
(2019) 06 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 5022 Of 2013

Sunilkumar And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Urban Land (Ceiling And Regulation) Act, 1976 — Section 5, 5(3), 6, 6(i), 9, 10, 10(i), 10(1), 10(3), 10(5), 10(6), 10(4)(i), 11(1), 14, 20, 23, 34
Urban Land (Ceiling And Regulation) Repeal Act, 1999 — Section 3(a), 4, 5(3)
Cantonments Act, 1924 — Section 3
Constitution Of India, 1950 — Article 252(1)

Citation : (2019) 06 BOM CK 0031

Hon'ble Judges : P.N. Deshmukh, J; Rohit B. Deo, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari, K.S. Joshi, P.N. Kothari

Final Decision : Dismissed

Judgement

R. B. DEO, J

1] The petitioners are seeking a declaration that in view of the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 ('ULC Act') by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ('Repeal Act') the proceedings under the ULC Act as regards land bearing survey number 38/1 including portion admeasuring 4080.955 square meters of village Drugdhamna, Tahsil and District Nagpur stand lapsed. Certain other and further reliefs are sought which are ancillary or consequential to the said declaration.

2] We have heard Shri A.C. Dharmadhikari, the learned counsel for the petitioners, Mrs. K.S. Joshi, the learned Additional Government Pleader for the State of Maharashtra and Shri Pankaj Kothari, the learned counsel for respondents 4 and 5 - the Maharashtra Housing and Area Development Authority and the Nagpur Housing Area and Development Board. With consent the petition is heard and finally decided at the stage of admission.

3] Facts, which are germane, are as set out herein.

3.1] One Shaikh Mehboob Shaikh Amir was the owner of land bearing survey number 86/2 and survey number 100/2 Situated in village Drugdhamna.

3.2] Irrefutably, the land owned by Shaikh Mehboob Shaikh Amir is situated in an urban agglomeration and was in excess of the ceiling area.

3.3] Shaikh Mehboob Shaikh Amir filed a return under section 6 of the ULC Act on 14.09.1976. The proceedings culminated in the notification under section 10(1) of the ULC Act dated 28.04.1989 by and under which the entire land bearing survey number 100/2 and portion admeasuring 8161.91 square meters of land bearing survey number 86/2 was declared surplus, and the notification dated 26.10.1989 under section 10(3) of the ULC Act.

3.4] The petitioners contend that the land owner Shaikh Mehboob Shaikh Amir executed sale-deed dated 01.09.1980 of land bearing survey number 86/2 in favour of one G.P. Deshpande, who in turn sold the said land to the petitioners by and under registered sale-deed dated 20.02.1984.

3.5] The petitioners contend that since 20.02.1984 they are in physical possession of land bearing survey number 86/2 as lawful owners thereof and the possession and ownership is duly reflected in the revenue record.

3.6] The petitioners contend that by and under sale-deed dated 01.08.2007 portion of survey number 86/2 admeasuring HR was sold to Jai Samudrimata Associates. The portion sold to the said Society is renumbered survey number 38/2 and the remaining area in possession of the petitioners is renumbered survey number 38/1.

3.7] The petitioners state that the surplus land admeasuring 8161.91 square meters from survey number 86/2 and 49290 square meters of land survey number 100/2 is allotted to the 5th respondent for providing housing accommodation. The petitioners contend that while possession of the surplus land of survey number 100/2 was taken by the State and handed over to the 5th respondent on 15.02.1990, the possession of 8161.91 square meters land of survey number 86/1 continued to be with The petitioners.

3.8] The petitioners further state that the owner Shaikh Mehboob Shaikh Amir submitted a scheme under section 20 of the ULC Act, 1976 and sought exemption to the land declared surplus. The petitioners contend that Shaikh Mehboob Shaikh Amir neither had the title nor the authority to seek exemption under section 20 of the ULC Act.

3.9] The petitioners state that initially vide communication dated 10.03.1992 the application for exemption preferred by Shaikh Mehboob Shaikh Amir was rejected by the State Government on the premise that possession of part of the surplus land was delivered to the 5th respondent.

3.10] The petitioners state that Shaikh Mehboob Shaikh Amir preferred a

Revision under section 34 of the ULC Act which was initially allowed by order dated 06.07.2004 and the surplus land was exempted in view of the scheme submitted by the land owner. The petitioners then state that the Hon'ble Chief Minister Reconsidered the order of exemption and vide order dated 23.11.2007 directed that the land allotted to the 5th respondent be divided equally and while the 5th respondent was allowed to retain half portion, the other half to be released in favour of Shaikh Mehboob Shaikh Amir for executing the scheme under section 20 of the ULC Act.

3.11] The petitioners state that pursuant to the order dated 23.11.2007 the 2nd respondent - competent authority issued communication dated 20.09.2010 directing the 3rd respondent - Tahsildar to take possession of half portion of land bearing survey number 86/2 and to handover the possession to the 5th respondent.

4] The petitioners assert that the proceedings initiated under the ULC Act by Shaikh Mehboob Shaikh Amir, the orders passed therein and the action initiated pursuant thereto do not bind the petitioners, which assertion is premised on the sale-deed dated 20.02.1984 by and under which the petitioners claim to be the owners of land survey number 86/2.

5] The petitioners contend that irrefutably the possession of the surplus land is with the petitioners with effect from the date of the sale-deed. The petitioners contend, relying on the provisions of section 3(a) of the Repeal Act, which is brought into effect in the State of Maharashtra from 29.11.2007, that since the possession of land survey number 86/1, is not taken over by the State Government or any person duly authorized by the State Government in this behalf, section 4 of the Repeal Act would come into play and the proceedings under the ULC Act shall stand abated with the result that the possession of the petitioners cannot now be disturbed.

6] The State of Maharashtra and the 4th and the 5th respondent are in-unison in questioning the very maintainability of the petition. The submission is that concededly Shaikh Mehboob Shaikh Amir executed the sale-deed of survey number 86/1 in favour of Shri G.P. Deshpande on 01.09.1980 during the pendency of the proceedings before the Competent Authority. The sale-deed executed by the owner in favour of Shri G.P. Deshpande is void in view of the provisions of section 5(3) read with section 10(4)(i) of The ULC Act and the petitioners do not have the locus to maintain the petition, is the submission. It is further emphasized that the original owner Shaikh Mehboob Shaikh Amir and predecessor in title of the petitioners G.P. Deshpande are not parties to the petition.

6.1] The State and the allottees the 4th and the 5th respondent emphatically deny every material averment in the petition including the averment that the petitioners continue to be in possession of the land.

6.2] The 4th and the 5th respondent would submit that pursuant to the order

dated 23.11.2007 passed by the State Government they have returned half the surplus land to the State Government vide possession receipt dated 18.11.2010. The 4th and the 5th respondent assert that they are in possession of the remaining half portion admeasuring 4080.955 square meters of land bearing survey number 86/1. It is further submitted that the original land owner Shaikh Mehboob Shaikh Amir did not assail the order dated 23.11.2007, and the petitioner who claim through Or under the original land owner cannot be heard making any grievance as regards the said order.

7] We have given anxious consideration to the strenuous and at times passionate submission of Shri A.C. Dharmadhikari that in the teeth of the irrefutable position on record that the possession is not taken by the State Government in accordance with the provisions of section 10(6) of the ULC Act, the provisions of the Repeal Act would have to be given full effect and the petitioners are therefore, entitled to a declaration of ownership and abatement of the proceedings under the ULC Act. We are of the considered view, that in the absence of the land owner Shaikh Mehboob Shaikh Amir and Shri G.P. Deshpande we need not make any decisive observation on the factum of possession in the petition preferred by persons who have no title in the land in question. For reasons spelt out infra, we accept the submission of the contesting respondents that the sale-deed dated 01.09.1980 executed by the land owner Shri Shaikh Mehboob Shaikh Amir in favour of G.P. Deshpande and the sale-deed dated 20.02.1984 executed by G.P. Deshpande in favour of the petitioners are Ab initio void.

8] Section 5 of the ULC Act reads thus:

5. Transfer of vacant land.-(1) In Any state to which this Act Applies in the first instance, where Any person who had held vacant land in excess of the ceiling limit At Any time during the period commencing on the Appointed day And ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall Also be taken into account in calculating the extent of vacant land held by such person And the excess vacant land in relation to such person shall, for the purposes of this chapter, be selected out of the vacant land held by him After such transfer And in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him After the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person transferred his vacant land to more than one person, the balance, or, AS the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion AS the area of the vacant land transferred to him bears to the total area of the land transferred to All the transferees.

(2) Where Any excess vacant land is selected out of the vacant land transferred

under sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null And void.

(3) In Any state to which this Act Applies in the first instance And in Any state which Adopts this Act under clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer Any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished A statement under section 6 And A notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; And Any such transfer made in contravention of this provision shall be deemed to be null And void.

Section 10 of the ULC Act reads thus:

10. Acquisition of vacant land in excess of ceiling limit.-(1) As soon AS may be After the service of the statement under section 9 on the person concerned, the competent Authority shall cause A notification giving the particulars of the vacant land held by such person in excess of the ceiling limit And stating that-

- (i) such vacant land is to be acquired by the concerned state Government; And
- (ii) the claims of All persons interested in such vacant land may be made by them personally or by their Agents giving particulars of the nature of their interest in such land,

To be published for the information of the general public in the official gazette of the state concerned And in such other manner AS may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent Authority in pursuance of the notification Published under sub-section (1), the competent Authority shall determine the nature And extent of such claims And pass Such orders AS it deems fit.

(3) At Any time After the publication of the notification under sub-section (1), the competent Authority may, by notification published in the official gazette of the state concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date AS may be specified in the declaration, be deemed to have been acquired by the state Government And upon the publication of such declaration, such land shall be deemed to have vested Absolutely in the state Government free from All encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub- section (1) And ending with the date specified in the declaration made under sub-section (3),-

- (i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise Any excess vacant land (including Any part thereof) specified in the notification aforesaid And Any such transfer made in contravention of this provision shall be deemed to be null And void; And

(ii) no person shall Alter or cause to be Altered the use of such excess vacant land.

(5) Where Any vacant land is vested in the state Government under sub-section (3), the competent Authority may, by notice in writing, under Any person who may be in possession of it to surrender or deliver possession thereof to the state Government or to Any person duly Authorised by the state Government in this behalf within thirty days Of the service of the notice.

(6) If Any person refused or fails to comply with An order made under sub-section (5), the competent Authority may take possession of the vacant land or cause it to be given to the concerned state Government or to Any person duly Authorised by such state Government in this behalf And may for that purpose use such force AS may be necessary.

Explanation.-In this section, in sub-section (1) of section 11 And in sections 14 And 23, "state Government", in relation to-

(a) Any vacant land owned by the central Government, means the central Government;

(b) Any vacant land owned by Any state Government And situated in A Union territory or within the local limits of A cantonment declared AS such under section 3 of the cantonments Act, 1924(2 of 1924), means the state Government.

9] The effect and implication of sub-section (3) of section 5 of the Act is that a person who holds vacant land in excess of ceiling limit immediately before the commencement of the ULC Act is prohibited from transferring such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10. Such transfer is deemed to be Null And void. The embargo on transfer is triggered on the date of coming into force of the ULC Act and continues till the publication of the notification 10(1).

Sub-section (4)(i) of section 10 on the other hand covers the period commencing on the date of publication of the notification under sub-section (1) of section 10 till the date specified in the declaration under section 10(3). The period during which the embargo operates, is the period from declaration of vacant land and the vesting thereof with the State Government.

10] It is incontrovertible that the sale-deeds are executed during the pendency of the proceedings under section 6 of the ULC Act. The sale-deeds are executed after the submission of the return under section 6(i) and before the issuance of section 10(i) notification of declaration of excess land. We, therefore, have no hesitation in holding that the sale-deeds are void and do not confer any title in favour of the petitioners.

11] We are not impressed by the submission that in view of the repeal of the ULC

Act the petitioners would be the owners Of the land and the declaration of the voidness in section 5(3) of the Repeal Act shall cease to operate. The position of law is too well settled to warrant a lengthy debate or reference to the plethora of authorities holding the field. A document or transaction which is declared void is not legalized or sanctified by the subsequent development of repeal. The transaction of sale was void and shall continue to remain void. The repeal of the Act does not confer legality or legitimacy on the transaction, which was void at the inception.

12] In state of uttar pradesh And others v. Adarsh seva sahkari samiti Limited reported in (2016) 12 SCC 493, the Supreme Court observes thus:

4. We have examined this aspect. Having regard to the undisputed fact that the respondent has purchased the property from the declarant which is vested with the state Government under Section 10(5) of the Act in terms of Section 10(3) notification, therefore, the transfer of property in favour of the respondent, who is claiming its interest in the said property is void Ab initio in law. On this ground Alone, the order passed by the High Court cannot be Allowed to sustain.

5. It is Also brought to our notice by the learned Senior Counsel Mr misra that After the Proceedings under Sections 10(3) And 10(5), notice And the Alleged taking over possession of the land in question, the subsequent event has taken place, namely, the said property has been transferred to the Lucknow Development Authority by the state Government And the Development Authority has laid A park for public use. On this, the learned Senior Counsel for the respondent submits that the said event has taken place during the pendency of the proceedings before the High Court. Though it may be the fact, subsequently, After the transfer of the property in favour of the Development Authority, the Authority has developed A park is An undisputed fact. This is Also A very relevant aspect of the matter for this Court to Annul the impugned judgment/order passed by the High Court.

6. In our opinion, the respondent herein has no locus standi to challenge the inaction on the part of the appellants viz. Not taking possession legally strictly complying with the statutory provisions under Section 10(5) of the Act And taking over possession AS provided under Section 10(6) of the Act. At this juncture, this aspect need not be examined by this Court At the instance of the respondent.

The observations of the Supreme Court are in the backdrop of the High Court entertaining the petition at the instance of a person who purchased the property after the issuance of the notification under section 10(3) of the Act, which transfer is deemed to be null And void in view of the provisions of section 10(4) (i).

A reference to the decision of the Supreme Court in Ritesh tewari And Another v. State of uttar pradesh And others reported in (2010) 10 SCC 677 shall also be apposite. In broadly similar circumstances the Supreme Court did not entertain

the challenge on the touchstone of the Repeal Act at the behest of the purchaser. The Supreme Court referred to the provisions of section 5(3) and section 10(4)(i) and observed thus:

32. It is settled legal proposition that if An order is bad in its inception, it does not get sanctified At A later stage. A subsequent action/development cannot validate An action which was not lawful At its inception, for the reason that the illegality strikes At the root of the order. It would be beyond the competence of Any Authority to validate such An order. It would be ironical to permit A person to rely upon A law, in violation of which he has obtained the benefits. (Vide Upen chandra Gogoi v. State of assam, satchidananda misra V. State of orissa And SBI v. Rakesh kumar tewari).

33. In C. Albert Morris v. K. Chandrasekaran this Court held that A right in law exists only And only when it has A lawful origin.

34. In mangal prasad tamoli v. Narvadeshwar mishra this Court held that if An order At the initial stage is bad in law, then All further proceedings consequent thereto will be the non est And have to be necessarily set aside.

35. In the instant case, AS We have observed That the Alleged sale deed dated 20-4-1982 in favour of mayur sahkari awas samiti has been A void transaction, All subsequent transactions have merely to be ignored.

13] We, therefore, decline to entertain this petition at the instance of the petitioners who claim to be the owners of the land on the basis of sale-deed which is indubitably void.

14] The petition is dismissed with no order as to costs.

At this stage, the learned counsel for the petitioners Shri A.C. Dharmadhikari submits that the interim order of status quo dated 20.09.2013 be continued for eight weeks. The request is opposed by the learned counsel for the respondents. However, since the interim order is operating since 20.09.2013, we continue the same till 31.07.2019.