

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1268 OF 2019

RR REALTORS,
A Partnership Firm,
Through their respective partners

- a. **HERO NOTANDAS MOTWANI,**
Age: 56 years, Occupation: Business
- b. **LAXMANDAS CHUDMAL
VASWANI,**
Age: 64 years, Occupation: Business
Office at: Shop No. 94, Pimpri Bazaar,
Pune 400 017.
R/at: Prasanna Colony, Rahatni, Taluka
Haveli, District: Pune 400 17.

...Petitioners

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through its Urban Development
Ministry
2. **THE COMPETENT AUTHORITY &
DEPUTY COLLECTOR,**
Pune Urban Agglomeration, Pune.
3. **THE MUNICIPAL CORPORATION
OF PIMPRI & CHINCHWAD,**
Pimpri 411 018.
4. **CRIMINAL INVESTIGATION
DEPARTMENT,**
Maharashtra State,

...Respondents

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MORMARE

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Near Modern Law College, Pune
University Chowk, Chavannagar,
Pashan Road, Pune 411 008.

**WITH
WRIT PETITION NO. 9722 OF 2022**

- 1. ZUMBAR BABURAO BHALERAO,**
Age: 69 years, Occ.: Agri./Service
- 2. RAJESH BABURAO BHALERAO,**
Age: 52 years, Occ.: Agri./Service,
Nos. 1 & 2 r/o Siddharth Nagar,
Rahatani, Pimpri, Pune 411 017.
- 3. YOGESH RAMCHANDRA
TUDAYEKAR,**
Age: 50 years, Occ.: Agri./Business
- 4. LEENA YOGESH TUDAYEKAR,**
Age: 46 years, Occ.: Practicing Doctor,
Nos. 3 & 4 r/o B-21, Suvarnayug,
New DP Road, Aundh, Pune 411 007.

...Petitioners

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through its Urban Development
Department, Government of
Maharashtra, Mantralaya, Mumbai.
- 2. THE COLLECTOR, PUNE.**
- 3. THE ADDITIONAL COLLECTOR
AND COMPETENT AUTHORITY,
PUNE URBAN AGGLOMERATION,
PUNE.**
- 4. THE TAHASILDAR,**
Pune Urban Agglomeration, Pune.

5. MUNICIPAL CORPORATION OF
CITY OF PIMPRI CHINCHWAD,
DISTRICT PUNE.

6. CRIME INVESTIGATION
DEPARTMENT,
Having its office at Bharari Pathak,
Opp. Modern College, Pashan Road,
Maharashtra State, Pune 411 008.
Through its Investigating Officer

...Respondents

APPEARANCES

FOR THE PETITIONERS IN WP/1268/2019 Mr YS Jahagirdar, Senior
Advocate, *with Suresh Sabrad,*
Neha Parte.

FOR THE PETITIONERS IN WP/9722/2022 Mr Atul Damle, Senior Advocate,
i/b Suresh Sabrad.

FOR RESPONDENT-STATE IN BOTH MATTERS Mr SB Kalel, AGP.

FOR RESPONDENT NO. 3-PMC IN WP/1268/2019 Mr Rohit Sakhdeo.

FOR RESPONDENT NO. 5-PMC IN WP/9722/2022 Mr Deepak More.

CORAM : G.S.Patel &
Neela Gokhale, JJ.

DATED : 31st July 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Rule returnable forthwith.

2. These two Petitions have been pending since 2019. There are Affidavits in Reply and Rejoinder. By consent, Rule is made returnable forthwith and the Petitions are taken up for hearing and final disposal. In any case, by our order dated 19th June 2023, we put parties to notice that we would dispose of the Petitions finally on the adjourned date.

3. We have heard counsel for the parties.

4. In Writ Petition No. 1268 of 2019, the Petitioners are a firm of developers. They are the successors in title and have purchased a plot at village Rahatni, Taluka Haveli, District Pune. The Petitioners (“**RR Realtors**”) are not the original owners nor are they persons who had, while it was in force, made any application under the Urban Land Ceiling and Regulation Act 1976. The first two Petitioners in Writ Petition No. 9722 of 2022 (“the Bhaleraos”) are the original owners with others of land at village Rahatani, Taluka Haveli, District Pune. They entered into a Memorandum of Understanding (“**MoU**”) on 28th August 2015 with Petitioners Nos. 3 and 4 (“the Tudayekars”) for part of their land.

5. The common question involved in both these Petitions is whether the authorities are justified in demanding that the Petitioners obtain a No Objection Certificate or NOC from the Competent Authority under the now-repealed Urban Land (Ceiling

and Regulation) Act, 1976 (“**the ULC Act**”) as a pre-condition to considering and deciding the application of Petitioners for building permissions of the respective lands in question.

6. First, a brief description of the lands in question. Both Petitions pertain to portions of Survey No. 5/9A. This initially measured a total of 71 Ares and it lies in village Rahatne, Taluka Haveli, District Pune. It was originally the property of one Zumbar Baburao Bhalerao and others in his family, the predecessors-in-title of the Bhaleraos. Of this total area of 71 Ares, a portion of 13 Ares is the subject matter of the RR Realtors’ Writ Petition No. 1268 of 2019. Another 14 Ares is the subject matter of Writ Petition No. 9722 of 2022 filed by the Bhaleraos and the Tudayekars.

7. RR Realtors acquired title under the sale deed dated 26th August 2018. As we have noted earlier, the Bhaleraos executed a MoU of 20th August 2015 in favour of the Tudayekars in respect of a portion of 14 Ares, i.e., for 10.06 Ares.

8. The origins of present trouble can be traced back 20 years to 14th October 2003. It was then that the original owners of this Survey No. 5/9A, that is to say, Zumbar Baburao Bhalerao and others signed a development agreement with one Sharad Kokate. This covered 35.5 Ares from total of the 71 Ares comprised in Survey No. 5/9A.

9. It seems that Kokate then somehow joined hands (the word used is ‘colluded’) with several others: Ramesh Popat Giramkar,

Sanjay Bhausaheb Shinde, Atul Ramchandra Panse and Sujay Surendra Chopade, to apparently obtained by fraud an order under the ULC Act . That covered Survey Nos. 5/9A, 5/9B and 5/13B/1 or at village Rahatani, Taluka Haveli, District Pune.

10. On 5th May 2006, there came to be made an order under Section 8(4) of the Urban Land Ceiling (“ULC”) Act. This was after the original owners (Zumbar Baburao Bhaleraa et al) filed mandatory returns under Section 6(1) of the ULC Act and also following the preparation of draft statement under Section 8(3) of that Act. The order under Section 8(4) was that the original owners held vacant lands of 5065 sq mtrs in excess of the ceiling limit.

11. The ULC Act was repealed by the Urban Land (Ceiling and Regulations) Repeal Act 1999. On 29th November 2007, the State Legislature adopted the Repeal Act and it was brought into force in the State of Maharashtra. As we shall presently see, the Repeal Act had a solitary savings clause in Section 3.

12. We considered the jurisprudential background in our order of 6th June 2023 in *Voltas Ltd & Anr v Municipal Commissioner of Thane Municipal Commissioner & Ors.*¹ The relevant paragraphs of the order in *Voltas* read thus:

“7. On 3rd September 2014, a Full Bench of this Court considered the effect of the Repeal Act in *Maharashtra Chamber of Housing Industry & Ors v State of Maharashtra &*

1 Interim Application No. 1463 of 2022 in Writ Petition No. 7222 of 2007.

*Anr.*² The majority held that exemptions granted under Section 20 of the ULC Act did not abate on repeal.³

8. The Government of Maharashtra appointed a committee under the chairmanship of Mr Justice BN Srikrishna (as he then was) and this committee recommended that the issue of exemption orders under Section 20 could and should be closed by accepting a certain payment. That proposal by the State Government was ultimately accepted in a Civil Appeal before the Supreme Court (order dated 2nd July 2019).⁴

9. This led to the State Government issuing the first of the GRs dated 1st August 2019 by which it effectively offered to close all pending issues regarding surplus land and retention land by accepting a payment, which we shall call a premium, since this is the terminology commonly used throughout these proceedings. There was a second GR dated 16th September 2019.

10. To appreciate the context, and this may be necessary because we are finally disposing of the Petition itself, it is necessary to briefly review the position in law. We considered these aspects in a recent judgment delivered on 30th March 2023 in *Salim Alimahomed Porbanderwalla & Anr v State of Maharashtra & Ors.*⁵ For compactness, we reproduce the relevant portion of that order:

12. The ULC Act's stated purposes were two: *first*, to prevent land speculation and

2 2014 SCC OnLine Bom 1083 : (2014) 6 Mah LJ 829 (FB) : (2014) 6 Bom CR 247 (FB).

3 Per SC Dharmadhikari and GS Kulkarni JJ; SC Gupte J dissenting. Kulkarni J delivered a separate judgment concurring with Dharmadhikari J.

4 *Maharashtra Chamber of Housing Industry & Ors v State of Maharashtra & Anr*, Civil Appeal No 558 of 2017 (unreported), originally Special Leave Petition (C) No 29006 of 2014 from the Full Bench decision, *supra*.

5 NC: 2023:BHC-OS:2190-DB : 2023 SCC OnLine Bom 731.

profiteering by a concentration of urban lands in the hands of a few; and, *second*, to achieve an equitable distribution of land in urban agglomeration for the greater common good.

13. Chapter III of the ULC Act had specific provisions directed towards these objective. Broadly, there were three strategies. (1) the imposing of a 'ceiling' on vacant land in urban agglomerations, (2) acquiring lands exceeding the ceiling, and (3) regulating construction on such land. Chapter III thus — and logically — had three sub-parts. Sections 3 through 18 dealt with ceiling limits, determining vacant land and the acquisition of 'surplus' land (land exceeding the ceiling). Sections 19 to 22 dealt with exemptions (and this is important for our purposes today). Sections 23 and 24 dealt with disposal of vacant lands. Section 3 was what we may call the trigger provision. It contained the prohibition — the heart of the ULC Act. No person could hold vacant land beyond the prescribed ceiling limit in the areas covered by the ULC Act. Ceilings and the method of computing these for different agglomerations were set out in Section 4. We pass over some of the following sections and come to Sections 6 through 9. These set out the operability of the Act. The 'determination' (of ceilings, surplus land, etc) began with a compulsory filing of statements by anyone who held vacant land beyond the ceiling limit as on the date of the ULC Act's commencement. Particulars were to be submitted. The excess vacant land was to be determined under

Section 9. A final statement of determination of excess vacant land (and its service) was to be done under Section 9 (Section 8 contained parallel provisions for a draft statement). Section 10 dealt with the acquisition of excess vacant land by the State Government. A notification with particulars was required proposing the acquisition inviting claims, determining these, and then a declaration of the acquisition. On publication of that notification, the land was deemed to vest absolutely in the State Government with effect from the specified date. Between the dates of the notifications, transfers were forbidden. Then there were provisions for the government to take possession of the acquired lands, including a surrender or possession by force. Compensation was the subject of Sections 11 to 14. Section 19 dealt with situations of exemption — where Chapter III would not apply to certain vacant lands (such as those held by the State or Central Government, banks, etc). Then came Section 20. This empowered the State Government to exempt any vacant land on specific conditions and also empowered it to withdraw any such exemption for non-compliance. Section 21 set out the circumstances in which some surplus vacant lands would not be treated as such, and Section 22 addressed cases under which land owners could retain the excess vacant land. Sections 23 and 24 had provisions for disposal of vacant lands so acquired by the State Government (i.e., in advancement of the principle of equitable distribution).

14. We need not be delayed with a fuller examination of the remaining sections. Historically, not all acquisitions were completed. Some indeed were, and possession followed. Others were pending, winding their way through appeals and revisions.

15. But for some lands, orders came to be made under Sections 20 and 21, sanctioning what are called 'schemes'. Typically, these took the form of proposals by landholders. They had to be approved. Some were, with conditions applied. For others, excess vacant land was directed not to be treated as excess (i.e., the landholder's representation for exemption was accepted). Where there were schemes mandated, some were completed, others not. Where exemption conditions were breached, there were also cases of exemptions being withdrawn, thus restarting the cycle of acquisition. This is how matters stood in 1999 at the time of the Repeal Act.

16. Section 3 of the Repeal Act had a savings clause. Section 3(1) said the repeal would not affect (1) the vesting of any land of which possession had been taken by the State Government; (2) the validity of any exemption order under Section 20(1) or any action taken thereunder;⁶ or (3) any payment made to the State Government as a condition for granting a Section 20(1) exemption. Section 3(2)(a) said that where any land vested in the State Government but possession had not yet been taken by the State

6 'notwithstanding any judgment of any court to the contrary'.

Government, and under (b) where any amount had been paid by the State Government regarding such land, then that land would not be restored unless the amount paid (if any) was refunded to the State Government.

17. It is the savings clause that fell for consideration. The reference to the Full Bench was made because there were as many as five Division Bench decisions that took conflicting views.⁷ Ultimately, by a 2:1 majority, the Full Bench held:

“(a) That the repeal of the Principal Act shall not affect the validity of the order of exemption

⁷ *Sundersons v State of Maharashtra*, 2008 SCC Online Bom 602 : (2008) 6 Mah LJ 332 : (2008) 5 Bom CR 85 held that the Collector could not instruct sub-registrars to insist on a NOC from the Competent Authority before registering a document of transfer — the invoked circular did not confer such power. In *Damodar Laxman Navare v State of Maharashtra*, 2010 SCC OnLine Bom 951 : (2010) 5 Mah LJ 92 : (2010) 6 Bom CR 611, the Division Bench quashed two letters one preventing sanctioning of plans or registering and the other demanding penalty for extending time to complete a Section 20 scheme. In *Mira Bhayandar Builders & Developers Welfare Association v Deputy Collector*, 2009:BHC-AS:15192-DB, the Division Bench upheld a circular directing the sub-registrar to verify if the scheme holder had sought a time extension to complete the scheme, and, if it had, not to register a document if no time extension had been sought (i.e., preventing transfers without completion or a time extension being sought for completion). In *Jayesh Tokarshi Shah v Deputy Collector*, (Writ Petition No 3815 of 2010, decided on 26th October 2010), another Division Bench considered similar circulars prohibiting registration of conveyances of flats constructed under delayed Section 20 schemes which did not have time extensions or NOCs. That Bench perceived a conflict between the views in *Sundersons* and *Navare* on the one hand and *Mira Bhayandar* on the other. The *Jayesh Tokarshi Shah* court referenced another decision that held that the powers of the State under Section 20 in cases of breach of exemption conditions were restricted to withdrawing the exemption. The Division Bench preferred this view, but said it would conflict with the decision in *Mira Bhayandar Builders*, and therefore a reference to a Full Bench was necessary.

under section 20(1) of the Principal Act and all consequences following the same including keeping intact the power to withdraw the said exemption by recourse to section 20(2) of the Principal Act. Further, merely because section 20(2) is not specifically mentioned in the saving clause enacted by section 3(1)(b) of the Repeal Act that does not mean that the power is not saved. The said power is also saved by virtue of applicability of section 6 of the General Clauses Act, 1897. That section of the General Clauses Act, 1897 applies to section 3(1) (b) of the Repeal Act.

(b) Once having held that the power to withdraw the exemption also survives the repeal of the Principal Act, then, all consequences must follow and the said power can be exercised by the State Government in accordance with law. That power and equally all ancillary and incidental powers to the main power to impose conditions are also saved and survive the repeal. Meaning thereby the terms and conditions of the order of exemption can be enforced in accordance with law.

(c) Question Nos. 1 and 2 in the AFFIRMATIVE, by holding that section 6 of the General Clauses Act, 1897 applies to the savings of the exemption order including all terms and conditions thereof, validity of which or any action taken thereunder has been saved by section 3(1)(b) notwithstanding any judgment of any Court to the contrary.

(d) Question Nos. 3 and 4 will have to be answered as above, but by clarifying that though it would be open for the State to enforce the exemption order and terms and conditions thereof, validity of which is saved by the Repeal Act, but having regard to the language of section 20(2) of the Principal Act it cannot be held that same can be enforced only by withdrawal of the order of exemption in terms of sub-section (2) of section 20, which power also survives the repeal of the Principal Act. In other words, though section 3(1)(b) of the Repeal Act read with section 6 of the General Clauses Act, 1897 states that repeal of the Principal Act shall not affect the validity of the exemption order passed under section 20(1) of the Principal Act or any action taken

thereunder notwithstanding any judgment of any Court to the contrary, still the obligations and liabilities incurred voluntarily under the exemption order by the person holding the vacant land in excess of ceiling limit need not be enforced only by exercise of powers under sub-section (2) of section 20 of the Principal Act, but by all other legally permissible means.

(e) We also clarify that though our answers to Questions 3 and 4 would be as aforesaid, still whether any of these powers could be exercised and to what extent are all matters which must be decided in the facts and circumstances of each case. In the event the State desires to take any action in terms of section 20(2) of the Principal Act it would be open for the aggrieved parties to urge that such an action is not permissible in the given facts and circumstances particularly because of enormous and unexplained delay, the parties having altered their position to their detriment, the proceedings as also the orders in that behalf are grossly unfair, unjust, arbitrary, high handed, mala fide and violative of the

principles of natural justice and of the Constitutional mandate enshrined in Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India. These and other contentions can always be raised and irrespective of our conclusions, individual orders can always be challenged and action thereunder impugned in appropriate legal proceedings including under Article 226 of the Constitution of India.

(f) The aggrieved parties can also urge that while seeking to enforce the terms and conditions of the exemption order or recalling or withdrawing the exemption itself the competent authorities/State has not adhered to the provisions of law applicable for such exercise. Meaning thereby there has to be a specific order in that behalf and mere issuance of administrative instructions or circulars will not suffice. All such objections can as well be raised and in individual cases.

(g) By our answers to Questions 1 to 4 above, we should not be taken to have held that there is a mandate under the Repeal Act to withdraw the order of exemption passed under section 20(1) of the Principal Act and the

Government is obliged to withdraw it in the event the said order or any terms or conditions thereof have not been satisfied rather violated or breached. In the light of the wording of section 20(2) of the Principal Act the State is competent to withdraw, but only after giving a reasonable opportunity to the persons concerned for making representation against the proposed withdrawal. The Government is obliged to pass an order withdrawing any exemption and needless to clarify that in the event such an order is passed it can be impugned and challenged by the aggrieved parties in appropriate proceedings on the grounds that it is unreasoned and/or in the given facts and circumstances such an order could not have been passed or need not be passed and the Government could have granted time to comply with the terms and conditions or that the terms and conditions relying on which and for breach of which the exemption order is withdrawn are not violated or breached, they were not mandatory and have been substantially complied with or were incapable of being

complied with because of several factors, obstacles and hurdles each of which cannot be enumerated or termed as exhaustive in any manner. Therefore, if the Government is not mandated to withdraw the exemption order, but can ensure compliance of the terms and conditions without withdrawal of the exemption order or without recourse to section 20(2) of the Principal Act, then, needless to clarify that all liabilities, obligations and equally the remedies available to the parties are unaffected by repeal and can be resorted to in the afore stated events.

(h) In the light of our conclusions as enumerated in paragraph No. 125 above we hold that the view taken by the Division Bench in *Vithabai Bama Bhandari v. State of Maharashtra* reported in 2009 (4) Mh. L.J. 693: 2009 (3) Bom. C.R. 663 (Writ Petition No. 4241/2008 decided on 31st March/16th April, 2009) does not lay down the correct law and to the extent indicated hereinabove.”

11. This is the jurisprudential background to the Repeal Act and Section 20 of the ULC Act.

12. As regards Section 21, this Court passed an order on 11th March 2015 in Writ Petition No. 1178 of 2014, *Swastik Constructions v State of Maharashtra & Ors.*⁸ That decision *inter alia* held that Section 21 of the ULC Act would not survive the repeal of the ULC Act. The conditions of the Exemption Order under Section 21 are not enforceable. The Division Bench held, *inter alia* following an earlier decision of this Court in *Voltas Ltd & Anr v Additional Collector and Competent Authority & Ors.*⁹

9. The effect of an order under Sub-Section (1) of Section 21 is that the vacant land held in excess of ceiling limit which is covered by the order under Sub-Section (1) is declared as not be excess land for the purposes of Chapter III and permit such person to continue to hold such land for the purposes set out in Sub-Section (1), subject to the terms and conditions incorporated in the said order. Sub-Section (2) provides that if there is any contravention of the conditions incorporated in the permission under Sub-Section (1) of Section 21, the Competent Authority is empowered to declare such land to be a vacant land held in excess of ceiling limits and thereupon all the provisions of Chapter III shall apply to the land held in excess of ceiling limit.

10. It will be necessary to make a reference to Sections 3 and 4 of the Repeal Act. From Clause (b) of Sub-Section (1) of Section 3, it appears that notwithstanding the Repeal, the

8 2015 SCC OnLine Bom 3848.

9 NC: 2008:BHC-AS:14572-DB : 2008 SCC OnLine Bom 701 : (2008) 5 Bom CR 746.

validity of any order granting exemption under Sub-Section (1) of Section 20 will not be affected. In short, the validity of such order has been saved. Section 4 provides that all proceedings relating to any order made or purportedly made under the Principal Act (ULC Act) pending immediately before the commencement of the Repeal Act, before any Court, Tribunal or other authority shall abate. **Section 4 saves the proceedings only relating to Sections 11, 13 and 14 of the ULC Act insofar as such proceedings are relatable to the land, the possession of which has been taken by the State Government.**

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.

(Emphasis added)

13. A Special Leave Petition against this order was dismissed on 5th October 2015,¹⁰ and the decision in *Swastik Constructions* thus attained finality.

14. To return to the facts of the matter at hand, following the *Swastik Constructions* decision and the dismissal of the Special Leave Petition, the State Government issued a Circular dated 5th December 2018. This specifically references the *Swastik Constructions* judgment and it directs all Municipal Corporations (which would include the TMC) not to insist on compliance with ULC conditions under Section 21 of the ULC Act. A copy of that Circular is annexed as Exhibit 2 to the Interim Application.”

13. In the present Petitions, it is clear that there were no further proceedings after the order under Section 8(4) of the now repealed ULC Act. The Petitioners predecessors never lost possession; it was never taken from them.

14. The inevitable consequence is, therefore, that all proceedings have lapsed and abated.

¹⁰ SLP (C) No 18067 of 2015.

15. On 1st March 2008 and 7th June 2011 (pages 38 and 39 of Writ Petition No. 1268 of 2019) we find government resolutions directing that in cases not covered by Sections 10(3), 10(5), 20 and 21, it was not necessary to obtain permission of a competent authority for selling or developing properties in urban areas.

16. There remained the question of the fraudulent order obtained on a Power of Attorney by Kokate et al. That order was dated 11th March 1999. The original land owners were not connected with it. This Court issued directions in a Public Interest Litigation (“**PIL**”) and an offence was registered against Kokate and two other accused. The original owners were only shown as witnesses. On 22nd February 2011, in the pending Criminal Public Interest Litigation No. 6 of 2008, this Court constituted a Special Investigative Team. That order was carried to the Supreme Court by the state government which, on 11th March 2011, stayed the High Court order. The CID completed its investigation and on 16th August 2011 filed a charge sheet. The owners of the land were named as witnesses. No charges or offences were registered against him. That trial is going on.

17. On 9th May 2017, on an application for building permission made by RR Realtors, the 3rd Respondent namely, the Pimpri Chinchwad Municipal Corporation (“**PCMC**”) demanded a No Objection Certificate from the Competent Authority in the ULC department and, for want of that NOC, declined to grant permission. On 26th August 2018, the original owners, Zumbar

Baburao Bhalerao et al, executed a sale deed in favour of RR Realtors in respect of 13 Ares from Survey No. 5/9A.

18. At page 379 is an Affidavit in Reply filed by Respondents Nos. 1 and 2 namely, the State of Maharashtra and the Competent Authority under the ULC Act. This Affidavit says that the fraudulent order in question relates to land owned by one Dilip Sadashiv Devkar. The Petitioners are not concerned with this land.

19. There is a Rejoinder of 17th November 2022 pointing out that neither the Petitioners nor their transferors (original owners) had anything at all to do with this bogus ULC order.

20. There is a further Affidavit of the Pimpri Chinchwad Municipal Corporation of 15th February 2023 reiterating that the building permission was refused for a failure to produce an NOC from the ULC competent authority and mentioning the Supreme Court's stay order referred to earlier. The matters before the High Court and the Supreme Court related to the criminal cases and the fraudulent order which, as noted above, does not even relate to the lands in question.

21. There is no manner of doubt that no further steps were taken after the Section 8(4) order under the ULC Act. Possession was never taken and the original owners/transferees continued to be in possession.

22. In the companion Writ Petition, the facts are broadly similar except for the aspect of the MoU in question. But they too have been told that an NOC from the competent authority under the ULC Act is required.

23. We believe that the stand of the 3rd Respondent, the PCMC, is not one that can be sustained in law. It proceeds on the assumption that the Section 8(4) order survives the repeal, which is contrary to law, or, at any rate, that steps have been taken pursuant to that order, which is contrary to the record. In view of the law as set out above and the decisions of this Court regarding Section 3 of the Repeal Act, this insistence on a NOC cannot be sustained.

24. In the RR Realtors Writ Petition prayer clause (e) (introduced by amendment) at page 12A reads thus:

“(e) by an appropriate writ, order or direction, this Hon’ble Court be pleased to direct the Respondent No. 5 Corporation to consider and decide the application of the Petitioners for building permission in respect of land admeasuring 14 Ares from and out of Survey No.5/9A, situated at Rahatani, Taluka Haveli, District Pune, on its own merits, without insisting for issuance of NOC from the Respondent Nos. 3 and 6 and irrespective of pendency of the appeal before the Hon’ble Supreme Court and on the basis of directions issued by this Hon’ble Court in several writ petitions, as expeditiously as possible.”

25. In the Bhalerao-s-Tudayekars Writ Petition the relevant prayer clause (d) at page 31 is as follows:

“(d) by an appropriate writ, order or direction, this

Hon'ble Court be pleased to direct the Respondent No. 5 Corporation to consider and decide the application of the Petitioners for building permission in respect of land admeasuring 14 Ares from and out of Survey No.5/- A(C.T.S. No.1015), situated at Rahatani, Taluka Haveli, District Pune, on its own merits, without insisting for issuance of NOC from the Respondent Nos. 3 and 6 and irrespective of pendency of the appeal before the Hon'ble Supreme Court and on the basis of directions issued by this Hon'ble Court in several writ petitions, as expeditiously possible.”

26. Having regard to the position in law and the facts as briefly set out above, it is clear that there is no basis for the insistence by the PCMC of an NOC from the ULC Authorities. The PCMC cannot possibly insist on such an NOC after the Repeal Act given that there is only Section 8(4) order and nothing further.

27. For these reasons, we make Rule absolute in both Petitions in the following terms:

- (a)** The Pimpri Chinchwad Municipal Corporation will consider and decide the applications by the Petitioners in the two Writ Petitions for building permissions in respect of lands admeasuring 13 Ares in the RR Realtors Petition and 14 Ares in the Bhaleraos - Tudayekars Petition on merits and in accordance with extant development planning rules, policies, law, regulations and norms but without insisting on an NOC

from the competent authority under the ULC Act or an NOC from the CID.

- (b) These applications are to be decided at the earliest possible and, in any event, within 12 weeks from today.

28. Rule is made absolute in these terms. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)