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

**WRIT PETITION NO.2200 OF 2009
WITH
CIVIL APPLICATION NO.1508 OF 2015
IN
WRIT PETITION NO.2200 OF 2009**

Sanjay Prabhakar Jarag
Age about 60 years,
Residing at Revision Survey No.788/4,
Plot No.9X10, B Ward,
Baba Jarag Nagar,
Kolhapur

...Petitioner

Versus

1) Competent Authority (ULC Act)
Kolhapur Urban Agglomeration and SDO,
Radha Nagari Division,
Kolhapur.

2) The State of Maharashtra

3) The Principal Secretary,
Urban Development Department
Mantralaya, Mumbai.

...Respondents.

Mr.S.G.Karandikar, for the Petitioner.

Mr.V.S.Gokhale, AGP for the Respondent Nos.1 to 3.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 1st JULY, 2015.

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

1. Heard the learned counsel appearing for the petitioner and the learned AGP for the respondents. Rule has been already issued. Taken up for hearing.

2. This petition concerns an order made under sub-section 1 of Section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act) on 7th May, 1985 by the Collector and the Competent Authority of Kolhapur Urban Agglomeration. It is not necessary to set out in detail the events which have taken place after the said order was passed. The only event which is material is the repeal of the ULC Act in the State of Maharashtra w.e.f. 29th November, 2007. The first substantive prayer made in this petition is for a declaration that the order dated 7th May, 1985 passed by the Collector and the Competent Authority of Kolhapur Urban Agglomeration under the provisions of sub-section 1 of Section 21 of the ULC Act has come to an end by virtue of coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 w.e.f. 29th November,

2007. The second prayer is for setting aside the letter dated 10th May, 2008 issued by the Competent Authority under the ULC Act to the Sub-Registrar of Assurances calling upon him not to register any documents in respect of the lands covered by orders under Sections 20 and 21 of the ULC Act, without the no objection in writing of the Competent Authority.

3. There is an affidavit-in-reply filed by Shri Suresh Kakani, Deputy Secretary to the Government, Urban Development Department, Mumbai. Apart from factual contentions, a contention has been raised in the said reply that though the Repeal Act may not be specifically saving the orders under the provisions of sub-section 1 of Section 21 of the ULC Act, the intention of the Repeal Act is to save all exemptions granted under the ULC Act.

4. The question whether the validity of the orders passed under the provisions of sub-section 1 of Section 21 of the ULC Act is saved by the Repeal Act has already been dealt with by this Court in Writ Petition No.1178 of 2014 in the case of ***M/s.Swastik Constructions v/s State of Maharashtra and Another.,*** by Judgment and Order dated 11th March,

2015. Paragraphs 9 to 11 of the said Judgment and Order reads thus :-

- “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.”

5. Thus, it is already held by this Court that the Repeal Act does not save the validity of an order under sub-section 1 of Section 21 of the ULC Act. This Court also held that even the power under sub-section 2 of Section 21 of the ULC Act has not been saved.

6. The legal effect of the order dated 7th May, 1985 under sub-section 1 of section 21 of the ULC Act is that till 29th November, 2007 the land subject matter of the said order was not a vacant land held in excess of ceiling limit and therefore, after the repeal of the ULC Act with effect from 29th November, 2007 the provisions of Chapter III cannot be applied to the said land.

7. As already held in the case of *M/s.Swastik Constructions (supra)*, the law laid down by the Division Bench of this Court in the case of the ***Voltas Limited vs. The Additional Collector and Competent Authority***¹ will squarely apply.

8. Our attention is invited to the letter dated 10th May, 2008 by which the Competent Authority of the Kolhapur Urban Agglomeration has informed the Sub-Registrar of the Assurances nos.1, 2, 3 and 4 not to register any document of transfer concerning the lands subject matter of orders under Sections 20 and 21 of the ULC Act without the no-objection of the Competent Authority.

9. Therefore, it is necessary to clarify that the direction contained in communication dated 10th May, 2008 will not apply to the land subject matter of this petition. Accordingly, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (b) ;
- (ii) We clarify that the direction contained in letter dated 10th May, 2008, addressed by the Competent Authority under the ULC Act of Kolhapur Urban Agglomeration to the Sub-

¹ (2008) 5 ALL MR 537

Registrar of Assurances nos.1, 2, 3 and 4 (Exhibit – 'N' to the petition) shall not apply to the properties subject matter of the order dated 7th May, 1985 (Exhibit 'A' to the Petition), which is the subject matter of challenge in this petition ;

- (iii) The petition is disposed of on the above terms ;
- (iv) There shall not be order as to costs.

10. Civil Application No.1508 of 2015 does not survive the same is also disposed of.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)