



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

WRIT PETITION NO. 28 OF 2020

(Shri Tukaram S/o Namdevrao Borkar and others vs. State of Maharashtra and others)

with

WRIT PETITION NO. 3144 OF 2021

(Manoj s/o Sewakram Ande and another vs. State of Maharashtra and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of the directions
and Registrar's orders.*

Court's or Judge's order

Mr. P.V.Vaidya, Advocate for petitioners in both petitions.
Mr. A.S.Fulzele, Additional Government Pleader for respondent
Nos.1 and 2 in both petitions.
Mr. Nalin Majithia, Advocate for respondent No.3 in WP 28/2020.
Mr. B.N.Mohta, Advocate for respondent No.3 in WP 3144/2021.

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATE : APRIL 17, 2025

Writ Petition No.3144/2021

1) Heard Mr.Vaidya, learned counsel for the petitioners.
Mr.Mohta, learned counsel for respondent No.3, and Mr.Fulzele,
learned Additional Government Pleader for respondent Nos.1
and 2.

2) The petition seeks declaration, that proceedings taken
under the Urban Land (Ceiling and Regulation) Act, 1976 (ULC
Act) in respect of Khasara Nos.129/1 and 129/2 Mouja
Drugdhamana Tahsil and District Nagpur under the provision of
ULC Act in respect of U.L.C.case No.2181/1976 stand lapsed on
the plea that possession in consonance with the mandate of
Section 10(5) and 10(6) of the ULC Act was not taken.

3) Mr.Vaidya, learned counsel submits that Section 10(5),
requires minium 30 days period notice before the possession can

be taken and any claim, by the respondents of having taken possession prior to that, would be illegal and contrary to the aforesaid statutory position and therefore, could not sustain in law, on account of which, the petition needs to be allowed.

4) Learned counsel relied upon ***Tarabai Tulshiram Meshram vs. State of Maharashtra and others 2020 (2) Mh.L.J. 440*** and so also ***Liladhar s/o Namdeo Dakhare and others vs. State of Maharashtra in Writ Petition No.3058/2023 decided on 17/04/2024.***

5) Mr.Mohta learned counsel for respondent No.3 contends that the period of 30 days indicated in Section 10(5) of the ULC Act is not a mandatory notice period and it is permissible for the authorities, to indicate a date before which the possession can be taken. He further submits that since in spite of receipt of notice under Section 10(5) the land owner did not cooperate, the act of taking over possession of land on 09/11/2019 cannot be faulted with. In respect of the mode of possession, learned counsel places reliance on ***Kapilaben Ambalal Patel vs. State of Gujrat and another (2021) 12 SCC 95.*** He further relies upon ***State of Assam vs. Bhaskar Jyoti Sharma (2015) 5 SCC 321*** on the ground of delay and latches.

6) It is not in dispute that Order under Section 8(4) of the U.L.C.Act came to be passed in the instant matter on 05/08/1988 (page 31) in pursuance to which, a notification under Section 10(3) came to be published on 13/09/1999. By notice dated 24/09/1990, the date of taking possession of the surplus vacant land, was fixed as 09/11/1990(page 34). It is not disputed by the learned counsel for the petitioner that this notice under Section 10(5) was served upon the land owner on

04/11/1990, which is also apparent from the endorsement made underneath in the said notice. Since the original owner, did not turn up on 09/11/1990, ex-parte possession was taken over on 09/11/1990 under the possession receipt on the same date by the Nayab Tahsildar, Nagpur (Rural) and handed over to the Deputy Engineer of respondent No.3 on the same date (page 37). A Panchnama was also prepared on 09/11/1990, regarding the taking over the ex-parte possession by recording that in spite of being noticed, the original owner had not turned up for delivery of possession and therefore, possession was being taken over by the party (page 57 of the reply by respondent No.3 dated 03/04/2025). After the taking over of possession it is duly recorded in the 7/12 extract (page 36) which also records the receipt of possession on 09/11/1990 by the respondent No.3.

7) It is therefore, apparent that the factum of taking over possession cannot now be disputed by the petitioner, in the year 2021, for the first time by filing of the present petition.

8) The mode of taking possession of lands under the ULC Act, has been indicated by the Hon'ble Apex Court in *Kapilaben Patel* (supra) in the following manner :-

"26. The respondents had additionally relied on the decision of this Court in Larsen & Toubro Ltd. Case¹⁹, wherein the Court adverted to the exposition in Balwant Narayan Bhagde vs. M.D.Bhagwat²², Balmokand Khatri Educational & Industrial Trust vs. State of Punjab²³ and T.N.Housing Board vs. A. Viswam²⁴ regarding the settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. Further, that the normal mode of taking possession is drafting the Panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paras 14 to 16 of Bhaskar Jyoti Sarma¹⁸. However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the

Division Bench of the High Court that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the possession panchnama dated 20-3-1986, suffered from laches. The Division Bench of the High Court noted that the learned Single Judge completely glossed over this crucial aspect of the matter, and we find no reason to depart from that conclusion.”

9) Though Mr.Vaidya, relies upon ***A.P.Electrical Equipment Corporation vs. Tahsildar and others 2025 SCC OnLine SC 447***, and specifically para 25 thereof, all that it speaks of is that notice under Section 10(5) is necessary. It does not lay down a proposition that before taking action under Section 10(6) another notice is required to be issued or for that matter, that the notice under Section 10(5) has to be of a minimum period of 30 days. *Tarabai Meshram* (supra), also does not mandate, that minimum notice period under Section 10(5) has to be of 30 days. Insofar as the observations made therein in para 23 that taking of possession was on no date earlier than 30 days from the date of service of notice under Section 10(5) is something which is not borne out from the reading of the language of Section 10(5) or 10(6), of the ULC Act, as they do not mandate the notice period should be of minimum 30 days or that possession before expiry of the period of 30 days from the date of service of notice under Section 10(5) cannot be taken. The above observation in *Tarabai Meshram* (supra), therefore, being contrary to the statutory scheme as indicated by the language of Section 10(5) and 10(3) of the ULC Act, clearly is to be held to be per incuriam. Though Mr. Vaidya also relied upon *Liladhar Dakhare* (supra) that was a case in which there was no document or receipt of possession in the record and proceedings of the ULC on the basis of which it was held that possession of the land was not demonstrable to have been taken over, by the competent authority which does not assist the learned counsel for the petitioner in any manner.

10) There is no dispute that the above mode has been followed while taking possession in the instant matter as is indicated from the possession receipt and the panchnama as observed above.

11) That takes us to the contention that the period of 30 days for the notice under Section 10(5) is mandatory. The reading of the language of Section 10(5), would indicate that what is mandatory is the issuance of a notice upon the land owner whose land has been declared surplus for delivering possession of a surplus land, calling upon him to deliver the possession within 30 days from the service of the notice. That does not mean a shorter period of time cannot be mentioned in the said notice, for the purpose of delivery of possession. Since the receipt of notice under Section 10(5) on 04/11/1990, by the original owner is not disputed, and had the original owner being aggrieved by this shorter period of time, it was open for the original owner to have questioned it by appropriate proceeding at that relevant time itself. A grievance in that regard cannot now be permitted to be raised after a passage of more than 30 years from the delivery of possession of the land in question.

12) It is also necessary to note that it is a settled position of law that the provision which is made for the benefit of a litigant can always be waived by the said litigant, therefore, by not objecting to a shorter period of time, as indicated in the said notice under Section 10(5) it can be presumed that the original owner waived off the requirement of a notice indicated larger period of time, if it was so. The expression "within 30 days from the date of service of notice", as contained in Section 10(5)

would indicate the outer time limit within which the owner is called upon to deliver possession of the surplus vacant land. It does not indicate that the notice period is 30 days only after which possession can be taken. Thus, the expression "within 30 days of the service of notice" would necessarily mean any duration within these 30 days period, of whatever length and according to us, does not mean that possession cannot be taken before expiry of 30 days from the date of service of notice.

13) In view of the aforesaid discussion, we are not prepare to hold, that possession of the surplus vacant land in question has not been taken under the possession receipt dated 09/11/1990 and there has been no compliance of the statutory requirement of the provisions of Section 10(5) and (6) of the ULC Act. In the result the petition fails, as such dismissed. No order as to costs.

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1) The legal position is also the same, but for the fact that the notification order under Section 8(4) is dated 15/12/1987, the notification under Section 10(3) is dated 26/09/1989 and the notice u/s. 10(5) of the ULC Act is dated 20/08/1990 fixing the date of 25/09/1990 as the date on which the possession was taken, in pursuance to which, the possession was taken on 25/09/1990 at 2.40p.m. under the possession receipt of the same date and the panchanama was also drawn on the same date in respect of the surplus vacant land of Survey No.206/2 Mouja Lawa Tahsil and District Nagpur. For the reasons

stated in Writ Petition No.3144/2021 as recorded above the present petition also stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

KOLHE