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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5871 OF 2014**

Mr. Kantilal Nathmal Baldota and Ors. ... Petitioners

Versus

The Collector, Pune and Ors. ... Respondents

Dr. Virendra V. Tulzapurkar, Senior Advocate i/by Mr. Nachiket Vilol Khaladkar, for the Petitioners.

Mr. Nitin P. Deshpande, AGP, for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**

DATE : 2nd SEPTEMBER, 2015

P.C.

. Heard the learned counsel appearing for the Petitioners and the learned AGP for the Respondents. Rule. The learned AGP waives service for the Respondents. Forthwith taken up for final disposal.

2. The Petitioners are claiming to be the owners of the land more particularly described in paragraph 1 of the Writ Petition. The Petitioners are claiming title in respect of the said land on the basis of a Deed of Exchange executed by and between the Twelfth Petitioner and the National Chemical Laboratory. On the basis of the statement filed by

the Twelfth Petitioner under Sub-section (1) of Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”), an order under Sub-section (4) of Section 8 was made by the Competent Authority on 16th November, 1987.

3. A Revision Application was preferred by the Petitioners by invoking Section 34 of the ULC Act to the State Government. An order dated 21st June, 1999 was passed by the State Government in Revision by which the order under Sub-section (4) of Section 8 was set aside and a fresh order was directed to be made.

4. The Petitioners on 7th November, 2012 made an application to the District Collector for grant of permission for conversion of the said land for non-agricultural purposes. A report was called for by the Collector from the Competent Authority of Pune Urban Agglomeration. The Competent Authority declined to grant No Objection Certificate for grant of permission to change the user of the land.

5. By a communication dated 21st May, 2013 which is the subject matter of challenge in this Petition, the Collector informed the Petitioners that the record of the orders passed by the State Government (Hon'ble the Minister of State Government for Housing and ULC) has

been seized by the State CID and the case of the Petitioners is subject matter of an enquiry before One Man Committee. The said communication is based on the communication dated 18th March, 2013 issued by the Competent Authority under the ULC Act to the Collector declining to grant a No Objection due to pendency of the inquiry before the One Man Committee and considering the police investigation.

6. The challenge in this Petition is to the aforesaid communications. A writ of mandamus is prayed for directing the Competent Authority not to refuse No Objection Certificate.

7. There is a reply filed by one Nilam Bhagat, the Deputy Superintendent of Police, Economic Offences Section, CID, Maharashtra State. There is a reference to investigation carried out by the CID in relation to fake ULC Certificates/documents. It is stated that a charge sheet has been filed in 24 cases out of 29 registered. It is stated that ULC order Nos.904-BA to 908-BA does not form part of the police investigation. It is not in dispute that the case of the Petitioners is covered by ULC order Nos.904-BA to 908-BA. Thus, the said orders are not the subject matter of any investigation by the Investigating Agency.

8. There is an affidavit filed by Shri Subhash Dharmadhikari, Additional Collector and Competent Authority, Pune Urban Agglomeration. He has stated that in case No.906-BA by the order of the Competent Authority dated 16th November, 1987 under Sub-section (4) of Section 8 of the ULC Act an area of 9033.00 sq. meter was declared as a vacant land. He stated that in fact there were five orders being case Nos.904-BA to 908 BA passed with respect to the Twelfth Petitioner. By Judgment and Order dated 21st June, 1999 Revision Application was allowed by the Hon'ble Minister. The affidavit further refers to the report submitted by the One Man Committee on 18th September, 2010. The affidavit discloses that the Annexure-II to the said Report is the list of 19 cases of the orders passed by the then Hon'ble Minister under Section 34 of the ULC Act. Paragraph 11 of the affidavit states that the case of the Petitioners in respect of the land described in paragraph 1 of the Petition is in Annexure-II. The relevant extract of the One Man Committee's Report has been also annexed to the said affidavit. From the said extract it appears that the case of the Petitioners falls in the category of "illegal orders passed by the Hon'ble Minister". The case is not covered by other category such as fake, fabricated and forged documents/orders. Thus, going by the report of the One Man Committee, at highest it can be stated that the order dated 21st June, 1999 passed by the Hon'ble Minister of Housing Department

under Section 34 is illegal. The learned AGP has confirmed the correctness of the statements made in the affidavit of Shri Subhash Dharmadhikari and Nilam Bhagat. We have perused the impugned communications issued by the Collector as well as the Competent Authority. The Competent Authority in communication dated 18th March, 2013 has stated that the case of the Petitioners is subject matter of an inquiry by the One Man Committee and that record of the case has been seized by the State CID. On this ground, the Additional Collector and Competent Authority under the ULC Act refused No Objection Certificate and on the ground of refusal of the No Objection Certificate that the Collector has rejected the application made by the Petitioners.

9. Going by the stand taken in the affidavits filed on record, what is stated in the communication dated 18th March, 2013 issued by the Competent Authority is factually incorrect. The documents or orders under the ULC Act subject matter of the case of the Petitioners are not the subject matter of any investigation by the police and no charge sheet has been filed by the police. Secondly, One Man Committee in its report has stated that the case falls in the category of cases where the orders of the Hon'ble Minister of Urban Development are found to be illegal. Admittedly, the order of the Hon'ble Minister in

the present case as of today has attained finality. Therefore, the Competent Authority could not have denied No Objection Certificate on the basis of the reasons incorporated in the letter dated 18th March, 2013 (Exhibit-N to the Petition).

10. Therefore, both the impugned communications will have to be set aside. Before we dispose of the Petition, we must note another stand taken in the reply filed by the Competent Authority. The said stand is based on the order of stay granted by the Apex Court in Special Leave to Appeal (Criminal) No.2404 of 2011. By the said order, the Apex Court has stayed the Judgment and Order dated 22nd February, 2011 in Criminal PIL No.6 of 2008 passed by the Division Bench of this Court by which a Special Investigation Team of CBI was ordered to be constituted in relation to the various cases under the ULC Act. As the case of the Petitioners is not the subject matter of any First Information Report or any pending criminal investigation or charge sheet, the pendency of the Special Leave Petition and stay granted by the Apex Court is not a ground to keep the application made by the Petitioners pending.

11. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) The communications dated 21st May, 2013 and 18th March, 2013 are hereby quashed and set aside;
- (ii) We direct the second Respondent to consider the case of the Petitioners for grant of No Objection Certificate for change of user of the land in question in accordance with law and to take appropriate decision thereon within a period of one month from the date on which an authenticated copy of this Judgment is produced by the Petitioners before the second Respondent;
- (iii) The second Respondent shall communicate his decision to the first Respondent;
- (iv) The first Respondent shall take appropriate decision on the application made by the Petitioners for the change of user within a period of one month from the date on which the decision of the second Respondent is communicated to the first Respondent;
- (v) We make it clear that the application for grant of No Objection Certificate and the application for grant of permission to use the land for non-agricultural use shall not be rejected on the ground that the aforesaid Special Leave Petitions are pending before the Court or on the

ground that the case of the Petitioners is included in the Annexure -II to the report of the One Man Committee;

- (vi) We make it clear that this order will not prevent the State Government from taking appropriate proceedings in accordance with law as regards the order which is found to be illegal by the One Man Committee;
- (vii) All contentions on merits of the application made by the Petitioners for grant of permission for change of user are kept open;
- (viii) Rule is made absolute on above terms;
- (ix) All concerned to act upon an authenticated copy of this order.

(VL. ACHLIYA, J)

(A.S. OKA, J)

Certified to be true and correct copy of the original signed
Judgment/order.