

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11600 OF 2013

Anil Govind Advani. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
—

Shri Sanjeev Mukund Gorwadkar for the Petitioner.
Shri V.S. Gokhale, Agp for Respondent Nos.1 and 2.
Shri Manoj Badgujar i/by Shri Abhijit P Kulkarni for Respondent No.3.

--

CORAM : A.S. OKA & A.K MENON, JJ
DATED : 7TH JANUARY 2015

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

. Heard learned counsel appearing for the Petitioner and the learned AGP for the Respondents.

2. There is a detailed order passed by the earlier Bench on 29th September 2014 taking a prima facie view that there is no power vesting in the State Government to grant permission which is sought by the Petitioner. Time was granted to the learned counsel appearing for the Petitioner to produce Government policy.

3. An order dated 8th August 1983 was passed by the Deputy Collector and Competent Authority, Pune Urban Agglomeration, Pune-1, under the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”) holding that the area of the vacant land held in excess of

ceiling limit will be to the extent of 146.32 square meter in case of Part-F. In fact, the same order records that the declarant (predecessor of the Petitioner) is going to apply for marginal exemption in relation to the said land admeasuring 146.32 square meters by invoking Section 20 of the ULC Act. Accordingly, on the Application made by the predecessor of the Petitioner, an order of exemption under Sub-section (1) of Section 20 of the ULC Act was passed by the State on 1st November 1988. Relevant part of the order of exemption reads thus:

“AND WHEREAS THE GOVERNMENT OF MAHARASHTRA IS SATISFIED

1. that having regard to the location of the land and the purpose for which the land is being or is proposed to be used and other relative factors, it is necessary in the Public interest so to do.
2. that the application of the provisions of Chapter-III of the said Act would cause undue hardship to the said person.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (i) of section 20 of the said Act after having recorded in writing the reasons for making this order, the Government of Maharashtra hereby exempts the said vacant land from the provisions of Chapter-III of the said Act, subject to the following conditions namely: open to sky. No F.S.I. is allowed. No transfer is permitted.

- (i) The land exempted or the FSI of such exempted land under this order shall be used by the land owner as permissible under the Development Control Rules and Statutory Regulations in force for construction of tenements, the plinth area of each of which shall not exceed 30 Sq.Mtr. If the area of exempted surplus vacant land exceeds 150-00 Sq.Mtr. The land holder shall sell out flat to the Government/Government Nominee at the rate of Rs.130.. per Sq.ft.

The landholder shall start the construction work in respect of the exempted portion of land within a period of two years and complete the same before the expiry of period of three years from the date of issue of this exemption order”.

(emphasis supplied)

4. The condition No.3A of the same order of exemption reads thus:-

“The exempted land will not be constructed upon nor will be available towards construction of any plinth. The exempted land will be kept open to sky. No FSI is allowed. No transfer is permitted.”

5. An Application was made by the Petitioner through his Architect on 29th January 2013 seeking modification of the terms and conditions of the order of exemption. The modification was sought for deleting the condition of keeping the area of admeasuring 146.32 square meters open to sky. The substantive prayer in this Petition under Article 226 of the Constitution of India is the prayer clause (b), which reads thus:-

“(b) Respondent No.1 be directed to calculate the amount as per clause 3 of the exemption order dated 01.11.1988 for the exempted land of 146.32 sq. meters from Plot No.51 at Yerwada and be directed to accept the same from Petitioner there upon Respondent No.1 be directed to permit the Petitioner to utilize the floor span index of the area 146.32 sq. meters for the development of the Plot No.51, S.No.301, C.T.S. No.211, Yerwada.”

6. The first submission of the learned counsel appearing for the Petitioner is based on the decision of a Full Bench of this Court dated 3rd September 2014 in Writ Petition No.9872 of 2010 and other connected Petition. His submission is that the Repeal Act which repealed the ULC Act which came into force in the State on 29th November 2007 not only saves the validity of the exemption orders under Sub-section (1) of Section 20 of the ULC Act, but as held by the Full Bench, even the ancillary power of modification of the terms and conditions in the order of exemption is also saved. He relied upon the Government Resolution dated 19th February 1987 which is annexed to the affidavit-in-reply filed by Shri Subhash Dharmadhikari, the Additional Collector and Competent Authority of ULC, Pune Agglomeration. He submitted that as per the said Government Resolution, the appropriate conditions incorporated in the order of exemption can be modified. Relying upon certain orders passed by the State Government in the individual cases which are annexed to the affidavit-in-rejoinder filed by the Petitioner, he urged that in similar cases, the power of modification of the conditions in exemption orders has been exercised by the State Government.

7. We have considered the submissions. The order under Sub-section (4) of Section 8 of the ULC Act records that the predecessor of the Petitioner desires to apply for marginal exemption under Section 20

of the ULC Act. The order of exemption dated 1st November 1988 specifically considers the location of the land. Clause (2) of the said order which we have quoted above records that the exemption was granted subject to specific condition of keeping the area open to sky and no FSI would be allowed. The condition is reiterated in Clause 3A of the order of exemption which provides that the exempted land will not be constructed upon nor will be available for construction upto the plinth.

8. As far as the Government Resolution dated 19th February 1987 is concerned, it does not deal with the power of the State to modify the terms and conditions incorporated in the order of exemption. The Petitioner has relied upon the order dated 17th November 1990 passed in the case of *Shri R.P. Rambasen and R.S. Vishwakarma* by which an order of exemption was modified by the State Government. The second recital of the order of exemption in that case clearly records that the exemption was applied on aesthetic and environmental considerations in relation to the excess land admeasuring 4.10 square meters.

9. In the present case, the order of exemption passed way back on 1st November 1988 imposes a specific condition of keeping the entire exempted land open to sky. No policy is shown to us which

permits the State Government to modify the condition of keeping the entire excess land open to sky. Thus, in fact, if such condition is allowed to be modified, the entire basis of the order of exemption will be taken away. Even assuming that the power of modifying such order is retained after repeal of the ULC Act, such power cannot be used to completely nullify the order of exemption. Therefore, we are of the view that the State Government will be justified in saying that the modification of keeping the land open to sky cannot be allowed. At this stage, the learned counsel appearing for the Petitioner submits that the Petitioner may be permitted to apply for use of FSI in relation to the exempted land elsewhere.

10. In this Petition, we are dealing with the prayer made in the Application dated 29th January 2013 where permission was sought to develop the said marginal surplus land. Suffice it to say that the said prayer cannot be granted by the State Government as it will nullify the entire order of exemption. If the Petitioner wants any other modification of the order of exemption, it is for him to make an appropriate Application to the State Government which will be considered in accordance with law.

11. Subject to what is observed above, the Petition is rejected.