

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

MISC. CIVIL APPLICATION NO. 756 OF 2019

IN

WRIT PETITION NO. 5022 OF 2013 (D)

Sunilkumar S/o Motilal Sharma and others

Vs.

The State of Maharashtra, through its Secretary, Urban Development Department, Mantralaya,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Sunil Manohar, Senior Advocate with Shri A.C. Dharmadhikari,
Advocate for the petitioners
Shri A.S. Fulzele, Addl.G.P. for the respondent Nos. 1 to 3
Shri P.P. Kothari, Advocate for respondent Nos. 4 & 5

CORAM : AVINASH G. GHAROTE AND
SMT M.S. JAWALKAR, JJ.

DATE : 23.08.2024.

The application seeks review of the judgment dated 07/06/2019 (page 21) to the extent, it holds that the sale-deed dated 01/09/1980 executed by the land owner Mr. Shaikh Mehboob Shaikh Amir, in favour of G.P. Deshpande and so also the sale-deed dated 20/02/1984 executed by G.P. Deshpande in favour of the petitioners are ab initio void in view of the provisions of Section 5(3) & 10(4)(1) of the Urban Land (Ceiling and Regulation) Act ('ULC Act'), 1976. It is contended by Mr. Manohar, learned Senior Counsel for the applicants that the aforesaid two sale deeds are in respect of land of Survey No. 86/2, Mouza Drugdhamna. Urban land

sealing proceedings were initiated and a return under Section 6(1) of the ULC Act was filed by the original land owner Mehbood S/o Shaikh Amir on 14/09/1976, in respect of the land of Survey No 86/2 admeasuring 42814 square meters and of Survey No. 100/2 admeasuring 49290 square meters. By an order under Section 6 of the ULC Act the competent authority declared the entire land of Survey No. 100/2 as surplus. It also found that an area admeasuring 33152.09 square meters out of the entire land of Survey No. 86/2 admeasuring 42814 square meters was under agricultural cultivation on account of which, since it did not satisfy the definition of urban land under Section 2(o)(ii) of the ULC Act deleted it for the purpose of calculating the surplus vacant land and declared an area admeasuring 8161.91 square meters from and out of the land of Survey No. 86/2 as surplus vacant land. Since the sale deeds dated 01/09/1980 and 20/02/1984 were in respect of the entire land of Survey No. 86/2, which have been declared as void ab initio, a clarification is sought, that such a declaration would not encompass the land admeasuring 33152.09 square meters from and out the land of Survey No. 86/2.

2. Mr. Fulzele, learned Assistant Government Pleader for non applicant No. 1 to 3 and Mr Kothari, learned Counsel for the respondent Nos. 4 and 5 do not dispute the order passed under Section 6(1) of the ULC Act, dated 10/04/1987 (page 98), which depicts the above position.

3. If the order dated 10/04/1987, under Section 6 of the ULC Act, passed by the competent authority is not disputed then the sale deeds dated 01/09/1980 & 20/02/1984, cannot be declared as ab initio void in respect of the entire land of Survey No. 86/2 but such a declaration would only be restricted to an area admeasuring 8161.91 square meters as that is the only area which is declared as surplus vacant land out of the entire land of Survey No. 86/2.

4. We, therefore, review the judgment dated 07/06/2019 and declare that the declaration of the sale deeds dated 01/09/1980 & 20/02/1984 would be void only in respect of land admeasuring 8161.91 square meters and would continued to be valid in respect of the balance land. The application is accordingly allowed in the above terms. No costs.

(SMT M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)