

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 929 OF 2008

Sneha Shrinath Navalkar
And Ors.

...Petitioners

Versus

Additional Collector And Competent
Authority, Thane And Ors.

...Respondents

....

Dr. Milind Sathe, Senior Advocate a/w Bhushan Deshmukh, Suneet Tyagi, Parimal K. Shroff, D.V. Deokar, Pinakin Modi, D. Parikh i/b. Parimal K. Shroff & Co. for the Petitioners.

Mr. A.P. Vanarase, AGP, for Respondent Nos.1 & 3 – State.

Mr. V.A. Thorat, Senior Advocate a/w. P.G. Lad, Ms. Aparna Kalathil, Ms. Sayli Apte & Ms. Priyanka Naik, Advocate for Respondent No.2 – MHADA.

Mr. Narayan Bubna i/b. Mayuresh Lagu, Advocate for Respondent No.4.

Ms. Ekta Pandav i/b. Jhangiani Narulla & Asso. for Respondent Nos.5 & 6.

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**CORAM : K.K. TATED &
SARANG V. KOTWAL, JJ.**

**RESERVED ON : 05th MARCH, 2020
PRONOUNCED ON : 17th MARCH, 2020**

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. By this Petition, the Petitioners have challenged the notice dated 5.2.2008 bearing No.ULC /TA /ATP/ S-21/ MHADAJ/

S.R.142+143+144 issued by Respondent No.1–Additional Collector and Competent Authority, Thane Urban Agglomeration, Thane calling upon the Petitioners to surrender the land admeasuring 39,647.95 square meters out of Survey Nos.231, 232, 233, 235 and 240/2 situated in village Mira, Taluka and District Thane to Respondent No.2 – Maharashtra Housing and Area Development Authority (hereinafter referred to as, 'MHADA'). The notice mentions that the Petitioners have already surrendered the land admeasuring 53,574.25 square meters out of the larger area of 93,222.20 square meters. The notice refers to the undertaking dated 13.6.1994 given by the Petitioners to surrender the area of 39,647.95 square meters. By the same notice, the Petitioners were informed that the officers from the Office of Tahsildar, Thane were to remain present on 12.2.2008 to take possession of the said land.

2. The aforementioned land was subject matter of the order passed under Section 21(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the 'U.L.C. Act'). The basic contention of the Petitioners is that, after repeal of the U.L.C. Act by the Urban Land (Ceiling & Regulation) Repeal Act,

1999, the Authorities were precluded from taking possession of the land of which possession was not taken till 29.11.2007 when the Repeal Act came in force.

3. The case of the Petitioners, as set out in the Petition, is as follows :-

3.1. The Petitioner Nos.1, 2 and other co-owners including Smt. Swati Saiprasad Pradhan were entitled to various pieces of leasehold lands and other lands situate at village Mira, Taluka & District – Thane admeasuring in all 10,52,280 square meters including the land bearing Survey Nos.231, 232, 233, 234, 235 and 240/2.

3.2. By agreement for development-cum-sale dated 22.1.1980 executed between the co-owners and Petitioner No.3, the co-owners agreed to sell this property and the rights to develop the same for consideration to Petitioner No.3. There were supplemental agreements executed between the parties.

3.3. Pursuant to the declaration filed by some of the co-owners, three orders under Section 21 of the U.L.C. Act were

passed by the Competent Authority on 28.3.1984, 11.4.1984 and 16.4.1984.

3.4. Vide order dated 10.8.1994, a corrigendum was issued by respondent No.1 replacing the schedules attached to the orders dated 28.3.1984, 11.4.1984, 16.4.1984 and the amended order dated 27.2.1985 specifying the surplus and exempted lands. In that corrigendum, Petitioner Nos.1 and 2 and Smt. Swati Pradhan were mentioned as owners. Apart from the aforementioned survey numbers, the land situate in other survey numbers were also considered. The corrigendum specifically mentioned that the land admeasuring 93,222.80 square meters was to be surrendered to MHADA. Out of which, the land admeasuring 53,574.25 square meters was already surrendered to MHADA and the land admeasuring 39,647.95 square meters was to be surrendered to MHADA. The area exempted under the scheme was admeasuring 2,29,571.72 square meters.

3.5. The compilation of documents tendered by the Petitioners, during the course of arguments, includes the notification dated 23.1.2003 issued under Section 10(3) of the

U.L.C. Act mentioning that the land admeasuring 18,920 square meters from Survey No.233 of the village Mira, Taluka & District – Thane and land admeasuring 13,730 square meters from Survey No.235 from the same village, totaling in all 32,650 square meters vested in the Government of Maharashtra w.e.f. 15.9.2002.

3.6. The Petition mentions that the Petitioners had addressed a letter dated 19.5.1996 to the Hon'ble Chief Minister requesting to condone the condition to surrender the land admeasuring 39,647.95 square meters and also deliver the area of 53,574.25 square meters back to the Petitioners. Till filing of the Petition, the Petitioners were not informed about the response on this letter.

3.7. On 29.11.2007, the State Legislature adopted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and the notification to that effect was issued on 1.12.2007. It was published on 6.12.2007 in the Official Gazette.

3.8. After this, the Petitioners received the notice dated 05/02/2008 referred herein-above issued by Respondent No.1, which is the subject matter of challenge in this Petition. During the

arguments, an affidavit dated 5.3.2020 affirmed by Mofatraj P. Munot, Director of Petitioner No.3 and Constituted Attorney of Petitioner Nos.1 & 2, was tendered before the Court which specifically mentions in paragraph-3 that the Petitioners will not press for return of 53,574.25 square meters land from Respondent Nos.2, 5 and 6. The relevant averments from this affidavit are as under :

“3.I say that during the interregnum the land which was handed over by the Petitioners admeasuring 53,574.25 sq. mtrs. has been developed by the Respondent No.2 through Respondent Nos.5 and 6. I say that the Respondent Nos.5 and 6 were therefore impleaded as party Respondents in the above Petition. I say that the Petitioners looking at the fact that the 53,574.25 square meters of land was handed over to MHADA way back in 1985 and has thereafter been developed by Respondent No.2 through Respondent 5 and 6, it may no longer seek the return of the said portion of land notwithstanding the aforesaid Order of the Hon’ble Supreme Court dated 12th January 2010. I say that the Petitioners are therefore filing the present Affidavit for the limited purpose of placing on record that the Petitioners will not press for return of the said 53,574.25 square metres land from Respondent Nos.2, 5 and 6.”

4. During the course of the arguments, the learned Senior Counsel Dr. Milind Sathe stated that in addition to this affidavit, the Petitioners were unconditionally agreeable to the effect that the land admeasuring 53,574.25 square meters, referred to in this paragraph, should vest with the Government of Maharashtra for all purposes. The statement is accepted.

5. Thus, considering the above factual situation, we are only considering whether the land admeasuring 39,647.95 square meters, referred to in the notice dated 05/02/2008 should be surrendered by the Petitioners and as to whether the land of that area vests with the Government of Maharashtra, though the prayer clause (a) in the Petition seeks quashing of the entire notice dated 5.2.2008 issued by Respondent No.1 relating to 53,574.25 square meters of land in Survey Nos.231, 232, 233, 234, 235, 240/2 situate at village Mira, Taluka & District – Thane.

6. By the amended prayer clause (a)(i), the Petitioners have sought declaration that condition No.38 in the improved construction Commencement Certificate dated 3.2.2009 issued by

Respondent No.4 Mira Bhayandar Municipal Corporation to be void. Said condition calls upon the Petitioners to seek extension of the period for the scheme of construction on the Petitioners' land in accordance with the Government Resolution dated 23.11.2007 pertaining to the U.L.C. Act.

7. The Petition was opposed by the Respondents by filing their reply. Affidavit-in-reply for Respondent No.1 was filed by the then Additional Collector and Competent Authority. It was affirmed on 11.4.2008. After referring to the above mentioned factual position, Respondent No.1 has stated in paragraph-3 of his reply that the land has vested with the Government and, therefore, it was necessary to direct the Petitioners to hand over the possession of the remaining land. He has relied on the undertaking given on behalf of the Petitioners on 13.7.1994. A contention was raised that after the notification under Section 10(3) of the U.L.C. Act was published in the Official Gazette of Maharashtra on 23.1.2003, the land vested with the Government.

8. Respondent Nos.5 & 6 were concerned with the development of the land admeasuring 53,574.25 square meters. In

view of the affidavit filed by the Petitioners and the statement made by the learned Counsel for the Petitioners, the rights of these Respondents are not affected by the reliefs claimed by the Petitioners in respect of the remaining piece of land.

9. We have heard Dr. Milind Sathe, learned Senior Counsel for the Petitioners, Shri V.A. Thorat, learned Senior Counsel for Respondent No.2–MHADA, Shri A.P. Vanarase, learned AGP for Respondent Nos.1 & 3–State, Shri Narayan Bubna, learned Counsel for Respondent No.4 and Ms. Ekta Pandav, learned Counsel for Respondent Nos.5 & 6.

10. Dr. Sathe, learned Senior Counsel for the Petitioners submitted that the scheme of the Repeal Act shows that in respect of the land of which possession was not taken by the Government on the date of the repeal of the U.L.C. Act, the Government was precluded from taking possession of such land and from claiming any interest in that piece of land. He submitted that Section 3 of the Repeal Act makes a reference to the order granting exemption under Section 20(1) of the U.L.C. Act, however, there is no reference to Section 21 of the U.L.C. Act meaning thereby the

proceedings under Section 21 were not covered by the saving clause. He submitted that even if the notification under Section 10(3) of the U.L.C. Act was issued, if the possession was not taken by the Government; after repeal, the Government cannot take possession of such pieces of land.

11. In support of his contentions, Dr. Sathe relied on a few judgments. He first referred to the judgment passed by the Division Bench of this Court in the case of **Voltas Ltd. & Anr. Vs. Additional Collector & Competent Authority & Ors.**, as reported in **2008(5) Bom.C.r. 746.**

12. Dr. Sathe further referred to the judgment of another Division Bench of this Court delivered on 11.3.2015 in Writ Petition No.1178/2014 pertaining to **M/s. Swastik Constructions Vs. State of Maharashtra & Anr.**, which was followed by another Division Bench of this Court in Writ Petition No.10705/2013 in the case of **Subhashchandra Vadilal Shah & Anr. Vs. The Additional Collector & Competent Authority, Thane Urban Agglomeration, Thane & Ors..**

13. On the other hand, Shri V.A. Thorat, learned Senior

Counsel appearing for Respondent No.2-MHADA submitted that the undertaking dated 8.8.1994 given by Petitioner No.3 to Respondent No.1 cannot be ignored. This undertaking reads thus :

“ We hereby undertake to surrender area admeasuring 39,648 sq.mtrs reserved for Public purpose from the land bearing Survey No.231, 232, 233, 234, 235 and 240/2 forming part of Srishti Housing Complex of village Mira, Taluka & Dist. Thane to Govt of Maharashtra.

We further confirm that the plot under reference is already demarcated for handing over to the Government of Maharashtra.”

14. Shri Thorat, therefore, submitted that it was a contractual obligation on the Petitioners to fulfill their part of commitment. This undertaking also means that the Government had deemed to have taken possession of even the portion of land which was in actual possession of the Petitioners. He submitted that considering continuous breach of this undertaking, it disentitles the Petitioners from claiming any equitable relief in the Petition filed under Article 226 of the Constitution of India. He submitted that though he was not arguing that the ‘Savings’ clause of the Repeal Act included

Section 21 of the U.L.C. Act, in the circumstances of this case the petitioners cannot retain the land which was in their possession and which was the subject matter of the scheme under Section 21(1) of the U.L.C. Act.

15. Learned A.G.P. Shri. Vanarase opposed the Petition. He relied on the affidavit filed by Respondent No.1. According to him, the land vested completely for all practical purposes with the Government of Maharashtra though the possession of that piece of land was not taken.

16. We have considered the contentions raised by the parties and the submissions made on their behalf. For the purpose of deciding this Petition, certain provisions of the U.L.C. Act and the Repeal Act are necessary to be reproduced. The relevant provisions for the purposes of this Petition are Sections 10 & 21 of the U.L.C. Act, which read thus :

“10. Acquisition of vacant and in excess of ceiling limit.-- (1) As soon as may be after the service of the statement under section 9 on the person concerned the competent shall cause a Notification giving the particulars of the vacant land held by such person in

excess of the ceiling limit and stating that--

(i) such vacant land is so he acquired by the concerned State Government and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date

of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)--

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any pan thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.--In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to--

(a) any vacant land owned by the Central

Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924, means that State Government.”

“21. Excess vacant land not to be treated as excess in certain cases. - (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purposes of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under sub-section (1), the competent authority shall, by order, and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this Chapter shall apply accordingly.

17. The Savings clause provided under Section 3 of the Repeal Act reads thus :

“3.Savings. – (1) The repeal of the principal Act shall not affect--

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not

been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

18. The analysis of the judgments referred by Dr. Sathe, learned Senior Counsel for the Petitioners shows that the observations in the case of **Voltas Ltd. & Anr.** (supra), particularly made in paragraphs-11, 13 and 14 indicate that the Division Bench had, in clear terms, held that Section 3(1)(a) of the Repeal Act saves vesting of the vacant land in the State Government made by virtue of the declaration made under sub-section (3) of Section 10 of the Principal Act only if the possession of those lands had been taken and by necessary implication it followed that vesting of said land in the State under sub-section (3) of Section 10 of the Principal Act, of which possession had not been taken had been repealed or made ineffective.

19. As far as the judgment in the case of **M/s. Swastik Construction's** case (supra) is concerned, paragraph-11 thereof

reads thus :

“11. We have perused the order dated 27th November, 1983 under Sub-Section (1) of Section 21 of the ULC Act. The legal effect of order under Sub-Section (1) of Section 21 is already noted above. Once there is such an order under Sub-Section (1) of Section 21, the vacant land held in excess of ceiling limit cannot be treated as an excess land for the purposes of Chapter III. Only in case of breach of terms and conditions of the order under Sub-Section (1) of Section 21 that the power under Sub-Section (2) can be exercised by the Competent Authority of declaring the vacant land to be an excess land. On plain reading of the Repeal Act, the validity of order under Sub-Section (1) of Section 21 has not been saved. Even the power under Sub-Section (2) of Section 21 has not been saved. Therefore, till the date of Repeal (i.e. 29th November, 2007), the said land was not a vacant land held in excess of ceiling limit. Though the Repeal Act does not save the validity of an order under Sub-Section (1) of Section 21 of the ULC Act, after 29th November, 2007, the provisions of Chapter III cannot be applied to the said land.”

. Thus, in this judgment, the Division Bench has clearly held that after 29.11.2007, the provisions of Chapter-III of the U.L.C. Act cannot be applied to such land.

20. Thus, from the reading of the relevant provisions and from the observations made in the judgments referred hereinabove, it is clear that if the scheme is sanctioned under Section 21 of the U.L.C. Act, the said land cannot be treated as excess land as mentioned under Section 21 of the U.L.C. Act. Only when there is violation of the conditions mentioned under sub-section (1), the Competent Authority could have declared such land to be excess land and the remaining provisions of the Chapter III of the U.L.C. Act would have applied to such lands if the U.L.C. Act was still in force. Notification under sub-section (3) of Section 10 of the U.L.C. Act is an important step. After the publication of such declaration, the land in question is deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified therein.

21. Section 3 of the Repeal Act specifically mentions Section 20(1) of the U.L.C. Act. Section 21 of the U.L.C. Act is conspicuous by its absence from the clear language of Section 3 of the Repeal Act. Even for Section 20 of the U.L.C. Act, this Section mentions that unless the possession was taken over by the State Government

of any vacant land which vested with the Government under Section 10(3) of the U.L.C. Act, the Government could not have any right including the right of possession in respect of the said land after the date of repeal of the U.L.C. Act.

22. Hence, considering all these aspects, it can be seen that, in the present case, the land admeasuring 39,647.95 square meters in Survey Nos.231, 232, 233, 234, 235, 240/2 situate at village Mira, Taluka & District – Thane is still in possession with the Petitioners. This is evident from the impugned notice itself. It is not possible to accept the contentions raised by Shri Thorat, learned Senior Counsel of Respondent No.2-MHADA that because of the undertaking the Petitioners were deemed to have surrendered the area admeasuring 39,647.95 square meters to the State Government before Repeal of the U.L.C. Act. The notice specifically refers to Section 21 of the U.L.C. Act and not Section 20 and, therefore, in any case the proceedings under Section 21 are not saved.

23. As the ‘Savings’ clause refers to handing over of the actual possession before repeal of U.L.C. Act, the learned A.G.P’s

stand that the Petitioners are liable to hand over the possession of the remaining land even after repeal of U.L.C. Act and that the entire land always vested with the Government, is not correct.

24. In view of this discussion, the Petition must succeed in respect of the land admeasuring 39,647.95 square meters. Hence, the following order :

O R D E R

- i. The impugned notice dated 05/02/2008 issued by Respondent No.1 to the Petitioners is quashed and set aside in respect of the area admeasuring 39,647.95 square meters from Survey Nos.231, 232, 233, 234, 235, 240/2 situate at village Mira, Taluka & District–Thane. The Petitioners are not required to hand over possession of that portion to the Government and it shall not vest with the Government.
- ii. It is further declared that the Petitioners need not obtain extension of the scheme as required in Clause-38 of the improved construction Commencement Certificate dated 03/02/2009 issued by Respondent No.4 Mira Bhayandar Municipal Corporation.

- iii. Rule is made absolute in aforesaid terms.
- iv. Writ Petition is disposed of accordingly.
- v. No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)

- a) At this stage, the learned counsel appearing on behalf of the Respondent No.2-MHADA seeks stay of this order.
- b) Considering the law discussed above, we do not find any reason to stay this order.
- c) Hence, the request made by the learned counsel for the Respondent No.2 – MHADA is rejected.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)

Deshmane (PS)