

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 819 OF 2014

(Ramdas Govind Daiwatkar and others .v. The State of Maharashtra and others)

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders

Shri C.V. Kale, Advocate for the petitioners.
Shri N.R. Patil, AGP for respondent Nos.1 to 4.
Shri H. Verma, Advocate for respondent No.5.

CORAM : SMT. VASANTIA. NAIK AND
PRASANNA B. VARALE, JJ.
07TH JULY, 2015.

Heard.

By this petition, the petitioners seeks a direction to the respondent Nos.1 to 4 to delete the name of the respondent No.5-Nagpur Housing and Area Development Board from the 7/12 extracts in respect of the land bearing Khasra No.46 admeasuring 132600 sq. mtrs. of Mouza Suraburdi and land bearing Khasra Nos. 141 and 142 admeasuring 79358 and 54800 sq. mtrs. respectively of Mouza Waddhamna. A direction restraining the respondent No.5-Board from making construction on the land at village Waddhamna is also sought.

The father of the petitioners and his brother were the owners of the land at Suraburdi and Waddhamna which was included in the Urban Agglomeration area, falling within the purview of the Urban Land Ceiling Act. The father and the brother of the petitioners filed the Return under Section 6(1) of the Urban Land (Ceiling and Regulations) Act, 1976 (hereinafter referred as the Act of 1976 for the sake of brevity) and an order under Section 8(4) of the Act was passed, thereby declaring 247044 sq. mtrs. of land as surplus. The notifications under Sections 10(3) and 10(5) of the Act of 1976 were issued. It is the case of the petitioners that without securing the possession of the land from the petitioners, the land was allotted by the State Government to respondent No.5-Board on the condition that the construction of the tenements should be completed on the land within a period of

three years. The order was passed by the Hon'ble Chief Minister under Section 34 of the Act of 1976 on 23.11.2007. The Writ Petition has been filed by the petitioners on 04.04.2014 impugning the order of the State Government, granting extension of time to the respondent No.5 for constructing the tenements.

It is submitted on behalf of the petitioners that in view of the provisions of Urban Land (Ceiling and Regulations) Repeal Act, 1999 (hereinafter referred to as the Act of 1999), the land of the petitioners is saved from the clutches of the Act of 1976. It is submitted that in terms of the order of the Hon'ble Chief Minister dated 23.11.2007, the respondent No.5 was liable to develop the land within a period of three years. It is submitted that the respondent No.5 did not develop the land within a period of three years from 23.11.2007 and the extension to develop the land within further period of three years was granted. It is submitted that the time to develop the land could not have been extended and since the respondent-Board had not developed the land within three years, the land was liable to be returned to the petitioner.

Shri Verma, the learned Counsel for the respondent No.5 submitted that the issue involved in this petition is no more *res integra* as the same is answered by the judgments rendered by this Court in several writ petitions against the petitioners. It is submitted that on a plain reading of the provisions of Section 3(1) (b), it is clear that the repeal of the Act of 1976 by the Act of 1999 cannot affect the validity of any order granting exemption under sub Section (1) of Section 20 of the Act of 1976. It is submitted that the order under Section 20(1) of the Act of 1976 was passed on 23.11.2007 and the said order is not justiciable in view of the provisions of sub Section (1)(b) of Section 3 of the Act of 1999.

We find from the order granting exemption dated 23.11.2007 that the respondent No.5 was permitted to develop the land within a period of three years. An interesting argument is made by the learned Counsel for the petitioners that the petitioners are not challenging the order granting exemption under Section 20(1) of the Act and are challenging the orders of

the State Government granting extension to the respondent No.5 to develop the land. If the order dated 23.11.2007 cannot be effectively challenged in view of the provisions of Section 3(1)(b) of the Act of 1999, it is difficult to understand how the petitioners could challenge the consequential order of the State Government granting extension of time to the respondent No.5 to develop the land. The issue involved in this case is similar to the issue involved in Writ Petition Nos.2495 of 2011 and 2502 of 2011 and this Court has, by the judgment dated 08.08.2012, dismissed the petitions after holding that the repeal of the Act of 1976 would not affect the order under Section 20 of the Act of 1976, granting exemption. Also, it is the case of the respondent No.5 that the respondent No.5 has completed the development on land bearing new Kh. Nos. 141/2 and 142/1. It is also stated that the construction on Kh. No. 46/1-B is in progress.

For the reasons aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

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