IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2789 OF 2024

Huhtamaki India Limited .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

Mr. Mayur Khandeparkar *a/w. Mr. Vikramjit Singh, Mr. Gaurav Gopal, Mr. Mohit Goyal i/b. Wadia & Ghandy Co., Advocates for the Petitioner.*

Mr. A.I. Patel, *Addl. GP a/w. Mr. Y.D. Patil, AGP for the Respondents/State.*

Mr. Ram A. Sabane, *Desk Officer, ULC, Urban Development Dept. Mantralaya, Mumbai is present in Court.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 15, 2024

ORAL JUDGEMENT:(*Per B. P. Colabawalla,J.*)

1. Rule. Respondents waive service. With the consent of parties, rule made returnable forthwith and heard finally.

2. By the above Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner *inter alia* seeks an order to direct Respondent No.1 and/or Respondent No.2 to refund an amount of Rs.19,21,70,250/-, which, according to the Petitioner, is illegally exacted from it for obtaining a No Objection Certificate for sale/redevelopment of their land bearing S. No.131/1 to 5, 132/A-1/1, 132/A/1,3,4, 134/1, 2A, 4, 136/1 to 7, 137/1 to 5,7 & 8, 139/2P, 3, 4, 5,6, 140/1 to 7, 140/8B, 8C, 140/9, Village Majivade, Tal. Dist. Thane, admeasuring 54,540 square meters. After certain deductions [as more particularly mentioned in the order of demand dated 16th October 2023], the entire land of the Petitioner admeasures 41,472 square meters (for short **"*the entire land*"**).

3. It is the case of the Petitioner that after the repeal of the *Urban Land (Ceiling and Regulation) Act, 1976* (for short **"the ULC Act"**), in a decision of the Full Bench of this Court in ***Maharashtra Chamber of Housing Industry, Mumbai & Ors. v/s. The State of Maharashtra & Anr.* [2014 (6) Mh.L.J. 829]**, it was held that the exemption granted under Section 20 of the ULC Act did not abate on repeal of the said Act. Being aggrieved by this decision of the Full Bench, some of the parties approached the Hon'ble Supreme Court. At the time when the SLP was pending before the Hon'ble Supreme Court, the State Government constituted a Committee under the Chairmanship of Mr. Justice B. N. Shrikrishna (Retired), who recommended that the issue of exemption orders under Section 20 of the ULC Act should be closed by accepting certain payments. This recommendation was made in a Report dated 9th August 2018. Accordingly, the learned Additional Solicitor General, appearing on behalf of the State of Maharashtra, made a statement before the Hon'ble Supreme Court that the State was prepared to implement the recommendations made in the said Report of Justice B. N. Shrikrishna and suggested that the SLP/appeal can be disposed of by permitting the State of Maharashtra to prepare a scheme for implementation of the recommendations made in the said Report. This suggestion was acceptable to the Appellants [before the Supreme Court] and therefore, on this basis, the SLP/appeal filed before the Hon'ble Supreme Court was disposed of by an Order dated 2nd July 2019.

4. This led to Respondent No.1 issuing Government Resolution dated 1st August 2019 (the ***"2019 GR"***) by which it effectively offered to close all pending issues regarding surplus land and the retained land [under the ULC Act], by accepting a payment, also called a 'one-time premium'. Thereafter, on 23rd June 2021, Respondent No.1 issued another Government Resolution (the ***"2021 GR"***) to streamline the process of implementation of the *2019 GR* and provide a basis for computation of the one-time premium.

5. Since all industries in the vicinity of the entire land of the Petitioners had shifted/shut down, it is the case of the Petitioner that in or around 2022, the Petitioner also closed/shut down the factory constructed on the entire land.

6. Since the Petitioner was desirous of selling the entire land, the Petitioner filed an Application dated 8th June 2023 before Respondent No.2 enquiring about the one-time premium required to be paid for the surplus exempted vacant land in terms of the *2019 GR* and also requested that upon payment of the said one-time premium, a No Objection Certificate be issued by Respondent No.2 to develop/sell the surplus exempted vacant land.

7. In response thereto, Respondent No.2 issued a letter/demand dated 16th October 2023, stating that in view of the *2019 GR*, the one-time premium required to be paid by the Petitioner would be in respect of the entire parcel of land (i.e.41,472 square meters) and not merely the surplus exempted vacant land. The Petitioner was informed that as per the *2019 GR* read with the *2021 GR*, the one-time premium would be calculated at the rate of 15% of the market value [per square meter] of the entire parcel of the said land. Thus, the one-time premium that was demanded from the Petitioner was Rs.27,74,47,680/-. A copy of the said letter/demand dated 16th October 2023 is annexed at Exhibit-H to the Petition. The English translation of the said letter/demand, which is not disputed by either party, reads thus:-

"DISTRICT COLLECTOR & COMPETENT AUTHORITY, THANE AGGLOMERATION, THANE

District Collector Office Bldg., second Floor

Tel: 022 25343492 Email: ulcthane27@rediffmail.com

Out.no.ULC/TA/ATP/Sec. 20 demand Notice/A.S./ M/s Paper Product Ltd./ Out.No.448

Date: 16.10.2023

To,
M/s Paper Product Pvt. Ltd. C/o Hutamaki India Ltd.
Add: LBS Marg, Majivade, Thane (W) 400601.

Subject: To grant permission for development by deleting the remark "Exemption for industrial purpose under Section 20 of Urban Land Ceiling Act 1976 and prohibition on transfer without prior permission" on the land exempted for industrial purpose under Sec. 20, Urban Land (Ceiling & regulation) Act 1976, on payment of premium as per the provisions in Government Decision dt. 01.08.2019.

Reference: 1) Government Decision No. ULC 2018 /Pra. Kr.51/ULC-1 dt. 01st August 2019.

2) Your application dt. 08.06.2023.

In the above subject matter, the total area in the Scheme Order under Section 20 for Industrial Purpose in S. No. 131/1 to 5, 132/A-1/1, 132/A/1, 3, 4, 134/1, 2A, 4, 136/1 to 7, *137/1 to 5, 7 & 8, 139/2P, 3, 4, 5, 6, 140/1 to 7, 140/8B, 8C, 140/9, Village Majivade, Tal. Dist. Thane, is 54540.00sq. mt. After deducting the area in ceiling limit 2000.00 sq.mt.from total area of 54540.00 sq.mt. the remaining area is 52540.00sq.mt. You have requested vide your application dt. 08.06.2023 to delete the remark, "Exemption for industrial purpose under Section 20 of Urban Land Ceiling Act 1976 and prohibition on transfer without prior permission" in 7/12 record by charging the premium at 15% premium in annual Market Value Rate Chart as per the provision in Government Decision dt. 01.08.2019, for the remaining area of 41472.00 sq. mt. i.e. after excluding the total area of 11068.00 sq. mt. comprising of (1) Area under road reservation transferred to Thane Municipal Corporation 4948.00 sq.mt.(2) Area under School Reservation S.No.137/1B 3000.00 sq.mt., S.No.137/1E 1500.00 sq.mt.and S.No.137/2/2 area 1100.00 sq.mt. totaling area 5600.00 sq.mt.(however remarks of S.20 will remain in Other Rights of 7/12) (3) area transferred in the name of Western India Steel Industries S.No.134/3E 42.00 sq.mt., S.No.137/5A 478.00 sq.mt. Totaling 520.00 sq.mt. (however remarks of S.20 will remain in Other Rights of 7/12). After excluding the said area of 11068.00 sq.mt. from the area of 52540.00 sq.mt. (which is total area in the Order 54540.00 sq.mt. Less: 2000.00 sq.mt. in ceiling limit), the residual is 41472.00 sq.mt. Pursuant to your above referred application, the Government Premium as per 1(A) in Government Resolution No.ULC 2018/ Pra.Kra. 51/ULC-1 dt.1st August 2019, for 41472.00 sq.mt. out of the Scheme Area 54540.00 sq.mt.under Section 20 for industrial purpose for S. No.131/1 to 5, 132/A-1/1, 132/A/1, 3, 4, 134/1, 2A, 4, 136/1 to 7, 137/1 to 5, 7 & 8, 139/2P, 3, 4, 5, 6, 140/1 to 7, 140/8B, 8C, 140/9, Village Majivade, Tal. Dist. Thane) at 15% of the rate in prevailing Annual Market Value Rate Chart, is calculated as Rs.27,74,47,680/- (rupees Twenty Seven Crores Seventy four Lacs Forty Seven Thousand six Hundred eighty only).*

You may therefore draw a Demand Draft of the Government premium amount as per the Government Decision dt. 1.8.2019, in the name of "Assistant Town Planner, Thane Urban Agglomeration, Thane" and submit the same in this office within fifteen days from the date of this letter. Thereafter the necessary appropriate steps pursuant to your *application will be taken to delete the remark "Exemption for industrial purpose under Section 20 of Urban Land Ceiling Act 1976 and prohibition on transfer without prior permission" appearing in Other Rights column in 7/12 Records, as per the Government Decision dt. 01.08.2019.*

Office copy bears the signature of
Hon'ble District Collector & Competent Authority.

Sd/-
(Sudam Pardeshi)

Dy. Resident Dist. Collector & Co-ordination Officer
For District Collector & Competent Authority
Thane Urban Agglomeration, Thane"

8. Since the Petitioner could not effectively deal with its own property without paying the demanded sum, the Petitioner, on 20th October 2023, paid the one-time premium demanded, though under protest and without prejudice to the Petitioner's right to seek a refund. This payment was made under protest because according to the Petitioner, this Court, in the case of ***Salim Alimahomed Porbanderwalla & Anr. v. The State of Maharashtra & Anr.*** **[Writ Petition No.4849 of 2022 decided on 30th March 2023]** had held that under the *2019 GR*, read with the *2021 GR*, the one-time premium could be charged only in respect of the surplus exempted vacant land [i.e. which is exempted under Section 20 of the ULC Act]. Despite this, the payment demanded was for the entire land of the

Petitioner. Be that as it may, since the entire payment was made by the Petitioner, the relevant No Objection Certificate was also granted by the authorities on 30th October 2023, which is also annexed at Exhibit-J to the Petition.

9. Thereafter, on 5th December 2023, the Petitioner requested for a refund of the amount of Rs.19,21,70,250/- from Respondent No.2. This refund was sought on the basis that the area of the surplus exempted vacant land was 12,747.07 square meters [on which the one time premium could be charged] whereas the Government had demanded the one-time premium on the entire land [i.e. 41,472 square meters]. This, according to the Petitioner, was contrary to the law laid down by this Court ***Salim Alimahomed Porbanderwalla*** which held that under the *2019 GR*, read with the *2021 GR*, the one-time premium could be charged by the Government only in respect of the surplus exempted vacant land [i.e. which is exempted under Section 20 of the ULC Act]. The said one-time premium could not be charged/exacted with respect to the "retainable land". The Petitioner, in the said letter, also brought to the notice of the authorities that the judgement in ***Salim Porbanderwalla*** was thereafter once again followed by a Division Bench of this Court in the case of ***Modern Paints vs. The State of Maharashtra & Anr.*** **[Writ Petition (L) 2091 of 2023 decided on 9th August 2023].** Since there was no response to the said letter, on 14th December 2023, the Petitioner once again requested for a refund of Rs.19,21,70,250/- from Respondent No.2.

10. On 4th March 2024, Respondent No.2 rejected the request of the Petitioner to refund the excess amount. The ground for rejection was that the judgement passed in ***Salim Porbanderwalla*** [along with the other orders that were passed by this Court in similar matters], were in the process of being challenged before the Hon'ble Supreme Court and the refund would be granted in the event the challenge fails. It is in these circumstances that the present Writ Petition is filed seeking the following reliefs:-

> *"a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent Nos. 1 and 2 to implement the Government Resolutions and refund the Excess Amount after deducting the premium amount only in respect of the Final Surplus Vacant Land admeasuring 12,747.07 square meters and implement the policy decision as contained in the Government Resolutions.*
>
> *(b) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling upon record and proceedings in respect of Demand Letter dated 16th October*

> *2023 (Exhibit "H" hereto) issued by Respondent No. 2 and after going through the same, be pleased to quash and set aside the same to the extent the same charges the Excess Amount."*

11. In other words, the Petitioner seeks a direction to Respondent Nos.1 and/or 2 to implement the *2019 and 2021 GRs* keeping in mind the interpretation of the said GRs in ***Salim Porbanderwalla*** as well as in ***Modern Paints***, and refund the excess amount of premium [of Rs.19,21,70,250/-] paid by the Petitioner.

12. In answer to this Petition, the only argument canvassed by Mr. Patel, the learned AGP, was that the Government is in the process of challenging the decisions of this Court in ***Salim Porbanderwalla*** and other similar matters. He submitted that, in fact, in the said order rejecting the refund, the Government has made it clear that in the event the challenge to ***Salim Porbanderwalla*** or other connected matters fails before the Hon'ble Supreme Court, they would refund the amount. He, therefore, submitted that there was no case made out for ordering a refund at this stage.

13. We have heard Mr. Khandeparkar, the learned Counsel appearing on behalf of the Petitioner, as well as the learned AGP, appearing on behalf of the Respondents. At the outset, we must mention that the facts and figures set out/narrated above are not disputed by either party. It is not in dispute that the entire land, after deductions, admeasuring 41,472 square meters belonged to the Petitioner. The fact that the one-time premium of Rs.27,74,47,680/- levied on the Petitioner (and paid by it) is with respect to the entire land [namely on 41,472 square meters], is also not disputed. The refund is sought on the basis that the one-time premium has to be paid only in relation to 12,747.07 square meters, and which comes to Rs.8,52,77,430/-. Hence, the refund of Rs.19,21,70,250/- is sought from the Government. These facts and figures are undisputed.

14. Having said this, we now turn our attention to the *2019 GR* as well as to the *2021 GR*. These two GRs have been considered in several judgments passed by this Court. Firstly, the same were interpreted in a decision of this Court in ***Salim Porbanderwalla***. This Court, in the said judgment, *inter alia* held that under the *2019 GR* as well as the *2021 GR,* the one-time premium can be charged only on the surplus exempted vacant land and not on the entire land belonging to the Petitioners. In the ***Salim Porbanderwalla*** matter, this Court in fact put it in very simple terms. It stated that there are two parcels of land. One is the land which the Petitioner was entitled to hold and there cannot be a premium on this, nor can there be a Revenue Entry relating to Section 20 of the ULC Act in relation thereto. The other parcel is the surplus vacant land for which the Petitioners have paid full premium. Against that, they are entitled to have the Revenue Entry deleted.

15. Thereafter, in the case of ***Modern Paints,*** this Court categorically reiterated that the ratio laid down in the judgement of ***Salim Porbanderwalla*** was not restricted to the facts of that case alone and applied to all cases to which the *2019 GR* and the *2021 GR* applied. The same view was again taken by this Court in the case of **Jemini Pradip Salot & Ors. v. The State of Maharashtra & Anr. [Writ Petition (L) No.20587 of 2023 decided on 9th August 2023].**

16. In fact, even after the judgment in ***Modern Paints***, it appears that the authorities were refusing to act. Therefore, Modern Paints was constrained to file another Petition in this Court [the 2nd

Writ Petition], being Writ Petition (L) No.27079 of 2023. The grievance of Modern Paints [in the 2nd Writ Petition] was that they had moved an Application before the Respondents for the release of its land and showed its willingness to pay the one-time premium as per the applicable rate. On considering this Application, Respondent No.2 therein granted its approval for release, subject to the condition that the one-time premium of Rs.1,46,36,087/- would have to be paid by Modern Paints. Modern Paints was not ready to pay the above-mentioned amount, mainly on the ground that the said amount was erroneously calculated taking the entire land holding of Modern Paints into consideration [and not only the declared surplus land]. Modern Paints, therefore, made a representation to Respondent No.2 to recalculate the one-time premium. This representation of Modern Paints was rejected. That is how the 2nd Writ Petition was filed by Modern Paints. Since there was urgency in the matter, Modern Paints offered to deposit the entire sum of Rs. 1.46 crores as originally demanded, without prejudice to its rights and contentions. This was because Modern Paints would otherwise face the consequence of losing a valued purchaser for the entire land. Accordingly, this Court, by its judgement/order dated 18th October 2023, permitted Modern Paints to deposit the amount of Rs.1.46 crores with Respondent No.2, and on such a deposit being made, the Respondents were directed to pass an order of release in favour of Modern Paints within a period of 7 days from the date of deposit. This Court also directed that in the event the judgment in the ***Salim Porbanderwalla*** matter was not challenged before the Hon'ble Supreme Court within a period of six months, or if such a challenge was made and rejected, whichever was earlier, the department would refund the excess amount paid, and which came to Rs.87,06,750/-. As mentioned earlier, the judgement/order in the 2nd Writ Petition filed by Modern Paints is dated 18th October 2023. Even though six months have elapsed from the date of the said judgement/order, we find that no SLP has been filed challenging the orders passed by this Court either in ***Salim Porbanderwalla*** or in ***Modern Paints*** or in ***Jemini Pradip Salot***. All these judgments are binding upon us. These judgments have clearly held that the one-time premium can be charged only on the surplus exempted vacant land and not on the entire land belonging to the Petitioner.

17. In the facts of the present case also, the Petitioner has paid [under protest and without prejudice to its rights and contentions to claim a refund] the entire one-time premium calculated on the basis of the entire land belonging to it because they were desirous of selling their land to a prospective purchaser. Once this Court has already interpreted the *2019 GR* and the *2021 GR* and held that the Government can charge the one-time premium only on the surplus exempted vacant land and not on the entire land belonging to the Petitioner, the Government is bound to refund the excess amount paid to it by the Petitioner. We say this because it is now too well settled a proposition of law that the Government cannot exact monies from its citizens without the authority of law. In the present case, we will assume that the *2019 GR* [read with the *2021 GR]* is the authority of law under which the Government can demand the one-time premium. These GRs have been interpreted by this Court to mean that the Government can only charge one-time premium on the surplus exempted vacant land and not on the entire land belonging to the Petitioner. Once this is the interpretation, the Government has no authority in law to exact premium on the entire land. If it has no authority, it cannot wrongly hold on to the money that was deposited by the Petitioner, under protest, towards the one-time premium.

18. Considering the law laid down by this Court, and since adequate time was granted to the Government to challenge the order passed by this Court in ***Salim Porbanderwalla,*** [as recorded in the 2nd Writ Petition filed by Modern Paints (Writ Petition (L) No.27079 of 2023)], we are of the view that we cannot wait indefinitely for the Government to challenge the orders passed by this Court in ***Salim Porbanderwalla*** or ***Modern Paints*** or ***Jemini Pradip Salot***, which are binding on the Government.

19. In these circumstances, we are of the opinion that the Petitioner is entitled to a refund of the amount of Rs.19,21,70,250/- from Respondent No.1 and/or Respondent No.2.

20. We, accordingly, pass the following order:-

(i) Respondent No.1 and/or Respondent No.2 shall refund to the Petitioner the sum of Rs.19,21,70,250/- within a period of eight weeks from today.

(ii) If the aforesaid amount is refunded within the aforesaid period, the Government shall not be liable to pay any interest on the aforesaid amount. However, if the aforesaid amount is not refunded within a period of eight weeks from today, namely, on or before 9th September 2024, the Government will be liable to pay interest on the amount of Rs.19,21,70,250/-, at the rate of 10% per annum, simple interest, from 10th September 2024 till payment and/or realisation.

(iii) If this burden of interest is cast upon the Government, it will be free to recover the same from the officer concerned, namely Respondent No.2, if it so chooses to do.

21. Rule is made absolute in the aforesaid terms and the above Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the present case, there shall be no order as to costs.

22. Though we have disposed of the above Writ Petition, we place it on board for reporting compliance on 10th September 2024.

23. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**