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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1808 OF 2014

Mrs. Banu B. Mushtaq Surme	]	
Age: 55 yars, Occu: Household,	]	
through Power of Attorney	]	
Mr. Wasim Abdul Rahim Khan,	]	
Age: 28 years, Occ: Business,	]	
R/at Vushama Palace, 'B' Wing,	]	
Mumbai Pune Road, Taluka and	]	
District Thane.	]	..Petitioner.

V/s.

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | The State of Maharashtra, |] | |
| | Through Department of Urban |] | |
| | Development, Mantralaya, |] | |
| | Mumbai. |] | |
| | |] | |
| 2. | The Upper Collector & Competent] | | |
| | Authority, Thane Urban |] | |
| | Agglomeration, having office at |] | |
| | Upper Collector's Office, Thane. |] | |
| | |] | |
| 3. | Thane Municipal Corporation, |] | |
| | through Commissioner, Almeida |] | |
| | Road, Panchpakhadi, Thane. |] | ..Respondents. |

Mr. S.M.Oak i/b. Mr.Sagar Anant Joshi for the petitioner.

Mrs. M.P.Thakur, A.G.P. for respondent Nos.1 & 2.

Mr.Mandar Limaye for respondent No.3.

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

DATED : 6TH JANUARY, 2015

ORAL JUDGMENT (PER A.S.OKA, J)

1. Notice for final disposal was issued on 26th September, 2014. The petitioner is claiming to be the owner of a land admeasuring 7660 sq. mtrs. bearing Survey No.95 of village Kausa, Taluka and District Thane. The petitioner filed a statement under section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (in short 'ULC Act'). Initially, an order was made under sub-section (4) of section 8 of the ULC Act on 31st December, 1998. By further order dated 24th August, 1999 the original order under sub-section (4) of section 8 was modified. As per the modified order, out of the total holding of the predecessor of the petitioner comprising of the lands bearing Survey No.93 (part) and Survey No. 95 of village Kausa and Survey No.166 of village Shil, it was declared that the predecessor of the petitioner was holding a vacant land totally admeasuring 22,117.13 sq. mtrs. in excess of the ceiling limit. By the said order dated 24th August, 1999, it was directed that

out the land bearing Survey No.95, the excess land would be 7256 sq. mtrs. The notification under sub-section (3) of section 10 was issued on 4th December, 2004.

2. On 25th February, 2005 the second respondent (The Additional Collector & Competent Authority) issued a notice under sub-section (5) of section 10 of the ULC Act calling upon the petitioner to hand over the possession of the excess land within a period of thirty days from the date of service of notice. It appears that on the basis of the said notice, an entry was made in the revenue record. The State Government purported to allot the surplus land admeasuring 7256 sq. mtrs. out of Survey No.95 of village Kausa to the Municipal Corporation of the city of Thane which is the third respondent herein. The second respondent by addressing a letter dated 25th October, 2013 claimed that the possession of the surplus land has been handed over to the third respondent. The petitioner is relying upon the information furnished by the public information officer of the third respondent-Corporation which discloses that the possession of surplus land was not handed over to the said Municipal Corporation. The present petition is for a declaration that the proceedings under the ULC in relation to the excess land out of survey No.95 (part) of village Kausa, Taluka & District Thane stand abated. The petitioner has relied upon the decision of this

Division Bench of this Court in *Voltas Limited V/s. Additional Collector of Competent Authority, Thane* [2008 (5) MR 537].

3. There is a reply filed by the second respondent. In the reply and in particular in paragraph 4, there is a specific statement on oath that though the procedure under sub-section (5) of section 10 was followed, the actual and physical possession of the subject land is not taken by the said respondent.

4. There is an affidavit of one Mr.Pramod R. Nimbalkar, the Town Planning Officer of the third respondent Corporation. In the said affidavit, it is stated that the State Government allotted the surplus land out of Survey No.95 (part) along with four other lands to the said Municipal Corporation for rehabilitating the persons who are likely to be affected by the JNNURM scheme. Vide a letter dated 25th February, 2010 a request was made to the Tahsildar, Thane to place the Municipal Corporation in possession of the surplus land out of Survey No.95 (part). However, it is not stated that the third respondent Corporation was put in possession.

5. The ULC Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. The said Repeal Act came into

force with effect from 29th November, 2007 in the State of Maharashtra.

6. The effect of sections 3 and 4 of the Repeal Act was considered by this Court in the case of Voltas Ltd. The Division Bench held that if the possession of vacant land held in excess of the ceiling limit is not taken over in accordance with sub-section (5) of section 10 of the ULC Act before 27th November, 2007, in view of the express provisions of the Repeal Act and in particular, section 3 read with section 4, the proceedings under ULC stand abated on the repeal of the ULC Act.

7. In the case of *Vinayak Kashinath Shilkar V/s. Deputy Collector and Competent Authority & Ors. [(2012) 4 Supreme Court Cases, 718]*, the Apex Court considered the effect of section 3 of the Repeal Act. The Apex Court held that where the possession of the excess vacant land has not been taken over by the State Government before 29th November, 2007, the proceedings under the ULC Act would not survive.

8. In view of the facts stated above, the proceedings under the ULC Act in relation to the land in question will stand abated.

9. Accordingly, we pass the following order:-

- (i) We declare that the proceedings in relation to excess land admeasuring 7256 sq. mtrs. out of the land bearing Survey No.95 (part) of village Kausa, Taluka & District Thane under the Urban Land (Ceiling & Regulation) Act, 1976 stand abated;
- (ii) The petition is allowed on above terms;
- (iii) All concerned to act on an authenticated copy of this order.

(A.K.MENON, J.)

(A.S.OKA, J.)