



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

WRIT PETITION NO. 3058 OF 2023

- 1) Liladhar S/o Namdeo Dakhare,
Aged about 50 years, Occu. - Agriculturist,
- 2) Sanjay Namdeo Dakhare,
Aged about 49 years, Occu. - Agriculturist,
- 3) Kamlabai W/o Namdeo Dakhare,
Aged about 60 years, Occu. - Housewife,

All Nos.1 to 3 R/o. House No.230,
Near Mata Mandir, Zenda Chowk,
Apartment No.2, Wanadongri 440 010,
Tahsil Hingna, District Nagpur.
- 4) Rajesh Kishor Bodele,
Aged about 45 years, Occu.- Business,
R/o. Plot No.153, Abhilasha Apartment,
Hill Top, Ambazari, Nagpur.

.... **PETITIONERS**

// VERSUS //

- 1) The 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
Tahsil Office, Nagpur.

.... **RESPONDENTS**

Mr. A.S. Manohar, Advocate for petitioners.
Mr. N.R. Rode, Assistant Government Pleader for respondents.

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

DATED : 17th APRIL, 2024

ORAL JUDGMENT (Per : AVINASH G. GHAROTE, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. The petition, seeks a declaration regarding lapsing of the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, "the ULC Act"), on the ground, that possession was not taken under Section 10(5) of the ULC Act. Even the vesting is in question on the ground that Section 10(3) requires a specific date to be mentioned in the notification as the date of vesting and since the notification dated 01.11.2007 in that regard does not mention such date, even the vesting cannot be held to be legal and proper.

4. Learned Assistant Government Pleader for the respondents, while opposing the petition, contends that the date of notification under Section 10(3) of the ULC Act has to be considered as the date of taking possession, in view of which, it is contended that the repeal of the said Act would not be applicable.

5. The provision of Section 3(1)(a) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which came into effect from 22.03.1999, saves lands affected by ULC from the provision of Repeal Act, where the vesting of any vacant land, possession of which has been taken over by the State or any Authority authorised in this behalf.

6. We have posed a specific query to the learned AGP as to whether any receipt is on record of the ULC Authority, to indicate taking over possession of the land in question, to which an affidavit has been filed on 21.03.2024, stating that there is no document or receipt of possession in the record and proceedings of ULC Case No.2599 of 1976. This would clearly indicate that possession of the land is not demonstrable to have been taken over by the competent Authority, in terms of Section 10(5) of the ULC Act. The requirements of savings Clause 3(1)(a) of the Repeal Act, which also

contemplate receipt of possession of the land affected by a notification under Section 10(3) of the ULC Act, therefore clearly have not been complied with. Though, it is contended that the date of notification under Section 10(3) of the ULC Act should be considered as the date of having taken possession, we, however, are unable to accept this proposition for the reason that the action of taking possession under Section 10(5) of the ULC Act, has to be subsequent in point of time to the publication of the notification under Section 10(3) of the ULC Act. This is further indicated from the fact that the notification under Section 10(3) of the ULC Act, is dated 01.11.2007, consequent to which a notice for possession is claimed to have been sent to the land holder on 06.11.2007.

7. Since in view of the admitted position as spelt out from the affidavit dated 21.03.2024, that the position is not in dispute indicating non-taking over of possession, it is obvious that the vesting is not complete, considering which, the same is not saved under Section 3(1)(a) of the ULC Repeal Act, 1999. We, therefore, hold that the ULC proceeding, in respect of the land bearing Gut No.25/2(old), presently Survey No.109 of Mouza Wanadongri stands lapsed.

8. The petition is allowed in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

Kirtak