

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1216 OF 2014

M/s. Acropolis Properties & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Nitin Gangal, Advocate for the petitioners
Mr. V. S. Gokhale, AGP for R. Nos. 1 to 3.

CORAM:-A. S. OKA &
REVATI MOHITE DERE, JJ.
DATED : -16/07/2015

P.C.

On the earlier date, the parties were put to notice that the petition would be disposed of finally at the stage of admission.

2 We have heard the learned counsel appearing for the petitioners and learned AGP for respondents No. 1 to 3.

3 The lands subject matter of this petition have been described in paragraph one of the petition. The lands are out of the lands bearing Survey No. 64/1/10-B and Survey No. 64/1/10-D situated at village Ghorpadi within the limits of the Pune Municipal

Corporation, District Pune. The petitioner has made a reference to an order made by the competent authority of the Pune Urban Agglomeration under sub-Section (4) of Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULC Act."). It is pointed out that under the said order, certain lands were declared as vacant lands held in excess of ceiling limit by the predecessor of the petitioners. By a Corrigendum dated 12th July, 1996 the said order has been modified.

4 The contention is that till 29th November, 2007 when Urban Land (Ceiling and Regulation) Repeal Act, 1999 was made applicable to the State of Maharashtra, possession of the lands which were declared as 'excess lands' was not taken over in accordance with sub-Section (5) of Section 10 of the ULC Act. Relying upon the decision of Division Bench of this Court in the **Voltas Limited & Anr. vs. Additional Collector & Competent Authority & Ors. Thane, (2008) 5 All M.R. 537**, it was submitted that all further proceedings under the ULC Act, in respect of the lands declared to be excess lands shall stand abated. Therefore, the only substantive prayer in this petition under Article 226 of the

Constitution of India is for directing the deletion of remarks in the Other Rights Column in the 7/12 Extract regarding the declaration of excess land.

5 There is an affidavit-in-reply filed by Shubhangi Sanjay Phule, Tahsildar (ULC), Pune Urban Agglomeration, Pune. Paragraphs 2 and 3 of the said affidavit reads thus:

“2. I have examined the record and proceedings of ULC Case No. D/VII/561-K. The subject matter of the said proceedings in Survey Nos. 59/2-D, 64/10, 64/11, 61/5-C and 64/7, situate at Ghorpadi, Taluka-Pune City, District-Pune. In the said matter though the orders under Section 8(4) of the ULC Act were passed; from record it reveals that no further steps taken in the said matter, the possession of the land declared to be surplus was not obtained.

3. I state that in the present Writ Petition, the subject matter of the Petitioner is lands bearing Survey Nos. 64/1/10-B and 61/1/10D, situate at Ghorpadi, Taluka-Pune City, District-Pune. I state

that these lands were not the subject matter of ULC
Case No.D/VII/651-K”.

6 Based on the said averments, the submission of the learned AGP is that the lands subject matter of this petition, are not subject matter of the order under sub-Section (4) of Section 8 of the ULC Act. To this, the answer of the learned counsel appearing for the petitioners is that the land bearing Survey No. 64/10 mentioned in the order under sub-Section (4) of Section 8 corresponds to land bearing Survey No. 64/1/10-B and even the Survey No. 64/1/10-D is covered by the land bearing Survey No. 64/10 which is a part of the order under sub-Section (4) of Section 8 of the ULC Act.

7 After having perused the petition, there is no authentic material placed on record to show that the lands described in paragraph 1 of the petition correspond to the lands described in order under sub-Section (4) of Section 8 of the ULC Act, which are shown as held in excess of ceiling limit.

8 There is a categorical assertion in the affidavit of Shubhangi Sanjay Phule that as far as the lands subject matter of order under sub-Section (4) of Section 8 are concerned (Exh. B & C

to the petition) steps under sub-Section (3) and sub-Section (5) of Section 10 have not been taken and the possession of the surplus lands has not been obtained.

9 In respect of the lands which are described in paragraph 2 of the affidavit of the Tahsildar (ULC), the law laid down by this Court in the case of **Voltas Limited** shall squarely apply and the said lands are free from the applicability of ULC Act. However, in this petition, no finding can be recorded that the lands subject matter of this petition described in paragraph 1 were part of the lands which were declared as 'surplus land' under sub-Section (4) of Section 8 of the ULC Act.

10 Therefore, it is for the petitioner to make an application to the appropriate authority under the Maharashtra Land Revenue Code, 1966 for deletion of the entry in the Other Rights Column of the 7/12 Extract on the basis of what we have held in this petition. If the concerned authority is satisfied that the lands described in paragraph 1 of the petition were a part of land bearing Survey No. 64/10 subject matter of the order under sub-Section (4) of Section 8 of the ULC Act, it is obvious that the entry in the Other

Rights Column will have to be deleted.

11 In the light of what we have held above, we pass the following order:

(i) It will be open for the petitioner to make an application to the appropriate authority under the Maharashtra Land Revenue Code, 1966 for deletion of the relevant entry in the Other Rights Column;

(ii) If such an application is made, the concerned authority shall decide it in the light of what we have held in the judgment and order;

(iii) If such an application is made, the same shall be decided as expeditiously as possible and preferably within a period of three months from the date on which the application is made;

(iv) Petition is disposed of in above terms.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)

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