IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 3945 of 2010

BETWEEN:-

1. **KASTURIBAI AND ANR. W/O SUKHARAM, AGED ABOUT 75 YEARS, OCCUPATION: HOUSEWIFE 79 TAJPUR GARBARI DISTT.INDORE (NOW DEAD & DELETED)**
2. **SUNIL S/O PRAKASH, AGED ABOUT 24 YEARS, OCCUPATION: UNEMPLOYED 79 TEJPUR GAGBADI**

.....PETITIONER

(BY SHRI AJAY BAGADIA, SENIOR ADVOCATE ASSISTED BY SHRI M.D. PATIL, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH AND 2 ORS. GOVT. PRAMOKH SACHIV RAJASVA VIBHAG MANTRALAYA BHAWAN BHOPAL**
2. **COLLECTOR / DISTRICT MAGISTRATE**
3. **ADDL. COLLECTOR**

.....RESPONDENTS

(BY SHRI KOUSTUBH PATHAK, GOVERNMENT ADVOCATE)

Reserved on	**:**	**20th March, 2024**
Delivered on	**:**	**05th April, 2024**

This petition having been heard and reserved for order coming on for pronouncement this day, the court pronounced the following:

O R D E R

The petitioners have filed the present petition under Article 226 of the Constitution of India challenging the notice dated 29.01.2010 (Annexure-P/1), whereby the Additional Collector & Competent

Authority under the Urban Land (Ceiling & Regulation) Act, 1976 (in short ULCR Act) directed them to remove the encroachment from the land bearing Survey No.310 area 0.509 hectare, Village – Tejpur Gadbadi, District – Indore.

02. Vide order dated 18.03.2015, writ petition was allowed by the Writ Court by holding that the *Kabza Panchnama* dated 27.02.1984 is merely a paper possession, made only for the purpose of completing the paper formalities, hence, now the possession cannot be taken from the petitioner. accordingly, impugned notice dated 09.01.2010 was set aside.

03. Being aggrieved by the aforesaid order, the State of Madhya Pradesh preferred W.A. No.125 of 2017. Vide order dated 10.10.2017, the Division Bench of this Court has held that the learned Single Judge did not decide the preliminary objection raised by the State Government in respect of the inordinate delay of 26 years in filing the writ petition, hence, set aside the order dated 18.03.2015 and remanded the matter back; firstly to decide the issue of limitation, then the writ petition be decided on merit in accordance with law.

04. Petitioner No.1 – Kasturi Bai was the joint owner of the ancestral properties including the land of Survey No.310, area 0.509 hectare. The petitioner No.2 is the grand son of the petitioner No.1. The competent authority, after conducting necessary enquiry prepared a draft statement under Section 8(3) of the ULCR Act and sent it to the land owners for submitting objections, if any. After confirming the draft statement, the land measuring 0.359 hectares of senior No. 310 was declared as surplus land. Smt. Kasturi Bai did not prefer any appeal against the said order confirming the draft statement. Thereafter, she filed an application under Section 20 of the ULCR Act for grant of exemption, but the same was rejected by the State Government vide

order dated 27.09.1983. Thereafter, a notice under Section 9 of the ULCR Act along with a final statement was issued by the competent authority on 15.05.1982.

05. After the dismissal of the application filed under Section 20 of the ULCR Act, a notification under Section 10(1) of the ULCR Act was published in the gazette on 10.10.1983 followed by the notification under Section 10(3) of the ULCR Act published on 14.02.1984, whereby vacant surplus land stood vested with the State Government.

06. The competent authority issued notice dated 14.02.1984 under Section 10(5) of the ULCR Act directing Kasturi Bai and other land owners to hand over the possession to the Collector within thirty days. The Additional Tehsildar, Indore was also directed to take possession of the land. According to the respondents / State, the possession of the surplus land was taken on 26.02.1984. The *Panchnama* dated 27.02.1984 was drawn *ex parte* as the owner of the land was not present. According to the respondents, notice dated 14.02.1984 was served by way of affixation.

07. Smt.Kasturi Bai preferred an appeal under Section 33 of the ULCR Act against the notification dated 14.02.1984, but the same was dismissed vide order dated 18.07.1985 in Appeal No.225/84 – 85. therefore, Kasturi Bai knew that the possession of the land had been taken on 27.02.1984. Smt. Kasturi Bai along with petitioner No.2 unauthorizedly encroached the surplus land, therefore, the impugned notice dated 29.01.2010 was issued to them, which is under challenge in this petition.

08. The petitioners assailed the notice on the ground that possession of the surplus land had never been taken from them. The name of the State Government was mutated without notice to them, therefore, now

vide impugned notice they cannot be dispossessed. The petitioners sought the relief that the notice dated 29.01.2010 be quashed and the cost be awarded in their favour. The petitioners have not challenged the notification dated 14.02.1984 and the order of dismissal of appeal dated 18.07.1985 or the *Kabza Panchnama* dated 27.02.1984.

09. Shri Ajay Bagadia, learned Senior Counsel for the petitioners submits that since the ULCR Act was abolished in the year 1999 but petitioners remained in possession, therefore, the proceedings under the ULCR Act did not culminate finally and now virtue of the saving clause in the repealed ULCR Act, all the proceedings stand abated and petitioners are entitled to retain the possession.

10. Learned Government Advocate for the respondents / State refuted that the petitioners have filed the present after 26 years from the date of taking possession of the surplus land. The surplus land had already been vested with the State Government, thereafter, the possession was taken on 27.02.1984 and now the status of the petitioners is, of a encroacher. Even otherwise, Kasturi Bai, against whom the proceedings under the ULCR Act were drawn is no more.. The remaining petitioner i.e. petitioner No.2 – Sunil cannot claim ownership of the surplus land to protect his possession. It is further submitted that the writ petition is not maintainable which is filed after a period of 26 years seeking the declaration of the *kabza* warrant as the paper warrant. The proceedings initiated under the ULCR Act have attained finality and the benefit of repealed ULCR Act will not be available to the petitioners. Hence, the writ petition is liable to be dismissed.

11. I have heard learned counsel for the parties at length and perused the record.

12. Although vide order dated 18.03.2015, the writ petition was allowed, the Division Bench by placing reliance upon the various judgments passed by the Apex Court has remanded the matter back to the Writ Court to first decide the issue of limitation whether the delay in approaching this Court was *bonafide* or not ?

13. By way of this petition, the petitioners are not seeking quashment of orders dated 14.02.1984 & 18.07.1985. They are also not challenging the *Kabza Panchnama* dated 27.02.1984. The petitioners are also not challenging the order dated 18.07.1985, whereby their appeal was dismissed by the appellate authority. They are only challenging the notice dated 29.01.2010 on the ground that they were never dispossessed physically on 27.02.1984, thereafter, the ULCR Act was repealed, hence, they are entitled to retain possession of the surplus land.

14. A similar issue came up for consideration before the Coordinate Bench of this Court in the case of ***Sardar Singh v/s The State of Madhya Pradesh & Another*** *reported in* ***I.L.R. 2023 M.P. 599***, in which it has been held it is true that the name of State Government was not immediately after 1986, but an entry was made in the revenue record of the year 2001 – 02 to the effect that the land has been declared to be an excess land. Even if the name of the original owner continued to remain in the revenue record, still it would not make much difference because it is the well established principle of law that the revenue entries are not made for fiscal purpose and do not create any right in favour of the person in whose name the revenue entry has been made. The Coordinate Bench relied upon a judgment passed by the Division Bench of this Court in the case of ***Lalji Choubey v/s The State of Madhya Pradesh & Another*** *reported in* ***I.L.R. 2008 M.P. 2513***, in which it has been held

that the preparation of receipt of possession by the revenue authorities as well as mutation of the name of the State Government in the revenue record is sufficient material to show that the physical possession was taken.

15. Recently another Division Bench of this Court in the case of **R*am Narayan & Others v/s The State of Madhya Pradesh & Another (Writ Appeal No.81 of 2006)*** decided on 14.02.2022 has held that the State is not supposed to physically reside or occupy the land once the possession is taken after the drawing of *Panchnama*. After drawing the Panchnama taking possession of the land, if anyone makes re-entry over the land then he is deemed to be a trespasser on the land which is in the possession of the State. The Division Bench has further held that if the actual possession of the land is taken over by the State, then the grievance about the non-compliance of Section 10(5) of the ULCR Act has to be taken within reasonable time of the possession. If the land owner failed to take such objection within a reasonable time, then he has been deemed to have waived his right under Section 10(5) of the ULCR Act. Paragraphs – 15, 16 & 17 of the aforesaid judgment are reproduced below:-

> "15. A constitution bench of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal5** considered the question when is physical possession is said to have been taken under the provisions of the Land Acquisition Act, 1894. The court held that when the State draws up a memorandum or *Panchnama* of taking possession, that amounts to taking the physical possession of the land. When vacant land is acquired, the State is not supposed to put some person or the police in possession to retain it and start cultivation till the time the land is used for the purpose for which it is acquired. *The State is not supposed to physically reside or occupy the land once the possession is taken after drawing of Panchnama. After drawing Panchnama taking possession of the land, if any one makes re-entry over the land then he is deemed to be a*

trespasser on the land which is in the possession of the State. It was further held that once possession is taken by drawing of *Panchnama* the lands vests in the government free from encumbrances. Thereafter any illegal re-entry over the land cannot have the effect of divesting the land once it vests in the State.

16. In **State of Madhya Pradesh v. Ghisilal**6 a two-judge bench of the Hon'ble Supreme Court considered the issue of taking possession of vacant land under the Act of 1976. While following the dictum of the constitution bench in **Indore Development Authority**5, it was held that taking possession of the vacant land by drawing a *Panchnama* amounts to taking physical possession of the land.

17. Further, in **State of Assam v. Bhaskar Jyoti Sarma and others**7 an argument was raised that when the possession of the land was taken, the provision of Section 10(5) of the Act of 1976 was not followed and hence no possession can be said to have been taken within the meaning of Section 3 of the Repeal Act of 1999. This argument was repelled by the Hon'ble Supreme Court by holding that *if the actual possession of the land is taken over by the State then the grievance about non-compliance with Section 10(5) has to be taken within reasonable time of dispossession. If the land owner failed to take such objection within reasonable time then he hasdeemed to have waived his right under Section 10(5)*. The decision and reasoning of **Bhaskar Jyoti Sarma**7 was approved by the constitution bench of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal**8. In the present case, appellants filed an application alleging non-compliance with Section 10(5) and 10(6) in 2004 whereas the possession of the land was taken over by the State in 1994 i.e., 10 years earlier. The appellants, it is clear, did not object to the taking over of the possession within reasonable time. Thus, we are of the view, that on this additional point too, the possession of the State obtained legitimacy and cannot be questioned at this stage when the land is already vested in the State and its name mutated in the revenue records."

[Emphasis Supplied]

16. The judgment passed by the Apex Court in the case of ***Indore Development Authority v/s Manoharlal & Others*** *reported in* ***(2020) 8 SCC 129 also deals with the same proposition of law***. Paragraph – 344 is reproduced below:-

344. In this context, it is noteworthy that the Urban Land

(Ceilingand Regulation) Act, 1976, was repealed in the year 1999; thereafter, claims were raised. After repeal, it was claimed that actual physical possession has not been taken by the State Government as such repeal has the effect of effacing the proceedings of taking possession, which it was alleged, was not in accordance with the law. In State of Assam v. Bhaskar Jyoti Sarma [State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321] , submission was raised by the State of Assam that physical possession has been taken over by the competent authority and it was submitted on behalf of landowner that procedure prescribed under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976, was not followed. It was before taking possession under Section 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976, the notification under Section 10(5) was necessary; thus, no possession can be said to have been taken within the meaning of Section 3 of the Repeal Act. The question this Court had to consider was whether actual physical possession was taken over in that case by the competent authority. The State of Assam submitted that though possession was taken over in the year 1991, may be unilaterally and without notice to the landowner. It was urged that mere non-compliance with Section 10(5) would be insufficient to attract the provisions of Section 3 of the Repeal Act. This Court repelled the submission of the landowner and held as under : (SCC pp. 329-30, paras 15-17)

> "15. The High Court has held [Bhaskarjyoti Sarma v. State of Assam, 2010 SCC OnLine Gau 377] that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile

> to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.
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> **17.** Reliance was placed by the respondents upon the decision of this Court in *Hari Ram case* [*State of U.P.* v. *Hari Ram*, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] . That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in *Hari Ram case* [*State of U.P.* v. *Hari Ram*, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so."

17. The Apex Court in the case of ***Kapila Ben Ambalal Patel & Others v/s The State of Gujarat & Another*** *reported in* ***(2021) 12 SCC 95*** has held that it is difficult to take physical possession of the land it is

difficult to take physical possession of the land under compulsory acquisition, the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession. It has further been held that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3.1986, suffered from laches. The Apex Court has also held that the appellants thought of the last attempt to assail the *Possession Panchnama* dated 20.3.1986 itself without seeking any further relief of declaration regarding the earlier proceedings which had attained finality. Hence, the Division Bench has rightly held that the petition is hopelessly time barred. Paragraphs – 23, 24, 25 & 26 are reproduced below:-

> "23. Obviously, therefore, *the appellants thought of the last attempt to assail the Possession Panchnama dated 20.3.1986 itself without seeking any further relief of declaration regarding the earlier proceedings which had attained finality*.
> 24. The Division Bench, in our opinion, therefore, was right in concluding that the writ petition filed by the appellants after lapse of 14 years was *hopelessly barred by delay and suffered from laches*. We are in agreement with the said view taken by the High Court in the peculiar facts of the present case.
> 25. Strikingly, in this appeal by special leave, a vague ground has been raised to challenge the said conclusion of the Division Bench. Further, no substantial question of law has been formulated in the appeal by special leave in that regard. Furthermore, in the grounds all that is asserted is that the High Court erred in holding that there was delay of 14 years in filing of writ petition and in not appreciating that the notice under Section 10(5) of the 1976 Act, dated 23.1.1986, was not served upon Ambalal Parsottambhai Patel as he had already expired on 31.12.1985 and the notice sent to him was returned back on 2.2.1986 unserved with remark "said owner has expired". Further, the legal heirs of Ambalal Parsottambhai Patel ought to have been served with the said notice. From the factual matrix already stated hitherto, these grounds, in our opinion, are of no avail to the appellants. It is manifest from the

> acknowledgement produced by the respondentState that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.12.1985. By the time second notice under Section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patel had died (on 31.12.1985). The second notice was also issued to others, namely, Bhikhabhai Maganbhai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel. Be that as it may, we are not inclined to reverse the conclusion recorded by the Division Bench of the High Court that the writ petition filed by the appellants was hopelessly delayed and suffered from laches. That is a possible view in the facts of the present case.
> 26. The respondents had additionally relied on the decision of this Court in Larsen & Toubro Ltd. (supra), wherein the Court adverted to the exposition in Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors.20, Balmokand Khatri Educational and Industrial Trust vs. State of Punjab21 and Tamil Nadu Housing Board vs. A. Viswam (Dead) by LRs. 22 regarding the settled legal position that *it is difficult to take physical possession of the land under compulsory acquisition. Further, that the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land.* Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paragraphs 14 to 16 of Bhaskar Jyoti Sarma (supra). However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the Division Bench of the High Court that the *writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3.1986, suffered from laches*. The Division Bench of the High Court noted that the learned single Judge completely glossed over this 20 (1976) 1 SCC 700 (paragraph 28) 21 (1996) 4 SCC 212 (paragraph 4) 22 (1996) 8 SCC 259 (paragraph 9) crucial aspect of the matter, and we find no reason to depart from that conclusion."
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> [Emphasis Supplied]

18. Likewise in the present case also, the land was declared as surplus land in the year 1984, and possession was taken on 27.02.1984, thereafter, objections and appeals were dismissed in the year 1985, and these proceedings had attained finality and never been challenged. Now this petition is filed only challenging the impugned notice questioning

the *Kabza Panchnama* dated 27.02.1984 after 26 years.

19. In view of the judgment passed by the Apex Court in the case of *Kapila Ben Ambalal Patel (supra)*, this writ petition is hopelessly time barred and not liable to be entertained on merit, hence, dismissed.

(VIVEK RUSIA)
J U D G E

Ravi