

(2014) 08 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 339 of 2014

Anupam Insulating Industries

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 10(5), 3, 3(1)(a)

Citation : (2014) 08 BOM CK 0100

Hon'ble Judges : S.B. Shukre, J;B.R. Gavai, J

Bench : Division Bench

Advocate : H.B. Bargat, Advocate for the Appellant; B.P. Maldhure, AGP,
Advocate for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—Heard. By consent the petition is heard finally at the admission stage.

2. By this petition, the petitioner has prayed for quashing and setting aside of the notification dated 02.11.2007 issued u/s 10(3) of The Urban Land (Ceiling and Regulation) Act, 1976 (for short ULCR Act) and also the notice dated 06.11.2007 issued u/s 10(5) of the ULCR Act with a further prayer for declaring the proceedings under ULCR Act as abated in view of the repeal of the Principal Act.

3. The facts necessary for deciding the petition may be stated, in brief, as under :

(a) The petitioner is the owner in possession of the land situated at mouza Nagalwadi, Patwari Halqa No. 6, Tahsil Hingna, bearing Survey No. 135/2 (old), 38 (new), admeasuring 6.07 HR, The petitioner submits that out of the said land, 59000 sq. mtr. of the land has been declared as surplus vacant land. The petitioner purchased the said land from Smt. Sunetra w/o Narayanrao Kale by virtue of sale-deed dated 08.7.1999, and having been put in physical possession thereof on the same day, name of the present petitioner came to be mutated in the 7/12 extracts and other revenue records maintained by the respondents.

(b) The original land owner Sunetrabai had filed Return u/s 6(1) of the ULCR Act on 15.9.1976. An order u/s 8(4) of the ULCR Act came to be passed on 24.2.1984 declaring the area of 59000 sq. mtr. as surplus vacant land and the remaining area admeasuring 1500 sq. mtr. as retainable land. The notification under sub-section (3) of Section 10 of the ULCR Act was published in the Government Gazette on 2.11.2007, thereby declaring that the said land was deemed to have vested absolutely in the State Government. However, no date of vesting of the land was specified. Respondent no. 2 issued notice u/s 10(5) of the ULCR Act on 6.11.2007 to the original owner calling upon her to deliver the vacant possession of the surplus land to the Tahsildar Hingna. But again no time of 30 days, as required under the said section, for delivery of surplus land was given. According to the petitioner, the possession of the land was never delivered actually to the Tahsildar, Hingna, and even today the petitioner continues to hold the possession of surplus vacant land.

(c) The petitioner further submits that the ULCR Act came to be repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short the Repeal Act) which came into force on 29.11.2007. He further submits that the respondent no. 2 did not follow the mandate of the provisions of subsections (3), (5) and (6) of Section 10 of the Principal Act and, therefore, the whole proceedings taken under the provisions of the ULCR Act have stood vitiated. It is also the case of the petitioner that since possession of the surplus vacant land had not been taken over by respondent no. 2 on 29.11.2007, by virtue of Section 3 of the Repeal Act, the alleged vesting of the land in the State Government is not saved and the surplus vacant land is liable to be allowed to be retained by the petitioner.

(d) However, according to respondent no. 2, who has filed affidavit in reply, the provisions of sub-sections (3) and (5) of Section 10 have been completely followed in this case and all the proceedings are legal. The respondent no. 2 has also submitted that the possession of the surplus land has been taken over by the Tahsildar Hingna and the name of the Government of Maharashtra has been mutated in the 7/12 extract.

4. Thus, the claim of the petitioner having been denied by the respondents, the petitioner has been required to approach this Court by filing the present petition.

5. The main controversy involved in the petition relates to the question, as to whether vesting of the land in the Government will be saved, even when possession is not taken by virtue of provisions of Section 3 of the Repeal Act, which came into force on 29.11.2007 and whether the proceedings under the ULCR Act shall stand abated u/s 4 of the Repeal Act.

6. It is the case of the petitioner that as on the date of filing of the petition, the petitioner was in possession of the surplus vacant land. From the affidavit in reply filed by respondent no. 2 it can be seen that the said contention of the petitioner has not been denied by the Government. All that is said, and we must say quite vaguely, that the Tahsildar Hingna has taken over possession of the

vacant surplus land and the name of the Government of Maharashtra is mutated in the 7/12 extract. Thus, the Government of Maharashtra has avoided to specifically deny the contention of the petitioner that even on the date of filing of the petition, he continued to be in possession of the surplus vacant land. This averment of the petitioner has gone uncontroverted and, therefore, by the principle of non-traversal of pleadings, it has to be concluded that on the date of filing of the petition, which was 28.12.2013, much after the relevant date of 29.11.2007, the petitioner was in possession of the surplus vacant land.

7. Now, it will have to be seen as to what is the effect of failure of the Government to take possession of the surplus vacant land before 29.11.2007 even after issuance of notification u/s 10(3) of the ULCR Act on 2.11.2007. The law in this regard is no more res integra. In the case of *Voltas Ltd. and Another Vs. Additional Collector and Competent Authority and Others*, the Division Bench of this Court has held that in view of the provisions of Sections 3 and 4 of the Repeal Act, the provisions of sub-sections (5) and (6) of Section 10 of the principal Act, i.e. ULCR Act, are not available to the State Government and, therefore, in relation to that land with respect to which declaration under sub-section (3) of Section 10 of the Principal Act has been made but possession has not been taken, the Competent Authority would not be entitled to make an order directing the person in possession of the land to deliver the possession to the Government, nor the Competent Authority would be entitled to take possession under sub-section (6) of Section 10 of the principal Act on failure of the person in possession to deliver the possession. The relevant observations of the Division Bench of this Court appearing in paragraph 11 are reproduced for convenience as under :

"Now so far as those lands which are owned by the petitioners in relation to which a notification under subsection 3 of Section 10 of the Principal Act was issued and the order under sub-section (5) of Section 10 of the Principal Act was made are concerned, it is the provisions of Section 3 of the Repeal Act which are relevant. Reading of Section 3 of the Repeal Act shows that it is a saving clause and sub-section 1(a) of Section 3 of the Repeal Act saves vesting of any vacant land under subsection (3) of Section 10 of the Principal Act, possession of which has been taken over by the State Government. In other words, vesting of vacant lands under sub-section (3) of Section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved. In the present case, it is an admitted position that though declaration under sub-section (3) of Section 10 of the Principal Act was made, the possession of the land was not taken over by the Government or by the competent authority. Therefore, on bare reading of the provisions, it can be said that by virtue of repeal, vesting of the land of the first petitioner in the State by virtue of declaration made under sub-section (3) of Section 10 of the Principal Act, is not saved. A submission on behalf of the State Government was made that by virtue of declaration made sub-section (3) of Section 10 of the Principal Act in relation to the petitioner's land, the land has vested in the Government, but there is no provision in the Repeal

Act which divest the State Government of the ownership of the land. In our opinion, this submission has no substance. Firstly, because the purpose of enacting section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government and out of the vacant lands that might have vested in the State Government by virtue of declaration made under sub-section (3) of Section 10 of the Principal Act, only vesting of those lands in the State Government of which possession has been taken has been saved."

8. It is clear from the above observations that vesting of those lands in the State Government of which possession has not been taken by the Government has not been saved in view of Section 3(1)(a) of the Repeal Act, and vesting of only those lands in the State Government of which possession has been taken has been saved.

9. In the instant case, possession of the surplus vacant land has not been taken by the State Government on or before the relevant date, i.e. 29.11.2007, and as such, in view of what is held in the aforesaid case of Voltas Ltd., vesting of the surplus vacant land in the State Government would not be saved and the land would be required to be restored to the petitioner, and in view of Section 4 of the Repeal Act all proceedings relating to the land of the petitioner would have to be declared as abated.

10. In the circumstances, the writ petition is allowed and it is declared that the proceedings in ULC Case No. 1737 of 1976 pending before the Competent Authority under ULCR Act have abated and the impugned notifications will not have any effect. The petitioner is allowed to retain the land purchased by him from the original owner Smt. Sunetrabai w/o Narayanrao Kale.

Rule is made absolute in aforesaid terms, with no order as to costs.