

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3922 OF 2016**

Zainulabedin Abdul Razzak Kokni & Ors. ... Petitioners
vs.
The Additional Collector and Competent
Authority, Nashik and others ... Respondents

**WITH
INTERIM APPLICATION NO. 1160 OF 2025**

M/s. Nirman Estate Developers Pvt. Ltd. ... Applicant

In the matter between:

Zainulabedin Abdul Razzak Kokni & Ors. ... Petitioners
vs.
The Additional Collector and Competent
Authority, Nashik and others ... Respondents

**IN
WRIT PETITION NO. 3922 OF 2016**

Mr. Vivek Salunkhe a/w Mr. Akshay Petkar, Mr. Vivek M. Punjabi, Mr. Ashish Venugopal and Mr. Priyansh R. Jain for Petitioners.

Ms. Neha S. Bhide, Govt. Pleader, a/w Mr. O. A. Chandurkar, Addl. G. P. and Ms. R. M. Shinde, AGP for Respondent Nos.1 to 3-State.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.**
Reserved on : 27th FEBRUARY, 2026
Pronounced on : 27th APRIL, 2026

ORDER: (*Per Manish Pitale, J*)

. The petitioners claim that proceedings in respect of the subject lands under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'ULC Act') abated and that they are entitled to benefit of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as 'ULC Repeal Act'). According to the petitioners, since possession of the subject lands was never taken by the State in accordance with the provisions

of the ULC Act, with the enactment of the ULC Repeal Act and operation of Section 4 thereof, the proceedings abated and consequently, notification and notices issued by respondent-Competent Authority under the provisions of the ULC Act, deserve to be set aside. As opposed to this, the respondent-State contends that possession was taken and that in any case, when the said question is a disputed question of fact, this Court exercising writ jurisdiction, ought not to entertain the pleas of the petitioners and that therefore, the writ petition deserves to be dismissed.

2. Events leading upto filing of the petition, as discernible from the petition, reply affidavits and the documents on record, show that the subject lands are lands located in survey Nos.401, 402, 403 and 404 at Nashik, totally admeasuring about 91,102 sq. mtrs. Originally, the lands were owned by one Ahmed Saheb Kokni. He expired in the year 1954 and thereafter, the lands were held by Abdul Sattar Ahmed Saheb Kokni (Abdul Sattar) and Abdul Razzak Ahmed Saheb Kokni (Abdul Razzak). The petitioners are the legal heirs of Abdul Razzak. There was a tenant in the said lands named Madhukar Shankar Sonawane.

3. Upon the enactment of the ULC Act, Abdul Sattar filed a statement under Section 6(1) thereof on 12.08.1976, wherein it was erroneously stated that Abdul Razzak was a tenant. As a matter of fact, Madhukar Sonawane was the tenant. The statement recorded the names of 10 family members of Abdul Sattar, including himself. On 16.08.1976, the said tenant Madhukar Sonawane also filed his statement under Section 6(1) of the ULC Act. The said Abdul Razzak i.e. the predecessor of the petitioners did not file any such statement under Section 6(1) of the ULC Act.

4. On 28.10.1981, Abdul Sattar passed away leaving behind his legal representatives. On 20.10.1986, Abdul Razzak filed his objections with respondent No.1 i.e. the Additional Collector and Competent Authority under the ULC Act and informed the said Authority that his share was divided in the said lands and that he ought to be heard before taking any decision in the matter. Abdul Razzak relied upon decree of a Civil Court. On 08.07.1987, Abdul Razzak expired leaving behind his legal representatives. On 06.09.1994, mutation entry was undertaken recording partition between legal heirs of Abdul Sattar and Abdul Razzak. It is claimed that the branch of Abdul Sattar ended up having ownership and possession of 25,364 sq. mtrs., the branch of Abdul Razzak had 54,404 sq. mtrs. and the tenant Madhukar Sonawane had 2,000 sq. mtrs.

5. On 01.10.1997, the said tenant Madhukar Sonawane approached the Competent Authority to reconsider the said order passed under Section 8(4) of the ULC Act, in the light of certain portions of the lands being earmarked for industrial purpose under the development plan issued by the Nashik Municipal Corporation. On this basis, on 13.11.1997, a draft statement under Section 8 of the ULC Act was prepared by the Competent Authority, to which the legal heirs of Abdul Razzak filed their objections on 18.11.1997. On 11.12.1997, the Competent Authority passed an order, declaring 60,821.25 sq. mtrs. as excess land under Section 8(4) of the ULC Act. By the said order, land to the extent of 29,198.75 sq. mtrs. was permitted to be retained. The petitioners claim that the legal heirs of Abdul Razzak were in possession of 45,821 sq. mtrs. out of the said excess land, declared by the Competent Authority. On 08.03.2007,

the Competent Authority issued notification under Section 10(1) of the ULC Act, stating the particulars of the vacant land and called for claims of all interested persons in such vacant land. On 22.03.2007, the Competent Authority issued notification under Section 10(2) of the ULC Act. On 30.05.2007 and 21.06.2007, the Competent Authority issued notification under Section 10(3) of the ULC Act, thereby notifying the public at large that the excess land was deemed to have been acquired and it vested absolutely with the State Government. The notification dated 21.06.2007 is a subject matter of challenge in this writ petition.

6. On 05.07.2007, the Competent Authority issued notice under Section 10(5) of the ULC Act to Abdul Sattar and others and Madhukar Sonawane and called upon them to handover possession of the excess land within 30 days. The petitioners claim that the said notice was not addressed to them. The said notice is also subject matter of challenge in the present writ petition. On 12.11.2007, Tahsildar, Nashik issued notice to handover possession of the excess land on 17.11.2007.

7. In this backdrop, on 19.11.2007, the legal heirs of Abdul Sattar filed Writ Petition No. 8340 of 2007 and challenged the notification issued under Section 10(3) of the ULC Act and the notice issued under Section 10(5) thereof. The petitioners herein were arrayed as respondents in the said writ petition. The petitioners have specifically stated that they were not aware about the filing of the said writ petition, as they were never served with the copy of the same and hence, they could not enter their appearance in the said writ petition. On 20.11.2007, while issuing notice in the said Writ Petition No. 8340 of 2007, this Court granted ad-interim relief in terms of prayer clauses (b) and (c) of the said writ petition.

8. On 29.11.2007, the ULC Act was repealed in the State of Maharashtra. On 30.03.2010, this Court in the aforesaid Writ Petition No. 8340 of 2007 expressed an opinion that since possession of the land in question was not taken by the State Government, the writ petition ought to succeed. But, the State Government took time to ascertain the factual position and hence, hearing on the said writ petition was adjourned for final disposal. On 09.04.2010, the Competent Authority filed an affidavit in aforesaid Writ Petition No. 8340 of 2007 filed by legal heirs of Abdul Sattar that possession of the excess land was already taken on 17.11.2017. This was disputed by the petitioners therein. On 27.04.2010, this Court disposed of the said Writ Petition No. 8340 of 2007, holding that there was a dispute on the factum of taking over possession of the property in question. The petitioners therein were granted liberty for pursuing their remedy by way of suit for appropriate reliefs and in the meanwhile, status quo for a period of 8 weeks was granted in respect of disputed land therein.

9. On 27.07.2010, the legal heirs of Abdul Sattar filed Regular Civil Suit No. 391 of 2010, in the light of the liberty granted by this Court, before the Court of Civil Judge Senior Division, Nashik, seeking declaration and permanent injunction. The petitioners are not parties to the said suit and there is no interim injunction granted therein.

10. On 22.05.2014, the Tehsildar, Nashik issued an order, directing the Talathi, Nashik to amend the revenue record (7/12 extract) in respect of a number of parcels of land forming part of the lands declared as excess lands under the ULC Act. By the said order, the

names of persons, including the petitioners, were directed to be deleted from the record for adding the name of the State of Maharashtra therein. The petitioners emphasize that even the said order recorded that the legal heirs of Abdul Razzak were in possession of 45,821 sq. mtrs. of land. On the very same date, the name of the State Government was entered as owner of the said excess land. In this backdrop, on 27.07.2015, the petitioners filed the present writ petition, seeking quashing of the notification dated 21.06.2007 issued by the Competent Authority under Section 10(3) of the ULC Act and also notices dated 05.07.2007 and 20.09.2007 issued by the Competent Authority under Section 10(5) of the ULC Act. The petitioners further sought declaration that the ULC Act was not applicable to the lands in question, as the proceedings initiated in respect thereof, stood abated on 29.11.2007.

11. The respondents filed their reply affidavits and additional affidavits in reply, opposing the claims made by the petitioners. It was submitted that possession of the lands was taken and even if the petitioners claimed that this was disputed, it gave rise to disputed question of fact, which could be resolved only in a properly instituted suit and not by way of the present writ petition.

12. Mr. Vivek Salunkhe, learned counsel appearing for the petitioners, submitted that the most crucial aspect in the present case was that the notice under Section 10(5) of the ULC Act was never served upon the petitioners, who continued to remain in possession of the subject lands. It was submitted that Section 10 of the ULC Act contemplated a systematic stepwise process, regarding acquisition of vacant land in excess of ceiling limit and that sub-sections (5) and (6) thereof deal with the manner in which possession is either

surrendered/delivered or taken by the Competent Authority, if required, by force. It was submitted that in the present case, the Competent Authority failed to place on record material to show compliance with Section 10(5) of the ULC Act.

13. The learned counsel for the petitioners placed reliance on the mutation entries dated 06.09.1994, recording partition between the legal heirs of Abdul Sattar and Abdul Razzak. Reliance was also placed on order dated 22.05.2014 passed by the Tahsildar, Nashik. It was submitted that when the petitioners continued to be in possession of the subject lands, it was imperative for the Competent Authority to show that notice under Section 10(5) of the ULC Act for surrender/delivery of possession was duly served upon them.

14. It was submitted that order dated 27.04.2010 passed by this Court in Writ Petition No. 8340 of 2007 filed by the legal heirs of Abdul Sattar, cannot come in the way of the petitioners herein. It was submitted that in the said petition, the question of non-compliance of Section 10(5) and (6) of the ULC Act was not raised or considered. In the said case, notice under Section 10(5) was addressed to Abdul Sattar, while no such notice was issued in the present case either to the petitioners or their predecessor Abdul Razzak. On this basis, it was submitted that as regards the legal heirs of the Abdul Sattar who were petitioners in Writ Petition No. 8340 of 2007, a disputed question of fact with regard to possession had arisen and therefore, they were relegated to filing a suit. But, as per law laid down by the Supreme Court in the cases of *State of Uttar Pradesh vs. Hari Ram*, (2013) 4 SCC 280, *Gajanan Kamlya Patil vs. Additional Collector and Competent Authority (ULC) & Ors.*, (2014) 12 SCC 523, *State of Assam vs. Bhaskar Jyoti Sarma & Ors.*, (2015) 5 SCC 321 and *A. P. Electrical Equipment Corporation vs. Tahsildar & Ors.*, 2025 SCC

OnLine SC 447, the petitioners are entitled to contend that due to absence of service of notice under Section 10(5) of the ULC Act, possession of the subject lands was not taken from the petitioners. It was submitted that even if the judgment of the Supreme Court in the case of *Dalsukhbhai Bachubhai Satasia & Ors. vs. State of Gujarat & Ors.*, **2026 SCC OnLine SC 25**, is taken into consideration, the absence of notice to the petitioners violated the mandatory requirement of Section 10(5) of the ULC Act, thereby meaning that the legal process of acquiring possession was still on going and therefore, this was a case of abatement of legal proceedings under Section 4 of the ULC Repeal Act. It was emphasized that since the Competent Authority in the present case failed to demonstrate that possession was taken as per Section 10(5) and (6) of the ULC Act, the entire proceedings abated and hence, the prayers in the writ petition deserve to be granted.

15. On the other hand, Ms. Neha Bhide, learned Government Pleader appearing on behalf of the respondent No.1-Competent Authority and respondent Nos.2 and 3, submitted that the writ petition deserves to be dismissed as there was ample material on record to show that possession of the subject lands was taken. It was submitted that if the petitioners were disputing the act of possession having been taken by the Competent Authority, the only recourse available to the petitioners was to file a civil suit to agitate their claims. It was submitted that the petitioners failed to distinguish their case from the petitioners in Writ Petition No. 8340 of 2007 i.e. the legal heirs of Abdul Sattar, who were relegated by this Court to file civil suit before the competent Civil Court, to justify their claims. It was submitted that the petitioners herein cannot claim that their case is on any better footing.

16. It was submitted that in the present case, the petitioners cannot claim that they were not served with notice under Section 10(5) of the ULC Act, simply for the reason that they were covered under the expression 'others' when the notice was addressed to Abdul Sattar Ahmed Saheb Kokni and others, the petitioners and the legal heirs of Abdul Sattar were all together and they cannot be permitted to turnaround and claim that separate notice ought to have been issued to them or their predecessor Abdul Razzak. Much emphasis was placed on the address in the said notice and the subsequent *panchanamas*, indicating physical possession being taken by the Competent Authority.

17. It was submitted that in any case, the questions arising from such opposing stands are clearly disputed questions of facts, which cannot be decided in writ jurisdiction. On this basis, it was submitted that the petitioners cannot claim any treatment different from the one given to the legal heirs of Abdul Sattar, who had filed Writ Petition No. 8340 of 2007. Reliance was placed on recent judgment of the Supreme Court in the case of *Dalsukhbhai Bachubhai Satasia & Ors. vs. State of Gujarat & Ors.* (*supra*) to contend that the petitioners are not entitled to claim benefit of Section 4 of the ULC Repeal Act pertaining to abatement of proceedings under the ULC Act.

18. It was further submitted that in any case, the petitioners filed the instant petition in the year 2015 for challenging notification and notices issued 8 years ago in the year 2007. The legal heirs of Abdul Sattar had immediately filed their writ petition in the year 2007 and they were subsequently relegated to filing civil suit as per order

dated 27.04.2010 passed by this Court. As opposed to this, the petitioners in this writ petition failed to take steps within reasonable time and filed the present writ petition after 8 years. The present writ petition also gives rise to disputed questions of facts and therefore, this Court ought to dismiss the writ petition.

19. Having heard the learned counsel for the petitioners and the learned Government Pleader for the respondent – competent authority and other respondents, the crucial question that arises for consideration is, as to whether the petitioners are justified in claiming that in the present case, the requirements of Section 10(5) and (6) of the ULC Act were not satisfied and therefore, as per Section 4 of the ULC Repeal Act, the entire proceedings as regards the lands of the petitioners, abated. It is the case of the petitioners that notice under Section 10(5) of the ULC Act was not issued and hence, not served upon the petitioners or their predecessor Abdul Razzak, demonstrating that in terms of law laid down by the Supreme Court in the aforementioned judgements, possession was not taken, thereby indicating that the proceeding abated under Section 4 of the ULC Repeal Act.

20. An attendant issue that requires consideration is whether the rival contentions can be considered and decided in writ jurisdiction or they give rise to a situation where the petitioners will have to be relegated to the Civil Court. In order to consider the said issue, it would be necessary to first refer to the position of law clarified by the Supreme Court in this regard.

21. In the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*), the Supreme Court considered the effect of vesting under Section 10(3)

of the ULC Act and as to whether the proceedings could be said to have been abated under Section 4 of the ULC Repeal Act, if the exercise of taking possession of the subject lands was yet to be completed under Section 10(5) and (6) of the ULC Act. The Supreme Court in the said judgement, found that there were three modes, whereby possession of the subject lands could be transferred to the State, pursuant to their vesting in the State. By analysing subsections (5) and (6) of Section 10 of the ULC Act, the Supreme Court found the three modes to be voluntary surrender, peaceful dispossession and forceful dispossession. In order to appreciate the said position of law clarified by the Supreme Court, it would be necessary to refer to Section 10 of the ULC Act, which reads as follows:

‘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 subsection (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.’

22. The Supreme Court found that mere vesting of land in the State would not be sufficient, under Section 10(3) of the ULC Act and that the process of possession of land being transferred to the State was necessary to claim that the proceeding was complete and that there could no longer be any abatement of the proceedings under Section 4 of the ULC Repeal Act. In this regard, reference to Sections 3 and 4 of the ULC Repeal Act is necessary and they read as follows:

‘3. Savings.-

- (1) The repeal of the principal Act shall not affect-
 - (a) the vesting of any vacant land under sub-section (3) of Section 10, 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;
 - (b) the validity of any order granting exemption under subsection (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;
 - (c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.
- (2) Where—
 - (a) any land is deemed to have vested in the State Government under sub-section (3) of Section

10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

- (b) any amount has been paid by the State Government with respect to such land,

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

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 in so far 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.'

23. A perusal of Section 3 of the ULC Repeal Act clearly shows that where vesting of land under Section 10(3) of the ULC Act has taken place and possession of land is taken over by the State Government, the repeal of the ULC Act does not have any effect. Section 4 of the ULC Repeal Act specifies that wherever proceedings under the ULC Act are still pending before the authority, when the ULC Repeal comes into force, such proceedings stand abated. In the present case, there is no dispute about the fact that the ULC Repeal Act came into force in Maharashtra on 29.11.2007. The rival contentions are to be considered in the context of the said date.

24. The Supreme Court, in the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*), after referring to the aforementioned three modes of transfer of possession to the State Government, observed as follows:

‘42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.’

25. In the case of **Gajanan Kamlya Patil vs. Additional Collector and Competent Authority (ULC) & Ors.** (*supra*), the Supreme Court found that the contents of the affidavits filed on behalf of the State authority, revealed that although the record of rights were mutated in the name of the Government on the basis of notification under Section 10(3) of the ULC Act and notice under Section 10(5) thereof had been issued, actual handing over of the possession of land had not taken place. It was found that the State authorities could not produce any document like *panchanama* or possession receipt and in that backdrop, the Court found that only *de jure* possession was taken and that *de facto* possession of land was not taken before the ULC Repeal Act came into force. In such circumstances, the Supreme Court held that the entire proceedings had abated.

26. In the case of **State of Assam vs. Bhaskar Jyoti Sarma & Ors.** (*supra*), the Supreme Court found, as a matter of fact, that possession of the land was taken and that third parties were even allotted the said lands. On facts, it was found that the owners approached the Court after considerable delay to challenge the manner of taking possession of lands and they claimed that Section 10(5) and (6) of the ULC Act had been violated. In such circumstances, the Court held that such a belated challenge could not be entertained, particularly when third parties had been allotted the lands.

27. In the case of **A. P. Electrical Equipment Corporation vs. Tahsildar & Ors.** (*supra*), the Supreme Court considered the aforementioned judgements and concluded that the findings rendered in the case of **State of Assam vs. Bhaskar Jyoti Sarma & Ors.** (*supra*) were in the facts of the said case and that the position of law clarified by the Supreme Court in the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*) continued to be good law and that it had not been diluted in any manner.

28. In the case of **Dalsukhbhai Bachubhai Satasia & Ors. vs. State of Gujarat & Ors.** (*supra*), the Supreme Court once again took into consideration the position of law elucidated in the judgements of the Supreme Court in the cases from **State of Uttar Pradesh vs. Hari Ram** (*supra*) onwards and considered two specific questions. This concerned the question as to whether delivery of notice on the possessors of the concerned lands, under Section 10(5) of the ULC Act, was a mandatory step and if actual possession of the lands was not transferred despite recording of the land in the name of the State, the same would result in the proceedings being abated under

Section 4 of the ULC Repeal Act. After taking into consideration the earlier judgements, the Supreme Court observed that when the mandatory requirement of delivery of notice under Section 10(5) of the ULC Act was violated, it meant that the legal process of acquiring possession was still ongoing, leading to abatement of proceedings under Section 4 of the ULC Repeal Act. The relevant observation reads as follows

‘22.8. Similarly, we are unable to agree with the contention of the respondents that the appellants cannot claim a right to receive notice under Section 10(5) of the ULC Act. The propriety of the sale deed executed in favour of the appellants is immaterial. Section 10(5) mandates the delivery of notice to the person(s) in possession of the concerned lands. On the date of issuance of notice (22.11.1990), the appellants as possessors did not receive the same. It was sent to the erstwhile owner of the subject land. This also implies that the respondents also were aware of the fact that actual possession was not with them and there was a need to issue notice under Section 10(5) of the ULC Act before taking over actual possession. However, the respondents did not ascertain as to in whose name actual possession stood. Therefore, no notice was issued to the appellants and hence there being no transfer of possession in accordance with Section 10 of the ULC Act, it continues with the appellants both in fact as well as in law. Hence, they are entitled to the benefit of Section 4 of the Repealing Act as they do not fall within the scope of Section 3 of the said Act which is the savings clause. The omission to issue notice to the appellants violated the mandatory requirement of serving notice under Section 10(5) and meant that the legal process of acquiring possession was still ongoing, leading to abatement of proceedings under Section 4 of the Repealing Act on its enforcement.’

29. The position of law that emerges from the said judgements of the Supreme Court is that issuance and service of notice under

Section 10(5) of the ULC Act is mandatory. Mere vesting of land in the State under Section 10(3) of the ULC Act, is not sufficient and if possession of lands is not transferred to the State before the ULC Repeal Act came into effect, as per Section 4 thereof, the entire proceeding abates. It is relevant to note that in all cases where the Supreme Court held that such proceedings had abated, the State authorities were unable to place on record any material about the steps having been taken under Section 10(5) and (6) of the ULC Act.

30. The respondent No.1 – competent authority in the present case, has relied upon the documents placed on record to contend that mandatory requirement of Section 10(5) of the ULC Act, was satisfied before the ULC Repeal Act came into force and therefore, the writ petition deserves to be dismissed. Alternatively, it was submitted that the contentions raised on behalf of the petitioners gave rise to serious disputed questions of fact, which can be decided only in a civil suit and not in writ jurisdiction.

31. In this context, observations made by the Supreme Court in the case of **A. P. Electrical Equipment Corporation vs. Tahsildar & Ors.** (*supra*) assume significance and they read as follows:

‘48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at

hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory, and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.'

32. Thus, in the present case, the material on record will have to be examined to consider as to whether the competent authority is justified in claiming that the mandatory requirement of Section 10(5) of the ULC Act was satisfied and conversely, whether the petitioners have succeeded in demonstrating that no steps were taken in respect of their lands beyond vesting under Section 10(3) of the ULC Act. It will also have to be examined as to whether the rival contentions indeed give rise to disputed questions of facts with regard to the vital issues like service of notice under Section 10(5) of the ULC Act upon the petitioners or their predecessor and as to whether physical possession of the subject land was indeed taken.

33. In this context, much emphasis was placed on behalf of the competent authority on the order passed by a Division Bench of this Court in Writ Petition No.8340 of 2007. The same pertained to the petition filed by the other branch i.e. successors of Abdul Sattar. In the order dated 27.04.2010, this Court referred to the notification under Section 10(3) of the ULC Act as also, notice dated 21.09.2007

issued under Section 10(5) thereof pertaining to the entire land. After referring to the rival contentions, this Court found that there was a dispute on the factum of taking over possession of the property in question and in that context, the writ petition was disposed of with liberty to the petitioners therein to file civil suit for seeking appropriate reliefs. It was directed that the parties would maintain *status quo* for a period of 8 weeks. The petitioners therein indeed filed Regular Civil Suit No.391 of 2010 before the Civil Judge Senior Division, Nashik, which is still pending. There is no interim injunction granted in the said suit and the petitioners herein are not parties to the said suit.

34. In the present petition, the petitioners claim that their case is distinguishable from that of the successors of Abdul Sattar, who had filed the aforementioned Writ Petition No.8340 of 2007, on the ground that non-issuance of notice to the petitioners therein, under Section 10(5) of the ULC Act, was not a ground available to them. It is asserted that in the present petition, the stated case of the petitioners is that they were never issued notice under Section 10(5) of the ULC Act and, as a matter of fact, the possession of lands was not taken.

35. In this context, much emphasis is placed on behalf of the petitioners on document at Exhibit D, being a notice dated 05.07.2007 issued under Section 10(5) of the ULC Act. It was emphasized that the notice was issued to Abdul Sattar and the tenant Madhukar Shankar Sonawane and the same was not addressed to the predecessor of the petitioners i.e. Abdul Razzak. The *Kabje pavati* and *panchanamas* were also attacked, on the ground that only the names of Abdul Sattar and the said tenant Madhukar Shankar Sonawane were mentioned in all the said documents.

36. It was further emphasized that the documents on record, including revenue record, showed partition between the two branches of Abdul Sattar and Abdul Razzak with the predecessors i.e. the successors of Abdul Razzak being shown in possession of their respective shares of lands. Reliance was also placed on the return submitted by Abdul Razzak in his individual capacity under the provisions of the ULC Act and notices for hearing under Section 8(3) of the ULC Act were separately issued to the predecessor of the petitioners, with separate notices being issued to the aforesaid Abdul Sattar. It was further submitted that in any case, the said Abdul Razzak had expired on 08.07.1987, thereby demonstrating that all actions taken subsequent thereto, purportedly against him, were after his death, further demonstrating the fallacy in the stand taken by the competent authority.

37. Reliance was also placed on an order dated 22.05.2014 passed by the Tahsildar, Nashik, directing that the names of '*kabjedar*' should be deleted from the 7/12 extract and the name of State of Maharashtra should be incorporated. In this order, the names of the petitioners were shown against specific pieces of land, which they claimed to be in possession. It was submitted that if Tahsildar, Nashik in the year 2014 itself, recognized the petitioners to be in possession of the lands, it was obvious that the mandatory requirement of Section 10(5) and (6) of the ULC Act was not satisfied. Therefore, in terms of the law laid down by the Supreme Court in the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*), followed in the aforementioned subsequent judgements, the writ petition ought to be allowed by holding that the proceedings had abated under Section 4 of the ULC Repeal Act.

38. On the other hand, the competent authority, through the Government Pleader, placed much emphasis on the fact that the notice dated 05.07.2007 issued under Section 10(5) of the ULC Act, was issued to Abdul Sattar and 'others'. The others included all the persons in possession of the entire excess land, in respect of which both the branches of Abdul Sattar and Abdul Razzak claimed rights. It was emphasized that the said notice pertained to the entire land admeasuring 60,821.25 sq. mtrs. in respect of which notification under Section 10(3) had been issued. This included the entire land concerning the branches of Abdul Sattar and Abdul Razzak as well as the land in possession of the tenant Madhukar Shankar Sonawane.

39. It was further submitted that on 20.10.2007, further communication was addressed to Abdul Sattar and 'others' as also the tenant Madhukar Shankar Sonawane, stating that since they had failed to give possession of the land admeasuring 60,821.25 sq. mtrs, steps for taking physical possession were to be undertaken for which they were required to remain present. By inviting attention of this Court to the documents on record such as '*Kabje pavati*' dated 17.11.2007, the competent authority claimed that possession of the lands adding up to the aforementioned 60,821.25 sq.mtrs. was duly taken. This was prior to the ULC Repeal Act coming into force in the State of Maharashtra on 29.11.2007. It was also emphasized that all the notices and communications under the provisions of the ULC Act, including notices under Section 8(3) thereof, were issued on the same address to both branches i.e. the branch of Abdul Sattar and Abdul Razzak. In this context, attention of this Court was specifically invited to the notice dated 05.07.2007 issued under Section 10(5) of the ULC Act, wherein the very same address was recorded,

emphasizing that the petitioners cannot claim that they were not put to notice with regard to the same.

40. We find that the documents relied upon by the competent authority on affidavit demonstrate that the notice under Section 10(5) of the ULC Act and the '*Kabje pavati*' as also *panchanamas* pertained to the entire excess land admeasuring 60,821.25 sq. mtrs., which included the land in respect of which the petitioners have raised their claims. The aforesaid rival submissions made in the context of the said documents that signify steps taken under Section 10(5) of the ULC Act and the actual taking over of the physical possession, certainly give rise to serious disputed questions of facts. Reliance placed on the order dated 22.05.2014 passed by the Tahsildar, Nashik, cannot inure to the benefit of the petitioners merely because the order uses the word '*kabjedaar*' in respect of names of land owners given in the table contained therein.

41. A proper analysis of the said order shows that the Tahsildar recorded the fact that the possession of the said lands was already taken under Section 10(5) of the ULC Act by the Circle Officer, Nashik and yet, the names of the land owners including the petitioners continued in the revenue records. This was despite the fact that the writ petition filed by the branch of Abdul Sattar bearing No.8340 of 2007 had been disposed of and the *status quo* granted for a period of 8 weeks, had expired, as also in the face of the admitted position that the concerned Civil Court in the suit filed by the said petitioners, had not granted any interim injunction. All that the Tahsildar, Nashik stated in the said order was that in the face of such facts, there was no impediment in deleting the names of the land owners and recording that of the State Government in the 7/12

extract. It is pertinent to note that the said order pertains to the entire land admeasuring 60,821.25 sq. mtrs. Hence, the said order cannot be relied upon by the petitioners to contend that it signifies that they continued to be in physical possession on the date when the order was passed i.e. on 22.05.2014.

42. In the light of the material placed on record on behalf of respondent No.1 – competent authority and the dispute raised by the petitioners with regard to the same, this Court finds serious disputed questions of facts arising in the matter. These include factual disputes with regard to service of notice under Section 10(5) of the ULC Act and taking over of possession of lands from the petitioners. It cannot be said that the petitioners have made out a clear case in their favour in respect of notice under Section 10(5) of the ULC Act, to take benefit of the position of law clarified by the Supreme Court in the aforesaid judgements in the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*) and subsequent cases. As noted hereinabove in the case of **Gajanan Kamlya Patil vs. Additional Collector and Competent Authority (ULC) & Ors.** (*supra*), the Supreme Court found that the State authorities had conceded on affidavit that there was neither any *panchnama*, nor possession receipt or any such document for the State authorities to claim that possession of lands was taken. In that light, the Supreme Court observed that even if *de jure* possession was taken, there was nothing to show that *de facto* possession had been taken, prior to ULC Repeal Act coming into force.

43. We find that serious disputed questions of facts arise and only if findings are rendered in favour of the petitioners, it would result in the position clarified in the aforementioned judgement of the Supreme Court in the case of **State of Uttar Pradesh vs. Hari Ram** (*supra*), accruing to the benefit of the petitioners.

44. We also find that while the address on which the notice under Section 8(3) of the ULC Act was received by both the branches of Abdul Sattar and Abdul Razzak was the same, the petitioners have feigned ignorance about the petitioners in Writ Petition No.8340 of 2007 i.e. branch of Abdul Sattar, having approached this Court in the year 2007 itself. It is claimed that although they were made respondents, but they were not served in the petition. The petitioners failed to take steps till filing the present petition after 8 years in the year 2015 to raise their claims. We find that in the backdrop of the said chronology of events and the serious disputed questions of facts that arise, in the light of the stand taken by the respondent – competent authority in support of which it has placed on record documents like '*kabje pavati*' and *panchanamas*, the said questions of facts cannot be decided in the present petition.

45. We are conscious of the above-quoted observations made by the Supreme Court in its judgement in the case of **A. P. Electrical Equipment Corporation vs. Tahsildar & Ors.** (*supra*). But, we find that in the facts and circumstances of the present case and the detailed documents placed on record on behalf of the competent authority in this petition, it cannot be said that the State has claimed that the disputed questions of facts arise only with the intention of having this writ petition rejected. We find that in the facts and circumstances of the present case, it is necessary to follow the approach adopted by this Court in Writ Petition No.8340 of 2007.

46. Accordingly, we dispose of the present petition, reserving liberty to the petitioners to file civil suit to seek appropriate reliefs. The petitioners are at liberty to approach the competent Civil Court and if such a suit is filed, the concerned court shall decide the same

strictly in accordance with law. All questions, rights and contentions of the rival parties are kept open.

47. In the light of the aforesaid, we do not find any reason to entertain the intervention application filed by the applicant bearing Interim Application No.1160 of 2025. The claims made by the said applicant are based on the assertion that physical possession of the lands of the petitioners was never taken by the competent authority and that the petitioners dealt with the lands, leading to the applicant coming into picture. Since the very dispute raised by the petitioners regarding taking physical possession, is found to be a serious disputed question of fact, to be decided by the appropriate Civil Court, the intervention application is dismissed. The said applicant may take recourse to remedies available in law.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)