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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5381 OF 2005

Thomas More Pereira
16-Bund Garden Road,
Pune-411001

.....Petitioner

Vs.

1. The State of Maharashtra
2. Additional Collector &
Competent Authority, Pune
3. The Secretary,
Housing & Special Assistance,
Govt. of Maharashtra, Mantralaya
Mumbai-400 032.
4. Maharashtra Housing & Area
Development Authority
duly constituted under the provisions
of Maharashtra Housing & Area
Development Act, 1976, having its
office at Griha Nirman Bhavan,
Bandra (E), Mumbai- 400 051.

.....Respondents

**WITH
CIVIL APPLICATION NO.38 OF 2022
IN
WRIT PETITION NO.5381 OF 2005**

Maharashtra Housing & Area Development Authority,
Pune, Griha Nirman Bhavan,
Agarkar Nagar, Pune- 411001

.....Applicant

Vs.

Thomas More Pereira
16-Bund Garden Road,
Pune-411001

.....Respondent



Mr. Chirag Balsara a/w Adv. Sean Wassoodew & Ashna Shah, for the Petitioner.

Ms. Kavita N. Solunke, Add. GP a/w S.L. Babar, AGP for the Respondent Nos.1 to 3.

Mr. Nitin P. Deshpande a/w Ms. Anjali Shinde, Ms. Rachna Harpale & Mr. Santosh Kurade, for the Respondent No.4.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 16th FEBRUARY, 2026

PRONOUNCED ON : 8th APRIL, 2026

JUDGMENT:- (PER SHYAM C. CHANDAK, J.)

1) Instant Petition has been filed under Article 226 of the Constitution of India. The subject matter of this Petition is the land admeasuring total 20,948.40 Sq.Mts. from Bund Garden Road C.T.S. No.13/2, Pune (“the land” for short) in relation to which proceedings has been initiated under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the “the Act”). During pendency of said proceedings, the Act came to be repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999. Consequently, the controversy in this Petition has been narrowed and therefore this Court is called upon to adjudicate this Petition only in relation to prayer clause “a (iii)” which reads as under :-

“a (iii) that this Hon'ble Court be pleased to declare that as a consequence of the repeal of the Urban Land (Ceiling & Regulation) Act, 1976, further proceedings pursuant to the



order made by the State Government on 6th August, 2005 as well as further proceedings under the provisions of the principal Act in relation to the land of the Petitioner mentioned in the declaration made under Section 10(3) of the principal Act lapses and those lands no longer vest in the State Government.”

2) Record indicates that, Rule and interim relief has been granted on 28.09.2011.

3) Heard Mr. Balsara, learned counsel for Petitioner, Ms. Solunke, the learned Addl.G.P. for Respondent-State and Mr. Deshpande, learned counsel for the Respondent No.4. Perused the entire record. Respondent Nos.2 and 4 have filed their separate replies and opposed the Petition.

4) Facts giving rise to this Petition are that, on the commencement of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the “the Act”), Petitioner’s mother had filed a statement before the Competent Authority under Section 6 (1) of the Act on 10.09.1976. Simultaneously, two sons of the deceased mother viz., the Petitioner and his brother also filed their returns under the Act which were clubbed together for disposal.

4.1) On 20.09.1977 the Competent Authority issued draft statement under Section 8(3) of the said Act. The mother and her two sons filed their objections resisting that draft statement. On 22.12.1977 the Competent Authority dismissed the objections and issued an Order under Section 8(4)



of the said Act and directed final statement to be issued under Section 9 of the Act without any change in the draft statement. Out of the said land, total 13,410.88 Sq.Mts. land was declared as surplus. On 22.01.1979 Application under Section 20 filed by the deceased mother on the ground of undue hardship came to be rejected. On 24.02.1979 the surplus land was allotted by the Competent Authority to Pune Area Housing Development Board on payment of Rs.77,200/- as occupancy price. The said excess land has still not been vested in the Government under Section 10(3) of the Act.

4.2) On 07.03.1979, the deceased mother filed an Appeal under Section 33 of the Act against the Order dated 22.12.1977 passed under Section 8(4). On 09.03.1979 the Collector and the Appellate Authority rejected the said Appeal on the grounds of laches. On 12.03.1979 Notification under Section 10(3) of the said Act was published and thereunder the surplus land was vested in the Government.

4.3) On 29.03.1979 the deceased mother filed an Application under Section 21 of the Act for exemption on the basis of a scheme of construction for Low Income Group Housing which was within the time limit permitted by the Government. On 29.03.1979 itself the deceased mother filed Writ Petition No.877 of 1979 before this Court challenging the Notification under Section 10(3) of the Act. Therein, a stay was granted on the next day. The said Writ Petition came to be dismissed on 24.09.1982. Therefore, Civil Appeal No.3331 of 1982 alongwith Misc. Petition No.27301 of 1982 was



filed in the Hon'ble Supreme Court on 08.10.1982, challenging the Judgments of this Court dated 24.09.1982 and for grant of stay respectively. *Vide* Order dated 05.11.1982, stay was granted by the Apex Court.

4.4) On 14.03.1987 the deceased mother submitted a further scheme under Section 20(1)(a) of the Act, being Scheme No.A-225 for construction of houses for weaker Sections of the society which is still pending with the State Government. On 08.07.1996 the exemption Application made under Section 21 of the said Act was rejected by the Commissioner, Pune Division and the Competent Authority.

4.5) On 25.07.1996 the Hon'ble Supreme Court dismissed the Civil Appeal No.3331 of 1982 filed against the Court Order dated 24.09.1982 and upheld the Notification under Section 10(3) of the said Act. In the said decision, in paragraph 6, the Hon'ble Supreme Court has observed thus :-

“The Power of examination and exemption would arise only when the Government becomes the owner and the erstwhile owner seeks to obviate the hardship under Section 20 or to sub serve the housing scheme of weaker sections under Section 21 as envisaged there under. There at, the Government is required to consider whether the proposals made by the erstwhile owner for undertaking the scheme as envisaged under Section 21 of hardship as envisaged under Section 20 for exemption would merit consideration.”



4.6) On 07.08.1996 the deceased mother of the Petitioner filed Appeal under Section 33 of the said Act with Respondent No.1 challenging the Order dated 08.07.1996 and sought for stay. As stated in the Petition, Respondent No.3 gave oral instructions to the Competent Authority not to take possession. Accordingly, since 1996 no possession of the surplus land is taken, although there was no formal stay thereon.

4.7) Respondent No.2 served a notice dated 14.08.1998 on the Petitioner thereby intimating that possession of the surplus land would be taken on 19.08.1998, at 1:00 p.m. On 17.08.1998 the Petitioner applied to Respondent No.3 to bring him on record in the Appeal filed by the deceased mother as her legal heir and also prayed to stay the dispossession. On 18.08.1998 the Petitioner filed the Writ Petition No.4446 of 1998 praying *inter alia* that injunction may be issued restraining the Respondents from taking possession of the land mentioned in the notice dated 14.08.1998 during the pendency of the said Appeal filed on 07.08.1996 and also for 15 days from the date of service of an adverse Order upon the Petitioner, if any, passed in the said Appeal and for ad-interim injunction. The ad-interim injunction was granted by this Court.

4.8) By the Order dated 31.08.1998 this Court disposed off the Writ Petition No.4446 of 1998, thereby restraining the Respondents from taking possession of the lands mentioned in the said notice dated 14.08.1998 during the pendency of the said Appeal and also for 15 days from date of



service of an adverse Order upon the Petitioner, if any, passed in the said Appeal. Thereafter no notice for hearing of the said Appeal was received from Respondent Nos.1 & 3 nor adverse Order was passed in that Appeal till date. On 12.08.2005, at 18:00 hours, the Petitioner received phone call from Respondent No.2's office when he was informed that Order for taking possession of the surplus lands has been passed; that, the officers of the Respondents will be coming on the site on 17.08.2005 for executing the said Order, and that, the Petitioner should remain present on that day to hand over the possession. In this background present Petition is filed.

5) Mr. Balsara, the learned Counsel for the Petitioner submitted that, the aforesaid Appeal filed on 07.08.1996 is yet not decided. The Application dated 15.04.1987 submitting a scheme under Section 20(1)(a) of the Act is also pending. Be that as it may. Till date, possession of the land in question has not been taken over by the Respondents and therefore the Petitioner continues to be in possession of said land. Since the Act of 1976 has been repealed in the state of Maharashtra with effect from 29.11.2007, therefore all proceedings initiated under the said Act of 1976 and pending before any Court on the date of implementation of the repealing Act, shall abate. Consequently, the Respondents have been statutorily barred from taking possession of the subject matter land. Hence, Petition may be allowed in terms of the prayer clause "a (iii)".

6) In reply, Ms.Solunke, the learned Add. GP for Respondent



Nos.1 to 3 and Mr. Deshpande, the learned counsel for Respondent No.4 have submitted that, from time to time, necessary actions were taken by the Respondents to take the possession of the land in question. Meanwhile, the Notification under Section 10(3) and notice under Section 10(5) of the Act were issued. Ms.Solunke and Mr. Deshpande submitted that although the ULC Act came to be repealed on 29.11.2007, it is of no consequence. Because, on issuance of the said Notification, the surplus land was vested in the Government. The land has been already allotted to Respondent No.4 – the Pune Area Housing & Department for the public purpose and occupancy price of the land is paid by the said authority. However, the possession of the said land could not be taken because of stay Orders passed in the Writ Petitions filed in this Court and certain proceedings filed before the Appellate/Revisional authority under the Act. Said Petitions/challenges were against the scheme of the Act. Therefore, the Respondents are not blamable for not taking the possession of the land and frustrating the purpose of the Principal Act. As such, there is no merit in the Petition and Petition is liable to be dismissed.

7) We have considered these submissions advanced by the learned Advocates.

8) A Controversy like in this Petition had come before this Court in *Voltas Limited & Anr. vs. Addl. Collector and Competent Authority & Ors.*, reported in *2008 (5) Bom. C.R. 746*, cited by Mr. Balsara, the learned



counsel. The question, therefore, that had arose for consideration was “whether by reason of repeal of the Act, all proceedings under the principal Act in regard to the petitioners’ land declared as surplus vacant land, have abated and whether the land of the petitioner has reverted to the petitioners.”

8.1) On a conjoint reading of Section 10 of the Principal Act of 1976 and the Sections 3 & 4 of the Repeal Act of 1999, the Division Bench of this Court, in paragraph 15 held that, Section 3 of the Repeal Act is a saving clause and sub-Section 1 (a) of Section 3 of the Repeal Act saves vesting of any vacant land under sub-section (3) of Section 10 of the Principal Act, possession of which has been taken over by the State Government. In other words, vesting of vacant lands under sub-section (3) of section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved. Because there is no provision in the Repeal Act which divest: the State Government of the ownership of the land. The purpose of enacting Section 3 (1) (a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government and out of the vacant lands that might have vested in the State Government by virtue of declarations made under sub-Section (3) of Section 10 of the Principal Act, only vesting of those lands in the State Government of which possession has been taken has been saved. Therefore, by necessary implication it follows that vesting of those lands in the State Government under sub-section (3) of Section 10



of the Principal Act of which possession has not been taken has been repealed or made ineffective.

8.2) On account of vesting of the land in the State Government, 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. 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. However, 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 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 Section 10 of the Principal Act on failure of the person in possession to deliver the possession. Consequently, the State Government will 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 Sections 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. 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.

8.3) In view of the aforesaid observations, the Division Bench allowed the said Petition thereby restraining the Respondent from taking possession of the land.

9) In the case in hand, on a careful reading of the Affidavit-in-Reply filed by Respondent No.2, it is apparent that after dismissal of the Civil Appeal No.3331 of 1982 on 24.06.1996 by the Apex Court, the Constituted Attorney of the landowner M/s. Shantilal Mutha and Associates had filed an Application on 05.08.1996 against the decision of the Divisional Commissioner dated 08.07.1996 before the Hon'ble Minister, Housing and Special Assistance Department. Therein, the Government had issued a stay order dated 05.08.1996 until further orders against the decision of the Divisional Commissioner. The landowner again filed an Appeal under Section 34 of the Act on the order of the Commissioner, Pune Division, on 09.08.1996. In that Appeal, on 20.08.1996 the Government had issued stay against the Commissioner's Order until further orders for



handing over the land to the MHADA and rejection of the scheme under Section 21 of the Act. It is not clarified in the Affidavit that, as to why the possession of the said land could not be taken invoking Section 10 (6) of the Act. Thus, it appears that even after dismissal of the Civil Appeal No.3331 of 1982 by the Hon'ble Supreme Court, there was sufficient time with the Respondents to take possession of the said land. However, they failed to do so. Thus, the facts of the case in hand and the facts in the case of *Voltas* (supra) are similar to a large extent. Therefore, the said decision is applicable to the case in hand.

- 10) In view of the above, we pass following Order :-
- 10.1) Petition is allowed in terms of prayer clause *a (iii)*.
- 10.2) Rule is made absolute in aforesaid terms.
- 10.3) Consequently, Civil Application No.38 of 2022, does not survive and is disposed off accordingly.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)