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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1178 OF 2014

M/s. Swastik Constructions	... Petitioner
Vs.	
State of Maharashtra and Anr.	... Respondents

Mr. Rahul Prakash Walvekar, for the Petitioner.
Mr. V.S. Gokhale, AGP, for the Respondent Nos.1 and 2.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 11th MARCH, 2015

ORAL JUDGMENT (Per A.S. Oka, J.)

. Heard the learned counsel appearing for the Petitioner and the learned AGP for the Respondents. On 31st January, 2014, a direction was issued by this Court to the Respondents to file a reply. On 14th November, 2014, this Court directed that the Petition shall be disposed of finally at the stage of admission. Even thereafter, no reply was filed. On 17th February, 2015, and 4th March, 2015, time was granted to the State. However, as of today, no reply is filed. The learned AGP today seeks time to file a reply. The first direction to file a reply was issued on 31st January, 2014. Thereafter, repeatedly time was granted. Therefore, no further time can be granted.

2. This Petition concerns the land bearing Revenue Survey No.166/B situated at Ujalaiwadi, Taluka Karveer, District Kolhapur. One Raju Mohan Kulkarni was the owner of the said land. The said original owner, after preparation of final statement under Section 9 of the Urban Land (Ceiling and Regulation) Act, 1976 made an application under Section 21 for grant of exemption in respect of the vacant land held in excess of ceiling limit. Accordingly, an order was made on 27th November, 1983 by the Collector and the Competent Authority, Kolhapur Urban Agglomeration. Under the said order, the Competent Authority allowed the owner to continue to hold the land held by him in excess of ceiling limit for construction of houses for weaker sections of the society. It appears that in the sanctioned development plan for the City of Kolhapur, the said land was reserved for a garden. Thereafter, the original owner made an application for deletion of the reservation of garden. Acting upon the said representation, the process under Sub-Section (1) of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) was initiated.

3. The original owner mortgaged the said land to the Warna Sahakari Bank Ltd. On the basis of the mortgage, proceedings were initiated under Sub-Section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (for short “the said Act of 2002”). After taking possession of the said land, the Bank had put the said land to auction. The Petitioner is the auction purchaser whose bid for the amount of Rs.1,02,00,000/- was accepted by the Recovery Officer of the said Branch. The Petitioner is relying upon the registered Sale Deed dated 22nd March, 2011 executed by the Recovery Officer of the said Bank.

4. The grievance in the Petition is that notwithstanding the fact that the Petitioner is the auction purchaser of the said land, his name was not mutated in the revenue records. Therefore, an application was made on 28th November, 2011 by the Petitioner on the basis of the Sale Deed to the first Respondent. It was pointed out that there was a remark in the other rights column of the 7/12 extract that the said land was “non-transferable”. The State Government called for the report from the second Respondent which is the Competent Authority under the ULC Act under the Kolhapur Urban Agglomeration. Accordingly, a report was submitted by the second Respondent. In the report, it is stated that an order under Sub-Section (4) of Section 8 of the ULC Act was passed on 30th June, 1993 under which it was declared that the original owner was holding a vacant land admeasuring 3575.20 in excess of the ceiling limit. It also records that on 27th November, 1983 an order of exemption was passed under Section 21 of the ULC

Act. It is stated that as the scheme under Section 21 of the said Act has been sanctioned, in the revenue records, an entry that the said land is non-transferable has been made.

5. The prayer in this Petition is based on the provisions of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short “the Repeal Act”) which came into force in the State of Maharashtra with effect from 29th November, 2007. The contention is that as no steps have been taken by the State Government under Sub-Section (5) of Section 10 of the ULC Act on or before 29th November, 2007, the proceedings under the ULC Act stood abated.

6. The learned counsel appearing for the Petitioner pointed out the registered Sale Deed executed by the Recovery Officer of the Warna Sahakari Bank which records that the possession of the said land was obtained by the said Bank on 5th June, 2010 under Sub-Section (4) of Section 13 of the said Act of 2002. He pointed out that even according to the report submitted by the second Respondent, no steps were taken by the State Government under Sub-Section (3) and Sub-Section (5) of Section 10 of the ULC Act. He, therefore, relied upon the decision of the Division Bench of this Court in the case of the *Voltas Limited vs. The Additional Commissioner and Competent Authority*¹.

¹ (2008) 5 ALL MR 537

7. The learned AGP appearing for the Respondents urged that notwithstanding the Repeal Act, the validity of the order granting exemption under Sub-Section (1) of Section 20 of the ULC Act has been saved. He submitted that similarly, notwithstanding the applicability of Repeal Act, even the validity of the orders under Section 21 will be saved and therefore, the State Government can always take appropriate action on the basis of the said order. He urged that essentially, the terms of the order under Sub-Section (1) of Section 21 constitutes a contract between the owner and the State Government and therefore, no relief can be sought in this Petition under Article 226 of the Constitution of India.

8. We have given careful consideration to the submissions. Sub-Section (1) of Section 20 confers power on the State Government to exempt vacant land held in excess of the ceiling limit from the applicability of the provisions of Chapter III of the ULC Act. It will be necessary to make a reference to Section 21 of the ULC Act which reads thus :-

“21. Excess vacant land not to be treated as excess in certain cases.—

(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for

the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purposes of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such building are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under sub-section (1), the competent authority shall, by order, and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this Chapter shall apply accordingly.”

9. The effect of an order under Sub-Section (1) of Section 21 is that the vacant land held in excess of ceiling limit which is covered by the order under Sub-Section (1) is declared as not be excess land for the purposes of Chapter III and permit such person to continue to hold such land for the purposes set out in Sub-Section (1), subject to the terms and conditions incorporated in the said order. Sub-Section (2) provides that if there is any contravention of the conditions incorporated in the permission under Sub-Section (1) of Section 21, the Competent Authority is empowered to declare such land to be a vacant land held in excess of ceiling limits and thereupon all the provisions of Chapter III shall apply to the land held in excess of ceiling limit.

10. It will be necessary to make a reference to Sections 3 and 4 of the Repeal Act. From Clause (b) of Sub-Section (1) of Section 3, it appears that notwithstanding the Repeal, the validity of any order granting exemption under Sub-Section (1) of Section 20 will not be affected. In short, the validity of such order has been saved. Section 4 provides that all proceedings relating to any order made or purportedly made under the Principal Act (ULC Act) pending immediately before the commencement of the Repeal Act, before any Court, Tribunal or other authority shall abate. Section 4 saves the proceedings only relating to Sections 11, 13 and 14 of the ULC Act insofar as such proceedings are relatable to the land, the possession of which has been taken by the State Government.

11. We have perused the order dated 27th November, 1983 under Sub-Section (1) of Section 21 of the ULC Act. The legal effect of order under Sub-Section (1) of Section 21 is already noted above. Once there is such an order under Sub-Section (1) of Section 21, the vacant land held in excess of ceiling limit cannot be treated as an excess land for the purposes of Chapter III. Only in case of breach of terms and conditions of the order under Sub-Section (1) of Section 21 that the power under Sub-Section (2) can be exercised by the Competent Authority of declaring the vacant land to be an excess land. On plain

reading of the Repeal Act, the validity of order under Sub-Section (1) of Section 21 has not been saved. Even the power under Sub-Section (2) of Section 21 has not been saved. Therefore, till the date of Repeal (i.e. 29th November, 2007), the said land was not a vacant land held in excess of ceiling limit. Though the Repeal Act does not save the validity of an order under Sub-Section (1) of Section 21 of the ULC Act, after 29th November, 2007, the provisions of Chapter III cannot be applied to the said land.

12. Apart from the recitals in the Sale Deeds which record that the land was in possession of the original owner and the possession thereof was taken on 5th June, 2010 under the provisions of the said Act of 2002, the report dated 28th March, 2012 submitted by the second Respondent to the State Government does not record that any steps under Sub-Section (3) and Sub-Section (5) of Section 10 of the ULC Act were taken by the Respondents before 29th November, 2007.

13. Therefore, in the present case, the law laid down by the Division Bench of this Court in the case of *Voltas* will squarely apply. After 29th November, 2007, no proceedings under the ULC Act can continue in relation to the said land. Accordingly, the Petition must succeed and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (b);
- (ii) As a consequence of grant of relief in terms of prayer clause (b), the remark in the other rights column in 7/12 extract that the said land is not transferable on the ground of applicability of ULC Act shall be deleted within a period of three months from today;
- (iii) If the sale in favour of the Petitioner is otherwise valid, steps shall be taken to mutate the name of the Petitioner to the revenue records in accordance with the provisions of the Maharashtra Land Revenue Code, 1966;
- (iv) The Petition is disposed of on above terms. There will be no order as to costs.

(A.K. MENON, J)

(A.S. OKA, J)