

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

WRIT PETITION NO. 1125 OF 2024

Riyaz Ismail Machhiwala & Anr.	.. Petitioners
Versus	
The State of Maharashtra & Anr.	.. Respondents

Mr. Pravin Samdani, Sr. Advocate *a/w. Mr. Viraj Maniar, Ms. Sneha Patil, Mr. Amish Gandhi i/b. Maniar Srivastava Associates, Advocates for the Petitioners.*

Ms. Prachi Tatake *AGP for the Respondent Nos.1 and 2.*

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: AUGUST 7, 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 Petitioners *inter alia* seek an order to direct Respondent No.2 to refund an amount of Rs.2,66,75,750/-, which, according to the Petitioner, is illegally exacted from it for obtaining a No Objection Certificate for development/sale of their land bearing

Survey No.429/1/2 and CTS No.1069-A/ A-1 and 1069-A/B/1, aggregating to 4163 square meters, of Village Malad, Taluka Borivali, (for short “***the entire land***”).

3. It is the case of the Petitioners 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 the 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 the Petitioners were desirous of developing/selling the entire land, the Petitioners filed an Application dated 15th March 2021 enquiring about the one-time premium required to be paid for the exempted surplus 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 exempted surplus vacant land.

6. In response thereto, Respondent No.2 issued a letter/demand dated 22nd April 2021, stating that, in view of the 2019 GR, the one-time premium required to be paid by the Petitioners would be in respect of the entire parcel of land (i.e.4163 square meters) and not merely the exempted surplus vacant land. The Petitioners were 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.5,73,74,466/-. A copy of the said letter/demand dated 22nd April 2021 is annexed at Exhibit “J” to the Petition. The English translation of the said letter/demand, and which is not disputed by either party, reads thus:-

*“COLLECTOR AND COMPETENT AUTHORITY (URBAN
LAND HOLDING) GREATER MUMBAL*

*Administrative Building, 5th Floor, Near Chetna College,
Government Colony, Bandra (East), Mumbai-51.*

Email ID: ulcmumbaiagglo@gmail.com

*No. Collector/ULC/D-3/Section 20/
WS-72/R.1.Machiwala/2021/
Outward No. 292/21*

Date: 22/04/2021.

*To,
Shri. Riyaz Ismail Machiwala and other
through their Power of Attorney Shri. Ajay C. Mehta,
113, Shripal Industrial Estate,
1st Floor, S.V. Road, Jogeshwari, (West), Mumbai 400 012.*

*Subject:- Regarding levy of lump sum
premium in CTS No. 1069-A/A-1 and 1069-
A/B-1 situated at village Malad, Taluka
Borivali -Urban Land (Ceiling & Regulation)
Act, 1976.*

*Reference: (1) Government decision, Urban
Devt. Department No. ULC-2018/Case
No.51/ULC- 1 dated 1st August, 2019.
(2) Your Request Application dated 15th
March, 2021.*

*In the above matter you had requested to take action in
respect of the subject land, according to the Government
decision referred at Sr. No. 1 of the reference clause vide your
application dated 15th March, 2021.*

*This office has passed order under section 8 (4) of the ULC
Act on 15th December, 1995 regarding the total area occupied by
4215.00 sq.mtrs., out of Survey No. 429/1/2, CTS No. 1069/A
situated at village Malad, Taluka Borivali possessed by Shri.
Riyaz Ismail Machiwala and others. On 15th December, 1995
corrigendum has been issued to the said order under section 8
(4) of the ULC Act and according to the said corrigendum an
area to the extent of 2227.45 sq.mt has been declared as surplus.
Permission to use the said additional / surplus declared area
has been given by Additional Industrial Commissioner cum
Deputy Secretary, Housing Development and Special Help
Department, Maharashtra Government vide Order No. ULC/R-
255/MC/DC/HSAD/B-9341 dated 27th June, 1996 under
Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976
for industrial purposes on the terms and conditions.*

*Area to the extent of 575.20 sq.mtrs and 3587.80 sq.mt has
been mentioned on the property cards of CTS No. 1069-A/A-1
and 1069-A/B-1 situated at village Malad, Taluka Borivali
submitted by you along with application under reference at Sr.
No.2 above. According to your application under reference Sr.
No. 2 you have requested to take action in respect of the total
area 4163.00 sq.mtrs., in accordance with Government
Resolution referred at Sr. No.1 above.*

“-1 (b) according to Section 20 of the ULC Act in the matter of exemption given for industrial purpose for the area mentioned in the order (without any deduction maximum area mentioned in the order) by charging/ levying premium at 15% of the prevailing annual market rate schedule in lump sum and such area is being made available to the Scheme Holder for development according to concerned D.C. Regulations.

---2(iv) Considering the total area exempted under Section 20 of the ULC Act (without any deduction maximum area mentioned in the order) on depositing the premium amount in lump sum by the applicant in the ratio in which development of the area is proposed, permission for carrying development of such area be given and entries in the record of rights to that effect be deleted. For remaining area premium as per the Ready Reckoner prevailing at the relevant time be recovered and in the ratio of the premium amount entries in other rights column of such land be deleted."

In the present matter, premium of the total area 4163.00 sq.mtrs out of CTS No. 1069-A/A-1 and 1069-A/B-1 situated at village Malad, Taluka Borivali is calculated in accordance with Government Resolution dated 1 August, 2019 as under:-

Subject land (original CTS No. 1069) is included in Ward No. 63/301 for the year 2021-2022 according to prevailing market rate schedule and rate of the said area per sq.mtr is Rs. 91880/-.

Hence, 15% premium is calculated as under:

Area of the land x rate of land x 15% = amount of premium $4163.00 \times 91880 \times 0.15 =$ Rs. 5,73,74,466/-.

Hence, the amount calculated in accordance with the Government Resolution dated 1" August, 2019 of Rs. 5,73,74,466/- (In words Rupees Five Crores. Seventy Three Lakhs, Seventy Four Thousand, Four Hundred, Sixty Six only) be deposited in the Reserve Bank of India under the following heads and submit the original copy of challan to this office. Thereafter, necessary action with regard to the subject matter be initiated according to rules.

Head of the Account:
0217-Urban Development Department
60, Other Urban development Scheme
800 Other deposited amounts
01 other deposited amounts

(01) (09) Regarding the amount received in connection with exempted land under section 20 of the Urban Land (Ceiling & Regulation) Act, 1976-Computer code (02170197)

Enclosed: Copy of original challan.

(Sd/- Milind Borikar)

Collector and the Competent Authority, ULC Gr. Mumbai”

(emphasis supplied)

7. Since the Petitioner could not effectively deal with its own property without paying the demanded sum, the Petitioner, on 2nd June 2021, paid the one-time premium demanded, and which was acknowledged by the Respondents on 8th June 2021.

8. It is the case of the Petitioner that after the payment of this one-time premium, the interpretation of 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 said one-time premium could not be charged/exacted with respect to the “retainable land”. Taking this decision into account, the Petitioners addressed a letter dated 26th May 2023 to Respondent No.2 requesting for a refund of the excess amount of Rs.2,66,75,750/- paid towards the one-time premium. This refund was sought on the basis that the exempted surplus vacant land [on which the one-time premium could be charged] was only 2227.45 square meters as reflected in the Section 20 NOC dated 27th June 1996 issued by the Additional Industries Commissioner and Ex-Officio Deputy Secretary to Government Housing and Special Assistance Department (pages 75 to 80 of the Petition).

9. In answer to the letter dated 26th May 2023, Respondent No.2, by its letter dated 5th July 2023, refused to refund the excess one-time premium paid by the Petitioners, basically on the ground that the judgement passed by this Court in ***Salim Alimahomed Porbanderwalla*** was applicable only in the facts of that case and that the 2019 GR was not declared as void in the judgment of ***Salim Alimahomed Porbanderwalla***. 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 Petitioners. It is in light of this stand taken by Respondent No.2 that the Petitioners have approached this Court by filing the present Writ Petition.

10. Mr. Samdani, the learned Senior Counsel appearing on behalf of the Petitioners, submitted that the stand taken by Respondent No.2 of refusing a refund is wholly unsustainable because after the rejection of the refund, ironically, 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 vacant land under Section 20 of the ULC Act. In light of these decisions, Mr. Samdani submitted that there was absolutely no justification for

Respondent No.2 to refuse to refund the excess amount paid by the Petitioners.

11. On the other hand, the learned AGP, appearing on behalf of the Respondents, made two submissions. She firstly submitted that the Government has decided to challenge the judgements passed by this Court in (i) ***Salim Porbanderwalla***; (ii) ***Modern Paints***; and (iii) ***Jemini Pradip Salot***; before the Hon'ble Supreme Court. Secondly, she 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 Petitioners without any protest. Once this is the case, the Petitioners 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. She therefore submitted that there was no merit in above Writ Petition and the same ought to be dismissed.

12. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition as well as the judgements passed by this Court in the cases

of **Salim Porbanderwalla, Modern Paints** and **Jemini Pradip Salot**. 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 Petitioners admeasures 4163 square meters. It is also not in dispute that, out of the entire land, the exempted surplus vacant land is only 2227.45 square meters. The fact that the one-time premium [of Rs.5,73,74,766/-] levied on the Petitioners (and paid by it) is on the entire land, namely, 4163 square meters (at the rate of 91,880/- per square meter), is also not disputed. In fact, the valuation of Rs.91,880/- per square meter has been arrived at by the Government itself when they raised their demand on the Petitioner by their letter dated 22nd April 2021 (Exhibit-J to the Petition). The refund is sought on the basis that the one-time premium to be paid is only in relation to 2227.45 square meters (the exempted surplus vacant land), and which comes to Rs.3,06,98,715/-. Hence a refund of Rs.2,66,75,750/- is sought from the Government. These are the undisputed facts.

13. Having said this, we will now deal with the judgments relied upon by Mr. Samdani. The 2019 GR as well as the 2021 GR first came up for consideration before this Court in **Salim Porbanderwalla**. This Court, in the said decision, *inter alia* held

that, under the *2019 GR* as well as the *2021 GR*, the one-time premium could be charged only on the exempted 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 is stated that there are two parcels of land. One is the land which the Petitioners are 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 Petitioners sought a refund, Respondent No.2, 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 Modern Paints, 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 Modern Paints. While Modern Paints was not ready to pay the above-mentioned amount on the ground that the said amount

was erroneously calculated [by taking the entire land holding of Modern Paints into consideration, and not only the declared surplus land], Modern Paints made a representation to Respondent No.2 to recalculate the one-time Premium. This representation of Modern Paints was rejected and that is how the second Writ Petition was filed. Since there was an urgency in the matter, Modern Paints offered to deposit the entire sum of 1.46 crores [as originally demanded] without prejudice to its rights and contentions. This was because Modern Paints 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 crores with Respondent No.2, and on such 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 shall refund the excess amount which came to Rs.87,06,750/-. This judgement in the second Writ Petition filed by Modern Paints is dated 18th October 2023. Even though more than nine months have elapsed 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 exempted surplus vacant land and not on the entire land belong to the Petitioners. In fact, these judgments have subsequently been also followed by this very bench in ***Jahind Oil Mills Company Vs. The Additional Collector and Competent Authority, ULC & Anr.*** [Writ Petition No.641 of 2024, decided on 5th July 2024] and in ***Huhtamaki India Limited Vs. The State of Maharashtra & Ors.*** [Writ Petition No.2789 of 2024, decided on 15th July 2024]. All these judgments have clearly held that under the 2019 GR read with the 2021 GR , the Government is only entitled to charge the one-time premium on the exempted surplus vacant land and not on the entire land belonging to the Petitioners.

16. As far as the arguments of the learned AGP are concerned, namely, that they are in the process of challenging the orders passed by this Court in (i)***Salim Porbanderwalla***; (ii) in ***Modern Paints***; and (iii) in ***Jemini Pradip Salot***; before the Hon'ble Supreme Court, we find that this argument has been made time and time again and yet

no challenge has been laid before the Hon'ble Supreme Court. We cannot wait indefinitely for the Government to challenge the orders passed by this Court and in the meanwhile not comply with the law laid down by this Court. In fact, in the second Writ Petition filed by Modern Paints (and referred to by us above), six months time was granted to the Government to challenge the judgement passed in ***Salim Porbanderwalla*** and which period of six months has long expired. We therefore cannot take any countenance of this argument. As far as the argument of the learned AGP that the Petitioners have made the payment without protest is concerned, we find that this makes little difference 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 exempted surplus vacant land and not on the entire land belonging to the Petitioners. 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 Petitioners towards the one-time premium, under

protest or otherwise. In fact, this view has already been taken by us in the decision rendered in ***Jaihind Oil Mills Company (supra)***.

17. In view of the foregoing discussion, we are of the opinion that the Petitioners are entitled to a refund of the amount of Rs.2,66,75,750/- from Respondent No.1 and/or Respondent No.2.

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

(i) Respondent No.1 and/or Respondent No.2 shall refund to the Petitioners the sum of Rs.2,66,75,750/- within a period of eight weeks from today, i.e. on or before 3rd October 2024.

(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 on or before 3rd October 2024, the Government will be liable to pay interest on the amount of Rs.2,66,75,750/-, at the rate of 10% per annum, simple interest, from 4th October 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.

19. Rule is made absolute in the aforesaid terms and the 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.

20. Though we have disposed of the above Writ Petition, we place it on board for reporting compliance on 4th October 2024.

21. 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.]