

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1654 OF 2017

Nisalp Realities LLP

**(Formerly known as Nishalp Realities
Private Limited) and anr.**

: Petitioners.

Versus

The State of Maharashtra and ors.

: Respondents.

**Mr. Rajiv Narula a/w Ms. Sonam Ghiya and Ms. Shivani S Shah I/by
Jhangiani Narula & Associates for the Petitioners.**

Mr. Abhay L Patki, Addl.GP for the Respondent Nos.1 to 3.

**CORAM : R. M. SAVANT &
NITIN W. SAMBRE, JJ.**

DATE : 01st NOVEMBER 2018

P.C.

1 The above Writ Petition has been filed principally for the relief that a direction be issued to the Respondents to delete the Mutation Entry No.478 dated 08/09/2006 in respect of the property registered in the Property Register Card of CTS No.867 of village Eksar, Taluka Borivali, Mumbai Suburban District.

2 It is not necessary to burden this order with unnecessary details, having regard to the nature of the directions to be issued. Suffice it would be to state that the Petitioners claim to have purchased the property bearing CTS No.867 which bore the original Survey No. 152/1 of village Eksar, Taluka Borivali, Mumbai from one Dr. Allwyn P Mascarenhas and other members of his family who were the original owners. It seems that the said property was

subjected to the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 ("ULCR Act" for short). The said proceedings it appears reached the stage of the notification issued under Section 10(1) of the ULCR Act, and thereafter notice under Section 10(5) of the ULCR Act. The said ULCR Act came to be repealed and which repeal came into force on 29/11/2007.

3 After the repeal Act had come into force, the said Dr. Allwyn P Mascarenhas and others filed a Writ Petition in this Court bearing No.931 of 2009 for the relief which was claimed in the said Writ Petition. In the said Writ Petition a statement came to be made on behalf of the State that the possession of the property in question (i.e. the surplus vacant land) has not been taken. In view thereof, the said Writ Petition was disposed of with directions to the Respondent to consider the case made out by the Petitioner and pass appropriate order in relation to the prayers made in the said Petition as expeditiously as possible and not later than 8 weeks from the said date. This was probably in the context of the fact that the entry in favour of the State Government came to be made in the revenue record in view of the proceedings under the ULCR.

4 In view of the order passed by the Division Bench, the Additional Collector and Competent Authority addressed a letter dated 11/09/2009 to the City Survey Officer No.6, Borivali (West) Mumbai and directed the City Survey

Officer to remove the name of the Government of Maharashtra as holder if entered in P.R. Cards of land bearing CTS No.857 and 867 of village Eksar Taluka Borivali.

5 It appears that prior thereto the land in question was shown in the holding of one Dr. F P Candes and others. A letter was therefore addressed by the said Dr. Candes (Exhibit- O, page-61) to the Hon'ble the Chief Minister of Maharashtra mentioning therein that some of the properties which do not belong to them but have been shown against their name in the order passed under Section 8(4) of the ULCR Act.

6 After the Petitioners had acquired the right in the said property bearing CTS No.867(P), the Petitioners vide their letter dated 26/09/2014 have addressed a letter to the Additional Collector and Competent Authority to delete the Mutation Entry No.478 dated 08/09/2006 inserting name of Government of Maharashtra.

7 The said issue has thereafter shuttled from one office to another i.e. from the State Government to the office of the Collector, Mumbai Suburban District to the office of the City Survey Officer, however, the corrective steps in respect of the Mutation Entry have not been taken for any justifiable reason till date.

8 In the above Writ Petition an affidavit has been filed on behalf of the Respondents by one Rajendra Borkar – Resident Deputy Collector, Mumbai Suburban District. In the said affidavit the factum of the said CTS No.867 (Part) which belongs to the petitioners and was wrongly included in the order passed under Section 8(4) dated 29/03/1981 in respect of the holding of the said Dr. Candes and family has been accepted. However, inability of the authorities to correct the Mutation Entry is expressed by the averments made in paragraph 9 of the said affidavit. It is stated that in view of the repeal of the ULCR Act it is not permissible and possible for the authorities to revisit and/or review the orders passed under the ULCR Act. The said approach of the authorities does not commend to us especially in the background of the conspectus of facts which we have narrated herein above. As indicated in the earlier part of this order, it is before a Division Bench of this Court in the year 2009 that the statement came to be made on behalf of the State that the possession of the land in question has not been taken. There can be no dispute about the fact that the Writ Petition No.931 of 2009 was filed by the predecessor of the Petitioner. Thereafter the Additional Collector and Competent Authority has vide letter dated 11/09/2009 directed the City Survey Officer to carry out corrections in view of the fact that the the possession was not taken in spite of the notification and notice under Section 10(1) and 10(5) of the ULCR Act.

9 In our view, the Revenue Authorities who are enjoined with the duty of making the entries in the revenue record have failed to carry out their statutory duties as a result of which the Petitioners have unnecessarily suffered and have to approach this Court by way of the above Writ Petition.

10 Upon this, the learned Additional Government Pleader Shri Abhay Patki on instructions stated that the Collector, Mumbai Suburban District, Mumbai Shri Sachin Kurey would take a decision and instruct the City Survey Officer No.6 Borivali to make necessary corrections in the Property Card in respect of CTS No.867.

11 We expect the Collector, Mumbai Suburban District, Mumbai to carry out the exercise having due regard to the material which is on record and copies of which would be provided to him by the representative of the Petitioners within one week from date. The Collector, Mumbai Suburban District Shri Sachin Kurey would take a decision within two weeks thereafter and issue instructions to the City Survey Officer, Borivali, Mumbai. On receipt of the instructions of the Collector, Mumbai Suburban District, the City Survey Officer, Borivali, Mumbai to take follow up action expeditiously by following the procedure.

12 The above Writ Petition to stand disposed of in terms of the above.

13 Put up the above Writ Petition for compliance on 30/11/2018.

14 All parties to act upon a copy of this Order duly authenticated by
the Court Associate/Sheristedar.

[NITIN W. SAMBRE, J]

[R. M. SAVANT, J]