IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4589 OF 2012

1. Metropolitan Infra Housing Private Limited, a Company registered under the Indian Companies Act, 1956 and having its registered office at Gammon House, Veer Savarkar Road, Prabhadevi, Mumbai – 400 025.)

2. Dinesh Dharamdas patel, Director of Petitioner No.1, having his office at Gammon House, Prabhadevi, Mumbai – 400 025.).. Petitioners

Versus

1. The State of Maharashtra,)

2. The Tehsildar, Kalyan, having his address at Opp. Kalyan Court near Station Kalyan West.)

3. The Additional Revenue Commissioner, (Konkan Region), Mumbai.).. Respondents

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Shri Milind Sathe, Senior Advocate along with Shri Prakash Shah, Shri Jitendra Shukla and Shri Durgaprasad Poojari i/by PDS and Associates for the Petitioners.
Mrs. M.P. Thakur, AGP for the Respondent Nos.1 to 3.

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CORAM : A.S. OKA & A.S.GADKARI, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 15TH NOVEMBER 2014

DATE ON WHICH JUDGMENT IS PRONOUNCED: 11TH FEBRUARY 2015

JUDGMENT (PER A.S. OKA, J)

1. Notice for final disposal at admission stage was issued by this Court. Rule. The learned Assistant Government pleader (for short 'AGP') waives service.

2. The lands which are subject matter of this Writ Petition under Article 226 of the Constitution of India are divided in two categories referred as "Part A" and "Part-B" which read thus:

> “"**Part A**"**-** Piece or parcel of lands situate at Villages Gharivli, Usarghar, Sandap, Sagaon, Sonarpada in the Registration district and sub-district Thane in the State of Maharashtra totally admeasuring 5,41,446 sq. meters and more particularly described in the Schedule of Deed of Conveyance annexed at Exhibit “A” to this Petition”.
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> "**Part-B**"**-** All piece or parcel of vacant lands situate at villages Gharivali Survey No.42/A & 55, Usarghar Survey No.93/P & 95 and Sandap Survey No.21-p in the registration District and sub District at Thane totally admeasuring 1,82,003 sq. meters more particularly described in the Schedule of the Deed of Conveyance annexed as Exhibit-”B” to this Petition'.

3. The issue involved in this Petition under Article 226 of the Constitution of India is whether the State Government is entitled to claim unearned income from the Petitioners in relation to the Part “B” lands. The other issue is whether the said lands are class-I or class-II lands in accordance with Section 29 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”).

FACTS

4. The Premier Automobiles Limited (for short “PAL”) was the owner of large pieces of lands. Out of which, the lands admeasuring 7,23,449 sq. meters were sold by the PAL to another Company by the name Pal Peugeot Limited (for short “PPL”) by a registered Sale Deed dated 27th March 1996. The ICICI Bank Limited which was appointed as a Trustee of PPL for its non-convertible debentures, filed Suit No.3636 of 1999 in this Court for enforcing mortgage for recovery of the outstanding amounts under the non-convertible portion of debentures. The PPL had executed a mortgage of the said lands admeasuring 7,23,449 sq. meters in favour of ICICI Bank Limited. In the said suit, the Court Receiver, High Court, Mumbai was appointed as a Receiver of the mortgaged property of PPL who was directed to sell the movables and immovable properties of the PPL by public auction. Accordingly, the Court Receiver had published a notice inviting claims on the properties of PPL.

5. The Sub-Divisional Officer, Thane, directed the Tahsildar, Kalyan, to ascertain the nature of the lands held by PPL and decide the class of occupancy thereof. Accordingly, on 27th June 2005, the Second Respondent classified the said lands as class-II occupancy and made mutation entries accordingly. In the meanwhile, winding up of PPL was

ordered by this Court and the Official Liquidator was appointed as the Liquidator of the PPL. The Suit No.3636 of 1999 was decreed by this Court.

6. On 7th September 2007, this Court permitted the First Petitioner Company, being a holder of more than 95% of the debentures of PPL to bid for the properties of PPL. This Court held that the First Petitioner Company was entitled to set off, in event the First Petitioner was declared as a successful bidder. On 2nd November 2007, on the basis of the decree, the Court Receiver published a public notice declaring that the auction of the said lands of the PPL and movable assets will be held on 27th November 2007.

7. A Notice of Motion No.4699 of 2007 was taken out in the suit by the State Government praying for the following reliefs.

> "(a) That this Hon'ble Court be pleased to modify the Public Notice (Exhibit-G to the affidavit in support hereof) to show the lands as more particularly described at Exhibit-A to the Affidavit in support hereof as Class II occupancy lands;
>
> (b) That this Hon'ble Court be pleased to permit the Applicant to withdraw the unearned income to the extent of 75% of the sale proceeds of the lands as more particularly described at Exhibit-A to the Affidavit in support hereof; As per the table shown in Exhibit "A-1" to the Affidavit in support thereof;

(c) That this Hon'ble Court be pleased to direct the Respondents not to part with the sale proceeds in respect of the said lands as more particularly described at Exhibit-A to the Affidavit in support hereof as per the table shown in Exhibit "A-1" to the Affidavit in support thereof."

8. The lands described in the Exhibit-A to the affidavit in support of the aforesaid Notice of Motion were "Part-B" lands. By the order dated 4th March 2008 passed by the learned Single Judge on Notices of Motion Nos.4378 of 2007, 4699 of 2007, 4701 of 2007, 262 of 2008 and 716 of 2008, the Court Receiver was directed to proceed with the sale of "Part A" lands. It was clarified that the Notice of Motion No.4699 of 2007 will remain pending only in relation to the claim of the State of Maharashtra in respect of the lands admeasuring 1,82,003 sq. meters (Part "B" lands). Material part of the said order of the learned Single Judge reads thus:

"18. By this order therefore Notices of Motion Nos.4378 of 2007, 4701 of 2007, 716 of 2008 and 262 of 2008 are disposed of. Further Notice of Motion No.4699 of 2007 is also disposed of in so far as it concerns the said 5,41,446 sq. mtrs. It remains on the file only in respect of the said 1,82,003 sq. mtrs. The above Notices of Motion are accordingly disposed of by the following order:-

(i) The Court Receiver shall proceed to sell the portion of the said land admeasuring about 5,41,446 sq. mtrs i.e. the suit land except the portion admeasuring about 1,82,003 sq. mtrs. particulars whereof are at Exhibit "A" to Notice of Motion No.4699 of 2007 on the terms and conditions contained in the draft settled by this order placed on record and marked “Y”. Each of the pages has been initialled by me. I have deleted clause 17 from this draft.

(ii) The above Notices of Motion are disposed of in terms of this order. Notice of Motion No.4699 of 2007 remains pending only in relation to the claim of the State of Maharashtra in respect of the said 1,82,003 sq. mtrs. This Notice of Motion is adjourned to 26.32008.

(iii) **It is made clear that the State of Maharashtra shall not be entitled to any claim on the land itself admeasuring about 5,41,446 sq. mtrs.** upon the sale thereof to the auction purchaser being confirmed.

(iv) The possession of the said 5,41,446 sq. mtrs. shall be handed over by the Court Receiver to the auction purchaser, if any, only after the land is demarcated by the D.I.L.R. The D.I.L.R. shall demarcate both the portions namely the 5.41,446 sq. mtrs. and the 1,82,003 sq. mtrs. Separately...”

(emphasis added)

9. Notice of Motion No.4699 of 2007 was made absolute in terms of the prayer clauses (a), (b) and (c) thereof by an order dated 30th June 2008 by the learned Single Judge of this Court. Thus, the "Part-B" lands were ordered to be shown as class-II occupancy in the auction notice. In terms of the prayer clause (b) of the Notice of Motion, the State Government was permitted to withdraw unearned income to the extent of 75% of sale proceeds of "Part-B" lands and in terms of prayer clause (c), a direction was issued to the Respondents in

the Notice of Motion not to part with sale proceeds in respect of the "Part-B" lands. The said order dated 30th June 2008 was challenged by the ICICI Bank Limited by preferring an Appeal being Appeal No.428 of 2008 before a Division Bench. By the judgment and order dated 21st July 2010, the Appeal was partly allowed. The order dated 30th June 2008 on the Notice of Motion No.4699 of 2007 was set aside on a statement made by the learned Senior Counsel representing the State that the State may be permitted to delete the prayer clauses (b) and (c) from Notice of Motion No.4699 of 2007 with liberty to adopt appropriate proceedings. However, the Division Bench directed in Paragraph 3 of the said order that the Court Receiver shall mention in the public notice of auction that he has received a claim from the State Government on the basis of the order dated 17th April 2008 of the Sub-Divisional Officer that the lands which are subject matter of Notice of Motion ("Part-B" lands) are class-II occupancy lands within the meaning of the said Code.

10. By the order dated 21st January 2011, the learned Single Judge passed an order on Court Receiver's Report No.230 of 2010 by which an auction sale of "Part A" lands in favour of the First Petitioner Company was confirmed. The bid amount offered by the First Petitioner was Rs.601 crores. By the further order dated 24th February 2011, the First Petitioner was declared as the successful bidder of "Part-B" lands

for an amount of Rs.125.01 crores. Clauses (iii) and (iv) of the said dated 24th February 2011 order read thus:

> "(iii) the Receiver and the sale proceeds received by him will not be liable for the payment of any liabilities/dues. If the State of Maharashtra is interested in raising the demand towards un-earned income, they shall raise the demand on M/s. Metropolitan Infrahousing Pvt. Ltd. Upon raising of the said demand, M/s. Metropolitan Infrahousing Pvt. Ltd. shall deal with the demand in accordance with the provisions of law.
>
> (iv) The Court is informed that the Sub-Divisional Officer at Thane has passed an order declaring part "B" property as Class II occupancy land. That order is challenged by the Official Liquidator by filing an Appeal against the said order before the Deputy Collector. That Appeal is pending. Liberty is granted to M/s. Metropolitan Infrahousing Pvt. Ltd. to make an application for joining in the said Appeal proceedings if M/s. Metropolitan Infrahousing Pvt. Ltd. desire to do so. If that application is filed, that application shall be disposed of by the concerned Appellate Authority in accordance with provisions of law."

11. We must note here that the name of PAL was entered in the revenue records on the basis of several mutation entries. The Sub-Divisional Officer by his communication dated 30th December 2004 directed the Tahsildar, Kalyan, to ascertain the nature of the occupancy of the lands occupied by PAL and whether the said lands are subject to the payment of unearned income under the Government Resolution dated 21st November 1957. On 10th January 2005, an order was passed

by the Tahsildar, Kalyan, recording that the said lands are class-II lands. Therefore, separate Appeals were preferred by the PAL for challenging the various mutation entries. The said Appeals were decided by the Sub-Divisional Officer. On 16th October 2006, an order of remand was passed in relation to the Mutation Entry Nos.207, 909, 1662, 380, 867 and 216. The Mutation Entry No.775 was, however, set aside. After remand, again an order dated 3rd September 2007 was made for making an entry of Occupancy Class-II in the 7/12 extracts. This order dated 3rd September 2007 was challenged by the PAL by filing an Appeal before the Sub-Divisional Officer. By an order dated 15th February 2011, the said Appeal preferred by the PAL was dismissed and the contention of the PAL that the lands are held as Occupancy Class-I was rejected. However, the Deputy Collector (Appeals) made certain observations regarding the right of the State to recover the unearned income. There was also a separate Appeal preferred by the Official Liquidator before the Deputy Collector (Appeals). The said Appeal was disposed of in the light of the order dated 15th February 2011. Against the order dated 15th February 2011, the PAL preferred a Revision Application before the Additional Commissioner. The Additional Commissioner confirmed the order of the Tahsildar directing the entry of Occupancy Class-II. However, he came to the conclusion that the issue of unearned income was discussed by the Deputy Collector (Appeals) beyond the scope of the Appeal and, therefore, the observations made by the Deputy Collector (Appeals) on the said issue were set aside.

12. On 19th January 2012, the Tahsildar, Kalyan, issued a notice to the First Petitioner calling upon the First Petitioner to pay the following amounts:-

Sr. No.	Description	Amount payable in Rs.
1.	Unearned income payable on the transfer of land to M/s. Pal Peugeot Limited by M/s. Premier Limited in 1996.	370,81,23,461/-
2.	Unearned income payable on current transfer of land	92,70,47,656/-
3.	Arrears of land revenue and N.A. Tax from year 2001-02 up to 2011-12	15,81,867/-
	Total amount payable to Government	463,67,52,984/-

13. The Tahsildar informed the First Petitioner that unless the aforesaid amount of Rs.463,67,52,984 was paid, the entry on the basis of the sale transaction in favour of the First Petitioner will not be recorded in the revenue record. Another notice was issued by Tahsildar on 21st March 2012 addressed to the First Petitioner stating that if the amount was not paid, the same shall be recovered as an arrears of land revenue.

14. In this Petition under Article 226 of the Constitution of India, the challenge is to the communications dated 19th March 2012 and 21st March 2012. There is also a challenge to the order dated 17th February 2012 passed by the Additional Commissioner, Konkan Division in revision. A writ of mandamus is sought against the Respondents to forthwith enter the name of the First Petitioner as the Purchaser of “"Part A"” and "Part-B" lands.

15. There is a reply filed by Shri Shekhar Babasaheb Ghadge, Tahsildar, Kalyan to the Petition. The Tahsildar, Kalyan relied upon the Government Resolution dated 29th May 2006 and urged that in view of the said Government Resolution, unearned income can be recovered. It is contended that the Court Receiver, PPL and the First Petitioner ought to have sought permission of the State Government for transfer of Class-II lands. In Paragraph 26, it is stated that the entire demand under the communications dated 19th March 2012 and 21st March 2012 is towards the unearned income of "Part-B" lands.

SUBMISSIONS

16. The learned senior counsel appearing for the Petitioners invited our attention to a decision of the Division Bench of this Court in the case of *Jaikumari Amarbahadursingh & Others v. State of Maharashtra, through the Secretary, Revenue & Forest Department &*

Another[1]. He submitted that as far as "Part-A" lands are concerned, as per the orders of this Court, the State has no claim for unearned income. He urged that in any case, there is no legal impediment in the way of making a mutation entry on the basis of the registered sale deed executed in favour of the First Petitioner. He submitted that the Division Bench has held that the State Government is free to impose such conditions and restrictions permissible by law in respect of the occupants covered by class-II and the Government Lessees which may include a condition of levying of unearned income. He submitted that the law laid down by a Division Bench of this Court is that the power to levy unearned income can be invested in the State Government only if the State Legislature expressly or by implication authorises it to do so and not otherwise. He urged that the "Part-B" lands will be governed by the law laid down by this Court. He urged that the PAL purchased the lands forming part of lands comprising of "Part-B" from a Village Panchayat by registered conveyances even before the said Code came into force. He urged that the lands were recorded as Class-II Occupancy lands without giving notice to PPL. He urged that the rights vested in the PPL were accrued to PAL before the said Code came into force. He submitted that the "Part-B" lands ought to be classified as Class-I and in any event, no unearned income is payable as there is no such provision. The learned AGP submitted that this Court while confirming the sale of "Part-B" lands permitted the State to make a claim of unearned income

1 2009(2)Bom.C.R. 407

and accordingly, the said claim has been made. She submitted that considering the conditions on which the sale to PAL was permitted, the "Part-B" lands will have to be classified as class-II occupancy. She urged that in view of Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (for short “the Land Disposal Rules”), levy of unearned income can be made.

CONSIDERATION OF SUBMISSIONS ON THE PART “A” LANDS

17. We have given careful consideration to the submissions. As far as classes of persons holding the lands are concerned, Section 29 of the said Code is material, which reads thus:

> “29. Of the Grant of land Classes of persons holding land.
>
> (1) There shall be under this Code the following classes of persons holding land from the State, that is to say
>
> (a) Occupants - Class I,
> (b) Occupants - Class II,
> (c) Government lessees.
>
> (2) Occupants - Class I shall consist of persons who
>
> (a) hold unalienated land in perpetuity and without any restrictions on the right to transfer ;
>
> (b) immediately before the commencement of this Code hold land in full occupancy or Bhumiswami rights without any

restrictions on the right to transfer in accordance with the provisions of any law relating to land revenue in force in any part of the State immediately before such commencement; and

(c) if they hold land in Bhumidhari rights in any local area in Vidarbha which has not been excepted under section 150 of the Madhya Pradesh Land Revenue Code, 1954 and are permitted hereafter subject to rules made by the State Government in this behalf, on payment of a premium (not exceeding three times the assessment payable in respect of such land) to be included in Occupants- Class I.

(3) Occupants- Class II shall consist of persons who,

(a) hold unalienated land in perpetuity subject to restrictions on the right to transfer ;

(b) immediately before the commencement of this Code hold

(i) land in Vidarbha in Bhumiswami rights with restrictions on the right to transfer or in Bhumidhari rights under the Madhya Pradesh Land Revenue Code, 1954; and

(ii) Elsewhere hold land in occupancy rights with restrictions on the right to transfer under any other law relating to land revenue; and

(c) before the commencement of this Code have been granted rights in unalienated land under leases which entitle them to hold the land in perpetuity, or for a period not less than fifty years with option to renew on fixed rent, under any law relating to land revenue and in fore before the commencement of this Code; and all provisions of this Code relating to the rights, liabilities and responsibilities of

> Occupants- Class II shall apply to them as if they were Occupants-Class II under this Code".

18. "Unalienated land" is not specifically defined in the said Code. The term "alienated" has been defined in Sub-section (2) of Section 2 of the said Code. The alienated land means a land transferred in so far as the rights of the State Government to payment of rent of land revenue are concerned, wholly or partially, to the ownership of any person. Sub-section (1) of Section 29 of the said Code refers to persons holding land. Sub-section (13) of Section 2 defines "holding". It means a portion of land held by a holder. Sub-section (12) of Section 2 defines "to hold land". It means to be lawfully in possession of land, whether the possession is actual or not. Thus, a person who is holding unalienated land in perpetuity subject to restrictions on the right to transfer becomes Occupant Class-II. A person who is holding unalienated land in perpetuity without any restrictions on the right to transfer becomes occupant class-I.

19. The sale of "Part A" lands was permitted by this Court under the order dated 4th March 2008 passed on Notice of Motion No.4378 of 2007 and other connected Notices of Motion. We have already quoted Paragraph 18 of the said order. Clause (iii) of Paragraph 18 of the said order makes it very clear that the State of Maharashtra shall not be entitled to make any claim in respect of the lands admeasuring about

5,41,446 sq. meters (“"Part A"” lands). In paragraph 12 of the said judgment and order, this Court has specifically clarified that the Purchaser of "Part A" lands would acquire a clear title to the same without any claim of the State of Maharashtra including the claim in respect of the unearned income. It is not shown by the Respondents that “"Part A"” lands were held subject to any restriction on right to transfer. We have perused the description of the lands transferred by the Collector to PAL and the lands vesting in the Village Panchayat which were purchased by the PAL in the order of Sub-Divisional Officer dated 17th April 2008. The lands in “"Part A"” are not covered by both the categories of lands specified in the said order of Sub-Divisional Officer dated 17th April 2008. It is not the case that the said lands were held by a Village Panchayat. It is not the case of the Respondents that the Part “A” lands were granted by the State to PAL. It is not the case of the Respondents that there was any restriction on transfer of the Part “A” lands. Therefore, the Part “A” lands cannot be of Occupancy Class-II.

20. We must record here that in paragraph 26 of the affidavit filed by Shri Shekhar Babasaheb Ghadge filed on behalf of the Respondents, it is specifically contended that the impugned demand towards the unearned income is in respect of the "Part-B" lands. Thus, no demand has been made in respect of the "Part A" lands and in any event, such a demand could not have been made by the State

Government in the light of the order dated 4th March 2008 of this Court. Under the impugned communications dated 19th March 2012 and 21st March 2012, it is directed that unless the unearned income demanded in respect of the "Part-B" lands is deposited, a mutation entry in the name of the First Petitioner in respect of both the lands will not be made. We have already noted that under the order dated 21st January 2011, the sale of "Part A" lands was confirmed. Accordingly, on 12th January 2012, a registered sale deed was executed in respect of the "Part A" lands in which the First Petitioner is shown as the Purchaser. There is a separate registered sale deed executed in relation to the "Part-B" lands. Thus, the sale of "Part A" and "Part-B" lands is under different registered conveyances. The State Government, as per the order of this Court, was not entitled to make any claim towards the unearned income in respect of the lands comprising of "Part A". As stated earlier, the demand made for unearned income and the other amounts is only in relation to the "Part-B" lands. As of today, there is no charge on "Part A" lands for the recovery of the alleged liability in relation to the "Part-B" lands. Therefore, a direction not to make a mutation entry in the name of the First Petitioner on the basis of the sale deed in respect of the “"Part A"” lands is illegal and as of today, there is no legal impediment in the way of the State Government giving effect to the sale in relation to the "Part A" lands in the Revenue Records.

<u>CONSIDERATION OF SUBMISSIONS ON THE PART "B" LANDS</u>

21. As far as "Part-B" lands are concerned, there are two issues involved. The first one is whether the said lands can be categorized as "Occupancy Class-II" or "Occupancy Class-I" lands. If answer to the said issue is that the "Part-B" lands can be categorized as Class-II, then the second issue will be whether there is a power to claim unearned income from the First Petitioner in respect thereof.

22. It appears that the PAL acquired the "Part B" lands vesting in Katai Group Village Panchayat. The same are the lands in Village Gharivali (Survey No.42/A and 55), Usarghar (Survey Nos.93/P and 95) and Sandap (Survey No.21/P). Under Section 55 of the Bombay Village Panchayats Act, 1958, no sale of the property vesting in a Village Panchayat shall be valid unless such sale has been made with the previous sanction of the Chief Executive Officer of the Zilla Parishad. Prior to the Amendment Act No.5 of 1962, Section 55 provided that the previous sanction of the Collector was required. To the additional compilation, an order of sanction dated 9th March 1962 issued by the District Collector, Thane is annexed which shows that the Collector permitted the Group Village Panchayat, Katai, to sell the lands subject

to condition that the same shall be used for industrial purposes and not for any other purposes. There was a further condition that the land shall not be transferred, mortgaged, leased, encumbered or sold in any way by PAL without written permission of the Collector. Subject to the said condition, by a registered sale deed dated 27th March 1962, the said lands comprising of "Part-B" lands were sold by the Group Village Panchayat, Katai to PAL. On 27th March 1996, the lands were purchased by the PPL from PAL. Thus, when the said Code came into force on 15th August 1967, the Part-"B" lands were held by the PAL subject to restrictions on right to transfer and, therefore, the lands were rightly classified as of as Class-II Occupancy. It is not the case of the Petitioners that the PAL converted its occupancy from Class-II to Class-I. Therefore, when the PPL acquired the said lands on 27th March 1996 under the registered sale deed, the PPL became occupants Class-II. It is again not the case of the Petitioners that the occupancy of the PPL was converted into Class-I Occupancy. It is also necessary to note that in the Sale Deed dated 27th May 1996 by which the PPL acquired the said lands, there is a reference therein to a permission granted by the State Government and the District Collector for the sale of the said lands by PAL to PPL. However, a copy of the same is not produced.

23. The public notice published by the Court Receiver on auction specifically records that the lands will be sold on “as is where is basis”. The sale deed executed by the Court Receiver in respect of the Part-"B" lands specifically records that the same have been sold to the First Petitioner on “As is what is basis”. Thus, the First Petitioner has taken Part-"B" lands subject to the condition attached to it that the same shall not be transferred without prior permission of the Collector. Therefore, in our view, the Part-"B" lands have been rightly classified as Class-II Occupancy lands.

DEMAND FOR UNEARNED INCOME IN RELATION TO “PART B” LANDS

24. Now, the issue is whether the unearned income can be recovered in relation to the Class-II Occupancy lands. On this aspect, it will be necessary to make a reference to a decision of the Division Bench of this Court in the case of *Jaikumari*. Paragraph 19 of the said decision reads thus:

> “19. **For the time being, we may safely proceed on the basis that as of now, there is no legislation enacted by the State Legislature which would govern the field of power to levy unearned income. We hasten to record this opinion after having analyzed the relevant enactment and in particular the provisions of M.L.R.C. There is no express provision therein nor it is possible to suggest that the State Legislature purports to do so by implication.** The learned Counsel for the State is

unable to substantiate with reference to any specific provision of M.L.R.C. which would suggest to the contrary. **Indeed, the statutory rules framed under the MLRC, titled as the Maharashtra Land Revenue (Disbursal of Government Lands) Rules, 1971, carve out exception about existence of such authority in relation to grant of land for industrial and commercial purposes. That position is spelt out from clause (c) of Sub-rule (2) of Rule 31 read with Rules 35 and 41 of the said Rules. There is no corresponding provision enabling the State Government to claim or levy unearned income in respect of grant of land for Agricultural use under Part III or residential use under Part IV of the said Rules. Besides, going by the provisions of the said Rules it would apply to fresh grants in respect of unoccupied lands. In other words, the State Government as of now has no authority to levy unearned income in respect of lands in question under whatever title, which would obviously include lands held by occupants-Class I.** In absence of a specific law on this subject, the State Government or its Officers cannot usurp to itself power to levy such charges on the basis of a Government Resolution. **That power to levy unearned income can be invested in the State Government only if the State Legislature expressly or by implication authorises it to do so and not otherwise.** By no means such power can be usurped by an Executive fiat in the form of a Government Resolution. **Suffice it to observe that a Government Resolution cannot be substitute for a "law" to be enacted by the competent legislature so as to affect the unconditional right of the Grantees to transfer and inherit the property.** Till such law is enacted, the State Government and its Officers are bound to honour the commitment in the Lease Deed if already executed and in any case, give effect to the extant provisions of law. To that extent, the Resolution will have to be held as inconsistent with the Scheme of MLRC and the Rules framed thereunder; In particular, with reference to grant of land other than for commercial or industrial purpose. In that, insofar as grant of land for commercial and industrial purposes, there is express provision in the Rule 31(2)(c) enabling the State Government to claim half the unearned income where the land is sold without any

> construction. We are not called upon to consider the validity of that provision”.
>
> (emphasis added)

25. In Paragraph 25, the Division Bench held thus:

> “25. As aforesaid, the exposition in that case will apply on all fours to the occupants who are covered by the definition of the Occupants Class- I as specified in Section 29 of the MLRC. Inasmuch as, occupants class-I have unfettered right to alienate their interest in the land in question. In some of the Petitions reliance was placed on condition which permitted the grantee to transfer the lands in question. It would necessarily follow that these grantees have had full occupancy and complete right to alienate the property; **Whereas, in case of occupants covered by occupants class II and Government lessees situation would be somewhat different. In that, so far as the occupants Class-II and Government Lessees are concerned, their right is not an absolute or unfettered right but is restricted as is provided in the governing statutes. In other words, the State Government will be free to impose such conditions and restrictions permissible by law in respect of occupants Class-II and Government lessees, which may include levying of unearned income”.**
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> (Emphasis supplied)

26. We have already made a reference to the order of this Court dated 24th February 2011 on the Court Receiver's Report No.230 of 2010 in Suit No.3636 of 1999. Clause (iii) of Paragraph 6 of the said order provides that the sale proceeds of the auction of Part “B” lands will not be liable for payment of any liabilities or dues. It records that if the State Government is interested in raising a demand towards unearned income, they shall raise the demand on the First Petitioner.

However, under the said order, this Court did not decide the issue whether the First Petitioner is liable to pay the unearned income. The remedy of the First Petitioner to challenge the demand was kept open. Perusal of the notices dated 19th March 2012 and 21st March 2012 shows that the reliance has been placed on a Government Resolution dated 29th May 2006. The said Resolution is annexed to the affidavit-in-reply. This Court in the aforesaid decision in the case of *Jaikumari* in paragraph 25 holds that in case of occupants class-II, the State Government is free to impose such conditions and restrictions permissible by law which may include levy of unearned income.

27. From the impugned communications dated 19th March 2012 and 21st March 2012, it is apparent that the Tahsildar, Kalyan has mechanically issued the said communications only on the basis of the order of the Divisional Commissioner dated 17th February 2012. In fact, by the said judgment and order, no finding was recorded that the State Government is entitled to claim unearned income. The said issue was not decided under the said judgment and order. The Tahsildar has proceeded on the footing that on the basis of the order of the Divisional Commissioner, he is entitled to demand unearned income. There is also a demand for arrears of the land revenue from the years 2001-2002 to 2011-2012 from the First Petitioner which is the period prior to the auction sale. Moreover, there is nothing placed on record to show that

the Tahsildar had lawful authority to demand the unearned income. The First Petitioner was not heard before raising the demand. Therefore, the impugned demand will have to be set aside only on the ground of breach of the principles of natural justice. If the State Government is entitled to claim unearned income and/or the arrears of land revenue up to the years 2011-2012 from the First Petitioner, the State Government or the Appropriate Officer of the State Government who is entitled to demand the unearned income and arrears of land revenue will have to give an opportunity of being heard to the First Petitioner before raising a demand. The State Government will have to inform the First Petitioner the basis on which the unearned income is being claimed. However, in accordance with Sections 149 and 150 of the said Code, an effect will have to be given in the Revenue Records to the Sale Deeds in respect of both the Part “A” and “B” lands by mutating the name of the First Petitioner.

28. Hence, the Petition must succeed in part and we pass the following order:

ORDER :

(a) We direct the Respondents to enter the name of the First Petitioner in the revenue records in relation to the "Part A" lands on the basis of the sale deed dated 10th January 2012. We make it clear that the

Respondents are not entitled to make any claim against the First Petitioner including the claim of unearned income in relation to the "Part A" lands;

(b) We make it clear that the entry of the name of the First Petitioner shall be made irrespective of the alleged claim of the State Government for unearned income in relation to the Part-"B" lands;

(c) Subject to clarification that the Part "A" lands are of Occupancy Class I and the Part "B" lands are of Occupancy Class II, the order dated 17th February 2012 passed by the Divisional Commissioner is not disturbed;

(d) The communications dated 19th March 2012 and 21st March 2012 issued by the Tahsildar, Kalyan are hereby set aside with liberty to the Appropriate Authority of the State to raise appropriate demands in accordance with law in relation to "Part B" lands after issuing a show cause notice to the First Petitioner and after giving an opportunity of being heard to the First Petitioner;

(e) We make it clear that no recovery or demand of any amount towards unearned income or arrears of land revenue up to the years 2011-2012 in relation to “Part B” lands shall be made against the First Petitioner without giving an opportunity of being heard to the First Petitioner;

(f) We direct that the name of the First Petitioner shall be mutated in the revenue records on the basis of the sale deed executed by the Court Receiver in relation even to the Part-"B" lands subject to the right of the State Government of initiating proceedings for recovery of unearned income and arrears of land revenue. However, we make it clear that unless a lawful demand as stated aforesaid is made by the State Government, an entry of an encumbrance of liability of unearned income shall not be made in the revenue records;

(g) The entry of the name of the First Petitioner in the revenue records in relation to both "Part A" and "Part B" lands shall be made within a period of one month from today;

(h) The Rule is partly made absolute on above terms;

(i) There shall be no order as to costs.

(A.S.GADKARI, J) (A.S. OKA, J)