2024:BHC-NAG:10233-DB

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

WRIT PETITION NO. 6449/2022

(SHIBU JOHN MATHEWS & OTHERS **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri Anand Parchure, counsel for the petitioners.
Shri N.S. Rao, Assistant Government Pleader for the respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : SEPTEMBER 05, 2024

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This writ petition is by the landowners for directions to delete the entry in the scheme under Talegaon-Dabhade pattern under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act of 1976'). The petitioners have sought a declaration that the petitioners are the exclusive owners of land Survey No. 116/1 admeasuring 1.13 Hectare of Mouza Shankarpur, Tahsil and District Nagpur in Class-I category.

2. We have heard the writ petition finally by consent and also perused the record from the Office of the respondent-Urban Land Ceiling Authorities.

3. The facts which are necessary for deciding the writ petition are as under:-

The petitioners are claiming to be the owners of land Survey No.116/1, Mouza Shankarpur, Tahsil and District Nagpur admeasuring 11300 square metres or 1.13 Hectare. On April 26, 2006, the petitioner submitted a return under Section 6(2) of the Act of 1976. After the said return was submitted, the petitioner sought exemption to the extent of 1500 square metres for each of the holders, i.e. 3000 square metres and 300 square metres towards land covered by construction. That being so, the competent authority vide order dated May 08, 2006 in exercise of Section 8(4) of the Act of 1976 declared 8000 square metres of area being surplus holding. Accordingly, pursuant to the provisions of Section 9 of the Act of 1976, final statement and map was directed to be served on the petitioners. The petitioners were also intimated that it is binding on the petitioners to submit the scheme based on Talegaon-Dabhade pattern within a period of sixty days.

4. After the aforesaid order was passed, it appears that the petitioners applied for conversion of user of the land from agriculture to non-agriculture as they wanted to use the same for residential purpose. Accordingly, vide order dated September 26, 2006, in exercise of the provisions of Section 44(1) and Section 123 of the Maharashtra Land Revenue Code, 1966, the petitioners were granted the said permission. However, pursuant to the directives of the State Government, the said permission for conversion of user came to be cancelled by the Collector, Nagpur on March 17, 2010. In the interregnum, on May 10, 2006, the petitioners applied for sanction of new layout scheme for weaker sections on the patter of Talegaon-Dabhade scheme under Section 20(1)(a) of the Act of 1976. Based on above, an exemption order came to be passed in favour of the petitioners thereby sanctioning the scheme in exercise of powers under Section 20(1)(a) on July 31, 2006 by the competent authority. After the scheme sanctioned under Section 20 as referred above, the competent authority i.e. the Additional Collector vide communication dated August 08, 2010 requested the revenue authorities to incorporate a condition to that effect in the revenue records and accordingly the said entry was taken in relation to the land in question.

5. The petitioners having realized that vide notification dated December 01, 2007, the Government of Maharashtra has repealed the Urban Land (Ceiling and Regulation) Act, 1976, applied on December 06, 2021 and January 11, 2022 for deletion of the revenue entry. It appears that since the said request is not granted, the petitioners are constrained to prefer the present writ petition.

6. Shri Anand Parchure, learned counsel for the petitioners would strenuously urge that the admitted facts which are borne out of record are; (a) the ownership of the petitioners over land admeasuring 11300 square metres (1.13 Hectare) situated at Survey No.116/1, Mouza Shankarpur, Tahsil and District Nagpur; (b) the permission to change the user of the land to non-agriculture was granted by the Collector on September 26, 2006 under Sections 44(1) and 123 of the Maharashtra Land Revenue Code, 1966; (c) the declaration submitted by the petitioners under Section 6(2) of the Act of 1976; (d) the order dated May 08, 2006 passed by the competent authority under Section 8(4) of the Act of 1976 thereby declaring 8000 square metres of land as surplus and further instructions to apply for scheme under Talegaon-Dabhade pattern; (e) the cancellation of the change of user permission by the State Government and consequential communication by the Collector on March 17, 2010; (f) the scheme being sanctioned on the land in question on the application moved by the petitioner on July 31, 2006; (g) the revenue entries being incorporated as to the land owned by the petitioners being covered under the Act of 1976 and the scheme sanctioned under Section 20; (h) the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 on December 01, 2007.

7. Based on the aforesaid admitted facts, according to the counsel for the petitioners it is apparent that once the Act of 1976 is repealed and the ULC Authorities or the State Government having not taken possession, the petitioners

are entitled to hold the land being out of purview of the Act of 1976. He would claim that the respondents have not taken recourse to the procedure as contemplated under Section 10 of the Act of 1976 after the return was filed by the petitioner and the surplus holding was declared. In such an eventuality, the entire land stood vested in the petitioner which can be termed as 'out of purview of the Act of 1976 in view of savings provided by Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, 'the Repeal Act'). According to the counsel for the petitioners, once the user of the land was declared to have been changed to non-agriculture and the said status was withdrawn by the Collector, the only option left with the respondents is to permit the petitioners to hold the land in question as freehold land.

His further contentions are, the repeal of the Act of 1976 results into the non-saving of all the actions or orders passed under the Act of 1976 as the possession still continued to be with the petitioners. In this background, he would claim that the revenue entries incorporated based on the ceiling proceedings and sanction of the scheme is *de-hors* the provisions of the Repeal Act as the land in question was never notified under Section 10(3) or 10(5) of the Act of 1976.

8. As against above, Shri Nitin Rao, learned Assistant Government Pleader would urge that the petitioner has admitted that the scheme under Section 20(1)(a) of the Act of 1976 was sanctioned on the surplus holding of 8000 square metres. In such an eventuality, he would claim that the order granting exemption has to be said to be saved in view of the law laid down by the Full Bench in the matter of *Maharashtra Chamber of Housing Industry Versus State of Maharashtra & Another* [**Writ Petition No. 9872 of 2010**], decided on September 03, 2014. According to him, the Full Bench of this Court has granted a declaration that Section 3(1)(b) of the Repeal Act saves the validity of an order

granting exemption under Section 20(1) of the Act of 1976 or any action taken thereunder notwithstanding any judgment of the Court to the contrary. He would claim that in clear terms, the Full Bench of this Court has held that the validity of an exemption order passed under Section 20(1) of the Act of 1976 is saved in every regard so as to hold the same valid for all purposes. He would try to rely on the entire judgment of the Full Bench of this Court to claim that the exemption order passed in exercise of powers under Section 20 of the Act of 1976 is saved and in such an eventuality the only option left with the petitioners is to implement the exemption order within reasonable period, failure to which shall follow the consequences. According to him, in any case once the exemption order is saved, the revenue entry is quite justified and the petitioners cannot claim the deletion of the said entry.

9. We have considered the rival claims.

10. At the outset, we are required to observe that there was no necessity for the petitioners to apply for conversion of the user of the land in question once they had submitted the return under Section 6(2) of the Act of 1976. The fact remains that the vacant land defined under Section 2(q) of the Act of 1976 provides for its applicability to the location of land which is in urban agglomeration. As such, the Act of 1976 is applied to the land located in urban agglomeration. The Apex Court has considered the identical issue which is sought to be canvassed based on the alleged conversion of the user in *Hubli Dharwad Urban Development Authority Versus Vidyaranya Sangha* [**(1998) 8 SCC 365**]. Paragraphs 2, 3, 4 and 5 of the said judgment read thus:-

> "2. Common question of law and fact is involved in these three appeals and they are being disposed of by this common order. We have heard learned counsel for the parties and examined the record. Both the learned Single Judge and the Division Bench of the High Court

> opined that once exemption is granted under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, it was not permissible for any other authority to require the exemptee to obtain an order of conversion of that land for non-agricultural purposes. In taking this view, the Court was influenced by the fact that the power under Section 20 of the Act could be exercised only if the land in question was urban land.
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> 3. Section 20(1)(b) unmistakably shows that if any person holds vacant land in excess of the ceiling limit and satisfies the Government regarding hardship then the exemption may be applied for and the Government can grant exemptions.
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> 4. Section 2(q) of the Act defines 'vacant land' to mean, "not being land mainly used for the purpose of agriculture, in an urban agglomeration……"
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> 5. These definitions when considered with the exemption order which records that the Government was granting exemption in respect of "the excess vacant land specified in the Schedule" unmistakably shows that the opinion of the High Court is unexceptionable."

11. Apart from above, it is apparent and noticeable from the Full Bench judgment that all the actions under Section 20(1) of the Act of 1976 are saved by the provisions of Section 3(1)(b) of the Repeal Act. The relevant observations of the Full Bench are as under :-

> "(a) Question No.(1) in the Affirmative. Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 saves the validity of the orders of exemption under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 including the validity of all terms and conditions thereof and all actions taken thereunder. Section 6 of the General Clauses Act, 1897 and Section 7 of the Bombay General Clauses Act, 1904 have no application in this behalf.
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> (b) Question No.(2) in the Negative. Section 6 of the General Clauses Act, 1897 read with or without Section 7 of the Bombay General Clauses Act, 1904 does not apply to the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 by the Repealing Act, 1999. The application of these sections is excluded by the contrary

intention expressed in the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

(c) Question (3) (a) in the Negative. There is no question of enforcement of the order of exemption under Section 20(1) or its terms and conditions, in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Neither can the exemption granted under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 be withdrawn for breach of conditions under Section 20(2) nor can Chapter III be applied to the land exempted under Section 20(1) after withdrawal of the exemption under Section 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976.

(d) Question (3)(b) in the Affirmative, with a clarification that the order of exemption can be implemented or enforced in any manner acceptable to law, if, and to the extent, such order could be implemented or enforced otherwise than by recourse to the Urban Land (Ceiling and Regulation) Act, 1976. The State may enforce the order together with its conditions through a Court of law or devise any legislative or executive means to implement the order of exemption and its conditions. The enforceability of the order, and legality of the measure adopted for its implementation will, however, have to be decided in the facts and circumstances of each individual case.

(e) Question No.(4) (a) in the Negative. The State cannot recall/cancel/modify any exemption order granted under Section 20 of the Principal Act at any time after the coming into force of the Repeal Act.(f) Question No.(4)(b) in the Affirmative, subject to a clarification that though enforceability of any circular issued for implementation of an order of exemption issued under Section 20 of the Principal Act is not affected by the repeal, whether, and to what extent, such circular is valid will have to be decided in the facts and circumstances of each case. It is not possible to lay down any general proposition with respect to its validity.

(g) Question No.(4)(c) in the Negative. The State Government cannot acquire the land which was exempted under Section 20(1) of the Principal Act by issuing notification under Section 10(3) of the Principal Act.

(h) Question No.(4)(d) in the Affirmative, but with a clarification that no action is possible at any time after the repeal of the Principal Act in respect of noncompliance/ breach of an exemption order issued under Section 20(1) of the Principal Act under the provisions of either Section 20(2) of the Principal Act or under Chapter III of the Principal Act in any manner whatsoever.

(a) Section 3(1)(b) of the Repeal Act saves the validity of an order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary.

(b) this would mean that the validity of Section 20(1) exemption order is saved in every regard so as to hold the same valid for all the purposes.

(c) the phrase 'validity' would mean that an exemption order would be construed to be valid in regard to all the rights and liability attached to such an exemption order. These rights and liabilities may be either of the beneficiary of the exemption order or the Government.

(d) As Section 3(1)(b) of the Repeal Act does not expressly bar or take away the rights and liabilities under an exemption order, Section 6 of the General Clauses Act becomes applicable with all its force, and hence, the repeal of the Principal Act, would not affect the rights, privileges, obligation or liability, acquired, accrued or incurred under the Principal Act qua a Section 20(1) exemption order.

(e) Any other interpretation would render Section 3(1)(b) of the Repeal Act to the extent it saves the validity of a Section 20(1) exemption order meaningless, as Section 3(1)(b) of the Repeal Act not only saves the validity of Section 20(1) exemption order but also any action taken thereunder notwithstanding any judgment of any Court to the contrary.

(f) If the Legislature in so many words has saved the validity of a section 20(I) exemption order then it would be absurdity to say that on one hand the legislature has saved its validity and on the other hand such a validity would be required to be read as meaningless in view of repeal of the Principal Act.

(g) The arguments of the petitioners that what is saved under Section 3(1)(b) of the Repeal Act are only actions which stand completed and closed, is per se not acceptable for the reason that such interpretation would only be possible when there is no saving clause in the repealing statute. More particularly it is also unacceptable in view of a saving clause of the nature section 3(1)(b) of the Repeal Act provides. A plain reading of Section 3(1)(b) definitely cannot be construed to attribute such a meaning to Section 3(1)(b).

(h) The Repeal Act, if construed in its entirety, manifest a clear intention of the Legislature to save the validity of a Section 20(1) exemption order in totality including its enforceability as observed by my learned brother S.C. Dharmadhikari, J."

12. If we examine the submissions canvassed by Shri Anand Parchure, learned counsel for the petitioner in the backdrop of the observations made hereinabove and also the law laid down by the Full Bench of this Court in *Maharashtra Chamber of Housing Industry* (supra), relevant observations of which are already reproduced, the fact remains that the petitioner has invited the exemption order under Section 20 of the Act of 1976 which should have been given effect to by him within the period specified therein. The exemption order warrants that the petitioner must comply with the conditions therein within stipulated period which admittedly the petitioner has failed to do. In view of the provisions of Section 3(1)(b) of the Repeal Act, since the exemption order passed under Section 20 of the Act of 1976 is saved, in our opinion, the petitioner cannot claim relief of the deletion of the entry from the revenue record.

13. The entire arguments canvassed by the counsel for the petitioners are dealt with and covered by the observations made by the Full Bench as mentioned hereinabove.

14. In that view of the matter, we see no reason to grant the relief as has been claimed by the petitioners. As such, relief if so granted shall go contrary to not only Section 3 of the Repeal Act but also the judgment of the Full Bench of this Court referred above. Equally, we are required to be sensitive to the scheme of the Government as reflected in Government Resolutions dated August 01, 2019 and June 23, 2021. We make it clear that it shall be open for the parties to take such steps as are permissible and available in law in accordance with the aforesaid Government Resolutions.

15. In view of the above, since the petition is devoid of merits, stands dismissed with no order as to costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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