

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

WRIT PETITION NO. 4094 OF 2018

M/s. Bhoomi Sky High Creations ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Prasad Dhakephalkar, Senior Advocate i/b. Mr. Sachin Dhakephalkar for the Petitioner.
Mrs. R. M. Shinde, AGP for Respondent- State.
Mr. Rohit P. Sakhadeo for Respondent No.5.

**CORAM : A. A. SAYED &
 S. G. DIGE, JJ**

DATED : 5th August, 2021

P.C.:

The Petitioner, who is a developer, has filed the above
Petition seeking the following reliefs:

a. This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ in the nature of the mandamus thereby calling for record and proceedings pertaining to the impugned order dated 12th December, 2017 passed by the Executive Engineer, Pimpari-Chichwad Municipal Corporation and after perusing the legality, validity and propriety be pleased to quash and set aside the impugned order dated 12th December, 2017 and be pleased to allow the application bearing no. 103317180009484 dated 6th December, 2017 filed by the Petitioners be allowed by issuing building permission in favour of the Petitioners;

b. Pending the hearing and final disposal of this petition this Hon'ble Court be pleased to direct the Pimpari-

Chinchwad Municipal Corporation to allow the application bearing no. 103317180009484 dated 6th December, 2017 filed by the Petitioners by issuing building permission in favour of the Petitioners;

2. By the impugned order dated 12.12.2017, the Respondent-Corporation has rejected building permission on the lands bearing Survey No. 126, Hissa No. 1/1, Mouje Wakade, Taluka-Mulshi, Dist.-Pune (hereafter referred to as “the said property”) in the municipal area of the Respondent-Corporation i.e. Pimpri Chinchwad Corporation on the ground that the said property is mentioned in the list of forged ULC certificates.

3. The owners of the said property are stated to be Sindhu Suresh Chavan & Ors. There is no dispute that no proceedings under the Urban Land Ceiling Act were adopted against the original owners nor the possession of the said land was taken. In view of the enactment of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and in view of the judgment of the Division Bench of this Court in *Voltas Limited & Anr. Vs. Additional Collector and Competent Authority Thane & Ors. 2008 (5) All MR 537* there is no question of the said property being vested in the Government under the provisions of Urban Land Ceiling Act. The

said property would therefore be available to the owners for development.

4. In the Affidavit-in-Reply filed on behalf of the Respondent-Corporation, in paragraph Nos. 3 to 7, it is stated as follows:

3. I say that, vide letter dated 30.07.2005, the Swargate Police Station through its Senior Inspector informed the corporation about the ongoing criminal investigation in the matter of alleged forged ULC orders, list/chart was attached to the said letter. The chart contained the ULC Case number, the names of the persons and the property details. Amongst the said list, is the survey number of the land which is subject matter of the Petition. The said Survey number is mentioned at Sr. No. 15 of the list. The alleged forged ULC Order Number is 1471-CH-09/12/1998. The name of the person is mentioned as Sindhu Suresh Chawan & others, at Survey No. 126/1, Wakad. Hereto marked and annexed as Exhibit R-1 is the copy of the said letter dated 30/07/2005 alongwith its annexure.

4. I say that, thereafter, CID, Pune through its Deputy Superintendent of Police vide its letter dated 11/08/2006 informed the Corporation that, the Corporation should call for report from CID, Pune before issuing Development permission in respect of the names and survey numbers mentioned in the said letter. The name of the Sindhu Suresh Chawan erstwhile owner of the subject property (survey no. 126/1, Wakad) is mentioned at Sr. No. 2 of the names mentioned in the said letter. Hereto annexed and marked as Exhibit R-2 is the copy of the letter dated 11/08/2006.

5. I say that, in view of the above letters, the Corporation has rejected the development permission sought by the Petitioner. The copy of the Corporation's

letter dated 12/12/2017 is already annexed at page no. 180 (Exhibit E) to the Petition.

6. I further say that in the meanwhile the Additional Collector cum Competent Authority, Pune vide its letter dated 10/04/2015 gave certain directions to the corporation, Pune Municipal Corporation / Dehu Road / Khadki Contonment Board, Talegaon Dabhade and Alandi Municipal Counsel in respect of handling of development permission applications as well as certain other aspect in the matter of the 29 alleged forged ULC Orders (out of which 18 are issued in respect of lands which are falling within the limits of PCMC). Hereto marked and annexed as Exhibit R-3 is the copy of the letter dated 10/04/2015. The said letter and its contents are self explanatory.

7. I say that, the Corporation vide its letter dated 09/04/2018 has called for remarks from Competent Authority, ULC Pune regarding development permission, the copy of the said letter also sent to the CID, Pune.

5 On 4th May, 2018 this Court had passed the following order:

“The learned AGP represents first, second, fourth and six respondents. Place the Petition on 26th June, 2018 under the caption of “Fresh Admission”. Parties are put to notice that an endeavour shall be made to decide the Petition finally at the stage of admission. We direct the concerned Investigating Officer to file an Affidavit stating whether owners of the property are involved in the offence and whether there names figures in the charge sheet. Affidavit shall be filed by the Respondents including the Investigating Officer on or before 18th June, 2018. No further time shall be granted.”

6. Pursuant to the aforesaid order, an Affidavit is filed by the Investigating Officer. In paragraph Nos.1 to 5 of the said Affidavit, it is stated as follows:

1. I say that, I am filing the present affidavit on behalf of the EOW, CID, Pune. I say that, I have carefully gone through the entire record of investigation and the chargesheet in the offence bearing Cr. No. 30/20211 registered in Swargate P. S. Pune City. I say that, I am filing this Affidavit as I am at present in-charge of the said offences registered vide Cr. No. 30/20211 with Swargate P.S. Pune and is duty bound to look after all the follow-up and court litigation compliance etc. arising out of the said offence as the case may be. I have been duly authorized to file affidavit in this petition on behalf of Respondent No. 6 CID, Pune in WP no. 1294/2018 before the Hon'ble Bombay High Court.

2. I say that, the Cr. No. 30/2011 is the offenses regarding forged and fake ULC Certificates wherein the various Survey Numbers of lands owned and possessed by the present petitioner and respondents are mentioned and included. I say that, the wakad S. no. 126/1 is mentioned in the fake ULC certificate prepared by accused bearing ULC Case no. 1471CH dated 09.12.1998 which has been seized and is an integral part and parcel being the crucial incriminating foundation document of the said offence registered vide Cr. No. 30/11 with Swargate P.S. Pune u/s. 420, 467, 468, 472, 474, 201, 120(B) r/w. 34 IPC.

3. I say that the chargesheet is filed against total 05 accused on 31.03.2012 in Hon'ble JMFC Court, Shivajinagar, Pune. I say that, the names of the said 05 accused are as i.e. i) Ramesh Popat Giramkar, ii) Sharad Subrao Kokate, iii) Sanjay Bhausaheb Shind, iv) Sujay Surendra Chopade and v) Atul Ramchandra Panse. The said offence has been investigated by various I.O.s from EOW, CID Pune. The original chargesheet in this offence has been submitted by P. R. Londhe, Dy. S.P. EOW, CID, Pune on 31.03.2012 against 05 accused.

4. I further say that, at present the investigation of the said offence has been completed. The criminal case bearing RCC No. 0401271/2012 has been registered on the basis of the said submitted chargesheet in the said offence before Hon'ble JMFC Court No. 8, Shivajinagar, Pune and presently the trial is awaited therein. The said criminal case is at the stage of framing of charges against the accused therein and the matter is fixed for further hearing.

5. I say that, the present Petitioners are not accused persons in the said Swargate P.S. vide Cr. No. 30/2011, in Criminal Case No. 0401271/2012 pending before the Hon'ble JMFC Court Shivajinagar, Pune.

7 It is thus an admitted position before the Court that in the Criminal Proceedings there is no charge-sheet filed against the owners of the said land who are stated to be Sindhu Chavan and others as well as the present Petitioner.

8 Similar issue had come up for the consideration of this Court in the case of **M/s. S. P. Developers vs. The Municipal Corporation for the City of Pimpri-Chichvad & Ors.** in Writ Petition No. 11329 of 2014. The issue raised in the present Petition would be covered by the judgment dated 6th June, 2017 in the aforesaid Writ Petition No.11329 of 2014. In Paragraph Nos.10 to 13 of the said judgment, it is observed as follows:

10. Having heard the learned counsel for the parties and having considered the facts of the case, it is now well

settled that if the State had not taken possession of the vacant lands before the Repeal Act which came into force on before 29th November, 2007, the mere vesting of the land in favour of the State, would not entitle the Competent Authority to proceed under the Act. Mere vesting of the land by an operation of law without actually taking the possession is not sufficient for invoking the provisions of Section 3(1)(a) of the Repeal Act. This position of the law as laid down by this Court in the case of *Voltas Ltd. & Anr. v/s. Additional Collector and Competent Authority, Thane & Ors.* 1 which in express terms has held that by virtue of Section 4 of the Repeal Act, the land in question would revert to land owner. With effect from 29th November, 2007 the provisions of Section 10(5) and (6) are no longer available to the State Government in relation to the said land and as such the Competent Authority will not be entitled to direct the landholder to deliver possession to the State nor could the State take possession on failure of the landholder to deliver the possession. In the circumstances, by virtue of the Repeal Act coming into force, there was no ground whatsoever to contend that the land was not freehold land and subject to the saving under the Repeal Act.

11. In paragraph 14 of the *Voltas* judgment, this Court has also dealt with and observed that intention of the legislature was not to save vesting of land of which possession was not taken. Although when the Repeal Bill was introduced clause (3) of the Repeal Bill considered provisions which intended to protect and save vesting of even those with the State Government in relation to which an order under Section 10(5) of the Principal Act has been made for delivery of possession as also those lands of which possession has been taken. The Repeal Act does not provide for such saving if possession has not been taken. This position of law, it has been also affirmed by the Supreme Court in the case of *Vinayak Kashinath Shilkar v/s. Deputy Collector and Competent Authority & Others* 2 which holds in no uncertain terms in paragraph 10 that where possession of the vacant

land has not been taken over by the State Government or by any person duly authorized by the State Government in this behalf or by the Competent Authority, proceedings under the Act would not survive and without actual possession the vesting would be inconsequential. This Court in a number of petitions being Writ Petition No.1972 of 2013 in the case of Parshuram Kashinath Joshi and others v/s. The State of Maharashtra and others has held that the mere pendency of CID enquiry would not entitle the respondents to reject the petitioner's application in the case for grant of occupancy certificate. Similarly, in the case of Anil Nemichand Bafna and others v/s. The Collector, Pune and others in Writ Petition no.3695 of 2014, this Court has held in its judgment dated 3rd July, 2015 to which one of us (A. S. Oka, J.) is a party, that the pendency of investigations in certain criminal complaints pending in relation to illegal/irregular orders passed by the Competent Authority or by the Appellate Authorities pursuant to fake/fabricated and/or forged documents should not come in the way of the District Collector considering the application for grant of non-agricultural use of the said land.

12. In the instant case, as well, it is seen that the charge sheet filed does not indicate that the original owner nor the present holder has been indicted and accordingly they were not accused in the cases and merely because the case is pending will not entitle the Corporation to decline considering the building proposal. The demand of the respondents to produce the no objection certificate from the ULC Department also is devoid of any merit since the lands in any case would not constitute vacant/excess lands since they are within the purview of the ULCRA.

13. The only other aspect to be noted is that one Suresh Borole who is one of the accused persons is the proprietor of one Pankaj Builders had sold the said land to the Petitioners vendor on or about 12th September 2007 i.e. before 29th November 2007, the effective date

of repeal of ULCRA. We do not see this by itself as reason to deny the petitioner consideration of the petitioner's application. It is pertinent to note that on behalf of Respondent no.6 Deputy Superintendent of Police EOW, and additional affidavit of Sourabhi Sharadchandra Pawar, Police Inspector, EOW, C.I.D., Pune has been filed in which the deponent in his capacity as officer in charge of the case no.444/2005, states that the present petitioner is not involved in the offence and not charge-sheeted. The case against the said Borole may proceed and does not impact the petitioners right to pursue its application before the authorities.

(Emphasis supplied)

9. In the circumstances, we are of the view that the impugned order dated 12.12.2017 rejecting the Applications for building permission cannot be sustained. Hence, we pass the following order:

ORDER

(a) The impugned order dated 12.12.2017 passed by the Respondent-Corporation rejecting the building proposal of the Petitioner on the ground of the said property is in the list of forged ULC Certificates is quashed and set aside.

(b) The Respondent Corporation shall consider the development proposal of the Petitioner afresh in accordance with law uninfluenced by the pending criminal cases relating to forged ULC Certificate No. CH-1471 dated 09.12.1998.

(c) We make it clear that we have not gone into the title of the Petitioner and/or the title of the owners who are stated to be Sindhu Suresh Chavan & Ors.

(d) The Writ Petition is allowed in the aforesaid terms and to stand disposed of.

(S. G. DIGE, J.)

(A. A. SAYED, J.)