

(2016) 05 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2866 of 2014

Shivshankar Shivram Singh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2016) 4 AIRBomR 194

Hon'ble Judges : S.C. Dharmadhikari and G.S. Patel, JJ.

Bench : Division Bench

**Advocate : Mr. M.U. Pandey with Mr. R.M. Pandey, Advocates, for the Appellant;
Mr. Milind More, Additional Government Pleader, for the Respondent**

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—This writ petition is one more in the series of matters where jurisdiction of this court under Articles 226 and 227 of the Constitution of India is invoked not by rightful owners but builders and developers, to reclaim the vacant lands in excess of ceiling limits, which have already vested in the State. The surplus land holders and owners of these lands very well know that their fate is sealed for they are divested of their right, title and interest in these lands by due process of law. However, they are propped up by builders and developers with ulterior motives to file such petitions by relying on the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 (Principal Act) in the State of Maharashtra with effect from 29th November, 2007. Though physical possession of these lands is with the State and not challenged by the owners and surplus vacant land holders at the relevant time, now they raise such challenge being financed by builders and developers. Builders and developers and particularly those amongst them who have no locus and right in law raise a challenge on the strength of irrevocable power of attorneys from the erstwhile owners. They put forward pleas which their principals have never raised. Such litigants are encouraged sometimes by inaction of the State officials in

maintaining and preserving proper records and sometimes the State machinery deliberately assists them by keeping back crucial and important documents. Whatever may be the cause, this court's precious time is wasted in not only scrutinising the original records, but in considering the prolonged arguments. All this because even one square feet of land is extremely valuable in a city like Mumbai and commands a huge price in the market. In cases after cases, vacant lands and which have not been fenced and protected are subject matter of such litigations and since the State is unaware about the extent of the land it owns, there is a tendency of filing them. This is one more case where builders and developers are before the court after the surplus land holders and owners have accepted the correctness and validity of the State's action. As Judges we hardly have any choice particularly when such petitions are admitted.

2. This petition was extensively heard by us and on several occasions. On 28th January, 2016, we passed the following order:-

"(1) The original records have been produced by Mr. More. Before the Court peruses and relies upon the same, it would be fair and in the interest of justice that Mr. Pandey is given an opportunity to inspect the same.

(2) At the request of Mr. Pandey and also in order to enable both, Mr. Pandey and Mr. More, to peruse the latest Hon'ble Supreme Court judgment, we list this matter on 17th February, 2016."

3. Thereafter, on 17th February, 2016, the parties concluded their arguments and we closed the matter for judgment.

4. The petitioners in this petition seek the following reliefs:-

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari and/or any other Writ Order or Direction in the nature of Certiorari calling for the records and proceedings of:

(i) Order under No. C/ULC/6(1)/SR.XVI-841 under Section 8(4) dated 22nd December, 1994 of the ULC Act and Final Statement issued present thereto under Section 9 of the ULC Act.

(ii) Notification No. C/ULC/D-6/6(1)/SR/16-841 dated 26th April, 2005 under Section 10(3) of the ULC Act published in the Maharashtra Govt. Gazette dated 26th May, 2005.

(iii) Notice No. C/ULC/D-5/6(1)/SR-16/841 dated 02nd February, 2007 under Section 10(5) of the ULC Act.

(iv) Ex-Parte possession Receipt dated 15th February, 2007.

(v) Mutation Entry No. 311 of Village:- Kanjur certified on 19.06.2007 and Mutation Entry No. 483 of Village ? Bhandup certified on 10th October, 2007.

(vi) the Letter/intimation No. ULC/ 2013/ 254/ PC 79/ULCR-1 dated 16th May, 2014 and

(vii) the Notice bearing No. C/ULC/D-V/6(i)/SRXVI/ 841 dated 18th February, 2008 issued by the Respondent No. 3 for fixing the Compensation and after perusing the same be pleased to set aside.

(b) that this Hon"ble Court be pleased to issue a writ of mandamus and/or any other writ order or direction in the nature of mandamus ordering/directing the Respondents to delete the name of respondent No. 1 and restore the name of the Petitioners in the Property Register Card as the holders in respect of the land bearing CTS No. 96 (Part) of Village ? Kanjur, Taluka Kurla, Mumbai Suburban District;"

5. The petition is filed in the following facts and circumstances:

6. The petitioners are the citizens of India and they are owners of the land ad-measuring 53,954 square meters bearing Survey No. 137, Hissa No. 1/2, CTS No. 96(Part) of Village Kanjur and the land ad-measuring 6,816 square meters bearing Survey No. 153, Hiss No. 1/3, CTS No. 127 of village Bhandup both of Taluka Kurla, Mumbai Suburban District. The said lands were owned by Smt. Ramkalidevi Sanman Singh, the grandmother of petitioner nos. 1 to 3 and mother-in-law of petitioner no. 4, having purchased the same by registered conveyance dated 25th August, 1965. Respondent no. 1 is the State of Maharashtra. Respondent no. 2 is the Chief Minister of State of Maharashtra holding the Urban Development Portfolio and respondent no. 3 is the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short referred to as "the ULC Act/Principal Act") (since repealed) for Mumbai Urban Agglomeration and respondent no. 4 is the City Survey Officer, Mulund, Mumbai.

7. The facts giving rise to the present petition are as follows:-

(i) By the conveyance dated 25th August, 1965, Smt. Ramkalidevi Sanman Singh, the grandmother of petitioner nos. 1 to 3 and mother-in-law of petitioner no. 4 purchased all the pieces and parcels of land or ground bearing Survey No. 137(part) of village Kanjur and Survey No. 153(part) of village Bhandup together ad-measuring 72,600 square yards or thereabout. The petitioners state that on actual measurement, the land bearing Survey No. 137(part) of village Kanjur ad-measured 64,529 square yards and Survey No.153(part) of Bhandup ad-measured 8,152 square yards. Both the said lands are adjacent to each other.

(ii) The effect of the said conveyance was given in the revenue records in the Village Form No. 6 and 7/12 and the name of Smt. Ramkalidevi Sanman Singh was recorded as the holder of the said land in the Village Form No. 6 and 7/12.

(iii) The said Smt. Ramkalidevi Sanman Singh died intestate at Kankavli in Ratnagiri District on 29.07.1971. Shivram Singh Sanman Singh (since deceased) the son of the said Smt. Ramkalidevi Sanman Singh applied for letter of administration of the estate of the said deceased and the High Court of Judicature at Bombay in Testamentary Petition No. 160 of 1972 granted letter of administration of the estate of the said deceased to her son Shivram Singh

Sanman Singh.

(iv) After obtaining the letter of administration from this court, the said Shivram Singh Sanman Singh applied for giving effect thereto in the city survey records and the City Survey Officer, by the order dated 15th September, 1975, ordered for recording the name of the said Smt. Ramkalidevi as the holder of the said land and thereafter by the order of the same date, ordered recording the name of Shivram Singh Sanman Singh on the basis of the letter of administration issued by this court.

(v) With the passage of time, the three daughters of the said Smt. Ramkalidevi Sanman Singh, by three separate deeds of release, duly registered with the Sub-Registrar of Assurances, released and relinquished their respective 1/3th undivided share, right, title and interest inherited from their mother Smt. Ramkalidevi Sanman Singh to petitioner nos. 1, 2 and 3, who were then minors. The effect of the said release has been given by the City Survey Officer in the Property Register Card on or about 5th April, 1988 and the relevant entry is marked by green colour on the extract of the Property Register Card. Thus, the said Shivram Singh Sanman Singh (since deceased) and petitioner nos. 1, 2 and 3 became the owners of 1/3th undivided share, right, title and interest in the said lands.

(vi) On the enactment of the ULC Act, the said Shivram Singh Sanman Singh filed statement under section 6(1) of the ULC Act. The finalisation of the statement filed under section 6(1) of the said Act remained pending for a period of more than 9 years. The petitioners state that a draft statement was issued by respondent no. 3 on or about 17.01.1985 proposing to declare a part of the land as surplus vacant land under the ULC Act. The reply/objection to the draft statement were filed and the objections were ultimately heard after 9 years on or about 15.06.1994.

(vii) On receipt of the notice for hearing, the petitioners had filed the death certificate of Shivram Singh as also authorisation in favour of M/s. Deole Brothers, to represent them. The said authorisation was dated 15th March, 1994 filed with respondent no. 3 on 17th March, 1994. By the said document, they placed on record that they were co-owners of the said properties and the said Shri Shivram Singh had died and annexed xerox copy of the death certificate of Shri. Shivram Singh. The hearing to the objections to the draft statement under section 8(3) took place on or about 15th June, 1994. At the said hearing, the said Deole Brothers, along with their letter dated 15th June, 1994, produced certain documents and promised to produce the D. P. remarks of CTS No. 96 of village Kanjur.

(viii) The said M/s. Deole Brothers applied to the Executive Engineer, Development Plan of the Municipal Corporation of Greater Mumbai (MCGM) and obtained the D. P. remarks in respect of the land bearing CTS No. 96 and other CTS numbers of village Kanjur. The said D. P. remarks were issued by the Executive Engineer, Development Plan under covering letter No. CHE/1029/DPES

dated 30th June, 1994 and annexed thereto was the plan certifying that the said land owned by the petitioners in CTS No. 96 was reserved for recreation ground in the D. P. Plan. The petitioners state that when they contacted Deole Brothers, they informed them that they had obtained the D. P. remarks in respect of the said land and submitted to respondent no. 3. However, they would not provide the acknowledgment of the same. The petitioners, therefore, applied to respondent no. 3 under the Right to Information Act and obtained the copy of the said D. P. remarks submitted by the said M/s. Deole Brothers, which was at page no. 421 of the file and the plan was at page no. 423 of the file. The petitioners state that on the submission of the said letter dated 15th June, 1994, assurance given to respondent no.3 of producing the D. P. remarks of CTS No. 96 of village Kanjur was complied with and the same was before respondent no. 3.

(ix) The said Shivram Singh Sanman Singh had died intestate on 24th January, 1991, leaving behind him the petitioners and one Suchitra a daughter (respondent no.5). thus, 7th share right, title and interest of the said Shivram Singh Sanman Singh devolved upon the petitioners and Kumari Suchitra by 5% each. Therefore, petitioner nos. 1, 2 and 3 became entitled to 30% share each. Petitioner no. 4 became entitled to 5% and Suchira (respondent no. 5) became entitled to 5% share in the said land.

(x) Taking into consideration the statement and representation of the said representative, who appeared, respondent no. 3 ordered CTSO No. 1 (City Survey Officer) in his office to work out the area falling under the reservation as per the sanctioned development plan of the MCGM and the area falling under the plinth and the land appurtenant in respect of the structures. The petitioners state that from the order made under section 8(4) and the final statement issued under section 8(4) and 9 of the ULC Act, the CTSO No. 1 worked out the reservation under the sanctioned development plan of the MCGM and the area under the plinth, the land appurtenants in respect of the structures as follows:-

Sr. No.

CTS No.

Total area sqms.

Area falling under reservation as

DPRd.

Cemetery

R. G.

1

99

4086.1

785.3
 1218.9
 -
 99/1 to 28
 463.7
 305.6
 -
 -
 102
 2568.5
 322
 -
 1709.6
 102/1 to 62
 1187.1
 278.2
 -
 908.9
 Total
 1691.1
 1218.9
 2618.5

(xi) From Order under section 8(4) and the final statement under section 9 of the ULC Act, it is seen that respondent no. 3 had directed the CTS Officer No. 1 in his office to workout the reservation in respect of the land declared by the declarant Shivram Singh, but the CTS Officer No. 1 worked out the reservation, built up area and the land appurtenant in respect of only two of the lands. From the order under section 8(4), it is seen that the land declared were as shown in table below and direction given by respondent no. 3 to CTS Officer No. 1 to work out D. P. reservation, the build-up area and the land appurtenant were in respect of the land described in table below but the CTS Officer No. 1 prepared report only in respect of two of the lands as above in (x). The directions were given by respondent no. 3 in respect of the following lands:-

The declarant has declared the following properties:-

Village

S. No.

Kanjur

120 130 01/02/37 137(pt.), CTS No. 102 153/1/3, 121/3 and 121

(xii) The petitioners state that the City Survey Officer (respondent no. 4) had prepared report dated 6th September, 2000, wherein he has very clearly stated that on the inspection, the entire land is fully built upon with pucca constructed chawls and there is no open land. By the said report, he further submitted that there is no plan prepared/provided earmarking proposed surplus vacant land under section 8(4) of the ULC Act. While preparing draft statement under section 8(3) as also passing the orders under section 8(4), respondent no. 3 dealt with the objections that the said land was reserved for recreation ground. Respondent no. 3 had not prepared any plan specifying any land to be declared as surplus vacant land under section 9 of the ULC Act.

(xiii) The petitioners state that the said statement worked out by the CTSO No. 1 in the office of respondent no. 1 is incomplete, incorrect and without application of mind in respect of the sanctioned development plan of the 'S' Ward of MCGM which was produced during the course of hearing as also the said report made by him is not in respect of the lands bearing CTS No. 96 of village Kanjur and CTS No. 127 of village Bhandup. The said statement/report of CTSO No. 1 is in respect of CTS No.99, 99/1 to 28 and CTS No. 102, 102/1 to 62 both of village Kanjur.

(xiv) The petitioners say that as far as their land is concerned, they owned the land admeasuring 53954 square meters in CTS No. 96 of village Kanjur, out of which an area admeasuring 912.02 square meters is reserved for secondary school and an area admeasuring about 3000 square meters is reserved for primary school and on both the above reservation, school buildings are constructed and education is being imparted to the students since much prior to the enactment of ULC Act. Thus, out of 53954 square meters, they have the balance land admeasuring 50041 square meters which is totally and fully reserved for recreation ground in the D. P. plan of the MCGM. Therefore, the same is not vacant land under the ULC Act. Similarly, as far as the land bearing CTS No. 127 of village Bhandup is concerned, the land area owned by the petitioners is 6816 square meters, out of which an area admeasuring about 2090.30 square meters and 1953.09 square meters aggregating to 4043.40 square meters has been leased by late Mr. Shivram Singh Sanman Singh during his lifetime to Navjeevan Education Society much prior to the enactment of the ULC Act. The said society had constructed the school building and the school is operational and education is being imparted to the students in the said school since prior to the enactment of the ULC Act. Thus, out of CTS No. 127, the

balance area of land that remains with the petitioners is 2773 square meters, out of which, a part of the land is reserved for play ground (non buildable reservation) and the remaining part of the land is reserved/earmarked for public housing and both the above reservations taken together cover the entire 2773 square meters.

(xv) From the said report of the CTSO No. 1 referred by respondent no. 3 in his order issued under section 8(4) of the ULC Act, it is seen that respondent no. 3 passed the order for publication of the final statement under section 9 of the ULC Act vide No. C/ULC/6(1)/SR-XVI/841 dated 22nd December, 1994 referring and discussing the report of the CTSO No. 1 in respect of CTS No. 99, 99/1 to 28 and CTS No. 102, 102/1 to 62 as reported and proceeded to declare surplus vacant land admeasuring 53954 square meters in CTS No. 96 and 6816 square meters in CTS No.127 of village Kanjur without even referring to the said land in his order and without discussing the same as to how he worked out the said area. The said order under section 8(4) and the declaration of surplus vacant land under section 9 of the said Act was without taking into account the D. P. remarks submitted by M/s. Deole Brothers, which was issued by the D. P. Department of the MCGM certifying that the said lands were reserved for recreation ground and without there being any report on the part of the CTSO No. 1 in the office of respondent no. 3 to ascertain about the recreation ground reservation on the said entire land. Respondent no. 3, however, observed that the plans could not be prepared by the CTSO No. 1 in his office of the surplus vacant land. Therefore, it is clear that the said land declared as surplus vacant land on false and erroneous report and without application of mind was not even identified.

(xvi) The petitioners state that as aforesaid, they own 6816 square meters of land in village Bhandup and they do not hold any land in CTS No. 127 of village Kanjur. This by itself shows non-application of mind and final statement having been prepared in undue haste after 18 years of filing the statement under section 6(1) of the ULC Act. As they do not own CTS No. 127 of village Kanjur, the said order does not effect them and to that extent is not made in respect of their land.

8. From the order under section 8(4) made by respondent no.3, the following glaring defects and non-application of mind is clear:-

(i) The land bearing Survey No. 137, CTS No. 96 was from Kanjur and the land bearing Survey No. 153, CTS No. 127 was from village Bhandup, however, the said final statement is prepared on the footing that both the lands are of village Kanjur.

(ii) The area of CTS No. 96 of village Kanjur is 53954 square meters and respondent no. 3 had directed respondent no. 4 to prepare the report of reservation on the said land, whereas the report prepared by CTSO No. 1 is not in respect of the D. P. Reservation on the said land, built-up area of the structures on the said land and land appurtenant to the said structures on the

said land.

(iii) The area of CTS No. 127 of village Bhandup is 6816 square meters, whereas the report of CTSO No. 1 is not in respect of the said land either referring to D. P. Reservation or construction on the said land.

9. The petitioners say that based upon the above report, without application of mind and without considering the D. P. reservations and constructions on the land bearing Survey No.137/1/2, CTS No. 96 of village Kanjur and Survey No.153/1/3, CTS No. 127 of village Bhandup, respondent no. 3 passed the order under section 8(4) and issued final statement under section 9 of the said Act and declared the surplus vacant land in both CTS numbers of village Kanjur as follows:-

Considering the above position, there remains vacant land in the declarant's holding as mentioned below:-

Sr. No.

1

CTS No.

96

Total Area

53954.00 sqms.

2

127

6816.00 sqms.

10. The petitioners state that based upon the said erroneous and faulty order under section 8(4) and final statement under section 9, which was made and declared without application of mind, respondent no. 3 issued the notification under section 10(3) of the ULC Act being No. C/Mumbai/D-6/6(1)SR-16/841 dated 26th April, 2005.

11. The petitioners state that from the above facts, the following position emerges:-

(i) That before respondent no. 3, objection was raised to the draft statement prepared and served under section 8(3) of the ULC Act, contending that the large part of the said land was reserved for recreation ground and other reservations in the development plan and the D. P. remarks issued by the Executive Engineer (DP) of the MCGM showing that the said lands were reserved for recreation ground in the D. P. Plan was produced before respondent no. 3.

(ii) Respondent no. 3 and/or his predecessors in office directed the CTSO No. 1 in

his office to prepare a report showing the D. P. Reservation from the said declared land and the balance area of the land.

(iii) The CTSO prepared and submitted his report as quoted above in the tabular form and as appearing in Exhibit ?G?, but instead of preparing the report of reservation in CTS No. 96 of village Kanjur, he prepared report only in respect of CTS No. 99 and 102 of village Kanjur. The entire report submitted by the CTSO was not in respect of the lands which are declared as surplus vacant lands. It is erroneous and not in respect of the land which is surplus vacant land and not in respect of the land on CTS No. 127 of village Bhandup.

(iv) By the report dated 6th September, 2000, it is reported by respondent no. 4 that the land is fully built and the plan of the proposed surplus land is not prepared.

(v) Respondent no. 3 discussed the report of CTSO No. 1 in respect of CTS No. 99 and CTS No. 102 of village Kanjur in paragraph 7 of the order under section 8(4) of the ULC Act and without application of mind and without specifying declared the land admeasuring 53954 square meters of land in CTS No. 96 and 6816 square meters of land of CTS No. 127 both of village Kanjur as surplus vacant land.

(vi) Based upon the said erroneous and faulty order issued under section 8(4), statement under section 9, which was issued without application of mind, respondent no. 3 issued notification dated 22nd December, 1994 under section 10(3) of the said Act and the gazette publication dated 26th May, 2005. However, the description of the land mentioned therein is not what was considered and discussed by him in the final statement but which was erroneously and without application of mind declared by him as surplus vacant land. It is further to be noted that even in the order under section 8(4), final statement under section 9 and notification under section 10(3) of the Act as also in the gazette notification, what is declared and published is CTS No. 127 of village Kanjur, whereas, the petitioners' land is CTS No. 127 of village Bhandup.

(vii) The said Shivram Singh had died and the fact of the said Shivram Singh having died having been placed on record, the said order under section 8(4) and final statement under section 9 was not issued or served upon them. The petitioners were not recognised as the holders/owners of the said land and the said entire process under sections 10(1), 10(3) and 10(5) was processed by them against the deceased Shivram Singh in spite of they being aware of the fact that Shivram Singh had died and the petitioners were the owners/holders of the said lands. Passing of the order under sections 8(4) and preparation/proposed final statement under section 9 of the ULC Act was against a dead person even though they were having full knowledge.

(viii) The final statement under section 9 as also notification under section 10(3), the notice for taking decision under section 10(5) of the ULC Act and the notice issued to them was no notice served upon them.

12. The petitioners received the copy of the notice/notification dated 26th April, 2005. That notification is issued under section 10(3) of the ULC Act to the effect that the land admeasuring 53954 square meters of CTS No. 96 and 6816 square meters of CTS No. 127 of village Kanjur are declared as surplus vacant lands and that the same shall vest in respondent no. 1 with effect from 30th April, 2005. The said notification was issued against a dead person in spite of full knowledge of the factum of his death and the petitioners being the owners/holders of the said land. In these circumstances, the notification is void, ab-initio non-est in the eyes of law and all further actions/steps taken in pursuance of the said notification are non-est. The petitioners state that the said notification was not served upon the petitioners or either of them. The same could not have been served upon Shivram Singh who had died on 24th January, 1991.

13. The petitioners state that ultimately on or about 2nd February, 2007, a notice addressed to Shivram Singh Sanman Singh (since deceased) under section 10(5) of the ULC Act was pasted on site and by the said notice, it is claimed that City Survey Officer would come and take possession of the said land described in the notification under section 10(3) of the ULC Act on 15th February, 2007 at 1.30 p.m. The petitioners state that the said Shivram Singh, the addressee of the said notice had died 16 years prior to the issuance of the said notice and therefore, the issuance of the said notice as also claim of service of the said notice upon him was illegal and no notice in the eyes of law. The petitioners state that respondent no. 3 and/or respondent no. 4 issued the said notice addressed to Mr. Shivran Singh in spite of the fact that the said Shivram Singh had died and the fact of death of the said Shivram Singh was brought on record of respondent no. 3 and the petitioners were ready to participate in the proceedings before him.

14. As per Property Register Card, the names of petitioner nos. 1, 2 and 3 has already been entered as the holders of the said land since the year 1988 and it is to the knowledge of the respondents, including respondent no. 3 and 4. In spite of the said fact to the knowledge of the respondents, no notification under section 10(3) and no notice under section 10(5) of the ULC Act was served upon them. The petitioners state that pursuant to the said notice under section 10(5), respondent no. 4 and/or other officer or subordinate of respondent no. 3 did not come on site to take possession of the said land. The petitioners state that paper possession receipt of having taken ex-parte possession in respect of CTS No. 96(part) of village Kanjur is prepared by respondent no. 4 and placed on file, copy whereof is taken by petitioners under the Right to Information Act, 2005. The petitioners state that the said receipt of paper possession is prepared by the City Survey Officer sitting in his office without coming to the site.

15. The petitioners state that immediately after the receipt of the notice dated 2nd February, 2007 to the effect that respondent no. 4 has been instructed to take possession of the said land declared as surplus vacant land, they prepared and filed revision petition under section 34 of the said Act with the State of Maharashtra. The said revision petition was filed on 14th February, 2007 and the

petitioners have acknowledgment of respondent no. 1 having filed the said revision petition on that day.

16. The petitioners state that immediately after filing the said revision petition, by their letter dated 15th February, 2007, addressed to respondent no. 4, the petitioners intimated about the said revision petition having been filed by them and called upon him to stay his hands and not to attempt to take possession of the said land. Along with the said letter, they had annexed the copy of the said revision petition including acknowledgement of the office of Mantralaya. The petitioners state that in spite of filing of the said revision petition and the intimation of the same having been given to respondent no. 3, he did not act in the matter and did not instruct respondent no. 4 to stay his hands. The petitioners say that as respondent no. 3 did not act and did not honour the filing of the revision petition, it appears that respondent no. 4 prepared a receipt of having taken paper possession and forwarded the same to respondent no. 3. The petitioners state that the said land bearing CTS No. 96(part) of village Kanjur owned by them which is reserved for recreation ground as also the said land bearing CTS No. 127 of village Bhandup both are reserved for public purposes in the D. P. plan for the recreation ground and play ground and the same are fully built-up by the slum dwellers. The petitioners, therefore, say that even while making the final statement/order under section 8(4) and 9 of the ULC Act, respondent no. 3 specifically stated as follows:-

"Since the sub-division of the above CTS Numbers have not been confirmed by the City Survey Department, the plans could not be prepared by the CTSO No. 1 in his office"

17. From the above observation in the said order, it is clear that respondent no. 3 has proceeded to declare unidentified lands in CTS No. 127 of Bhandup and CTS No. 96 of village Kanjur as the surplus vacant land. It is mandatory upon respondent no. 3 to earmark the land which he has declared as surplus vacant land and showed by a plan, but he having failed to do so and the said declaration is vague and in-effective.

18. The petitioners state that the City Survey Officer, Mulund, after preparing the paper possession receipt having taken possession of the unidentified land in CTS No. 96 of village Kanjur and having failed and being unable to take possession of CTS No. 127(part) of village Kanjur, made and submitted his report dated 16th March, 2007 to respondent no. 3. By the said report, respondent no. 4 stated as follows:-

(i) As long with the notification, the plan of CTS No. 127 of village Kanjur was not available, the CTS No. 96(part) was only declared as surplus vacant land and was taken possession.

(ii) CTS No. 127 of village Kanjur is declared surplus vacant land admeasuring 6816 square meters. According to respondent no. 4, CTS No. 127 ought to have been from village Bhandup as per him. Accordingly, KJP of village Kanjur and

Bhandup was enclosed for perusal of respondent no. 3. The report dated 16th March, 2007 shows that the area of CTS No. 127 of village Kanjur as per Property Register Card was only 172.8 square meters.

(iii) Correction/Rectification be made in the name of the village and thereafter date be fixed for taking possession of land in CTS No. 127.

(iv) the holder has filed appeal before respondent no. 1 and has taken objection to the possession being taken.

(v) As per Property Register Card, in respect of CTS No. 96, the name of various holders have been recorded. In the notice under section 10(5), the name of only one holder has been stated. In respect of the said land, one Mr. Mahadeo Laxman Kurle has objected to the possession being taken in respect of 500 square meters of land having purchased the same from Khot of Bhandup in the year 1965. In respect of CTS No. 96, it has not been ordered to make record of possession having been taken in respect of CTS No. 96 of village Kanjur and therefore, it is requested to make appropriate orders.

(vi) From the Property Register Card Exhibits 'B' and 'C', it is seen that the name of various holders in respect of various portions of the land being CTS No. 96 of village Kanjur have been recorded and while declaring surplus vacant land admitted and observed by respondent no. 3, the plan of the land which was declared surplus vacant land in CTS No. 96 was not prepared. Therefore, the said paper possession allegedly taken by respondent no. 4 was not in respect of any specified land as there was no specification of land which he was directed to take possession. The report of the City survey Officer shows that he has not taken possession of any specified earmarked land out of CTS No. 96 of village Kanjur. He requested for order be made for entry of the name of respondent no. 1 in Property Register Card.

(vii) On that day, namely, 16th March, 2007, even paper possession of any land in CTS No. 127 of village Kanjur or Bhandup was not taken and a report was made to correct/rectify the name of the village Bhandup instead of village Kanjur in respect of CTS No. 127.

19. It is submitted that from the report of the City Survey Officer, following things are clear:-

(a) The notice issued under section 10(5) was erroneous and defective and the same was issued without application of mind inasmuch as the notice was issued for taking possession of CTS No. 96(part) of village Kanjur without plan and identification of land and there were several recorded holders as also it mentioned CTS No. 127 of village Kanjur, whereas, no plan was prepared and as per him, the same ought to have been of village Bhandup.

(b) The notification issued under section 10(3) was also defective and issued without application of mind as the said notification was issued as if both the lands to be acquired were from village Kanjur and no plan was prepared of

surplus vacant land.

(c) The petitioners further state that even the notification issued in the Maharashtra Government Gazette dated 26th May, 2005 was also defective inasmuch as (i) the said notification was for acquiring the surplus vacant land held by Mr. Shivram Singh Sanman Singh, who died way back in the year 1991; (ii) the said land bearing Survey No. 137, Hissa No. 1/2, CTS No. 96 admeasuring 53454 square meters and Survey No. 153, Hissa No. 1/2, CTS No. 127 admeasuring 6816 square meters is from village Bhandup and not from village Kanjur and the land proposed to be acquired out of CTS No. 96 was not identified and plan was not prepared of the land to be acquired.

(d) Even paper possession of land in CTS No. 127 of village Bhandup was not taken.

20. After filing the said revision petition, the petitioners had made application for interim relief by presenting application for interim relief. After filing the said revision petition and the application for interim relief, the petitioners were heard by the Chief Minister, Maharashtra, being Urban Development Minister. He passed the interim order staying further actions in the matter. The petitioners state that the Under Secretary, Maharashtra State, by the Outward Letter No. 10/2003/PC 58/ULCR-1 intimated respondent no. 3 that the Chief Minister passed the order staying further actions in the matter. The petitioners state that after the said intimation letter dated 9th March, 2007 addressed by the Under Secretary, Maharashtra State, the said revision remained pending till the intimation dated 16th May, 2014.

21. The petitioners state that in spite of the fact that no order under section 8(4) was passed and no final statement under section 9 was issued and no notification under section 10(3) was issued or published in the Maharashtra Government Gazette and no notice for taking possession under section 10(5) of the ULC Act was issued and further in spite of the report of the City survey Officer dated 29th March, 2007 reporting that there is no order for taking possession of the land in CTS No. 127 of village Bhandup and an order for correcting the name of the village be made/passed without any rectification/ correction order and behind the back of the petitioners, respondent no. 4 certified Mutation Entry No. 483 of village Kanjur on 10th October, 2007, inter alia to the effect that as per the order of the Additional Collector and Competent Authority (respondent no. 3) and as per the notice under section 10(5), the name of respondent no. 1 is entered as the holder in respect of 6816 square meters of land in CTS No. 127 of village Bhandup.

22. The petitioners state that making of the said entry by respondent no. 4 is illegal, void, ab-initio and unjust and violative of Articles 14 and 21 of the Constitution of India inasmuch as (i) there was no order made under section 8(4) in respect of CTS No. 127 of village Bhandup; (ii) respondent no. 4 himself has reported that there is no order in respect of CTS No. 127 of village Bhandup and

the instructions/directions given to him are to take possession of the land in CTS No. 127 of village Kanjur and he had sought for the rectification/correction of the order; (iii) no rectification or correction is carried out to the order under section 8(4) and/or final statement under section 9 and/or to the notification under section 10(3) and/or to the notice of possession under section 10(5) of the ULC Act; (iii) the said entry is certified on 10th October, 2007 and recorded on the Property Register Card on 12th October, 2007 after the stay order passed by the Chief Minister of Maharashtra on 9th March, 2007. Therefore, making of the said entry in violation of the stay order issued under section 37 of the ULC Act is non-est and is a malafide act to cause prejudice to the petitioners.

23. The petitioners state that thereafter respondent no. 3 issued the notice bearing no. C/ULC/D-V/6(i)/SR-XVI/841 dated 18th February, 2008 addressed to late Mr. Shivram Singh Sanman Singh purporting to give him notice to determine the compensation payable to the said deceased in view of the said notification under section 10(3) of the ULC Act, purporting to have been issued by respondent no. 3 calling upon deceased Shivram Singh Sanman Singh to put forth his claim/objection for determination of the compensation under section 11 of the ULC Act.

24. The petitioners say that as the said notice came to the hands of the petitioners, they replied the same by their letter dated 29th February, 2008. By the said reply, the petitioners have placed on the record of respondent no. 3 that the stay order has been issued on 9th March, 2007 by the revisional authority, the State of Maharashtra acting through the Chief Minister. By the said reply, they have also stated that the alleged ex-parte possession is a false report prepared by respondent no. 4. The petitioners say that the said notice dated 18th February, 2008 for fixing the compensation and the petitioners' reply dated 29th February, 2008, it appears that respondent no. 3 called for the report from respondent no. 4. Respondent no. 4 by his report no. C/ULC/6(i)/SR-XVI/841 dated 4th June, 2008 reported to the City Survey Officer that the lands in village Kanjur, Taluka Kurla admeasuring 53454 square meters being CTS No. 96 and 6816 square meters bearing CTS No. 127 of village Kanjur in all aggregating to 60,270 square meters are reserved for recreation ground (non buildable reservation).

25. The petitioners state that the said report dated 4th June, 2008 submitted by the City Survey Officer, respondent no. 4 very clearly falsifies, invalidate and make non-est the said orders under section 8(4), the final statement under section 9, the notice under section 10(3), the possession notice under section 10(5) and the alleged ex-parte possession dated 15th February, 2007 and the said notice for fixing the compensation dated 18th February, 2008. The said report substantiate the contention of the petitioners that the land is reserved for recreation ground and is a non-buildable reservation, therefore, outside the ULC Act and is fully built-up with unauthorised structures/hutment's.

26. The petitioners thereafter kept on making representation from time to time

to the Urban Development Department of the State of Maharashtra, respondent no. 1 as also to respondent no. 3. The said representation were to the effect that the land in CTS No. 96 of village Kanjur were reserved for recreation ground in development plan, therefore, non-vacant land. The petitioners say that in furtherance of the said representation made, the additional Collector and Competent Authority, ULC, Mumbai Agglomeration by his letter no. ULC/Desk-5/6(1)/SR-16/841 dated 29th March, 2007 addressed to the Under Principal Secretary of Urban Development Department of respondent no. 1 submitted his report inter-alia stating as follows:-

(i) That Shivram Singh Sanman Singh died in the year 1991 and the statement under section 8(4) of the year 1994 is issued to him after his death.

(ii) After the death of Smt. Ramkalidevi Sanman Singh, the name of Shivram Singh Sanman Singh was recorded as the administrator.

(iii) After the death of Smt. Ramkalidevi Sanman Singh on 29th July, 1971, the names of (1) Shivram Singh Sanman Singh, (2) Shivshanka Singh Shivram Singh, (3) Randhir Singh Shivram Singh and (4) Sachin Shivram Singh were recorded.

(iv) As the land is vast area and the same are not subdivided, therefore, they have not been given the benefit of reservation of recreation ground as also the reservation for school. As there is already construction for the school, the same cannot be shown as vacant land.

(v) In respect of CTS No. 127(part) of village Bhandup, the benefit of recreation ground reservation is not given in view of the D. P. remark have not been submitted. Similarly, the land under P. H. through buildable cannot be considered as non-vacant land and accordingly requested for appropriate decision to be taken at the State level.

27. Thereafter, the petitioners made various representations for early hearing of the revision application filed by them, however, the case was not heard and decided and ultimately the Additional Collector and Competent Authority, ULC, Mumbai Urban Agglomeration wrote Letter No. C/ULC/D-5/6/SR-XVI dated 5th August, 2013 to the Desk Officer, ULC, Mantralaya and made a request that the appeal under section 34 of the ULC Act filed before the chief Minister and on the said appeal the stay order was passed by the Chief Minister which was communicated to his office on 9th March, 2007. In connection with the said appeal, his office has submitted the report dated 29th March, 2007 being Exhibit "R". However, nothing has been heard in the matter and submitted that as the ULC Act has been repealed, therefore, the appropriate order be made and direction be given to his office.

28. The petitioners state that ultimately the Maharashtra Government under the signature of the Desk Officer by Letter No. 2013/254/PC 79/ULCR-1 dated 16th May, 2014, intimated to the petitioners that on the said appeal, the State

Government by the letter dated 9th March, 2007 had stayed further action in the matter. However, before the stay order was received, the possession of the land was taken on 15th February, 2007. In these circumstances, as the stay order was only in respect of the further action, therefore, the possession of the land by the State Government remained un-obstructed as the ULC Act has been repealed, therefore, the appeal filed under section 34 before the State Government stands abated and nothing could be done at the level of the State Government.

29. It is in the above circumstances that the writ petition has been filed. It is submitted by Mr. Pandey learned counsel appearing for the petitioners that the entire process initiated for declaring the said land as excess vacant land, notifying the same for acquisition and taking paper possession thereof is malafide and violative of the right to equality guaranteed by Article 14 of the Constitution of India. Mr. Pandey submits that the gross illegalities have been highlighted in details in the writ petition. Mr. Pandey submits that the possession of the land could not have been taken unless the provisions of law were complied with. There is no compliance therewith. Mr. Pandey has submitted that the order under section 8(4), final statement under section 9, the notification under section 10(3) and the gazette notification dated 26th May, 2005 so also the notice under section 10(5) are all passed on incomplete, erroneous and false report of the City Survey Officer No. 1 in the office of the competent authority. He has made report contrary to the sanctioned development plan and without applying his mind to the fact that this land was reserved for recreation ground and outside the purview of the ULC Act. Mr. Pandey submits that the name of respondent no. 1 should be deleted from the Property Register Card in respect of CTS No. 96 of village Kanjur and CTS No. 127 of village Bhandup, both of Taluka Kurla, Mumbai Suburban District and that of the petitioners" be restored, as the declarant Shivram Singh Sanman Singh had died in the year 1991. His death certificate was duly placed on record. The petitioners are co-owners of the land. Though this death certificate was placed on record, all proceedings under the Principal Act were continued against a dead person. If he has died and the authorities knew the names and addresses of his heirs/co-owners, then, all the steps taken and orders passed against a dead person are void ab-initio and unsustainable.

30. Mr. Pandey submits that out of the land admeasuring about 53954 square meters being CTS No. 96 of village Kanjur, an area admeasuring 50041 square meters is reserved for recreation ground in the sanctioned development plan prepared by the planning authority and duly sanctioned under the Maharashtra Regional Town Planning Act, 1966. Hence, the land was non buildable. It was outside the purview of ULC Act. The 3rd respondent (competent authority under the ULC Act) relied upon the report of its office and prepared by a City Survey Officer, which report was incomplete and erroneous as demonstrated in the foregoing paragraphs. The City Survey Officer prepared a statement in order to place before respondent no. 3, the extent of the reservation on the land and the built up area. There was a reservation to the extent of 2773 square meters even on the Bhandup land. Hence, the order under section 8(4) of the ULC Act was

passed on erroneous and incomplete record. The competent authority, ignored the development plan reservation of the two lands and that is how this order was vitiated by non application of mind. There is grave prejudice caused to the petitioners as their constitutional rights are breached and violated. The reservations are for recreation ground, play ground and housing for dis-housed. These would take the lands out of the purview of the ULC Act. The acquisition thereof is wholly impermissible. Once this foundation for the proceedings under the Principal Act is demonstrably erroneous and illegal, then, all further steps must also stand vitiated. They are so vitiated and in that regard, Mr. Pandey relies on several grounds raised in the writ petition.

31. He, therefore, submits that the writ petition be allowed.

32. There is an affidavit filed by the Additional Collector and Competent Authority, ULC and apart from urging the ground of delay, it is submitted that the remedy of filing fresh application under section 6(1) has not been exhausted. Once the original applicant expired, the petitioners could have taken recourse to and exhausted this remedy.

33. In the affidavit in reply filed on 23rd July, 2015, this is what is stated:-

"3. In reply to the petition on behalf of Respondent Nos. 1 to 4, I have to state and submit as under:

The Petitioner filed a Statement under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 after draft statement dated 17.01.1985 was issued by our office to him calling for objection. Our office afforded opportunity to the petitioner in accordance with law from time to time calling for objections to the draft statement, vide notice dated 5th February, 1986 and 20th March, 1986, but the Petitioner failed and neglected to do so. Hereto annexed and marked as EXHIBIT ? 1 is a copy of the notice dated 5th February, 1986 and hereto annexed and marked as EXHIBIT ? 2 is a copy of the notice dated 20th March, 1986.

4. I say that on receipt of the aforesaid notices for hearing, the Petitioners filed the Death Certificate of Shivram Singh on 17th March, 1994 almost 4 years after the death of Mr. Shivram Singh for reasons best known to them. I put the Petitioners to the strict proof thereof.

5. With reference to paras 3(xv), 4 to 7 of the petition, I say that statement under Section 6(i) of the ULC Act, 1976 was filed by the declarant in our office in the year 1976 declaring the suit land to be a surplus land as per provisions of ULC Act, 1976. Hereto annexed and marked EXHIBIT ? 3 is a copy of the said order. Accordingly, an Order dated 22nd December, 1994 was issued by our office under Section 8(4) of the ULCR Act, 1976 after following due procedure of law. I say that the Death certificate of the Petitioner was not filed with the office of the Respondent no. 3.

6. With reference to paras 8 and 9 of the petition, the contents thereof are nothing but twisting of facts. I say that the petitioner is trying to take advantage

of his own wrong. I say that the Death Certificate was produced to our office dated 24th January, 1991. I put the petitioner to the strict proof of the allegations made in the said para.

9. The Petitioner is put to strict proof of the averments made in paras 17 and 18 of the petition. The Petitioner is alleging that no order under Sections 8(4), 9, 10(3) was issued. I say that Order under Section 8(4) was passed on 22.12.1994. After final statement Order under Section 9 of ULC was passed on 26.04.2000. I further state that notice under Section 10(1) dated 25.04.2000 was published in Government Gazette on 2.11.2000 and notice under Section 10(3) dated 26.04.2005 was published in Government Gazette on 26.05.2005.

10. With reference to para 19 of the petition, it is pertinent to note that the Petitioner has not specified the date when the Death Certificate of Shivram Singh was filed and brought on record. I say that prior to the stay order dated 9.3.2007, all the procedure regarding the suit land was completed and notification dated 26.04.2005 under Section 10(3) of the ULC Act was published in the Maharashtra Government Gazette. Notice under Section 10(5) dated 2.02.2007 was issued directing to hand over possession of suit property and on 15.02.2007 possession was taken. All these procedures was carried out by our office in accordance with law.

11. With reference to paras 22 to 31 of the petition, I have to state as under:

Ramkalai purchased the suit land from Ratan Singh Karsadandas on 25.08.1965. Ramkali's son Shivram Singh made an application to our office under Section 6(1) of the ULCR Act, 1976 on 14.09.1976. Therefore, in the revenue record, the name of Shivram Singh appears. On receipt of application under Section 6(1) of ULCR, 1976, Respondent No. 3 passed an Order dated 22.12.1994 in accordance with Section 8(4) of ULCR Act, 1976. Thereafter, final statement under Section 9 of ULCR Act 1976 was served upon Shivram Singh. As per law, notice under Section 10(1) dated 25.04.2000 was served calling for objection. It is pertinent to note that, though notice under Section 10(1) was duly served and objection was called for, No Objection was received by our office. Thereafter, another notice dated 26.04.2005 under Section 10(3) was published in the Maharashtra Government Gazette. Notice under Section 10(5) dated 2.02.2007 was issued directing to hand over possession of suit property and on 15.02.2007 possession was taken and in the revenue record, the suit property stands in the name of Government.

I further state that vide letter dated 15.02.2007, the Petitioner made a representation against the procedure carried out by our office under Section 10(3), 10(5) of ULCR Act, 1976 before the State of Maharashtra. The Appellate authority was pleased to stay further action under Section 10(3) and 10(5) vide Order dated 09.03.2007. It may be stated that before the Stay Order dated 09.03.2007 was received, the Ex parte possession of the suit land was already taken on 15.02.2007. As the operative part of Stay Order dated 09.03.2007 was

only in respect of further action, the possession of land with the State Government remains unobstructed.

In view of what is stated herein above, I respectfully say and submit that the Petitioner has not made out any case for grant of the reliefs prayed for in the petition. The petition being devoid of merits deserves to be dismissed and be dismissed in limine."

34. In view thereof, it is submitted that the petition be dismissed.

35. There is a rejoinder affidavit filed by the petitioners, in which, the petition allegations are reiterated. Additionally, in para 3 of this rejoinder affidavit, at running pages 178-179, this is what is stated:-

"3. Dealing serially with the aforesaid contentions put forth by the Respondent No. 3, I say and submit as under:

(i) I say that the said allegations/averments are false and incorrect. I say that after 18th March, 1986 the hearing was fixed on 23rd April, 1986, 18th June, 1986 and 09th July, 1986 when Late Shri Shivram Singh personally appeared. I say that thereafter the hearings were fixed on 27th August, 1986, 24th September, 1986 and 14th November, 1986 when on 2 occasions the hearing was adjourned at the request of the Declarant and the last hearing on 14th November, 1986 was adjourned as the Competent Authority was on leave. On each of the above occasion, the representative of Late Shri Shivram Singh was present. I say that thereafter the hearing took place before the Competent Authority on 17th March, 1994. By that time Shri Shivram Singh had died. M/s. Deole Brothers representing the Petitioners appeared representing us as Co-owners and filed our authority and Death Certificate of Shri Shivram Singh (Exhibit "D" to the Petition). I say that thereafter the documents were filed as set out in Writ Petition. I say that the Petitioners have in their possession copy of the Roznama dated 18th March, 1986 to 15th June, 1994 which shows that the statement made by the Respondent no. 3 in his Affidavit is false and incorrect. I crave leave to rely upon the Roznama dated 18th March, 1986 to 15th June, 1994.

(ii) The contention of the Respondent no. 3 that the Order dated 22nd December, 1994 under Section 8(4) of the ULCR Act was passed after following the due procedure of law is incorrect and false. The Petitioners have set out the various facts showing that the Order was passed without application of mind, without considering the documents produced and knowing fully well that the lands were reserved for recreation ground in the Sanctioned Development Plan and Schools were functioning since prior to enactment of ULCR Act, therefore, lands are not vacant/buildable and outside the purview of the ULCR Act.

(iii) I say that on 17th March, 1994, M/s. Deole Brothers represented us being Co-owners is recorded in the Roznama dated 17th March, 1994. The authorisation in favour of the said M/s. Deole Brothers is produced by us at

Exhibit "D" to the Petition to which is annexed the Death Certificate of said Shri Shivram Singh (Page 107 and 108 of the Writ Petition). I say that the said documents are on the record of the Respondent no. 3 but he has not applied his mind and passed Orders and issued Notices to Deceased Person. The name of Petitioners is mutated in P. R. Cards as Owners/ Holders since the year 1989. The Death Certificate of Shivram Singh having been produced.

(iv) I say that the Revision Petition was filed under Section 34 and the intimation whereof was given to the Respondent No. 3 as also to the City Survey Officer before 15th February, 2007. I say that the Chief Minister of Maharashtra was the concerned Minister holding the Portfolio of Urban Development including Urban Land (Ceiling and Regulation) Act. The Chief Minister applied his mind and passed the Stay Order staying further proceedings. I say that once the Respondents were intimated of the Revision having been filed before the State Government, they ought not to have proceeded in the matter. I say that the act on the part of the Respondents is nothing but entering into raise with the Legal Proceedings. I say that as on the date of ULCR Repeal Act, the said Revision was pending. Therefore, all proceedings under ULCR Act abate.

(v) I say that there is no Order passed under Section 8(4), 9, 10(1) or 10(3) in respect of the land bearing CTS No. 127 of Village: Bhandup as stated in the Writ Petition. The said facts are also borne out from the contents of the Orders and Notification and Publication in the Maharashtra Government Gazette.

(vi) I deny that the entire process under ULC Act was completed prior to the date of communication of the Stay Order passed by the State Government. I say that the Revision Petition was pending till the enactment of the Urban Land Ceilings and Regulation Repeal Act. I therefore say that all the proceedings under the ULCR Act abated. I further say that as set out in the Petition, the City Survey Officer himself has reported that the possession of the land bearing CTS No. 127 of Village Bhandup was not taken. He has further reported that the land bearing City Survey No. 96 of Village: Kanjur and City Survey No. 127 of Village: Bhandup are full of hutments and constructions. The Mutation Entry recording the name of the State Government on the Property Register Card is certified on 10th October, 2007 in respect of CTS No. 127 of Village : Bhandup and on 19th June, 2007 in respect of CTS No. 96 of Village : Kanjur which are much after the intimation of the Stay Order by the State Government to the Respondent Nos. 3 and 4."

36. Mr. Pandey has relied upon the following judgments:-

(i) State of Maharashtra and Anr. v. B.E. Billimoria and Ors., (2003) 7 SCC 336.

(ii) State of U.P. v. Hari Ram, AIR 2013 SC 1793.

(iii) Gajanan Kamlya Patil v. Addl. Collector and Comp. Auth. And Ors., AIR 2014 SC 1843.

(iv) Johnson and Johnson Ltd. and Anr. v. State of Maharashtra and Anr., Writ

Petition No. 1461 of 2009 (Bombay High Court) order dated 9th November, 2011.

(v) Mr. Abdul Mohammed Hussain Pitalwala v. The State of Maharashtra and Anr., Writ Petition No. 687 of 2008 (Bombay High Court) order dated 4th January, 2012.

(vi) Ramlal and Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361 (V 49 C 56).

(vii) Voltas Ltd. and Anr. v. Additional Collector and Competent Authority and Ors., 2008(5) Bom. C.R. 746.

37. At the outset, it must be stated that this writ petition is filed on 2nd September, 2014 and to a challenge order which has been passed on 22nd December, 1994, notification dated 26th April, 2005 and a notice under section 10(5) dated 2nd February, 2007. Then, the proceedings in relation to taking possession, ending on 15th February, 2007 are also challenged.

38. We find much substance in the contention of the respondents that the writ petition is barred by delay and laches. There is absolutely no explanation much less reasonable or bona fide for this enormous delay. We cannot, therefore, at the instance of the present petitioners/co-owners render all the steps and measures under the Principal Act negatory. That would defeat the purpose of the Principal Act and the vesting of the lands contemplated thereunder for larger public good.

39. Apart therefrom, what we find is that the petitioners claim that the grandmother of petitioner nos. 1 to 3 and the mother-in-law of petitioner no. 4 purchased the pieces and parcels of land situated at village Kanjur and village Bhandup. The name of the grandmother/mother-in-law was entered as the holder of the land. She died on 29th July, 1971. Shivram Singh Sanman Singh, the son of Ramkalidevi, thereafter, got his name recorded as holder of the lands and Annexures "B" and "C" are relied upon. Then, what is relied upon is the release deed executed by three daughters of Ramkalidevi. These release deeds, according to the parties, make Shivram Singh Sanman Singh and petitioner nos. 1 to 3 the owners of 7th undivided share, right, title and interest in the lands. From the averments in the petition, it appears that on the death of Shivram Singh Sanman Singh, the petitioners claim to have filed a death certificate. They authorised M/s. Deole Brothers to represent them. They rely upon the said authorisation. Thereafter, the acts of M/s. Deole Brothers are relied upon. These acts are performed decades back allegedly and the petitioners are relying on the information obtained under the Right to Information Act, 2005 about such acts. It is, therefore, not possible to presume, as Mr. Pandey would want us to do, that the competent authority had knowledge of the death of Shivram Singh Sanman Singh. In the circumstances, the authorities rightly proceeded on the basis of the acts of Shivram Singh Sanman Singh, performed during his lifetime and took the steps and measures envisaged by the Principal Act. Mr. Pandey's argument relying on the reservations on these properties/lands and therefore the lands could not have been declared as vacant land in excess of the ceiling limits is

completely devoid of merits. In the case of *State of Gujarat and Ors. v. Parshottamdas Ramdas Patel and Ors.* AIR 1988 SC 220 the Hon'ble Supreme Court of India had an occasion to consider somewhat identical contentions. The argument that the lands are unbuildable was considered at length and it was rejected in the following words:-

7. The High Court treating section 29(1)(a) of the Bombay Town Planning Act, 1954 as a building regulation within the meaning of that expression used in sub-clause (i) of clause (q) of section 2 of the Act was of the view that the ban contained in clause (a) of section 29(1) of the Bombay Town Planning Act, 1954 brought the lands in question within sub-clause (i) of clause (q) of section 2 of the Act. Assuming for purposes of argument that section 29(1)(a) of the Bombay Town Planning Act, 1954 amounted to a building regulation it cannot be said that the construction of buildings on the land in question was not permissible at all. Section 29(1)(a) of the Bombay Town Planning Act, 1954 only required a person who owned a piece of land situated within an area included in the scheme to obtain the permission from the local authority before erecting or constructing any building or pulling down or altering any building as provided therein. Merely because section 29(1)(a) of the Bombay Town Planning Act, 1954 requires a person owning the land to which a scheme applied to obtain permission of the local authority to construct a building on it, it cannot be said that the land was one on which construction of building was not permissible. The embargo in question was not total. It was only where the ban was complete it could be said that no construction was permissible on the land. The High Court omitted to notice that the owners were entitled to construct buildings on the lands after the permission was accorded by the local authority. The finding of the High Court that by virtue of section 29(1)(a) of the Bombay Town Planning Act, 1954 the lands fell outside the definition of 'vacant land' in the Act is, therefore, unsustainable.

8. It was no doubt true that the State Government had issued a notification dated March 31, 1976 published in the Gujarat Government Gazette dated April 8, 1976 under section 4(1) of the Land Acquisition Act, 1894 stating that the lands in question were likely to be needed for a public purpose, namely, for providing housing accommodation for the employees of the Ahmedabad Municipal Corporation and that after making an enquiry under Section 5-A of the Land Acquisition Act, 1894 the State Government had issued declaration under section 6 of that Act declaring that the aforesaid lands along with other lands were needed for the public purpose referred to above. In the meanwhile the Act came into force with effect from 17.2.1976. The respondents filed statements before the competent authority under section 6 of the Act including the lands in question which were in excess of the ceiling limit which each of them could retain after the coming into force of the Act. Thereafter they filed the above writ petitions out of which these appeals arise contending that the acquisition proceedings under the Land Acquisition Act, 1894 should be proceeded with and the acquisition of proceedings of the surplus land under the ceiling law should be

dropped. In this connection the respondents relied upon the provisions contained in section 24 of the Land Acquisition Act, 1894 in which clause `seventhly' stated that any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of publication of the notification under section 4, sub-section (1) of the Land Acquisition Act, 1894 should not be taken into consideration by the Court at the time of determining compensation payable under the said Act. The argument of the respondents was that clause `seventhly' in section 24 of the Land Acquisition Act, 1894 again amounted to an embargo on construction of buildings on the lands which attracted sub-clause (i) of clause (q) of section 2 of the Act and, therefore, the lands were not vacant lands. Reliance was placed by the respondents on the decision of the High Court of Delhi in Smt. Shanti Devi v. The Competent Authority under U.L. (C. & R.) Act, 1976, Delhi and others, AIR 1980 Delhi 106 in which the High Court of Delhi had taken the view that a land in respect of which a notification under section 4(1) of the Land Acquisition Act, 1894 had been issued was a land on which construction of buildings was not permissible and was thus outside the definition of the expression `vacant land' in section 2(q) of the Act. The reason given by the Delhi High Court for reaching the above conclusion is set out in para 12 of the said decision. It reads thus:-

"12. It is pertinent to note that the land in Sant Nagar is under threat of acquisition by issue of Section 4 notification of the Land Acquisition Act, 1894. This is not denied by the respondents. In this view of the matter also building activity would not be permissible as no prudent person would construct on land already notified under Section 4 of the said Act because he will get no compensation for it unless the construction is made with the permission of the Land Acquisition Collector. For all intents and purposes the effect of Section 4 notification, therefore, is that building activity is not permissible in Sant Nagar. This would also result in excluding the Sant Nagar plots from the total holding of the petitioner for the purposes of computing vacant land under the Act."

9. With great respect to the High Court of Delhi it has to be stated that the view taken by it is wholly incorrect. The High Court of Delhi omitted to notice that in order to exclude a land from the definition of `vacant land' it should be shown that it was a land on which construction of a building was not permissible under the building regulations in force in the area in which such land was situated. The question whether a piece of land is a vacant land or not does not depend upon the fact whether a prudent man would put up a building on that land or not after the issue of a notification under section 4(1) of the Land Acquisition Act, 1894. Nor a land will cease to be a vacant land merely because the permission of certain authority is to be taken to put up a building thereon. It may be further seen that what clause `seventhly' in section 24 of the Land Acquisition Act, 1894 provides is that any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4(1) of the Land Acquisition Act shall not be taken into consideration while awarding

compensation. It does not ban the construction of any building on the land which is so notified. The High Court of Gujarat against whose judgment these appeals have been filed also committed an error in accepting a similar contention which was urged before them. The declaration made by the High Court in these cases that the land acquisition proceedings did not suffer from an infirmity which indirectly suggests that the proceedings should go on is again erroneous. It is open to the State Government to drop the land acquisition proceedings and to withdraw the lands from acquisition under section 48 of the Land Acquisition Act, 1894. We are informed that the State Government has in fact subsequently withdrawn these lands from acquisition. The proceedings under the Land Acquisition Act, 1894 cannot therefore have any bearing on the question whether the lands in question are vacant lands or not for purposes of the ceiling law contained in the Act. When the lands in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire them under the provisions of the Land Acquisition Act, 1894. As already stated the Act has the overriding effect on all other laws.

10. It was, however, urged before this Court by the learned counsel for the appellants that because the lands in question have been reserved under the Town Planning Scheme for purposes of building staff quarters the lands could not be treated as vacant lands. We do not find any substance in this submission because the construction of buildings on the lands in question is permissible though not by the owners of land. Sub-clause (i) of clause (q) of section 2 of the Act does not provide that a land on which the owner cannot construct a building will cease to be vacant land for purposes of the Act. As long as construction of building can be done on a land by some person or authority, the land does not get excluded from the definition of the expression "vacant land" under the Act. The lands in question, therefore, are vacant lands.

11. Before concluding our judgment we wish to refer to the decision of the Full Bench of the High Court of Bombay in *Prabhakar Narhar Pawar v. State of Maharashtra and another*, AIR 1984 Bombay 122 in which the following passage appears at page 130:

"Reliance was placed on the decision of the Delhi High Court in *Shanti Devi v. Competent Authority*, (AIR 1930 Delhi 106). In that decision, the learned Judges of the Delhi High Court took the view that Section 2(q) of the Act contemplated that the activity of building is not permissible on the date when the land is sought to be dealt with and not at any future time and the possibility that such activity could come to be permitted in future or that there are buildings constructed in the area or that there is no prohibition to construct in an unapproved colony or that there is no permanent prohibition to construct would not be sufficient to treat the land as "vacant land" within the meaning of the provision. So far as the decision holds that the relevant date for determination for the purpose of Section 2(q)(i) of the Act is the date on which the land is

sought to be dealt with, that is, the commencement date referred to in Section 3 there can be no dispute. In a part of the decision, the Division Bench seems to have taken the view that land notified for acquisition under the Land Acquisition Act must be held to be one on which construction of buildings was not permitted. We are really not concerned with that view, so far as the present petitions are concerned, but it is sufficient to point out that the correctness of that view has not been accepted by this Court in *Dattatraya v. State of Maharashtra*, [1981] Mah LJ 764; (AIR 1981 Bom 326) and in an unreported decision of this Court in *D.P. Dani v. State of Maharashtra* (Writ Petition No. 1650 of 1979 decided on 31st January, 1983). In *Dattatraya's* case the contention was that certain plots of land which were reserved for various public activities, such as buildings of primary school, high school, civil hospital, bus terminus etc. under the Town Planning Scheme should be excluded for the purpose of computation of vacant land, because, according to the petitioners, in that case no building activity was permitted on those lands so far as the petitioners were concerned. The Division Bench after referring to the primary object of the Act as set out in the case of *Union of India v. Valluri Basavaiah Choudhary*, (AIR 1979 SC 1415) rejected the contention that merely because the petitioners are prohibited from constructing any building under the building regulations contained in the Town Planning Scheme the land should not be treated as vacant land. The Division Bench found that if the regulations allowed the building activity not to a person who holds that land but by public bodies or the State Government then certainly construction of building is permitted either by an individual or even by public authority and cannot be taken out of the definition."

12. We agree with the observations made in the above case. A Full Bench of the Allahabad High Court has in the State of U.P. and another v. Radha Raman Agarwal and another, AIR 1987 Allahabad 272 also taken the view that a land will cease to be a "vacant land" for purposes of the Act only where the construction of a building on it is wholly impermissible. We agree with the views expressed by the High Courts of Bombay and Allahabad.

40. Thus, we cannot assume that the reservations were overlooked or that they were never present to the mind of the authorities in determining the extent of the vacant land. We have thus noted that the order passed under section 8(2) and the final statement cannot be faulted for alleged non consideration of these reservations.

41. Once the above grounds are cleared, then, what we have is the other argument that further steps under section 10(1) and 10(3) are also vitiated by non application of mind. For selfsame reasons and finding that the authorities were not obliged to accept the objection raised on the basis of the reservations on the land, even this contention must fail.

42. The argument of Mr. Pandey based on the applicability of the Repeal Act is equally untenable. The petitioners are somehow or the other trying to take advantage of the enforcement of the Repeal Act in the State of Maharashtra with

effect from 29th November, 2007. It is much after the repeal of the Principal Act they realise that the act of taking possession and concluded way back in July, 2007 is bad in law. It is evident from the averments in the writ petition itself that the notification under section 10(3) was published and there is no dispute as regards the same. Once that was published in the official gazette and the further steps were taken that the petitioners, after nearly seven years of the conclusion of the same are now alleging that the notification as also the notice under section 10(5) refer to a dead person or are addressed to him. Therefore, the proceedings themselves are null and void from inception. It is not possible to accept this contention and which obviously lacks bonafides. In the affidavit in reply, it has been explained as to how the petitioners had not specified the date when the death certificate of Shivram Singh Sanman Singh was filed and brought on record. We have noted above that it was not the petitioners who filed the death certificate but in terms of an authorisation dated 15th March, 1994 in favour of Deole Brothers it is possibly they, according to the petitioners, who have placed this document on record. However, the averments in the petition and particularly in para 3(vii) at pages 8 and 9 are guarded and not emphatic. There are no details much less specific. Even the annexures relied upon will not be enough to accept the arguments of Mr. Pandey. Annexure "D" at page 107 of the paper book is a document on stamp paper and stated to be signed by heirs of Shivram Singh Sanman Singh, but it is stated that the name of the holder is Shivramsingh Thakur. This is not an intimation of the death of Shivram Singh but it is an intimation to the competent authority that the petitioners have authorised M/s. Deole Brothers Architects to represent them in all the matters/issues pertaining to the Principal Act. Thus, the statements in the affidavit in reply are uncontroverted. Even in the affidavit in rejoinder, all that is stated is that on 17th March, 1994 M/s. Deole Brothers represented the co-owners and that is recorded in the roznama dated 17th March, 1994. It is stated that the authorisation in favour of M/s. Deole Brothers and which is at Annexure "D" to the petition has another annexure to it, namely, the death certificate of Shivram Singh Sanman Singh. We have carefully perused both annexures and we do not find anything in the authorisation or the document in that behalf which would enable us to conclude that the death certificate accompanied it and therefore was filed along with the authorisation by M/s. Deole Brothers. Therefore, to claim that the death certificate was on record of respondent no. 3 but he has not applied his mind to the same is untenable. It is unsafe to accept such claims as are now made and belatedly before us. It is not possible to accept the argument that even before the death of Shivram Singh Sanman Singh, the petitioners have been dealing with the properties.

43. We find that the notice under section 10(5) followed all the legal steps that were taken and enunciated above. The petitioners do not dispute that they were aware of a notice pasted at the site on 2nd February, 2007. That notice intimated that the officer would come and take possession of the land on 15th February, 2007 at 1.30 p.m. This notice is also claimed to be bad in law, as it is issued in

the name of the dead person. The petitioners do not deny the receipt of the notice nor do they allege and affirm that the contents thereof were not to their knowledge. The response of the petitioners to this notice pasted at site and the inevitable consequences thereof is to file a revision application. That is how they seek the intervention of the Chief Minister of the Maharashtra. They claim that the revision petition was filed and a letter was addressed on 15th February, 2007 intimating filing of the same. That is how they attribute knowledge of the pendency of legal proceedings and the order of alleged stay thereon. Even this aspect has been clarified in the affidavit in reply and we have reproduced the parts thereof.

44. In the affidavit in rejoinder, there is a bald assertion that the revision petition was filed under section 34 and intimation whereof was given to respondent no. 3 competent authority as also the City Survey Office before 15th February, 2007. We find the statements in the rejoinder affidavit to be clearly conflicting and contrary to what is set out in the petition. The petition refers to the receipt of the notice under section 10(5) and immediately after receipt of the same, the petitioners prepared and filed a revision petition with the State of Maharashtra. In para 11, it is stated that the revision petition was filed on 14th February, 2007 and the petitioners have acknowledgement of respondent no. 1 having filed the revision petition on that date. It is then claimed that after filing the said revision petition, the petitioners, by their letter dated 15th February, 2007 addressed to respondent no. 4, intimated to him about the filing of the same and calling upon him to stay his hands and not to take possession of the said land. Annexures "K" and "L" are relied upon. However, a perusal thereof would indicate that this letter dated 15th February, 2007 addressed to the City Survey Office at Topiwala College Building, Mulund (West), Mumbai 400 080 is received at 5.00 p.m. in that office on 15th February, 2007. The revision application itself was filed on 14th February, 2007. Therefore, it is false to allege that the filing of this revision application was known to the competent authority and the City Survey Officer prior to the date and time of taking possession. The date and time of taking possession was stipulated as 15th February, 2007 at 1.30 p.m.. We do not derive these dates and events from any other documents but the pleadings in the petition itself (see paras 9, 11 and 12). Further, there was no stay or any prohibitory order restraining the competent authority from proceeding and taking possession. It is apparent that after filing of a revision petition, an application for interim stay was filed and that is an act of much later date, namely, 9th March, 2007. Even with regard thereto, in the affidavit in reply, it has been pointed out as to how none of the authorities had any knowledge of the filing of the revision petition or any order of stay. By that time, the petitioners had already lost their right, title, interest in the land and which had vested in the State.

45. In the above circumstances, we do not find that the reliance placed by Mr. Pandey on the decision of the Division Bench judgments of this court and the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh v. Hari Ram AIR 2013 SC 1793 is well placed. All these decisions and in the backdrop of the

peculiar circumstances therein are distinguishable. Even the decision in the case of *State of Maharashtra v. Billimoria and Ors.* (2003) 7 SCC 336 is of no assistance. The case of Billimoria was of construction on the land. The controversy was entirely different as to whether the construction ought to be complete or the same could have been made on the basis of the building plan. We are unable to see how this judgment has any application.

46. The other judgments based on the non fulfilment of the requirement of section 10(5) also need not detain us. These decisions cannot have any application when we noted the peculiar facts and namely that each of these petitioners were aware of the contents of the notice and that the possession was to be taken before the 30 days" period stipulated in section 10(5) of the Principal Act. Yet, none of the petitioners resisted this action at the relevant time, but proceeded to move the State Government by filing a revision petition. They never intended to object to the taking of possession of the land vesting in the State.

47. Even otherwise, we have already dealt with such an issue and controversy and recently. In a Division Bench judgment delivered in Writ Petition No. 1468 of 2009 decided on 22nd April, 2016, we considered somewhat identical questions and while distinguishing judgments in the case of *Hari Ram (supra)* and in the case of *Johnson and Johnson (supra)*, we held as under:-

"(175) On the aspect of applicability of section 3(1)(a) of the Repeal Act, Mr. Chidambaram's reliance on the judgment of this court and that of the Hon'ble Supreme Court of India is entirely misplaced.

(176) In the case of *Bank of Baroda Employees Arunoday Co-operative Housing Society Ltd. v. State of Maharashtra* Writ Petition No. 2119 of 2008 decided on 21st November, 2011, the State and the competent authority claimed that possession of the land declared as surplus vacant land was taken on 14th November, 2006, whereas, the petitioner asserted otherwise. The facts have been noted in para 2 of the order of the Division Bench and it found that the State/competent authority took possession on the above date pursuant to a notification under section 10(5) of the Principal Act dated 30th June, 2006. The Division Bench noted the case of the petitioner that as on 30th October, 2006, when the notice under section 10(5) was issued, it was the petitioner society who was in possession of the land and the building and therefore, the act of the State in taking possession without issuing notice to it is illegal. Then, they questioned the contents of the possession receipt and which states that the person to whom notice was issued is not willing to handover possession. It is in these circumstances that the Division Bench held that the provisions of the Repeal Act would come into play, meaning thereby, the proceedings under the Principal Act lapse. It is in the above factual background and peculiar to the petitioner's case that all findings in para 5 have been rendered. We do not see, therefore, any assistance can be derived from the said observations, findings and conclusions. Notice under section 10(5) may have been held to be mandatory.

The notice also must set out the period and in terms of the sub section so as to enable the person in possession to surrender or deliver possession of the vacant land vesting in the State to the State Government or to any person duly authorised by the State. He should be, therefore, put to notice in writing and which should contain the direction to surrender or deliver possession within 30 days of the service of the notice. We do not see as to how this principle and which also has been laid down in the judgment of this court in the case of M/s. Johnson and Johnson Ltd. and Anr. v. State of Maharashtra and Anr. Writ Petition No. 1461 of 2009 decided on 9th November, 2011 would have any application to the facts of this case.

(177) Then comes the reliance on the judgment in the case of State of Uttar Pradesh v. Hari Ram. (2013) 4 SCC 280 In this case, one should not forget that respondent Hari Ram was holding excess land admeasuring 52,513.30 square meters. An order under section 8(4) of the Principal Act was passed by the competent authority on 29th June, 1981. The notification under section 10(1) of that Act was issued on 12th June, 1982 and published in the Government gazette. The notification under section 10(3) was published on 22nd November, 1997. On 10th June, 1999, the surplus vacant land stood vested in the State in terms of the entry in the Revenue records. On 19th June, 1999, a notice under section 10(5) directing Hari Ram to handover possession of the land declared surplus was issued. Aggrieved by that, Hari Ram preferred Appeal No. 29 of 1999 before the District Judge, Varanasi under section 33 of the Principal Act, but what he impugned in that appeal was important. He challenged the order under section 8(4) of the Act and urged that before that order was passed, no notice, as contemplated under section 8(3) of that Act, was served on him. That appeal was allowed and the order dated 29th June, 1981 under section 8(4) of the Act was set aside on 14th December, 1999. Aggrieved by that order, the State of Uttar Pradesh filed a writ petition in the High Court of Allahabad and the High Court, after elaborately considering various contentions, took a view that for taking physical possession of the land, proceedings under section 10(5) have to be followed. On facts also the Division Bench found no reason to interfere with the order of the District Judge.. The State's writ petition was dismissed. That is how the State approached the Hon'ble Supreme Court against the decision of the High Court of Allahabad in Hari Ram's case and following Hari Ram in other cases. The arguments have been noted in paras 6 and 7 and we must not forget that the Hon'ble Supreme Court was concerned with the primary submission that under the Principal Act, though there is a vesting of the land in terms of sub-section (3) of section 10, upon publication of the notification, what one finds is that by virtue of sub-sections (4) and (5) of section 10 so also sub-section (6) thereof, after such vesting, the physical possession has to be taken and obtained by recourse to these provisions. It is in examining the scope of sub-sections (3), (4) as well as sub-sections (5) and (6) of section 10 that all the further conclusions of the Hon'ble Supreme Court are rendered. It is then apparent that by vesting alone, it would not be permissible to hold that possession follows.

Possession would follow only upon recourse to these sub sections and that is how all the paragraphs, namely paragraphs 33 to 37 would have to be seen. The requirement of notice is only under sub-sections (5) and (6) and that is held to be mandatory.

(178) We do not see how our view in the present case, is in any way contrary to Hari Ram's decision (*supra*). We have not held in the present case that notice need not be issued. The controversy before us was whether notice issued was served on the co-owners. On facts, we have found that not only such a notice was served, but copy thereof was pasted on site. That was after it was endorsed in the register that the notice-es were not found at the stated address. That is how the competent authority directed the City Survey Officer to cause a notice to be displayed at site. It was accordingly displayed. Once we find that the notice was issued, though that notice stated that the possession would be taken on 9th March, 2007, the record indicates that it was not taken on that date, meaning thereby within 30 days, but on 28th March, 2007. Therefore, it is not as if before the 30 days period expired from 27th February, 2007 that the possession was taken. Secondly, we find that the distinguishing feature in the present case is that the arguments do not rest on the issuance of notice and its service alone. The legality and validity of the notice and the act of taking possession before 30 days" period is also raised. It is therefore clear that diverse pleas are set out to claim benefit of the Repeal Act. However, that cannot be extended to the petitioners in the present case. We are of the firm opinion view that no assistance can, therefore, be derived from the principles laid down in the case of Hari Ram (*supra*) in the present facts and circumstances. The legal principles are indeed binding on us, but on facts their application is a matter with which we are really concerned. More so, when the petitioners also challenge the correctness and validity of the possession receipt, panchanama etc. Once there is a record of the physical possession having been taken well before 29th November, 2007 (reckoned as the date of coming into force of the Repeal Act in Maharashtra), then, we do not see how we can apply the Repeal Act to the present facts.

(179) There is one more reason because we have already found that the petitioners alone do not claim to be in physical possession, but state that the physical possession of the land would have to be obtained from the Court Receiver. They claim that the property is custodia legis and hence notice to receiver ought to be issued. It is only when notice is issued to him or when the court's approval is obtained that the receiver can be dispossessed and not otherwise. Therefore, it is doubtful as to how the judgment in the case of Hari Ram (*supra*) and that in the case of Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and Ors. (2012) 4 SCC 718 can have any application.

(180) We cannot also take assistance as desired by Mr. Chidambaram from other judgments and which are essentially on the point of an order being non compliant with the principles of natural justice and therefore nullity. On facts, we

do not see any application of this principle to the present case.

(181) We are also supported in our views and conclusions by the reliance placed by Mr. Samdani on the judgment of the Hon'ble Supreme Court of India in the case of *State of Assam v. Bhaskar Jyoti Sarma and Ors.* (2015) 5 SCC 321. This judgment distinguishes *Hari Ram's* case (*supra*) and we reproduce the following paragraphs of this judgment:-

"6. We have heard the learned counsel for the parties for a considerable length. The Urban Land (Ceiling and Regulation) Act, 1999 repealed the principal Act w.e.f. The date the State adopted the Repeal Act. In terms of a resolution passed under clause (2) Article 252 of the Constitution, the Repeal Act was adopted by the State of Assam w.e.f. 6-8-2003. We may at this stage usefully extract Sections 2 and 3 of the Repeal Act which have a direct bearing on the questions that arise for our determination:

2. Repeal of Act 33 of 1976. - The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Principal Act), is hereby repealed.

3. Saving. - (1) The repeal of the principal Act shall not affect -

(a) the vesting of any vacant land under subsection (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 sub-section (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."

7. A bare reading of Section 3 (*supra*) makes it clear that repeal of the principal Act does not affect the vesting of any vacant land under sub-section (3) of Section 10, possession whereof has been taken over by the State Government or any person duly authorised by the State Government in that behalf or by the competent authority. In the case at hand, the appellant claims to have taken over the possession of the surplus land on 7-12-1991. That claim is made entirely on the basis of a certificate of handing over/taking over of possession,

relevant portion whereof reads as under:

"Certificate of handing over/taking over possession

Today on this 7th December, 1991, we took over possession of 70.32 ares of acquired land as scheduled below vide order of the Deputy Commissioner, Kamrup's ULC Case No. 343 dated 2- 3-1991 and as per Assam Gazette Notification dated 1-1-1987 in Case No. ULC 343/76.

Schedule of land

* * *

Received possession (Taken over possession unilaterally)

sd/-

Illegible Given possession Designation SK (G) Designation

Dated 7-12-1991

Countersigned

sd/-

Illegible

Circle Officer

Guwahati Revenue Circle"

Countersigned

sd/-

Illegible

Circle Officer

Guwahati Revenue Circle"

8. Relying upon the above document it was strenuously argued on behalf of the appellant that actual physical possession was taken over from the erstwhile landowner as early as in December 1991, no matter relevant official record does not bear testimony to any notice having been issued to the landowners in terms of Section 10 sub-section (5) of the Act. It was argued that so long as actual physical possession had been taken over by the competent authority title to the land so taken over stood vested absolutely in the State Government under Section 10(3) and could not be claimed back no matter the principal Act stood repealed after such vesting had taken place. In support of the contention that actual physical possession had been taken over by the competent authority, the appellant places heavy reliance upon the fact that challenge to the proceedings under the Act mounted in Writ Petition No. 2568 of 1992 by the purchasers of a part of the disputed land had failed right up to this Court and the allotment of a

substantial part of the surplus land in favour of the 8 families affirmed. This, according to the appellant, proves that possession of the surplus land had indeed been taken over from the erstwhile owner in terms of proceedings held on 7-12-1991.

9. It was also contended that Bhabadeb Sarma, the erstwhile owner, had remained aloof even when he was a party to the writ petition filed by the purchasers who had questioned the validity of the order passed by the competent authority including the allotment of the surplus land in favour of third parties. It was argued that the Repeal Act would have no effect whatsoever even when the taking of possession was without notice to the erstwhile owner especially when the owner had failed to question any such takeover at the appropriate stage in appropriate proceedings. The challenge mounted by the legal heirs of the deceased erstwhile owner 13 years later was clearly untenable and an afterthought. Failure of the landowner to seek redressal against non-compliance with the statutory requirement of a notice before possession is taken would constitute abandonment of the right of the owner under Section 10(5) which cannot be resuscitated after lapse of such a long period only to take advantage of the Repeal Act. The question whether actual physical possession of the disputed land had been taken over is in any case a seriously disputed question of fact which could not be adjudicated or determined by the High Court in its writ jurisdiction.

10. ?..

11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10 is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression "possession" used in Section 3 (supra) has been interpreted to mean "actual physical possession" of the surplus land and not just possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.

12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.

13. The case of the appellant is that actual physical possession of the land was taken over on 7-12-1991 no matter unilaterally and without notice to the erstwhile landowner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article 226 of the constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the landowners in terms of Section 10(5) would by itself mean that

such dispossession is no dispossession in the eye of the law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.

14. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorised officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand? Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him? It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the may uphold his contention that the procedure ought to be followed as prescribed, it may still be-not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over

from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case ((2013) 4 SCC 280). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.

18. ?..

19. In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr Sanatan Baishya. It was contended that said Mr Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7-12-1991 till the date the land in question was allowed to GMDA in December 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked the learned counsel for the parties whether they can, upon remand on the analogy of the decision in

Gyanaba Dilavarsinh Jadega (2013) 11 SCC 486, adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the constitution no matter the High Court may in its discretion in certain situations enter upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

(182) We are of the opinion that the controversy before us stands fully covered by this judgment and it binds us."

48. We do not find any prejudice to the petitioners being established and proved. The petitioners have whenever convenient maintained silence about the legal proceedings and whenever faced with a rival claim raised the plea about it to resist the action under the principal Act. This aspect besides a belated challenge and no real prejudice are enough reasons to deny relief to the petitioners in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India. As a result of the above discussion, the writ petition is dismissed. There would be no order as to costs.

49. The original record shall be returned to the concerned Department of State through the Government Pleader.