IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 641 OF 2024

Jaihind Oil Mills Company .. Petitioner

Versus

The Additional Collector and Competent Authority, ULC & Anr. .. Respondents

Dr. Milind Sathe, *Sr. Advocate, a/w. Mr. Aditya Mhase, Mrs. Rati Patni, Mrs. Kathleen Lobo and Mr. Vikrant Dere i/b. Wadia Ghandy & Co., Advocates for the Petitioner*.

Mr. Abhay Patki, Addl. G. P *for the Respondents/State*.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 5, 2024

<u>ORAL JUDGEMENT</u>:

1. Rule. Respondents waive service. With the consent of the 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 to refund an amount of Rs.35,93,97,406/-, which, according to the Petitioner, is illegally exacted from it for obtaining a No Objection Certificate for redevelopment of their land bearing CTS Nos.611, 611/1 to 611/10, admeasuring in aggregate approximately 36,689.30 square meters, situate, lying and being at Village Kanjur, Taluka Mulund, District Mumbai, Suburban Mumbai-400078 (for short **"the entire land"**).

3. This relief is sought on the basis that after the repeal of the *Urban Land (Ceiling and Regulation) Act, 1976* (for short **"the ULC Act"**) and 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 that time, the Hon'ble Supreme Court appointed a committee under the chairmanship of Mr. Justice B. N. Shrikrishna (Retired) who recommended that the issue of exemption orders under Section 20 should be closed by accepting certain payment. That recommendation was ultimately accepted by the Hon'ble Supreme Court by its Order dated 2nd July 2019. This led to

Respondent No.2 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, by accepting a payment also called a 'one-time premium'. Thereafter, on 23rd June 2021, Respondent No.2 issued another Government Resolution (the ***"2021 GR"***) to streamline the process of implementation of the *2019 GR* and providing a basis for computation of the one-time premium.

4. Since all industries in the vicinity of the entire land had shifted/shut down, it is the case of the Petitioner that in or around 2016, the Petitioner also closed/shut down the factory constructed on the entire land. Since, all the land parcels in the vicinity of the entire land were being utilized for residential development, the Petitioner also now intended to develop the said entire land for residential use.

5. Accordingly, the Petitioner filed an Application dated 12th January 2022 before Respondent No.1 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.1 to develop the surplus exempted vacant land.

6. In response thereto, Respondent No.1 issued a letter dated 21st January 2022 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 the land [i.e. 36,689.30 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. According to Respondent No.1, at the relevant time, the market value of the said land [as per the ready reckoner] for the year 2021-22 was Rs.77,410/- per square meter. Thus, the one-time premium that was demanded from the Petitioner was Rs.42,60,17,807/-. A copy of the letter dated 21st January 2022 raising a demand on the Petitioner for Rs.42,60,17,807/- is annexed at Exhibit "F" to the Petition. The English translation of the said letter, and which translation is not disputed by either party, reads thus:-

"COLLECTOR & COMPETENT AUTHORITY (URBAN LAND CEILING) BRIHANMUMBAI
Administrative Building, 5th Floor, near Chetana College, Government Colony, Bandra (East), Mumbai-

51.

Email ID-ulcmumbaiaggg@gmail.com

No. C/ULC/D-3/S-20/WS-10/2022 O. No. 54
Date 21.01.2022

To,
The Partner
M/s. Jai Hind Oil Mills Co.,
387-389 Narasinath Road,
Mumbai-400 009.

Sub.: Urban Land (Ceiling & Regulation) Act, 1976 Regarding area in C. T. S. Nos. 611 & 619/1 to 10 at Mauje Kanjur, Tal. Kurla.

Ref.: 1) Joint Director Industry & Designated Dy. Secretary, General Administration Department, Government of Maharashtra's Exemption Order under Section 20 of ULC bearing No. ULC/J-18/CSC/IC/GAD/4107, dated 07.12.1979
2) Additional Industry Commissioner & Designated Dy. Secretary, Housing & Special Assistance Department, Government of Maharashtra's Revised Order under Section 20 of ULC bearing No. ULC/J-18/SC/IC/GAD/E6075, dated 18.03.1994

3) Govt. Resolution, Urban Development Department, No. ULC 2018/C. No. 51/ULC-1 dated 01.08.2019

4) Your Request Application dated 12.01.2022

In the present matter, you have requested to this office to carry out proceeding in respect of subject land as per the Government Resolution at Ref. No. 3.

An exemption had been given in respect of area in CTS Nos. 611 & 611/1 to 10 at Mauje Kanjur (Bhandup), Tal. Kurla held by the M/s. Jai Hind Oil Mills Co. on terms & conditions to use it for industrial purpose under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 under the Order at Ref. No. 1 dated 07.12.1979. Thereafter, pursuant to changes in area on the Property Card, the Revised Order has been passed under the Order at Ref. No. 2 dated 18.06.1994 and according to said Revised Order, a total area admeasures 36689.30 sq. mt. and area under exemption admeasures 30000.00 sq. mt.

***In present matter, according to provision in above mentioned Government Resolution dated 01.08.2019, a calculation of 15% premium in respect of total 36689.30 sq. mt. in CTS Nos. 611 & 611/1 to 10 at Mauje Kanjur, Tal. Kurla is being made in following manner**:*

The subject land is included in Ward No. 120/551 ***as per Prevailing Market Value Rate Table of Year 2021- 2022 and per sq. mt. rate of that land is Rs. 77,410/-***.

Amount of Premium=Area of Land X Rate of Land X 15%

=36689.30 X Rs 77,410 X 0.15
= Rs. 42,60,17,807/-

Hence, an amount of Rs. 42,60,17,807/-(In Words Rupees Forty Two Crore Sixty Lakhs Seventeen Thousand Eight Hundred and Seven Only) calculated as per Government Resolution dated 01.08.2019 should be deposited in below given account head in Reserve Bank of India and copy of Challan should be submitted in this office, thereafter, in subject matter, further necessary action will be taken as per rule in subject matter.

Account Head:

0217-Urban Development Department
60, Other Urban Development Department
800, other deposit amount
01, other deposit amount
(01) (09) Charges received in respect of
land exempted under Section 20 of Urban Land (Ceiling & Regulation)

*Act, 1976 and Premium Amount
Computer Code (0217 0197)*

Encl.: Original Copies of Challan

Sd/-

*(Nidhi Chaudhari)
Collector & Competent Authority
(U. L. C.) Brihanmumbai.*"

(emphasis supplied)

7. Since the Petitioner could not effectively utilize its own property, the Petitioner paid the one-time premium to the office of Respondent No.1. A challan dated 16th July 2022 evidencing payment of the aforesaid one-time premium of Rs.42,60,17,807/- is also annexed at Exhibit "G" to the Petition.

8. It is the case of the Petitioner that after the payment of this one-time premium, the interpretation of the *2019 GR* and the *2021 GR* came up for consideration before 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]**. In this judgment, a Division Bench of this Court 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 vacant land which is exempted under Section 20 of the ULC Act. The one-time premium could not be exacted with respect to the "retainable land". Taking this decision into account, the Petitioner addressed a letter dated 7th June 2023 to Respondent No.1 requesting for a refund of the excess amount of Rs.35,93,97,406/- paid towards the one-time premium. This refund was sought on the basis that the surplus vacant land [on which the one-time premium could be charged] was only 5,937.45 square meters as reflected in the revised schedule issued by the Additional Industries Commissioner, Ex-officio Deputy Secretary to Government, Housing and Special Assistance Department (pages 36 and 37 of the Petition).

9. In answer to the letter dated 7th June 2023, Respondent No.1, by its letter dated 5th July 2023, refused to refund the excess one-time premium paid by the Petitioner basically on the ground that the judgment passed by this Court in ***Salim Porbanderwalla (supra)*** was applicable only in the facts and circumstances of that case and that the *2019 GR* was not declared as void in the judgement of ***Salim Porbandarwalla***. It was further contended that the Government had not taken back/cancelled the *2019 GR* after the order of the High Court and neither was there any change in the provisions of the *2019 GR*. It was on this basis that the refund was refused to the Petitioner.

10. Ironically, after this rejection, 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],** as well as 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],** held that the interpretation of the *2019 GR* [as set out in the judgement passed in the ***Salim Porbanderwalla***] is applicable to all cases to which the *2019 GR* [read with the *2021 GR*] was applied by the Government. This Court, in the aforesaid two decisions, once again held that the one-time premium required to be paid under the *2019 GR* was only with respect to the exempted surplus land under Section 20 of the ULC Act.

11. In the light of these judgements, the Petitioner once again, vide its letter dated 6th November 2023, called upon Respondent No.1 to refund the excess one-time premium of Rs.35,93,97,406/- paid by the Petitioner. Since there was no response to the aforesaid letter, the Petitioner has been constrained to file the above Petition *inter alia* seeking a refund of this amount of Rs.35,93,97,406/-.

12. We must, at the outset, mention that the facts as narrated above are not really disputed. It is not in dispute that the entire land belonging to the Petitioner admeasures 36,689.30 square meters. It is also not in dispute that out of the entire land, the vacant surplus land is only 5,937.45 square meters. The fact that the one-time premium of Rs.42,60,17,807/- levied on the Petitioner [and paid by it] is on the entire land, namely, on 36,689.30 square meters [at the rate of Rs.77,410/- per square meter], is also undisputed. In fact, the valuation of Rs.77,410/- per square meter has been arrived at by the Government itself when they raised their demand on the Petitioner by their letter dated 21st January 2022 (Exhibit “F” to the Petition). The refund is sought on the basis that the one-time premium has to be paid only in relation to 5937.45 square meters (the surplus vacant land), and which comes to Rs.6,66,20,401/-. Hence, a refund of Rs.35,93,97,406/- is sought from the Government. These are the undisputed facts.

13. The *2019 GR* as well as the *2021 GR* have been considered in several judgments passed by this Court. Firstly, the same was 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-premium can be charged only on the surplus 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. When this judgement was brought to the attention of the authorities before us, and the Petitioner herein sought a refund, Respondent No.1 by his letter dated 5th July 2023 refused to refund the excess amount as it believed that in the ***Salim Porbanderwalla*** matter the *2019 GR* was not held to be void and the said decision was restricted to the facts of that case.

14. However, thereafter, in the case of ***Modern Paints (supra)*** as well as in ***Jemini Pradip Salot (supra)***, 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. For the sake of convenience, the operative part of the decision passed by this Court in ***Modern Paints (supra)*** is reproduced hereunder:-

> "*25. To make it perfectly clear, once and for all:*
>
> *(a) No demand under the 1st August 2019 GR or the later GR of 23rd June 2021 can be made applicable to the land that is retainable, i.e., exempted, and is in the ownership of and has vested in the private owner.*
>
> *(b) The Government has no power to demand a premium for the private party's own land.*
>
> ***(c) The retention land, i.e., that which was within the ceiling limit permissible under the ULC Act and which was not vacant land, cannot be computed or reckoned for the purposes of computing a premium***.
>
> ***(d) The expression "entire land" or ",dw.k{ks=" in the 1st August 2019 GR or the later GR of 23rd June 2021 means the whole of the surplus vacant land not the whole of the land, i.e., not the portion including the retention/retainable land.***

> ***(e) Any demand for a premium for the retainable land is illegal, unconstitutional and unlawful****.*
>
> *(f) There cannot be a continuance of the Section 20 order in the revenue entry against the whole of the land.*
>
> *(g) No revenue entry under Section 20 can apply to the retention land.*
>
> *(h) Any revenue entry showing the State Government in respect of the retainable / retention land is also illegal.*
>
> ***26. This judgment is not restricted to the facts of this case. It applies to all cases to which the GRs of 1st August 2019 and 23rd June 2021 are sought to be applied. Consequently, the State Government cannot refuse or fail to follow this judgment. It cannot make premium demands for the whole land or make revenue entries favouring the State Government for the whole land - i.e., including the retention/retainable land that is private property. Any such demands or entries are illegal and unconstitutional."***
>
> (emphasis supplied)

15. 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 being Writ Petition (L) No.27079 of 2023. The grievance of Modern Paints was that they had moved an Application before the Respondents for the release of its land and showed its willingness to pay the price of the land as per the applicable rate. On considering this Application of the Petitioner, Respondent No.2 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 the Petitioner. While the Petitioner was not ready to pay the above-mentioned amount on the ground that the said amount was calculated erroneously taking the entire land holding of the Petitioner into consideration, and not only the declared surplus land, the Petitioner made a representation to Respondent No.2 to recalculate the one-time Premium. This representation of the Petitioner was rejected and that is how the second Writ Petition was filed. Since there was an urgency in the matter, the Petitioner offered to deposit to entire sum of 1.46 crores as originally demanded without prejudice to the rights of the Petitioner. This was because the Petitioner would face the consequence of losing a valued customer for the entire land. Accordingly, this Court permitted Modern Paints to deposit the amount of Rs.1.46 crore with Respondent No.2, and on such a deposit being made, the Respondents were directed to pass an order of release in favour of the Petitioner within a period of 7 days from the date of deposit. The 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 is earlier, the department shall refund the excess amount which came to Rs.87,06,750/-. This judgment in the second Writ Petition filed by Modern Paints is dated 18th October 2023. Even though six months have lapsed from the said judgment, 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 excess surplus land and not on the entire land of the Petitioner.

16. Faced with this situation, Mr. Patki, the learned Additional Government Pleader made two submissions. He firstly submitted that the Government has decided to challenge the judgements passed by this Court (i) in ***Salim Porbanderwalla***; (ii) in ***Modern Paints***; and (iii) in ***Jemini Pradip Salot***; before the Hon'ble Supreme Court. Secondly, he submitted that in any event these judgements are distinguishable on facts, because in the present case, the one-time premium was paid on the entire land belonging to the Petitioner without any protest. Once this is the case, the Petitioner cannot today, after taking advantage of the release orders passed by the Government, rely upon the judgments passed in the ***Salim Porbanderwalla*** or ***Modern Paints*** or ***Jemini Pradip Salot*** to seek a refund.

17. We have heard Mr. Patki on this aspect. We are wholly unimpressed with his arguments. Firstly, the Petitioner cannot be asked to wait indefinitely for his refund merely because the Government decides to take its own sweet time to challenge the Judgements passed by this Court. These Judgements are indeed binding on the Government, and barring any stay granted by the Hon'ble Supreme Court, the Government has to comply with the said Judgements/orders. Secondly, the submission that the judgements in ***Salim Porbanderwalla*** and ***Modern Paints*** and ***Jemini Pradip Salot*** are distinguishable on facts, holds no merit. We say this because it makes little difference whether the Petitioner paid the amount of one-time premium for the entire land under protest or otherwise. 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 excess surplus 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 towards the one-time premium, under protest or otherwise.

18. Considering the law laid down by this Court [as mentioned earlier], we are of the view that we cannot wait indefinitely for the Government to challenge the Judgements/orders passed by this Court in ***Salim Porbanderwalla*** or ***Modern Paints*** or ***Jemini Pradip Salot***, and which are binding on the Government. In these circumstances, we are of the opinion that the Petitioner is entitled to a refund of the amount of Rs.35,93,97,406/-, as prayed for in the above Petition.

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

(i) Respondent No.1 and/or Respondent No.2 shall refund to the Petitioner the sum of

Rs.35,93,97,406/- 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 30th August 2024, the Government will be liable to pay interest on the amount of Rs.35,93,97,406/-, at the rate of 10% per annum, simple interest, from 1st September 2024 till payment and/or realisation.

20. Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the present case, there shall be no order as to costs.

21. At this stage, Mr. Patki, the learned AGP requested for a stay of the operation of this order for a period of 12 weeks. Considering that we have given the State 8 weeks to refund the amount of Rs. Rs.35,93,97,406/- to the Petitioner, we do not see any reason to stay the operation of this order. Hence, the request for stay is rejected.

22. 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.]**