Supreme Court of India
Gjanan Kamlya Patil vs Addl.Collector & ... on 14 February, 1947
Author: K S Radhakrishnan
Bench: K.S. Radhakrishnan, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2069 OF 2014
[Arising out of SLP (C) No.14690 of 2011)

Gajanan Kamlya Patil .. Appellant

Versus

Addl. Collector & Comp.
Auth. & Ors. .. Respondents

WITH

CIVIL APPEAL NOS. 2070-2071 OF 2014
[Arising out of SLP (C) Nos.14904-14905 of 2011)

J U D G M E N T

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are, in these appeals, concerned with the question whether the High Court was justified in relegating the parties to file Civil Suits to recover the lands covered by Survey No.54/4 and Survey No.53/3, both admeasuring 1870 sq. meters, situated at Village Kasarwadavli, Ghodbunder Road, Taluka and Distt. Thane, so as to get the benefit of Urban Land (Ceiling and Regulation) Repeal Act, 1999.

3. We may, for the disposal of these appeals, refer to the facts in Civil Appeal arising out of Special Leave Petition No.14690 of 2011, treating the same as the leading case. The Appellant herein was issued a notice dated 17.2.2005 under Section 10(5) of the Urban Land (Ceiling and Regulation) Act,

1976 (for short 'ULC Act') for taking possession of the Appellant's land bearing Survey Nos.47/10 and 54/4. It was stated in the notice that in accordance with the notification published in Part-I, Page No. – Konkan Division Supplementary, dated 12.12.2002, in the Gazette of Maharashtra, the land notified had been vested in the Government of Maharashtra and that Additional Collector and Competent Authority, Thane (for short "Competent Authority"), had been authorized by the State Government to take possession of the land in question, details of which had been published in the notification under Section 10(3) and the land be handed over or possession be given within 30 days from the date of receipt of the notice. Further, it was also intimated that if the Appellant had failed to give possession of the land, necessary action would be taken for taking possession by application of necessary force.

4. The Appellant, aggrieved by the above-mentioned notice, filed Writ Petition No.1669 of 2010 before the Bombay High Court to quash the notice dated 17.2.2005 and also for a declaration, inter alia, that the land bearing Survey No.54/4 admeasuring 1870 sq. meters is in the physical possession of the Appellant and would continue to vest as such with the Appellant as true and actual owner thereof. The Appellant also sought a declaration that in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proposed action of the Respondents or State or its authorities for taking possession of the land be declared as null and void and also prayed for other consequential reliefs.

5. The High Court after examining the provisions of the ULC Act as well as the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, and also taking note of the affidavit filed by the State Government and by the Mumbai Metropolitan Region Development Authority (MMRDA) noticed that so far as Survey No.47/10 is concerned, the possession had not been taken over by MMRDA. However, as far as land in Survey No.54/4 was concerned, after noticing that possession had been taken over, the High Court disposed of the Petition granting relief to the Appellant in respect of Survey no.47/10, but so far as Survey No.54/4 is concerned, as already indicated, the Appellant was granted liberty to move the Civil Court for establishing his claim over the property in question.

6. Shri Shekhar Naphade, learned senior counsel appearing for the Appellant, submitted that the issue raised in this case stands fully covered by the judgment of this Court in State of UP v. Hari Ram (2013) 4 SCC 280 and that the High Court has committed a grave error in holding that the MMRDA is in possession of the land in Survey No.54/4 and hence the question as to whether possession had been legally taken or not has to be decided by the Civil Court. Learned senior counsel also submitted that the State of Maharashtra has adopted the Repeal Act, 1999 on 1.12.2007 and that Respondent No.1 had executed the possession receipt in favour of Respondent No.3 on 2.7.2008 behind the back of the Appellant, without following the due process of law. Learned senior counsel submitted that since possession had not been taken in accordance with law, the Appellant is entitled to the benefit of the Repeal Act, 1999, as was rightly held in respect of Survey No.47/10.

7. Shri A.S. Bhasme, learned counsel appearing for the Respondents, on the other hand contended that the High Court has rightly come to the conclusion that the land in question had been taken over by MMRDA and being a disputed question of fact, the same cannot be decided by the High Court

under Section 226 of the Constitution of India and the only remedy available to the Appellant is to file a Civil Suit to establish his right since the dispute is of a civil nature. Learned counsel, therefore, prayed for dismissal of the appeal.

8. We may, at the outset, point out that almost all the legal issues urged before us stand covered by the judgment of the this Court in Hari Ram (supra). However, reference to few facts is necessary for the disposal of these appeals. The Competent Authority published a notification dated 17.1.2000 under Section 10(1) of the ULC Act in the Gazette of Government of Maharashtra on 15.6.2000, wherein the land held by the Appellant was shown as the land to be acquired by the Government of Maharashtra. Following that, a notification dated 14.3.2000 under Sub-Section (3) of Section 10 of the ULC Act was published notifying the public that the land shown in the schedule therein is covered and the land in Survey No.54/4 as well would be considered to be acquired by the Government of Maharashtra w.e.f. 15.6.2000 and the said land would be vested with the Government of Maharashtra from the said date.

9. The Competent Authority then issued yet another notification dated 2.8.2002 for information of the public that the land described in the schedule therein which included the land in Survey No.54/4 as well, have been considered to be acquired by the Government of Maharashtra w.e.f. 15.9.2002 and the said land would be vested for all purposes free from all charges to the Government of Maharashtra from the said date. The Competent Authority, as already indicated, issued a show cause notice dated 17.2.2005 under Sub-Section (5) of Section 10 of the ULC Act to the Appellant to hand over possession of the land in question within 30 days from the date of receipt of that notice. It was also indicated therein that if the Appellant failed to give possession of the land, necessary action would be taken for taking possession by the application of necessary force.

10. We may indicate that all the above-mentioned proceedings were initiated under the ULC Act, 1976, but the said Act was repealed by the Parliament by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 on 22.3.1999 which came into force w.e.f. 11.1.1999. The State of Maharashtra vide its notification dated 1.12.2007 adopted the Repeal Act, 1999 w.e.f. 1.12.2007. After adoption of the Repeal Act, 1999, on 1.12.2007, the Circle Office Balkum, Taluka & District Thane, executed "possession receipt" on 2.7.2008 of the land bearing Survey No.54/4 belonging to the Appellant in favour of the Chief Surveyor of MMRDA, pursuant to the orders of the Collector, Thane dated 1.7.2008. No notice, admittedly, was given to the Appellants before executing the possession receipt. In this case, an additional affidavit dated 29.4.2010 was filed by the Competent Authority stating that he could not find any document like Panchanama or possession receipt in respect of the land covered by Survey No.54/4 and few other Survey numbers. The operative portion of the affidavit reads as follows :-

> "I have stated in my affidavit in reply dated 20.3.2010 that on 2.7.2008 the Circle Officer has delivered the possession of the land bearing Survey No.103/3 area 3890 sq. mtrs., 3/10 area 3600 sq. mtrs., 98/6 area 1708 sq. mtrs., 53/3 area 2450 sq. mtrs., 54/4 area 1870 sq. mtrs to the MMRDA. I state that I have inspected my record, however, I could not find any document like panchanama or possession receipt in respect of aforesaid lands by which its possession was obtained from the

land holder under Urban Land Ceiling Act."

11. We have another affidavit dated 2.7.2010 by the Principal Secretary, Urban Development Department, Government of Maharashtra, wherein he has categorically stated that the possession had not been handed over by the landowner to the Competent Authority. The operative portion of the same reads as under :-

> "The records of right of the said land have been mutated in favour of the Government on the basis of the notification issued under Section 10(3) of the ULC Act. I say and submit that on enquiry, it is revealed that, though the notice under Section 10(5) was issued on 17.02.2005 for handing over possession of the surplus vacant land, the possession of land has not been handed over by concerned landowner to the Competent Authority or to his representative." The Affidavit also further reads as under :-
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> "Therefore, Government was under impression that since the land has been vested into the Government as per the notification under Section 10(3) dated 02.08.2002, the Government has every right to use the said land for public purpose. I say that, in the aforesaid background, the decision was taken to allot the land to Mumbai Metropolitan Region Development Authority, and therefore, as per the directions of the Government and subsequent directions of Collector, Thane, the Circle Officer, Balukm, Distt. Thane handed over the possession of the surplus land to the Mumbai Metropolitan Region Development Authority on 02.07.2008." The affidavit also says that actual possession was not taken over as per the provisions of the ULC Act, 1976 before 29.11.2007. The operative portion of the same reads as under:-
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> "I say and submit that, even though the possession of the land has been handed over to the Mumbai Metropolitan Region Development Authority by Circle Officer, Balkum on 02.07.2008, the actual possession of said surplus land was not taken over as per the provisions of the ULC Act, 1976 before 29.11.2007."
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> 12. We may indicate, apart from the affidavits filed by the officials in this case, no other document has been made available either before the High Court or before this Court, either showing that the Appellant had voluntarily surrendered or the Respondents had taken peaceful or forcible possession of the lands. In Hari Ram (supra) this Court examined the meaning and context of Sub-sections (3) to (6) of Section 10 of the ULC Act and held as follows :
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> "30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on

such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words "acquired" and "vested" have different meaning and content. 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.

Voluntary surrender

31. The "vesting" in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in Maharaj Singh v. State of U.P. (1977 (1) SCC 155), while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in Rajendra Kumar v. Kalyan (2000 (8) SCC 99) held as follows: (SCC p. 114, para 28) "28. ... We do find some contentious substance in the contextual facts, since vesting shall have to be a 'vesting' certain. 'To "vest", generally means to give a property in.' (Per Brett, L.J. Coverdale v. Charlton (1878) 4 QBD 104 (CA): Stroud's Judicial Dictionary, 5th Edn., Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorisation cannot however but be termed to be a contingent event. To 'vest', cannot be termed to be an executory devise. Be it noted however, that 'vested' does not necessarily and always mean 'vest in possession' but includes 'vest in interest' as well."

32. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub- section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date

specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

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) of 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 to only in a situation which falls under sub-section (6) and not under sub-section (5) of 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), then "forceful dispossession" under sub-section (6) of Section 10.

37. The 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 in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall"."
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> 13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken.

Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.

14. The Appeals are, accordingly, allowed. However, there shall be no order as to costs.

eard Hear.....J.

(K. S. Radhakrishnan) eard Hear.....J.

(Vikramajit Sen) New Delhi, February 14, 2014.