

(2012) 07 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1290 of 2012

Mr. Manik M. Ragit

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 20, 20(1), 20(2), 4
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(1)(a)

Citation : (2013) 1 ALLMR 550 : (2013) 2 MhLj 224

Hon'ble Judges : S.C. Dharmadhikari, J; M.T. Joshi, J

Bench : Division Bench

Advocate : P.V. Vaidya, for the Appellant; B.H. Dangre, Addl. GP for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

1. By this Writ Petition under Article 226 and 227 of the Constitution of India, petitioner seeks a declaration that all proceedings under Urban Land (Ceiling and Regulation) Act, 1976 stand abated in view of Section 3 and 4 of the Urban Land Ceiling Repeal Act 1999. Accordingly respondents be directed to make appropriate change in the revenue record and restore the name of the petitioner therein in respect of land Kh. Nos. 211 and 211/1 mouza Wadi Patwari Halka 47 Tahsil Nagpur Gramin, District Nagpur. Petitioner states that this land admeasures about 3.84 H.R. It was shown in the land records in the name of the petitioner. When the returns were filed in the year 1981 it appears that an enquiry was made and a portion admeasuring 22781 Sq. Mtrs. from these khasra numbers came to be notified and declared as surplus vacant land. That order was passed on 28th December 1981. Accordingly, the petitioner presented a scheme u/s 20(1) of the Urban Land Ceiling Act. It is stated that this was in relation to half portion of the land declared as surplus. This scheme was sanctioned by the Competent Authority, Urban Land Ceiling Nagpur. However, the scheme was not implemented as there was no approach road to the petitioner's land and no

infrastructure facilities were available. Reliance is placed on the exemption order and it is submitted that area admeasuring 0.36 H.R. from Kh. No. 211/ 1 and area admeasuring 0.54 H.R. from Kh. No. 211 are shown in the name of respondent no. 1 by mutation entry dated 30th October 2007. However, physical possession of the land is still with the petitioner and that has not been taken from him. The land is under cultivation of the petitioner.

2. It is submitted that the Urban Land (Ceiling and Regulation) Act, 1976 came to be repealed with effect from 29th October 2009. It is submitted by Shri Vaidya, learned counsel appearing on behalf of the petitioner that Section 3 of Repeal Act only saves a scheme sanctioned under Sub Section (1) of Section 20 provided in furtherance of the order granting exemption any action has been taken by the holder of the land.

3. In the present case, the Scheme could not be implemented and, therefore, there was no question of the same being saved by Section 3(1)(a) of the Urban Land (Ceiling And Regulation) Repeal Act 1999. The respondents, were required, according to Shri Vaidya learned counsel, to take physical possession of the land after the scheme had failed and that could have been taken only in terms of Section 10 of the Un-repealed Act. That having not been done the proceedings under Urban Land Ceiling Act stand abated after its repeal. Thereafter, the land must be held to be belonging to the petitioner and should be restored back to him in the revenue records.

4. Reliance is placed on Division Bench judgment of this Court in the case of Vithabai Bama Bhandari Indian Inhabitant Vs. State of Maharashtra and Deputy Collector and Competent Authority Ulhasnagar Urban Agglomeration, decided on 16th April 2009.

5. Mrs. Dangre learned Additional Government Pleader appearing on behalf of the respondents fairly states that Division Bench judgment in Vithabai's case holds that if the State Authorities have failed to take possession in terms of Section 10, then, the physical possession being with the petitioner, the revenue records have to be corrected accordingly.

6. With the assistance of the learned counsel appearing for parties we have perused the Writ Petition and also the Division Bench judgment. Facts in our case are not disputed. There has been no step or action taken in pursuance of the order of exemption passed in favour of the petitioner. Thus, the scheme was not implemented. If it was not implemented, then, the Division Bench judgment in Vithabai's case takes the view that the consequence of passing an order u/s 20(1) results in exemption of surplus vacant land from the provisions of the Act. However, on withdrawal of the exemption u/s 20(2) of the Urban Land Ceiling Act, that does not provide that possession of surplus land would automatically or is deemed to have been taken by the Competent Authority. If the State of Maharashtra is required to resort to provisions of Chapter III of Urban Land Ceiling Act for taking possession and issue notice u/s 10 of the Act, then, they

cannot urge that possession was not taken prior to the Repealing Act coming into force. In other words, if possession is not taken prior to Repeal Act coming into force, then, it will be restored to owner. The view taken is that Section 10, does not provide for different procedure to be adopted subsequent to the passing of an order u/s 20(2) of the Urban land Ceiling Act. Therefore, looking at the matter this way, even if the scheme has not been implemented or the exemption has been withdrawn, this judgment holds that the respondent could resort to Section 10 of the Un-repealed Act. That having not been done in the case before us we are of the view that, the controversy is covered by the judgment of this Court in the judgment of Vithabai's case. Accordingly the Writ Petition succeeds and it is declared that the land of the petitioner to the extent indicated above stands released and the records of the Revenue Authorities be corrected as the provisions of Urban Land (Ceiling & Regulation) Act, 1976 are no longer applicable. Revenue records be corrected as prayed by the petitioner within two months from the date of receipt of copy of this order.