

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.4759 OF 2007

M/s. Kesharimal Phoolchand

..... Petitioners

V/s

The Maharashtra State & Ors.

..... Respondents

Mr. K.S. Dewal for the Petitioners.

Mr. Manish Pabale, AGP for the Respondent Nos.1 and 2/State.

Mr. S.G. Karandikar for the Respondent No.3.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 25 OCTOBER 2016

ORAL JUDGMENT (Per A.S. Oka, J.):

1 This Petition on final hearing board is kept today for further hearing.

2 By this Petition under Article 226 of the Constitution of India, the challenge by the Petitioners is to the order passed by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act").

3 According to the case of the Petitioner, the third Respondent was the owner of larger plot of land bearing Survey No.161 (part) in village

Pahadi Goregaon, Taluka Borivali, Mumbai Suburban District. According to the case made out in the Petition, the third Respondent obtained permission for dividing the larger plot of land into 189 plots and accordingly a layout of the 189 plots was approved. Reliance is placed by the Petitioners on Agreement dated 4 November 1966 between the third Respondent-Company and the Petitioners. By the said Agreement, the third Respondent agreed to sell plot No.101 admeasuring 865.50 square yards out of survey No.161 (part) to the Petitioners on the terms and conditions incorporated in the said Agreement. On 28 January 1976, a conveyance was executed by the third Respondent in respect of the said plot No.101.

4 The third Respondent had filed a statement/return under section 6 of the ULC Act. On 30 June 2006, an order was made by the competent authority under the ULC Act holding that the third Respondent was holding vacant land admeasuring 1,50,012.32 square meters in excess of the ceiling limit.

5 On the basis of the said order, the Competent Authority issued notifications/notices under sub-sections (1), (3) and (5) of section 10 of the ULC Act. Notice under sub section (5) of section 10 of the ULC Act was issued in January 2007.

6 The prayer in this Petition under Article 226 of the Constitution of India is for quashing and setting aside the order dated 30 June 2006 and notices/notifications issued under sub-sections (1), (3) and (5) of section 10 of the ULC Act. During the pendency of the Petition, an amendment was carried out on the ground that with effect from 29 November 2007, in the light of the provisions of the Urban Ceiling Land (Ceiling and Regulation) (Repeal) Act, 1999, the ULC Act stands repealed as far as State of Maharashtra is concerned. By amending the Petition, a specific averment was added in paragraph 5.3 that the possession of the plot No.101 has not been taken over on the basis of notice issued on 19 January 2007 under sub-sections (5) of section 10 of the ULC Act. Therefore, a consequential prayer was added for a declaration that the proceedings under the ULC Act in connection with the said plot have lapsed.

7 Rule was issued by the Division Bench of this Court on 8 October 2007 and interim relief in terms of prayer clause (c) was granted staying the execution and operation of the order dated 30 June 2006 and notices/notifications issued under sub-sections (1), (3) and (5) of section 10 of the ULC Act. The said interim relief is operative even as of today.

8 On the last date, the learned Counsel appearing for the third Respondent has placed on record the judgment and order dated 25

February 2009 passed by a Division Bench of this Court in original side Writ Petition No.2908 of 2008 (**M/s. Laxmi Asbestos Products Ltd. vs. State of Maharashtra and Another**). The third Respondent was the Petitioner in the said Writ Petition. From paragraph no.2 of the said judgment and order, it appears that the Petition relates to the larger land bearing Survey No.161 (part). The Division Bench observed that till 29 November 2007, the possession of the land held in excess of ceiling limit by the third Respondent was not taken over by the Government. Therefore, by relying upon the decision of the Division Bench of this Court in the case of **Voltas Ltd and another vs. Additional Collector and Competent Authority, Thane**¹, it was held that the proceedings under the provisions of the ULC Act in relation to the said land stand lapsed and the excess vacant land no longer vests in the State Government. Perusal of the said judgment and order shows that the same is in relation to the entire excess land admeasuring 1,50,012.32 square meters out of survey No.161 (part).

9 Though rule was issued and an interim relief was granted after hearing the learned AGP on 8 October 2007, till today, there is no Reply filed by the Respondents disputing the averments made in the Petition that the Petitioners have not been dispossessed from the aforesaid plot No.101 on the basis of the notice issued under sub-section (5) of section

1 2008(5) Bom.C.R. 746

10 of the ULC Act. In view of the failure to file Reply and in view of the judgment and order dated 25 February 2009, this Court will have to proceed on the footing that the Petitioners were not dispossessed in accordance with sub-sections (5) and (6) of section 10 of the ULC Act in respect of the said plot. Hence, in view of the decision in the case of **Voltas Limited**, the Petition must succeed.

10 Hence, we pass the following order:-

- i) Rule is made absolute in terms of prayer clause (a-1) in respect of the plot No.101 claimed by the Petitioner.
- ii) There is no order as to costs.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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