

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2612 OF 2021**

Acme Housing India Pvt. Ltd. & Anr. Petitioners

V/S

State of Maharashtra & Ors. Respondents

Dr.Birendra Saraf, Senior Advocate a/w Bhushan Deshmukh, Jasmine Kachalia, Viren Mandhale and Sahil Singh i/b Wadia Ghandy & Co. for the Petitioners.

Mr.Ashutosh Kulkarni, Special Counsel a/w Karan Thorat, B Panel Counsel a/w V.G. Badgujar, AGP and Sarthak Diwan for the State-Respondent Nos.1, 4 and 5.

Mr.Vedant Bende h/f Mandar Limaye for Respondent Nos.2 and 3-TMC.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

**RESERVED ON : 4th FEBRUARY 2026
PRONOUNCED ON : 12th FEBRUARY, 2026**

JUDGMENT (PER BHARATI DANGRE, J) :

1 Petitioner No.1, a company registered under the Companies Act, 2013, interalia engaged in the business of development of real estate in and around the State of Maharashtra, claiming to be the owner of immovable property in form of piece of land bearing Gut No.61/1 admeasuring 46,400 sq. mtr. and Gut No.61/2 admeasuring 8100 sq. mtrs. aggregating to 54,500 sq.

mtrs in Thane, situated at Village Chitalsar, Manpada, Thane, alongwith its Director i.e. Petitioner No.2, has approached this Court seeking the following reliefs :-

(a) That this Hon'ble Court be pleased to declare that the provisions of Urban Land (Ceiling and Regulation) Act. 1976 are not applicable and proceedings have abated under Section 3 (1) (a) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 in respect of the said Land i.e.. Gut No. 61/1 and 61/2, Village Chitalsar. Manpada. Thane totally admeasuring 54,500 square meters:

(b) That this Hon'ble Court be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India in the nature of mandamus, directing Respondent No. 4 to withdraw/cancel the communication dated 25th February 2021 issued to Respondent No. 5 (Exhibit "V" hereto) and directing Respondent No. 5 to delete the Impugned Mutation Entry No. 1125 dated 26th February 2021 (Exhibit "W" hereto) from the revenue records for the said Land i.e. Gut No. 61/1 and 61/2, Village Chitalsar, Manpada, Thane totally admeasuring 54,500 square meters;

(c) That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari calling for the records and proceedings pertaining to issuance of the Impugned Letter dated 25th May 2021 (Exhibit "Z" hereto) and the Impugned Letter dated 10th June 2021 (Exhibit "CC" hereto) issued by Respondent No.3 and after examining the legality and validity thereof, this Hon'ble Court be pleased to quash and set aside the Impugned Letter dated 25th May 2021 (Exhibit "Z" hereto) and the Impugned Letter dated 10th June 2021 (Exhibit "CC" hereto);

(c-1) That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or directions in the nature of certiorari calling for records and proceedings pertaining to issuance of the Impugned Letter (Exhibit HH hereto) and the Impugned Notice (Exhibit II hereto) issued by Respondent No. 3 and after going through the legality and validity thereof, this Hon'ble Court be pleased to quash and set aside the Impugned Letter (Exhibit II hereto) and the Impugned Notice (Exhibit II hereto)."

2 On 11/10/2021, the Petition was admitted by recording prima-facie observations to the following effect :-

"32. Of course, in that case original section 8(4) order was set aside by the Appellate Authority whereafter the matter was sent back on remand. It was on remand that fresh order under section 8(4) was passed and it was in that context the above principle of law has been

laid down. Nonetheless in the said case, this Court referred to section 3(1)(b) of the ULC Repeal Act and held that the savings clause under section 3 of the ULC Repeal Act would operate only in cases where a valid exemption order under section 20 of the ULC Act is existing. When the subsequent revised order was passed by the Competent Authority under section 8(4) of the ULC Act whereby it was held that the owner did not have land in excess of the ceiling limit, question of existence of exemption order under section 20 of the ULC Act would not arise. Once it is held that exemption order under section 20 of the said Act ceases to exist or it stood cancelled upon the Competent Authority passing fresh order under section 8(4) there can be no mutation entry pertaining to the land in question stating that the land is subject to exemption under section 20 of the ULC Act for industrial user.

33. Prima facie the principle of law laid down in **Bombay Fibre Industries Pvt. Ltd.** (supra) would be applicable to the facts of present case. As already noted above, the issue involved is what would be the impact of the revised order under section 8(4) on the exemption order under section 20 passed on the basis of the earlier section 8(4) order ? This will require further deliberation.

34. In the circumstances the following order is passed :

- (i) Let the Writ Petition be admitted for hearing.
- (ii) As an interim measure, we direct stay of mutation entry No.1125 and the stop work notices dated 30.06.2021 and 30.08.2021.
- (iii) Respondent No.4 shall inform the Petitioner the amount of premium @ 15% of the ASR as mentioned in paragraph 21 of the affidavit in reply. Petitioners shall identify and not sell the flats of that value as per the ready reckoner rate for the year 2021 from the sale building pending the hearing of the Writ Petition.
- (iv) Hearing of the Writ Petition is expedited."

3 Upon the pleadings being completed, the Petition is ready for hearing and we have heard the learned senior counsel Dr.Birendra Saraf for the Petitioner and Mr.Ashutosh Kulkarni, Special Counsel for Respondent Nos.1, 4 and 5 and Mr.Vedant Bende for Respondent Nos. 2 and 3.

In order to appreciate the contentions advanced on behalf of the Petitioners, it is necessary for us to cull out the background facts in which the reliefs are sought and which are presented

before us by Dr.Birendra Saraf by placing on record list of dates and events.

4 The earliest event in the present case is an order passed by the Competent Authority under Section 8(4) of the ULC Act, 1976, in relation to a return filed by M/s.Shah Malleable Castings Ltd. u/s 6(1) of the Act, in respect of the land in Gut No. 61/1 and 61/2 in Village Chitalsar, Manpada, Thane. Pursuant to the enquiry being held, revealing that the company is holding excess vacant land, notice under Section 8(3) of the ULC Act was issued and on measurement of the land by City Survey Officer covering the area under the factory building and other authorized construction, 20,622.80 sq. mtrs. of land was declared as surplus vacant land as against the total holding of 54500.00 sq. mtrs.

The Competent Authority, therefore, passed the following order on 25/07/1985 :-

“ I, therefore, order that the company is surplus vacant land holder to the extent of 20,622.80 sq. mtr. which should be acquired from the following Gut Nos.

Gut No.	Area in Sq.Mtrs.
61/2	8100.00
61/1	12522.80
Total	20622.80

Notice u/s 9 and notification u/s 10(1) should be issued. Party may be informed accordingly.”

5 Followed by this order, the Joint Director of Industries (ULC Branch) passed an order under Section 20(1) of the ULC Act, 1976, exempting the vacant land from the provisions of Chapter III of the Act, subject to the terms and conditions

mentioned therein and also directed that the part of the exempted land shall always be kept vacant. The Schedule appended to the said order set out the area of vacant land exempted and also set out the area of vacant land within matter of course exemption limit, i.e. land permitted to be retained. It exempted 35156.18 sq. mtrs. of vacant land.

6 In the year 1991, development plan of Thane was sanctioned and the land under question was converted from “Industrial Zone” to “Partly Residential Zone” and “Partly Market and Road Reservations”. As a consequence, the owner of land M/s.Shah Malleable Castings Ltd. submitted an Application for revise order under Section 8(4) of the ULC Act, 1976, on 01/09/1997, which resulted in issuance of Revised Order under Section 8(4) of the ULC Act, 1976 being issued on 20/11/1997 with reference to the area of land held by the Applicant/Company in Gut No.61/1 and 61/2 with the total holding of 54500.00 at Chitalsar Manpada.

The order record that as per the Draft Development Plan of the 1991 for Corporation, the said land (Gut No.61/1) was shown in reservation for residential cum D.P. Road of 20 mtr. and an area of 2550 sq. mtr. was reserved for market and market center, and therefore, the Company submitted an application for revised order.

The order record that the Assistant Town Planner carried out inquiry and on scrutiny determined the land rent for the road and market center in Gut No.61/2. Since Chitalsar, Manpada was falling within the vicinity of 1 k.m. of Thane Urban

Agglomeration, where the ceiling of urban land was fixed at 2000 sq. mtrs., the Company was held eligible to reserve an area to that extent.

With the computation being reworked with reference to the exemption granted by the Department of Industry under Section 20 of the ULC Act, 1976, with the area under the roads, open area for construction as well as permissible area of 2000.00 sq. mtr., the excess area was worked out as 114.72 sq. mtr.

The revised order passed by the Competent Authority on 20/11/1997 declared thus :-

“It is being declared that M/s.Shah Malleable Company is holding an excess area of 114.72 Sq.M. This order be acquired from the Gat No.61/2 and further action should be taken as per Section 9 and 10(1). This order is being issued by setting aside the order passed on 25.7.85 under Section 8(4).”

At this stage, it is important to note the declaration in the order, that it is issued, by setting aside the order passed on 25/07/1985 under Section 8(4) of the ULC Act, 1976, as the bone of contention between the Parties involved revolve around this revised order and its effect.

7 Continuing the sequence of events, a Notification under Section 10(1) of the Act was issued notifying an area of 114.72 sq. mtr. for acquisition from Gut No.61/2 on 26/05/2005 and a Notification under Section 10(3) was issued in relation to the surplus vacant land declared by the competent Authority by its revised order on 20/11/1997.

After this development, Ascent Constructions Pvt. Ltd. acquired the right, title and interest from M/s.Shah Malleable Castings Ltd.

8 On 01/12/2007 State of Maharashtra adopted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (For short “ULC Repeal Act, 1999”) which came into force w.e.f. 29/11/2007 in the State of Maharashtra.

On 04/11/2008 the Urban Development Department of the State of Maharashtra, formulated the ‘Rental Housing Policy’ for various Municipal Corporations including Thane Municipal Corporation (TMC) under Section 37(1) read with Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act, 1966”), with the object of providing affordable housing for poor on rental basis and it appointed Mumbai Metropolitan Region Development Authority (MMRDA) as implementing agency for the Project which was considered to be of vital public importance.

MMRDA granted Location Clearance to M/s.Ascent Construction Pvt. Ltd. for development on the land subject to the terms and conditions under the Rental Housing Policy, as the located site was situated within the limits of Thane Municipal Corporation (for short “Corporation”).

The order granting clearance contemplated the ‘Rental Housing Project’ component to be developed on minimum 25% of land, with permission to develop free sale component on the balance land area, with the requirement of securing fresh development permission from the Corporation and the project was directed to be developed in two years.

Pursuant to this permission, the Collector, Thane granted permission to Ascent Constructions Pvt. Ltd. for ‘Non Agriculture-Residential’ use of the land by invoking the powers

under Section 44 of the Maharashtra Land Revenue Code, 1966 and even MMRDA granted layout approval for the same on 21/12/2009.

9 In the wake of the aforesaid developments, the Additional Collector and Competent Authority, Thane, issued a Notification on 03/09/2010 in respect of the 'excess area' of 114.72 sq. mtr. directed to be acquired from Gut No.61/2. The said Notification with reference to the Repeal Act of 1999 recorded that regarding a land declared excess, after taking action under Section 10(3) and 10(5) the lands taken into possession by the Government prior to 29/11/2007 vested in it, but ownership of the excess declared land not taken into possession, was to remain with the original owner.

Recording that the area of 114.72 sq. mtr. in Gut No.61/2 Manpada i.e. the subject land, proceedings under Section No.10(1), 10(3) and 10(5) had taken place and after 10(3) stage, the name of the Government was shown in the Record of Rights instead of the landholder. But, since the possession of the land was not taken, Notification issued under Section 10(3) dated 25/11/2005 published in the Gazette on 19/01/2006 was cancelled as the ULC Act was repealed. It was also directed that the mutation entry in the revenue record of the Government shall be deleted and the revised Village Form be submitted to the Competent Authority.

Upon this development, a notice was addressed on behalf of M/s. Shah Malleable Castings Ltd. to the Joint Director, Industries, with reference to the Revised Order dated

20/11/1997 passed by the Competent Authority, and the order declaring surplus area of 114.72 sq. mtr. to be acquired from Gut No.61/2, but the physical possession of the same not having been taken by the Government of Maharashtra when the ULC Repeal Act, 1996 came in force, resulting into setting aside of the order dated 25/11/2005 passed under Section 10(3) of the Act of 1999.

A request was, therefore, made to issue a corrigendum to exempt 114.72 sq. mtrs of the land and to restrict the applicability of the exemption order only to the said area. It is worth to note that this communication was addressed by way of abundant precaution as the Notification dated 03/09/2010 already cancelled the Notification issued under Section 10(3) of the ULC Act, 1976, in the wake of its repeal.

The company also made a request to the Principal Secretary (UDD) to issue a clarification.

10 The next important milestone in the sequence of events is the inquiry from the Additional Collector and Competent Authority, to the Director of Industries (ULC) seeking clarification whether the exemption order dated 21/01/1986 is valid or it is set aside. This query was made with reference to the application of the Company for grant of 'NOC' for 'Rental Housing Project'. The Additional Collector, sought clarification as to whether the exemption order dated 21/01/1986 was valid as on date, as in terms of the revised order dated 20/11/1997, 11.472 sq. mtr. was declared as excess land and on the area belonging to company i.e. from Gut No.61/1 and 61/2 'Non Agriculture'

permission was granted by the Collector, Thane, which was followed by the Construction Permission and revised construction permission in the year 2011 and the area under the industrial zone was converted into residential zone.

The said query was met with a positive response from the Deputy Director of Industries (ULC) in the following words :-

“Now, a period of more than 15 years have elapsed since the orders granting exemption were issued. It is seen from the records available with the Directorate, the Additional Collector & Competent Authority, Thane Urban Agglomeration, Thane has submitted to the Directorate of Industrial Units, the revised orders issued vide his office No.ULC/TA/Te-1/Chitalsar Manpada/SR-27, dated 2011/1997, under section 8(4) of the Act, 1976. As per these orders, it has been declared that an excess area admeasuring 114.72 sq. meters has remained free with the said Industrial Unit. In the said orders, it has been ordered the said area of 114.72 sq. meters should be acquisition from Gat No.61/2. In the order of exemption issued by the Directorate of Industries, there is no mention of land area of Gat No.61/2. Therefore, the orders issued by the Directorate of Industries are not valid for land area declared to be ‘excess’. Similarly, in the same order it has been mentioned that the Additional Collector & Competent Authority has declared that there is ‘NIL’ additional land area with the said Industrial Unit in Survey No.44, Gat No.61/1 and therefore also, the said orders dated 21/1/1986 about the exemption are not valid.”

11 Despite the aforesaid response from the Industry Department, that the Exemption Order was not valid and legal, on 24/08/2017, a Mutation Entry No.1052 was taken in respect of various Gut Nos. which included Gut No.61/1/22, 61/2/1.

The criticism against the said mutation entry is, the Exemption Order had ceased to exist in view of the fresh computation of surplus land of 114.72 sq. mtr. and, therefore, the mutation entry mentioning that the land was subjected to Exemption Order, was a completely unjustified act.

12 This constrained the Petitioner to address a letter to the Collector, Thane, to delete Mutation Entry No.1052 on the

subject land in the Revenue Records, with regard to the Exemption Order issued under Section 20 and this request was again reiterated on 22/07/2019, but no action was initiated at the end of the Revenue Authority.

In light of the request made by the Petitioner, on 13/09/2019 the Collector and Competent Authority, Thane, through its communication addressed to the Tahsildar, Thane, directed deletion with reference of the Mutation Entry No.1052. This request was made in the backdrop of the records maintained by the office in the register prepared for Schemes under Section 20 of the ULC Act, 1976, where it recorded the name of M/s.Shah Malleable Castings Ltd. at S.R.No.189 against an area of 12522.00 sq. mtr. from Survey No.61/1/2 and area of 8100.00 sq. mtr. of Survey No.61/2/1. However, it is also noted that the search of the file further revealed that by order dated 20/11/1997 issued under Section 8(4) of the ULC Act, 1976, area of 114.72 sq. mtr. has been declared as 'excess' and action under Section 10(3) and 10(5) was taken, but the actual possession of the land was not taken and hence the same was returned to the original owner by a Notification dated 03/09/2010 and, therefore, the question of the Scheme under Section 20 of the ULC Act, having being approved on the land property bearing Survey No.61/1/2 and 61/2/1 does not arise.

The communication contain the following reference :-

"7) The Government of Maharashtra has repealed the said Urban Land (Ceiling and Regulation) Act, 1976 on 29/11/2007 and Urban Land (Ceiling & Regulation) Repealment Act, 1999 has been accepted for the State of Maharashtra and thereafter section 20 has been protected. Since the regulation of industrial exemption is being implemented by the Directorate of Industries, the exemption under section 20 has been granted on 21/1/1986 to the land bearing Gat No. 61/1 of mouze

Chitalsar Manpada for industrial purpose by the Directorate of Industries. The remarks of Directorate of Industries were sought by this office vide letter dated 9/1/2012 requesting whether their said orders granting industrial exemption after the repealment of the ULC Act would be legally valid or otherwise. Thereafter, as informed by the Directorate of Industries on 7/2/2013, a period of more than 15 years has been elapsed since the order granting exemption under section 20 for the area admeasuring 17983.73 sq. meters from Gat No. 61. It is seen from the records available with the Directorate, the Additional Collector & Competent Authority, Thane Urban Agglomeration, Thane has submitted to the Directorate of Industrial Units, the revised orders issued vide his office No. ULC/TA/Te-1/Chitalsar Manpada/SR-27, dated 20/11/1997, under section 8(4) of the Act, 1976. As per these orders, it has been declared that an excess area admeasuring 114.72 sq. meters has remained free with the said Industrial Unit. In the said orders, it has been ordered the said area of 114.72 sq. meters should be acquisition from Gat No. 61/2. In the order of exemption issued by the Directorate of Industries, there is no mention of land area of Gat No. 61/2. Therefore, the orders issued by the Directorate of Industries are not valid for land area declared to be 'excess'. Similarly, in the same order it has been mentioned that the Additional Collector & Competent Authority has declared that there is 'NIL' additional land area with the said Industrial Unit in Survey No.44, Gat No.61/1 and therefore also, the said orders dated 21/1/1986 about the exemption are not valid.

Considering the above circumstances, it is seen that for cancellation of the Entry in the column of other rights' of 7/12 on the property bearing S. No. 61/2 and 61/1 in respect of the ULC Act, after the Notification issued under section 10 (3) was cancelled by this office on 3/9/2010, it was informed by this office on 2/8/2017 by sending a list of schemes under section 20 and directed for taking entries in the column of 'other rights' in the village record in respect of the said property as per Mutation Entry No. 1052, dated 28/4/2017 and it was also informed that the entry under section 20 (1) about "the area under Housing Scheme for Economically Weaker Sections and prohibition for transfer" seems to have been taken inadvertently. However, in the S. R. Register of this office register maintained under section 20, a entry of the name of M/s. Shah Meliable Casting Pvt. Ltd. is found to have been taken at S. R. No. 189 as the Scheme holder. However, there is no other details mentioned in the register whether the said scheme has been approved or otherwise. Therefore, as mentioned in Mutation No. 1052, the entry made in the column of 'other rights' of the 7/12 extract in respect of the land property of M/s. Shah Meliable Casting Pvt. Ltd., bearing S. No. 61/1/2 having an area of 12522.00 sq. meters and S. No. 61/2/1 having an area of 8100.00 sq. meters that 'the area under Housing Scheme for Economically Weaker Sections and prohibition for transfer' should be deleted and compliance report of the action taken submitted to this office."

13 The aforesaid communication was followed by a communication from Tahsildar to Circle Officer, Thane with reference to the letter of the Collector/Competent Authority dated 13/09/2019 and a direction was issued to the Circle Officer to take suitable action and update the record of rights.

As a consequence of this, on 03/10/2019 the mutation entry was deleted in Village Form No.7 with reference to the order of the Collector dated 13/09/2019 and the order of the Tahsildar dated 21/09/2019.

14 After a stoic silence for over a period of 2 years, all of a sudden, the leader of opposition made a grievance with respect to the entry of 'Area under Housing Scheme for Weaker Section and Prohibition for Transfer' under Section 20/21 of the ULC Act, 1976, in the column of 'other rights' of Village Form No.7/12 in respect of property bearing Gut No.61/1 and 62/2 of Mauje Chitalsar, Manpada and sought its deletion. The letter levelled serious accusations against the Collector and Competent Authority, Thane and by attributing malice, a request was made that the order may be cancelled, the earlier mutation entry be restored and the construction work in progress on the subject land be stayed.

This complaint-cum-communication received a response from the Collector and Competent Authority on 15/02/2021 where, after highlighting the sequence of events, the Collector clarified as below :-

"11) From the record of this office, the S.R. Register prepared under section 20, the name of M/s. Shah Meliable Industries is mentioned at S.R. No. 189 and there is entry of Gat No. 61/1/2 as

having an area of 12522.00 sq. meters and the area of Gat No. 61/2 to be 8100.00 sq. meters. However, since there is no entry about the date of approval of the scheme or any other details regarding the scheme, it has been made sure that no scheme for housing for economically weaker section has been approved on the said area under section 20 of the Act and no action has been taken by this office.

12) Considering the above circumstances, since there is no 'excess' area Gat Nos. 61/1 and Gat No. 61/2 and even though no scheme for Economically Weaker Section Housing is approved on that area under section 20 of the Act, the list sent along with this office letter No. ULC/Sanar/Thane/8/2017/310, dated 2/08/2017, it has been inadvertently mentioned about Housing Scheme for Economically Weaker Sections S.R. 189 under section 20 of the Act and erroneous entry has been made about the area under Housing Scheme for Economically Weaker Sections under sections 20/21 of Urban Land Ceiling Act, 1976 and Prohibition for Transfer made in 7/12 records which was necessary to have been deleted.

13) Therefore, as per the applications dated 28/3/2019 and dated 22/7/2019 made to this office by M/s. Shah Meliable (Acme Housing India Pvt. Ltd.), necessary scrutiny as above was made and thereafter the Tahsildar, Thane was informed by this office letter No. ULC/TA/ATP/Thane/415/2019, dated 03/09/2019 that the entry taken under section 20 of the Act directing him for deletion of entry regarding area under the Housing Scheme for Economically Weaker Sections and Prohibition for Transfer."

15 The Collector with clarity responded to the complaint but it appears that some explanation was sought from him and he responded to the same on 02/03/2021 and addressed a letter to the Principal Secretary (UDD) reiterating the sequence of events and informing that pursuant to the Thane Municipal Corporation's Draft Development Plan, the area of Gut No.61/1 part and Gut No.61/2 was included in the residential zone from industrial zone and, therefore, as per the request of the Architect of M/s.Shah Malleable Castings Ltd., revised orders dated 20/11/1997 was passed under Section 8(4) of the ULC Act, 1976, and as per the said order, area of the statement-holders admeasuring 114.72 sq. mtr. of land was declared 'excess'.

The Collector reiterated its stand which he had adopted when he responded to the communication of the leader of opposition but now he took a sudden U turn and clarified as below :

“12) By order No. ULC/S 31/NC/DC/GAD/B/5247, dated 21/01/1986 from the Government's Directorate of Industries, orders of exemption for industrial purpose have been passed for the area bearing Gat No. 61/1 of mouze Chitalsar-Manpada, Tal. & Dist. Thane, having an area of 35156.18 sq. meters. However, since it has come to notice that in the Record of Rights in the column of 7/12 in respect of the land bearing Gat No. 61/1 of mouze Chitalsar Manpada, no entry of "exemption for ULC's industrial purpose and Prohibition for Transfer without the prior permission of Government" is taken and therefore the Tahsildar Thane has been informed by this office vide letter dated 25/2/2021 that as per the orders dated 21/1/1986 from the Directorate of Industries, an entry about "exemption for ULC's industrial purpose and Prohibition for Transfer without the prior permission of Government" should be taken in the record of 7/12 in respect of the land bearing Gat No. 61/1 of mouze Chitalsar Manpada and accordingly vide Mutation No. 1125, an entries have been taken in the column of 'other rights' of 7/12 of the land bearing Gat No. 61/1 (Pot-Hissas 61/1/1, 61/1/2A, 61/1/2B, **651/1/3** and 631 61/1/4) about "exemption for ULC's industrial purpose and Prohibition for Transfer without the prior permission of Government (photocopy of the updated 7/12 extract and the extract of Mutation have been attached and submitted herewith.”

16 The aforesaid sequence of events constrained the Petitioner to approach this Court by filing Writ Petition on 21/06/2021, *interalia* raising a challenge to the impugned Mutation Entry No.1125 and also for quashing of letter dated 25/05/2021 and 10/06/2021 issued by Respondent No.3, the challenge being raised by amending Petition in terms of the order dated 03/09/2021.

Upon the Petition being filed and listed before this Court on 25/08/2021, a statement was made on behalf of the Respondents that they would be ready and willing to hear the Petitioners on

the notice dated 25/05/2021 and by permitting the Petitioners to file additional submissions before Respondent No.3, Assistant Director, Town Planning Department, Thane Municipal Corporation, the order dated 10/06/2021 stopping the work, was set aside and Respondent No.3 was directed to hear the Petitioners on 27/08/2021 and communicate the decision in writing.

Pursuant thereto, on 30/08/2021 the Petitioners were communicated the decision of the Municipal Corporation. At the conclusion of the hearing, Respondent No.3 recorded thus :-

“As informed by the Competent Authority on dt. 23.04.2021 and as there is an entry as “Area Exempted for Industrial Purpose under ULC Section 20 and Transfer Prohibited without Prior Permission of the Government” on the 7/12 extract of the plots on Gut No. 61/1/1, 61/1/2A, 61/1/2B, 61/1/3, 61/1/4, vide mutation No. 1125, and upon the hearing conducted on dt. 27.08.2021, the Developer could not submit any reasons for cancelling the show cause notice issued on 25.05.2021 more so for withdrawing it, so the explanation submitted by the Developer on dt. 10.06.2021 and also the additional submission pleaded on dt. 26.08.2021 and the points raised during the hearing on dt. 27.08.2021 are being rejected.”

This communication resulted into a notice addressed by the Assistant Director, Town Planning Department on 30/08/2021, once again directing the Petitioner No.1 to stop construction work in progress.

Pursuant to the aforesaid development, the Petitioner was permitted to amend the Petition and as a consequence the Petition was amended raising a challenge to the impugned letter dated 30/08/2021 as well as the notice directing the Petitioners to stop construction of the work on site.

17 The learned senior counsel Dr.Saraf, representing the

Petitioners, at the outset, clarified that the Petitioners do not desire to press the prayer in the Petition seeking declaration about the provisions of the ULC Act, 1976 being not applicable and the proceedings being abated under Section 3(1)(a) of the ULC Repeal Act, 1999 in respect of the subject land i.e. land in Gut No.61/1 and 61/2 of Village Chitalsar, Manpada. However, it is his specific contention that in the wake of the revised order dated 20/11/1997 passed by the Competent Authority, the earlier two orders i.e. order dated 25/07/1985, which computed the surplus vacant land and further order dated 21/01/1986 granting exemption under Section 20 of the ULC Act, 1976 in respect of the surplus land so declared, do not survive and have no legal efficacy. According to him, for the purposes of ULC Act, 1976, only 114.72 sq. mtrs. is the surplus vacant land, for which the revised order dated 20/11/1997 directed the holder to obtain fresh exemption under Section 20 and had this exemption not been secured, the same would have been liable to be acquired. However, in the wake of the revised order, passed under Section 8(4) of the Act of 1999, the area of land held by M/s.Shah Malleable Castings Ltd. in Gut No.61/1 and 61/2 was recorded to be 54500.00 sq. mtrs. and according to Dr.Saraf the computation of surplus land was reworked by taking into consideration the total area held by the Company alongwith the permissible area available to it and computing the net open area after deducting the area under construction, area to be kept permanently open as well as as area under road, open area suitable for construction and 20% of area to be kept open as per Construction Regulation. Based upon the same, the excess area was computed as 114.72 sq.

mtrs and the order directed that further action shall be taken as per Section 9 and 10(1) of the ULC Act, 1976.

In light of the aforesaid, it is the submission of Dr. Saraf that the order under Section 20 of the ULC Act, 1976 having been superseded by the revised order issued under Section 8(4) of the ULC Act, which was passed for Gut No.61/1 holding that the surplus vacant land was to the extent of 114.72 sq. mtr, the order of exemption under Section 20 became *non est*.

Dr.Saraf would place reliance upon the two decisions of the Bombay High Court in case of *Essen Realtors, Pune vs. State of Maharashtra & Ors.*¹ as well as the decision in case of *Bombay Fibre Industries Private Limited & Anr. vs. State of Maharashtra & Anr.*². Reliance is also placed upon the decision of the Apex Court in case of *State of Uttar Pradesh vs. Hari Ram*³ and it is urged that the Petitioners are entitled to a declaration that the said land is not subjected to ULC Act, 1976 since it is repealed in the State of Maharashtra with effect from 29/11/2007 and consequently the impugned mutation entry, the impugned letter dated 25/05/2021 and the impugned letter dated 10/06/2021 are liable to be quashed and set aside.

18 The State Government being represented by the Special Counsel Mr.Ashutosh Kulkarni alongwith Mr.Karan Thorat strongly opposed the relief in the Petition.

Mr.Kulkarni would rely upon the Affidavit filed by the Collector & Competent Authority, Thane Urban Agglomeration to

1 2018(2)Mh.L.J. 455

2 2018(3)Mh.L.J. 404

3 (2013) 4 SCC 280

submit that M/s.Shah Malleable Casting Ltd. submitted an application on 01/09/1997 for obtaining revised order under Section 8(4) of the ULC Act, 1976, in the wake of change in the development plan for the City of Thane for the year 1991 and accordingly a revised order was passed on 20/11/1997. According to the said order, 114.72 sq. mtr. of land was declared as surplus and it is categorically stated that the said order was passed by setting aside the earlier order dated 25/07/1985 under Section 8(4) of the ULC Act, 1976, but a specific stand adopted on behalf of the Government is that the order passed under Section 20 of the ULC Act on 21/01/1986 is still in existence and valid as the calculations and deductions made in the order dated 20/11/1997 i.e. the revised order, are based on the exemption order which had considered the exempted area.

The Affidavit contain a very specific statement to the following effect :-

“ I say that, the said revised order 20-11-1997 under Section 8(4) was passed /issued with the condition that the applicant company shall obtain revised/ modified order from the industries department in place of present order. I say that, the company/ petitioner should have applied for cancellation and revision of the existing exemption order u/s. 20. I say that, the said condition is mandatory. I say that, the the order of industries department dated 17th July, 1997, passed under Section 20 is still in existence and is never been cancelled.

I say that the validity of any order granting exemption under sub-section (1) of Section 20 of the ULC Act has been saved under the ULC Repeal Act, 1999.”

I say that, this Hon'ble Court has, vide their Judgment dated 3rd Sep, 2014 in Writ Petition no.9872/2010 and other, held that the conditions of exemption orders under section 20 of the ULC Act will survive despite repeal of ULC Act and are enforceable even after the repeal and the land owners/developers will be liable to comply with those conditions. I say that the said Judgment of Bombay High Court was not set aside by the Hon'ble Supreme Court, as requested by the Maharashtra Chamber of Housing Industries (MCHI) in Civil Appeal No.558/2017.”

19 Mr.Kulkarni, submitted before us that municipal area of Thane fell in Category D specified in Schedule I of ULC Act and the ceiling limit in case of every person was 2000 sq. mtr. and the term 'person' under the Act include a firm, a company, whether incorporated or not, apart from an individual. According to him, after deducting the ceiling limit of 2000 sq. mtr. and the area under the road, R.G. and non buildable reservation area from the total holding area, 'surplus vacant land' is calculated.

By applying this formula he would submit that M/s.Shah Malleable Castings Ltd. was holding a large chunk of 54500 sq. mtr. area of land, but it is their claim that the excess vacant land was only 114.72 sq. mtr. and its possession was not taken. He would submit that the Petitioner/Company is overlooking the fact that the revised exemption order under Section 8(4) was passed by deducting the area under industrial exemption order under Section 20 of the ULC Act, 1976, it being passed with a condition that the Petitioner shall obtain revised order, on cancellation of the existing order, but according to Mr. Kulkarni, the Company/ Petitioner never applied for cancellation and revision of previous exemption order under Section 20 and this fact is intentionally suppressed.

Mr. Kulkarni would place reliance upon the Government Resolution dated 17/07/1997, which provided a guidance to the effect, that all previous orders passed under Section 20 of the Act shall be considered afresh under Section 8(4) and therefore, it is his submission that that if there is any change in the holding of the owners/surplus land, it shall be mandatorily communicated to the Government and only after its approval, further order under

Section 8(4) was permitted to be passed.

It is his contention that the Petitioner has completely neglected to comply with the obligations as provided in the said Government Resolution and it has also failed to seek cancellation of the Industrial Exemption Order dated 21/01/1986 issued under Section 20 of the ULC Act, 1976, and the Government was not informed about the revised order passed on 20/11/1997 under Section 8(4) of the Act, prior to its passing.

20 Mr.Kulkarni who has insisted upon the adherence to the Government Resolution dated 17/07/1997 submit that the Deputy Director of Industries (ULC) has given opinion that the order passed under Section 20 of the Act on 20/01/1986 is not valid, but according to him, this opinion in light of the Government Resolution, cannot prevail as the order under Section 20 is never cancelled by the Competent Authority and the same is still in existence.

It is his further submission that by letter dated 02/08/2017 issued by the Competent Authority, Tahsildar of Thane was directed to ensure that the entries "area under weaker section housing scheme under Section 20, restriction on transfer" on 7/12 extract of respective lands under Section 20 are in place and if such entries are not earlier taken, they should be taken with immediate effect and based upon the direction, the entry was made in the 7/12 extract of Gut No.61/1 and 61/2 of Chitalsar, Manpada through Mutation Entry No.1125 which was certified by the Circle Officer, Thane. In short, it is the submission of Mr. Kulkarni that Section 20 order for industrial

use is still in existence and M/s.Shah Malleable Castings Ltd., should apply to the Government to take further action to revise Section 20 order for industrial use or to pay premium as per the Government policy, where it is permissible to release the subject land by paying premium at the rate of 50% of ASR Rate in respect of total land exempted for industrial purpose as a one time settlement. It is his contention that though surplus vacant land admeasuring 114.72 sq. mtrs. is out of purview of ULC Repeal Act, but the land under Section 20 order for industrial use i.e. area admeasuring 35156.18 sq. mtrs. out of Gut No.61/1 or part thereof is not freehold and provisions of Section 20 of ULC Act are applicable to the said area.

21 As far as the Corporation is concerned, it has adopted a stand that action taken by it is based upon the letter received from the Competent Authority, Thane Urban Agglomeration, and in compliance of the communication dated 23/04/2021, since it was directed that the construction work of the residential/commercial premises being undertaken on the plot of land under the Development Proposal No.88/142 shall be stopped with immediate effect, the Respondents had followed the directions given to them.

The counsel would restrict his argument to the stand set out in the Affidavit filed by the authorized representative of the Corporation on 27/07/2021.

22 In order to appreciate the controversy involved and the rival contentions placed before us and the specific contention of

the Respondents/State that despite, a revised order being passed under Section 8(4) of the ULC Act, 1976, recalculating the surplus vacant land of lesser area than the one which is reflected in Section 8(4) order passed on 25/07/1985, whether the exemption order based on it will survive and for this purpose, we must make reference to the ULC Act, 1976.

The enactment which provide for imposition of the ceiling on vacant land in Urban Agglomerations also contemplated acquisition of such land, in excess of the ceiling limit, with an object to regulate the construction of the buildings and with a view to prevent concentration of urban land in the hands of a few persons and speculation and profiteering therein and to bring more equitable distribution of land in urban Agglomerations to subserve common good.

On determining the ceiling limit under Section 4, the Act prohibited holding of any vacant land in excess of the ceiling limit in the territories to which the Act applied. Admittedly, Thane Municipal Corporation fell in Category D and the ceiling limit as per Section 4(1)(b) was fixed at 2000 sq. mtr.

A person holding vacant land in excess of ceiling limit at the time of commencement of the Act was to file a statement before the Competent Authority, giving the particulars of the vacant land held by him and also specifying the vacant lands within the ceiling limit, which he desire to retain.

Upon such a statement being filed and after such enquiry made by the Competent Authority, as it deem fit, Section 8 provide for preparation of a draft statement, containing the particulars of all vacant lands and/ or any other land on which

there is a building, whether or not, with a dwelling limit therein held by a declarant under Section 6 and also the particulars of the vacant land which such person desire to retain within the ceiling limit alongwith the particulars of the right, title or interest of the person in the vacant land.

Sub-Section (4) of Section 8 then directed the Competent Authority to consider any objection received to the draft statement within the period specified in the notice and pass an order declaring the vacant land held in excess of the ceiling limit.

23 Section 10 of ULC Act, 1976, provide that the Competent Authority shall cause a notification giving particulars of the vacant land held by a person in excess of ceiling limit and stating that 'such vacant land' is to be acquired by the concerned State Government and the claims of all persons interested in such vacant land may be made by him personally or by the Agent, giving particulars of the nature of their interest and such notification shall be published in the official gazette.

Upon the declaration of the excess vacant land in the Notification, such land shall be deemed to have been acquired by the State and vest absolutely in it free of all encumbrances, with effect from the date so specified. It also impose a restriction on its transfer by any means, from the date of publication of the notification and impose a restriction on altering or causing to alter the use of such vacant land.

By virtue of sub-section(5) the Competent Authority , on vesting of the land, by issuing a notice in writing, order any

person who may be in possession of the said land to deliver possession thereof to the Government within a period of 30 days, but if the person refuse or fail to comply, the Competent Authority may take possession of the land or cause it to be taken, to be given to the concerned State Government.

In the scheme of the enactment, Section 11 deals with payment of amount of vacant land acquired and the State Government shall pay to the person, having any interest therein, the amount specified in clause (a) or clause (b) of sub-section (1) of Section 11 of the ULC Act, 1976.

24 Section 20 of the ULC Act, 1976, which is in form of a power of the State Government to exempt, open with a non obstante clause, prescribe that when any person holds vacant land in excess of the ceiling limit and the State Government is satisfied that having regard to the location of such land, the purpose for which such land is being used or proposed to be used or such other relevant factors, it is necessary and expedient in the interest of public to exempt such vacant land from the provisions of the Chapter III, it may do so.

Similarly it is also open for the State Government to exempt any land, if the Government is of the view that application of the provisions of the Chapter would cause undue hardship to such person, but it is permitted to be so done by recording the reasons in writing.

Sub-clause (2) of Section 20, confer a power on the State Government to withdraw such exemption when it is satisfied that the conditions of exemption are not complied with and upon such

an action, the provisions of the Chapter shall apply.

Section 23 of the ULC Act, 1976 then provide for disposal of the vacant land acquired under the Act, to any person for any purpose relating to or in connection with any industry or for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry. Section 24 is another provision in form of a special provision for disposal of vacant land in favour of certain persons.

25 The Parliament enacted the ULC Repeal Act, 1999, repealing the Urban Land (Ceiling & Regulation) Act, 1976.

Section 3 of the Repeal Act provide for the following : -

“3(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 authorized 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 be restored unless the amount paid, if any, has been refunded to the State Government.”

26 Admittedly, despite Repeal of Act of 1976, the validity of the order granting exemption under Sub-section (1) of Section 20 or any action thereunder is not impacted since it is saved. The aforesaid being the scheme of the statute and the Repeal Act, we

turn our attention to the facts placed before us.

M/s.Shah Malleable Castings Ltd. filed statement under Section 6(1) of the ULC Act, 1976 in respect of 8100 sq. mtr. of land in Gut No.61/2 and 46400 sq. mtr of land in Gut No.61/1 of Village Chitalsar, Manpada , Taluka and District, Thane. On the measurement being carried out by the City Survey Officer and conduct of enquiry it was noticed that the company is holding excess vacant land and, therefore, a notice under Section 8(3) of the Act alongwith draft statement in Form No.III was issued calling upon the company to prefer their objection, if any, to the draft statement.

M/s.Amubhai & Diwanji, on behalf of the declarant on 07/04/1977 raised an objection about the exemption being granted for internal roads and the land under use for building structures, offices, godowns and also the requirement of vacant land for drying raw material as well as an area of 3177.00 sq. mtr. being reserved for scrap storage and parking which is covered for sheds and, therefore, requested that it shall not be treated as vacant land.

The objection also mentioned that the company had made an application under Section 20 of the Act for exemption of the entire factory, which is pending with the Government. It was also notified that vacant land admeasuring 1221.00 sq.mtr. is covered under garden and 6932.00 sq. mtr. is covered under playground and these facilities are absolutely necessary and, therefore, the lands may be exempted from the provisions of ULC Act.

27 On consideration of the said objections and taking into

consideration the actual measurement of the land, the Competent Authority for Thane Agglomeration, computed the surplus land held by the Company, by recording that as per the Building Regulation, 10% area for internal roads, 15% area for statutory open space and land appurtenant has been left with the declarant and in addition, area admeasuring 2000 sq. mtr. is allowed to be retained with the Company as it falls within the Thane Agglomeration.

The computation of the surplus land was, therefore, worked out as below :-

Total Holding	..	54,500.00 sq. mtrs.
Deduct		
1) Area under building	..	6756.00
2) Land appurtenant	..	13512.00
3) 10% internal road	..	4643.30
4) 15% statutory open space	..	6965.50
5) Retainable land	..	2000.00

Based on the aforesaid computation, the Competent Authority declared that the company is surplus vacant land holder to the extent of 20622.80 sq. mtr. which should be acquired from Gut No.61/1 and 61/2 to the extent of 12522.80 sq. mtr. and 8100.00 sq.mtr. respectively. Notice under Section 9 and Notification under Section 10(1) was directed to be issued accordingly.

28 After passing of the above order, the Application of the Company dated 27/01/1977 for exemption under Section 20 was granted thereby exempting the 'said vacant land' from the provisions of Chapter III, subject to several conditions, thereby imposing a restriction on a different use of the land other than

for which the exemption is sought, transfer of the exempted land in any manner etc. Similarly some restriction was also imposed on part of the exempted land which was directed to be kept vacant by indicating it in the plan.

The schedule appended to the said order was captioned thus:-

“Details regarding Applicant and the vacant land possessed by him for which exemption is sought under Section 20 of the ULC Act, 1976.”

The said Schedule gave the description of the property for which exemption was sought and this included the total area from Gut No.61/1 i.e. 46400.00 sq. mtr., with the area under the building to the extent of 8254.67 sq. mtr. and the area of the land appurtenant to the building alongwith the area of land kept vacant as per statutory regulation and also the area of vacant land within matter of course of exemption limit/permitted to be retained. The area under different heads was computed as 35156.18 sq. mtr.

Thus, it can be seen that Section 20 order exempted 35156.18 sq. mtr. of land from the provisions of Chapter III, on the vacant land being declared surplus, which otherwise would have been acquired by the State Government as per the provisions of Section 10.

It is pertinent to note that under Scheme of the ULC Act, 1976, the power to exempt is available qua the vacant land in excess of the ceiling limit and the term ‘vacant land’ is defined in Section 2 (q), which shall not include the areas which are specified in clause (i) (ii) (iii). On a declaration being made about

a vacant surplus land by the Competent Authority after taking into consideration the statement filed under Section 6 and a draft statement being circulated under Section 8, upon the vacant land being declared as surplus, it is liable to be acquired by the concerned State Government. However, notwithstanding the aforesaid procedure to be followed, the State Government is competent to exempt holding of vacant land in excess of ceiling limit, if the Government deem it necessary to do so in public interest and such land shall stand exempted from the provisions of the Chapter.

The exemption is, therefore, available qua the vacant surplus land which is declared by the Competent Authority and necessarily the power to exempt the land is dependent on declaration of surplus vacant land, on the process initiated from Section 6 till the final publication under Section 10 by way of Notification as what is permissible for exemption is the vacant land in excess of the ceiling limit prescribed under the ULC Act.

29 In the wake of the change in the development plan of the city, an application was filed by M/s.Shah Malleable Casting Ltd. on 01/09/1997 for revised order under Section 8(4), accompanied with a copy of the map and the previous order dated 25/07/1985 under Section 8(4) of the Act. In the wake of orders being set aside and the Additional Collector & the Competent Authority being authorized to issue amended orders under Section 34, the revised order came to be passed under Section 8(4) with reference to the holding of M/s.Shah Malleable Casting Ltd. in Gut No.61/1 and 61/2 in Chitalsar, Manpada i.e. an area

of 54500 sq. mtr.

Recording that the land in Gut No.61/2 was included in residential zone as per the map of the year 1972 of BMRDA and the land in Gut No.61/1 was kept reserved as industrial zone, as per the Draft Development Plan for the year 1991 of the Municipal Corporation, the land in Gut No.61/1 was shown in the reservation of residential-cum-DP road of 20 mtr. and an area of 2550 sq. mtr. was shown for market and market centre. In the wake of this development, the company submitted an application for revised order.

The Assistant Town Planner after carrying out an enquiry noted that the exemption under Section 20 of the ULC Act, 1976 was given to the entire land area of Gut No.61/1 i.e. area admeasuring 43400.00 sq. mtrs. The revised order specifically mention that on cancellation of the exemption order of the Department of Industries as per Government Resolution dated 17/07/1997, it would be binding upon the Company to obtain revised orders, which is clear indication that the exemption order under Section 20 is cancelled.

At this juncture, it is relevant to refer to the Government Resolution dated 17/07/1997 which is annexed alongwith the Affidavit in Reply filed by the State. The said Resolution issued by the Housing and Special Assistance Department, with reference to Section 8(4) of the ULC Act, 1976, take into account a situation where while passing orders under Section 8(4) of the ULC Act, 1976 by the Competent Authority, the order of the State Government granting exemption under Section 20 is not taken cognizance of and the land is declared surplus land as per their

convenience. Citing an example, the resolution state that the Special Commissioner (Industries) which has granted exemption for industrial use under Section 20, but if its user is changed to residential or non residential purpose, the exemption granted under Section 20 for industrial purpose must be cancelled and it would be necessary to declare the said surplus land considering this cancellation and the purpose of the Government Resolution is to take cognizance of the cancellation of Section 20 Exemption Order, while passing a revised Section 8(4) order.

30 In the present case, exemption is granted by the Department of Industries under Section 20 of the ULC Act, 1976 by taking into consideration location of the land and considering that the land is situated in industrial zone subject to certain conditions which are imposed. While passing the revised order, on 20/11/1997 it is recorded that after cancellation of the exemption order by the Department of Industries, it would be necessary for the company to obtain revised orders, clearly indicating that a fresh order under Section 20 would be sought only after determination of the excess area, in the wake of the change in the development plan as the land from Gut No.61/1 was shown in reservation for residential-cum-DP road of 20 mtr. which was earlier reserved in industrial zone.

The exemption granted by the Department of Industries, therefore, has undergone a change and the order record that after cancellation of the Exemption Order, the Petitioner/Company would obtain revised order under Section 8(4) and therefore, when the revised order declared the surplus vacant area of

114.72 sq. mtr. it was the starting point for the process to be initiated for seeking exemption as against the declared surplus land of 114.72 sq. mtr. This is the specific reason that the Additional Collector & Competent Authority on 13/04/2005 communicated to M/s.Shah Malleable Casting Ltd. that Section 8(4) revised order shall be obtained before formal order is issued and the application should be accompanied with a closure certificate from Department of Industries.

While granting permission for redevelopment of the property in Gut No.61/1 and 61/2, under the Rental Housing Scheme, the permission was granted to demolish authorized structures by invoking Section 22 of the ULC Act, 1976 and retaining the vacant land.

The Additional Collector & Competent Authority even issued Notification under Section 10(1) of the ULC Act, 1976, in the Maharashtra Government Gazette on 30/06/2005 showing the land from Gut No.61/2 to the extent of 114.72 sq. mtr. to have been acquired by the Government with effect from 30/06/2005 and it being vested in the Government. Therefore, an inference which could be drawn is specific, that the exemption shall be granted qua the surplus land of 114.72 sq. mtr. only.

Subsequent to this, i.e. on 01/12/2007, the State of Maharashtra adopted the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which came into force with effect from 29/11/2007.

31 The action on part of the Respondents failed to take into consideration the most important aspect being the first order

declaring the surplus vacant land comprising of part of land from Gut No.61/2 and area from Gut No.61/1 part followed by the exemption order under Section 20(1) of the Act of 1976, issued in the year 1986 did not survive when an application for revise order under Section 8(4) of the Act of 1976 was preferred by erstwhile owner and pursuant thereto a revised order was issued on 20/11/1997 computing the surplus vacant land of 114.72 sq. mtrs., only restricting it to Gut No.61/2. In view of the revised order, the procedure under the ULC Act, 1976 was followed as Notification was issued under Section 10(1) notifying an area of 114.72 sq. mtrs. for acquisition from Gut No.61/2 to be followed by a Notification issued under Section 10(3) issued on 25/11/2005. In the meantime, repeal of ULC Act came into force in the State of Maharashtra on 29/11/2007 and the Petitioners being desirous of availing the benefit of rental housing policy, for the Municipal Corporation of Thane, expressed its desire to be a part of the same and in fact MMRDA also granted layout approval.

The Additional Collector & Competent Authority on 03/09/2010 set aside the Notification under Section 10(1) dated 26/05/2005 and under Section 10(3) dated 25/11/2005 since the possession of surplus vacant land admeasuring 114.72 sq. mtr. from Gut No.61/2 was not taken and ULC Act was already repealed.

As a consequence thereof the mutation entries in the Revenue Record were also deleted. Upon this exercise being carried out, all of a sudden, in the circumstances narrated above, upon the Leader of opposition taking up an issue, the Mutation entry No.1125 was recorded on 02/03/2021.

According to us, the whole premise on which the impugned mutation entry is recorded by setting aside the earlier mutation entry as well as the stop work notice issued to the Petitioners is based on the saving of the Scheme under Section 20 of the ULC Act, 1976. But a clear perusal of the ULC Repeal Act would clearly reveal that what is saved is validity of an order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder and Section 20 which is the power to exempt, clearly contemplate the exemption of “such vacant land” subject to such condition imposed by the Government, from the provisions of the Chapter.

32 A careful reading of Chapter III in the ULC Act in form of ‘Ceiling on Vacant Land’ creates an embargo on the person holding vacant land in excess of the ceiling limit that is specified in Section 4 and the process culminates into acquisition of vacant land in excess of ceiling limit under Section 10 of the Act.

Section 20 which finds place in the very same Chapter is a specific provision to exempt such vacant land, which is declared surplus from the provisions of the Chapter i.e. its acquisition and payment of compensation, subject to such terms and conditions as the Government deems fit. As a necessary corollary, the exemption shall restrict itself to the land declared as ‘surplus’ on following the procedure, with reference to the statement being filed under Section 6, by the holder of the land, to be followed by preparation of draft statement as regards the vacant land under Section 8, and upon consideration of objections received under Sub-section (4) thereof and the final statement being issued

under Section 9, to be followed by acquisition of surplus vacant land. The power of exemption, therefore, permit exemption of the vacant land which is declared surplus and the exemption order under Section 20 is relatable to the order under Section 8(4) and the order issued under Section 9 and no other scope of interpretation is possible, as is sought to be pressed into service by the Respondent by submitting that though the order is revised under Section 8(4), the exemption granted under Section 20 in respect of the earlier declaration of the vacant land which notification is superseded, it shall operate despite a fresh order being passed under Section 8(4).

33 The stand of the Government that the exemption notification dated 21/01/1986 survive based on the order dated 25/07/1985 despite a revised order being issued under Section 8(4) on 20/11/1997, is misleading argument as the perusal of the revised order would itself make it clear that the exemption granted under Section 20 of the Act by the Department of Industries on 21/01/1986 to the entire land of Gut No.61/1 is cancelled after cancellation of the exemption order of the Department of Industries as per GR dated 17/07/1997 and, therefore, it would be binding upon the Company to obtain revised orders. The aforesaid statement in the revised 8(4) order make it clear that the exemption order of the Department of Industries is cancelled in the wake of the fact that the area which was earlier falling in industrial zone is now removed therefrom and the reservation has undergone change. The Resolution dated 17/07/1997 specifically directed that if the previous orders

passed under Section 20 of the Act by the Competent Authority are for industrial purpose, and due to change in the Development Control Rules, there is change of user of such lands which is permitted, then in all such cases before passing a revised order under Section 8(4), prior cancellation of the order passed under Section 20 must be first effected and the exempted lands be considered as surplus under Section 8(4) of the Act.

According to us the Government Resolution very clearly contemplate cancellation of the exemption granted by the Department of Industry and in such circumstance it was the duty of Competent Authority to take into consideration the provision of the Government Resolution dated 17/07/1997 and if it is not so done, the Petitioner cannot take the blame.

Shockingly, in the Affidavit of the State and the Competent Authority, Thane Urban Agglomeration record thus

“I say that the Government Resolution dated 17/07/1997 being an important and prima facie a worthy document has been suppressed by the Petitioner by not filing on record before the Hon’ble Court. I say that Petitioner herein has failed and neglected to comply with the obligations as referred and speculated in the Government Resolution dated 17/07/1997. I say that Petitioner has willfully failed and neglected to comply with the obligations as referred and set out in the Government Resolution dated 17/07/1997. I say that Petitioner has willfully failed and neglected to seek cancellation of industrial exemption order dated 21/01/1986 passed by the Industrial Department under Section 20 of the Act. I say that the Government of Maharashtra was not informed and reported about the revised order dated 20/11/1997 under Section 8(4) of the Act prior to its passing.”

We find the stand adopted by the State Government to be palpably fallacious and mistaken as the revised order is passed by the Competent Authority and the aforesaid statement in the Affidavit is made by the Competent Authority himself. We must

note that the revised order under Section 8(4) dated 20/11/1997 clearly mention that the exemption order of 21/01/1986 stand cancelled, for the obvious reason that the land no longer was reserved for industrial purpose and that is the reason why the Petitioner sought a revised order under Section 8(4) and we do not find any merit in the the State and the Competent Authority in unison raising a foul cry, blaming the Petitioner.

34 Dr. Saraf has placed reliance upon the decisions of this Court, the first being the decision in case of *Essen Realtors, Pune* (*supra*), to be followed by another Division Bench decision of the same Bench in *Bombay Fibre Industries Pvt. Ltd.* (*supra*).

Perusal of the facts in *Essen Realtors, Pune* are somehow close to the facts placed before us, when on the return filed by the original owner, a policy decision was taken by the State Government in respect of the lands utilised for industrial purpose and the State Government directed that lands upto 1 Acre in Pune Urban Agglomeration be granted exemption as a matter of course.

Similar to our case, the Joint Director of Industries passed an order under Section 20 of the Act, on 11/07/1984, granting exemption to the land, which form part of the larger area of land belonging to the original owner and accordingly the original owner continued to have its industrial units on the said land. Pursuant to the development plan for the Municipal Corporation being sanctioned in the year 1995 and the land being shown in industrial zone, under the DCR the industrial use of land was permitted to be converted to residential use, on the condition of

providing specified percentage of land to the Corporation free of cost for amenities and also on payment of specified premium. This was done with a view to satisfy requirement of land for residential purpose.

This prompted the original owner to request the Competent Authority to decide its return filed under Section 6(1) of the Act and the Competent Authority passed an order on 20/07/2005, taking into consideration the earlier exemption order dated 11/07/1984 to find that, the original owner did not hold vacant land in excess of the ceiling limit. The original owner, thereafter, submitted an application before the Competent Authority under Section 22 of the Act for permission of redevelopment and this application was granted on 16/03/2007, on a condition of obtaining necessary permission from the Planning Authority.

Immediately thereafter on 29/11/2007 the ULC Act stood repealed and in terms of Section 3 the order granting exemption under Section 20 was saved. When the Petitioner submitted proposal for development before the Municipal Corporation, it received the permission for non agricultural use and the Petitioner commenced development work, which was stalled by the impugned notice issued by Respondent No.3, directing it to stop the development work on the ground that the exemption order under Section 20 of the Act issued on 11/07/1984 has not been cancelled and the Petitioner was required to deposit market value of the land in question before undertaking the development work.

35 It is in this background facts, the Division Bench of this

Court observed thus :-

"13. A perusal of the order dated 20-7-2005 passed by the Competent Authority Respondent No. 2 under section 8(4) of the said Act shows that such order has been passed on the returns filed by the original owner under section 6(1) of the said Act. This order takes into consideration the exemption order dated 11-7-1984 passed under section 20 of the said Act by the Jt. Director of Industries; this order also records that a proper enquiry was conducted, with the maintenance surveyor of the office of the Competent Authority visiting the spot and verifying claim of the original owner. Upon said detailed inquiry, it was concluded by the Competent Authority in the said order dated 20-7-2005 that the original owner did not hold vacant land in excess of the ceiling limit under the unchallenged thereby attaining finality, the question of exemption under section said Act. Thus, the moment such a finding was reached, which remained 11-7-1984 issued as a matter-of-course by the Jt. Director of Industries under 20 of the said Act did not arise. In other words, the earlier exemption order dated issued by the Competent Authority concluding that the original owner did not specific policy of 1977, stood eclipsed by the said detailed order dated 20-7-2005 issued by the Competent Authority concluding that the original owner did not hold surplus vacant land in excess of the ceiling limit.

14. In fact, a perusal of the affidavit-in-reply filed on behalf of Respondent Nos. 1 to 3 shows that in paragraph 3 thereof, it has been stated as follows:

"3. I say that thereafter, by order dated 20-7-2005, the return under section 6(i) was decided under the order under section 8(4), it was held that the land owner is not in possession of any excess land. Ordinarily, this made the exemption under order under section 20 unnecessary and irrelevant. However, the Petitioner did not take any steps to get the order under section 20 set aside."

Thus, the said Respondents were also clearly aware that the order dated 20-7-2005 passed by the Competent Authority under the said Act concluding that the original did not hold surplus vacant land in excess of the ceiling limit, rendered the exemption order dated 11-7-1984 under section 20 the said Act as "unnecessary" and "irrelevant". Once the said admission is given by the Respondents, it cannot lie in their mouth that the impugned order dated 1-10-2014 was justified, as it was issued on the basis of the exemption order dated 11-7-1984 passed by the Jt. Director of Industries. The only contention raised on behalf of the Respondent - State was that the Petitioner failed to take any steps to set aside the exemption order dated 11-7-1984 and therefore, the impugned order dated 1-10-2014 was justified. But, this contention is unsustainable because in the facts of the present case, a valid exemption order is not in existence, in view of the order dated 20-7-

2005 passed by the competent authority under the said Act, holding that the original owner did not hold vacant land in excess of the ceiling limit. It is clear that upon passing of the order section 8(4) of the said Act holding that the original owner did not hold vacant land in excess of ceiling limit, the exemption order under section 20 of the Act becomes non est and a declaration regarding cancellation of the exemption order is not necessary.”

36 The aforesaid view was again adopted by the same Division Bench when it decided the case of **Bombay Fibre Industries Pvt. Ltd.** (supra) , where the Court held thus :

“16. It is also clear that when a valid order of exemption under section 20 of the said Act does not exist in the present case, reliance placed by the learned AGP on section 3(1)(b) of the Repeal Act, and the Full Bench judgment of this Court, in the case of Maharashtra Chamber of Housing Industry, Mumbai and ors. (supra), is wholly misplaced. The saving clause under section 3 of the Repeal Act would operate only in cases where a valid exemption order under section 20 of the said Act is existing. In the present case, the subsequent order dated 4-4-2003 passed by the Competent Authority under section 8(4) of the said Act clearly holds the field whereby it has been held that the owner does not have land in excess of the ceiling limit. Section 20 of the said Act comes into operation when an owner holds land in excess of the ceiling limit, and therefore, in the absence of such a factual position in the present case, there is no question of existence of exemption order under section 20 of the said Act.

17. Once it is held that exemption order under section 20 of the said Act dated 24-4-1980 ceased to exist and it stood cancelled upon Competent Authority passing the order dated 4-4-2003 under section 8(4) of the said Act, there can be no mutation entry pertaining to the land in question stating that the land is subject to exemption under section 20 of the said Act for industrial user. Therefore, Mutation Entry dated 25-5-2009 in the revenue record pertaining to the land in question is wholly unsustainable and deserves to be quashed and set aside.”

37 In the wake of aforesaid ruling by Coordinate Bench, clearly adopting a view that upon a revised order under Section 8(4) being passed, the exemption granted under Section 20, based on the previous order, shall not survive and while considering the

saving of Section 20 Scheme, the land owner will not be put to a disadvantageous position, we are of the view that the facts in the present case are almost identical to the one involved in the two cases decided before and we express our concurrence with the view expressed in the aforesaid decisions and even independently on appreciation of the claim staked before us we have reached the same conclusion.

38 In the wake of the aforesaid discussion, and by placing reliance upon the two decisions by this Court, the Writ Petition is allowed by directing deletion of the impugned mutation entry No.1125 from the Revenue Record on land bearing Gut No.61/1 and 61/2 , village Chitalsar, Manpada, Thane, totally admeasuring 54,500 sq. mtrs. and we direct recording the name of the Petitioner in the Revenue Record for the said land.

We also quash and set aside the impugned letters/notices as set out in prayer clause (c) and (c-1) issued by Respondent No.3 as according to us, the Petitioner cannot be restricted from proceeding with its project on land situated in Gut No.61/1 and 61/2 of Village Chitalsar for an area admeasuring 54,500 sq. mtrs or any portion thereof, as we have directed deletion of Mutation Entry No. 1125 from the Revenue Record and we direct restoration of Mutation Entry in the name of the Petitioner as regards Gut No.61/1 and 61/2 of Village Chitalsar, Manpada, Thane.

Pursuant to the aforesaid, we direct that Respondent No.2 and 3 to permit the Petitioner to proceed with its project on the subject land in terms of the permission/approval granted and if

necessary as per the approvals in the revised form.

As a result of above discussion, the writ petition is made absolute in terms of prayer clause (b), (c) and (c-1).

No order as to cost.

[MANJUSHA DESHPANDE, J.] [BHARATI DANGRE, J.]

39 Upon pronouncement of the Judgment in the Court Mr.Kulkarni the Special Counsel representing the State make a request for extension of the interim order passed by this Court on 11/10/2021 and in specific the direction contained in clause (iii) of Paragraph 34 of the said order.

We, however, decline the said request as we have decided the Petition on merits and having held that the Scheme under Section 20 of the ULC Act, 1976, did not survive pursuant to the revised order under Section 8(4) being passed and we refuse any extension of the impugned order.

[MANJUSHA DESHPANDE, J.] [BHARATI DANGRE, J.]