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

WRIT PETITION NO.8341 OF 2021

1. Ananta Landmarks Private Limited
a company incorporated under the
provisions of the Companies Act, 1956,
and under the Companies Act, 2013
having its Registered Office at 101,
Kalpataru Synergy, Op. Grand Hyatt,
Santacruz (East), Mumbai – 400 055. Petitioner

Versus

1. State of Maharashtra
through the Principal Secretary
Revenue & Forest Department
Mantralaya, Mumbai – 400 032.
2. District Collector of Thane
having office at Collector Office, Thane
Opp. Thane District Court, Court Naka,
Thane (West) – 400 601. Respondents

Dr.Milind Sathe, Senior Advocate with Mr.G.S.Godbole,
Mr.Saket Mone, Mr.Subit Chakrabarti, Mr.Shrey Shah,
Mr.Makarand Savant & Mr.Devansh Shah i/b M/s.Vidhii
Partners for the Petitioner

Mr.A.A.Kumbhakoni, Advocate General with Ms.
M.P.Thakur, A.G.P. for the State / Respondents

**CORAM: S.V. GANGAPURWALA &
M. G. SEWLIKAR, JJ.**

RESERVED ON: MAY 05, 2022

PRONOUNCED ON: JUNE 09, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

1. Rule. Rule made returnable forthwith. By consent of parties, Writ Petition is heard finally.

2. The Petitioner in the instant petition under Article 226 of the Constitution of India assails the impugned order / communication dated 27.09.2021 issued by the District Collector of Thane i.e. Respondent no.2 thereby rejecting the application filed by the Petitioner for conversion of occupancy from Class-II to Occupancy Class-I of the writ lands.

3. Sans the necessary details, the facts relevant for adjudication of the present petition can be culled out as under:

4. The State of Maharashtra (Respondent no.1) acquired an area of 1,89,680 sq. mtrs. of the lands under the provisions of Part VII of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894). Upon the request of the predecessor-in-title of the Petitioner, the agreement to that effect was executed, as required under the Act, 1894

in respect of an area of 1,89,680 sq. mtrs. Upon further request of the predecessor-in-title of the Petitioner, the State of Maharashtra also granted an area of 10,900 sq. mtrs. under the provisions of Maharashtra Land Revenue Code. Sanad dated 14.12.1990 under section 44 of the Maharashtra Land Revenue Code for an area of 10,900 sq. mtrs. is issued in favour of the predecessor-in-title of the Petitioner.

5. The writ lands were acquired for the benefit of the predecessor-in-title of the Petitioner to run the Industry. It is the case of the Petitioner that the predecessor-in-title of the Petitioner used the said lands for industrial purposes for about 50-60 years. It is the case of the Petitioner that with the passage of time, to avoid the hazards of industrial pollution, most of the companies/industrial units including that of the predecessor-in-title of the Petitioner were either shifted to other locations or shut down. To cope up with the need of urban population, the State Government came up with a policy regarding sale or change of use of lands acquired for industrial purpose under Part VII of the Act, 1894 and to permit such lands for residential / commercial use. It is further the case of the Petitioner that the State of

Maharashtra permitted the predecessor-in-title of the Petitioner to transfer the writ lands to the Petitioner under different permissions dated 17.11.2009 and 21.08.2010 upon payment of requisite premium. According to the Petitioner, the lands allowed to be transferred to the Petitioner are 'Occupancy Class-II' lands. Petitioner as such, filed an application for conversion of Occupancy Class II lands into Class I lands as per the rules notified by the Respondent no.1 in the year 2019 namely the Maharashtra Land Revenue (Conversion Of Occupancy Class-II And Leasehold Lands Into Occupancy Class-I) Rules, 2019 (hereinafter referred to as the Rules, 2019). The said application is rejected. Aggrieved thereby, the present petition.

6. Mr.Sathaye, the learned Senior Advocate for the Petitioner in his usual lucid manner submits that the lands allotted to the Petitioner are Class II occupancy lands. The title document issued by the State Government expressly records that the lands are Class II occupancy lands. Clause 2 of the title documents expressly provides that the lands are granted subject to the provisions of Bombay Land Revenue Code, 1879 and Rules made therein. Clause viii

stipulates that the Company shall not alienate the land except with previous permission in writing from the Government. It is contended by the learned Senior Advocate that on a plain reading of the Rules, 2019 dated 08.03.2019 viz. Conversion rules, the same applies to lands granted or subsequently allotted by the competent authority to be used for agricultural or residential or commercial or industrial purpose on Occupancy Class-II or leasehold rights. The said is evident from Rule 1(2) of Rules, 2019. Further under Rule 3, it categorically provides for the application to be made by any holder of land granted on occupancy Class II or leasehold rights. The Petitioner is governed by title (B) Serial no.2 for the purpose of payment of premium. The learned Senior Advocate further submits that the State Government had filed an affidavit on 19.1.2016 in Writ Petition No.7979 of 2012 in respect of the same land. In the said affidavit, it was accepted by the Government that the lands are category Class II lands and governed by the G.R. dated 21.11.1957 and Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules 1971. The government now is estopped from taking a different stand. In the said Writ Petition, the State Government as well as the present Petitioner were parties.

The learned Senior Advocate further contends that the impugned order is contrary to the law laid down by Division Bench of this court in its judgment ***dated 16.03.2020 passed in Writ Petition No.2830 of 2016 in the matter between CEAT Limited vs. The State of Maharashtra and Ors.*** In the said judgment, this court held that when the government had acquired the land under Land Acquisition Act, 1894 and vested the same in favour of the company in accordance with Maharashtra Land Revenue Code, the Government had not vested absolute title in favour of the company but had conferred on the Company the status of Class II occupant. In the said judgment, the stand of the government was that the Petitioner is an Occupant Class II under the Maharashtra Land Revenue Code. The learned Senior Advocate further submits that section 44A of the Act, 1894 also prescribes that no company for which any land is acquired under this Part shall be entitled to transfer the said land except with the previous sanction of the appropriate government. The appropriate government is the State Government. The State Government exercised its right while permitting the transfer of the land in the year 2009-10 by the predecessor-in-title of the Petitioner in favour of the Petitioner and the change of user has also been

permitted. The learned Senior Advocate also relies upon section 29 read with section 29A of the Maharashtra Land Revenue Code, 1966.

7. Another contention of the learned counsel for the Petitioner is that the premium ought to be calculated on the valuation of the property as on the date the application is made and not as on the date the decision is given. The Division Bench of this court to which one of us (S.V.Gangapurwala, J) was a party in Writ Petition No.15018 of 2017 dated 21.12.2017 has held that if the application is complete in all respects, then, the date for the valuation of the property, ought to be the date of application.

8. Mr.Kumbhakoni the learned Advocate General of the State of Maharashtra pellucidly countered the submission of the learned Senior Advocate for the Petitioner and submits that section 29 and 29(A) of the Maharashtra Land Revenue Code, so also the Conversion Rules, 2019 would apply to the lands allotted/granted by the Government under the provisions of the Maharashtra Land Revenue Code and not otherwise. The land allotted to the

predecessor-in-title of the Petitioner were under the provisions of the Part VII of the Act, 1894. Under section 55 of the Act, 1894, the powers are given to the Central Government to frame the rules. The State Government is not vested with the powers to frame the rules in that regard. By exercising its powers under provisio to section 55 of the Act, 1894, the Central Government has framed the rules namely Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as the Rules, 1963). The said Rules apply to acquisition of lands for all Companies under Part VII of the Act. Referring to Rule 8 therein, the restrictions on transfer of the land are provided. The transfer cannot be made except in accordance with Rule 8 of the Rules 1963. According to learned Advocate General, if Conversion Rules 2019 are to be made applicable to the lands acquired and allotted under Act, 1894, then the same would amount to State Government eroding upon the powers of the Central Government. The same is not permissible.

9. The learned Advocate General further submits that the land admeasuring 1,89,680 sq. mtrs. is acquired under the provisions of part VII of the Land Acquisition Act, 1894 and then is allotted to the predecessor-in-title of the

Petitioner vide agreement under section 41 of the Land Acquisition Act, 1894. Therefore, Conversion Rules, 2019 are not applicable to those lands. The rules framed under section 29A and 328 of the Maharashtra Land Revenue Code and known as Conversion Rules, 2019 are applicable to those lands which are allotted under the provisions of Maharashtra Land Revenue Code and not to those lands acquired and allotted under the provisions of the Act, 1894. About 10,900 sq. mtrs. of land is allotted to the predecessor-in-title of the Petitioner under Maharashtra Land Revenue Code to the said area for which Conversion Rules, 2019 will apply and not to the lands admeasuring 1,89,680 sq.mtrs. acquired by the Government under Part VII of the Act, 1894 and for the benefit of the predecessor-in-title of the Petitioner.

10. Travelling through the pleadings and the submissions of the respective parties, the arena of dispute would be whether the Conversion Rules, 2019 framed by the State of Maharashtra exercising its powers under section 328 read with section 29 of the Maharashtra Land Revenue Code would apply to the land transferred to the Petitioner under permissions dated 17.11.2009 and 21.08.2010.

11. It is not the subject matter of debate that the land admeasuring 1,89,680 sq. mtrs. was acquired by the State of Maharashtra under part VII of the Act, 1894 for the benefit of the predecessor-in-title of the Petitioner for industrial purpose. Section 44A of the Act 1894 puts an embargo on the right of such an allottee from transferring the land except with the previous sanction of the appropriate Government viz. the State Government.

12. The Central Government has framed Rules, 1963 in exercise of powers conferred by section 55 of the Act, 1894. The said Rules amongst other matters provide for the terms and conditions to be incorporated in the agreement as required under section 41 of the Act, 1894, so also, the additional covenants that may be provided in the agreement pursuant to section 41 and conditions under which sanction may be granted for transfer of land. Under Rule 8, powers are given to the appropriate government (State Government) for transfer of land acquired under part VII of the Act, 1894 by sale, gift, lease or otherwise, upon appropriate government satisfying that the proposed transfer of land along with the dwelling houses, amenities,

buildings or work, if any, is to some other company or where the company is a cooperative society, such transfer is to any or all of its members and, if the land is acquired for erection of the dwelling house for workmen employed by the company, the proposed transfer of land along with the dwelling houses, if any, is to such workmen or dependent heirs.

13. The State Government has issued Government Resolution dated 11.01.2018 thereby taking a policy decision permitting transfer or change of user of the land allotted to the companies under part VII of the Act, 1894. The said G.R. provides that if the twin conditions i.e. (1) The proposed land should have been acquired for the company for industrial purposes vide the Land Acquisition Act, 1894 at least 30 years ago, the company should have started using it and the proposed land should be in the possession of the company at present and

(2) According to the regional plan or development plan or development control regulations or other statutory / administrative provision or for any other reason, the planned non-industrial use should be permissible on said land,

are satisfied, then such Company shall be eligible for change of user and/or sale of land. In the present case, these two conditions appear to be complied with.

14. The predecessor-in-title of the Petitioner is allowed to transfer the property to the Petitioner under various permissions dated 17.11.2009 and 21.08.2010. The said permissions have been granted on payment of premium. Under the terms and conditions enumerated in the said permission, the Petitioner was permitted to use the land for commercial/ residential purpose. The Petitioner was directed to pay 50% of the unearned income. The said permission was in respect of the land which the predecessor-in-title of the Petitioner was allotted under part VII of the Act, 1894.

15. Once the land is allowed to be transferred and used for residential / commercial purpose i.e. the purpose distinct and separate than the purpose for which it was acquired, then it would be improper and irrational upon the Respondents to insist on the restriction for the transfer of the land and that to be used for industrial purpose only. One of the contentions of the learned Advocate General is

that the restriction on the transfer of the land in perpetuity has to remain as the land is taken away from the individual pursuant to the compulsory acquisition and handed over to the Company for industrial purpose. The same is with an object to provide employment and to contribute to the national development. However, appropriate government under its permission dated 21.08.2010 allowed the transfer of the subject writ land for the residential / commercial purpose.

16. The State certainly can frame the policy by exercising its executive powers under Article 162 of the Constitution of India. The only restriction is policy should not be against the provisions of the statute or the rules. If the particular field is not governed by the statute and or the rules then the State Government has powers under Article 162 of the Constitution of India to frame the policy. It appears that pursuant thereto, the State Government has framed a policy permitting transfer and change of user of the lands acquired under Part VII of the Act, 1894 pursuant to G.R. dated 11.01.2018. Conditions imposed under the agreement, by virtue of which the land was allotted to the predecessor-in-title of the Petitioner, states that on payment of the entire

cost of acquisition of the land, the whole of the said land shall, as soon as conveniently may be, be transferred to the Company at the cost in every respect of the company so as to vest in the company subject to the provisions of Bombay Land Revenue Code, 1879 (herein after referred to as the 'said Code') and the rules made therein. It is manifest that upon the payment of consideration amount the said land allotted under part VII of the act, 1894 would vest with the company subject to the provisions of the Land Revenue Code.

17. Once the land would vest with the company subject to the provisions of Bombay Land Revenue Code then certainly the provisions of the Land Revenue Code will have to be applied and also complied with. There is one more reason to hold that the Conversion Rules, 2019 may be made applicable. The land was acquired by the government and given to the predecessor-in-title of the Petitioner under part VII of the Act, 1894 for specific purpose i.e. industrial purpose. Under the rules framed by the Central Government i.e. Rules 1963, the appropriate government is given powers to permit transfer of the land. The appropriate government exercising its powers, under order

21.08.2010 permitted transfer of the said land and allowed commercial / residential use of the said land. It is under the order of the State Government / appropriate government that the change of user from industrial to the commercial / residential use is permitted. Further, under G.R. dated 11.01.2018, the policy is framed by the State Government under Part VII of the Act, 1894 for sale/change of use of land acquired for industrial purposes for companies. Rules, 2019 framed by the State Government also permits transfer of the land and change of user, of course, subject to development plan, regional plan or development control regulations. The Petitioner is already granted that permission. In such a scenario, there is no impediment for applying Conversion Rules, 2019.

18. The State Government itself had filed an affidavit in earlier Writ Petition in which the State Government and present Petitioner were parties, thereby, clearly asserting that land in question is category Class II land and governed by the G.R. dated 21.11.1957 and Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules 1971. In the case of CEAT Limited (Supra), Division Bench of this court also observed that the land

allotted to the company under part VII of the Act, 1894 has status of Class II Occupancy.

19. Section 29 of the Maharashtra Land Revenue Code provides for two class of lands. Sub section (2)(a) of Section 29 provides that Class-I consists of persons who hold unalienated land in perpetuity and without any restrictions on the right to transfer. Sub section (3)(a) of section 29 provides that Class-II consists of persons who hold unalienated land in perpetuity subject to restrictions on the right to transfer under the Code. Section 29A of the Code starts with *non-obstante clause*. It also states that lands granted by the Government on Class II occupancy or on leasehold rights may be converted into Class-I occupancy, on payment of such conversion premium and after following such procedure and subject to such terms and conditions, as may be prescribed for different categories of lands.

20. Conversion Rules, 2019 apply to lands granted or subsequently allowed by the competent authority to be used for agricultural or residential or commercial or industrial purpose on Occupancy Class-II or leasehold rights. The predecessor-in-title of the Petitioner is allotted the land

pursuant to Part VII of Act, 1894 for industrial use. Subsequently, the competent authority has permitted the transfer of change of user for industrial, residential and/or commercial purpose. Under section 29(3)(a) land of the Petitioner is a restricted land i.e. the Petitioner holds unalienated land in perpetuity subject to restrictions on the right to transfer. The said clause does not restrict its applicability to the lands allotted under the Maharashtra Land Revenue Code. Reading Section 29, 29(a) of the Code, the agreement pursuant to which the land was allotted to the predecessor-in-title of the Petitioner, the permission dated 21.08.2010 granted for transfer of the land and for the change of user from industrial to commercial/residential, policy of the State Government under G.R. 11.01.2018 permitting non-industrial use and transfer of the land allotted under Part VII of the Act, 1894 and the Conversion Rules, 2019, the affidavit of the government in Writ Petition No.7979 of 2012 admitting that the land in question is a category Class II land and the judgment of the Division Bench of this court in CEAT Ltd (Supra), the only irresistible conclusion that can be drawn is that the land of the Petitioner is Occupancy Class II land and the Conversion Rules, 2019 would apply to the writ

land.

21. In view of the above, impugned communication is quashed and set aside.

- a. The Respondent authority shall treat the land as Occupancy Class II land and may charge the conversion premium considering the valuation of the property and the premium payable as on the date the application was filed by the Petitioner complete in all respects.
- b. Rule accordingly made absolute in above terms.
- c. No costs.

(M. G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)

At this stage, the learned A.G.P. seeks stay of the present order for a period of four weeks. Mr. Godbole, the learned counsel for the Petitioner is present and opposes the said request. Considering the request made, the present judgment may be acted upon after four weeks.

(M. G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)