

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4562 OF 2016

Ramkrishan Narayan Borade .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr. Sagar Anant Joshi for the Petitioner.
Ms. Aparna D.Vhatkar AGP for the Respondent Nos.1 and 2.
Mr. Pratik B. Rahade for the Respondent No.3.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 18TH APRIL, 2017

P.C.

1. Heard learned counsel appearing for the petitioner and learned A.G.P for the first and second respondents and learned counsel appearing for the third respondent.

2. In paragraph 2 of the petition, the petitioner has stated thus :

"2. The Petitioner was owner of the lands bearing Survey No.689/A and Survey No.689/C situate at Nasik, totally admeasuring approximately 8745.08 sq. mtrs. (hereinafter referred to as "the said

Lands”). As the said lands were in excess of ceiling limit, the Petitioner submitted the Scheme under Section 20(1)(a) of the Principal Act for construction of tenements for the weaker section of the society. The Collector of Nasik and Competent Authority i.e. Respondent No.2 by order No.ULC.WS.III.HS 21-71/80 dated 6th February, 1980 was pleased to approve the scheme for the construction of dwelling units for weaker section of the society. The Petitioner craves leave of this Hon'ble Court to produce copy of the Scheme submitted by the Petitioner and the order passed therein.”

3. The case made out in the petition is that the third respondent committed breach of the order dated 6th February, 1980 and, therefore, a show cause notice was issued on 8th August, 1986 to the third respondent and others under Sub-Section (2) of Section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'ULC Act'). The prayer in this petition under Article 226 of the Constitution of India is for issuing a Writ of Mandamus directing the first and second respondents to pass the appropriate orders under Sub-Section (2) of Section 20 of the ULC Act of cancellation of the scheme.

4. By the Urban Lands (Ceiling) Repeal Act, 1999 (for short “the Repeal Act”), the ULC Act was repealed. The provisions of repealing Act were brought into force in Maharashtra with effect from 29th November, 2007.

5. The entire petition proceeds on the footing that on 6th February, 1980 a scheme under Section 20 of the ULC Act was sanctioned for the benefit of the third respondent. However, the notice dated 8th August, 1986 (Exhibit-C to the petition) has been issued in exercise of the powers under Sub-Section (2) of Section 21 of the ULC Act. Today, learned counsel appearing for the third respondent has produced for a perusal of this Court a copy of the said order dated 6th February, 1980 to which reference has been made in paragraph 2 of the petition which is quoted above. A perusal of the said order shows that it is an order made under Sub-Section (1) of Section 21 of the ULC Act under which the third respondent was allowed to retain vacant land in excess of ceiling limit for the purpose of undertaking construction of houses for the weaker sections of the society subject to the terms and conditions incorporated in the said order.

6. As per provisions of the Repeal Act, the validity of the orders granting exemption under Sub-Section (1) of the Section 20 of the ULC Act or any action thereunder have been saved. However, the validity of the order under Sub-Section (1) of Section 21 has not

been saved. Therefore, after the ULC Act was repealed for the State of Maharashtra, no action could have been taken on the basis of the show cause notice dated 8th August, 1986 and alleged breach of the terms and conditions of the order dated 6th February, 1980 issued under Sub-Section (1) of Section 21 of the ULC Act. As stated earlier, the entire petition proceeds on a completely wrong footing that the order dated 6th February, 1980 is an order under Sub-Section (1) of Section 20 of the ULC Act. Hence, no relief can be granted in this petition. The Petition is accordingly dismissed.

(A.K. MENON, J.)

(A.S. OKA, J.)