

Ashvini Narwade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.638 OF 2021

Sureshkumar Shrikisan Bhayya and Anr.

... Petitioner

Versus

The State of Maharashtra thr. Secretary Urban
Development Department & Ors.

... Respondents

Dr. Ramdas S. Sabban a/w. Mr. Shrikant S. Kompelli a/w. Ms Arundhati
Sabban for the Petitioner.

Mrs. S. S. Bhende, AGP for State.

Mr. Vishwanath Patil for Respondent No.4.

Mr. Vishwasrao S. Deokar for Respondent No.5.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 29th FEBRUARY, 2024

P.C.

1. We have heard Mr. Sabban, learned Counsel for the Petitioner, Ms. Bhende, learned AGP for Respondent Nos. 1 to 3, Mr. Patil, learned Counsel for Respondent No.4, and Mr. Deokar, learned Counsel for Respondent No.5.
2. This Writ Petition filed under Article 226 of the Constitution of India prays for the following reliefs:-

“(a) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, thereby to direct the Respondent authorities to implement the said Revision Order dt. dt.31- 01-2007 (a copy annexed hereto as Exhibit-B) passed by the Hon'ble Chief Minister for the Government of Maharashtra u/S.34 of the Urban Land (Ceiling & Regulation) Act, 1976, permitting the petitioner landholders to execute the Sec.20 Housing scheme for the said petitioners lands, i.e. the said land admeasuring 7,400 sq. mtrs. situated at T.P.S.- I. out of Final Plot No.30, Sub plot

No.263 (earlier sub plot Nos. 88 to 94 & 101 to 107, CTS-10385 of Solapur city, the possession of R which is with the State Government;

(b) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, thereby to direct the Respondent authorities to implement the said Revision Order dt. dt.31- 01-2007 (a copy annexed hereto as Exhibit-B) passed by the Hon'ble Chief Minister for the Government of Maharashtra u/S.34 of the Urban Land (Ceiling & Regulation) Act, 1976, permitting the petitioner landholders to execute the Sec.20 Housing scheme for the said petitioners remaining lands admeasuring 6195.60 sq. mtrs. T.P.S.- I. out of Final Plot No.30, as per the said Government Order, the possession of which is with the State Government;

(c) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, thereby to direct the Respondent authorities to implement the said Revision Order dt. dt.31- 01-2007 (a copy annexed hereto as Exhibit-B) passed by the Hon'ble Chief Minister for the Government of Maharashtra u/S.34 of the Urban Land (Ceiling & Regulation) Act, 1976, permitting the petitioner landholders to execute the Sec.20 Housing scheme for the said petitioners lands admeasuring 6142.50 sq. mtrs. T.P.S.- I. out of Final Plot No.30, (1862.50 sq. mtrs. under illegal water tank + 4280 sq. mtrs reserved for Community Centre & Dispensary allotted by Collector order dt.08-08-1997 to S.M.C., possession of which is illegally given by Government on 29-05-2007 after the Government Order dt.31-01-2007;

(d) Any other order, relief or direction as this Hon'ble High Court deem fit and proper in favor of the applicant.

(e) Cost of this petition may be provided for;"

3. At the outset, we may observe that this Petition was filed on 9th November 2019. The reliefs which are sought for in the Petition are in respect of the implementation of an Order dated 31st January 2007 which is stated to be passed by the State Government (Hon'ble Chief Minister, Government of Maharashtra), exercising revisionary powers under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "**the ULC Act**"). Since the year 1980, as pointed out on behalf of the Municipal Corporation-Respondent No.4 and also by Mr. Deokar, learned Counsel for Respondent No.5, in regard

to the subject land, allotments have been made, as also construction has been undertaken as also third party rights have already been created. On such backdrop objections as raised on behalf of the Respondents is to the maintainability of the Petition on the ground of gross delay and laches. It is submitted that a cause of action which has in fact accrued to the Petitioner in the year 2007, is sought to be espoused after about 12 years and thus only on such ground the Petition is required to be dismissed.

4. On such objection as raised on behalf of Respondents, we find that there is much substance, that the Petition is barred by delay and laches. A Perusal of the prayer itself would make it abundantly, clear that what is sought to be espoused by the Petitioner is a cause of action which is in fact accrued to the Petitioner in the year 2007, which is by virtue of the State Government passing an order under Section 34 of the ULC Act. For about 12 years the Petitioners slept over their rights. This would be also relevant, also considering the subsequent developments namely that on 29th November 2007 the ULC Act was repealed by the State Government adopting the Urban Land ceiling Repeal Act, 2002 passed by the Parliament. Thus, after repeal of the 2007 Act, the Petitioner was well aware that legal consequences which would be brought about, namely the orders when the ULC Act loosing their legal efficacy on such orders being abated by execution of law. Despite such consequences being known to the Petitioners for the reason known to the Petitioners, the Petitioner

chose not to assert any rights under the orders in question, much less to approach this Court for any relief. This in our opinion itself would show that the Petition, apart from being barred by the well settled legal principles of delay and laches, being filed with an inordinate delay of 12 years, also appears to be filed for extraneous reasons. The principles of law on the doctrine of delay and laches were considered by this Court in a recent decision of this Court in **Sansar Texturisers Pvt. Ltd. Vs. Union of India & Ors.**¹, In such decision the Court considering the decisions in **Shiv Dass v. Union of India**², **Chennai Metropolitan Water Supply and Sewerage Board v. T. T. Murali Babu**³, **Baljeet Singh (dead) through Legal Representatives v. State of Uttar Pradesh**⁴, **Union of India v. N. Murugesan**⁵ to hold that a Writ Petition filed with an inordinate delay to assert state rights would not be maintainable. The relevant observations as made by the Court on the principles of delay and laches are required to be noted, which read thus:-

“19. Apart from the above clear position in law to maintain a writ petition, in our clear opinion, the petition is completely barred by delay and laches. The principles of law in this regard are well settled. In **Shiv Dass Vs. Union of India and Others**⁶, the Supreme Court has held that normally, in the case of a belated approach, the writ petition has to be dismissed. It was observed that delay or laches is one of the factors to be borne in mind by the High Courts when it exercises its discretionary powers under Article 226 of the Constitution of India. It was held that in an

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- 1** 2024 SCC Online Bom 235
 - 2** (2007) 9SCC 274
 - 3** ((2014) 4 SCC 108
 - 4** (2019) 15 SCC 33
 - 5** (2022) 2 SCC 25
 - 6** (2007) 9 Supreme Court Cases 274

appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right, as taken in conjunction with the lapse of time and other circumstances, which would cause prejudice to the opposite party and that the discretion has to be exercised judicially and reasonably. Even when a fundamental right is involved in the matter, it is still the discretion of the Court. Referring to the decision in **State of M.P. vs. Nandlal Jaiswal**⁷, it was observed that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is an inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court would decline to intervene and grant relief in exercise of its writ jurisdiction. It was also held that such rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after an unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. Also referring to the decision in **K.V. Rajalakshmiah Setty vs. State of Mysore**⁸, it has been pointed out that representations cannot be the adequate explanation to take care of delay (albeit in the present case there is none). It was observed that there is a limit to the time which can be considered to be reasonable for making representation and if the Government had turned down one representation, the making of another representation on similar lines will not explain the delay. Referring to the observations of Sir Barnes Peacock in **Lindsay Petroleum Co. Vs. Prosper Armstrong Hurd**⁹ which was approved by the Supreme Court in **Moon Mills Ltd. vs. M. R. Meher**¹⁰ and **Maharashtra SRTC vs. Balwant Regular Motor Service**¹¹, it was observed thus:

“7. Sir Barnes had stated that now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be

7 (1986) 4 SCC 566

8 AIR 1967 SC 993

9 (1874) 5 PC 221

10 AIR 1967 SC 1450

11 AIR 1969 SC 329

reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

20. In **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu**¹², the Supreme Court referring to the aforesaid decisions, pertinent observations were made that the doctrine of delay and laches ought not to be lightly brushed aside and the writ court is required to weigh the explanation offered and the acceptability of the same, as it is not only the duty of the Court to protect the rights of the citizens, but simultaneously to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. It was observed that delay reflects inactivity and inaction on the part of a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, the law does not permit one to sleep and rise like a phoenix. It was observed that delay does bring in hazard and causes injury to the lis. It was also observed that remaining innocuously oblivious to such delay does not foster the cause of justice, on the contrary, it brings in injustice which is likely to affect the others. It was observed that a Court is not expected to give indulgence to such indolent persons who compete with “Kumbhakarna” and for that matter “Rip Van Winkle”. In such case, a delay of four years was held to be fatal. Justice Dipak Misra, speaking for the Bench, observed thus:-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated

stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

21. The Supreme Court reiterated the above principles in **Baljeet Singh (dead) through Legal Representatives and others Vs. State of Uttar Pradesh and Others**¹³ and held that the matter requires examination from another aspect, namely, laches and delay. It was observed that it is a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay.

22. In **Union of India and Others Vs. N. Murugesan and Others**¹⁴ the principles of delay, laches and acquiescence were succinctly explained in which the Court observed that the principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions, however, they have their distinct characters and distinct elements. It was observed that one can say that delay is the genus to which laches and acquiescence are species. It was observed that laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. It was further observed that such principles are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The observations of the Supreme Court on delay and laches would aid the conclusion which we intend to derive in the present proceedings so as to non-suit the petitioner applying the principles of delay and laches. The observations of the Supreme Court read thus:-

“Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court.

Laches

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on

the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.”

Thus, applying the above principles of law to the facts of the present case, we are in complete agreement with the Respondents when they contend that this Petition deserves to be dismissed on the ground of delay and laches. We find from the averments as made in the Petition that the inordinate delay in filing of the Petition from 2007 till 2019 has also not been explained, much less satisfactorily when the Petitioner has invoked the discretionary

jurisdiction, even assuming that the Petitioner had any cause of action to assert the prayers as made in the Petition. The Petitioners are certainly not in a position to achieve what they could hope, if at all, achieved in the year 2007, by such long passage of time.

5. Further, even assuming that the Petition is not to be dismissed on the ground of the same being barred by gross delay and laches, even otherwise the prayers as made in the Petition are not maintainable, considering the fact that the ULC Act itself was repealed by the State Government w.e.f. 29th November 2007. On the repeal of the ULC Act, the implementation of the orders passed below the provisions of Section 34 of the ULC Act would abate by the mandate of Section 4 of the Urban Land(Ceiling and Regulation) Repeal Act,1999 which reads thus:-

Section 4. Abatement of legal proceedings- 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:

Provided that this section shall not apply to the proceedings relating to sections 11,12,13 and 14 of the principal Act insofar 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.

(emphasis supplied)

6. Admittedly, the issue which was raised before the State Government in the revision proceedings filed by the Petitioners under Section 34 of the ULC Act, was arising from the proceedings of Section 8(4) of the ULC Act, and the further orders/action taken under Section 10(3) and Section 10(5) of the ULC

Act. In such context the impugned order dated 31st January 2007 has been passed under Section 34 of the ULC Act. It would be relevant to note the impugned order which read thus:-

“(Official Translation of a photocopy of an ORDER, typewritten in Marathi)

Exhibit ‘B’

*No. Review-1023/M. No.392/ULCH-3.
Urban Development Department,
Mantralaya, Mumbai – 400 032.
Date: 31st January, 2007.*

REVIEW ORDER

UNDER SECTION 34 OF THE URBAN LAND (CEILING ON HOLDING AND REGULATION) ACT, 1976, PASSED BY THE HON'BLE SHRI VILASRAO DESHMUKH, HON'BLE CHIEF MINISTER.

Whereas, pursuant to the Statement under Section 6(1) of the Act, submitted by the land-holders from Solapur Urban Agglomeration by names Shri Vijaykumar Shrikisan Bhaiya and Shri Sureshkumar Shrikisan Bhaiya, in respect of the land admeasuring 62,753.03 Sq. Mtrs. and 2,51,107.63 Sq. Mtrs. respectively, of their ownership, situated at Village – Solapur, the Competent Authority, Solapur, by his Order under Section 8(4) [of the Act] passed on the date 13.06.1979 in both the matters, sanctioned the area admeasuring 1,500 Sq. Mtrs. each as Admissible Area and declared the area admeasuring 61,253.03 Sq. Mtrs. and 2,49,607.63 Sq. Mtrs., respectively, thus total area admeasuring 3,10,807.66 Sq. Mtrs. as Surplus Area. In respect of the said areas declared as surplus, the action under Section 10(1) of the Act was taken on the date 13.06.1979, the action under Section 10(3) was taken on the dates 08.11.1979 and 06.09.1979 and the action under Section 10(5) was taken on the dates 01.04.1980 and 20.02.1980.

And whereas, from out of the said area declared as surplus, the Government, under Section 23, has allotted the area admeasuring 60,220 Sq. Mtrs. to Karnik Nagar Co-operative Society, the area admeasuring 42,971.70 Sq. Mtrs. to Ekta Nagar Co-operative Society and the area admeasuring 7,400 Sq. Mtrs. to Hingul Ambika Education Society. Further, as per the provisions of the Government Resolution dated 01.10.1997, as the area admeasuring 1,90,548.40 Sq. Mtrs. from out of the area declared as surplus is located beyond the circumference of the area of Solapur Urban Agglomeration, the same has been excluded from the provisions of the Urban Land Ceiling on Holding Act and has been returned to the holders of the land. That means, as there is a construction (structure) standing on the area admeasuring 524.96 Sq. Mtrs. from out of the remaining area admeasuring 9,720.56 Sq. Mtrs., the surplus area admeasuring 9,195.60 Sq. Mtrs. has remained in balance

with the Government.

And whereas, as the Admissible Area returned to the land holders has been returned to them with the construction (structure) standing thereon, they have requested to modify the Order passed under Section 8(4) and to give the said area from out of the area declared as surplus.

And whereas, the hearing in this matter, under Section 34 of the Act, was held on the date 16.09.2006 and at the time of said hearing, Shri Alok V. Bhaiya of behalf of the land holders, and Shri M.M. Masood and other officers from the Office of the Deputy Collector and Competent Authority, Solapur Urban Agglomeration had remained present. They advanced their arguments in the matter and the say of all of them was heard.

And whereas, on perusing the information submitted by the persons concerned, arguments advanced by them and the report submitted by the Competent Authority, Solapur, at the time of hearing, the facts that are noticed are as under:-

1) In pursuance of the Statement under Section 6(1) of the Act, submitted by the land-holders by names Shri Vijaykumar Shrikisan Bhaiya and Shri Sureshkumar Shrikisan Bhaiya, in respect of their land admeasuring 62,753.03 Sq. Mtrs. and 2,51,107.63 Sq. Mtrs. respectively of their ownership, situated at Village – Solapur, the Competent Authority, Solapur, by his Order dated 13.06.1979, passed under Section 8(4) [of the Act], sanctioned the area admeasuring 1,500 Sq. Mtrs. each as Admissible Area and declared the area admeasuring 61,253.03 Sq. Mtrs. and 2,49,607.63 Sq. Mtrs., respectively, thus total area admeasuring 3,10,807.66Sq. Mtrs., as Surplus Area.

2) In respect of the said areas declared as surplus, the action under Section 10(1) of the Act was taken on the date 13.06.1979, the action under Section 10(3) was taken on the dates 08.11.1979 and 06.09.1979 and the action under Section 10(5) was taken on the dates 01.04.1980 and 20.02.1980.

3) From out of the said area declared as surplus, the Government, under Section 23, has allotted the area admeasuring 60,220 Sq. Mtrs. to Karnik Nagar Co-operative Society, the area admeasuring 42,971.70 Sq. Mtrs. to Ekta Nagar Co-operative Society and the area admeasuring 7,400 Sq. Mtrs. to Hingul Ambika Education Society.4) Further, as per the provisions of the Government Resolution dated 01.10.1997, as the area admeasuring 1,90,548.40 Sq. Mtrs. from out of the area declared as surplus is located beyond the circumference of the area of Solapur Urban Agglomeration, the same has been excluded from the provisions of the Urban Land Ceiling on Holding Act and has been returned to the holders of the land. That means, as there is a construction (structure) made on the area admeasuring 524.96 Sq. Mtrs. from out of the remaining area admeasuring 9,720.56 Sq. Mtrs., the surplus area admeasuring 9,195.60 Sq. Mtrs. is remained in balance with the Government.

5) As the Admissible Area returned to the land holders has been returned to them with the construction (structure) standing thereon, they have made an application to the Government and have requested to modify the Order passed under Section 8(4)

in this matter and to give them the area admeasuring 1,500 Sq. Mtrs. each, thus total area admeasuring 3,000 Sq. Mtrs. as admissible area from out of the area declared as surplus.

6) The Competent Authority, in his report, has submitted that the construction on the area that has been given as admissible area to the land-holders has been carried out prior to the Act coming into force and has, therefore, recommended to give them admissible hissa (area) from out of the surplus area which is in the possession of the Government.

7) As per the provisions of the U.L.C.H. Act, as the provisions of the said U.L.C.H. Act are not applicable to the area occupied by structures, admissible area is allotted to the statement-holder (Land Holder) by excluding the said area. However, in the present matter, it is seen that the then Competent Authority has given the admissible hissa to both the statement-holders only from out of the area occupied by the structures.

Considering the aforesaid facts of the present matter, it is seen that, in the matter of Shri Vijaykumar Shrikisan Bhaiya and Shri Sureshkumar Shrikisan Bhaiya, while passing both the orders under Section 8(4) on the date 13.06.1979, admissible hissa (areas) have been given from out of the area occupied by structures. Despite this fact being contrary to the provisions in the said Act, now, after the period of 26 years, it would not be proper to again modify the orders passed under Section 8(4) in these two matters. However, it could be considered to grant permission under Section 20 to implement a scheme of constructing houses on the surplus area that is in the possession of the Government.

Therefore, in view of the aforesaid discussion, by exercising the powers under Section 34 of the Urban Land (Ceiling on Holding and Regulation) Act, 1976, order in this matter is passed as under:

1) The Action under Section 10(3) and under Section 10(5) in respect of the area of Shri Vijaykumar Shrikisan Bhaiya and Shri Sureshkumar Shrikisan Bhaiya, the land-holders from Solapur Urban Agglomeration, that has been declared as surplus area and is in the possession of the Government, is set aside.

2) The Land-holders are permitted to implement a Scheme of constructing houses on the land declared as surplus.

3) In view of the above, the Deputy Collector and Competent Authority, Solapur Urban Agglomeration shall take necessary action.

Sd/-

[Vilasrao Deshmukh]

Chief Minister, Maharashtra State.

To,

Shri Vijaykumar Shrikisan Bhaiya and

Shri Sureshkumar Shrikisan Bhaiya.

C/o. Shri Murarilal Buddharam Agrawal,

42-B/26, Samrat Chowk, Solapur.

Copy to:

1) Divisional Commissioner, Solapur Division, Solapur.

- 2) Collector, Solapur.
 3) Municipal Commissioner, Solapur.
 4) Deputy Collector and Competent Authority, Solapur Urban Agglomeration, Central Administrative Building, First Floor, 'D' Ward, Solapur.
 5) Select File/ULCH-3, Urban Development Department, Mantralaya, Mumbai – 32.

(The Seal of the Urban Development Department)	Office Copy.	(Signature Illegible) [Shyam Vardhane] Joint Secretary, Government of Maharashtra
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Right to Information Act, 2005.
 Information in pursuance of the
 Application dated 02.07.2005.
 Page No. 131-132.

Issued
02.02.2007.

7. Thus, it is clear from the perusal of the impugned order that in respect of the areas declared as surplus, action under Section 10(1) of the Act was taken on 13th June 1979, further action under Section 10(3) was taken on 8th November 1979 and 6th September 1979. Thereafter action under Section 10(5) was taken on 20th February 1980 and 1st April 1980. To appreciate as to what would be the nature of the orders / actions which would be taken under the provisions of Section 10 of ULC Act, which are consequent to a prior procedure undertaken under Section 6 and 8, it would be necessary to note the relevant provisions which read thus:-

“Section 6. Persons holding vacant land in excess of ceiling limit to file statement.- (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant

lands within the ceiling limit which he desires to retain:

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words "Every person holding vacant land in excess of the ceiling limit at the commencement of this Act", the words, figures and letters "Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement" had been substituted.

Explanation.-*In this section, "commencement of this Act" means,-*

- (i) the date on which this Act comes into force in any State;*
- (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;*
- (iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.*

(2) If the competent authority is of opinion that-

(a) in any State to which this Act applies in the first instance, any person held on or after the 17th day of February, 1975 and before the commencement of this Act or holds at such commencement; or

(b) in any State which adopts this Act under clause (1) of article 252 of the Constitution, any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit; so, however, that the period or the aggregate of the periods of such extension shall not exceed three months.

(4) The statement under this section shall be filed,-

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf;

(b) in the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both;

(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by a person competent to act on his behalf.

Explanation.-For the purposes of this sub-section, "principal officer",-

(i) in relation to a company, means the secretary, manager or managing-director of the company;

(ii) in relation to any association, means the secretary, treasurer manager or agent of the association, and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of his intention of treating him as the principal officer thereof.

Section 8. Preparation of draft statement as regards vacant land held in excess of ceiling limit.- (1) On the basis of the statement filed under section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under section 6.

(2) Every statement prepared under sub-section (1) shall contain the following particulars, namely: -

(i) the name and address of the person;

(ii) the Particulars of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;

(iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant lands; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

Section 10. Acquisition of vacant land in excess of ceiling limit.- (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a

notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3),-

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.-In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to-

(a) any vacant land owned by the Central Government, means the

Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924, (2 of 1924.), means that State Government.”*

(Emphasis Supplied)

8. It is seen that after an action under Section 10(3) was taken by the State Government on 1st April 1980 and 20th February 1980, the Petitioner assailed the concluded actions taken under Section 10 which was almost after a period of 27 years, when the Petitioners invoked the jurisdiction of the Revisional Authority of the State Government under Section 34 of the Act. To appreciate such jurisdiction of the State Government, Section 34 needs be noted, which reads thus:-

34. Revision by State Government- *The State Government may, on its own motion , call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under section 12 or section 30 or section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:*

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

9. It is on such grossly belated revision application, the Revisional Authority exercised its discretion, and without granting an opportunity of a hearing to the affected parties, has passed the impugned order. We have great doubt on the legal sanctity and tenability of such orders passed by the Revisional Authority, exercising its jurisdiction, after such an inordinate delay of about 27 years, on the Petitioners purportedly invoking the revisional

jurisdiction of the State Government to reopen the proceedings under Section 10(5) which had attained finality in the year 1980.

10. We may thus observe that for several reasons to grant the prayers in the present petition, is an impossibility, which is nothing but execution of order dated 31 January 2007, passed by the State Government on the petitioner's revision.

11. We have already noted that Section 4 of the Repeal Act provides for abatement of legal proceedings when it ordains that all proceedings relating to any order made or purported to be made under the ULC Act pending immediately before the commencement of the repeal Act before any Court Tribunal or other authority, which would include the orders passed by the State Government under Section 34 shall abate. This is also not a case which would stand saved by the proviso below Section 4 of the Repeal Act. Thus *ex facie* the Petitioner would not be entitled to any reliefs as prayed for.

12. This apart, it is the Petitioners' contention that by virtue of the orders passed under Section 34 of the ULC Act, the Petitioners would become entitled for making an application for a scheme to be approved under Section 20 of the ULC Act in respect of the land. Such contention is too far-fetched to say the least. Admittedly, there was no order which was passed under Section 20. There is no possibility of now any jurisdiction being available with the Competent Authority to pass any order under Section 20 in view of the repeal

of the ULC Act with effect from 29 November 2007. It is therefore inconceivable that any further orders under the provisions of the ULC Act can at all be passed, so as to reopen the proceedings under the ULC Act which in the present case stood concluded in the year 1980.

13. We, accordingly find that the Petition is wholly devoid of merits. It is accordingly rejected. No order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)