
(2018) 10 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 1517 Of 2004

Gopalrao Shiva Ikhankar & Others.

APPELLANT

Vs

State Of Mah & Others

RESPONDENT

Date of Decision : 06-10-2018

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 10(6), 20, 21

Citation : (2018) 10 BOM CK 0061

Hon'ble Judges : B. P. Dharmadhikari, J; M. G. Giratkar, J

Bench : Division Bench

Advocate : P. B. Patil, N. R. Patil, Girish Dipwani, H. N. Verma

Judgement

B. P. Dharmadhikari, J

1. Matter was heard on 4th 10th 2018 and thereafter today. Submission of Advocate Shri Patil is provisions of the Urban Land (Ceiling and Regulation)

Repeal Act, 1999 (hereinafter referred to as 'Repeal Act') have come into force from 29th 11th 2007. Possession of excess land with petitioners was

not taken in terms of Section 10(5) of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as '1976 Act') till then. Petitioners

continued in actual cultivation and hence after repeal, the land vests back in petitioners.

2. He fairly points out that the subject land was allotted by the State Government to Nagpur Housing Area Development Board and also to an

educational institute with political clout. These allotments formed subject matter of Writ Petition (PIL) No. 55/2004 wherein a commission headed

by Hon'ble Shri Justice Batta (Retired) was appointed. That commission found defects in allotments and ultimately by judgment dated 15th 3rd 2017,

allotment of said land to housing board and to educational institute is quashed and set aside.

3. Advocate Shri Patil submits that in this situation, since the petitioners have constantly continued in possession, the Repeal Act is squarely attracted.

4. Learned Assistant Government Pleader is relying upon reply affidavit. He also states that petitioners have made some correspondence and in it,

they have accepted that the said land was declared as surplus land. The proceedings in Writ Petition No. 55/2004 are not in dispute and hence,

allotment of that land to housing board and to educational institute is also not in dispute. He contends that though that allotment may be faulty, it

shows the power exercised by the State Government on subject land and, therefore, it negates possession of petitioners over the same.

5. He points out that possession was taken on 22.11.1990 as per possession notice dated 12.11.1990 and the petitioners have never questioned

it. He therefore seeks dismissal of writ petition.

6. In brief reply, Advocate Shri Patil relies upon mechanism provided for in Section 10(5) and 10(6). He submits that if possession is taken without

following procedure, the land owners are entitled to repossess the same. He draw support from judgment of Hon'ble Apex Court in the case of

State of Uttar Pradesh Vs. Hari Ram reported at (2013) 4 SCC 280, particularly, paragraph 34 to 37.

7. The learned counsel also states that here respondents point out that notice for taking possession was issued on 12.11.1990 and though they claim

that it was served on petitioners on 17.11.1990, material in support thereof is not produced. Alleged possession receipt dated 22.11.1990 also

does not support the contention that possession was taken from petitioners.

8. With the assistance of respective counsel, we have perused the papers. The judgment delivered by Division Bench of this Court on 15.3.2017

in Writ Petition (PIL) No. 55/2004 is produced on record by Advocate Shri Patil. It shows that land admeasuring 51,700 Square meters of Field

Survey No. 117 and 119 formed subject matter of enquiry. The Division Bench has found that land did vest in State Government. However,

procedure envisaged by 1976 Act therefor was not the issue to be looked into by that Division Bench. The consideration proceeds on the premise

that State Government was competent to allot land to the educational institute or

Housing Board. In present matter, we are concerned with events which are prior to vesting of land in State Government.

9. The description and area of subject matter is not in dispute. The respondents in their reply affidavit state that notice for taking possession was

served on land owners on 17/11/1990. They also claim that said notice is dated 12/11/1990. Copy of this notice or then acknowledgment of

its service is not made available. Respondents also rely upon possession receipt dated 22/11/1990. The possession receipt does not show that

petitioners were served on a particular date and were absent though had sufficient advance intimation.

10. The possession receipt mentions that land owner Gopal was absent though served and hence possession was taken in presence of witnesses on

22/11/1990. Signatures of panch witnesses and signature of Tahsildar are there. It appears that simultaneously by very same document,

possession was handed over to Housing Board.

11. The provisions of Section 10 of 1976 Act are therefore important in this matter. Section 10(5) deals with taking of possession of land by the

State Government after the same vests in it. That section enables competent authority to serve a notice in writing ordering person in possession to

surrender the same to State Government within 30 days of service of such notice. Subsection (6) deals with contingency when such person either

refuses or fails to comply with the notice/order demanding possession under Section 10(5). In that event, competent authority is empowered to take

possession of vacant land by using such force as may be necessary. Scheme therefore shows that competent authority cannot take possession

before land vests in State Government. Vesting is provided for in Section 10(3) and thereafter Section 10(5) provides for mechanism to take

possession. A notice in writing and the period of 30 days therefore is essential. If land owner refuses or fails to comply with such notice, Section

10(6) then permits competent authority to use force to take possession.

12. Judgment of Hon'ble Apex Court reported at State of Uttar Pradesh Vs. Hari Ram (supra) brings out this position only. Hon'ble Apex Court has

expressly noted that till stage under Section 10(5) is reached, provisions of 1976 Act do not deal with aspect of possession at all.

13. In this matter, the notice allegedly served upon petitioners is not produced

on record.Â Reply affidavit claims that it is issued on 12Â11Â1990 and it is served upon petitioners on 17Â11Â1990.Â The petitioners therefore ought to have been given time of 30 days to handover possession.Â

Respondents do not point out whether such time was given to petitioners or not.Â If such time was given, that time would have expired either on

12Â12Â1990 or then on 17Â12Â1990.Â They have, however, proceeded to take possession on 22Â11Â1990.Â Possession claimed to be taken is

therefore within five days of alleged service of notice.

14. Section 10(6) contemplates refusal or failure on part of land owner to comply with notice under Section 10(5).Â The so called receipt dated 22Â?

11Â1990 relied upon by respondents expressly mentions that petitioners were absent.Â Their absence therefore connotes either their refusal or then

omission to yield to demand of possession under Section 10(5).Â Hence, on that day, possession could not have been taken and steps under Section

10(6) should have been initiated.

15. In other words, even if, we presume story of respondents to be correct, material pressed into service by them shows violation of Section 10(5) and

also Section 10(6) of 1976 Act.Â It therefore cannot be said that they have taken possession illegally.

16. Petitioners have filed this petition claiming expressly that they have remained in possession and even today continue in possession.Â They are

relying upon crop statements and revenue records to support the same.Â Respondents have not challenged this assertion on affidavit specifically.Â

They have also not explained entries in revenue records.Â Respondents have only produced revenue record for year 1997/1998.Â Said revenue

record mentions Land Survey No. 144/2 admeasuring 5H 17 R and it records name of Housing Board.Â The field survey numbers which are looked

into even in Writ Petition (PIL) No. 54/2004 are 117 and 119.Â These documents, therefore, do not show that petitioners were/are not in possession.

17. We have already taken note of 1999 Act.Â Though Repeal Act has been passed by Parliament, it has come into force on 29Â11Â2007 which is

almost 8 years thereafter.Â In writ petition, petitioners have produced a communication dated 7Â8Â2003 sent by them to State Government.Â In

that communication, they state that till 7Â8Â2003, stage only till Section 10(1) was reached, they have therefore not pointed out that notices under

Section 10(5) were issued or then land did vest in State Government under Section 10(3).Â They have in that communication prayed for condoning delay in filing scheme under Section 20/21 of 1976 Act.

18. There is one more document of date 7Â1Â2004.Â There, petitioners have addressed a letter to Housing Board.Â They have claimed that their land has been taken in possession by the State Government without paying any compensation.Â They have also pointed out that even Housing Board has not developed any scheme on their land.Â They further state that their financial condition is bad and in absence of any other source of employment, they are cultivating subject land only to earn livelihood.Â This letter and language employed therein unequivocally brings on record the fact that petitioners were cultivating the land and earning livelihood.Â When these two letters were sent by petitioners to respondents, they had no reason to fabricate any evidence. The Repeal Act has come into force more than three years thereafter.

19. These documents and revenue records support the contention of petitioners that actually they have continued in physical possession of subject land.

20. Thus on one hand, we have recorded a conclusion that respondents are not in position to prove that they have taken possession of subject land as per law and on the other hand, on the basis of documents, we have reached a finding that petitioners are/were in possession thereof.

21. It is, therefore, apparent that after 29Â11Â2007, the petitioners become owner of entire land and the respondents cannot continue to treat or recognize the same as surplus or excess vacant land.

22. Accordingly, we make rule absolute in terms of prayer (a1) to (a2).Â No costs.