

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA  
ON THE 24<sup>th</sup> OF APRIL, 2023  
SECOND APPEAL No. 948 of 2014**

**BETWEEN:-**

1. SMT. SHANTI BAI W/O SHRI BALA PRASAD R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
2. SATISH KUMAR S/O SHRI BABULAL R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
3. JEEVAN KUMAR S/O SHRI BABULAL R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
4. PRAM NARAYAN S/O SHRI BABULAL R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
5. NARESH KUMAR S/O SHRI BABULAL R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
6. SMT. KESHAR BAI W/O LATE SHRI SURAJMAL R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT BHOPAL (MADHYA PRADESH)
  
7. SMT. RAMKALI BAI W/O SHRI RAMESH KUMAR R/O VILL. SINGRACHOLI TEH. HUZUR, DISTRICT

**BHOPAL (MADHYA PRADESH)**

8. **SMT. USHA BAI W/O SHRI MEGHRAJ  
R/O VILL. SINGRACHOLI TEH. HUZUR,  
DISTRICT BHOPAL (MADHYA  
PRADESH)**
9. **SMT. KANTI BAI W/O SHRI  
GANESHRAM R/O VILL. SINGRACHOLI  
TEH. HUZUR, DISTRICT BHOPAL  
(MADHYA PRADESH)**
10. **SMT. GYATRIBAI W/O SHRI SURESH  
KUMAR R/O VILL. SINGRACHOLI TEH.  
HUZUR, DISTRICT BHOPAL (MADHYA  
PRADESH)**
11. **SMT JASHODA BAI W/O SHRI  
MITTHULAL R/O VILL. SINGRACHOLI  
TEH. HUZUR, DISTRICT BHOPAL  
(MADHYA PRADESH)**

**.....APPELLANTS*****(BY SHRI SANKALP KOCHAR WITH SHRI PRAMENDRA SINGH THAKUR -  
ADVOCATES)*****AND**

1. **THE STATE OF MADHYA PRADESH  
THR. COLLECTOR OLD  
SECRETARIATE, BHOPAL (MADHYA  
PRADESH)**
2. **ADDITIONAL COLLECTOR AND  
COMPETENT AUTHORITY UNDER THE  
URBAN CEILING ACT, OLD  
SECRETARATE, BHOPAL (MADHYA  
PRADESH)**

**.....RESPONDENTS*****(BY MS.SHANTI TIWARI – PANEL LAWYER FOR THE  
RESPONDENTS/STATE & SHRI CHANDRAHAS DUBEY – ADVOCATE FOR  
THE PROPOSED INTERVENER)***

.....  
*This appeal coming on for admission this day, the court passed the following:*

### **J U D G M E N T**

Heard on **I.A.No.1950/2023**, an application under Order 1 Rule 10 of CPC.

2. This application has been filed by Laxmi Naryan Dangi seeking his impleadment as respondent on the ground that he is in possession of the land in dispute for the last 40 years.

3. The application at this stage is not maintainable as he neither applied before the Trial court nor before the First Appellate Court for his impleadment.

4. Furthermore the question in the present case is as to whether the acquisition of the land was completed or not?

5. Accordingly, **I.A.No.1950/2023 is hereby rejected.**

6. Heard on admission.

7. This second appeal, under section 100 of CPC, has been filed against the judgment and decree dated 13.08.2014 passed by 16<sup>th</sup> Additional District Judge, Bhopal in Civil Appeal No.93/2013, arising out of judgment and decree dated 07.02.2013 passed by Second Additional Civil Judge, Class-I to the Court of First Civil Judge, Class-I, Bhopal in RCS No.1423-A/2012.

8. The facts necessary for disposal of the present appeal in short, are that the plaintiffs/appellants filed a suit for declaration of title and permanent injunction. It is the case of the plaintiffs that Khasra No.16/2, area 1.28 hectares out of 2.40 hectares, situated in Village

Singarcholi, Tahsil Huzoor, District Bhopal is the disputed property. The said land was in the name of Babulal, which was declared as surplus land under section 10(3) of Urban Land (Ceiling and Regulation) Act. A notice under section 10 (5) of Urban Land (Ceiling and Regulation) Act was issued on 24.04.1995 with a direction to appear and handover the possession to the State Government, but on the said date, no action was taken. Even the said notice was not served on Babulal, but was served on Prem Narayan. The plaintiffs are the legal representatives of Babulal. Later on, the possession panchanama was prepared, which does not contain the signatures of plaintiffs. On the basis of forged possession panchanama, the name of Babulal has been deleted from the revenue record and accordingly the suit was filed for declaration of title and permanent injunction.

9. The defendants filed their written statements and submitted that after the land was declared as surplus under section 10(3) of Urban Land Ceiling Act, notice under section 10(5) of Urban Land Ceiling Act was issued, which was duly served on Prem Narayan, who is the son of Babulal. The possession of the surplus land has been taken on 06.01.1998 and a possession panchanama was also prepared and from thereafter the land is recorded in the name of defendants.

10. The trial court, after framing issues and recording evidence, decreed the suit.

11. Being aggrieved by the judgment and decree passed by the trial court, the respondents/State preferred an appeal, which has been allowed by the impugned order.

12. Challenging the judgment and decree passed by the First Appellate Court, it is submitted by the counsel for the appellants that

the Court below failed to see that the appellants are still in possession of the land in dispute. After the repeal of Urban Land Ceiling & Regulation Act, the appellants have become the owner of the land in dispute because possession was not taken in accordance with law.

13. To buttress his contentions, the counsel for the appellants has relied upon the judgment passed by a Coordinate Bench of this Court in the case of *Rajendra Kumar Patel Vs. State of M.P. and another, decided on 08.08.2013 in W.P.No.1855/2005, Thamman Chand Koshta Vs. State of M.P. and others reported in 2016(2)MPLJ 623, Dattatrey Rao Kale Vs. State of M.P. and others, decided on 12.02.2019 in W.P.No.1426/2011 and Amar Chand Vs. State of M.P. and others decided on 03.04.2019 in W.P.No.20905/2018* and proposed the following substantial questions of law :-

*“I. Whether the learned Lower Appellate Court justified reversing the well reasoned finding of the Trial Court?*

*II. Whether the Lower Appellate Court is perverse and contrary to the material available on record?*

*III. Whether the Lower Appellate Court justified in holding that suit of the plaintiffs is time barred inspite of fact plaintiffs specifically pleaded and proved that suit has been filed within 3 years from the date of knowledge?*

*IV. Whether the Court below justified in allowing the appeal and holding that suit is time barred inspite of fact that no issues was fraed in Trial Court in this regard?”*

14. Heard the learned counsel for the appellants.

15. Section 10 of Urban Land (Ceiling and Regulation) Act reads as under :-

***“10. Acquisition of vacant land in excess of ceiling limit.—***

*(1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that—*

*(i) such vacant land is to be acquired by the concerned State Government; and*

*(ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.*

*(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.*

*(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.*

*(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)—*

*(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and*

*(ii) no person shall alter or cause to be altered the use of such excess vacant land.*

*(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.*

*(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.*  
*Explanation.—In this section, in sub-section (1) of section 11 and in sections 14 and 23, “State Government”, in relation to—*

*(a) any vacant land owned by the Central Government, means the Central Government;*

*(b) any vacant land owned by any State Government and situated in the Union*

*territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.”*

16. Thus, after the land is declared as surplus under section 10(3) of Urban Land (Ceiling and Regulation) Act, the notice is required to be issued under section 10(5) of Urban Land Ceiling Act to the holder of the surplus land to surrender the surplus land and in case if he fails to surrender the land, then action under section 10(6) of Urban Land (Ceiling and Regulation) Act shall be taken.

17. In the case in hand, it is the case of the plaintiffs themselves that a notice of under section 10(5) of Urban Land Ceiling Act was served on the son of Babulal. However, their contention is that immediately thereafter the possession was not taken and, therefore the possession by the respondents was not taken.

18. It is the claim of the plaintiffs that the possession taken by the defendants on 06.01.1998 is a forged proceeding and is not in accordance with law.

19. The fact that the land in dispute was declared as surplus land under the Urban Land (Ceiling and Regulation) Act, is undisputed.

20. Thus, the first question for consideration is as to whether a civil suit for declaration of possession panchnama dated 06.01.1998 (Ex.P.4), is maintainable or not?

21. The Supreme Court in the case of **State of M.P. Vs. Ghisilal by judgment dated 22/11/2021 passed in Civil Appeal No.2153 of 2012** has held as under:-

*“14. The Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any*



*orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the civil courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil court cannot declare, orders passed by the authorities under the ULC Act, as illegal or non est. More so, when such orders have become final, no declaration could have been granted by the civil court. In this regard reference may be made to the judgment of this Court in the case of **Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 and another v. David Mantosh and others (2020) 12 SCC 542**. We are totally in agreement with the aforesaid view taken by this Court.*

*15. In this case, it is clear from the orders passed by the competent authorities, that the original declarant was holding excess land to the extent of 16000.32 square meters. When the orders passed by the competent authority and consequential notifications issued under Section 10(1) and 10(3) of the ULC Act have become final, it was not open for the respondent to file a suit seeking declaration, as prayed for. As we are of the view that jurisdiction of the civil courts is barred by necessary implication, trial court fell in error in entertaining the suit, as filed by the respondent and even the first appellate court and second appellate court have not considered the various grounds raised by the appellant in proper perspective.*

*16. Although it is contended by the learned counsel appearing for the respondent to mould the relief, it is trite principle that where the suit is filed with particular pleadings and reliefs, it is to be considered with reference to pleadings on record and the reliefs claimed in the suit*

*only. The judgments relied on by the learned counsel for the respondent would not render any assistance to support the case of the respondent. As we are in agreement with the view taken by this Court earlier in the case of **Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976** this appeal is to be allowed by setting aside the judgment and decree passed by the trial court as confirmed by the appellate court on the ground that such suit itself was not maintainable.”*

22. Thus, it is clear that the suit itself was not maintainable.

23. It is next contended by the counsel for the appellants that the paper possession cannot be equated with actual possession, therefore, it cannot be said that the actual possession of the surplus land is taken over by the State functionaries.

24. Heard the learned counsel for the appellants.

25. The Supreme Court in the case of **Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, reported in AIR 1996 SC 1239** has held as under :-

*“4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that 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 the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.”*

26. The Supreme Court in the case of ***Tamil Nadu Housing Board Vs. A.Viswam(Dead) by LRs., reported in AIR 1996 SC 3377*** has held as under :-

*“9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.”*

27. The Supreme Court in the case of ***Sita Ram Bhandar Society, New Delhi Vs. lieutenant Governor, Government of NCT, Delhi and others, reported in (2009) 10 SCC 501*** has held as under :-

*“28 A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam [(1996) 8 SCC 259 : AIR 1996 SC 3377] after considering the judgment in Narayan Bhagde case [(1976) 1 SCC 700] , observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case [(1976) 1 SCC 700] had been rendered and held as under: (Viswam case [(1996) 8 SCC 259 : AIR 1996 SC 3377] , SCC p. 262, para 9)*

*“9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the*

*land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land.*

**29.** *In Balmokand Khatri Educational and Industrial Trust v. State of Punjab [(1996) 4 SCC 212 : AIR 1996 SC 1239] yet again the question was as to the taking over of the possession of agricultural land and it was observed thus: (SCC p. 215, para 4)*

*“4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that 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 the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.”*

**30.** *It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.”*

28. Thus, it is clear that one of the permissible mode of taking possession is by preparing possession panchanama. Thus, it cannot be said that possession of surplus land was not taken.

29. So far as the contention of the counsel for the appellants that the appellants are still in possession of the land in dispute is concerned, the same will not confer any title.

30. The Supreme Court in the case of ***Land & Building Department through Secretary and Another Vs. Attro Devi and others, reported by judgment dated 11.04.2023 decided in Civil Appeal No.2749/2023*** has held as under :-

*"12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in **Indore Development Authority's** case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is D.No.23608/2021 complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:*

*"244. **Section 16** of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and*

*thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has D.No.23608/2021 no right to possess the land which vests in the State free from all encumbrances.*

*245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any reentry is made on the land*

*or someone starts cultivation on the open land or starts residing in the outhouse, etc., is D.No.23608/2021 deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.*

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*256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such D.No.23608/2021 possession of trespasser enures for his benefit and on behalf of the owner."*

*(emphasis supplied)"*

31. Thus once the land has vested in the State Government, then the possession of a person would be that of an encroacher only and he cannot claim adverse possession also.

32. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no substantial question of law arises in the present appeal.

33. According, judgment and decree dated 13.08.2014 passed by 16<sup>th</sup> Additional District Judge, Bhopal in Civil Appeal No.93/2013 is hereby **affirmed**.

34. The appeal fails and is hereby **dismissed**.

**(G.S.AHLUWALIA)**  
**JUDGE**

TG/-