leave to amend the Writ Petition. We however after perusing the entire material on record find that resolution of this disputed question merely on the basis of affidavits would not be possible. Reference can also be made to the decision in *State of Assam vs. Bhaskar Jyoti Sarma and Others* **(2015) 5 SCC 321**. We therefore decline to entertain the prayers made by the Petitioner on the ground that same would require resolution of a disputed question. Hence, the Petitioner is at liberty to approach the competent Civil Court and establish her possession with regard to 0.85 Ares land.

8] Coming to the challenge to the Award passed on 09/02/1984 under Section 11 of the Land Acquisition Act, 1894 as well as the Order passed by the Collector on 05/05/1977 under the Act of 1976, we find that this challenge suffers from unexplained delay and laches. Except for stating that the original owner was illiterate there is no reason indicated for not raising any challenge to the aforesaid proceedings any time earlier. On the ground that such a challenge is highly belated and no acceptable reason is indicated for raising the same now, we are not inclined to go into this challenge.

9] Needless to state that in case the Petitioner finally

succeeds in establishing her undisputed possession over 0.85 Ares land, it would be open for her to seek such relief that would be permissible in law. With the aforesaid observations, the Writ Petition is disposed of leaving the parties to bear their own costs.

[ABHAY J. MANTRI, J.]

[A.S. CHANDURKAR, J.]