



200-19

1/18

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

WRIT PETITION NO.8200 OF 2019

1. Murlidhar S/o Shankarrao Choudhary
Aged about 66 years, Occ. Business
2. Damodhar s/o Shankarrao Choudhary
Aged about 65 years, Occ. Private
3. Serveshwar s/o Shankarrao Choudhary
Aged about 50 years, Occ. Private
4. Dnyaneshwar s/o Shankarrao Choudhary
Aged about 45 years, Occ. Private
5. Smt Kamlabai Madhukar Choudhary
Aged about 40 years, Occ. Housewife
6. Mrs Archana Tulsidas Bhajbhuj
Aged about 31 years, Occ. Housewife
7. Mrs Seema Nilesh Dhande
Aged about 27 years, Occ. Housewife
8. Mrs Priti Jagesh Kolambe
Aged about 29 years, Occ. Housewife
9. Mrs Arjun Madhukar Choudhary
Aged about 27 years, Occ. Student

All residents of Balabhau Peth,
near Hanuman Temple, Panchpaoli Nagpur
through their constituted Attorney
Shri Ulttam s/o Gulabchand Kashyap,
Resident of Darodkar Chowk,
Itwari, Nagpur

-vs-

1. State of Maharashtra, Thr. Its Secretary,
Urban Development Dept. Mantralaya,
Mumbai- 32
2. The Collector, Nagpur

3. The State of Maharashtra
The Station House Officer,
Police Station, Jaripatka,
Ring Road, Jaripatka,
Kukreja Nagpur, Nagpur

... Respondents.

Shri Anand Parchure, Advocate for petitioners.

Smt S. S. Jachak, Additional Government Pleader for respondent Nos.1 and 2.

Shri N. D. Khamborkar, Advocate for Intervenor/CAW 555/2021 and 444/2021.

Shri R. V. Gaikwad, Advocate for Intervenor/CAW No.456/2021.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

Arguments were heard on : October 11, 2023

Judgment is pronounced on : November 30, 2023

Judgment : (Per : A. S. Chandurkar, J.)

In view of notice for final disposal issued earlier, we have heard the learned counsel for the parties at length.

The petitioners are the legal heirs of one late Shankar Maruti Choudhary who was the owner of land bearing Survey No.58, P.H. No.11, Mouza Nari, Tehsil and District Nagpur admeasuring 14.36R. The said land was the subject matter of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act of 1976). Notice under Section 10(3) of the Act of 1976 came to be published on 08/04/1981 while notice under Section 10(5) of the Act of 1976 was issued on 18/04/1981. The possession of the aforesaid land was indicated to be taken on 21/04/1981 and was to be handed over to Magasvargiya Beghar Mahila Gruha Nirman Sahakari Sanstha Ltd. (for short, the Housing Society). It is the case of the petitioners who are the legal heirs of Shankar Maruti Choudhary that the

possession of the land in question continued with the land owner and attempts to take over the same forcibly had been resisted. The allotment of the aforesaid land made in favour of the Housing Society came to be cancelled in the light of the judgment of this Court in Public Interest Litigation No.55/2004 (*Sunil Shamraoji Shinde vs. The State of Maharashtra, Thr. Urban Development Dept. Mantralaya, Mumbai and ors.*). As a result, the aforesaid land did not vest with the State Government and the possession of the petitioners continued. In the light of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, the Act of 1999), the petitioners were entitled to a declaration that the proceedings under the Act of 1976 had abated and the land in question continued with the petitioners. In this backdrop the petitioners on 26/08/2017 moved a representation before the Sub-Divisional Officer seeking correction of the revenue record and restoration of their names therein. In response, the concerned Talathi on 16/09/2017 informed the petitioners that in view of the interim order operating in Writ Petition No.459/2015 (*Magasvargiya Beghar Mahila Gruha Nirman Sahakari Sanstha Ltd., Nagpur vs. State of Maharashtra and ors.*), the request made by the petitioners could not be accepted. In this backdrop the petitioners have approached this Court seeking the relief referred to herein above.

2. Shri Anand Parchure, learned counsel for the petitioners referred to

the aforesaid facts as well as the relevant documents on record to urge that the documents on record indicated that the possession of the aforesaid land had not been taken in the manner prescribed by Section 10(5) of the Act of 1976. The notice dated 18/04/1981 issued under Section 10(5) required granting of time of 30 days prior to taking over possession under Section 10(6) of the Act of 1976. However, in the said notice itself it was stated that the possession of the land would be taken on 21/04/1981. There was no possession receipt executed on behalf of the petitioners to indicate that they had voluntarily handed over possession of the said land to the Authorities. It was therefore clear that the possession was not taken in accordance with Section 10(5) of the Act of 1976. In this regard the learned counsel for the petitioners has placed reliance on the decisions in Writ Petition No.2002/2002 (*Baburao Kashinath Saratkar (dead) Thr. L.Rs. And ors. vs. State of Maharashtra, Thr. its Urban Development Dept. Mantralaya, Mumbai and ors.*) decided on 11/08/2017, Writ Petition No.5372/2017 (*Shri Gyansingh S/o Satyanarayan Yadav and ors. vs. State of Maharashtra, Thr. its Secretary, Ministry of Urban Development, Mantralaya, Mumbai and ors. with connected writ petitions*) decided on 19/09/2019 and Writ Petition No.1581/2018 (*Smt. Tarabai Tulshiram Meshram vs. State of Maharashtra, Thr. its Secretary, Ministry of Urban Development, Mantralaya, Mumbai and ors.*) decided on 13/09/2019. It had been held in the aforesaid decisions that issuance of notice under Section 10(5) of the Act of 1976 stipulating a shorter

period than 30 days would be fatal in the matter of taking over possession. Since the allotment in favour of the Housing Society had been cancelled, there was no question of any right being created in its favour. As a consequence, the land ought to be restored to the petitioners especially as same continued with the petitioners and by virtue of provisions of Section 3 of the Act of 1999, the said proceedings itself had lapsed. The learned counsel further submitted that though applications for intervention had been filed by various parties, they had no locus whatsoever to oppose the relief sought by the petitioners. On this count it was submitted that the petitioners were entitled for the relief prayed for by them and the writ petition ought to be allowed.

3. Smt S. S. Jachak, learned Additional Government Pleader for respondent Nos.1 and 2 opposed aforesaid submissions. Referring to the affidavit in reply filed on behalf of the Collector, Nagpur, it was submitted that the possession of the surplus land was taken over on 21/04/1981 and handed over to the Housing Society. The record maintained in that regard was clear and that the contention raised by the petitioners that they continued in possession was factually incorrect. The learned Additional Government Pleader referred to the orders passed in various proceedings pertaining to the said land initiated by the petitioners as well as by the intervenors. Since possession of the lands was taken voluntarily, there was

no question of taking recourse to the provisions of Section 10(6) of the Act of 1976. Even if the allotment in favour of the Housing Society had been cancelled, the lands could not be restored to the petitioners as they vested in the State.

4. Civil Application No.456/2021 has been filed by the Housing Society through its President seeking permission to intervene in the present proceedings. Shri R. V. Gaikwad, learned counsel for the applicant submitted that the petitioners had voluntarily lost possession of the surplus land which was clear from the application for cancellation of allotment of land dated 19/07/1990 as well as a subsequent application seeking cancellation of the Notification under Section 10(3) of the Act of 1976 dated 25/03/2000 moved on behalf of the petitioner. The learned counsel referred to an application dated 01/10/2004 that was moved before the Urban Development Department in the matter of cancellation of allotment of the subject land. Reference was also made to Civil Application No.77/2016 that had been moved by the present petitioners seeking leave to intervene in Writ Petition No.459/2015 that had been filed by the Housing Society. It was also urged that the civil Court had recorded a categorical finding in Special Civil Suit No.258/1989 decided on 29/08/1992 that the present petitioner No.1 was not in possession of the subject land. All these relevant aspects had not been brought on record by the petitioners though the same had material bearing on

the prayer made in the writ petition.

Civil Application No.444/2021 has been filed by three applicants who claim to be member of the Housing Society and who were allotted plots of land pursuant to the initial allotment made in favour of the Housing Society. Civil Application No.555/2021 has been filed by three applicants stating to have interest in the Housing Society. These applicants had earlier filed Civil Application No.444/2021 which they now say that the same would not be pursued. These applicants also seek to rely upon the orders passed in various proceedings including Writ Petition No.3530/2008 (*Murlidhar Shankar Choudhary and ors. vs. State of Maharashtra and ors.*). It is submitted by Shri N. D. Khamborkar, learned counsel for the applicants that the petitioners are not entitled for the relief sought by them.

5. We have heard the learned counsel for the parties and we have perused the records of the proceedings that were made available for perusal. It may be stated that the present writ petition was directed to be heard with Writ Petition Nos.459/2015 and 6651/2015. The aforesaid two writ petitions have been preferred by the Housing Society seeking to raise a challenge to the cancellation of allotment as made in its favour. The learned counsel for the present petitioners however submitted that since the petitioners were challenging the validity of proceedings under the Act of 1976 and were seeking a declaration that said proceedings had abated in view of the Act of

1999, the question of going into the validity of cancellation of allotment would arise only in case the present petitioners were not successful in their challenge. He therefore submitted that Writ Petition No.8200/2019 be heard first. It is on that basis that we have considered the prayers made in the present writ petition.

6. The principal challenge raised by the petitioners to the proceedings under the Act of 1976 is on the premise that there had been no compliance with the provisions of Section 10 of the Act of 1976. It is urged that notice under Section 10(3) of the Act of 1976 was issued on 08/04/1981 while notice under Section 10(5) of the Act of 1976 was issued on 18/04/1981 and prior to expiry of 30 days, the possession of the said land was stated to be taken over on 21/04/1981 and handed over to the Housing Society. Perusal of the notice dated 18/04/1981 does indicate that the possession of the said land was to be taken over on 21/04/1981 and handed over to the Secretary of the Housing Society. The specific time limit prescribed under Section 10(5) of the Act of 1976 had not been scrupulously adhered to and within a period of 30 days the possession is shown to have been taken over and thereafter handed over to the Housing Society. The possession receipt in that regard is also not clearly maintained. It is in the light of this record that the petitioners seek a declaration that since the provisions of Section 10(5) as well as Section 10(6) of the Act of 1976 have been violated, the proceedings

stand abated by virtue of the Act of 1999. The material on record would therefore have to be examined in the aforesaid context.

7. While considering the prayer made by the petitioners, it would be necessary to take into consideration the effect of various proceedings relating to the subject land initiated either by the petitioners or by the Housing Society in that regard. The record indicates that on 19/07/1990 the present petitioners had moved an application seeking cancellation of allotment of this very land in favour of the Housing Society. It has been stated therein that paper possession of the surplus land was handed over to the Housing Society on 06/06/1981. It is thereafter stated that within a period of two years from 06/06/1981, the Society did not develop the said land nor did it utilise the same for the purpose for which it was allotted. On this basis the petitioners sought cancellation of the order of allotment dated 06/06/1981 and further prayed that they be permitted to submit a scheme under Section 20(1)(a) of the Act of 1976. This application does not raise any protest whatsoever to the possession not being taken over in accordance with Section 10(5) and 10(6) of the Act of 1976 except for referring to the same as being paper possession. There is another application dated 25/03/2000 moved by the present petitioners before the Secretary, Housing and Special Assistance Department of the State Government. It again raises a grievance that even after lapse of almost 19 years, the Housing Society failed to develop the said land that was

lying vacant since 1981. It is further stated that no compensation was paid to their predecessor Shankar Maruti Choudhary or any of the petitioners. A prayer was thus made to restore the said land to the present petitioners. There is yet another application dated 01/10/2004 that was moved by the present petitioners before the Secretary, Urban Development Department of the State Government in proceedings arising out of show cause notice dated 05/07/2004 in the matter of cancellation of allotment of land that was allotted to the Housing Society. It was stated that since the said land was not utilized by the Housing Society for the purpose for which it was allotted, the allotment be cancelled.

8. The present petitioners as legal heirs of Shankar Maruti Choudhary preferred Writ Petition No.2564/1981 since they were aggrieved by an order dated 07/11/1981 passed by the Collector, Nagpur rejecting their application for condonation of delay in filing an appeal without hearing them and without recording any reason. The aspect of possession being taken over by the Housing Society was disputed by the petitioners and the same has been recorded in the order dated 29/08/1989. The order passed by the Collector was set aside and the proceedings were directed to be heard afresh including the question of actual possession. The present petitioners had also preferred Writ Petition No.3530/2008 seeking restoration of possession. The learned Single Judge dismissed the said writ petition on 17/10/2008 on the ground of

locus. However, the said order was set aside in Letters Patent Appeal No.415/2008 on 15/04/2009 holding that the petitioners were entitled to agitate the legality of the aspect of possession not being taken over from them. Yet another proceedings to which the present petitioner No.1- Murlidhar Shankar Choudhary was a party as defendant No.6 is required to be noticed. Special Civil Suit No.258/1989 was filed by the Housing Society seeking a declaration that pursuant to the letter of allotment it was a lawful owner of the same and was having absolute possession over it. It was alleged that defendant Nos.1 to 6 were attempting to sell off various plots by forming a Trust without any authority of law to do so. Issue No.1 framed in the said suit reads as under :

“ (i) Do the plaintiffs prove that they are in possession and title over the suit land ?”

While answering the said issue, the trial Court recorded a finding that the plaintiffs' evidence remained unchallenged and un-shattered. The said issue was answered in favour of the Housing Society by holding that pursuant to the allotment of the surplus land, it was the Society that was in lawful possession of the same. The suit was decreed on 29/08/1996 granting the declaration as sought with regard to the Society's ownership and also restrained the defendants including the present petitioner No.1 from obstructing the possession of the Housing Society. This decree does not appear to have been further challenged by the defendants therein.

9. The aforesaid documents on record in the form of various applications preferred by the petitioners as well as orders passed therein indicate that though initially the petitioners sought to contend that paper possession of the subject land was taken from them and handed over to the Housing Society, the civil Court in Special Civil Suit No.258/1989 that was filed by the Housing Society has recorded a categorical finding on the basis of evidence on record that the members of the Housing Society were in possession of the said land that was allotted to it. The petitioner No.1 was defendant No.6 in the said suit and this finding/decreed passed in the said suit has not been shown to have been challenged. This would indicate that the civil Court on the basis of a full dressed trial has held in clear terms that the petitioners were not in possession of the subject land but the land was in possession of the allottee/the Housing Society. In the light of this finding recorded, the contention raised by the petitioners that possession was not taken over from them cannot be accepted. This aspect is further corroborated by the stand taken by the petitioners in other applications preferred by them before various Authorities. Except for stating that paper possession was shown to be taken, there is no protest in those applications that the possession was forcibly shown to be taken from them. The recourse to the provisions of Section 10(6) of the Act of 1976 is required to be taken only if the person to whom notice under Section 10(5) of the Act of 1976 is issued has failed to surrender the same or deliver its possession. It is pertinent to note that the

original owner Shankar Maruti Choudhary is shown to have been issued notice dated 18/04/1981 under Section 10(5) of the Act of 1976 and it is only his legal heirs who have subsequently sought to contend that such possession was not taken in accordance with law. In any event, we find that the disputed question with regard to taking over possession and the petitioners continuing therein stands answered by the civil Court in Special Civil Suit No.258/1989 while answering Issue No.1. We therefore find that in the light of the material on record it cannot be said that the petitioners continued in possession after issuance of notice dated 18/04/1981 to their predecessor in that regard. Absence of such grievance being raised in various proceedings referred to herein above would substantiate the conclusion that the original land owner had acquiesced to the voluntary loss of possession.

10. It is also material to note that the record indicates that the predecessor of the petitioners Shankar Maruti Choudhary had pursued the proceedings with regard to grant of compensation in lieu of the vacant land that was acquired. By an order dated 27/08/1981 passed in Case No.15/1979 the Competent Authority and Deputy Collector (Urban Land Ceiling), Nagpur determined an amount of Rs.17,298.45 as the amount to be paid under Section 11(7) of the Act of 1976 to the person interested in the same. The said order records that the said Shankar Maruti Choudhary was the only claimant and that the entire amount was paid to him. The said claimant was aggrieved by the amount of

compensation as determined and he filed an appeal under Section 12 of the Act of 1976 raising a grievance that no opportunity was granted to adduce evidence in the matter of valuation of the surplus land. The learned Commissioner, Urban Land Tribunal, Nagpur Division, Nagpur dismissed the said appeal on 20/12/1981. This order was thereafter subjected to challenge in Writ Petition No.2564/1981 that was preferred by Shankar Maruti Choudhary. By the order dated 29/08/1989 the impugned orders were set aside and the proceedings were remanded for fresh consideration.

After remand, the Collector, Nagpur heard the present petitioners as legal heirs of deceased Shankar Maruti Choudhary. A finding was recorded that since the property acquired was the self acquired property of deceased Shankar Maruti Choudhary, the other members of his family did not have a right to claim any share therein as co-parceners. The appeal was therefore dismissed and the order passed by the Competent Authority on 23/04/1979 was affirmed.

11. The aforesaid factual position would indicate that even after issuance of notice under Section 10(5) of the Act of 1976 on 18/04/1981, Shankar Maruti Choudhary and thereafter his legal heirs pursued the matter with regard to award of compensation under Section 11 of the Act of 1976. Though it was open for the said parties to raise a grievance in the matter of not acquiring possession in terms of Section 10(5) and (6) of the Act of 1976 shortly thereafter, no steps in that regard were taken for a considerable period of time.

This conduct on the part of the original owner and thereafter his legal heirs cannot be ignored and the same would have material bearing in the facts of the present case.

12. It is true that the notice issued under Section 10(5) of the Act of 1976 prescribes a shorter period of less than 30 days for delivering possession of the surplus land. The said notice is dated 18/04/1981 and possession of the surplus land is shown to be taken on 21/04/1981 which was thereafter handed over to the Housing Society on 30/04/1981. There can be no dispute whatsoever with the legal position laid down in the decisions relied upon by the learned counsel for the petitioners. However, the factual aspects based on the conduct of the parties in this regard cannot be ignored.

13. Another material aspect that cannot be given a go-by is the factor based on unexplained delay and laches on the part of the petitioners in seeking the relief sought in the present writ petition. Admittedly notices in proceedings under the Act of 1976 were issued in April 1981. The petitioners have pursued proceedings before the Urban Development Department seeking cancellation of allotment made in favour of the Housing Society. Though the petitioners had filed Writ Petition No.3530/2008 which was dismissed on 17/10/2008 and which order was set aside in Letters Patent Appeal No.415/2008 on 15/04/2009, it has not been demonstrated that thereafter the petitioners took

steps to seek a declaration that they are now seeking in the present proceedings. It is only on 25/08/2017 that the petitioners sought restoration of their names in the revenue record which request was rejected on 15/09/2017. This writ petition has been filed on 05/12/2019. There is no satisfactory explanation furnished by the petitioners in the writ petition as regards the steps taken to seek legal redress so as to enable the consideration of their grievance with regard to abatement of the proceedings under the Act of 1976 especially when notice under Section 10(5) is dated 18/04/1981. Even on this count we find the petitioners are not entitled to the relief prayed for by them.

14. At this stage reference can be made to the decision in *Kapilaben Ambalal Patel and ors. vs. State of Gujarat and anr.* **(2021) 12 SCC 95** in proceedings held under the Act of 1976. The original owner as well as their successors sought to raise a challenge to the action of taking over possession of the surplus land on 20/03/1986. 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 owner and granted a declaration as sought. The Division Bench in appeal however, considered the aspect of delay and noticed that the panchanama dated 20/03/1986 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 vs. State of Maharashtra*

(1999) 3 SCC 5 and *Municipal Council, Ahmednagar vs. 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 raised by the land owners. The said decision was challenged before the Honourable Supreme Court. It was found that after possession was shown to be taken from the land owner on 20/03/1986, 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. vs. State of Gujarat* (1998) 4 SCC 387, the Honourable 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.

We find from the facts of the present case that the ratio of this decision can be applied to the case in hand. Notwithstanding the manner in which possession of the subject land is shown to have been taken pursuant to notice dated 18/04/1981 issued under Section 10(5) of the Act of 1976, it is seen that issue with regard to determination of compensation under Section 11 was pursued by the predecessor of the present petitioners. No grievance whatsoever was raised at any point of time. As stated above, there is absence of any explanation whatsoever on behalf of the petitioners for approaching

this Court only on 06/12/2019 by filing the present proceedings for challenging the legality of taking over of possession on 21/04/1981.

15. For aforesaid reasons we do not find that there is any case made out for this Court to exercise extraordinary writ jurisdiction under Article 226 of the Constitution of India. By clarifying that we have not examined the challenge to the prayer made in the writ petitions preferred by the Housing Society, this writ petition stands dismissed with no order as to costs.

All pending civil applications stand disposed of accordingly.

(Mrs. Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)