

(2019) 09 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 1581 Of 2018

Tarabai Tulshiram Meshram	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Urban Land (Ceiling And Regulation) Act, 1976 — Section 6(1), 8(4), 9, 10, 10(3), 10(5), 10(6), 11(5), 11(6), 20(1), 45
Constitution Of India, 1950 — Article 136, 252(1)

Citation : (2019) 09 BOM CK 0031

Hon'ble Judges : Sunil B. Shukre, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : P.V. Vaidya, T.H. Khan, P.P Kothari

Final Decision : Allowed

Judgement

Milind N. Jadhav, J

1. Heard. Rule. Rule is made returnable forthwith. By consent of the parties, Petition is taken up for final hearing.

2. By the present Petition, the Petitioner has prayed for a declaration that all proceedings viz. notices/notification issued under the provisions of Section 9 & 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act") in respect of land bearing khasra No. 125 (old) corresponding to khasra No. 155 (new) admeasuring 1.10 H.R., situated at Mouza Drugdhamna, Tahsil-Nagpur (Gramin), District Nagpur (hereinafter referred to as "the said land") stand abated in view of the enactment of the Urban Land (Ceiling & Regulation) Repeal Act (1999) (hereinafter referred to as "the Repeal Act") and has further prayed for a declaration that the aforesaid land does not vest in the Respondents. The Petitioner has also sought consequential relief in respect of mutation of revenue records pertaining to the said land. The relevant facts pertaining to the Petitioners claim are stated herein under.

3. The said land alongwith two other parcels of land viz. khasra No.119/2 (old) and Khasra No. 115(old) situated at Mouza Durgdhamna, Tahsil Nagpur (Gramin) District Nagpur stood in the ownership of Smt. Radhikabai Tulshiram Borkar, mother of the present Petitioner at the time of enactment of the ULC Act. The said Smt. Radhikabai Tulshiram Borkar filed preliminary statement under Section 6(1) of the ULC Act before the Competent Authority in respect of the aforementioned three parcels of land on the basis of which ULC Case No. 2571/76 came to be registered.

4. Consequent upon the enquiry, Respondent No. 2 passed order under Section 8(4) of the ULC Act on 28th September, 1987, inter alia, declaring that 11000 sq. meters of land from khasra No. 125 (old), 4827.87 sq. meters of land from khasra No. 115 (old) and 1000 sq. meters of land from khasra No. 119/2 (old) belonging to Smt. Radhikabai Tulshiram Borkar to be surplus vacant land.

5. The said Smt. Radhikabai Tulshiram Borkar expired on 27th August, 1990 leaving behind the present Petitioner as her sole legal heir. There is no dispute or controversy about the claim of the Petitioner as the sole legal heir of Smt. Radhikabai Tulshiram Borkar.

6. Pursuant to the above declaration, a Notification under Section 10(3) of the ULC Act was published on 26th May, 1988 in the Maharashtra Government Gazette, Nagpur Division Supplement at page 465. The Notification stated that land admeasuring 4827.87 sq. meters out of khasra No. 115, 1000 sq. meters of khasra No. 119/2 and 11000 sq. meters out of khasra No. 125 totally admeasuring 15927.87 sq. meters belonging to and held by Smt. Radhikabai Tulshiram Borkar, resident of Drugdhamna was land held in excess of "Ceiling limit" and was therefore to be acquired by the Government of Maharashtra under the ULC Act. Thereafter, on 29th January, 1991 the office of the Competent Authority and Deputy Collector, Urban Land Ceiling, Nagpur, i.e. the Respondent No. 2, issued notice addressed to Smt. Radhikabai Tulshiram Borkar under the provisions of Section 10(5) of the ULC Act, inter alia, stating that possession of all three parcels of lands (declared as surplus) be handed over to the authorised representative of the Nagpur Housing and Area Development Board, Nagpur, i.e. the Respondent No. 3 on 18th February, 1991 at 11:00 a.m. It is an admitted position that since Smt. Radhikabai Tulshiram Borkar had expired on 27th August, 1990, the above notice could not be served upon her. The Petitioner has produced the copy of the above notice at Annexure '3' to the Petition which was obtained by the Petitioner under the Right to Information Act, 2005. There is an endorsement on the office copy of the notice duly initiated and signed by the concerned officer which states that the noticee has expired and a copy of the said notice has been handed over to the grandson of the noticee and his signature has been obtained. This endorsement shows that the notice was not served on the noticee as required to be served under the provisions of the ULC Act.

7. Shri P.V. Vaidya, learned counsel appearing on behalf of the Petitioner

submitted that possession of the said land i.e. khasra No. 125 (old) corresponding to khasra No. 155 (new) admeasuring 1.10 H.R. was never handed over to the Respondents or their representatives nor the Respondents have taken any further action under the provisions of and in consequence of the notice issued under Section 10(5) or any action under Section 10(6) in respect of the said land. The learned counsel submitted that the statutory notice under Section 10(5) was never served on the Petitioner who was the only daughter and sole legal heir of deceased Smt. Radhikabai Tulshiram Borkar. The learned counsel submitted that the statutory notice issued under Section 10(5) was issued in the name of a dead person and the endorsement on the notice proves the same. The learned counsel submitted that physical possession of the said land i.e. khasra No. 125 (old) corresponding to khasra No.155 (new) is with the Petitioner as on date and the Petitioner has two stables ('gothas') and cattle on the said land. The Petitioner is using the said land for grazing of her cattle.

8. The learned counsel for the Petitioner submitted that even though possession of the said land was never handed over by the Petitioner or taken over by the Respondents under the provisions of the ULC Act, the revenue record i.e. 7x12 extract of the said land was wrongfully mutated in the name of Respondent No. 3 subsequently.

9. The learned counsel for the Petitioner submitted that the Petitioner had subsequently under the provisions of Section 45 of the ULC Act filed Application for correction and rectification of the Section 8(4) order with the Respondent No. 2. The Respondent No. 2 by his order dated 11th November, 1998 enhanced the area of surplus vacant land standing in the name of late Smt. Radhikabai Tulshiram Borkar from 15927.87 sq. meters to 16827.87 sq. meters. The learned counsel for the Petitioner therefore submitted that the revision of the Section 8(4) order clearly demonstrated that the said land was never handed over to any authority much less Respondent No. 3 atleast until 11th November, 1998.

10. The learned counsel for the Petitioner submitted that since possession of the said land was never taken over by Respondent Nos. 1 & 2 under the provisions of Section 10(5) and/or Section 10(6) of the ULC Act, the said land cannot be said to have vested in the Respondent No. 1 and therefore the Respondent No. 1 had no right to further allot/transfer the said land to the Respondent No. 3. The learned counsel submitted that besides the notice dated 29th January, 1991 issued under the provisions of Section 10(5), no other notice calling upon the Petitioner or her deceased mother Smt. Radhikabai Tulshiram Borkar was issued by the Respondent Nos. 1 & 2.

11. The learned counsel for the Petitioner submitted that the notice dated 29th January, 1991 under Section 10(5) is itself on the face of record defective and bad in law since it states that the date of taking over possession would be on 18th February, 1991 and according to the Petitioner it was mandatory to give 30 days clear notice before taking over possession of the said land. Hence, it was submitted that in any event the said land could not have vested in the

Respondents and therefore the consequential action of mutation of revenue record in the name of Respondent No. 3 was illegal.

12. Finally the learned counsel for the Petitioner submitted that there was no possession receipt on record, inter alia, showing that Respondent Nos. 1 & 2 had taken possession of the said land either from the Petitioner or from the Petitioner's deceased mother Smt. Radhikabai Tulshiram Borkar in accordance with and as prescribed by the ULC Act, and therefore prayed that in view of the failure of Respondent Nos. 1 & 2 to take possession of the said land, the present Writ Petition deserves to be allowed and in view of repeal of the ULC Act, the said land has reverted back to the Petitioner and that the Respondents cannot have any claim upon the same.

13. The learned counsel for the Petitioner submitted that the legal position regarding effect of Repeal of the ULC Act in cases where actual physical possession of the land has not been taken is no more res integra.

14. The learned counsel for the Petitioner submitted that in these circumstance by reason of the Repeal Act all proceedings under the ULC Act in regard to the said land declared as surplus vacant land have abated and the said land has reverted back to the Petitioner.

15. Ms. T.H. Khan, Assistant Government Pleader appearing on behalf of the Respondent Nos. 1 & 2 fairly submitted that pursuant to the Notification dated 29th January, 1991 issued under Section 10(5) of the ULC Act, de jure possession of the said land was taken and was handed over to the Respondent No. 3. Thereafter, mutation entry in the revenue record was carried out inserting the name of Respondent No. 3 i.e. Nagpur Housing and Area Development Board, Nagpur. We had also called upon the learned AGP to produce the office file containing the record of the case and the same was produced before us and we have perused the same. Apart from the office copy of the statutory notice dated 29th January, 1991 issued under Section 10(5) which states that the date of taking over possession was fixed on 18.2.1991, there is no other document showing that possession of the said land was sought to be taken and/or handed over by the Petitioner or her deceased mother to the Respondents.

16. Mr. P.P. Kothari, learned counsel appearing on behalf of Respondent No. 3 submitted that there was gross delay on the part of the Petitioner to invoke the present proceedings and therefore the Petition deserved to be dismissed on the ground of delay and laches. He further submitted that the Petitioner had availed benefit of scheme under Section 20(1) of the ULC Act in respect of khasra Nos. 119/2 (old) corresponding to khasra No. 147/2 (new) and therefore the Petitioner was estopped from claiming any further benefit under the Repeal Act. This submission of the Respondent No. 3 deserves to be rejected at the outset as the present petition pertains to land bearing khasra No. 125 (old) corresponding to khasra No. 155 (new) admeasuring 1.10 H.R. and not khasra No. 119/2 (old).

17. The Division Bench of this Court by its judgment dated 25th July, 2008 in the

case of Voltas Ltd. & Anr. Vs. Additional Collector and Competent Authority, Thane & Ors., reported in 2008(5) ALL MR 537=2008 (5) Bom. C.R. 746 has squarely considered the question of the effect of the Repeal Act in cases wherein actual physical possession of land was not taken before 29th November, 2007 i.e. date of coming into effect of the Repeal Act in the State of Maharashtra. In the State of Maharashtra, the Maharashtra Legislative Assembly and the Maharashtra Legislative Council passed a resolution for adopting the Urban Land (Ceiling & Regulation) Repeal Act, 1999, in the State of Maharashtra with effect from 29th November, 2007. The provisions of the ULC Act and the Repeal Act have been discussed in detail in the aforesaid judgment and it has been held as follows :

"11..... Perusal of the above provisions shows that vesting of the land in the State Government occurs on publication of notification in the Official Gazette under sub-section (3) of Section 10 of the Principal Act. Thereafter, the Competent Authority gets power to make order directing the person who is in possession of the land to surrender or deliver the possession of the land to the State Government, and if that person does not deliver the possession then the Competent Authority becomes competent to take possession under sub-section (6) of Section 10 of the Principal Act. Thus, after 29.11.2007, the provisions of sub-section (5) and sub-section (6) of Section 10 of the Principal Act are not available to the State Government, therefore, in relation to that land with respect to which declaration under sub-section (3) of the Section 10 of the Principal Act has been made but possession has not been taken, the Competent Authority will not be entitled to make an order directing the person in possession of the land to deliver the possession to the Government nor the Competent Authority would be entitled to take possession under sub-section (6) of the Section 10 of the Principal Act on failure of the person in possession to deliver the possession. Thus, the State Government will not be in a position to take possession of the land under the provisions of the Principal Act, it will also not be in a position to determine the compensation of the land under Section 11 of the Principal Act and make payment to that compensation to the interested persons under Section 14 of the Principal Act, Section 4 of the Repeal Act keeps the provisions of Section 11, 12, 13 and 14 relating to determination of amount and payment of amount alive only in relation to the land possession of which has been taken by the Government. In our opinion, therefore, it is clear from the provisions of the Repeal Act that as a result of the Repeal Act neither any proceedings can continue nor the State Government can claim that the land continued to vest in it if possession of the land in relation to which declaration under sub- section (3) of Section 10 of the Principal Act has been made, has not been taken before 29.11.2007. In other words to claim that vesting of the land in the State Government is saved, it will have to be shown by the State Government that the possession of the land in accordance with the provisions of the Principal Act has been taken by the Government before 29.11.2007.

.....

14. In our opinion, one more aspect that is relevant and needs to be considered is the provision of Clause (3) of the Urban Land (Ceiling and Regulation) Repeal Bill, 1998, which reads as under:-

"3. Savings:- The repeal of the Principal Act shall not affect-

(a) the vesting of any vacant land under Sub-section

(3) of section 10 with respect to which the Competent Authority has:-

(i) by notice in writing under sub-section (5) of that section ordered any person to surrender or deliver possession of such land to the State Government or to any person duly authorised by the State Government in this behalf, or

(ii) taken possession of such vacant land under sub- section (6) of that section, and the use of such land for the purposes of the principal Act has commenced.

Provided that where such use for the purposes of the Principal Act has not commenced, then the State Government shall restore such land to the person from whom it was taken over and the amount paid shall be liable to be refunded.

Provided further that where such land was subject to any encumbrance before vesting absolutely in the State Government under sub-section (3) of that section, such land shall be restored with all the encumbrances from which it was freed under that sub-section as if no declaration had been made under that sub-section:

Provided also that no such land shall be restored unless the amount paid has been refunded to the State Government;

(b) any exemption granted by the State Government under sub-section (1) of section 20.

Perusal of the above Clause (3) of the Bill shows that it was intended to protect, or save vesting of even those lands with the State Government in relation to which an order under sub- section (5) of section 10 of the Principal Act has been made for delivery of possession as also those lands of which possession has been taken. But while enacting Repeal Act, the land in relation to which notice under sub-section (5) of section 10 was given has been deleted. Comparison of Clause 3 of the Bill quoted above with the provisions sub-sections (3) and (4) of the Repeal Act which are also quoted above shows that it was the clear intention of the Legislature not to save vesting of the land in the State Government of which possession was not taken. One more aspect that is to be kept in mind, in our opinion, while interpreting the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 is that what is stated in the Statement of Objects and Reasons of the Repeal Act. Paragraph 1 of the Statement of Objects and Reasons of the Repeal Act, in our opinion, is relevant which reads as under:-

"The Urban Land (Ceiling and Regulation) Act, 1976 was passed when Proclamation of emergency was in operation with a laudable social objective in

mind. The said Act was passed pursuant to resolutions passed by the State Legislatures under Clause (1) of Article 252. Unfortunately public opinion is nearly unanimous that the Act has failed to achieve what was expected of it. It has on the contrary pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption. There is wide spread clamour for removing this most potent clog on housing."

Perusal of the above referred paragraph from the Statement of Objects and Reasons of the Repeal Act shows that the Principal Act was required to be repealed because of the unanimous public opinion that not only the Principal Act has failed to activate what was expected of it but it has pushed up the land prices to unconscionable levels. In this background, therefore, if despite clear words used in the Repeal Act, it is held that the Government continues to hold title of those lands of which possession is not taken though after the Repeal Act came into force it ceases to have power to take possession of those lands, ceases to have power to decide the amount to be paid under the Principal Act, in our opinion, will defeat the very intention of the legislature in enacting the Repeal Act. In our opinion, therefore, it is clear from the provisions of the Repeal Act that neither the proceedings after the remand order made by the State Government can continue after 29.11.2007 nor can the State Government claim that the land of the petitioners which was subject-matter of the notification under Sub-section (3) of section 10 of the principal Act, possession of which has not been taken by the State Government continues to vest in the State Government.

15. In the result, for the reasons recorded, the petition succeeds and is allowed. It is held that as a consequence of the Repeal Act, further proceedings pursuant to the order made by the State Government dated 30.10.2006 abate and can no longer be proceeded further. That all further proceedings under the provisions of the Principal Act in relation to the land of the petitioner No. 1 mentioned in the declaration made under Sub-section (3) of section 10 of the principal Act lapses and those lands no longer vest in the State Government. Rule made absolute accordingly. No order as to costs. At the request of the learned Counsel appearing for respondents, it is directed that both the sides shall maintain status quo both in relation to the proceedings to be taken up after remand as also in relation to the land involved in this petition for a period of Ten weeks from today".

From the above it is clear that in cases wherein actual physical possession of the land has not been taken by the State Government under the provisions of Section 10(5) of the ULC Act before 29th November, 2007, such land cannot be said to have been vested in the State Government and therefore the State Government cannot have any claim upon the same.

18. The above judgment dated 25th July, 2008, in the case Voltas Ltd., (supra) was challenged by the Additional Collector and Competent Authority and others in the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 25745/2008.

The Hon'ble Supreme Court dismissed the Special Leave Petition on 7th November, 2008 by passing the following order:

"No ground is made out for interference under Article 136 of the Constitution". The special leave petition is dismissed" .

Thus, the judgment passed in the case of Voltas Ltd. (supra) is therefore settled law in so far as cases wherein actual physical possession of the land has not been taken by the State Government under the provisions of Section 10(5) or Section 10(6) of the ULC Act before enactment of the Repeal Act.

19. The Division Bench of this Court in the case of M/s. Johnson and Johnson and another Vs. State of Maharashtra and another in Writ petition No. 1461/2009 (unreported) in the order passed on 9th November, 2011, under the provisions of the ULC Act and the Repeal Act, inter alia, had the occasion to consider the above proposition regarding taking over possession of the Petitioner's lands therein under the provisions of Section 10(5) or Section 10(6) of the ULC Act. The Petitioner therein had pleaded that since possession of the Petitioner's lands was not taken by the Respondent therein in accordance with the provisions of Section 10(5) or Section 10(6) of the ULC Act, all proceedings under the ULC Act had lapsed on the repeal of the said Act. The Court held that all proceedings under the ULC Act lapsed on repeal of the ULC Act on the authorities had not taken possession of the land.

The above judgment dated 9th November, 2011, in the case Johnson and Johnson (supra) was challenged by the State of Maharashtra in the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 20543/2012. The Hon'ble Supreme Court dismissed the said Special Leave Petition on 15th October, 2014.

20. The above proposition was also decided by a Single Judge of this Court while finally disposing of Civil Suit No. 341/2012 in the case of Krishnakanth S. Parikh Vs. the State of Maharashtra and Ors. on 1st August, 2017. The said judgment while referring to the judgment of the Division Bench of this Court in Voltas Ltd. (supra) held thus:

"9. The Supreme Court has held that when a statute allows a period to a person to do a certain thing that person is entitled to do the thing during that period and if he does that thing even on the last day of the permitted period nobody can ask him why he did not do earlier. The authority which issued the notice in the present case thus had no power to direct the petitioner to deliver possession on 27.08.2007 because he curtailed the period to which the Petitioner was entitled to under the law. Perusal of the provisions of the Section 10 (6) shows that the authority became entitled to take possession only on failure of the person to deliver possession within 30 days. Thus for the authority to get the power to take possession under Section 10 (6) a period of 30 days must lapse between the date of the service of notice and the date on which the possession is taken under Section 10 (6)".

In the present case, it is an admitted position that the date of statutory notice issued under Section 10(5) was 29th January, 1991 and the said notice stated that possession would be taken on 18th February, 1991. It is further fairly admitted by the learned counsel for the Respondent Nos. 1 & 2 that the statutory notice was never served on the original holder/owner or the Petitioner as prescribed by law, thus concluding that possession was not taken in accordance with law before the enactment of the Repeal Act in the State of Maharashtra.

21. Another Division Bench of this Court has also, inter alia, considered the aforesaid proposition with respect to adherence to the strict procedure as prescribed in Section 10 (5) and (6) of the said Act in the case of Bombay Wire Ropes Ltd. Vs. State of Maharashtra, 2019 (2) Bom.C.R. 706 while relying upon the judgment of the Supreme Court in the case of State of Uttar Pradesh Vs. Hariram, reported in 2013(4) S.C.C.280, wherein the Division Bench has held as under:-

56. A very strong reliance was placed on the judgment of the Supreme Court in the case of [State of Uttar Pradesh vs. Hariram] 2031[4]SCC 280. In this case, the following question arose for consideration and decision, before the Supreme Court :-

"....Whether the deemed vesting of surplus land under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 [for short 'the Act'] would amount to taking de facto possession depriving the land holders of the benefit of the saving Clause under Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 [for short 'the Repeal Act']."

57. The aforesaid question cropped up in the backdrop of the following facts :-

The landholder filed a return under Section 6 on 28th September 1976. Draft settlement under Section 8(3) was made on 13th May 1981. Order under Section 8(4) came to be passed on 29th June 1981. Notification under Section 10(1) was issued on 12th June 1982. Vesting Notification under Section 10(3) was issued on 12th November 1997. The Repeal Act came into force in the State of Uttar Pradesh on 18th March 1999. Even after coming into force of the Repeal Act, the competent authority issued a notice under Section 10(5) on 19th June 1999 and called upon the landholder to deliver possession of the surplus land.

58. In the backdrop of the aforesaid facts, the Supreme Court, inter-alia, observed that :-

".....the expressions "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean "acquisition of title" or "acquisition of interests". Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent".

59. The Supreme Court further explained the import of Sub-section (3) of

Section 10 to envisage "voluntary surrender", sub-section (5) of Section 10, to address "peaceful dispossession" and sub-section (6) of Section 10 to cover the situation of "forceful dispossession". In the process, the Apex Court observed as under :-

"35.....Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub- section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub- sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10.

37. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word 'may' has been used therein, the word 'may' in both the sub- sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'." (emphasis supplied)

60. Ultimately, the Supreme Court, in the facts of the said case, held that the State had failed to establish that possession of the land in question was taken either under Sub-section (3), sub-section (5) or sub-section (6) of Section 10 and, thus, the landholder was entitled to the benefit of Section 4 of the Repeal Act. The Supreme Court concluded as under :-

"42 The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim

the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act."

22. In view of the aforesaid settled legal position and applying it to the facts and circumstances of the present case in particular, with Section 10(5) notice dated 29th January, 1991, having been issued in the name of Smt. Radhikabai Tulshiram Borkar, the deceased original holder/owner and admittedly not served upon the said land holder/owner or the Petitioner. We are persuaded to hold that once it is established that actual physical possession was not taken, the Respondents are not justified in refusing the claim of the Petitioner on the ground that de jure possession was taken by the State Government and the revenue record was mutated in the name of Respondent No. 3 in respect of the said land. It is trite position in law that mere mutation entries in the revenue record cannot be the ground for denial of relief to the Petitioner, whose case is clearly covered by the aforesaid judgment of this Court in the case of *Voltas Limited & Anr. Vs. Additional Collector and Competent Authority and Ors.* (cited *supra*).

23. In the facts and circumstances of the present case in particular, unless the Respondents Nos. 1 & 2 are able to establish that possession of the said land was taken over by them as required by law, they cannot claim to be in possession of the said land. The Respondent Nos. 1 & 2 must show that there was strict compliance of the provisions Section 10 (5) and/or Section 10(6) of the ULC Act and more importantly that taking of possession was on no date earlier than 30 days from the date of service of the notice under Section 10(5). The act of taking possession must be properly witnessed and that possession was taken within the time prescribed by the statute and not otherwise. This has been so held by the learned Single Judge of this Court in the case of *Re. Krishnakanth S. Parikh* (*supra*).

24. In this view of the matter, therefore, as the notification/order dated 29th January, 1991, made under Section 10(5) of the ULC Act was itself contrary to law, any de jure possession taken pursuant thereto cannot be termed as valid. Therefore, in our opinion, in any case as on or before 29th November, 2007, as possession of the surplus vacant land was not taken in accordance with law by the Competent Authority on repeal of the ULC Act in the State of Maharashtra, in view of the judgment of the Division Bench of this Court in *Voltas Ltd.*, (*supra*) all further proceedings under the ULC Act in relation to the said land i.e. land bearing khasra No. 125(old) corresponding to khasra No. 155 (new) admeasuring 1.10 H.R. would lapse.

25. In view of the above, the Petition succeeds. The Rule is made absolute in terms of prayer clauses (1) to (4). There shall be no order as to costs.