

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6575/2013

Prabodh s/o Sadashiv Sadavarte,
Aged about 71 years, Occu: Legal Practitioner,
R/o 138, Ramnagar, Nagpur.

PETITIONER

-VERSUS-

1. State of Maharashtra,
Through Revenue Minister,
Mantralaya, Mumbai.
 2. The Divisional Commissioner,
Revenue Department, Civil Lines, Nagpur.
 3. Competent Authority/Addl. Collector,
Under Urban Land Ceiling Act, Collectorate
Compound, Civil Lines, Nagpur.
 4. Kishor Govindrao Kashikar,
Aged about 71 years, Occ.: Nil.
 5. Jaimala w/o Vijay Kashikar,
Aged about 60 years, Occu.: Household.
- Nos. 4 and 5 Both R/o Kashikar Wada, Old Motor
Stand, Itwari, Nagpur.

6. Shobha wd/o Vilas Sadavarte,
Aged about 60 years, Occu.: Household.
 7. Nishant s/o Vilas Sadavarte,
Aged about 32 years, Occu.: Business.
 8. Ajit s/o Vilas Sadavarte,
Aged about 30 years, Occu.: Business.
 9. Rajashree w/o Suraj Minase,
Aged about 39 years, Occu.: Household.
- Nos. 6 to 9 All R/o Shivaji Nagar, Mehkar, Tahsil
Mehkar, District Buldana.

10. M/s Saptagiri Relators,
Through Vyankatesh Kunnawar, 3rd Floor,
N.K.Y. Tower, Ajni, Wardha Road, Nagpur.

RESPONDENTS

Shri K.P. Sadavarte, counsel for the petitioner.
Shri N.R. Patil, Assistant Government Pleader for the respondent nos.1 to 3.
Shri S.P. Bhandarkar, counsel for the respondent nos.4 to 9.
Shri P.V. Vaidya, counsel for the respondent no.10.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 31ST MARCH, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 07TH JUNE, 2022.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised by the petitioner in this writ petition filed under Articles 226 and 227 of the Constitution of India is to the proceedings in U.L.C. Case No.ATP/ULC-TD(823) 2006/1583, dated 31.07.2006 alongwith subsequent steps taken by the respondent nos.3 to 10 in that regard. A prayer is also made to investigate into the aspect of fraud and misrepresentation as alleged to have been committed by the respondent nos.3 to 10 in passing the order dated 31.07.2006.

2. The facts relevant for deciding the writ petition are that it is the case of the petitioner that he is related to the respondent nos.4 to 9 herein. The respondent no.4 is the husband of the younger sister of the petitioner, the respondent no.5 is another sister of the petitioner while the respondent nos.6 to 9 are the legal heirs of the deceased elder brother of the petitioner. According to the petitioner an agreement was entered into to purchase land Survey no.96 (New) at Mouza Shankarpur, Tahsil and District Nagpur on 30.03.1982. On the instructions of the petitioner's father, the sale-deed of the aforesaid land was got executed in the name of the petitioner's younger brother Vilas on 06.08.1982. The petitioner further contends that he has purchased field Survey No.94 which adjoins

field Survey No.96 in the name of his wife. On 21.05.2003 the petitioner alongwith all family members entered into a family arrangement and a deed was signed by all the parties on that day. It was agreed to dispose of the joint family properties including Survey No.96 as well as gold ornaments left by the petitioner's father. The petitioner's elder brother Vilas expired on 24.03.2004. In the year 2005, the petitioner got knowledge that the respondent nos.4 to 9 had filed a statement under Section 6(1) of the Urban Land Ceiling Act, 1976 (for short, 'the said Act') for determining the extent of retainable land from Survey No.96 through the respondent no.10-their Power of Attorney Holder. The petitioner on 08.02.2005 raised an objection before the Competent Authority stating therein that since the petitioner had paid half of the consideration while purchasing Survey no.96 and the land had not been partitioned, the petitioner intended to file appropriate proceedings for declaration and partition of the said property. The petitioner claimed to be the lawful owner of half of the said land and hence requested the Competent Authority not to proceed with the matter. The Competent Authority for the purpose of considering the said objection adjourned the proceedings from time to time and according to the petitioner after 08.09.2005 there was no further progress in the said proceedings. In the meanwhile on 28.04.2006, the respondent no.10 initiated proceedings for grant of exemption with regard to the excess land from Survey No.96 under Section 20(1)(a) of the said Act. On 31.07.2006 the Competent Authority

passed an exemption order by imposing various conditions under Section 20(1)(a) of the said Act. Mutation entry to that effect was accordingly taken in the revenue records. According to the petitioner, while making enquiries in the Office of the Competent Authority with regard to Survey No.94 that was standing in the name of his wife, the petitioner got information of the exemption order dated 31.07.2006. After applying for certified copies of the said proceedings the petitioner has filed the present writ petition on 29.11.2013 pleading that since the proceedings in U.L.C. Case No.45 of 2005 had been kept pending by the Competent Authority since 08.09.2005, the subsequent proceedings resulting in passing of the exemption order dated 31.07.2006 was on account of the fraud practiced by the respondent nos.4 to 10.

3. Shri K.P. Sadavarte, learned counsel for the petitioner submitted that the Competent Authority was not justified in issuing the order of exemption under Section 20(1)(a) of the said Act. Inviting attention to the deed of family arrangement dated 21.05.2003 and the objection dated 08.02.2005 raised by the petitioner in proceedings under Section 6(1) of the said Act, he submitted that the Competent Authority was seized of the objections raised by the petitioner. Without adjudicating the objections as raised, it was not permissible for the Competent Authority to have entertained the subsequent application dated 28.04.2006 at the behest of the respondent nos.4 to 10 in the matter of grant of exemption under

Section 20(1)(a) of the said Act. He referred to the scheme of the said Act and urged that it is only after following the procedure prescribed by Section 8(4) of the said Act that the matter could have proceeded further. Giving a go-by to the procedure as prescribed the order dated 31.07.2006 had been passed. He also pointed out various deficiencies in the order of exemption dated 31.07.2006 and submitted that the share of the Government had not been determined in the said proceedings. In that regard the learned counsel placed reliance on the decisions in *Abdul Aziz Alisaheb Bharmar & Others Versus State of Maharashtra & Another* [2010(6) Mh.L.J. 549], *Tarabai Tulshiram Meshram Versus State of Maharashtra & Others* [2020 (4) ALL MR 78], *Laxmibai wd/o Anandraoji Bante (d) thr. Legal heirs Versus State of Maharashtra & Others* [2021 (3) ALL MR 366], *Dhondiram Babu Ghodake Versus The State of Maharashtra & Another* [2018(7) ALL MR 784], *Ritesh Tewari & Another Versus State of U.P. & Others* [2010 ALL SCR 2398], *Balu Siddhu Bhosale since deceased by his legal heir wife Versus The State of Maharashtra & Others* [2012(4) ALL MR 865], *Madan Jagobaji Welekar & Others Versus State of Maharashtra & Others* [2013 (7) ALL MR 23], *Baliram Ramaji Ghate Versus State of Maharashtra & Others* [2010(5) Mh.L.J. 465], *Usha Vasantrai Trivedi & Others Versus State of Maharashtra & Others* [2018 (7) ALL MR 738] and *Sunilkumar Motilal Sharma & Others Versus The State of Maharashtra & Others* [2019(5) ALL MR 1].

On the aspect of the time taken to approach this Court for challenging the order dated 31.07.2006, he referred to the averments in paragraph 8A of the writ petition and submitted that the petitioner was under the *bona fide* belief that as the objection dated 08.02.2005 was under consideration of the Competent Authority no further steps would be taken in the proceedings. However ignoring the said objections the order dated 31.07.2006 came to be passed. The petitioner had no notice or knowledge of the same and it was only in the year 2013 when the petitioner made enquiries in respect of the proceedings pertaining to Survey No.94 that it was found that the order of exemption had been passed on 31.07.2006. After obtaining the certified copies the writ petition had been filed. Since the impugned order was the outcome of the fraud and misrepresentation at the behest of the respondent nos.4 to 10 and the writ petition having been filed after getting information of the said order, there was no delay on the part of the petitioner in approaching this Court. In that regard he referred to the decisions in *Dr.Dinshah Dhunjishah Gagrati Versus Viloo Byramji Plumber & Another* [2010(1) ALL MR 231] and *Santosh Versus Jagat Ram & Another* [(2010) 3 SCC 251] to submit that the writ petition be entertained on merits. It was thus submitted that the impugned order dated 31.07.2006 alongwith all consequential steps taken thereafter were liable to be set aside. In support of his submissions, the learned counsel for the petitioner also placed reliance on the decisions in *Uttar Pradesh Power Transmission*

Corporation Limited & Another Versus CG Power and Industrial Solutions Limited & Another [(2021) 6 SCC 15], *Hari Krishna Mandir Trust Versus State of Maharashtra & Others* [2021 (4) Mh.L.J. 662] and the order of the Hon'ble Supreme Court in **Civil Appeal 558 of 2017** [*Maharashtra Chamber of Housing Industry & Others Versus The State of Maharashtra & Others*]. It was thus submitted that the petitioner was entitled for the reliefs sought in the writ petition.

4. Shri N.R. Patil, learned Assistant Government Pleader for the respondent nos.1 to 3 relied upon the affidavit-in-reply filed by the Competent Authority in which all adverse allegations made by the petitioner had been denied. He submitted that it was a matter of record that pursuant to the objection raised by the petitioner on 08.02.2005 the proceedings in U.L.C. Case No.45 of 2005 had been kept pending by the Competent Authority. According to him, the order passed under Section 20(1)(a) of the said Act was in accordance with law and there was no reason to set aside the same at the instance of the petitioner. The aspect of delay in approaching this Court was also referred to while submitting that the writ petition was liable to be dismissed.

5. Shri S.P. Bhandarkar, learned counsel for the respondent nos.4 to 9 at the outset submitted that the writ petition was not liable to be entertained on account of the unexplained delay in approaching this

Court for challenging the order dated 31.07.2006. The averments as made in paragraph 8A of the writ petition were not sufficient to indicate exercise of due diligence by the petitioner. It was then submitted that it was not permissible to raise any objection to the statement as filed under Section 6(1) of the said Act on 07.02.2005. Failure to consider that objection would not result in vitiating the order of exemption passed under Section 20(1)(a) of the said Act. The exemption proceedings were independent in nature and not dependent on the matters referred to in Sections 6 and 8 of the said Act. In absence of there being any cause of action in favour of the petitioner, the writ petition was liable to be dismissed.

Shri PV. Vaidya, learned counsel for the respondent no.10 also opposed the writ petition. The learned counsel questioned the locus of the petitioner on the ground that the petitioner had no title in Survey No.96. The sale-deed dated 30.03.1982 was executed in favour of the predecessors of the respondent nos.4 to 9 and they had a right to seek exemption under Section 20(1)(a) of the said Act. The objection raised by the petitioner on 08.02.2005 did not indicate the petitioner's legal right in the property. The petitioner had sought a declaration of his legal right by filing a civil suit to which the Competent Authority was not a party. It was then submitted that the petitioner had a statutory remedy of filing an appeal for challenging the impugned order under Section 33 of the said Act or by preferring a revision application under Section 34 of the

said Act. Without doing so and after considerable delay the writ petition had been filed which did not deserve to be entertained on merits. There were also no pleadings in the writ petition that the objections raised by the petitioner on 08.02.2005 had not been decided by the Competent Authority. It was then submitted that in view of the judgment of the Full Bench of this Court in *Maharashtra Chamber of Housing Industry & Others Versus The State of Maharashtra & Another* [2014(6) Mh.L.J. 829] the validity of an order of exemption under Section 20(1)(a) of the said Act was saved notwithstanding the repeal of the Act of 1976 with effect from 29.11.2007. Hence the petitioner was not entitled to any relief whatsoever and the writ petition was liable to be dismissed.

6. Having heard the learned counsel for the parties at length and having perused the documentary material placed on record we are of the view that the petitioner is not entitled for any relief in the writ petition for more than one reason. At the outset it may be noted that admittedly land bearing Survey No.96 stands in the name of the petitioner's deceased elder brother Vilas and the respondent no.4-his brother-in-law. The said sale-deed recognizing the title of said parties is dated 30.03.1982. The petitioner contends that in view of the deed of family arrangement dated 21.05.2003 he has a share in land bearing Survey No.96 which admeasures 1 Hectare 88 R. The petitioner has filed Regular Civil Suit No.69 of 2005 seeking a declaration in that regard alongwith a prayer for

partition, separate possession and perpetual injunction. In this suit, initially the trial Court on 17.07.2009 passed an order below Exhibit 4 and restrained the respondent no.10-Power of Attorney Holder from entering the suit property or carrying out any operations on the same on the basis of agreement with the other defendants therein. The possession of the petitioner herein was also directed not to be disturbed. It may be noted that this order passed by the trial Court was challenged by the respondent nos.4 to 9 in Appeal from Order No.169 of 2009. On 17.06.2010 this Court modified the order passed by the trial Court and directed that no third party rights be created in the suit property nor should the same be developed or changed during pendency of the suit.

From the aforesaid it becomes clear that on 08.02.2005 when the petitioner raised an objection to the statement filed under Section 6(1) of the said Act or on 31.07.2006 when the order of exemption was passed at the behest of the respondent nos.4 to 9, the petitioner did not have any legal title to the said land. In absence of the petitioner having any title to the said land he would not have any locus to object to the issuance of the exemption order under Section 20(1)(a) of the said Act. An order of exemption would be a matter between the person who holds vacant land and the Competent Authority. A person not having title to the subject land would have no locus to question the order of exemption as the same would bind only the true owner of that land and the Competent Authority. Admittedly, Survey No.96 was recorded in the names of the respondent

no.4 and the petitioner's brother – Vilas. It would be a different matter if the petitioner establishes his title to Survey No.96 which till date has not been brought on record. Thus for want of title to the subject land, we find that the petitioner would not have locus to challenge the order of exemption dated 31.07.2006.

7. This conclusion of ours can be supported by the observations in paragraphs 37 to 39 of the decision in *Jasbhai Motibhai Desai Versus Roshan Kumar, Haji Bashir Ahmed & Others* [(1976) 1 SCC 671]. It has been observed therein as under:

“37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) ‘person aggrieved’; (ii) ‘stranger’; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity ; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones ; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are

those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. *To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed ? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something ? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? Or is it a statute dealing with private rights of particular individuals ?"*

In absence of any title to Survey No.96 it cannot be said that the petitioner had suffered a legal grievance or that any legal right has been disturbed so as to confer on him the locus to challenge the order of exemption. Reference can also be made to the decision in *Kasani Narayana & Others Versus Government of A.P. & Others* [AIR 1989

Andhra Pradesh 51] wherein it has been held that a person not having title to the subject land has no *locus standi* to challenge an order of exemption passed under Section 20 of the said Act.

8. Yet another reason for not entertaining the writ petition at the behest of the petitioner is that the order of exemption was passed on 31.07.2006. The said Act was repealed in the State of Maharashtra on 29.11.2007. On such repeal the exemption proceedings attained finality and the same are not liable to be re-opened after repeal more so, when a period of more than fourteen years has now elapsed. As held by the Full Bench in *Maharashtra Chamber of Housing Industry, Mumbai & Others* (supra) notwithstanding the repeal of the said Act the validity of an order granting exemption under Section 20(1)(a) of the said Act or any action taken therein stands saved. Thus it would not be appropriate to re-open the proceedings under Section 20(1)(a) of the said Act at the behest of the petitioner who does not have title to the land which is the subject matter of the order of exemption.

9. On the aspect of delay and laches, the petitioner has urged that the order of exemption dated 31.07.2006 is the outcome of fraud and misrepresentation at the behest of the respondent nos.4 and 6 to 9 alongwith respondent no.10. It is stated that the respondent no.3 ought not to have proceeded with the matter without deciding the objection

dated 08.02.2005. We however find that in the absence of valid title to Survey No.96 the petitioner cannot allege fraud and misrepresentation on the part of the land owners in seeking to prosecute the exemption proceedings. The alleged fraud and misrepresentation could have been a justification only if the petitioner had title to the land in question. On this count also it is found that the challenge to the order dated 31.07.2006 is highly belated at the instance of the petitioner who has no title to Survey No.96. Though the learned counsel for the petitioner referred to numerous judgments to support his contentions while challenging the order dated 31.07.2006, we find that in absence of title to the land in question it would not be necessary to refer to the said decisions in this context.

10. It is not found necessary to go into the aspect of the objection raised by the petitioner on 08.02.2005 to the statement filed on behalf of the respondent nos.4 to 9 under Section 6(1) of the said Act before the Competent Authority for the reason that no effective relief can now be granted in that regard to the petitioner in view of repeal of the said Act. After repeal of the said Act no direction can be issued to the Competent Authority to consider the objection raised by the petitioner 08.02.2005 and pass an order thereon. The objection was pending on 29.11.2007 when the said Act was repealed and hence those proceedings would abate as a result of such repeal. It is well settled that the Court shall not under

Article 226 of the Constitution of India issue a futile writ. Since the said Act is no longer on the statute book no relief can be granted to the petitioner in the context of the objection dated 08.02.2005 raised by him.

11. For all the aforesaid reasons, we do not find any ground made out to hold in favour of the petitioner and grant him relief as prayed for in the writ petition. Hence, the writ petition stands dismissed with no order as to costs. Rule stands discharged.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE