

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4917 OF 2017

Mr. Mohammad Akil Gulam Mohammad Patil
Alias Patel And Ors. ...Petitioners

Versus

The State Of Maharashtra And Anr. ...Respondents

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Mr. Y.S. Jahagirdar, Senior Advocate a/w. Raju D. Suryawanshi, Advocate
for the Petitioners.

Mr. A.I. Patel, Addl. G.P. a/w. A.P. Vanarase, AGP, for Respondents – State.

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

DATE : 09th MARCH, 2020

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

1 Rule. Rule made returnable forthwith by consent of parties. By this Petition, the Petitioners are praying for declaration that the lands held by them and of which possession is not taken over by the Government, be declared as freehold lands and not affected by the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as, 'U.L.C. Act'). The Petitioners are also praying for correcting the revenue record in respect of those lands by removing the remark of 'excess area' in the 7/12 extracts.

2 Brief facts mentioned in the Petition are as follows:-

2.1 The Petitioners and their predecessors were the joint owners of the lands situated in village Mira, Taluka & District–Thane. Those lands were as follows :

Sr. No.	Old Survey No.	New Survey No.	Hissa No.	Area in Square Meters
1	165	36	1	1796
2	165	36	3	5362
3	165	36	8	2302
4	165	36	11	2150
5	174	43	3	1644
6	174	43	5	4957
7	174	43	6	2910
8	174	43	7	1190
9	181	50	2	3320

These properties are collectively described as ‘larger property of the Petitioners’.

2.2 It is the case of the Petitioners that on 18.8.1973, partition was effected amongst the owners and different portions went to the share of different Petitioners. The details of such shares is not necessary to be reproduced in this order.

2.3 On commencement of the U.L.C. Act, Mr. Gulam

Mohammad Ibrahim Patil alias Patel had filed a statement under Section 6(1) of the U.L.C. Act before Respondent No.2–Additional Collector and Competent Authority under U.L.C., Thane Urban Agglomeration, Thane, specifying therein the details of the larger property. Respondent No.2 passed an order dated 26.10.1982 under Section 8(4) of the U.L.C. Act. By that order, Respondent No.2 declared aforementioned lands as surplus vacant land.

2.4 Since according to the Petitioners, Respondent No.2 had not considered the partition dated 18.8.1973, Gulam Mohammad Ibrahim Patil alias Patel made an application dated 29.6.1990 to the Under Secretary to Government, Housing and Special Assistance Department seeking revocation of the order dated 26.10.1982.

2.5 By a letter dated 17.12.1990, the Under Secretary to the Government, Housing and Special Assistance Department informed Respondent No.2 to consider the shares of other family members of Gulam Ibrahim Mohammad Patil alias Patel in the larger property and to pass appropriate order accordingly. According to the Petitioners, fresh inquiry was not initiated by Respondent No.2

pursuant to this letter.

2.6 During this period, Mohammad Akhil Patil alias Patel made an application to Respondent No.2 seeking permission under Section 20 of the U.L.C. Act in respect of old Survey No.165, New Survey No.36, Hissa No.1 admeasuring 1296 square meters, old Survey No.165, New Survey No.36, Hissa No.11, admeasuring 2150 square meters, Old Survey No.174, New Survey No.43, Hissa No.3 admeasuring 1644 square meters and old Survey No.174, New Survey No.43, Hissa No.5 admeasuring 4957 square meters.

2.7 Respondent No.2 passed an order dated 29.12.1994 granting exemption on certain conditions including construction of small tenements.

2.8 By order dated 18.10.2002, this order was modified by issuing corrigendum for surrendering certain FSI in the form of tenements to the Government. According to the Petitioners, they completed the scheme under Section 20(1) of the U.L.C. Act on the area of 10,087 square meters of land bearing old Survey Nos.165/1, 165/11, 174/3 and 174/5. The tenements were also

handed over to the respective nominees as were directed by the Government.

3 According to the Petitioners, the surplus area of 15,041 square meters in the lands bearing Survey No.165/3, 165/8, 165/11, 174/6 and 174/7 is still in possession of the Petitioners. The Petitioners claimed that these lands are freehold lands and after repeal of the U.L.C. Act, the Petitioners are not required to surrender these lands. The break-up of the area is mentioned in the amended paragraph-4(xi) as under, and that is the prayer made by the Petitioners in this Petition :

Sr. No.	Old Survey No.	New Survey No.	Hissa No.	Area in Square Meters
1	165	36	3	5362
2	165	36	8	2250
3	174	43	6	2909
4	174	43	7	1190
5	181	50	2	3330
			Total Freehold land	15041

4 The Petitioners have described this freehold land as the suit property. It is their case that the respective Petitioners as the

owners of this property are in exclusive possession of this suit property. By virtue of the Repeal Act, the orders passed by Respondent No.2 under Section 8(4) of the U.L.C. Act have lapsed.

5 The Petition is opposed by the Respondents. Respondent Nos.1 & 2 had filed affidavit of Deputy Collector (EGS) and Coordinating Officer, Thane Agglomeration, Thane dated 14.11.2017. It was stated on their behalf in their affidavit that the order dated 17.12.1990 referred in the Petition, whereby the Under Secretary to the Government, Housing and Special Assistance Department informed Respondent No.2 to consider the shares of other family members of Gulam Ibrahim Mohammad Patil alias Patel; was not available in the office file. According to these Respondent Nos.1 & 2, the order passed under Section 8(4) of the ULC Act on 26.10.1982 was final. The affidavit-in-reply further mentions that the vacant area of the Petitioners was 25,148 square meters and the Petitioners had initially submitted a proposal of Weaker Section Housing Scheme under Section 20 of the ULC Act for development of an area admeasuring 10087 square meters on lands bearing Survey Nos.165/1, 165/11, 174/3 and 174/5 at

village Mire. The Additional Collector and Competent Authority under ULC passed order under Section 20(1) of the ULC Act on 29.12.1994 granting them exemption under that Section. It is admitted that the Petitioners had completed the construction in the said Scheme.

6 It is further stated in the affidavit-in-reply that the Petitioners also submitted a proposal of Weaker Section Housing Scheme under Section 20 of the ULC Act for development of the balance surplus area admeasuring 15,040 square meters on the lands bearing Survey Nos.165/3, 165/8, 174/6, 174/7 and 181/2 in Mire village. The Additional Collector & Competent Authority passed order under Section 20(1) of the ULC Act on 10.7.1995. The noting for sanctioning of the said scheme was perused and signed by the Collector on 15.7.1995.

7 It is specifically admitted in the affidavit-in-reply that the copy of the exemption order dated 10.7.1995 was not available in the relevant file. However, it was contended that all other documents including the proposal submitted by the Petitioners were available in the office file.

8 It is further stated that since the original file of proposal was not traceable, a fresh proposal of Weaker Section Housing Scheme was submitted by one Shri Kanti K. Haria. According to the submissions in paragraph No.9 of this affidavit this Shri Kanti Haria was the Power of Attorney Holder of the land owner Mohammad Akil Mohammad Patel & Ors. The Technical Committee had accorded sanction to this proposal on 03/07/1995. It is contention of Respondent No.2 that the Petitioners were required to handover the possession of the area under various reservations in the Development Plan to the concerned Planning Authority and they were required to construct small tenements. They were also required to surrender 10% of the tenements to the Government. All these details of the scheme were included in the office noting approved on 10/07/1995. It is the contention of Respondent Nos.1 and 2 in the affidavit in reply that the Petitioners have not implemented the said scheme u/s 20 of the ULC Act. The Competent Authority had issued a notice dated 26/07/1996 to the Scheme Holder pointing out that the construction was not started within a period of one year from the date of order of this Scheme

and, thus, the terms and conditions of the Scheme were violated by the Scheme holders. By another notice dated 13/11/1997 the Scheme Holders were directed to hand over possession of the area of the land in the scheme. By further notice dated 20/08/2009 and 26/05/2014, the Scheme Holders were directed to comply with the exemption order under Section 20 of the ULC Act and to take further extension of time for implementation of the Scheme after paying the requisite penalty.

9 It was specifically mentioned in paragraph-14 of the affidavit-in-reply that the copy of the scheme order under Section 20 of the ULC Act dated 16/07/1995 was not available in the relevant file, though a detailed note in that respect was available. It is contended that since there was violation of the conditions of the exemption scheme under Section 20 of the ULC Act and since the scheme was still in existence, the Petitioners were bound to comply with the said order.

10 The Petitioners filed their rejoinder to this affidavit in reply filed by Respondent Nos.1 and 2. The Petitioners have *inter alia* stated that M/s Sanghvi Builders had agreed to purchase the

land described in paragraph No.4(ix) of the Petition from Gulam Mohammad Ibrahim Patil @ Patel and the Partners of M/s Sanghvi Builders had made an application to Respondent No.2 for seeking permission under Section 20 of ULC Act in respect of the said property, pursuant to which Respondent No.2 had granted exemption.

11 It was specifically stated in the rejoinder that the Petitioners and their predecessor had not made any application to Respondent No.2 for seeking exemption in respect of suit property described in paragraph No.4(xi) of the Petition under Section 20 of the ULC Act. It is further stated that Shri Kanti Haria has nothing to do with the suit property.

12 Respondent No.2 filed additional affidavit dated 29/11/2017 mentioning that aforementioned Shri Kanti Haria had placed on record five documents of Power of Attorney. Copies of said documents are annexed to the additional affidavit-in-reply.

13 During the course of hearing of this matter, this Court directed the learned AGP to file affidavit of Secretary, Urban Development Department, Mantralaya, explaining the position

about availability of the order dated 16/07/1995 passed under Section 20 of ULC Act. Pursuant to this direction, the Additional Chief Secretary to Government, Urban Development Department, Mantralaya, filed affidavit dated 11/12/2019. It was mentioned in paragraph No.3 of this affidavit that the order under Section 20 of ULC Act dated 16/07/1995 was not available with the office of Collector and Competent Authority, Thane. However, it was contended that considering the other documents, the mutation entry of the scheme under Section 20 was already taken in 7/12 extract of the exempted land. It was further contended that the land owners can avail the benefits of Government Resolution dated 01/08/2019, which was regarding exemption under Section 20 of the ULC Act.

14 We have heard learned Senior Counsel Mr.Y.S. Jahagirdar for the Petitioners and learned Addl.G.P. Mr.A.I. Patel for the Respondents-State.

15 Mr. Jahagirdar submitted that admittedly the area of 15,041 square meters is still in possession of the Petitioners. After Repeal of the ULC Act, was adopted by the State legislature, the

lands of which possession was not taken by the Government cannot vest with the Government and the Government is precluded from taking possession of the said land. He submitted that in any case, the notification under Section 10(3) in respect of this area of land was never published and, therefore, the lands never vested in the Government. He submitted that admittedly the exemption order dated 16/07/1995 passed under Section 20 of ULC Act is not available on record and, therefore, the Government cannot act on such order and allege non-compliance of such conditions.

16 Mr. Jahagirdar referred to a judgment of the Full Bench of this Court in the case of *Maharashtra Chamber of Housing Industry, Mumbai and Ors, Vs. State of Maharashtra and Anr.*, reported in *2014(6) Mh.L.J.829*. Mr. Jahagirdar invited our attention to the relevant provision of the ULC Act and the Repeal Act.

17 The Learned A.G.P. on the other hand reiterated the stand taken by the Respondents in their affidavits.

18 We have considered the rival submissions. For the purpose of appreciating these arguments it is necessary to reproduce important provisions from the ULC Act and Repeal Act. Sections 10 and 20 of the ULC 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.”

“20. Power to exempt.-- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter.--

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by

order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter.

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of subsection (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.”

19 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.”

20 Section 3 of the Repeal Act takes care of important aspects involved in this Petition. Clause (b) of sub-section 1 of Section 3 lays down that the repeal of the Principal Act shall not

affect 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. Clause (a) of sub-section (1) of Section 3 provides that the repeal of principal Act shall not affect 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.

21 The Full Bench in case of **Maharashtra Chamber of Housing Industry, Mumbai** (supra), by majority view, has emphasized that the repeal of the Principal Act shall not affect validity of order of exemption under Section 20(1) of ULC Act and all terms and conditions thereof are saved. Though, Section 20(2) of the Principal Act is not specifically mentioned in the ‘Savings’ clause of the Repeal Act, that did not mean that the power under Section 20(2) of the Principal Act was not saved.

22 In the case of **Voltas Ltd. & Anr. Vs. Additional Collector & Competent Authority & Ors.**, as reported in **2008(5) Bom.C.r. 746**, the Division Bench has emphasized that on the date of the repeal if

the possession was already not taken by the Government, the Government cannot claim possession of such land which was the clear language of Section 3(1)(a) of the Repeal Act.

23 It is an admitted position that in the present case the possession of the land which is the subject matter of this Petition is still with the Petitioners. Thus, on the date of repeal of the Principal Act, the Petitioners continued to be in possession of the said land. It is not taken over by the State Government in all those years.

24 Secondly, the exemption order passed under Section 20(1) of the ULC Act is not available in records and, therefore, now it is not possible for the State Government to claim that a particular condition in the said exemption order is violated by the Petitioners and there is nothing on record to show that any notification under Section 10(3) of the ULC Act was ever published in respect of the subject matter of this Petition. Thus, the land in question had never vested or were not deemed to be have vested with the State Government. On all these counts, the Government is precluded from claiming possession or any other right in respect of those

pieces of land. Therefore, the Petition must succeed. Hence following order:

i. Rule is made absolute in terms of prayer clauses (b) and (c)

which read thus:

“(b) This Hon’ble Court be pleased to declare and hold that the lands described in paragraph 4(xi) of the petition continue to be freehold lands and not affected in view of Urban Land (Ceiling and Regulation) Repeal Act, 2007 and no steps be taken against the said lands under Urban Land (Ceiling and Regulation), Act, 1976;

(c) This Hon’ble Court be pleased to declare and hold that the lands described in paragraph 4(xi) of the petition are freehold lands and Respondents be directed to give effect to the same in the revenue records of the said lands by removing the remark of “excess area” in the 7/12 extracts of the said lands in view of Urban Land (Ceiling and Regulation) Repeal Act, 2007;”

ii. Paragraph No.4(xi) of the Petition describes the land as follows:

Sr.No.	Old Survey No.	New Survey No.	Hissa No.	Total Area in Sq.Meters
1.	165	36	3	5362
2.	165	36	8	2250
3.	174	43	6	2909
4.	174	43	7	1190
5.	181	50	2	3330
			Total Freehold land	15041

iii. The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)

Deshmane (PS)