

(2004) 04 GUJ CK 0010
In the Gujarat High Court

Case No : Special Civil Application No. 3208 of 1992

Chandulal P. Patel and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2004) 04 GUJ CK 0010

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : S.H. Sanjanwala, for the Appellant; Harsha Devani, AGP for Respondent No. 1 and 2, for the Respondent

Judgement

K.A. Puj, J.—The present petition is filed under Article 226/227 of the Constitution of India praying for quashing and setting aside the order passed by the competent authority on 22.03.1984 in so far as it relates to the declaration of the excess vacant land and finding that the petitioners were holding excess vacant land. The petitioners have further prayed for the direction to the State Government to dispose of the petitioners' application dated 11.03.1983 seeking exemption u/s 20 of the Urban Land (Ceiling & Regulation) Act, 1976. The petitioners have further prayed for quashing and setting aside the Notification issued u/s 10(3) of the Act on 20.05.1989 and the notice dated 31.05.1990 issued by the competent authority by holding that the orders made by the competent authority and confirmed by the appellate authority are illegal and contrary to law. The petitioners have prayed for, by way of an interim relief, seeking stay against the operation of the impugned orders in so far as it relates to the excess vacant land till the pendency and final disposal of the petition.

2. This petition was filed on or around 20.04.1992 and this Court has issued notice on 07.05.1992 and the respondents were directed not to take possession of the parcel of land in question, if the possession was not taken over. This Court

has issued Rule on 24.02.1994 and the ad-interim relief granted earlier was ordered to continue till further orders, if the petitioners have not lost possession of the subject matter of the petition. The Court has further observed that if this possession has already been taken, the respondents were directed not to allot that land or any part of it to anyone.

3. It is the case of the petitioners that one Mr. Prahaladbhai Ramdas Patel, the father of petitioner Nos.1 to 6 and the husband of the petitioner No.7 filed Form u/s 6 of the Act. The said Prahaladbhai expired on 31.08.1978. In the Form filed by the deceased Prahaladbhai, it has been specifically mentioned that the properties stated in the Form were ancestral property. It was also stated in the Form that Survey No.269/1, 552/1 & 552/2 are agricultural lands and agricultural operations were carried on. Alongwith the Forms, the deceased Shri Prahaladbhai also filed revenue records 7 & 12 forms and also filed property card along with the Form. The competent authority issued draft statement in the name of the deceased in 1982. The petitioner No.1 appeared on 01.01.1983 before the competent authority and gave an application that his father expired on 31.08.1978 and submitted a Certificate issued by the authority. The competent authority acknowledged the application dated 01.01.1983 wherein the petitioner No.1 has also reiterated that the said three Survey Nos. were agricultural lands and could not be treated as vacant land and also stated that the properties were ancestral one. In the said application, the petitioner No.1 has also stated that Survey No.84 was used as Vada land and the same could not have been treated as vacant land and therefore, the petitioners were not holding excess vacant land. The competent authority, however, vide his order dated 22.03.1984 held that there was excess vacant land to the extent of 26,407 Sq. Mtrs. and the said order was sent to the deceased by the respondent No.1 which was returned to the office of the respondent No.1 with the endorsement "addressee expired". On receipt of the final statement u/s 9 of the Act, the petitioners obtained copy of the order passed by the respondent No.1 dated 22.03.1984.

4. Being aggrieved by the said order dated 22.03.1984, the petitioners, heirs of deceased filed Appeal u/s 33 of the Act before the Urban Lands Tribunal contending, inter alia, that the order was a nullity as the same was passed against the dead person and that the land bearing Survey Numbers was agricultural lands and could not be treated as vacant land, and that the Vada land also could not be said to be a vacant land under the Provisions of the Act and that the application u/s 20 of the Act dated 11.03.1983 was pending decision by the State Government and that the petitioners were not holding excess vacant land. The Tribunal by its order dated 08.12.1988 dismissed the said appeal filed by the petitioners and confirmed the order of the competent authority.

5. The order passed by the competent authority and/or confirmed by the Tribunal were challenged by the petitioners before this Court in S.C.A. No. 4967 of 1989 and the said petition came to be dismissed vide order dated 02.07.1990. By dismissing the said petition, the Court has observed that the land has already

been vested in the State Government as Notification u/s 10(3) has already been issued in the month of March, 1989. The land having vested in the Government, the petitioners have no right, title or interest left in them. Merely because petitioners' application u/s 20 has remained pending with the Government, it could not effect the vesting of the property in the Government. The vesting took place as a result of operation of law and not because of any administrative decision taken by the Government. The Court has, therefore, held that it would not be open to the Government now to grant that application.

6. It is the say of the petitioners that since there was error apparent on the face of the record, the petitioners filed Review Application No. 431 of 1992 before this Court and the same Review Application was rejected by the Court on 26.03.1992 holding that it was not maintainable. However, the Court has observed that it was open for the petitioners to challenge Notification u/s 10(3) and notice u/s 10(5) of the Act by way of fresh petition. Therefore, the petitioners have filed the present petition before this Court.

7. Mr. S.H. Sanjanwala, learned Senior advocate appearing for the petitioners has submitted that the impugned orders passed by the competent authority and the appellate authority were not tenable at law as the application u/s 20 seeking for exemption was pending and in view of the Full Bench decision of this Court in the case of M/S. AVANTI ORGANISATION V/S. COMPETENT AUTHORITY & ADDITIONAL COLLECTOR, RAJKOT 30 (1) G.L.R. 368 wherein it is held that when application u/s 20 is pending, Form u/s 6 can only be proceeded upto the stage of inviting objections to the draft statement and deciding the same u/s 8(3) of the Act. He has, therefore, submitted that if the acquisition proceedings were allowed to be completed before the exemption proceedings u/s 20(1) were disposed of and the land in respect of which exemption was claimed stands acquired and vested in the Govt. it would cause an anomalous position if the State Government subsequently decides to grant exemption in respect of the said land. He has, therefore, submitted that once the application u/s 20 is granted, then the land ceases to be governed by the Provisions of the Act and, therefore, Notification u/s 10(3) can never be issued.

8. Mr. Sanjanwala has further submitted that the Notification u/s 10(3) of the Act was issued on 20.05.1989 which was published in Gazette Part -IV-C dated 29.06.1989 declaring that the excess vacant land referred to in the said Notification shall be deemed to have been acquired. The said Notification was absolutely illegal, null and void in as much as no draft statement and notice read with Rule 5 of the Rules was issued to any of the petitioners by the competent authority and as such, the impugned order on the strength of which Notification u/s 10(3) was issued, was null and void and nugatory. The respondent has issued notice u/s 10(5) of the Act dated 31.05.1990 requiring the respondent No.2 and other heirs of the late Shri Prahladbhai Ramdas Patel to hand over the possession within 30 days of the receipt of the said notice. Since the petitioners were not afforded opportunity to lodge objections as no draft statement and notice were

issued and hence, the orders passed by the competent authority and confirmed by the appellate authority are arbitrary, illegal and the petitioners were not allotted unit though they were owners of the land sought to be declared as excess vacant land.

9. Mr. Sanjanwala has further submitted that there was an apparent error of law as well as on facts on record in as much as the competent authority as well as the appellate authority have failed to appreciate that Survey No.552/1 & 552/2 were mainly used for agriculture and that having regard to the definition of the "vacant land" as contained in Section 2(q) of the Act, the same could not be said to have been vacant land as computed by the competent authority. There was also an error apparent from record in as much as the competent authority has issued the draft statement on the deceased person and the order was also passed against the deceased person. The order, therefore, was a nullity and the Tribunal ought not to have confirmed the said order and ought to have directed the petitioners to file Form u/s 15 of the Act. The properties in question were ancestral properties and the petitioners were entitled to hold a share in the property.

10. Ms. Harsha Devani, learned AGP appearing on behalf of the respondent authorities has submitted on the basis of Affidavit-in-Reply filed on 25.02.2004 that the petitioner No.1, namely, Shri Chandubhai P. Patel, son of the deceased Prahaladbhai by communication dated 30.01.1984 addressed to the Deputy Collector and the competent authority informed that his father Prahaladbhai has expired and that his heirs consisted of six sons and his mother and that he was looking after the management of the land and that they have not received the draft statement and the details of the draft statement has been personally obtained by him and adjournment was sought for to produce the evidence on record. She has further submitted that by another communication dated 03.03.1984 signed by all the heirs of deceased Prahladbhai, it was informed that they had nothing to add to the submission made and evidence produced by the brother Chandubhai. The argument canvassed on behalf of the petitioners that the order was passed against the dead person was no force in eye of law. The legal heirs have appeared before the Authority and represented themselves and hence it is not open for them to canvass such arguments in the present proceedings. She relied on the decision of the Hon"ble Supreme Court in the case of State of U.P. Vs. Sher Singh and Others, wherein it is held that the crucial date was the date of declaration and after demise of the declarant, who was holder of the urban vacant land, the question of intestate or testamentary succession by his legal representatives would not arise.

11. Ms. Devani has further submitted that the competent authority has passed the order on 22.03.1984 declaring the land admeasuring about 26,407 Sq. Mtrs. to be excess vacant land and pursuant to the said order, Notification u/s 10(1) was issued on 14.08.1984 Notification u/s 10(3) was issued on 20.05.1989 and was published in Govt. Gazette on 29.06.1989 and notice u/s 10(5) was given to

the respondents on 31.05.1990. By this notice, the petitioners were ordered to hand over the possession of the vacant land to the Government. Since the possession was not handed over within 30 days from the date of receipt of the said notice, the State Government has taken over the possession of the disputed land by way of making Panchnama on 09.01.1992. The competent authority requested the Talati-cum-Mantri by letter dated 01.02.1992 to make necessary mutation entries in the revenue record on the basis of possession taken by the competent authority by Panchnama. Accordingly, the name of the State Government was entered in the revenue record. Thereafter, the order of the competent authority was challenged in appeal before the Tribunal and before this Court in writ petition and again by way of review application. The petitioners have failed in all their attempts and thereafter, the present petition was filed before this Court. The petitioners were permitted to challenge the Notification issued u/s 10(3) and the notice u/s 10(5) of the Act. However, the petitioners have challenged the entire proceedings in the present petition. Hence, the second round of litigation is not permissible in view of the finality of the proceedings already arrived at earlier.

12. She has further submitted that there was no substance in the argument of the petitioners to the effect that during the pendency of the proceedings u/s 20 of the Act, the competent authority could not have proceeded with the acquisition proceedings u/s 10(3) of the Act as it is contrary to the binding decision of the Hon'ble Supreme Court in the case of Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others, wherein it was held that the publication of Notification u/s 10(3) declaring acquisition of excess vacant land by State cannot be differed till the decision taken on landowner's application for exemption u/s 20 or application u/s 21. None of the grounds raised by the petitioners in the present petition deserve any consideration by this Court and hence, the petition is required to be dismissed with cost.

13. Mr. S.H. Sanjanwala, learned Senior Counsel has submitted in rejoinder that fact regarding taking over of possession on 09.01.1992 was disclosed for the first time in the reply filed on 25.02.2004, which is not correct. The notice has not been served on all the petitioners and the statement made in the Panchnama that notice was served on the land holders on 31.05.1990 was not correct and was denied. Even bare look at the Panchnama would show that it is got up and concocted document which was prepared afterwards since this Court has granted ad-interim relief by an order dated 07.05.1992 directing the respondents not to disturb the possession but since this Court has ordered that the possession was not to be disturbed, if the possession was not taken over, it appears that a concocted document has been put up before this Court showing that on 09.01.1992 the possession was taken by panchnama which was prepared in 1990 and alleged notice was served on 31.05.1990. The notice dated 31.05.1990 was not served on all the land holders as required and hence the alleged taking over of possession was not in terms of Section 10(5) or 10(6) of the Act. Notice if any, dtd. 31.05.1990 even if issued, was null and void and as the very

proceedings from the stage of section 10(3) of the ULC Act were vitiated no possession could have been taken over pursuant to any such notice. Since the order has been passed by this Court not to disturb the possession in 1992 i.e. after nearly one year and seven months the alleged Panchnama was prepared. The Maintenance Surveyor Shri Suthar who is alleged to have taken possession was not authorised Officer as envisaged in sub-section 5 of Section 10 and no notice as required under sub-section 5 of section 10 read with Sections 3 & 4 of the Repeal Act was served on the land holders. The authorities were not authorised to take possession ex-parte. Since there was nothing to show that the petitioners have refused to comply with the order made under Sub-section 5 to hand over the possession, the competent authority could not have taken such ground while taking over the possession. Even the copy of Panchnama which was produced before the Court did not bear the signature of the Panchas. The possession was never taken over and even if paper possession was alleged to have been taken on 09.01.1992, it was not legal and proper. There are ample evidences on record to show that the possession was never taken over from the petitioners. Mr. Sanjanwala has also drawn the attention to several documents including notice issued by G.E.B. regarding service connection, Certificate issued by Sarkhej Nagar Panchayat to the effect that the land revenue assessment was paid by the land holders right upto 1995 - 96 and the construction of godowns on the disputed land and the taxes paid in respect of the said godowns in the year 2001 - 02. Even the documents produced by the respondents to show that the entry made on 15.05.1992 regarding the order of the competent authority was not certified by the Mamlatdar which shows that possession was not taken pursuant to the said order and it was clearly mentioned in the said entry that because of the interim relief granted by this Court, it could not be certified. The possession was not taken over from the petitioners and the Provisions of the Repeal Act would apply to the disputed land and hence, all these proceedings were abated and the petitioners are entitled to succeed in this petition.

14. In support of his submissions, Mr. Sanjanwala has relied on the decision of this Court in the case of Rajeshkumar Bhikhabhai Patel and Another Vs. State of Gujarat and Others, wherein it is held that panchnama is not enough to render delivery of possession by the petitioners in accordance with law. It was not considered to be a voluntary handing over the possession to the State Government and it was also not considered to be the handing over of the possession to the person authorised by the Government or to the competent authority. Consequently, such recovery of possession by the State Government was of no consequences. The Court has further observed that since the competent authority did not proceed to act in accordance with the judgment of the Tribunal dated 10.12.1998, and thereafter, the Act was repealed with effect from 30.03.1999, it will be deemed that there was no declaration of surplus land. Consequently, the petitioners are entitled to restoration of possession of surplus land.

15. He has further relied on the Division Bench judgment of this Court in the

case of RAJKOT MUNICIPAL CORPORATION V/S. LAVJIBHAI M. PATEL THROUGH HIS P.O.A. HOLDER RAJESH J. JOSHI AND OTHERS 2000 (3) G.L.R. 2293 wherein it is held that if excess land has been declared by the Competent Authority which has been confirmed in Appeal, but possession of vacant land was not taken over by the State Government or any person duly authorised by the State Government in this behalf, then under the aforesaid provision the State Government cannot be treated as owner of the excess land. It is only where the possession is taken over by the State Government under Sec. 10(3) of the Act that the provisions of the Repeal Act shall not affect the right and title of the State Government. Since the possession of vacant land was not taken over by the State Government under Sec. 10(3) of the Act and since it is also established that the plaintiff continues to remain in possession of the disputed land, the ownership of the petitioners could not be disturbed and the State Government was not held to be the owner of the land in dispute.

16. He has further relied on the decision of this Court in the case of Ambalal Parsottambhai Patel Thr''h Poa Kamleshbhai Parekh Vs. State of Gujarat, wherein symbolic paper possession was taken. Scheme was not approved and the matter was remanded to the competent authority. In the meanwhile, the Principal Act was repealed and hence, the view was taken by the Court that when the application under Sec. 20 or 21 of the Act was pending, proceeding upto Sec. 10(2) of the Act only could be maintained and further proceedings after Sec. 10(2) would not survive. The Court has restored the possession to the petitioner in the said case.

17. Since in the Affidavit-in-Rejoinder, the issue regarding possession and the impact of the repeal Act was raised for the first time, Ms. Harsha Devani has made her further submissions on the basis of Affidavit-in-Sur-Rejoinder filed on 06.03.2004. She has submitted that the petition had been filed by Shri Chandubhai P. Patel whereas the Affidavit-in-Rejoinder has been filed by Shri Indravadan Manilal Patel, as a Power Of Attorney Holder of the petitioners. However, no power of Attorney appears to have been placed on record showing that Shri Indravadan Manilal Patel is duly authorised to make the affidavit on behalf of the petitioners. She has further submitted that there was no substance in the challenge made by the petitioners in Affidavit-in-Rejoinder with regard to taking over possession by the competent authority. It is not open for the petitioners to challenge the action of the respondent authority on the ground that the notice u/s 10(5) was not served on the petitioners. The respondents have no reason to prepare a concocted documents as the question of possession has assumed significance in view of the Provisions of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 and prior thereto much significance was not attached to the taking over of possession. On the contrary, the petitioners have themselves stated in the Review application filed before this Court that only when possession was said to have been taken from them in the last week, the petitioners approached the advocate and were told that decision could be reviewed. The petitioners were well aware of the fact regarding taking over of

possession of the disputed land. She has also denied the statement made on behalf of the petitioners that the Maintenance Surveyor was not authorised Officer as envisaged in Sub-section 5 of Section 10 of the Act. In this connection, she relied on the decision of this Court in the case of LALITABEN TANSUKHLAL SAMEJA V/S. STATE OF GUJARAT (C.A. No. 3576 of 2003 in L.P.A. No. 572 of 2003) decided on 01.07.2003 wherein the main contention of the applicant was that the Officers who are said to have taken over such possession, were not competent. The Court held that if the Competent Authority has taken help of its subordinates for preparing the on the spot panchnama and taking of possession under its orders and supervision, it cannot be said that the action was unauthorised or invalid. An official Act is deemed to have been properly done unless shown otherwise. The Panchnama bears the name of one of the panchas and the signature of both the panchas. The fact that name of one of the panchas has been left out, can at the most be termed as a technical mistake, but the same is not so gross so as to vitiate the panchnama. The maps annexed with the panchnama are duly signed by the officer who has drawn them. It is not open for the petitioners to raise all such technical disputes in respect of the said Panchnama after all these years as on the basis of the documentary evidence as well as the averments made, it is evident that the petitioners were aware that the possession of the subject lands has been taken over by the State Government way back in the year 1992. Once the procedure prescribed under the Act has been followed and the possession of the subject land has been taken over by the State Government, the possession, if any, by the petitioners is unlawful and in the nature of an encroachment. After taking over the possession of the disputed land, the petitioners have executed several documents in the form of irrevocable power of attorney which are totally illegal and it would not confer any rights on them. Despite the subject lands having been declared as excess vacant land, the petitioners have without obtaining any permission under the Act disposed of part of the property as aforesaid and the petitioners have suppressed the said fact in the present petition. The petition, therefore, suffers from the vice of suppression of material facts and hence, the petitioners have not approached this Court with clean hands and the petitioners are not considered to be fit persons to carry the writ of this Court. On the date of commencement of the Urban Land (Ceiling & Regulation) Act, 1976, there was no construction on the subject lands and hence, any transfer in contravention of the Act or any construction on the lands which have been declared as excess vacant land under the Provisions of the Act is illegal and unauthorised and no equity can be claimed in that regard. The very fact that the godowns were constructed on lands which have been declared excess vacant speaks volumes as to how the petitioners were perpetuating illegalities with impunity, in blatant disregard of the provisions of law. The possession of the disputed land was taken over by the competent authority in accordance with law and since the same was already taken over prior to the coming into force of the Repeal Act, 1999, the proceedings in this writ petition in absence of any order of competent authority, Tribunal or Court conferring any right on the petitioners, are abated. Since the constructions were

being put up on lands bearing Survey No. 269/1 despite the fact that there were stay orders issued against the persons by the competent Courts and since the petitioners have taken illegal possession of Govt. lands and had sold such Govt. properties which would amount to land grabbing, the competent authority and Additional Collector had submitted a proposal dated 09.08.1995 for initiating action against the petitioners under the Provisions of the Gujarat Prevention of Antisocial Activities Act, 1985. The possession is already taken over and if the petitioners claimed to be in possession of the said lands, it was in the nature of encroachment and amounts to land grabbing.

18. The affidavits filed by the Panchas have no importance in the eye of law as the Hon'ble Supreme Court in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, has clearly held that affidavits of the Panchas filed in the High Court which contains statements contrary to what was recorded in the panchnama and against the revenue entries are quite meaningless and the High Court has unnecessarily put undue reliance on the same. The High Court could not convert itself into a Revenue Court and hold that inspite of the Panchnama and the revenue records actual physical possession of the acquired land has not been handed over to the acquiring body. No reliance should have been placed upon the affidavits of the Panchas filed by the petitioners along with their Affidavit-in-rejoinder in the year 2004 regarding a Panchnama made in 1992.

19. Even the above submissions made by the learned AGP on the basis of the Affidavit-in-Sur-Rejoinder were disputed and denied by the petitioners and reply to the Affidavit-in-Sur-Rejoinder was placed on record on 17.03.2004. On the basis of this reply, Mr. Sanjanwala has submitted that unless and until the notices are served and documentary evidences are produced by the competent authority showing serving of notices on all the petitioners who were the land owners and co-owners, the competent authority under the Ceiling Act does not get any right whatsoever to take ex-parte possession. The very fact that no allotment has been made as required under Sub-Section 9 of Section 11 and that no proceedings are taken for determination of the amount to be paid within the prescribed time would also show that the possession was not taken. Otherwise, such proceedings were bound to be taken. Rule 7 of the ULC Rules requires that every case for determination of the amount to be paid to the person or persons having any interest in the vacant land shall be disposed of by the competent authority within one year from the date on which vacant land is deemed to have been taken acquisition by the State Government. No proceedings are taken, much less finished within the period of one year and no price is determined.

20. After hearing is over, written submissions were filed by the learned AGP which also deal with certain factual averments and the disputes raised in the Affidavit-in-Sur-Rejoinder and the same are also taken into consideration.

21. After having heard the learned advocates appearing for the respective parties and after having perused their respective pleadings and the documentary evidences produced before the Court and after having given my anxious thoughts

and due considerations to the authorities cited before me by both the sides, I am of the view that the true nature and scope of the present writ petition is in a very narrow compass and the issues which were raised and decided in earlier writ petition being S.C.A. No. 4967 of 1989 on 02.07.1990, can not be reagitated or readjudicated in the present proceedings. It is an admitted position that the competent authority has passed an order on 22.03.1984 declaring 26,407 Sq. Mtrs. land as excess vacant land. An appeal preferred against the said order u/s 33 of the ULC Act before the Tribunal was also dismissed on 08.12.1988. Despite the fact that the order of the Competent authority was challenged on the ground that the order was a nullity as it was passed in the name of dead person and that part of the land was agricultural land or Vada land and hence could not be declared as excess vacant land and that application u/s 20 of the Act was pending, the said appeal was dismissed. Writ petition filed before this Court, being S.C.A. No. 4967 of 1989 was also dismissed on 02.07.1990 and the Review Application filed against the said order was also rejected on 26.03.1992, except to the extent that since the Notification u/s 10(3) of the Act was not challenged in the earlier petition, the petitioners were permitted to challenge the said Notification by way of separate petition and that is how, the present petition was filed. The issue was, however, not decided till the Repeal Act, 1999 has come into force on 30.03.1999 and hence the proceedings may be deemed to have been abated in view of the decision of this Court in the case of MAGANLAL MEPABHAI PATEL V/S. ADDITIONAL COLLECTOR (1999) 40 (3) G.L.R. 2105 wherein it is held that "even the High Court's jurisdiction under Art. 226 of the Constitution of India, whether the Court call it a constitutional jurisdiction or a discretionary jurisdiction or a writ jurisdiction, is not beyond the statute. Thus, if Section 4 creates the mandate in respect of abatement of all pending proceedings, the Court is of the opinion that such mandate would apply even to the High Court exercising its writ jurisdiction under Art. 226. Even otherwise, the phrase "before any court, tribunal or other authority" is sufficiently wide to indicate the intention of parliament so as to cover all pending proceedings, irrespective of the forum where they were pending and irrespective of the nature of jurisdiction which that forum would be exercising". In view of these observations, the challenge to the Notification issued u/s 10(3) of the Act in the writ petition, the proceedings of which are deemed to have been abated, would not survive. Since no rights are crystalised in favour of the petitioners, no protection can be granted to them nor any of their alleged rights are saved by virtue of the Repeal Act, 1999.

22. The Repeal Act, however, contains saving clause in Section 3 and Clause (a) of Sub-section (2) of Section 3 states that 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, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government. The petitioners have specifically pleaded that the possession of the disputed property was with them

and it was not taken over by the State Government till the Repeal Act has come into force on 30.03.1999.

23. The issue regarding possession of disputed property, therefore, assumes much significance in the light of the Repeal Act, 1999. The very fact that while issuing the notice in this petition on 07.05.1992, this Court has restrained the respondent State and its officials from taking the possession of the disputed land, only in the event if the possession was not taken over on that day, itself proves that the petitioners' possession was not believed by the Court. Now, the State Government has placed on record several documents showing that possession was taken over on 09.01.1992. An entry was made on the basis of said Panchnama. Because of the pendency of the matter before this Court, the entry was not certified nor any allotment has been made u/s 11(a) of the Act nor any proceedings were taken for determination of the amount to the petitioners. This, by itself, does not vitiate the factum of possession taken over by the State Government prior to the order passed by this Court on 07.05.1992. There might be some lapses in drawing Panchnama or recording transaction of possession. The State Government or its officials were not cautious or vigilant enough to protect completely the possession of the disputed property, after having taken such possession. On these basis, however, it cannot be believed that the petitioners are in possession, much less the lawful possession of the disputed property. If the petitioners are claiming to be in possession of the disputed property, the said possession may be believed to be the possession of an encroacher and may amount to land grabbing. This Court has already taken the same view in the case of LAXMANJI BABAJI THAKORE (S.C.A. No. 10315 of 2000 decided on 25.01.2001) and it has been confirmed in L.P.A. No. 624 of 2003 decided on 01.07.2003. The Panchnama prepared by the Maintenance Surveyor cannot be said to be an illegal Panchnama as this Court has taken the view in the case of LALITABEN TANSUKHLAL SAMEJA (SUPRA) that if the Competent Authority has taken the help of its subordinates for preparing the on the spot Panchnama and taking of possession under its orders and supervision, it cannot be said that the action was unauthorised or invalid. Considering the Panchnama and Revenue records, it is difficult for this Court to hold that actual physical possession was not taken over by the State Government and no importance can be given to the affidavits filed by the Panchas and produced before the Court at the belated stage, in view of the decision of the Hon'ble Supreme Court in the case of M/S. LARSEN & TOUBRO LIMITED (SUPRA). Moreover, on 09.01.1992, when Panchnama was drawn and possession was taken over, the issue did not assume much significance. It assumed so much importance only after 30.03.1999 when the Repeal Act has come into force and hence there is no justifiable reason to believe that Panchnama drawn on 09.01.1992 was false or concocted. Thus, taking overall view of the matter, the Court is of the firm opinion that the possession of the disputed property was taken over by the State Government on 09.01.1992 and on the date when the Repeal Act has come into force i.e. 30.03.1999, the petitioners were not in lawful possession of the

disputed property.

24. The Court now proceeds to deal with the last contention raised on behalf of the petitioners and that is with regard to the effect of pendency of an application u/s 20 of the Act, on the subsequent proceedings under the ULC Act, beyond the stage of Section 10(2) of the said Act. It is, true that earlier this Court has taken the view in the case of STATE OF GUJARAT V/S. KANUBHAI @ NAVINBHAI (S.C.A. No. 9331 of 2000) decided in November, 2003 that an application u/s 20 of the ULC Act seeking exemption was filed and since there was nothing on record showing that the said application was disposed off by the Competent authority, all subsequent actions taken without disposal of the said application cannot be held to be justified in view of the decisions of this Court. However, the Court has not rested its decision on this solitary ground. The Tribunal has remanded the matter to the competent authority and order of the Tribunal was challenged by the State Government before this Court, after about two years and that too, after Repeal Act, 1999 has come into force on 30.03.1999, and the matter was still pending before the competent authority. Moreover, the decision of the Hon"ble Supreme Court in the case of DAROTHI CLARE PARREIPA (SMT.) AND OTHERS (SUPRA) was neither cited nor relied upon by the State Government. In the present case, the facts are quite distinguishable. The proceedings under the ULC Act were finalised and the petitioners have lost at all levels. After vesting of the land u/s 10(3) of the Act in the State Government, the possession of the disputed land was already taken over on 09.01.1992 and, thereafter, the present petition was filed before this Court. In the said background of the matter, the observations made by the Hon"ble Supreme Court in the case of SMT. DAROTHI CLARE PARREIPA AND OTHERS (SUPRA) are of much relevance. Considering the scheme of the Act, the Hon"ble Supreme Court has given categorical finding that it cannot be said that until the application u/s 21 or Section 20 is considered and disposed of, the Competent Authority has no power to have the notification u/s 10(3), vesting the excess land in the Government published.

25. The decision of this Court in the case of Rajeshkumar Bhikhabhai Patel (Supra) has no application as in that case, the competent authority did not proceed to act in accordance with the order of the Tribunal dated 10.12.1998, and thereafter, the Act was repealed with effect from 30.03.1999. In the present case, the order of the competent authority is confirmed by the Tribunal and by this Court.

26. The decision of this Court in the case of Rajkot Municipal Corporation (Supra) has also no application as in that case, admittedly the possession was not taken over by the State Government despite the Notification having been issued u/s 10(3) of the Act.

27. The decision of this Court in the case of Ambalal Parsottambhai Patel (Supra) has also no application as in that case Scheme was not approved and the matter was remanded to the competent authority and pending decision of the competent

authority, the Act was repealed on 30.03.1999. In the present case, order passed by the Competent authority has become final and no proceedings except application u/s 20, are pending before the Competent Authority and after Repeal Act, 1999 and more particularly, when the Notification u/s 10(3) has already been issued vesting the disputed property in the State Government and after issuance of notice u/s 10(5) of the Act, possession was taken over by the State Government, neither the State Government or any authority in that behalf be directed to decide application u/s 20 of the Act, nor Notification u/s 10(3) or any subsequent proceedings under the Act, can be held to be illegal, unlawful or null and void.

28. In the above view of the matter and considering the previous history of litigation, nature and scope of present proceedings, effect of Repeal Act on these proceedings, petitioners' conduct and involvement of many disputed questions of fact, this Court is unable to exercise its extraordinary, equitable, prerogative, plenary and discretionary writ jurisdiction in favour of the petitioners. The petitioners are, therefore, not entitled to any relief claimed in this petition. The petition, therefore, fails. Rule discharged without any order as to costs. Interim relief granted earlier is vacated.