



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

WRIT PETITION NO.1446 OF 2023

- PETITIONERS** : 1 Vachhalabai W/o Kisan Dakhale,
Aged about 75 years, Occupation –
Agriculturist, Resident of Gram
Panchayat Ward No.2, Wanadongri,
Tahsil Hingna, District Nagpur.
- 2 M/s. Ratnamala Construction,
A partnership firm through its
Authorised Partner Rajesh S/o
Kishor Bodele, Aged about 42
years, Occupation – Business,
Resident of Plot No.153, Abhilasha
Apartment, Hill Top, Ambazari,
Nagpur.

..VERSUS..

- RESPONDENTS** : 1 The State of Maharashtra,
Through Department of Urban
Development, Mantralaya, Madam
Cama Road, Mumbai.
- 2 The Additional Collector and the
Competent Authority (Urban Land
Ceiling), having its office at Civil
Lines, Nagpur.
- 3 The Tahsildar, Tahsil Hingna,
Nagpur, having its office at Tahsil
Office, Nagpur.

Mr A. A. Naik, Advocate for Petitioners.
Mr P. P. Pendke, AGP for Respondents.

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

DATE : **2nd FEBRUARY, 2024.**

ORAL JUDGMENT (PER : AVINASH G. GHAROTE)

. 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 (Page 91).

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, 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 31.01.2024, stating that there is no document or receipt of possession in the record and proceedings of ULC Case No.2610 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 31.01.2024, that there is no position in dispute indicating 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 of survey Nos.25/1 and 25/3 of Mouza Wanadongri stands lapsed.

8. The petition is disposed of accordingly. No order as to costs.

(M. S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

TAMBE.