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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.1256 OF 2009
WITH
CIVIL APPLICATION NO.2015 OF 2018

Simon B. Lopez

... Petitioner

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Kailas S. Dewal for the Petitioner.

Mr. Y.S. Khochare, AGP for the Respondents.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 10th APRIL 2019.

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

1 Heard the learned counsel appearing for the petitioner and the learned AGP for the respondents. Rule has been issued and therefore, we have taken up the petition for final hearing. The learned counsel appearing for the petitioner pointed out that the order dated 10th February 2011 may not apply to this petition as the prayer incorporated in the said order is not made in this petition. We have perused the prayers. We find that there is no prayer incorporated for challenging the validity of section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short “the Repeal Act”).

2 The petitioner claims to be the owner of the land more particularly described in paragraph 3 of the petition which admeasures about 10720 sq. meters. On 2nd August 1994, the second respondent granted exemption under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”) in respect of the said land.

3 The case made out in the petition is that till 29th November 2007 which is the date on which the Repeal Act came into force, the possession of the entire portion of the said land which was held in excess of ceiling limit was not taken over.

4 To complete the factual aspects, it may be noted here that on 18th March 2005 the exemption granted under section 20 of the ULC Act was revoked. On 11th January 2007, in appeal preferred by the petitioner the matter was remanded to the second respondent. The case made out in the petition is that inspite of the order of remand, no action was taken by the second respondent. In fact, notices under sub-section (1) and sub-section (3) of section 10 of the ULC Act were issued on 9th May 2005 and 31st October 2007 respectively. The specific case made out in the petition is that the petitioner continues to be in possession of the subject land and the petitioner was never served with a notice under sub-section (5) of section 10 of the ULC Act till 29th November 2007. Therefore, reliance is placed on section 4 of the Repeal Act for contending that the proceedings under ULC Act in respect of the said land stand abated.

5 A reply is filed by Shri Bhausahab Joti Patil, the second respondent. The reply mainly deals with the controversy regarding exemption granted under section 20 of the ULC Act. It is not the case made out in the reply that after service of notice under sub-section (5) of section 10 of the ULC Act, the possession of the excess vacant land was taken over.

6 In fact, on the earlier date, we had granted time to the learned AGP to take instructions whether the possession of the excess vacant land was taken over on or before 29th November 2007 after following the procedure under section 10. Today, on instructions, he stated that no such material is available.

7 Thus, in view of the law laid down by a Division Bench of this Court in the case of *Voltas Ltd. and Anr. vs. Additional Collector & Competent Authority & Ors.*¹, the proceedings under ULC Act in relation to the subject land stand abated by virtue of the admitted factual position. Though in Civil Application No.2015 of 2018, there are other reliefs claimed, there is no foundation for the said reliefs in the main petition. Therefore, for any other relief, the petitioner will have to file appropriate proceedings in accordance with law:

ORDER

- (i) We hold and declare that the proceedings in relation to the land described in paragraph 3 of the petition under ULC Act stand abated as a consequence of the repeal of the ULC Act with effect from 29th November 2007;

1 (2008) 5 Bom CR 746

- (ii) We have made no adjudication on any other controversy and especially controversy relating to section 20 of the ULC Act;
- (iii) For the grievances which are made in Civil Application No.2015 of 2018, the petitioner can always adopt appropriate proceedings in accordance with law;
- (iv) On an application being made by the petitioner, the concerned authorities under the Maharashtra Land Revenue Code, 1966 shall correct the revenue record for giving effect to this order of this Court;
- (v) Rule is made absolute on above terms;
- (vi) Pending Civil Application does not survive and the same is disposed of;

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)