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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8166 OF 2012

Jinappa Appaji Shirote and Ors. … Petitioners

vs.

State Bank of Maharashtra … Respondents.
Through Minister of Housing and
Special Assistance and Ors.

……….

Mr. Niranjan A. Mogre for the Petitioner.
Mr. Manish M. Pabale, AGP for the Respondents.

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CORAM : A.S. OKA & A.K. MENON, JJ.
DATE : 4th MAY, 2017

P.C.

1. Heard the learned Counsel appearing for the Petitioners and the learned AGP for the respondents. Perused the Order dated 10th February, 2017. The said order records that out of two substantive prayers (a) and (b), only the prayer clause (a) can be considered. Prayer clause (b) seeks to challenge the Order dated 21st January, 1997 on the ground that the same is not binding on the petitioners. This prayer made in the Writ Petition of the year 2012 cannot be considered. The present Writ Petition has been filed on 1st August, 2012. That is the reason why in the order dated 10th February, 2017 this Court observed that it is too late in the day now to allow the

petitioner to challenge the order dated 21st January, 1997 granting exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'The ULC Act').

2. As far as the prayer clause (a) is concerned, the petitioners are relying upon the corrected certificates issued by the Competent Authority under Section 4 of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001 (for short "The Gunthewari Act"'). Copies of the corrected certificates under Section 4 have been annexed at pages 61-B to 61-BB.

3. On the earlier date, we had called upon learned AGP to take instructions and to make a statement whether in respect of the lands subject matter of the aforesaid certificates, an action under Sub-Section 5 of Section 10 of the ULC Act, 1976 was taken prior to the date of its repeal in the State of Maharashtra. Today on instruction, he states that no such action was taken.

4. Our attention is invited to the impugned communication. By the impugned communication dated 18th June, 2012, the Competent Authority of the Sangli Urban Agglomeration recorded that as a scheme under section 20 of the ULC Act has been sanctioned in respect of the lands subject matter of the aforesaid certificates, a permission under Section 5 of the Gunthewari Act has not been granted to the petitioners.

5. Our attention is invited to Section 5 of the Gunthewari Act which reads thus :

> *5. **Consequences of regularisation***
>
> *(1) Notwithstanding anything contained in any other law for the time being in force, on being regularised, the Gunthewari development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966 subject to the payment of non-agricultural assessment and the other terms and conditions of such conversion and the provisions of the Development Plan or the Regional Plan as the case may be, shall, so far as such development is concerned stand modified or relaxed as may be required.*
>
> *(2) On such regularisation of Gunthewari development under section 3, by the concerned Planning Authority, all court cases or other proceedings, filed by such Planning Authority, and pending in any Court in so far as they relate to such unauthorised development, shall abate.*

6. Sub-section (1) of Section 5 starts with a non obstante clause. It provides that on being regularised, a Gunthewari Development shall be deemed to have been exempted under Section 20 of the ULC Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966 subject to payment of non-agricultural assessment and other terms and conditions of such conversion. "Gunthewari Development" is defined in clause (a) Sub-Section (1) of Section (2). It means plots formed by unauthorisedly sub-dividing privately owned land, with buildings, if any, on such plots, including excess vacant land under the ULC Act not vested in the State Government. The provisions regarding regularisation of Gunthewari Development are under Section 3. In the present case, in respect of plots which are the subject matter of the Gunthewari Certificates which are on pages 61-B to 61-BB, regularisation of Gunthewari Development has been made under Section 3 and that is the reason why the Certificates have been issued. As stated earlier, the learned AGP on instructions stated that in respect of lands which are subject matter of said Certificates, action under the Sub-Section (5) of Section 10 of the ULC Act has not been taken. Therefore, there is no vesting of the said lands in the State Government.

7. The effect of sub-Section (1) of Section 5 is automatic. On being regularised, a Gunthewari Development shall be deemed to have been

converted into non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966 subject to conditions specified in Sub-Section (1).

8. Thus, by virtue of the said statutory provision, there is a deemed conversion of lands subject matter of the aforesaid Gunthewari Certficates. Now, the petitioners will have to make a formal application under the Maharashtra Land Revenue Code, 1966 so that conditions such as payment of non agricultural assessment and other terms and conditions can be imposed.

9. While issuing the impugned communication, the Competent Authority has completely ignored sub-Section (1) of Section 5 of the Gunthewari Act. Accordingly, we dispose of the petition by passing the following Order :-

(a) Prayer clause (b) is rejected;

(b) The impugned communication dated 18th March, 2012 is quashed and set aside to the extent to which it holds that the lands subject matter of the Gunthewari Certificates annexed on pages 61-B to 61-BB are not entitled to the benefit of Sub-Section (1) of Section 5 of the Gunthewari Act;

(c) We hold that the lands subject matter of the aforesaid Gunthewari Certificates shall be deemed to have been converted to non agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966 subject to payment of non agricultural assessment and other requirements/conditions as specified in Sub-Section (1) of Section 5.

(d) We, therefore, direct petitioners to make a formal application to the District Collector for permitting conversion of user by producing an authenticated copy of the Judgment and Order. The application shall be made within a period of one month from the date on which this order is uploaded. The Collector may himself deal with the application made by the petitioners or may transfer it to appropriate authorised Officer under the Maharashtra Land Revenue Code, 1966. On such application being made by the Petitioners, non-agricultural assessment payable by the petitioner shall be determined and even other terms and conditions of such conversion shall be also laid down;

(e) If such application is made, the Collector or the Officer to whom the application is transferred shall decide the same within a period of three months from the date on which the application is made;

(f) We make it clear that the petitioners can commence actual non agricultural use only after payment of the requisite non agricultural assessment and after making compliance of the terms and conditions which may be imposed by the Collector or the Authorised officer;

(g) Rule is made partly absolute on above terms.

(A.K. MENON, J) **(A.S. OKA, J)**