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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4849 OF 2022

1. SALIM ALIMAHOMED PORBANDERWALLA,
an adult, Indian Inhabitant, residing at 1, Delight Apartment Perry Cross Road, Bandra, Mumbai 400 050

2. SHIVRANJANI PROPERTIES LLP,
(formerly known as "Shivranjani Properties Private Limited",
A Limited Liability partnership Firm incorporated under the provisions of the Limited Liability Partnership Act 2005 and having its registered office at 601, Orbit Plaza New Prabhadevi Road, Prabhadevi, Mumbai 400 025 ...Petitioners

~ VERSUS ~

1. THE STATE OF MAHARASHTRA,
through its Chief Secretary,
having his address at Mantralaya, Mumbai 400 032

2. THE ADDITIONAL COLLECTOR AND COMPETENT AUTHORITY (ULC),
Greater Mumbai, New Administrative Building, Fifth Floor, Bandra (East), Mumbai 400 051 ...Respondents

APPEARANCES

FOR THE PETITIONERS	Mr Pravin Samdani, Senior Advocate, *with Amogh Singh , Nivit Srivastava & Sneha Patil, i/b Maniar Srivastava Associates.*
FOR RESPONDENT-STATE	Mr Himanshu Takke, AGP.
PRESENT IN PERSON	Mr Vipin Somwanshi, *Assistant Town Planner, ULC, Greater Mumbai.*

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

DATED : 30th March 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. Rule. Rule returnable forthwith.

2. Prayer clauses (a) and (b) of the Petition at pages 24 and 25 read:

> "(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 Respondents to implement the Government Resolutions dated 1st August 2019 read with 23rd June 2021 and raise the appropriate demand in respect of the surplus vacant land of the said property and implement the policy decision as contained in the said Government Resolutions dated 1st

August 2019 read with 23rd June 2021 and upon payment of such demand relieve the Petitioners of all the terms and conditions of exemption order dated 15th May 2008, i.e., Exhibit "B";

(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 Letter dated 22nd April 2022 (Exhibit "L" to the Petition) issued by Respondent No.1 and after going through the same, be pleased to quash and set aside the same."

3. But these will require some moulding for the reasons that will shortly become apparent.

4. The 1st Petitioner owns lands CTS Nos. 124 and 125 of Village Marol, Taluka Andheri. This is undoubtedly a substantial tract of land, said in the Petition to be nearly 17492.70 sq mtrs, i.e., over four acres altogether. The 2nd Petitioner is a developer.

5. It all began on 15th May 2008 when the Additional Collector and competent authority under the Urban Land (Ceiling And Regulation) Act 1976 ("the ULC Act") passed an order exempting surplus vacant lands from the application of Chapter III of the ULC Act. This was a conditional order. The competent authority declared that an area of 5387.17 sq mtrs from the total holding was surplus vacant land. This itself requires an explanation and reference may be had to a schedule at page 45 where we find the relevant details. First, there is an area statement in this table relatable to the property card and this shows CTS Nos. 124 and 125

as admeasuring 15,669.20 sq mtrs. This is slightly less than the Petitioners claim. Of this, the area in possession of the Petitioners was 12025.25 sq mtrs. Another 1547.80 sq mtrs was under a DP Reservation for a road, and further 2100 sq mtrs was under a reservation for a recreation ground. This left the "net balance land" which was computed at 8377.40 sq mtrs. The retainable land within the ceiling limit under the ULC Act and not being vacant was stated to be 2990.23 sq mtrs.

6. Deducting this retainable land, i.e., land that could be retained by the owner, of 2990.23 sq mtrs, from the net balance land (after correcting for land records etc and after deducting reservations) from the net balance land of 8377.40 sq mtrs, the surplus vacant land was 5387.17 sq mtrs. We may note that this surplus vacant land had on it another reservation for rehabilitation and resettlement of project affected persons. This is how the figure of 5387.17 sq mtrs was arrived at as being the surplus vacant land.

7. We pause briefly for a moment to note the decision of a five Judge Bench of the Supreme Court in *Maharao Sahib Shri Bhim Singhji v Union of India & Ors*[1] which dealt with a challenge to the constitutionality of the ULC Act. The Supreme Court upheld the constitutionality of the Act except for Section 27(1) because this restricted the transfer of any urban or urbanisable land with a building or a portion of a building and which was within the ceiling area. Effectively, the Supreme Court held that such a restriction on property would be unconstitutional and could not be sustained. As

1 (1981) 1 SCC 166.

we shall presently see this, will have some bearing on the argument that Mr Takke learned AGP has to make in relation to the Government Resolutions ("GRs") in question before us.

8. The ULC Act stood repealed by the Urban Land (Ceiling & Regulation) 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.

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

10. 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] This led to the State Government issuing the first of the GRs dated 1st August 2019 by which it

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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*.

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.

11. At this stage, it may be instructive to take a step back for a quick overview of the trajectory of the land ceiling legislation and the decisions to which we have referred.

12. The ULC Act's stated purposes were two: *first*, to prevent land speculation and 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;[5] 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

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

possession had not yet been taken by the State 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.[6] 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 under section 20(1) of the Principal Act and all consequences following the same including keeping intact the power to withdraw the said

6 *Sundersons v State of Maharashtra*, 2008 SCC Onliune 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 Bhayander Builders*, and therefore a reference to a Full Bench was necessary.

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."

18. This is the legislative and jurisprudential background. We return to the case at hand. On 23rd June 2021, the State Government issued another GR, (and this is the second GR in question) to streamline the process of implementation of the previous GR of 1st August 2019 and providing a basis for computation.

19. On 9th September 2021, 25th October 2021 and 17th November 2021, the Petitioners applied to the State Government indicating their willingness to avail of the benefits of the schemes notified under these two GRs. They requested that their payment be accepted and that they be relieved of the terms and conditions of the exemption order of 15th May 2008 passed by the competent authority (i.e., for development of the scheme under Section 20). The Petitioners asked that the demand be computed so that the Petitioners could make payment.

20. On 30th November 2021, the competent authority made a demand for Rs.5,15,40,741/- but in doing this, the competent authority took into consideration 5271.75 sq mtrs. An area of 115.42 sq mtrs (which together would have made up 5387.17 sq mtrs) was left out. The Petitioners paid this demand.

21. This area of 5271.75 sq mtrs is clearly part of the surplus vacant land. That is to say, it is the land that was declared on 15th May 2008 to be surplus and vacant and therefore, under the repealed ULC Act vested in the Government inter alia for the purposes of a scheme sanctioned under Section 20, to be implemented by the land holders.

22. On 24th February 2022, the Petitioners offered to make payment for the remaining 115.42 sq mtrs and asked that the demand be raised in that regard as well. On 22nd April 2022, the State Government informed the Petitioners that on payment of the amount for the balance area of 115.42 sq mtrs, the entries in the Records of Rights and other records regarding the entire property as being affected by the ULC order would continue to remain in force. In other words, despite the payment, the Revenue Records would continue to reflect the original Section 20 order.

23. On 20th September 2022, the Competent Authority made a demand for Rs.12,32,869/- for the additional area of 115.42 sq mtrs. This was done after the Petition was filed sometime on 17th June 2022. On 23rd September 2022, the Petitioners deposited that entire amount of Rs.12,32,869/- with the Treasury and then, on 22nd November 2022 submitted an original challan.

24. The only point for controversy is about the interpretation of the 1st August 2019 GR. The original in Marathi is at Exhibit "F" at page 152. There is a home-grown translation from page 158. For the purposes of this order, we reproduce certain portions from English

translation although we clarify that while considering the arguments, we have ourselves read with the assistance of Counsel the original in Marathi. The relevant portions of the 1st August 2019 GR say this:

"PREFACE

The Central Government has repealed The Urban Land (Ceiling and Regulation) Act, 1976 by the Urban Land (Ceiling and Regulation) Repeal Act 1999. As per the aforestated repeal Act, the action with regards to the exemption order under section 20 for the several purposes and the action under in respect of the land acquired under the Urban Land (Ceiling and Regulation) Act section 10 (3) and 10 (5) are protected. The State Government has made applicable the said Repeal Act on 29.11.2007.

2. The protected provision under the said repeal act has been challenged before the Full Bench of the Hon'ble Court vide Writ Petition No. 9872/2010 (filed by Maharashtra Chamber of Housing Industries Versus State of Maharashtra & others) and by an Order dated 03.09.2014 has been passed that the exemption order under section 20 of the Urban Land (Ceiling and Regulation) and actions under that are protected and it has been made binding upon concerned planner to implement the respective sanction plan. The said Order has been challenged by the Maharashtra Chamber of Housing Industries before the Hon'ble Supreme Court of India by filing Special Leave Petition No. 29006/2014 and by other petitions. In the said matter by an Order dated 10.11.2014 the Hon'ble Supreme Court has issued directions that "No Coercive action" to be taken against the respective planner.

3. ...

4. ...

GOVERNMENT'S DECISION

1. In the said matter, the recommendations of the dual-members Committee, the Government's submissions in that respect and the consent terms which were produced before the Hon'ble Supreme Court in Civil Appeal No. 558/2017. The Hon'ble Supreme Court on 02.07.2019, at the time of deciding the Civil Appeal No. 558/2017 and the Interim Applications filed therein bearing Interim Application No. 19706/2019, 92357/2019 and 36257/2017, has granted permissions to take actions in accordance with the recommendations of the dual-members committee. In accordance with this, by considering the recommendations as above and in view of the order passed by the Hon'ble Supreme Court, the Government has decided as follows, for the development of the several projects/industries for which the exemption has been granted under section 20 of the Urban Land (Ceiling and Regulations) Act.

A. The exemption orders passed under Section 20 of the Urban Land (Ceiling and Regulation) Act, were granted for Housing Schemes, Talegaon – Dhabhade Plotting Schemes, Land Development Schemes, Agriculture purposes, Livestock breeding, Gardens, Schemes etc. As per the said order passed under Section 20 of the Urban Land (Ceiling and Regulations) Act,, it was decided that the 10% of the prevailing Annual Market Rate towards the surplus charges (as per the Ready Reckoner), as one-time payment be levied on the total exempted land (without any deductions, the total exempted area in pursuance of the ULC order) and so that, the land would be make available for the development of the residential purposes should be released on the condition that the tenements to be constructed on such freehold land, shall be not more than 80 sq.mt. carpet area.

B. The exemption orders passed under Section 20 of

the Urban Land (Ceiling and Regulations) Act, granted for Industrial Purposes, it was decided that 15% of the prevailing Annual Market Rate (as per the Ready Reckoner), as one-time payment be levied on the total exempted land towards the surplus charges (without any deductions, the total exempted area in pursuance of the said ULC order) and so that, the freehold land shall be made available for development subject to respective Development Control Regulations (DCR) for the area.

C. The exemption orders passed under Section 20 of the Urban Land (Ceiling and Regulations) Act, the exempted land for the recreation ground, open to sky and for the any other purposes as per the prevailing Development Plan (DP) have been incorporated in the Residential Zone and shall be made available for Housing purposes schemes by levying 2.5% of the prevailing Annual Market Rate (as per the Ready Reckoner), towards the surplus charges as one-time payment. As also, in pursuance of the exemption orders passed under section 20 of the Urban Land (Ceiling and Regulation) Act, the land in respect of which the FSI/Carpet has not been used previously as per the terms and conditions of the policy, in that case, then for such land 10% of the prevailing Annual Market Rate (as per the Ready Reckoner), as one-time payment be levied upon the beneficiary/policy holder.

D. ...

2. The land which are exempted under section 20 of the Urban Land (Ceiling and Regulation) Act to be developed and the income towards the surplus charges earned by the Government to be used for the development of the construction of the tenements for the low and middle income group under affordable housing schemes and the said scheme is conducted for the purpose of to make stock of housing and the influential and the effective

implementation of the said scheme, the following terms and conditions are hereby levied.

i) ...

ii) ...

iii) As also, for the said development of the housing scheme on exempted land u/20 of the ULC act, as per the present prevailing Government norms, the Extension fees (Penalty) shall be taken from the Scheme Holder/Developer of the Scheme Holder as one-time payment.

iv) Considering the total exempted land (without any deductions, the total exempted area as per the said ULC order) under u/20 scheme, if the respective one-time payment has been made as mentioned above, and the permission to develop such freehold land has been allowed by the respective Competent Authority, then for that respective area, the remark on the other rights column of record of rights shall be deleted. But, the *for the remaining land for which payment has not been made as per the prevailing market rate for that exempted land in time, shall be applicable to recover the amount of surplus charges as per the prevailing market rate and only then the remark on the other rights of records column shall be deleted*.

v) The applicant must produce the original copy of the challan to the Collector and Competent Authority Office once the payment has been made. On submission of the Challan, the land records shall be updated for those lands which had been granted exemption u/20 (for Housing, Land Development, Agriculture, Livestock Breeding, Gardening purposes), and the remark of 'Land Exempted Under Section 20 of ULC Act and No Conveyance Allowed on the Land' shall be deleted from the other rights column. But, freehold development on the exempted land has been

allowed with the condition that the tenements to be constructed, shall be not more than 80 sq mt carpet area. So, for such land remark of 'Construction of tenements up to 80 sq mt only' has been incorporated in the other rights columns of the records of rights.

vi) As mentioned in the Clause No.1, after marking of the one-time payment has been done, during the development of such land, it will be binding on the applicant to take cognizance of the reservations on the land per the Development Plan and the respective regulations for the same as per the DCR and to develop the same accordingly.

vii) ...

viii) ...

ix) On making payment of the one-time premium towards the specific surplus charges, the free hold land shall be available for further development. The respective planning authority while granting approvals on the said land shall take notice of the condition that the tenements to be constructed on the said land shall not exceed carpet area above 80 sq mt. This condition shall be incorporated while issuance of the commencement certificate (CC) and same shall be taken care of before granting Occupation Certificate (OC) to the proposed development.

x) Where in the cases the original scheme holder wants to develope the land as per the original scheme granted under Section 20 of the Urban Land and Ceiling Regulation, then the terms and conditions of the original exemption order shall be applicable and none of the provisions mentioned in this resolution shall apply, but the terms and conditions passed under the exemption order under Section 20 of the Urban Land Ceiling and Regulation will be made applicable."

(*Emphasis added*)

25. The dispute is this. According to Mr Samdani, learned Senior Counsel for the Petitioners, it does not stand either to reason or law that a premium can be charged on the land that is retainable, i.e., exempted, and is the ownership of and has vested in the Petitioners. It is unclear and on what basis, or by what power under a statue, the Government can require the Petitioners to pay the Government a premium, no matter how computed, for the *Petitioners own land*.

26. Mr Takke learned AGP has invited our attention to both the original in Marathi and the translation. His submission is two-fold. *First*, that the premium must be charged on the entirety of the land i.e., the "net balance land" of 8377.40 sq mtrs for the simple reason that it is the failure of the Petitioners to implement the Section 20 scheme that has resulted in this situation in the first place. This, he submits, is the only interpretation consistent with the Full Bench decision. The second submission is that following any principle of purposive construction, avoidance of mischief, or a principle of executive interpretation, the GR, plainly read speaks of the whole land or the entire land (in Marathi ,dwok {k=). This cannot be, according to him, a reference to a *part* of the land and has to be a reference to the net balance land. He points out that the net balance land is a figure arrived at after already making deductions for reservations and also adjusting for any discrepancies in the then existing land survey records.

27. Mr Takke accepts that the premium being charged as a composite must be so calculated. He however submits that revenue entries must continue against the *entirety* of the land because what is

being permitted now is a development over what was then computed as "surplus vacant land", i.e., 5387.17 sq mtrs, until the premium is paid on the whole land. Strangely enough, Mr Samdani agrees that it is 5387.17 sq mtrs which should be the basis of the computation. But, he submits, there cannot be a continuance of the Section 20 order in the revenue entry against the *whole* of the land. The retention land, i.e., that which was within the ceiling limit, permissible under the ULC Act and was non vacant land, i.e., 2990.23 sq mtrs cannot be computed or reckoned for the purposes of computing a premium; and no revenue entry under Section can apply to it. His submission is that the expression "entire land" or "**,**dwok {k=" means the *whole of the surplus vacant land*. The mischief that is sought to be avoided is by taking bits and pieces of the surplus vacant land or failing to implement a scheme on the surplus vacant land. That is impermissible.

28. Mr Samdani's submission, one that we are inclined to accept, is that if read as Mr Takke commends, the GR in question would render itself entirely unconstitutional. Not only would this be an unconstitutional restriction on development unsupported by statute, but it would conceivably also run afoul of Article 300-A of the Constitution of India. Mr Samdani is also correct in saying that if the Government's interpretation of the GR is to be accepted then this will be nothing but a reintroduction of Section 27(1) in a different form although this has already been held to be unconstitutional.

29. Mr Samdani points out that the Petitioners are in fact seeking enforcement of the GR but quickly adds that they are seeking an enforcement of the GR as correctly read and as constitutionally valid. The Government's interpretation, he submits, and we believe correctly, would render vulnerable the GR in itself and the consequence of that is that the Government could demand no premium at all. That is not in the Government's interest.

30. He draws our attention to paragraph 44 of the five Judge decision of the Supreme Court in the celebrated case of *Olga Tellis and Ors v Bombay Municipal Corporation and Ors*.[7] The Supreme Court clearly enunciated the principle that where two interpretations are possible, a Court must strive towards an interpretation that is consistent with a constitutional mandate i.e., a manner by which we can uphold and enforce the GR.

31. We understand the concerns of Mr Takke and his officers because there are clearly quite sizeable amounts involved. But the quantum cannot possibly matter when we are considering questions of validity and constitutionality. On no account should the Government venture into an area that would render the GR itself vulnerable. We are therefore not inclined, in the Government's own interest, to accept a submission that would have that result of rendering the GR of 1st August 2009 susceptible to a full-pledged constitutional challenge.

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7 (1985) 3 SCC 545.

32. The claim in the Petition is really that the continuance of the entries in the Revenue Records for within-ceiling retained land despite the payment of the full premium is itself unlawful. What is in fact being demanded is that to have the revenue entries for the exempted land — the Petitioners' own land, that which they were entitled to continue to hold — deleted, the Petitioners must pay an additional premium even on their own land, although it was within the ceiling limit under Section 20 of the ULC Act on 15th May 2008.

33. We do not believe it is possible to accept the submission made by Mr Takke. It is true that the GR uses the words "entire land" but this has to be read in a context. It cannot be an elastic term. It cannot be unreasonably expanded to include lands that under no process of logic or law could be subjected to a premium.

34. To simplify this: there are two parcels of land. One is the land which the Petitioners were entitled to continue to hold. There cannot be a premium for this, nor can there be a revenue entry relating to Section 20 ULC for this. The other parcel is the surplus vacant land, for which the Petitioners have paid the full premium. Against that, they are entitled to have the revenue entry deleted.

35. We are therefore inclined to make Rule absolute by quashing and setting aside the impugned communication of 22nd April 2022 and by directing the 1st and 2nd Respondents to, within six weeks from today, remove all entries under the ULC Act for the surplus vacant land since the Petitioners have paid the premium for it fully

and to treat this land as now free (on payment of that premium as noted above), free of all conditions stipulated by the exemption order of 15th May 2008 under Section 20 of the ULC Act.

36. Rule is made absolute in these terms. The Petitioner is disposed of. There will be no order as to costs.

(Neela Gokhale, J) (G. S. Patel, J)