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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3730 OF 2015

M/s. Essen Realtors,)
A registered Partnership Firm,)
through its partner : Santosh Bhimsen)
Agarwal, Age – 41, Occupation -)
Business, R/at Survey No. 142/4,)
C.T.S. No.5102, near Khandoba)
Mandir, Akurdi, Pune. … Petitioner

Vs.

1. State of Maharashtra)
Urban Development Department,)
Mantralaya, Mumbai 400 032)

2. The Competent Authority,)
Pune Urban Agglomeration, Pune)
created Under Urban Land (Ceiling)
and Regulation) Act, 1976.)

3. District Collector, Pune)
Collector's Office Campus,)
Pune 411 001)

4. The Municipal Corporation for the)
city of Pimpri and Chinchwad through)
the Municipal Commissioner, PCMC,)
A Planning Authority, PCMC)

5. The City Engineer,)
PCMC Pimpri, Pune … Respondents

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Mr. S. M. Gorwadkar, Sr. Counsel, for the Petitioner.
Mr. S. B. Kalel, AGP for the Respondent Nos. 1 to 3.
Mr. Nitesh J. Mohite i/b Deepak R. More, for Respondent No. 4 and 5.

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CORAM : ANOOP V. MOHTA, &
MANISH PITALE, JJ.

RESERVED ON : NOVEMBER 3, 2017
PRONOUNCED ON : NOVEMBER 7, 2017

JUDGMENT : [PER : MANISH PITALE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for Respondent Nos. 1 to 3. Learned counsel Mr. Nitesh Mohite waives service of notice for Respondent No. 4. By consent of parties, petition is taken up for final hearing.

2. By this writ petition, Petitioners have challenged the order dated 1.10.2014 issued by Respondent No. 3 directing the Petitioner to stop construction work on the land in question on the basis that the Petitioner was required to deposit market value of the said land under Government Resolution dated 23.11.2007 as the land was the subject matter of exemption under Section 20 of the Urban

Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "said Act").

3. It is the contention of the Petitioner that the said order is illegal and arbitrary and therefore, liable to be set aside as developments subsequent to the exemption order dated 11.7.1984 passed under Section 20 of the said Act have not been taken into consideration.

4. The facts, leading to the filing of the instant petition, are that the original owner – M/s. Thermolab Glass Products Ltd. of the land in question i.e. land Survey No. 142/1/2B and 142/4 at village Akurdi, district Pune admeasuring about 5949.89 sq. mtrs., had utilised the same for the industrial purpose. When the aforesaid Act of 1976 came into force, the original owner of the land submitted returns under Section 6(i) of the said Act. The proceedings in pursuance of the said returns filed by the original owner were pending when in 1977 a policy decision was taken by the Respondent – State Government in respect of the lands utilised for the industrial purpose that came under the purview of the aforesaid Act. As per this policy framed in the year 1977, the Respondent State Government directed

that such lands upto one acre in Pune Urban Agglomeration be granted exemption under the aforesaid Act as a matter-of-course and that no detailed scrutiny would be conducted. In pursuance of the said policy decision, the Jt. Director of Industries of the Respondent State Government passed an order under S. 20 of the aforesaid Act on 11.7.1984 granting exemption to the land in question in favour of the original owner. This land formed part of the larger area of land belonged to the original owner. Accordingly, the original owner continued to have its industrial units on the said land.

5. In 1995, a development plan for the Respondent No. 4 Municipal Corporation was sanctioned and the land in question was shown in the industrial zone. On 16.12.1999 in the Development Control Rules (for short “DC Rules”), industrial user of lands was permitted to convert such land to residential use, on the condition of providing specified percentage of the land to the Respondent No. 4 – Municipal Corporation, free of cost for amenities, and also on payment of specified premium for the same. This was done keeping in view the requirement of lands for residential purpose and the lack of profit in the development of lands in the industrial zone. In this

backdrop, since conversion of the land in question from industrial use to residential use would have been contrary to the conditions specified in the exemption order dated 11.7.1984 passed in the case of the original owner of the land under Section 20 of the said Act, the original owner requested the competent authority to decide its returns filed under Section 6(i) of the said Act, which had remained pending.

6. On 20.7.2005, the Competent Authority i.e. Respondent No. 2 passed an order under Section 8(4) of the said Act in pursuance of the aforesaid returns filed under Section 6(i) of the said Act by the original owner of the lands in question. The said Respondent took into consideration the earlier exemption order dated 11.7.1984 passed by the Jt. Director of Industries and upon inquiry, he found that the original owner did not hold vacant land in excess of the ceiling limit of the said Act. Thereafter, the original owner submitted an application before Respondent No. 2 Competent Authority under Section 22 of the said Act for permission of the redevelopment of the land in question. This application was granted by the Competent Authority on 16.3.2007 on a specific condition requiring permission from the Planning Authority.

7. On 29.11.2007, the Act stood repealed in the State and as per Section 3, the order granting exemption under Section 20 of the said Act was unaffected. A few days before the repeal of the said Act, the Respondent State Government issued a resolution dated 23.11.2007, laying down that if industrial land exempted under Section 20 of the said Act was to be utilised for other purpose, then for transfer of such land, an amount equivalent to the market value of the said land would have to be deposited. In the year 2008, the original owner sold the land in question to an entity from whom the Petitioner purchased part of the land admeasuring 5949.89 sq. mtrs. on 9.4.2013 by a registered sale-deed.

8. Since the land in question was free to be developed, the Petitioner submitted a proposal for development of the said land before Respondent No. 4 – Municipal Corporation i.e. the planning authority and on 25.11.2013 the said Respondent sanctioned the said plan. On 5.7.2014, an application submitted by the Petitioner for permission for non-agricultural use was granted by the Competent Authority and the Petitioner commenced development work on the said plot. It was in this situation, when the development was being

undertaken by the Petitioner on the aforesaid land, the Respondent No. 3 issued the impugned communication / order dated 1.10.2014 directing the Petitioner to stop the development work on the ground that the exemption order under Section 20 of the said Act issued on 11.7.1984 had not been cancelled and that therefore, Petitioner was required to deposit market value of the land in question as per Government Resolution dated 23.11.2007, before undertaking the development work. This order is the subject matter of challenge in the present petition.

9. Mr. S. M. Gorwadkar, learned senior counsel appearing for the Petitioner submitted that Respondent No. 3 was not justified in issuing the impugned order dated 1.10.2014 because the order dated 20.7.2005 issued by the Competent Authority under Section 8(4) of the said Act was not taken into consideration. It was contended by the learned senior counsel that when the aforesaid order dated 20.7.2005 was passed by the Competent Authority under the said Act, concluding that the original owner did not hold vacant land in excess of the ceiling limit, the exemption order passed under Section 20 of the said Act stood annulled because for exercise of powers under Section 20,

the owner of the land has to hold vacant land in excess of the ceiling limit. It was further contended that the exemption order dated 11.7.1984 in the instant case was passed by the Jt. Director of Industries under a specific policy, introduced in the year 1977 wherein it was provided that there would be no detailed scrutiny of cases of industrial units who hold the land and that exemption would be granted as a matter-of-course. It was contended that since the exemption order under Section 20 of the said Act was without any inquiry or scrutiny, subsequent order dated 20.7.2005 passed after detailed inquiry by the Competent Authority, concluding that the original owner did not hold vacant land in excess of ceiling limit, would prevail over the exemption order dated 11.7.1984 issued by the Jt. Director of Industries. It was contended that the Petitioner had all valid permissions from the relevant authorities for development of the land and that the impugned order dated 1.10.2014 was unsustainable.

10. Mr. Kalel, learned AGP appearing for the Respondent – State in response contended that the order dated 1.10.2014 issued by Respondent No. 3 was fully justified because the Petitioner had failed to take any steps for cancellation or setting aside of the exemption

order dated 11.7.1984. As long as the said order remained, the applicability of Government Resolution dated 23.11.2007 could not be denied by the Petitioner and that if the Petitioner desired to carry on the development work on the land in question, it was bound to comply with the condition specified in the aforesaid Government Resolution.

11. We have heard the learned counsel appearing for the respective parties and perused the pleadings and documents on record. The real question in the instant case is as to what is the efficacy of the exemption order dated 11.7.1984 passed under Section 20 of the aforesaid Act in view of the admitted facts pertaining to the subsequent developments. The record shows that the exemption order dated 11.7.1984 was issued in pursuance of specific policy framed by the State Government in the year 1977 as regards the lands with industrial units, which were to come under the purview of the said Act. The relevant portion of the said policy reads as follows:

> **"26. Policy regarding exemption under Urban Land (Ceiling and Regulation) Act, 1976**
>
> ***Subjec**t :* *Policy regarding Policy regarding exemption under Urban Land (Ceiling and Regulation) Act, 1976*

1. State Government is aware of the hardship which industrialists, agriculturists, architects, builders, engineers and common people are facing because of the implementation of the Urban Land (Ceiling and Regulation) Act, 1976. With a view to redress their grievances, following policy decisions regarding exemptions have been taken:

2. *Exemption to Industries*

2.1 It has been decided to give matter-of-course exemption to the industrial units as follows:

(a) Upto half acre in Bombay Urban Agglomeration;

(b) Upto one acre in Pune Urban Agglomeration; and

(c) Upto two acres in remaining Urban Agglomerations.

There will be no detailed scrutiny of the cases of the industrial units which hold land as indicated above and the exemption will be given to them as a matter-of-course. In Maharashtra Industrial Development Corporation areas, such exemption will be given by the Chief Executive Officer, Maharashtra Industrial Development Corporation while in non-Maharashtra Industrial Development Corporation areas, such exemption will be given by Industries Commissioner."

12. The aforesaid policy clearly directs that exemptions to industrial units were to be granted as a matter-of-course and that no

detailed inquiry or scrutiny was to be conducted. It is an undisputed fact that the original owner in the instant case was having industrial units in the lands in question and accordingly exemption order dated 11.7.1984 was passed by the Jt. Director of Industries under the said policy as a matter-of-course and without conducting any inquiry or scrutiny. The fact that the Jt. Director of Industries passed the said exemption order and not the Competent Authority under the said Act also assumes importance in the instant case.

13. A perusal of the order dated 20.7.2005 passed by the Competent Authority – Respondent No. 2 under Section 8(4) of the said Act shows that such order has been passed on the returns filed by the original owner under Section 6(i) of the said Act. This order takes into consideration the exemption order dated 11.7.1984 passed under Section 20 of the said Act by the Jt. Director of Industries; this order also records that a proper enquiry was conducted, with the maintenance surveyor of the office of the Competent Authority visiting the spot and verifying claim of the original owner. Upon said detailed inquiry, it was concluded by the Competent Authority in the said order dated 20.7.2005 that the original owner did not hold vacant

land in excess of the ceiling limit under the said Act. Thus, the moment such a finding was reached, which remained unchallenged thereby attaining finality, the question of exemption under Section 20 of the said Act did not arise. In other words, the earlier exemption order dated 11.7.1984 issued as a matter-of-course by the Jt. Director of Industries under specific policy of 1977, stood eclipsed by the said detailed order dated 20.7.2005 issued by the Competent Authority concluding that the original owner did not hold surplus vacant land in excess of the ceiling limit.

14. In fact, a perusal of the affidavit-in-reply filed on behalf of Respondent Nos. 1 to 3 shows that in paragraph 3 thereof, it has been stated as follows:

> "3. I say that thereafter, by order dated 20.07.2005, the return under Section 6(i) was decided under the order under Section 8(4), it was held that the land owner is not in possession of any excess land. Ordinarily, this made the exemption under order under Section 20 unnecessary and irrelevant. However, the Petitioner did not take any steps to get the order under Section 20 set aside."

Thus, the said Respondents were also clearly aware that the order dated 20.7.2005 passed by the Competent Authority under the said Act concluding that the original did not hold surplus vacant land in excess of the ceiling limit, rendered the exemption order dated 11.7.1984 under Section 20 the said Act as “unnecessary” and “irrelevant”. Once the said admission is given by the Respondents, it cannot lie in their mouth that the impugned order dated 1.10.2014 was justified, as it was issued on the basis of the exemption order dated 11.7.1984 passed by the Jt. Director of Industries. The only contention raised on behalf of the Respondent – State was that the Petitioner failed to take any steps to set aside the exemption order dated 11.7.1984 and therefore, the impugned order dated 1.10.2014 was justified. But, this contention is unsustainable because in the facts of the present case, a valid exemption order is not in existence, in view of the order dated 20.7.2005 passed by the competent authority under the said Act, holding that the original owner did not hold vacant land in excess of the ceiling limit. It is clear that upon passing of the order Section 8(4) of the said Act holding that the original owner did not hold vacant land in excess of ceiling limit, the exemption order under Section 20 of the Act becomes *non est* and a declaration regarding cancellation of the exemption order is not necessary.

15. The learned AGP appearing for the Respondent also relied upon Section 3 of the Repeal Act and claimed that the exemption order remained in force despite repeal of the said Act and that therefore, the prayers of the Petitioner may not be granted. The said contention raised on behalf of the Respondent-State is unsustainable because in the instant case, the order of exemption dated 11.7.1984 stood completely eclipsed by the subsequent order dated 20.7.2005 issued by the Competent Authority wherein it was categorically held that the original owner did not hold vacant land in excess of the ceiling limit. A bare perusal of Section 20 of the said Act shows that it will come into operation only when owner of the land holds vacant land in excess of ceiling limit. In the absence of the very basis for operation of Section 20 of the said Act, the said exemption order dated 11.7.1984 issued by the Jt. Director of Industries cannot be held to be existing and operational in the facts of the present case.

16. In this backdrop, it is clear that Respondent No. 3 was not justified in holding in the impugned order dated 1.10.2014 that the Petitioner was liable to deposit the market value of the land in

question under Government Resolution dated 23.11.2007. The said Government Resolution would apply only if the exemption order under Section 20 of the said Act could be said to be in existence.

17. The facts on record show that the Petitioner purchased the land in question by valid registered sale-deed dated 9.4.2013 and that it was granted all necessary permissions for undertaking building and development in the said land. As we are of the view that the exemption order dated 11.7.1984 could not have been relied upon, Respondent No. 3 was not justified in issuing the impugned order dated 1.10.2014 directing the Petitioner to stop construction and development work on the land in question. Accordingly, we allow the instant writ petition, setting aside the impugned order dated 1.10.2014 issued by Respondent No. 3, and we direct Respondents to permit the Petitioner to develop the land in question as per building permissions granted to it, as may be modified from time to time. Rule is accordingly made absolute in terms of prayer clause (a) with no order as to costs.

Sd/-
[MANISH PITALE, J.]

Sd/-
[ANOOP V. MOHTA, J.]

Vinayak Halemath