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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6130 OF 2016

DALSUKHBHAI BACHUBHAI SATASIA & OTHERS **...APPELLANTS**

VERSUS

STATE OF GUJARAT & OTHERS **...RESPONDENTS**

J U D G M E N T

NAGARATHNA, J.

This civil appeal assails the impugned judgment dated 23.07.2014 passed by the High Court of Gujarat at Ahmedabad in LPA No.2024/2010 in Special Civil Application No.533/2009 wherein the appeal filed by the appellants herein was dismissed.

Factual Backdrop:

2. The facts of the case are that the land in question is admeasuring 9303 square metres and bearing Survey No. 339 of

Town Planning Scheme No.4, Final Plot Nos.9A and 9B of Village Katargam, Surat, Gujarat (for short, "Survey 339"). According to the appellants, the said land belonged to one Nathubhai Ranchhodbhai, upon whose death in the year 1933, his heir Kuberbhai Nathubhai became its true owner and occupier.

2.1 On 17.02.1976, the Urban Land (Ceiling and Regulation) Act, 1976 ("ULC Act", for the sake of convenience) came into force. Section 6(1) of the said Act directed every person holding vacant land in excess of the ceiling limit to file a statement specifying the location, extent, value and such other particulars of all vacant lands held by him. Accordingly, on 12.08.1976, Kuberbhai Nathubhai filed a Form under Section 6(1) of the ULC Act declaring the following lands of Katargam, Surat under his holding:

Sl. No.	**Survey No.**	**Area (square metre)**	**Type of Use**
1.	470/1 paiki	23168	Agricultural
2.	472 paiki	3035	Agricultural
3.	472 paiki	11331	Agricultural
4.	Residence House No. 1355 in Ward No. 15	111-484	Residential

2.2 Thereafter, on 18.02.1980, the Competent Authority under the ULC Act (for short, "Competent Authority-I") passed an order holding that lands bearing Survey Nos. 479 and 472/p were exempt under Section 21 of the ULC Act, which stated that excess vacant land shall not be treated as excess in certain cases. The order also held that the remaining land of Survey No.339 was within the ceiling limit, so there was "no excess land" being held by the family members of Kuberbhai Nathubhai. The respondents contended that the form filled earlier under Section 6(1) was not processed and was kept pending.

2.3 Thereafter, one Khodidas Kanjibhai Patel, the organiser of Sardar Hira Udhyog Sahakari Mandali Ltd. (for short, "the Society") purchased the lands of Survey No.339 at a public auction held by the Special Recovery Officer on 28.04.1981. By order dated 28.05.1981, the officer confirmed the auction, and directed that the name of the Society be entered in the records of rights. Accordingly, the name of the Society was entered in the revenue records by Mutation Entry No.7068 on 16.05.1983. Thereafter, Khodidas Kanjibhai Patel obtained Construction Permission (for short, "Raja

Chitthi") on 13.12.1983 from the Surat Municipal Corporation for constructing industrial units for the Society. Khodidas Patel then issued Possession Receipts (for short, "Kabja Receipts") to multiple sub-plot holders, the appellants herein, who have remained in possession of the said sub-plots since the year 1983-84.

2.4 However, on 12.10.1984, the Assistant Collector, Choryasi Prant, passed an order cancelling Mutation Entry No.7068 dated 16.05.1983, *inter alia,* on the basis that the public auction dated 28.04.1981 was not conducted according to the provisions of the ULC Act. This order was challenged before the Collector, Choryasi Prant in Appeal No.152/1985, which passed an order dated 16.01.1986 upholding the original order dated 12.10.1984 of the Assistant Collector. The order of the Collector was in turn challenged before the Assistant Secretary, Revenue Department in Revision under Rule 108(6A) of the Gujarat Land Revenue Rules, 1972. By order dated 07.04.1986, said Revision was dismissed thereby upholding the order dated 16.01.1986 passed by the Collector in Appeal No.152/1985.

2.5 On 03.05.1988, the Government of Gujarat exercised its powers of revision under Section 34 of the ULC Act and set aside the order dated 18.02.1980 passed by the Competent Authority-I, and remanded the matter to the Competent Authority & Additional Collector, ULC, Surat (for short, "Competent Authority-II") for reconsideration of the question of "excess land" with regard to the subject land Survey No.339. Thereafter, on 16.01.1989, the Competent Authority-II passed an order declaring that 662.18 square metres out of the total area of 9303 square metres of the subject land in Survey No.339 – Final Plot Nos. 9A and 9B was 'excess land'.

2.6 According to the appellants, in the order dated 16.01.1989, the cancellation of the mutation entry was specifically mentioned. However, they were not served with any notice by the Competent Authority-II, though they were the unit holders (sub-plot holders), and were in actual physical and legal possession of the said units. Furthermore, none of them was made a party before the Competent Authority-II, despite being in possession.

2.7 Therefore, on the cancellation of the auction purchase in favour of Khodidas Kanjibhai Patel the original landowner, Kuberbhai Nathubhai, entered into a registered agreements of sale for the sub-plots in favour of the sub-plot holders/appellants herein, and hence the appellants became owners and came into possession of sub-plot Nos.1 to 77 situated upon Survey No.339. According to the appellants, majority of them are engaged in the business of diamond cutting and polishing, while a few of them are engaged in different businesses, such as embroidery and other small businesses.

2.8 On 22.11.1990, a notice under Section 10(5) of the ULC Act was issued to the original landholder directing him to vacate and handover possession of the "excess land" to the respondent/State Government within a period of thirty days. Since possession was not surrendered, the Deputy Collector, ULC drew *Panchnama* dated 21.01.1992, directing taking over possession of the 'excess land' to the tune of 662.18 square metres out of the total area of the land admeasuring 9303 square metres. In the said order, it was also observed that the said excess land is "open on the site" and that

the possession of the same has been taken by the Competent Authority and Deputy Collector, ULC.

2.9 When some of the sub-plot holders tried to resell their sub-plots, the Competent Authority-II sent letters dated 20.06.2007 and 05.07.2008 refusing to grant 'No Objection Certificates' (for short, "NOCs") for the subsequent sale, on the ground that the constructed units were situated over the alleged 'excess land' as the said surplus land was taken over and therefore vested in the government since 21.01,1992. The appellants contended that this was the first time it came to their knowledge that the said property had been declared as 'excess land' by the Competent Authority-II.

2.10 Aggrieved, the appellants preferred Writ Petition being Special Civil Application No.533/2009 before the Gujarat High Court, seeking relief in the nature of directions to the respondent to issue the necessary NOCs for subsequent sale of the said sub-plots. Thereafter another Writ Petition being Special Civil Application No.10844/2010 was preferred by the appellants before the Gujarat High Court, seeking relief in the nature of a declaration

to the effect that no 'Non-Agricultural Use Permission' was required for the usage of the said allotted sub-plots. Both the said Writ Petitions were dismissed *vide* separate orders dated 08.02.2010 by the Gujarat High Court.

2.11 Aggrieved by the dismissal of the said Writ Petitions, the appellants preferred Letters Patent Appeals bearing LPA Nos.2024/2010 and 1171/2011 before the Gujarat High Court. The said Letters Patent Appeals were dismissed *vide* impugned common order dated 23.07.2014. The Gujarat High Court, while dismissing the said Letter Patent Appeals, observed that the appellants herein are 'illegal occupants' of the said sub-plots and had the knowledge and notice of the proceedings under the ULC Act as it is apparent from the perusal of the sale deeds and *'Raja Chitthi'* that said transfers were made subject to the proceedings and provisions of the ULC Act. It was further observed by the High Court that the order of permission granted was in favour of the Society and not in favour of the appellants. It was observed that the fact that electricity connections and subsequent bills raised were in the name of the appellants but the same do not establish their

possession as emphasised under Section 10(5) of the ULC Act. Lastly, the High Court also observed that none of the appellants were in possession of the said pieces of land on the date on which the ULC Act came into force.

2.12 Aggrieved by the impugned common order dated 23.07.2014 passed in LPA No.2024/2010 in Special Civil Application No.533/2009 and LPA No.1171/2011 in Special Civil Application No.10844/2010, the appellants have preferred the present Civil Appeal. The appellants submitted that they have only challenged one order and hence the declaration of 'excess vacant land' is the only hurdle preventing the issuance of NOC's. Therefore, if they were to succeed in the present appeal, the other reliefs sought for, and grievances of the appellants, including the relief sought for in LPA No.1171/2011, can be redressed by the respondents themselves.

Submissions:

3. We have heard learned counsel for the respective parties and perused the materials on record.

3.1 Learned counsel for the appellants submitted as follows:

3.1.1 As per the wording of Section 10(5) of the ULC Act, the intention of the legislation is clear inasmuch as the persons who are in possession of the land are required to be served with notice and not merely the persons who had filled the declaration form under Section 6(1) of the ULC Act. Therefore, the High Court misinterpreted the provisions of Section 10(5) of the ULC Act. Had the appellants, as possessors of the concerned plots been served notice, they would have been in a position to take appropriate action against the orders of the Competent Authority-II, as well as the original landowners. Neither Benches of the High Court disagreed with the fact that the physical and actual possession of the sub-plots in question were with the appellants. Rather, while the learned Single Judge did not consider the question of possession, the Division Bench held that possession of the sub-plots by the appellants was illegal under the provisions of the ULC Act.

3.1.2 That the above finding is contrary to law. This is because when the Society allotted the sub-plots to its members, including the appellants herein, in the year 1983-84, there was no declaration regarding 'excess vacant land'. No notice was ever served to the appellants about such a declaration, despite them possessing the sub-plots, putting up construction upon them and running small factories/diamond factories/industrial units. The appellants had adduced electricity bills in their name to prove possession. However, the High Court held that the electricity bills do not establish possession.

3.1.3 Further, the High Court erred in holding that the appellants were in illegal occupants. The original landowners, who had executed the sale deeds, did not mention the declaration of 'excess vacant land'. Moreover, the Competent Authority-II only took 'paper possession' of the sub-plots, and did not take over actual, physical and legal possession, which has always remained with the appellants. No notice was served on the appellants and therefore the possession of 'excess vacant land' was not taken over legally by, for and on behalf of the respondents. Therefore, the High Court

should have declared the proceedings 'abated' under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for the sake of convenience, "Repealing Act"), which speaks of abatement of legal proceedings and granted relief to the appellants herein.

4. *Per contra,* learned counsel for the respondents submitted as follows:

4.1 At the outset, while arguing before the learned Single Judge of the Gujarat High Court, the appellants conceded all claims, except the prayer to direct the Competent Authority-II to issue necessary NOCs for the purpose of getting the registered sale deed that was withheld by the Joint Sub-Registrar, Surat. Therefore, the High Court was constrained to not consider the challenge to the order dated 16.06.1989 on merits. The High Court thus never had to consider the applicability of the Repealing Act, the challenge to the order dated 16.06.1989, or the claims regarding the appellants' right to receive notice under Section 10(5). The concessions made by the appellants cannot now be raised before this Court.

4.1.1 The appellants have no *locus* to challenge any order passed since the alleged sales were made without obtaining permission from the Competent Authority-II and were in violation of Sections 5(3) and 27 of the ULC Act. The concerned lands were recorded in the name of the State Government by an entry dated 22.10.1993, well before the repeal of the ULC Act. The appellants have challenged the order dated 16.06.1989 after almost twenty-one years.

4.1.2 The possession claimed by the appellants traces back to possession receipts issued by the Society, in whose favour the land was transferred by auction dated 28.04.1981. However, this auction was cancelled by order dated 12.10.1984, following which the registration in the name of the Society was cancelled, and possession of the land was restored to the original landowner. The fact that the landowner challenged the order dated 16.06.1989 by an appeal under Section 33 of the ULC Act, shows that possession was with the landowner.

4.1.3 It was further submitted that Section 4 of the Repealing Act does not apply in the present case, since the appellants had no pending proceedings under the ULC Act before the commencement of the Repealing Act. On 24.09.1992, a final order was passed under Section 11 of the ULC Act regarding compensation for 'excess vacant land'. This marked the conclusion of proceedings under the ULC Act.

4.1.4 The claim of the appellants depends solely upon the alleged non-issuance of mandatory notice under Section 10(5) of the ULC Act. However, the legislature did not intend that illegal possessors be provided the requisite notice under Section 10(5). In this regard, the judgement of this Court in ***C. Albert Morris vs. K. Chandrasekaran, (2006) 1 SCC 228*** was referred to.

4.1.5 Possession was restored to the landowner upon cancellation of the auction. Therefore, the subsequent sale deed executed in favour of the appellants was in violation of Section 5(3) of the ULC Act. If a right is borne out of an act that does not have legal sanction, such a right may exist, but is not enforceable. Therefore,

the appellants cannot contend that they had an enforceable right to receive notice under Section 10(5) of the ULC Act.

Points for consideration:

5. The following points would arise for our consideration:

(i) Whether the High Court was justified in dismissing the Writ Petitions by not applying Section 4 of the Repealing Act and thereby not granting relief to the appellants herein.

(ii) What Order?

6. Section 10 of the ULC Act reads as under:

> **"10.Acquisition of vacant land in excess of ceiling limit.** –
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> (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-
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> (i) such vacant land is to be acquired by the concerned State Government; and
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> (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 a Union Territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924, means that State Government."

7. Section 10 of the ULC Act speaks of acquisition of vacant land in excess of the ceiling limit. Once a final statement is issued under Section 9 of the ULC Act, the same has to be served on the person concerned by the Competent Authority which shall also issue a

notification giving the particulars of the vacant land held by such person in excess of the ceiling limit. The said notification shall also state that:

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

(ii) the claims of all persons 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.

8. The said notification has to be published in the Official Gazette of the State concerned. The Competent Authority shall thereafter consider the claims of the persons interested and determine the nature and extent of such claims and pass orders accordingly. From the date of the publication of the notification in the Official Gazette of the State as per sub-Section (1) of Section 10 of the ULC Act, the vacant land is deemed to have been acquired by the State Government. Also, the publication of such a notification implies a declaration that such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. No person can transfer any

excess vacant land specified in the notification in any manner known to law and no person shall alter or cause to be altered the use of such excess vacant land once the publication of the notification under sub-Section (1) is made till the dates specified in the declaration made under sub-Section (3) of Section 10 of the ULC Act.

9. On the basis of the vacant land having vested in the State Government as per sub-Section (3) of Section 10 of the ULC Act, the Competent Authority, by notice in writing, order any person who may be in possession of vacant land of it to surrender or deliver possession to the State Government or to any person duly authorised by the State Government within thirty days of the service of the notice (*vide* Section 10(5) of the ULC Act). In case, if any person refuses or fails to comply with an order made under sub-section (5) of Section 10 of the ULC Act, 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 and may for that purpose use such force as may be necessary.

10. Therefore, Section 10 of the ULC Act categorically distinguishes between the vesting of land in the State Government and taking possession of the vested land from any person who is in possession of the said land. The two legal consequences are distinct and have to be borne in mind while considering the savings clause as well as the abatement clause under Sections 3 and 4, respectively of the Repealing Act.

11. The Explanation to Section 10 does not require any discussion for the purpose of this case.

12. In the ***State of Uttar Pradesh vs. Hari Ram, (2013) 4 SCC 280 ("Hari Ram")***, a two-judge bench of this Court explained the enactment of the ULC Act, as well as the Repealing Act, in great detail including the history of the ULC Act. Then, this Court referred to the Statement of Objects and Reasons of the Repealing Act, outlining as follows:

> "12. Before examining the scope of sub-section (3) of Section 10 as well as sub-sections (5) and (6) of Section 10, reference may be made to the Repeal Act, 1999 and its object and reasons which are as follows:

Statement of Object and Reasons:

"1. The Urban Land (Ceiling and Regulation) Act, 1976 was passed when Proclamation of Emergency was in operation with a laudable social objective in mind.....Unfortunately public opinion is nearly unanimous that the Act has failed to achieve what was expected of it. It has on the contrary pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption. There is widespread clamour for removing this most potent clog on housing.

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4. The proposed repeal, along with some other incentives and simplification of administrative procedures is expected to revive the stagnant housing industry and provide affordable living accommodation for those who are in a state of underserved want and are entitled to public assistance. The repeal will not however, affect land on which building activity has already commenced. For that limited purpose, exemptions granted under Section 20 of the Act will continue to be operative. Amounts paid out by the State Government will become refundable."

13. While the Repealing Act thus sought to put an end to the substantive operation of the ULC Act, it contained a savings clause, which is as follows:

"**3. Savings.—**(1) The repeal of the principal Act shall not affect—

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then, such land shall not restored unless the amount paid, if any, has been refunded to the State Government."

14. On the other hand, Section 4 of the Repealing Act provides for abatement of proceedings pending immediately before the commencement of the Act, and for immediate reference, is reproduced once as under:

> "**4. 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:
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> 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."

15. The core of the dispute at hand centers around the proper application of Section 4 of the Repealing Act to the facts of this case. The appellants contended that without notice being delivered to them under Section 10(5) of the ULC Act (since they were in actual possession of the concerned land), possession has not been legally transferred to the State. Therefore, the proceedings relating to transfer of possession of the sub-units was 'pending' at the time of commencement of the Repealing Act, resulting in their abatement under Section 4 of the Repealing Act.

15.1 *Per contra*, the respondents submitted that a 'final order' regarding compensation for the land deemed to be "excess" and

"vacant" was passed on 24.09.1992. With this order, the proceedings concluded and hence there is no question of the matter of possession having been 'abated' with the advent of the Repealing Act.

16. The legal questions that arise for our consideration in the present appeal are therefore as follows:

i) Was the delivery of notice under Section 10(5) to the appellants (as possessors of the concerned lands) a mandatory step, the non-fulfilment of which would render abatement of the proceedings in terms of Section 4 of the Repealing Act?

ii) Despite the recording of lands in the name of the State Government, if actual possession was not subsequently transferred to the Government, would this render the proceedings to abate under Section 4 of the Repealing Act?

The aforesaid questions shall be considered together.

17. In ***Hari Ram***, this Court considered the proper meaning of the phrases "deemed to have been acquired by the State Government" and "vested absolutely in the State Government" in Section 10(3) of

the ULC Act. The relevant paragraphs containing this Court's reasoning are reproduced below:

> "24. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more....
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> 29. What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land are pitted against a statutory hypothesis....
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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."

(underlining by us)

17.1 Therefore, the land 'vesting' with the State Government does not connote the transfer of possession. Rather, what is 'deemed' to have 'vested' are the aspects that have deemed i.e., by a legal fiction to have been 'acquired', i.e., title or interests. Possession, as explained in ***Hari Ram*** vests *de jure* and not *de facto*. 'Acquisition' (of title or interests) does not necessarily involve the transfer of such *de facto* possession. Such transfer requires certain explicit steps to be taken, which were also outlined by this Court in ***Hari Ram*** as follows:

"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…

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……

Forceful possession

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…. 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."

(underlining by us)

17.2 Hence, after *de jure* possession is vested, there are three methods by which *de facto* possession may be transferred: the first is voluntary transfer by the possessor under Section 10(3) of the ULC Act. If possession is not voluntarily transferred, then the second method is through delivery of notice under Section 10(5) of

the ULC Act to the possessor. In case possession is still not transferred, then the third method involves the Competent Authority taking possession under Section 10(6) of the ULC Act (by force, if required) and delivering it to the State Government.

18. On the question of delivery of notice under Section 10(5), this Court observed in ***Hari Ram*** as under:

> "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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> 39. The abovementioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the landowner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land."
>
> (underlining by us)

18.1 We, therefore, see that the requirement of issuance of notice under Section 10(5) is mandatory and must be issued to the person(s) actually in possession of the concerned land. This is clear from the wording of the statute ("order any person who may be in possession of it"), which are interpreted by this Court in ***Hari Ram***. This Court opined that the importance of delivering notice lay in avoiding a situation where a person is "dispossessed" without notice which would be in violation of the principles of natural justice, thereby clearly envisioning that the possessor must be served with notice.

18.2 Having held thus, this Court concluded by establishing the proper scope of application of Section 4 of the Repealing Act, as under:

> "***Effect of the Repeal Act***
>
> 41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed

will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."

(underlining by us)

18.3 Therefore, landowner/holder of land may claim the benefit of Section 4 of the Repealing Act (abatement of proceedings) if *de facto* possession has not yet been transferred either through voluntary surrender, peaceful transfer under Section 10(5) (which, as observed earlier, requires notice to the possessor) or forceful dispossession under Section 10(6) of the ULC Act.

19. It would also be apt to refer to a more recent judgment of this Court in ***AP Electrical Equipment Corporation vs. Tahsildar,***

2025 SCC OnLine SC 447 ("AP Electrical"), in which a Bench comprising J.B. Pardiwala and R. Mahadevan, JJ. (one of us) ruled on the acquisition of 'possession' under the ULC Act. Writing for the bench, Pardiwala, J. observed:

> "20. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not assumes great significance after the coming into force of the Repeal Act, 1999 inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10(3) of the Act, 1976 would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land."
>
> (underlining by us)

19.1 On the specific question of delivery of notice under Section 10(5) of the ULC Act, it was held as follows:

> "22. On a plain reading of the aforesaid provisions, it is apparent that the statute contemplates giving an opportunity to the landholder or any person in possession of excess vacant land to surrender or deliver possession thereof to the State Government and for this purpose provides for giving notice in writing, ordering such person

to surrender or deliver possession of such land. It is only when pursuant to such notice, such person refuses or fails to comply with an order under sub-section (5) within a period of thirty days of the service of notice, that the competent authority is required to take over possession of the vacant land and for that purpose may use force, if necessary. Therefore, the provisions of sub-section (6) are to be resorted to only when there is refusal or non-compliance of an order under sub-section (5) of Section 10 of the Act, 1976 within the prescribed period.

xxx

25. ....when sub-section (5) of Section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in its true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of subsection (6) of Section 10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under Section 10(6) of the Act, 1976 unless a period of thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of Section 10, there will be no starting point for calculating the period of thirty days. In other words, time will not start running, hence the question of taking over possession under sub-section (6) of Section 10 of the Act, 1976 will not arise at all....

(underlining by us)

19.2 The delivery of notice to the person in possession was therefore unequivocally held to be mandatory. Indeed, the

emphasis was on the service of notice on the possessor, as opposed to mere issuance of the same. In the absence of such service of notice, any attempt at forced dispossession was held to be contrary to the statute and hence illegal.

19.3 This Court reiterated the conclusion in ***Hari Ram,*** i.e., that if possession has not been taken over by the State Government, then the proceedings under the Act would abate under Section 4 of the Repealing Act. The "mere vesting of the vacant land with the State Government by operation of law, without actual possession, is not sufficient". This Court in ***AP Electrical*** phrased the conclusion of ***Hari Ram*** in the following manner:

> "29. ….To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal."
>
> (underlining by us)

19.4 A situation in which possession was not actually transferred to the State Government under the provisions of Section 10 of the

ULC Act, was thus deemed to be 'paper possession', and incapable of preventing proceedings from abating under Section 4 of the Repealing Act.

19.5 This Court in ***AP Electrical*** examined a prior decision of this Court in ***State of Assam vs. Bhaskar Jyoti Sarma, (2015) 5 SCC 321 ("Bhaskar Jyoti Sarma"),*** since it appeared to "at the first blush create an impression that the dictum as laid in ***Hari Ram*** has been diluted". It assessed the effect of ***Bhaskar Jyoti Sarma*** on the dictum on ***Hari Ram*** as follows.

> "33. We quote few relevant paras of the said judgment as under:—
>
> xxx
>
> "15. The High Court has held 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 7th December, 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 this 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.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only

because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) 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 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."

(Emphasis supplied)

> 34. We have supplied emphasis on paras 15 and 17 of Bhaskar Jyoti Sharma (supra) referred to above, for the purpose of highlighting that Hari Ram (supra) has not been diluted in any manner. We are of the firm view that Hari Ram (supra) holds the field even as on date. The statements of law in Hari Ram (supra) are absolutely correct.
>
> 35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathem, [1901] A.C. 495 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:
>
> > "…… every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand."

20. We are inclined to agree with this view of this Court in ***AP Electrical*** regarding the effect of ***Bhaskar Jyoti Sarma*** on the dictum in ***Hari Ram***. In the former, <u>*de facto* possession had actually been transferred to the State Government</u>. Albeit, this was done by force in contravention of the requirement to mandatorily

issue notice under Section 10(5) of the ULC Act. In this regard, this Court held that if the objection regarding the non-compliance with Section 10(5) is not made within a "reasonable time", then the right to so object is "waived".

20.1 However, the facts of ***Hari Ram*** (and indeed, the present case) are different insofar as *de facto* possession was not transferred, by force or otherwise. Therefore, the question is not whether an actual transfer of possession by force is vitiated by a delay in raising objections to the transfer. Rather, the question is whether actual possession has been transferred at all, if no process of transfer has been conducted under the various provisions of Section 10 of the ULC Act. Therefore, the dictum in ***Hari Ram*** stands undisturbed by the judgment in ***Bhaskar Jyoti Sarma.***

20.2 In fact, this Court in ***AP Electrical*** wholly aligned with the dictum in ***Hari Ram*** regarding the difference between 'vesting' and 'possession', observing as follows:

> "38. <u>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</u>

the expression "where any land is vested." under sub-section (5) to Section 10…

39. The mere vesting of the land under subsection (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.03.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under subsection (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 3 of the Repeal Act, 1999. In the case on hand, the State Government has in our considered view not been able to establish any of those situations and hence the learned Single Judge was right in holding that the appellant herein is entitled to get the benefit of Section 3 of the Repeal Act, 1999."

(underlining by us)

20.3 Finally, bringing all the above concepts together, this Court summed up the proper effect of the Repealing Act, as also the question of possession under Section 10 of the ULC Act, as follows:

"40. The effect of Repeal Act, 1999 is further clear. If the landowner remains in physical possession, then irrespective of his land being declared surplus and/or entry being made in favour of the State in revenue records, he will not be divested of his rights….

41. The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.

[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.

[3] In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession" is valid or invalidated on any of the considerations in law.

[4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[7] The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18th March 1999.

[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (6) of

Section 10 or forceful dispossession under sub-section (6) of Section 10."

(underlining by us)

20.4 We find that this view is in accordance with the prior dictum of this Court in ***Hari Ram,*** and agree with the same. At this juncture, we find it appropriate to briefly go through certain other pronouncements of this Court, all of which are aligned on the necessity of serving notice on the possessor under Section 10(5); the difference between vesting and possession; the difference between *de jure* and *de facto* possession and the effect of the Repealing Act.

21. The following judgments of this Court could be adverted to at this stage:

a) In ***Mangalsen vs. State of Uttar Pradesh, (2014) 15 SCC 332,*** this Court observed that the application filed under Section 20 of the ULC Act was still pending and therefore, the State Government's claim to taking possession of the surplus land was found not based on facts. It was also not clear from the record whether or not the notice under Section 10(5) was served upon the

appellant therein. The notice under Section 11(8) of the ULC Act determining compensation was after a gap of ten years. Hence, it was observed that there was no evidence to prove that the notice issued under Section 10(5) had been served upon the appellant therein or that he had illegally occupied the surplus land after 30.01.1990. In paragraph 14 of the judgment, this Court has also noted the tardy approach in the matter by the competent authority which makes an interesting reading.

b) In ***Gajanan Kamlya Patil vs. Additional Collector & Competent Authority, (2014) 12 SCC 523***, it was held that in the absence of any evidence to show that appellant therein had voluntarily surrendered or respondents therein had taken peaceful or forceable possession of the lands in question, the respondents therein had only *de jure* possession before coming into force of the Repealing Act. Since *de facto* possession of lands was not taken before execution of possession receipt, it was held that the respondent therein could not hold on to the lands in question which were legally owned and possessed by the appellants therein. Accordingly, it was observed as under:

"12. 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. The 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 is there anything to show that the appellants had given voluntary possession. The 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 MMRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the appellants…."

(underlining by us)

c) In ***U.A. Basheer vs. State of Karnataka, (2021) 5 SCC 313,*** while referring to Sections 3 and 4 of the Repealing Act which deal with savings clause and abatement of proceeding clause respectively observed as under:

"18. It is clear from the aforementioned legislative provisions that the question of current possession of the suit property is absolutely material to a full adjudication of the controversy before us. This is because, if the appellant does enjoy possession, as claimed by him, any proceedings for any excess land under the principal Act are liable to abate, as per Section 3 and Section 4 of the

Repeal Act, and the appellant would be entitled to ownership and possession over the suit property……"

(underlining by us)

d) In ***State of Orissa vs. Sakhi Bewa, (2022) 16 SCC 594,*** it was held that the question whether surplus land was taken over by the State is a question of fact and is not concerned with payment of compensation to the landowner. That merely because compensation has not been paid, it cannot be presumed that possession was not taken over. In the aforesaid context, it was observed as under:

"4.3. A fair reading of Sections 3 and 4 of the 1999 Repeal Act makes it clear that all proceedings relating to any order made or purported to be made under the principal Act (the 1976 Act) pending immediately before the commencement of the 1999 Repeal Act, before any court, tribunal or other authority shall abate. Section 4 of the Repeal Act shall not apply provided possession of land 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. Therefore, if the possession of the surplus land/land 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, in that case, the proceedings relating to any order made under the principal 1976 Act shall not abate, meaning thereby that the 1999 Repeal Act shall not affect all those proceedings with respect to the land of which the possession has been taken over. Therefore, before declaring the proceedings as having abated in view of Sections 3 and 4 of the 1999 Repeal Act,

it has to be considered and decided whether possession of the surplus land/land 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 or not. If it is found and held that the possession of the surplus land has been taken over, in that case, the proceedings shall not be declared as having been abated."

(underlining by us)

22. The land in question is admeasuring 9303 square metres in Village Katargam, Surat, Gujarat which initially belonged to one Nathubhai Ranchhodbhai and on his demise to his heir Kuberbhai Nathubhai. That on the enforcement of ULC Act proceedings were initiated under the said Act on Kuberbhai Nathubhai filing a Form under Section 6(1) of the ULC Act and by making a declaration thereby. Initially, the Competent Authority-I under the ULC Act held that the land in question was exempt as per Section 21 of the said Act and the remaining land was within the ceiling limit. The Society purchased the land bearing Survey No.339 at a public auction on 28.04.1981 conducted by the Special Recovery Officer and the name of Society was entered in the Mutation records. Industrial units were developed on the said land. Thereafter, the Assistant Collector passed an order cancelling Mutation entries on

the premise that the public auction dated 28.04.1981 was not conducted in accordance with the provisions of the ULC Act which order was challenged before the Collector and on being unsuccessful, it was challenged before the Assistant Secretary, Revenue Division by filing a revision petition.

22.1 When the matters stood thus, the Government of Gujarat exercised its revisional powers under Section 34 of the ULC Act and set aside the initial order dated 18.02.1980 passed by the Competent Authority-II and remanded the matter for reconsideration and on 16.01.1989 it was held that 662.18 square metres was 'excess land'. None of the appellants herein were parties to the proceedings culminating in the order dated 16.01.1989. Further, on the cancellation of the auction purchase in favour of Khodidas Kanjibhai Patel, the original landowner, Kuberbhai Nathubhai, entered into an agreement of sale of the sub-plots in favour of the appellants herein, and they became owners in possession of the said sub-plot Nos.1 to 77 situated upon Survey No.339. When such being the position, on 22.11.1990, a notice was issued under Section 10(5) of the ULC Act to the original landholder

directing him to vacate and handover possession of the "excess land" to the respondent/State Government within a period of thirty days. The said notice has been extracted below. The said notice was not issued to the appellants herein and despite that it appears that the Deputy Collector, ULC drew a *Panchnama* dated 21.01.1992, "taking over possession" of the 'excess land' to the tune of 662.18 square metres out of the total area of the land admeasuring 9303 square metres. It is only when the appellants herein sought 'No Objection Certificates' for further sale that they became aware that 'excess land' was taken over by the State Government and had vested with them. Hence, they filed the Writ Petition before the High Court which was dismissed.

22.2 The fact that notice under Section 10(5) of the ULC Act was issued to the original owners implies that the respondents were aware that the possession of the said land had to be taken in accordance with Section 10 of the ULC Act. This was without ascertaining the fact that possession of the said land was with the appellants herein but no notice was issued to the appellants herein who were in actual possession of the subject land.

22.3 Applying the above settled law to the facts at hand, we find the following facts on the face of the record:

a) The appellants herein were in actual possession of the sub-plots in question at the time of enforcement of the Repealing Act.

b) On 22.11.1990, a notice under Section 10(5) regarding transfer of possession to the State Government was issued to the original landowner but not the appellants herein, who were in possession of the concerned sub-plots. The said notice reads as under:

"Regd. Post A.D. No.ULC/6(1)2/773/3912/733/

Section – 10(5)
Competent Authority and
Additional Collector Office,
First Floor, Nanpura, Surat

Date : 22-11-90

To,

Smt. Maniben wd/o Kuberbhai Nathubhai
Resident: Gotalavadi, Katargam,
Dist. Surat

Pursuant to Section – 9 of the Urban Land Ceiling and Regulation Act, Part "CH" of Form – 3 of the Final Statement made surplus and notice to the land holder

under Section – 10(5) regarding entrusting the possession of the land forfeited to the government vide Notification of Section – 10(3).

It is hereby informed to you that by passing an order under Section – 8(4) of the above act regarding the land as described in the schedule below, Final Statement under Section – 9 was forwarded on 16-6-89, after that Notification of Section – 10(1) was published vide dated 28-9-89. Now Final Notification of Section – 10(3) has been published on dated 21-8-90 in Government Gazette in Part 4-C in English and Gujarati on Page No.1316 to 1317. According to that notification, a land mentioned in the schedule below has been forfeited to the government from the date of publication as an additional land free from all encumbrances.

So, it is hereby ordered under Section – 10(5) of the above Act that person holding the possession / usage of the land mentioned in the schedule below to entrust the possession of the said land to the officer authorized by the state government i.e. Additional Collector, Urban Land Ceiling, Surat within days – 30 (thirty) from the receipt of this notice.

If you may commit any delay or failure in entrusting the possession of the land mentioned in the schedule, possession shall be taken by using required force by taking requisite steps under Section 10 – (6) of the above act. So this notice is for entrusting the possession of the land within time limit of 30 days.

SCHEDULE

Sr. No.	Name of the Land Holder	Name of Taluka	S.No. Area of the Plot land No.	Declared surplus sq. Mt.
1	2	3	4	5
	Maniben wd/o Kuberbhai Nathubhai	Katargam Choryasi	339 Paiki T.P. No.4	662.18 No.9/A Paiki 9/B

Sd/-
Competent Authority and
Additional Collector, Surat

Copy forwarded: -

Surveyor – Shree I.G. Parekh
2/- For preparing map of the above surplus land in triplicate."

22.4 Therefore, as per the provisions of Sections 10(3) and 10(5) of the ULC Act, the subject land, despite having 'vested' (along with acquisition of title or interests) in the State Government, was not in the possession of the Government. Further, possession was not taken by any of the three possible means, i.e., voluntary transfer by the appellants, issuance of notice under Section 10(5) to the appellants followed by peaceful transfer or forceful acquisition of possession under Section 10(6) of the ULC Act. The possession of the land continues with the appellants herein till date.

22.5 Such a scenario is clearly one where the provision of abatement under Section 4 of the Repealing Act applies. The proviso to Section 4 states that the section would not apply to proceedings under Sections 11, 12, 13 and 14 of the ULC Act

relating to land that has already been taken possession of by the State Government. Therefore, the proviso has no applicability to the facts at hand and the benefit of abatement under the section would apply wholesale.

22.6 That the approach to be had with cases such as the present one is also evident upon a reading of Sections 3 and 4 of the Repealing Act. Clearly, the legislative intent is that in cases where lands were deemed to have been vested but possession was not yet transferred as on date of enforcement of the Repealing Act (such as the present case), the lands were to remain in possession of the private parties. Section 3(2) of the Repealing Act prescribes the procedure to be followed in specific types of situations, i.e., where amounts paid by the State Government must be refunded. This is not so in the present case. However, the underlying concepts are clear – that vesting and possession are distinct and that without the latter, the private parties have a claim over continuing to be in possession. This is subsequently further emphasised in Section 4 of the Repealing Act, as explained earlier under which proceedings abate as a result.

22.7 We are therefore unable to agree with the contentions of the respondents herein. Also, it is not correct to submit that the proceedings under the Act had concluded with the 'final order' regarding compensation dated 24.10.1992. The matter could only have concluded by transfer of possession through one of the three possible means explained above. The mere recording of the lands in the name of the State Government by entry dated 22.10.1993 does not demonstrate transfer of possession. Rather, the same only denotes *de jure* possession with the *de facto* possession remaining in the hands of the appellants herein.

22.8 Similarly, we are unable to agree with the contention of the respondents that the appellants cannot claim a right to receive notice under Section 10(5) of the ULC Act. The propriety of the sale deed executed in favour of the appellants is immaterial. Section 10(5) mandates the delivery of notice to the person(s) in possession of the concerned lands. On the date of issuance of notice (22.11.1990), the appellants as possessors did not receive the same. It was sent to the erstwhile owner of the subject land. This also implies that the respondents also were aware of the fact that

actual possession was not with them and there was a need to issue notice under Section 10(5) of the ULC Act before taking over actual possession. However, the respondents did not ascertain as to in whose name actual possession stood. Therefore, no notice was issued to the appellants and hence there being no transfer of possession in accordance with Section 10 of the ULC Act, it continues with the appellants both in fact as well as in law. Hence, they are entitled to the benefit of Section 4 of the Repealing Act as they do not fall within the scope of Section 3 of the said Act which is the savings clause. The omission to issue notice to the appellants violated the mandatory requirement of serving notice under Section 10(5) and meant that the legal process of acquiring possession was still ongoing, leading to abatement of proceedings under Section 4 of the Repealing Act on its enforcement.

22.9 Another argument of learned standing counsel for the respondent-State is to the effect that the appellants herein had not pressed the main reliefs in Special Civil Application No.533/2009 and had only sought prayer in terms of paragraph 26(c) i.e., directing the competent authority and Additional Collector, ULC,

Surat to issue necessary "NOC" for the purpose of getting the registered sale deeds released by the Joint Sub-Registrar, Surat, and the said prayer was not rightly granted as the other prayers were not pressed is also not correct. Further, in the writ petition, the learned Single Judge of the High Court also observed that the appellants herein cannot be granted NOC as they did not have a valid title. We find that the said reasoning is contrary to Section 4 of the Repealing Act inasmuch as the abatement of proceedings is by operation of law based on the facts of each case and once the proceedings under Section 10 of the ULC Act abate, the consequential reliefs would have to be granted to the appellants herein. Hence, the appellants are entitled to all consequential reliefs pursuant to the abatement of the proceedings under Section 4 of the Repealing Act as the case of the appellants squarely falls within the scope of the provision.

The consistent reasoning adopted by this Court in similar cases, as detailed above squarely applies to this case also.

23. In this case, the Division Bench of the High Court was not right in holding that the appellants were not in possession of the subject land on the date on which the ULC Act came into force and they were illegal occupants. Further, the High Court was also not right in holding that although the electricity bills showed the name of the appellants, it did not establish their possession under Section 10(5) of the ULC Act.

24. Consequently, the impugned orders of the High Court in LPA No.2024/2010 in Special Civil Application No.533/2009 dated 23.07.2014 and in Special Civil Application No.533/2009 dated 08.02.2010 are set aside. This appeal is allowed in the aforesaid terms.

No costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(R. MAHADEVAN)

NEW DELHI;
JANUARY 06, 2026.