

# **Vinayak Kashinath Shilkar vs Dy.Collector & Competent Auth.& Ors on 29 February, 2012**

**Equivalent citations: AIRONLINE 2012 SC 24, 2012 (4) SCC 718, (2012) 2 CAL LJ 47, (2012) 5 MAD LJ 450, (2012) 3 MAD LW 582, (2012) 5 MAH LJ 122, (2012) 3 PUN LR 744, (2012) 2 ALL WC 2123, (2012) 5 BOM CR 869, (2013) 2 CAL HN 197, (2012) 92 ALL LR 300, (2012) 3 SCALE 385, (2013) 124 ALLINDCAS 443 (CAL), (2013) 1 CALLT 556, (2013) 1 RENTLR 403, (2013) 2 CURCC 610, (2012) 113 ALL IND CAS 236 (SC), (2012) 4 ALL MR 461 (SC), (2012) 1 WLC (SC) CIVIL 580, (2012) 2 JCR 136 (SC), (2012) 113 ALLINDCAS 236, (2012) 4 ALLMR 461**

**Author: R.M. Lodha**

**Bench: H.L. Gokhale, R.M. Lodha**

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2615 OF 2012  
[ARISING OUT OF S.L.P. (C) NO.14223 OF 2009]

VINAYAK KASHINATH SHILKAR

... APPELLANT(s)

Versus

DY. COLLECTOR & COMPETENT AUTHORITY AND OTHERS

... RESPONDENT(s)

J U D G M E N T

R.M. LODHA, J.

Leave granted.

2. The appellant herein was the writ petitioner before the High Court. In the Writ Petition, he prayed that the proceedings in respect of the land bearing survey No. 195, Hissa No. 2 (New 195/1) of Village Parsik, District Thane under the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act") on the basis of the return filed by Nabibai Tukaram Patil may be declared as abated in view of the repeal of the Act. The appellant asserted that the possession of the subject land was with him and at no point of time, his possession was ever disturbed or attempted to be taken by the respondents.

3. In response to the Writ Petition, a reply affidavit was filed by the Additional Collector and Competent Authority, Thane Urban Agglomeration, Thane before the High Court. In paragraph 3 of that affidavit, it is stated that notice under Section 10 (5) of the Act was issued to the appellant on February 25, 2005 calling upon the appellant to hand over the possession of the subject land within 30 days from the receipt of the said notice and, thus, the subject land had vested with the State Government. In paragraph 10 of the said affidavit, it is stated that the Competent Authority had already taken action under Sections 10(3) and 10(5) of the Act and, therefore, the subject land is deemed to have vested in the State Government.

4. The Division Bench of the Bombay High Court dismissed the Writ Petition by observing that the possession of the subject property had already been taken by the Government of Maharashtra under the Act.

5. Mr. U.U. Lalit, learned senior counsel for the appellant submitted that the finding of the High Court that the possession of the property had been taken by the Government of Maharashtra was factually incorrect. He submitted that, as a matter of fact, even in the reply affidavit before the High Court filed on behalf of respondent No. 1, no such statement about possession was made. The subject land although had vested in the Government of Maharashtra on action having been taken under Sections 10(3) and 10(5) of the Act, learned senior counsel submitted but actual possession continued with the appellant.

6. Mr. Uday B. Dube, learned counsel for the respondents submitted and, in our view fairly that there was nothing on record to indicate that actual possession of the subject land had been taken over by the respondents from the appellant. He further submitted that the observation of the High Court that the possession of the subject land had already been taken by the Government of Maharashtra was based on the assertion made in the reply affidavit filed on behalf of respondent No. 1 that land had vested in the State Government on action having been taken under Sections 10(3) and 10(5) of the Act and for no other reason.

7. The Act came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "

the Repeal Act") on March 22, 1999. However, the State of Maharashtra did not adopt the Repeal Act immediately. On resolution having been passed by the Maharashtra Legislative Assembly as well as Maharashtra Legislative Council that w.e.f. November 29, 2007, the Repeal Act came to be adopted and became operative in the State of Maharashtra.

8. Section 2 of the Repeal Act reads as follows:

"2. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principal Act) is hereby repealed."

9. Section 3A of the Repeal Act reads as follows:

" 3 : Savings (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-

section (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."

10. It is clear from the above provisions that where the possession of the vacant land has not been taken over by the State Government by any person duly authorised by the State Government in this behalf or by the Competent Authority, the proceedings under the Act would not survive. Mere vesting of the vacant land with the State Government by operation of law without actual possession is not sufficient for operation of Section 3(1)(a) of the Repeal Act.

11. We are fortified in our view by a recent decision of this Court in Ritesh Tewari and another vs. State of Uttar Pradesh and others<sup>1</sup>. This Court in Ritesh Tewari<sup>1</sup> considered the matter thus:

"Shri Jayant Bhushan, learned Senior Counsel appearing for the appellants has submitted that as the State Government had not taken possession of the land in exercise of its powers under Section 10(6) of the 1976 Act, on coming of the 1999 Act into force, the proceedings stood abated and the respondents have no business to interfere with the peaceful possession and enjoyment of the property.

We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any court/authority under the 1976 Act, stood abated automatically on coming of 1999 Act into force, provided the possession of the land involved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this Court in Pt. Madan Swaroop Shrotriya Public 1 (2010) 10 SCC 677 Charitable Trust vs. State of U.P. (2000) 6 SCC 325, Ghasitey Lal Sahu vs. Competent Authority (2004) 13 SCC 452, Mukarram Ali Khan vs. State of U.P. (2007) 11 SCC 90 and Sulochana Chandrakant Galande vs. Pune Municipal Transport (2010) 8 SCC 467."

12. In view of the legal position enunciated by this Court in Ritesh Tewari<sup>1</sup> and the factual situation that the possession of the subject land has not been taken by the Government of Maharashtra, we are satisfied that the appellant was entitled to the relief in terms of para 9 (b) in the Writ Petition and the High Court ought to have declared that the proceedings under the Act in relation to the subject property stood abated. Now it is declared accordingly.

13. Appeal is allowed as above with no order as to costs.

.....J. (R.M. LODHA) .....J. (H.L. GOKHALE) NEW DELHI FEBRUARY 29, 2012.