

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13529 of 2000****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS JUSTICE SONIA GOKANI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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PATEL KANTIBHAI DEVJIBHAI HEIROF DECD DEVJIBHAI RAMJIBHAI
Versus

ADDITIONAL COLLECTOR & COMPETENT AUTHORITY & 1 other(s)

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Appearance:

MR AMAR D MITHANI for the Petitioner(s) No. 1

GOVERNMENT PLEADER for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI**Date : 02/11/2017****ORAL JUDGMENT**

1 Petitioner has challenged in this petition under
Article 226 of the Constitution of India the

action of respondent-State of depriving him of his right to be heard and its act of declaring surplus land.

2 It is the case of the petitioner that father of the petitioner Devji Ramjibhai filled in Form No.1 under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, ("the ULC Act" for short). The competent authority prepared draft statement under section 8(3) of the Act and issued the same along with notice under section 8(1) to the petitioner (declarant). Objections were filed by the petitioners and hearing had been given on various dates, namely, 23.12.1982, 17.3.1983 and 7.8.1994 and 15.9.2015.

3 The competent authority thereafter decided the proceedings and order was made under section 8(4) of the said Act. On 21.9.1994 the final statement under section 9 of the Act was issued allowing one unit of 1500 sq.meters to the father of the applicant and rest of the land

admeasuring 9691.25 sq.meters of land was declared as surplus land.

4 The scheme was prepared by the petitioner under section 21 of the said Act, which was sanctioned for the area admeasuring 2344.50 sq.meters and said area of land covered under the scheme was allowed to be retained with the land holder for developing dwelling house for weaker sections.

4.1 Thus the order dated 21.9.1984 and the one made thereafter by the competent authority was upheld by the Urban Land Tribunal ("ULT" for short). The permission granted to the petitioner to re-issue land under section 21 of the Act was cancelled by the competent authority vide order dated 13.7.1987 which was challenged before the ULT vide Appeal No.121 of 1987 and the same was dismissed by the Tribunal on 10.2.1988. The said order was challenged by the petitioner by preferring Special Civil Application No.1941 of 1988 which came to be withdrawn on 19.5.1988. Therefore, the authority concerned passed an order on 18.8.1990 and included the said land of

2344.50 by final an official statement under section 9 on 9.10.1984.

4.2 The authorities had issued notice under section 10(5) of the Act in respect of the land admeasuring 9691.25 sq.meters, which was already declared surplus land in the year 1984. It appears that in respect of the surplus land declared being 9691.25 sq.meters, the proceedings have been initiated under section 10(5) of the ULC Act on 4.7.1987 by issuing notice to the father of the present petitioner. It is averred by the petitioner that after such a notice was issued, no Panchnama has been drawn. There is no Rojkam nor Panchnama in relation to 9691.25 sq.meters as otherwise is expected to be done within 30 days. Father of the petitioner passed away on 5.7.1998 and intimation of such death had been given to the authority on 30.9.1988 in writing. However, for the surplus land declared under the scheme, notice has been issued under section 10(5) of the ULC Act on 17.7.1993 to the father of the petitioner, who no more existed. The possession

had been taken on 4.10.1998 for the said land of 2344.50 sq.meters by drawing Rojkam and the Panchnama although had Column NO.3 surplus land shown is 9691.25 sq.meters.

4.3 In a notice issued on 17.7.1993, there is no reference of Survey No.327 and also plot No.4. Survey Nos.327 and 328 were forming part of the earlier notice, which was for a total surplus land of 9691.25 sq.meters for which the Rojnama and the Panchnama both have not been drawn for the period of 6 years. If one looks at the Rojkam, which clearly mentions area admeasuring 1012.55 sq.meters and 1331.95 sq.meters, both in Survey No.299 making it total of 2344.50 sq.meters, they do not make a reference of Survey Nos.327 and 328 and as mentioned hereinabove, the 17.7.1993 notice under section 10(5) does not include these Survey numbers.

5 Father of the petitioner filed appeal under section 33 of the said Act before the Urban Land Tribunal ("the Tribunal" for short), which was dismissed on 10.2.1988. Thereafter, the claim under section 21 came to be rejected by the

competent authority vide its order dated 18.8.1990. In the meantime, against the order of the Tribunal, the petitioner had preferred appeal being Appeal No.16 of 1993 which was allowed by the Additional Chief Secretary to the Government vide order dated 23.12.1993. The Tribunal allowed the appeal and remanded the matter back to the competent Authority for a fresh decision. It quashed and set aside the orders passed by the competent authority dated 21.9.1984, 18.8.1990 and 17.7.1993.

6 Aggrieved State Government had preferred Special Civil Application No.1219 of 1993 before this Court against such order in appeal being Appeal No.16 of 1993.

7 On 30.3.1999 in view of the provisions of the Urban Land (Ceiling and Regulations) Repeal Act, 1999, ("the Repeal Act" for short) the said Special Civil Application No. 1219 of 1996 came to be disposed of on the ground that by virtue of section 4 of the Repeal Act, all proceedings pending on the said date shall abate.

8 The petitioner, therefore, is aggrieved by the fact that after once the Act is repealed, it is not for the State Government to declare the surplus land as its own land. It is also erroneous to show the possession of the State Government as the possession has not been handed over to the State and the petitioner is in actual physical possession of the land.

8.1 Present petition, therefore, is filed with following prayers:-

"14. The petitioner, therefore, prays that:-

A)The Honourable Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the statement Annexure-G to the petition, so far as it relates to case No.818 of deceased Devjibhai Ramjibhai, and be further pleased to declare that the land in question is not acquired under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976;

B)Pending admission, hearing and final disposal of this petition, the Honourable Court may be pleased to restrain the respondents from transferring, alienating or, in any manner, dealing with the land of Case No.818 of deceased-Devjibhai Ramjibhai, shown in the statement at Annexure-G to this petition;

C)Such order and further reliefs, as are deemed fit, in the facts and circumstances of this case may kindly be granted."

9 The State has disputed this version of the petitioner by stating that the possession has

already been taken over by the State. The total area of the land comes to 2758.50 sq.meters. The possession of which has been taken over, on 4.10.1993 in presence of the Panchas. The details also have been shown in the register of surplus land. Therefore, the said land, since is with the Government and the Government has already taken possession on 4.10.1993, the petition deserves to be rejected as the Repeal Act came into force in the year 1999 and the possession is of the Government of the disputed land. The Court has abated the petition being Special Civil Application No.1219 of 1996, and therefore, the present petition is also not to be entertained.

- 10 According to the respondent, the petitioner has no *locus standi* to institute any proceedings against the appeal before the Tribunal, which was rejected. The petitioner had preferred Special Civil Application No. 1991 of 1988, which was withdrawn and in Special Civil Application No.1219 of 1996, the Government was

granted stay against the decision of the Tribunal and the stay was in operation till the abatement of the petition. Therefore, according to the respondent, when the possession is already with the State, nothing needs to be done at the end of the Court.

- 11 This affidavit-in-rejoinder has been filed urging that Shri Devji Ramjibhai passed away on 5.7.1988. Intimation in writing had been given to the competent authority, Rajkot on 30.9.1988. However, the authority proceeded against the dead person and passed order on 18.8.1990. Notice dated 17.7.1993 under section 10(5) of the ULC Act, therefore, according to the Tribunal being subsequent to death of Shri Devji Ramjibhai is null and void and, hence, the notice under section 10(5) of the ULC Act was held as per the said order of Tribunal *void ab initio*. It is further the say of the petitioner that the possession of the disputed land was taken over, according to respondent No.1, on 4.10.1993, whereas in their own record on

27.10.1993, it is very clear that possession of the entire land was not taken over. In the memo of petition also, the petitioner had claimed that the petitioners were in possession of the land. In the para-wise remarks given also it has been mentioned that part-possession was taken on 4.10.1993 and the declared surplus land was admeasuring 9691.25 sq.meters. The authority took possession of the land admeasuring 2758.50 sq. meters and the Panchnama/Rojkam was prepared on 4.10.1993, and the same has not been produced on record. However, the petitioner has obtained the same and produced it on record. The Rojkam dated 4.10.1993 also does not appear to be bearing signatures of heirs or legal representatives of the deceased. The Rojkam is prepared without issuance of any notice on the occupiers of the land. He also demanded possession receipt of land bearing Revenue Survey No. 337 and, according to him, there is Rojkam of taking over of the possession of said Survey Nos.337.28 and 48. There are communications issued by IDBI Bank and there are

other Government documents to indicate the same. It is also the say of the petitioner that the appellate authority has quashed and set aside the order/action and held the same to be null and void in the year 1993, whereas ULC Act has been repealed in the year 1999. The possession of the land in question has continued with the party all through out.

12 This Court has heard at length learned advocate Mr. Amar Mithani for the petitioner and Mr. Parikh, learned Assistant Government Pleader for the State. Both have made their respective submissions at length and also have substantiated the same by way of various judgments in support of the rival submissions.

13 The question, at the outset, raised for consideration is as to whether at the time of repeal of the said Act, the possession of the property in question, under section 10 of the ULC Act, was with the State or with the applicant.

14 It is not in dispute that the father of the petitioner lost before both the authorities, i.e. the competent authority and the appellate authority, however, the petitioner succeeded in his challenge before the Additional Chief Secretary, who vide his order dated 23.12.1993 had quashed and set aside all the three orders of 21.9.1984 of the competent authority passed under section 8(4) of the Act, order dated 18.8.1990 of rejecting the claim under section 21 of the ULC Act by the competent authority and the order dated 17.7.1993, the order of the Tribunal under section 33 in the appeal confirming the order of the competent authority. This, since, had aggrieved the State Government, it was before this Court by way of Special Civil Application No. 1219 of 1996. The interim relief granted in favour of the State was to an effect that the order of the Additional Chief Secretary to the Government dated 23.12.1993 was stayed. In the meantime, on 31.3.1999 by virtue of the provisions of the Repeal Act, the ULC Act came to be repealed and the Court disposed of the

said petition. Admittedly, by virtue of the Additional Secretary's order, which was impugned in that petition, the matter was remanded back to the competent authority for considering the claim of the petitioner in respect of the title holding of the land and also for the scheme prepared by it under section 21 for the weaker sections for the area admeasuring 2344.50 sq.meters of the land.

- 15 It is also not in dispute that original owner and the father of the petitioner passed away on 5.7.1988 and intimation of that was given in writing to the competent authority on 30.9.1988. However, in the order passed on 18.8.1990, notice came to be issued to late Shri Devjibhai Ramjibhai. This was the reason for the Tribunal to hold that the proceedings deserved to be remanded. Thus, the notice issued on 17.7.1993 under section 10(5) of the ULC Act also was not sustained. There were, of course, other grounds on which the appeal came to be allowed by the Additional Chief Secretary to the Government.

16 The question that arises is as to whether possession taken over by the authority concerned of the disputed land under section 10(5) of the ULC Act would entitle the State to retain the said possession or whether, on various grounds raised in the Special Civil Application No.1219 of 1996 and the stay granted by this Court on 15.2.1996, would entitle the State to retain the property, as there was a vesting of the same statutorily in the State.

17 In the case of ***State of Uttar Pradesh vs. Hari Ram*** reported in (2013) 4 SCC 280, the Court held that ceiling proceedings would abate in all cases where factual possession had not been handed over to the State Government before the date of coming into force of section 4 of the Repeal Act, 1999 since such pending proceedings would not be saved by section 3 of the Repeal Act, 1999. The Court also held that vesting of land under section 10(3) of the 1976 Act without delivery or surrendering of physical/factual or *de facto* possession by the land owner to State

Government prior to the date of coming into force to 1999 Repeal Act voluntarily or by force does not confer any right on the State Government to obtain *de facto* possession of vacant land after coming into force of the Repeal Act, 1999. The Court held that expressions "deemed to have been acquired" and "deemed to have been vested absolutely" under section 10(3) do not comprehend delivery or transfer of physical possession in view of section 10(5)(6). The Court further held that surrendering or transfer of possession under section 10(3) can be voluntarily or if there is no voluntary surrender, necessarily State has to issue notice in writing under section 10(5) to land owners concerned to surrender or deliver possession peacefully, while section 10(6) contemplates situation of forceful dispossession. Therefore, the Court held that giving of notice under section 10(5) and 10(6) is mandatory. Non-issuance of notice may result in land holders being dispossessed without notice. Relevant paragraphs are reproduced here

under:-

" Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says 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 authorized 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) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to 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) to Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualizes 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) to 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 only in a situation which falls under sub-section (6) and not under sub-section (5) to 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), than "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 the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'."

- 18 In the case of **State of Gujarat vs. Gyanaba Dilavarsinh Jadeja**, (2013)11 SCC 486 two questions arose before the Apex Court, when the decision of this Court was challenged (1) whether the possession taken over of the property by an officer, who was not authorized is only a paper possession and whether that,

ought to have been considered by this Court and (2) whether the High Court was justified in directing the competent authority to examine the case of respondent in light of Notification dated 6.10.1997 in view of the repeal of the ULC Act. The Apex Court held and observed that Section 4 of the Repeal Act provides that all proceedings relating to 1976 Act pending immediately before the commencement of the Repeal Act shall abate. The proviso that repeals under section 4 provides that the abatement of legal proceedings, which is provided in the main section shall not apply to the proceedings relating to sections 11,12,13 and 14 of 1976 Act in so far as such proceedings are relatable to the possession of land, which has been taken over by the State Government or any person authorised by the State Government in this behalf or by the competent authority. The issue that also was considered was whether the respondent had any right to have his claim under notification dated 6.10.1997 examined by the competent authority despite the repeal of the

said Act and the Apex Court held as under:-

- "[11] Mr. Ranjit Kumar, learned Senior Counsel for the Respondent, urged that the Respondent has pre-existing right by virtue of Section 2(o) and 2(q) of the 1976 Act as he is claiming his right in respect of the land which is agriculture land and that right is saved by Notification dated October 6, 1997. We are unable to accept the submissions of Mr. Ranjit Kumar, learned Senior Counsel for the Respondent.
- [12] On repeal of the 1976 Act by the 1999 Repeal Act, the only actions which have been saved are the actions as set out in Section 3(1)(a), (b) and © of the 1999 Repeal Act. The claim of the Respondent under Notification dated October 6, 1997 is, at best, a claim of acquiring a right; it is not an enforcement of accrued right. Such claim of acquiring a right under Notification dated October 6, 1997 is, at best, a claim of acquiring a right; it is not an enforcement of accrued right. Such claim of acquiring a right under Notification dated October 6, 1997 is not saved Under Section 3 at all. In this view of the matter, the High Court was clearly in error in directing the competent authority to examine the case of the Respondent in the light of Notification dated October 6, 1997. No such proceedings can take place on repeal of the 1976 Act. The direction given by the High Court cannot be sustained and has to be set aside.
- [13] Insofar as first question is concerned, it does not transpire from the impugned order and the record that the Respondent expressly set up the case that the possession allegedly taken over on June 27, 1989 was not by a competent officer and it was only a paper possession. Unfortunately, the High Court has not adverted to this aspect at all. In our opinion, the above plea raised by the Respondent is quite vital. If the actual possession has not been taken over by the competent authority, then by virtue of the 1999 Repeal Act, the proceedings under the 1976 Act would abate automatically.

On the other hand, if the actual possession has been taken over by the competent officer, the proceedings under the 1976 Act would stand concluded and the Respondent would have no right whatsoever. Having regard to this aspect, we are satisfied that on this limited issue the matter should go back to the Division Bench of the High Court.

[14] Consequently, the Appeals are allowed to part. The direction given by the High Court to the competent authority to examine the case of the Respondent in the light of Notification dated October 6, 1997 is set aside. Letters Patent Appeal is restored to the extent noted above. The Division Bench shall examine the question as to whether the possession on June 27, 1989 alleged to have been taken over by the Appellants tantamount to actual possession contemplated Under Section 3(1)(a) of the 1999 Repeal Act. No costs."

19 In yet another decision by the Division Bench of this Court in ***Parshottambhai Chunibhai Patel and others vs. State of Gujarat and others*** reported in **2012 LawSuits (Guj) 732** in the matter before the Division Bench, the competent authority ordered on declaring the land excess was quashed and set aside by the Tribunal and, hence, such an order was no more in existence and adjudication by the competent authority was yet to be carried out. The Tribunal had directed the competent authority to decide the case of the appellant afresh. The Court did not accept the

say of the Government that this would be covered under the proviso to section 4 of the Repeal Act. Relevant paragraphs are reproduced hereunder:-

- "4. On the other hand, learned AGP Mr.N.J.Shah has submitted that, pursuant to the order dated 27.3.1989, Notification was issued under Section 10(1) of the Act on 10.4.1989 and the proceedings were completed under Section 10(2) of the Act. Thereafter notice was issued under Section 10(2) of the Act on 30.4.1991, and on 3.10.1991 the notice for possession was issued under Section 10(5) of the Act, and accordingly the possession of the land was taken by the Government on 12.12.1991. After following the procedure prescribed under the ULC Act, and after taking the possession of excess land, the name of State of Gujarat was added as owner of the land in revenue record. Since the possession has been taken over by the State, the provisions of Repeal Act, 1999 would not be applicable in the present case.
5. We have heard the learned advocates appearing for the parties. It is an undisputed position that the order dated 27.3.1989 passed by the competent authority declaring the land in excess, was quashed and set aside by the learned tribunal vide its order dated 29.9.1997. Therefore the decision taken by the competent authority in 1989 declaring the land in excess, other than retainable was no more in existence and the adjudication by the competent authority was yet to be carried out and the appellants can be treated as 'Holders' of the entire land which is in dispute. When the decision declaring the land excess itself goes, then any action taken pursuant to the said order also goes and the original situation would arise. Since the tribunal has directed the competent authority to decide the case of the appellants afresh, the competent

authority is bound to accept that the appellants were holding particular size of land which was to be considered de novo after hearing the appellants.

6. We do not accept the say of the learned AGP that since after following the procedure prescribed under the ULC Act, the entries were made and therefore it was not required to be rectified by the Government.

We are also of the opinion that the Repeal Act, 1999, would be applicable in the facts of the present case. Section 4 of the Repeal Act reads as under:

“Abatement of legal proceedings :- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, 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.”

It is an undisputed fact that after the order of remand by the tribunal, the competent authority had issued notice to the appellants on 29.9.1997 and call upon the appellants – petitioners to remain present before the authority. Therefore the proceedings were pending for adjudication before an authority which is established under the ULC Act and, therefore, the case of the appellants would be covered under Section 4 of the Repeal Act.

7. As we have held that when the proceedings were pending before the competent authority, all proceedings shall abate as per Section 4 of the said Act.

Though it has been provided in Section 4 itself of the Repeal Act, would not be applicable in the case where possession was

taken by the State Government with regard to excess land. But, in the present facts of the case, the possession which was taken pursuant to the order, was quashed and set aside and no other order was passed declaring excess land, the said proviso would not be applicable in the present case."

- 20 In the case of ***Lilavanti Jayantilal Parekh vs. Competent Authority and additional Collector of Rajkot and another*** decided by this Court in Letters Patent Appeal No.1318 of 2006 on 20.3.2017, the Division Bench was considering the case of the petitioner, where the competent authority had declared 3995.69 sq.meters of land as excess vacant land. Special Civil Application No.6357 of 1986 was preferred on the ground that respondent violated the principles of natural justice as well as provisions of the ULC Act. It was disposed of directing the petitioner to approach the Tribunal by way of Appeal and *status quo* was granted. The Tribunal was approached, which rejected appeal on 17.11.1990 and possession was taken over by the authority by drawing panchnama on 18.12.1999.

21 Against such an order of the Tribunal, the petitioner preferred Special Civil Application No. 3477 of 1991 and when the repeal Act, 1999 came, his petition was disposed of by ordering that the proceedings had abated. Miscellaneous Civil Application No.630 of 2017 in Letters Patent Appeal No.1458 of 2015 was preferred and the Division Bench remanded the matter back for hearing to the learned Single Judge, who dismissed the petition, and therefore, the appeal came to be preferred. After hearing both the sides, the Court noted that it was an admitted fact from the verification of the record that notice under section 10(6) of the ULC Act was not issued to the petitioner before preparing panchnama on 18.12.1990. The physical possession of the land in dispute was never taken over by the respondent authority referring to the decision of **Hari Ram** (supra) and other decisions, the Division Bench held in favour of the petitioner by holding thus:-

"10. Keeping in mind the aforesaid decisions, if the facts of the present case are examined, it is not in dispute that notice/intimation

under Section 10(6) of the ULC Act has not been issued to the petitioners before preparing panchanama. Thus, we are of the view that the present case is covered by the aforesaid Division Bench decision rendered by this Court. At this stage, it is also relevant to note that the respondent-State filed Review Application being Miscellaneous Civil Application No. 630 of 2017 in Letters Patent Appeal No.1458 of 2015. However, the said review application is also dismissed by Division Bench of this Court by an order dated 2.3.2017.

11. For the reasons recorded hereinabove, this appeal is allowed. The order dated 7.10.2016 passed by the learned Single Judge in Special Civil Application No.3477 of 1991 is set aside. Consequently, Special Civil Application No.3477 of 1991 is allowed by setting aside the order passed by The Competent Authority and Additional Collector, Rajkot-respondent no.1 herein passed on 31.12.1985 under Section 8(4) of ULC Act and the order dated 17.11.1990 passed by the respondent no.2-Tribunal in Appeal No.94 of 1987. Consequently, the proceedings initiated under ULC Act stands abated in terms of Section 4 of Urban Land (Ceiling and Regulation) Repeal Act of 1999."

22 In the case of **Pravinbhai Chandubhai Patel and another vs. Competent Authority and Addl. Collector U.L.C and others** decided by this Court in **Letters Patent Appeal No.1473 of 2009** and allied matters on 6.8.2010 the Court held that as under:-

"5. Having heard learned counsel appearing on behalf of the parties, while we are not deliberating on the issue whether the

appellants can derive any advantage of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 or not, as it is agreed upon and under the law, the Act having been repealed, it was not open to the learned Single Judge to remit the matter for a fresh decision to the competent authority on the question from the stage of Section 8(3) of the Act. We accordingly set aside the part of the order dated 12th December, 2008 so far as it relates to remand of the case to the competent authority from the stage of Section 8(3) of the Act. Special Civil Application No. 6255 of 1997 is remitted to the learned Single Judge to decide the issue whether the appellant can derive advantage of the Repeal Act. Rest of the questions are left open. The Appeal and Civil Application both stand disposed of. No cost."

23 In the case of **Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority and others, 2012 (4) SCC 718**, the appellant continued to retain the possession of land after the repeal Act. The Court held that proceedings under section 176 stood abated where the possession of the land was not taken on coming into force of the Act of 1999. Relevant paragraphs are reproduced hereunder:-

"6. The Act came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Repeal Act") on 22-3-1999. 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 the Maharashtra Legislative Council that w.e.f. 29-11-2007, the

Repeal Act came to be adopted and became operative in the State of Maharashtra.

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

"2. Repeal of Act 33 of 1976.- The Urban Land (Ceiling and Regulation) Act, 1976(hereinafter referred to as the principal Act) is hereby repealed."

8. Section 3 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 30 or any action taken thereunder, notwithstanding any judgment of any court to be contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section(1) of Section 30.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal bu 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, the, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

9. It is clear from the above provisions that where the possession of the vacant land has not been taken over by the State Government or 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..

10. We are fortified in our view by the recent decision of this Court in *Ritesh Tewari v. State of U.P.* This Court in *Ritesh Tewari* considered the matter thus:

"14. Shri Jayant Bhushan, learned Senior Counsel appearing for the appellants has submitted that as the State Government hadnot 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.

15. 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 the 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 Shrotiya Public Charitable Trust v. State of U.P.* *Ghasitey Lal Sahu v. Competent Authority*, *Mukarram Ali Khan v. State of U.p.* And *Sulochana Chandrakant Galande v. Pune Municipal Transport*.

11. In view of the legal position enunciated by this Court in *Ritesh Tewari* 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."

24 In the case of ***Kishan Lal vs. State of M.P. and others***, AIR 2005 SCW 1166, the appellant had

submitted that possession of land was never taken by State and according to the counsel of the State the possession was taken over and land vested in the State. Therefore, the State was invoking the Repeal Act and there was no material before the Court on the basis of the finding of possession could be recorded. The Apex Court directed the High Court to make an inquiry as to whether the assertion of the appellant was correct or whether denial by the State was justified.

25 In wake of the decisions discussed hereinabove, if one refers to the factual matrix, in the instant case, this Court will need to conduct the inquiry as held by the Apex Court in the case of **Kishan Lal** (supra).

26 As mentioned hereinabove, it is the case of the petitioner that the death of the petitioner was already intimated to the competent authority on 30.9.1988 through Devjibhai Ramjibhai, who passed away on 5.7.1988. Thus, within two

months, the competent authority was already in know of the fact that the person who had filled -up the form and in whose name the property was standing was no longer existing. However, the notice came to be issued under section 10(5) of the ULC Act on 7.7.1993 to the person who did not exist. It is the case of the State Government respondent No.1 that possession was taken over by virtue of the due service of notice under section 10(5) of the ULC Act on 4.10.1993. However, record of it suggests that it was not the entire land the possession of which was taken and such record is of 27.10.1993. In the parawise remarks as also mentioned herienabove at para 9, there is a reference of taking of part-possession on 4.10.1993 and declaring the land admeasuring 9691.25 sq.meters as surplus land and the authority had taken possession of the land ad measuring 2344.95 sq.meters. The Rojkam of 4.10.1993 of which the petitioner obtained copy does not bear the signature of any heir or legal representative of the deceased.

27 At this stage, it is necessary to once again reiterate that the petitioner had lost before both the authorities. However, it succeeded in its challenge before the Additional Chief Secretary, which vide its order dated 21.12.1993 by quashing and setting aside all the three orders had directed the competent authority to reconsider. The claim of the petitioner was in respect of the total holding of the land which also included the parcel of land in respect of which the scheme was prepared under section 21 of the said Act for weaker section.

28 This order dated 21.12.1993, of course, had aggrieved the State Government which approached this Court and the Court had granted stay against the order of the Additional Secretary on 15.2.1996. The order of stay against the order of the Additional Secretary, which stayed all the three orders would entitle the State to retain the possession of only that parcel of land of which possession could vest in the State

Government in wake of the repeal in the year 1999. As per the decisions of the Supreme Court hereinabove is that the issuance of notice under section 10(5) of the ULC Act and also taking of the possession thereby what would be vital and important, therefore, is of issuance of notice to the owner and/or the occupiers. The notice to the deceased cannot be said to be an effective notice. However, as stated hereinabove, the Panchnama drawn by the competent authority does bear the signature of heir or authorized representative of the deceased. The entire action on the part of the State, therefore, cannot be held to be in contravention of law and null and void. It is only that parcel of land where possession is taken over that the Court is not to interfere.

28.1 Both Survey Nos.327 and 328 (2957 sq.meters) are not even included in the notice under section 10(5) of the ULC Act and, therefore, area which is covered under the said notice is Survey No.299 and 337, (Plot No.18(1012.55 sq.meters and Plot No.22(1331.95 sq.meters)which admeasures 2344.50 sq.meters.

29 After pronouncement of the aforesaid order, Shri Amar Mithani, learned counsel appearing for the petitioner, has requested this Court to continue the interim relief granted in favour of the petitioner qua the area of land admeasuring 2344.50 sq.mtrs. because as per his say, the said interim relief has been continued since April 03, 2001.

30 At this stage, Shri Krutik Parikh, learned Assistant Government Pleader, has objected to continue, any further, interim relief in favour of the petitioner in the wake of judgment pronounced today.

31 In view of aforesaid and the fact that the order of status quo granted long back i.e. prior to about 17 years, has been continued till date, let the same continue for a further period of four weeks from the date of obtaining certified copy of this order, qua the said parcel of land i.e. 2344 sq.mtrs.

Direct Service is permitted.

(MS SONIA GOKANI, J.)

SUDHIR