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

WRIT PETITION NO.10705 OF 2013

Subhashchandra Vadilal Shah and Anr.	...Petitioners
v/s.	
The Additional Collector & Competent Authority, Thane Urban Agglomeration, Thane and Ors.	...Respondents.

Mr.K.S.Dewal i/b Mr.J.M.Joshi, for the Petitioners.
Mr.V.S.Gokhale, AGP for the Respondent Nos.1 to 3.
Mr.Roshan S. Tanna, for the Respondent No.4.

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

DATED : 12th AUGUST, 2015.

P.C.

1. Heard the learned counsel appearing for the petitioners and the learned AGP appearing for the first to third respondents. The learned counsel appearing for the fourth respondent is supporting the petitioners.

2 An order/declaration under sub-section 1 of section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act') was issued on 1st February, 1984. The description of the land in respect of which the said declaration was made is in Schedule - I to the said order.

By order dated 11th May, 1987 the said order dated 1st February, 1984 was cancelled by the Collector and Competent Authority No.3, Thane Urban Agglomeration, Thane. By a further order dated 10th August, 1987 the order dated 11th May, 1987 was withdrawn thereby reviving the original declaration under sub-section 1 of section 21 of the ULC Act.

3. The main contention of the petitioners is that in view of the applicability of 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 said order/declaration under sub-section 1 of Section 21 does not survive and the same shall be deemed to have been lapsed. It is pointed out that the Repeal Act does not save the order/declaration under sub-section 1 of section 21 of the ULC Act.

4. The submission of the learned AGP is that as the validity of order granting exemption under sub-section 1 of section 20 of the ULC Act has been saved by the Repeal Act, even validity of orders under section 21 will be saved and therefore, notwithstanding the coming into force of the Repeal Act, the State Government can take action on the basis

of the order under sub-section 1 of section 21 as in terms of the said order as essentially it constitutes a contract between the State and the owner of the land in question.

5. The effect of the provisions of the Repeal Act on the validity of order under sub-section 1 of section 21 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. A similar submission made by the learned AGP has been dealt with. It will be necessary to refer to the said Judgment and Order. 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."

(Underline supplied)

6. Hence, this Court has already held that the Repeal Act does not

save the validity of an order under sub-section 1 of section 21 of the ULC Act and consequently even the power under sub-section 2 of section 21 of the ULC Act has not been saved. Thus, it follows that till 29th November, 2007 the lands subject matter of the declaration/order dated 1st February, 1984 under sub-section 1 of section 21 of the ULC Act were not vacant lands held in excess of ceiling limit and therefore, after 29th November, 2007, the provisions of Chapter III of the ULC Act cannot be applied to the said lands.

7. Therefore the petition must succeed. Hence, we dispose of the petition by passing the following order :-

ORDER

- i) Rule is made absolute in terms of prayer clauses (b) and (c).
- ii) We make it clear that the order in terms of prayer clause (c) shall apply only to the land subject matter of the order dated 1st February, 1984 (Exhibit – ‘B’ to the petition). There shall be no order as to costs.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)