

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. No. 2019

IN  
CIVIL APPEAL NO. 558/2017

IN THE MATTER OF:

Maharashtra Chamber of Housing  
Industry and Ors.

...Petitioners

versus

State of Maharashtra & Anr.

...Respondents

APPLICATION FOR ADDITIONAL DOCUMENTS

INDEX

Sr. No.	Particulars	Page No.
1.	Application for filing additional documents with affidavit.	<b>1-12</b>
2.	<b><u>Annexure-I.A-1:</u></b> A true copy of the Government Resolution dated 16.06.2017 for constitution of a two members committee.	<b>13-15</b>
3.	<b><u>Annexure-I.A-2:</u></b> A true copy of the report of the two members committee to suggest appropriate implementation of schemes u/s 20(1) of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 dated 09.08.2018.	<b>16-51</b>

**PAPER BOOK**

**ADVOCATE FOR RESPONDENTS: NISHANT R. KATNESHWARKAR**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. No. 2019

IN

CIVIL APPEAL NO. 558/2017

IN THE MATTER OF:

Maharashtra Chamber of Housing  
Industry and Ors.

...Petitioners

versus

State of Maharashtra & Anr.

...Respondents

APPLICATION FOR ADDITIONAL DOCUMENTS

TO

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE  
RESPONDENTS ABOVE NAMED.

MOST RESPECTFULLY SHEWETH: ...

1. Respondent State Government adopted the Urban Land (Ceiling & Regulation) Repeal Act, 1999 w.e.f. November 29, 2007. Section 3 of the said Repeal Act provides that the repeal of the Principal Act shall not affect the vacant lands, which had already been vested under Section 10 (3) of the Principal Act, of which possession had been taken over by the State

Government or any person, duly authorized by the State Government or by the Competent Authority, before the coming into force of the Repeal Act. It also provided that the Repeal of the Principal Act shall not affect the validity of any order, granting exemption under sub-section (1) of Section 20 of the Principal Act or any action taken thereunder, notwithstanding any judgment of any court to the contrary.

2. The provisions of the Repeal Act were challenged by a group of writ petitions before the Bombay High Court and resulted in conflicting judgments. Ultimately, the position of law was clarified by Full Bench of the Bombay High Court in Writ Petition No.9872 of 2010 along with batch of other writ petitions. This Special Leave Petition challenges the said judgment of the Full Bench rendered on September 03, 2014. Special leave has been granted in this and the companion writ petitions and directed to the respondent "Not to take coercive steps" against exemption holders.
3. The said Civil Appeal is pending before this Hon'ble Court. The Petitioners in this Special Leave Petition had filed an Interim Application No.4 of 2015 before

this Hon'ble Court, praying for a direction to this Respondent to consider the composition of scheme suggested by them by their applications dated April 15, 2015 and November 21, 2015 submitted to the State Government. The Interim Applications also sought an early hearing of the matter and stated that if the State Government was ready to formulate a composite scheme, the Special Leave Petitions could be withdrawn. The said Interim Application came to be dismissed by this Hon'ble Court on January 29, 2016.

4. In this regard, it is submitted that during the Monsoon Session of 2016 of the State Legislature, a calling attention was raised regarding the multifold difficulties that the exemption holder are facing on account of pending SLP in this Hon'ble Court. While replying the said calling attention motion, the Hon'ble Chief Minister had assured the House that the State Government had decided to constitute a committee under the Chairmanship of Retired Supreme Court Judge to consider these problems and suggest the appropriate recommendations.
5. Thereafter, by the State Government Resolution



constituted under the Chairmanship of Hon'ble Mr. Justice (Retd.) B.N. Shrikrishna and Hon'ble Shri. B.N. Makhija, Retired Secretary, Government of Maharashtra. The said Resolution formulated the terms of reference to the said Committee.(The copy of the said resolution is attached herewith Exhibit P-1)Following were the terms of reference to the Committee.

- (a) In the background of pending appeal before this Hon'ble Court, to explore the possibility of imposing one time premium for completion of schemes under Section 20 of the Principal Act.
- (b) To consider the Government Resolution dated November 23, 2007 and suggest the measures to be taken with regard to the lands exempted from ULC Act for agricultural and industrial purposes.
- (c) To suggest the measures to be taken for redevelopment of the schemes under Section 20 already constructed.

6. In view of above, the Committee had issued a public notice dated October 27, 2017 and called for the

5

considered 119 responses. The Committee also met on February 12, 2018, February 15, 2018, April 11, 2018 and August 02, 2018. It discussed the modalities of taking forward the situation in a manner consistent with the public benefit to be achieved under the provisions of Repeal Act and in the light of the present ground realities. The Committee submitted its report on August 09, 2018. This report is at Exhibit P-2.

7. From the Report, it is clear that the Committee considered the provisions of the Principal Act. It has broadly explained how the State Government implemented the Principal Act. It noted that the State Government has granted exemption orders for five different purposes. It considered the provisions of the Repealed Act, as also the judgment impugned in this Civil Appeal and delivered by the Full Bench of the Bombay High Court in Writ Petition No.9872 of 2010 along with bunch of writ petitions. It also noted the I.A. filed by the Appellants to this Civil Appeal. The Committee noted that in view of pendency of this appeal, the plans of the State Government to oversee and ensure that schemes under Section 20(1) are implemented is in limbo.

6

8. The Committee considered the implications arising from monitoring and implementing different exemption orders. It arrived at a considered view that to get over the current impasse, it would be appropriate to formulate a scheme, which will ensure that the twin objectives of land development and maximum utilization of the land for the benefit of the lower sections of society are effectuated. It has suggested that the measures recommended may be adopted by the State Government.

9. The Committee noted that the State Government, Respondent has taken an overall view of the manner in which exemption orders and their conditions have been partially or fully implemented. It was found that broadly, there are five categories of cases that are affected on account of pending civil appeals.

10. Following Table indicates the category-wise suggestion given by the Committee:

I) Cases where redevelopment of buildings that are already completed under the exemption order, but are held up presently on account of the High Court's Order.

Suggestion: If the land exempted is fully utilized strictly in accordance with



the terms and conditions of the exemption order, then redevelopment may be permitted upon charging one time premium of 5% at current ASR rates for total exempted land in exemption order

II) Lands, which are exempted under Section 20 of the Act.

Suggestion: (a) Housing & Talegaon Dabhade Plotting Schemes- Flat 10% premium of the current annual scheduled rates may be charged, in respect of the total exempted land under the exemption Order. This should be subject to condition that the tenements to be constructed on such freehold land shall not be of more than 80 sq. mtrs. carpet area.

(b) Lands exempted for industrial purposes - Such lands should be released from the conditions of exemption Order by charging a premium @ 15% of the Annual Schedule of Rates in respect of the total exempted land as a one time settlement.

(c) Lands exempted for agricultural purpose: The restrictive conditions of the exemption be removed by charging one time premium @ 10% of the



current Annual Schedule of Rates in respect of total exempted land on condition of tenement to be constructed on such freehold land shall not exceed 80 sq. mtrs. Carpet area.

Where lands have been exempted for other purposes, viz. gardens, open to sky, etc. release from condition of exemption be effected by charging 10% of the current Annual Schedule of Rates for the total exempted land in the exemption order. If the FSI of such land has not been used, then the premium shall be 20% of the current Annual Schedule of Rates for the total exempted land in the exemption order.

- III) Application of Government Resolution dated June 09, 2016 for industrial exempted lands.

Suggestion: By the way of Government Resolution dated 9.6.2016 action under 10(3) and 10(5) was deleted if section 20 scheme has been sanctioned on the same land. Hence, the said Government Resolution be applied to industrial agricultural and other exempted lands, of which the State Govt. has taken possession.

- IV) Deletion of entries of 'State Government' from property cards and 7/12 Extracts in respect of lands exempted under Section 20 of the Act.

Suggestion: In case of such lands, if the building had already been constructed with valid permission and there is no exemption order, then the entries in such case be deleted.

If the buildings have been constructed after coming into force of the Principal Act and the exemption Orders under Sec.20 have been made, then in such cases the entries made under Sections 10(3) and 10(5) at the rate of 5% of the current Annual Schedule of Rates in respect of the total constructed area of the building as a one-time settlement.

V) Miscellaneous cases:

Suggestion: The lands were exempted under Section 20 for housing, formation of plots industrial and agricultural purpose. Hence, the release of such lands from the condition of exemption may be considered by charging appropriate premium as applicable in the aforesaid categories so that the fund generated could be used for construction of affordable housing by the State Government.

Implementation of Committees recommendations would generate approximately 1,00,000 tenements of smaller sizes at affordable rates across the State. The rates charged for such tenements should be as per the pricing

policy of MHADA.

10

11. Thereafter, the State Government in its Cabinet meeting dated 16.11.2018 accepted the Two Member Committee report dated 9.8.2018 and directed to place said report before this Hon'ble Court. The Cabinet also directed that the recommendation of the Two Member Committee regarding schemes under section 20 of ULC Act will be implemented only after concurrence of this Hon'ble Court. The State cabinet has suggested 2.5% premium in case of Redevelopment of Buildings which are constructed under section 20 scheme.
12. A true copy of the Government Resolution dated 16.06.2017 for constitution of a two members committee is produced herewith and marked as **Annexure-I.A-1(Pàge No.13 to 15 )** and a true copy of the report of the two members committee to suggest appropriate implementation of schemes u/s 20(1) of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 dated 09.08.2018 is produced herewith and marked as **Annexure-I.A-2(Page No. 16 to 51).**



13. In the above circumstances, the Respondent intends to place the report before this Hon'ble Court for disposal of the Civil Application in terms of the report, provided the Petitioners are willing for such arrangement.

14. It is, therefore, prayed that -

(A) This Hon'ble Court may permit the Respondent, State Government to place on record the Report dated August 09, 2018, regarding schemes sanctioned under Section 20 (1) of the Urban Land (Ceiling & Regulation) Act, 1976,

(B) Kindly allow the State Government to implement the recommendations of the Two Member Committee.

(C) All such and further reliefs may be granted.

*AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE RESPONDENT ABOVE NAMED AS DUTY BOUND SHALL EVER PRAY.*

New Delhi

Dated: 25.01.2019

Nishant R. Katneshwarkar  
Advocate for Respondent





12

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A. NO. \_\_\_\_\_ OF 2019  
IN

CIVIL APPEAL NO. 558 OF 2017

**IN THE MATTER OF:-**

Maharashtra Chamber of Housing  
Industry & Ors.

....Petitioners

Versus

State of Maharashtra & Anr.

...Respondents

AFFIDAVIT

I, Rajesh J. Narvekar Age: 50 years, Occu.: Collector and Competent Authority, Thane Urban Agglomeration, Thane, Main Building Court Naka, Thane (West) Maharashtra, do hereby solemnly affirm and say as under:-

1. That, in my above official capacity, I am well conversant with the facts and circumstances of the case and as such I am competent to swear this Affidavit.
2. That I have gone through the contents of the I.A. and understood the contents of the same and I say that the same are true and correct to the best of my knowledge.

*[Signature]*  
DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of para 1 to para 2 of above Affidavit are true and correct to the best of my knowledge and belief and no material has been concealed therefrom.

Solemnly affirmed on this 24<sup>th</sup> day of January, 2019 at Thane.

**BEFORE ME  
NOTARY**

**HEENA P. SHAIKH**  
ADVOCATE & NOTARY  
B-2/204, Sukh Sheetal CHS Ltd.,  
Opp. Lawkim Co., G.B. Road,  
Thane-400 607.

*[Signature]*  
DEPONENT

24 JAN 2019

**NOTED & REGISTERED**  
Sr. No. 3450/2019

Constitution of a two members committee of Shri. B. N. Shrikrishna, Retd. Judge, Hon'ble Supreme Court of India and Shri. B. N. Makhija, Retd. Secretary, Health Department, Govt. of Maharashtra to suggest appropriate recommendations for completion of pending schemes sanctioned under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 or to make available such lands for development by considering the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

**Government of Maharashtra**  
**Urban Development Department**  
**Government Resolution No : NJK 2017/ Pra.Kra.63/ Najkadha-2**  
**Mantralaya, Mumbai-400 032.**  
**Date: 16 June, 2017.**

**Introduction :-**

The issue of constitution of a committee to suggest legal and practical solutions for the implementation of various schemes sanctioned under section 20 of Urban Land (Ceiling and Regulation) Act, 1976, redevelopment of buildings which have been already completed under section 20 exemption order for Housing purpose and the schemes sanctioned under section 20 of ULCR Act but still pending by studying and considering the provisions of the ULCR Act was under consideration of the Government. Accordingly Government has taken following decision.

**Government Resolution :-**

The Urban Land (Ceiling & Regulations) Repeal Act, 1999 has been adopted by the State of Maharashtra on 29.11.2007. The vesting of vacant land under sub-section (3) and (5) of Section 10 of the Principal Act, possession of the land which has been taken over by the State Government, the validity of order granting exemption under sub-section (1) of Section 20 of the Principal Act or any actions taken there under are saved by virtue of Section 3(1) of the Repeal Act, 1999.

2. In view of the situation aroused after the Urban Land (Ceiling & Regulations) Repeal Act, 1999 and order of Hon'ble High Court in Writ Petition No.9872/2010 along with other petitions and an interim order of Hon'ble Supreme Court in SLP No.29006/2014, the decision of constitution of a two member committee of Shri. B. N. Shrikrishna, Retd. Judge, Hon'ble Supreme Court of India and Shri. B. N. Makhija, Retd. Secretary, Health Department, Govt. of Maharashtra as assured by Hon'ble Chief Minister in State Legislative Assembly to suggest appropriate recommendations for completion of pending schemes sanctioned under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 or to make available such lands for development by considering the provisions



of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 has been taken by the Government.

3. The duration of the said Committee would be of three months and the terms of reference is as follows :-

- A) To suggest legal and practical solutions for making the lands free for development under housing schemes/ special plotting schemes sanctioned under Urban Land (Ceiling and Regulation) Act, 1976 by charging a one time premium, in view of the situation aroused after the various provisions saved by virtue of the Repeal Act, 1999, the order of Hon'ble High Court dated 3.9.2014 in Writ Petition No.9872/2010 along with other petitions and SLP No.29006/2014 admitted in Hon'ble Supreme Court of India.
- B) To suggest the appropriate solutions for making available the lands exempted for industrial and agriculture purpose for housing/ development purpose by charging a one time premium by considering the Exemption order for industrial purpose under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 and the Government resolution dated 23.11.2007 issued by Government in this respect.
- C) To suggest the appropriate solutions for redevelopment of buildings in housing schemes completed under section 20 of the Principal Act.

This Government Resolution of Maharashtra Government is available at the website [www.maharashtra.gov.in](http://www.maharashtra.gov.in) under the reference no.201706161255068325. This order has been signed digitally.

By order and in the name of the Governor of Maharashtra,

(Shriram D. Yadav)

Deputy Secretary, Government of Maharashtra.

To,

- 1) The Secretary to Hon'ble Governor.
- 2) The Additional Chief Secretary to Hon'ble Chief Minister.
- 3) Private Secretary to All Hon'ble Cabinet Ministers and Hon'ble Ministers of the State.
- 4) Hon'ble Chief Secretary, Maharashtra State, Mantralaya, Mumbai.
- 5) All Additional Chief Secretary/ Principal Secretary/Secretary, Mantralaya, Mumbai.
- 6) The Vice President and Chief Executive Officer, MHADA, Mumbai.
- 7) The Secretary, Maharashtra State Legislature Secretariat, Vidhan Bhavan, Mumbai.
- 8) The Secretary, State Parliamentary Affairs Department, Mantralaya, Mumbai.

- 9) District Collector and Competent Authority (ULC), Mumbai sub urban district / Thane (Thane and Ulhasnagar Urban Agglomeration)/ Nashik / Pune/ Solapur/ Kolhapur/ Sangli/ Nagpur.
- 10) Director, Directorate of Industries, New Administrative Building, Mantralaya, Mumbai-32.
- 11) Chief Executive Officer, Maharashtra Industrial Development Corporation, Udyog Sarathi, Mahakali Guha Road, Andheri (East), Mumbai 400 093.
- 12) Director General, Directorate General of Information and Public Relations, Mumbai.
- 13) Accountant General (Accounts and Adm)-1, Maharashtra State, Mumbai.
- 14) Accountant General (Audit), Maharashtra State, Mumbai.
- 15) Residential Audit Officer, Mumbai/ Pay and Accounts Officer, Mumbai.
- 16) Deputy Secretary (Expend.-4/ Financial Reforms), Finance Department, Mantralaya, Mumbai.
- 17) Deputy Secretary (Services/ Karya.26 A), General Administration Department, Mantralaya, Mumbai.
- 18) Desk Officer (ULC -1, 2 and 3), Urban Development Department, Mantralaya, Mumbai.
- 19) Select file (ULC-2).

\*\*\*\*



REPORT OF THE COMMITTEE TO SUGGEST  
APPROPRIATE IMPLEMENTATION OF SCHEMES  
UNDER SECTION 20(1) OF THE URBAN LAND  
(CEILING & REGULATION) REPEAL ACT, 1999

I. FORMATION OF THE COMMITTEE:

1. The Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the "Principal Act") was enacted by the Parliament in 1976 with the object of prevention of the concentration of urban properties in the hands of few persons and to ensure equitable distribution/utilization of urban properties. Consequently, the State Government enforced the Principal Act in nine agglomerations of the State i.e. Mumbai, Thane, Pune, Ulhasnagar, Nashik, Sangli, Solapur, Kolhapur and Nagpur from 17<sup>th</sup> February 1976 with the approval of the State Legislature. The Principal Act provided for a ceiling on the holding of vacant lands in urban agglomerations. It also provided for determination of excess lands and their vesting in the authority constituted under the Act.

2. Broadly, various provisions of the Principal Act were as follows:

- (a) Section 6: Filing of statement of land holding by the land owner or the land holder.
- (b) Section 8(1): Preparation of draft statement of Surplus Vacant Land (SVL) by Competent Authority.
- (c) Section 8(3): Service of draft statement regarding lands on the owner and right of holder to file objections to Competent Authority.
- (d) Section 8(4), Section 9: Making final statement of surplus vacant land, after considering objections thereto.
- (e) Section 20 or 21: Landowners can get the scheme sanctioned on Surplus Vacant Land.
- (f) If the exemption u/s 20 or 21 is granted then further process of acquisition u/s 10(3), 10(5) cannot be stopped.
- (g) Sections 20(2) and 21(2) of Principal Act, provide for consequences of exemption order for non-compliance of exemption orders. Under such circumstances, if orders came to be passed, such orders stand final.
- (h) Section 10(1): This provision is regarding the notice inviting the claims in respect of Surplus Vacant Land of the land holders.

- (i) Section 10(3) and 10(5) of the Act deals with the objections raised by the land holder, notice to the person interested, to handover the position of the surplus vacant land on failure of which forcible possession of land can be taken under the provisions of Section 10(5).
- (j) Sections 33 and 34 deal with appellate jurisdiction of the Competent Authority and revision jurisdiction of the State Government respectively.
- (k) Section 11 is concerned with payment of compensation and Section 38 is concerned with the prosecution for contravention of any provisions of the Act.

3. When the Principal Act was in force, the possession of surplus vacant lands was taken by the concerned authority after following due procedure. Thereafter, in 1986 the State Government issued a Circular dated 22<sup>nd</sup> August 1986 and decided to exempt certain surplus vacant lands from the provisions of Chapter 3 of the said Act and adopted the practice of granting exemption under Section 20 of the Act where the vacant lands were to be utilized for specified purposes. Under specified guidelines, the exemptions under Section 20 were granted for various purposes and the exemption holder was



obliged to implement the terms and conditions of the exemption order.

4. Under the provisions of the Principal Act, there were two authorities constituted i.e. Director of Industries (ULC) and a Competent Authority for implementation of the Act in respective Urban Agglomerations. Director of Industries (ULC) was looking after the exemption order under Section 20 issued towards the lands being used for industrial purposes. The Additional Collector/Deputy Collector and Competent Authority (ULC) was looking after all other issues viz. filing of land returns, declaration of surplus vacant land, granting of exemption under Section 20 for various purposes other than industrial use. That included housing, plotting, agriculture, etc. Till the Principal Act was repealed by the Central Government, the above authorities had issued various exemption orders for different purposes, as permitted under the said Act.

5. Broadly, the surplus vacant lands declared under Section 8(4) came to be acquired or exempted under Section 20 of the Principal



Act. Following are the different purposes for which exemption orders were granted;

- (i) Housing Schemes.
- (ii) Talegaon Dhabhade Plotting Schemes.
- (iii) Industrial Exemption Orders.
- (iv) Agricultural Exemption Orders.
- (v) Exemption orders for units in Information Technology, Education, Rental Housing, S.R.A. Recreation, etc.

6. The Principal Act came to be repealed by the Urban Land (Ceiling & Regulations) Repeal Act, 1999 (hereinafter referred to as the "Repeal Act").

7. By the Urban Land (Ceiling & Regulation) Repeal Act, 1999, the Principal Act came to be repealed. The repealing Act, however, enabled the different State Legislatures to adopt and implement the repeal from different dates. The Maharashtra State Legislature adopted the Repeal Act with effect from 28<sup>th</sup> November 2007.

8. Section 3 of the Repeal Act provided that the repeal of the Principal Act shall not affect the vacant lands which had already been vested under Section 10(3) of the Principal Act, of which possession had been taken over by the State Government or any person duly authorized by the State Government or by the Competent Authority, before the coming into force of the Repeal Act. It also provided that the repeal of the Principal Act shall not affect the validity of any order granting the exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any Courts to the contrary. The provisions of the Repeal Act were challenged by Writ Petitions before the Bombay High Court and resulted in conflicting judgments. Ultimately, the position in law was clarified by the decision of the High Court of Judicature at Bombay in Writ Petition No.9872 of 2010 (along with bunch of Writ Petitions) by the Full Bench of the High Court. The Full Bench formulated the following questions for their consideration:

- (1) Does Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 read with Section 6 of the

General Clauses Act, 1897 r/w Section 7 of the Bombay General Clauses Act, 1904 save the orders of exemption including all terms and conditions thereof passed under Section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 and all actions taken thereunder?

- (2) Whether Section 6 of the General Clauses Act, 1897 r/w Section 7 of the Bombay General Clauses Act, 1904 apply to the repeal of the Principal Act by the Repealing Act, 1999?
- (3) Whether in view of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and the Bombay General Clauses Act, 1904:
  - (a) the order of exemption including all its terms and conditions under Section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 can be continued and enforced in accordance with the provisions of the Principal Act;
  - (b) all remedies and proceedings in respect of the order of exemption including all its terms and conditions may be instituted, continued and enforced?



- (4) Whether in view of the repeal of the Principal Act by the Repeal Act, the Government of Maharashtra can:
- (a) recall/cancel/modify the exemption order granted either under Section 20 of the Principal Act;
  - (b) enforce circulars for implementation of exemption orders issued under Section 20 of the Principal Act prior to the repeal of the Principal Act;
  - (c) acquire the land by issuing notification under Section 10(3) of the Principal Act; and
  - (d) take any action of whatsoever nature on account of non-compliance/breach of exemption order issued under Section 20(1) of the Principal Act;
- (5) Whether, the view taken by a Division Bench of this Court in the case of *Vithabai Bama Bhandari v/s State of Maharashtra and another* reported in 2009 (3) Bombay Cases Reporter 663 (Writ Petition No.4241/2008 decided on 31<sup>st</sup> March/16<sup>th</sup> April, 2009) and *Damodar Laxman Navare and others v/s State of Maharashtra and others* in Writ Petition No.6300/2009 dated 08<sup>th</sup> July, 2010 sets out the correct legal position as regards the ambit and scope of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 or whether, the view

taken in *Mira Bhayandar Builders and Developers Welfare Association v/s the Deputy Collector and Competent Authority, Thane Urban Agglomeration and others* in Writ Petition No. 5745/2009 dated 27<sup>th</sup> August, 2009 to the contrary should be held to be laying down the correct principle of law?

9. The Full Bench of the Bombay High Court by its judgment dated 3<sup>rd</sup> September 2014 summarized the legal position emerging from the coming into force of the Repeal Act as under:

- (i) 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 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.

- (ii) The power to withdraw the exemption also survives the repeal of the Principal Act and, therefore, 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.
  
- (iii) 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.
  
- (iv) 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 any other legally permissible means.

- (v) 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 300A 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.

- (vi) The aggrieved parties can also urge that while seeking to enforce the terms and conditions of the exemption order on 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.
- (vii) There is no mandate under the Repeal Act to withdraw the order of exemption passed under Section 20(1) of the Principal Act and the Government is not 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 an exemption and 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 unreasonable 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, all liabilities, obligations and equally the remedy available to the parties are unaffected by repeal and can be resorted to in the afore-stated events.



10. The judgment dated 3<sup>rd</sup> September 2014 of the Full Bench of the Bombay High Court has been challenged before the Supreme Court of India by Petitions for Special Leave to Appeal (Civil) Nos.29006 and 29459 of 2014 filed by Maharashtra Chamber of Housing Industry and others. The clutch of Special Leave Petitions are still pending before the Supreme Court of India. The Supreme Court has by its Order dated 10<sup>th</sup> November 2014 directed the Respondent State not to take any coercive steps during the pendency of the Appeals.

11. The Maharashtra Chamber of Housing Industry filed an Interim Application No.4 of 2015 before the Supreme Court praying for a direction to the State Government to consider the composition scheme suggested by them by their applications dated 15<sup>th</sup> April 2015 and 21<sup>st</sup> November 2015 submitted to the State Government. The Interim Application also sought an early hearing of the matter and stated that if the State Government was ready to formulate a composite scheme, the Special Leave Petitions could be withdrawn.

The said Interim Application came to be dismissed by the Supreme Court on 29<sup>th</sup> January 2016.

12. As a consequence of the view taken by the Full Bench of the Bombay High Court to the effect that the schemes permitted under Section 20(1) of the Principal Act would continue to be operative with the conditions subject to which the schemes were sanctioned for utilization of the vacant lands and that the same has to be implemented by the State, (to be clarified) the State Government has been put in a situation where large tracts of vacant lands, which were the subject matter under Section 20(1) of the Principal Act and the Authority under the Principal Act not being available presently, the State Government would have to oversee and ensure that the schemes under the exemption orders granted under Section 20(1) are meticulously implemented. In the meanwhile, because of the pendency of the Special Leave Petitions before the Supreme Court of India, the matter is in limbo and the schemes are not being implemented as the State Government is prevented from taking any coercive steps.

13. Placed in this quandary, the State Government has appointed this Committee by the Government Resolution dated 16<sup>th</sup> June 2017 to make recommendations for smooth implementation of the housing and schemes for plots or releasing of such lands from public housing development in such manner as would sub-serve utmost public benefit.

#### **Proceedings of the Committee**

14. The Committee issued a public notice dated 27<sup>th</sup> October 2017 and called for responses from all stakeholders. In all, 119 responses were received and have been considered.

15. The Committee also met on 12<sup>th</sup> February, 2018, 15<sup>th</sup> February, 2018, 11<sup>th</sup> April, 2018 and 2<sup>nd</sup> August, 2018 and discussed the modalities of taking forward the situation in a manner consistent with the public benefit to be achieved under the provisions of Repeal Act and in light of the present ground realities.



## Views of the Committee and Recommendations

17. Having considered the implications arising from monitoring and implementing the different exemption orders, the Committee is of the view that the way forward in the present impasse would be to formulate a scheme which will ensure that the twin objectives of land development and maximum utilization of land for the benefit of the lower sections of society are effectuated.

18. In the considered opinion of the Committee, subject to the sanction of the Supreme Court of India in the pending Special Leave Petitions, the State Government may adopt the measures recommended hereinafter to resolve the present imbroglio.

19. Under the provisions of the Repeal Act, persons holding vacant land in the urban agglomeration were required to file returns under Section 6(1) of the Repeal Act. Such return was to be filed with the Collector/Additional Collector who was declared as the Competent Authority. After a finding that there was a vacant land, the land holder would have to surrender the land to the Competent Authority

or seek exemption therefrom under Section 20(1) of the Principal Act.

20. The Government has taken an overall view of the manner in which the exemption orders and their conditions have been partially or fully implemented and it is found that broadly there are five categories of cases that are affected by the present deadlock. The Full Bench having taken the view that the conditions imposed in the exemption orders have to be complied with even after repeal of the Principal Act, and that it is the obligation of the State Government to ensure the implementation of the schemes proposed for which the exemption have been granted are strictly implemented subject to the conditions under which exemption orders were made are strictly complied with, the State Government has been subjected to an overwhelmingly onerous task despite repeal of the Principal Act, whose utility was found to be wanting by Parliament resulting in repeal of the said Act.

21 The Committee has received representations from different stake holders which can be broadly divided into five categories. Each of these categories is required to be dealt with differently to balance private interest against public interest.

22. After having reviewed the different types of cases, the Committee has found that there are broadly five categories of cases where all development has been frozen as a result of the order of the Full Bench. In each of these categories, the considerations are somewhat different, although the bottom line in all these categories is advancement of interest by way of housing schemes for affordable housing being built for people of the lower income and middle income group.

23. The Committee had discussions with the authorities of the State Government in light of the representations made by different stakeholders to ensure an equitable solution to take forward the matters in a way that would ensure the interest of all affected parties while complying with the law.



24. The categories into which all pending cases can be divided are as under:

- I) Cases where development of buildings that are already completed under the exemption order but are held up presently on account of the High Court's order.
- II) Waiver from extension charges and conversion of schemes from agriculture to housing or plotting.
- III) Application of Government Resolution dated 9<sup>th</sup> June 2016 for industrial exempted lands.
- IV) Deletion of entries of 'State Government' from property cards and 7/12 extracts in respect of lands exempted under Section 20 of the Act.
- V) Applications received from private institutions engaged in real estate development.

25. The Committee is of the view that the aim of the Principal Act and the purpose for which the exemption orders together with conditions were made thereunder was to enhance the affordable housing stock for lower income and middle-income group. The objective was to ensure affordable housing units for the section of

society whose income is below median household. These houses would be of sizes varying from 30 to 80 sq. mtrs and in order to be affordable, their costs should also be kept within limits so as to be affordable to the lower income and middle-income group.

26. The State Government has pointed out that in each of these categories, development of land has come to a standstill without any benefit to the land holder, public at large or the State Government. Since the primary objective of the Principal Act and the exemption orders and the conditions made thereunder was to ensure public benefit, it is necessary to take some steps by which the interests of the public, the land holders and the Government are balanced. One way of achieving this objective could be to grant permissions for development in each of these categories upon charging appropriate premium to generate a fund which should be utilized for meeting with the objective. In any event, with the disbanding of the Authority under the Principal Act, the Government would find it an immensely onerous task, almost impossible, to supervise development of all the acquired lands strictly in accordance with the imposed conditions

with the machinery at its command so as to achieve the maximum potential of affordable houses for the lower income and middle-income group. If the said objective could be achieved by charging an appropriate premium to the land holders and ensure proper development of the land by relaxing the conditions of exemption, the Government would generate funds which should be dedicated towards building of appropriate types of houses for lower income and middle-income group. In order to achieve these objectives, the Committee makes the following recommendations:

**Category I – Re-development of buildings which are already completed under the exemption order.**

27. The lands exempted under Section 20 of the Act for housing purposes were to be used to construct tenements under affordable housing schemes by respective exemption holders. Such buildings have been constructed and cooperative housing societies have been formed by the tenement purchasers, although in some cases, the formation of the cooperative society is still pending. A large number of such buildings are in dilapidated conditions and are required to be



redeveloped. A number of societies have represented to the Committee that permissions should be granted in all such cases for redevelopment of the buildings. After the repeal of the Act, the State Government had directed all the Competent Authorities under the urban agglomerations by a Circular dated 1<sup>st</sup> December 2008 to make appropriate entries of exemption schemes on the property cards and 7/12 extracts. Due to this, restrictions were imposed on transfer of exempted land without permission of the State Government. Consequently, the property records cannot be updated even today in view of the blanket directions by the State Government.

28. In all such cases, the Committee recommends that once the land exempted under Section 20 has been utilized fully for the construction of tenements with full land potential, strictly in accordance with the terms and conditions in exempted order, there would be no further net surplus vacant land available in this scheme and, in all such cases, the buildings may be allowed to be redeveloped by charging a one-time premium of 5% at the current annual scheduled rates of the total exempted land in the exemption

order. If the exemption holder complies with this requirement, then the entries on property cards and the prohibition against transfer and redevelopment should stand vacated and appropriate entries can be allowed to be made on the property cards.

**CATEGORY-II – Lands which are exempted under Section 20 of the Act.**

29. Large tracts of land exempted under Section 20 of the Act for various purposes, namely, industrial, housing, agricultural, etc. These exemptions under Section 20 were coupled with several conditions which had to be complied with by the exemption holder. Although, there are provisions to extend the time limit mentioned in the exemption order to complete the scheme by payment of charges, the policy of extension charges has been formulated under Government Resolution dated 18<sup>th</sup> February 2015. In such cases, the time limit mentioned in the exemption order to complete can be extended by paying charges. This category has the following sub-categories:

(A) Housing and Talegaon-Dabhade Plot Schemes under Section 20 of the Act.

30. Presently, there are 1405 incomplete housing schemes and 1633 Talegaon-Dabhade schemes under Section 20. If these schemes are completed, the Government is expected to get 7500 tenements and 143 hectares of land as its share but due to unwillingness of exemption holders and the matter being sub-judice, implementation of these schemes has come to a total standstill and the land, though exempted, remains undeveloped.

31. CRIDAI had filed an Interim Application before the Supreme Court in which it was proposed that a one time premium of 20% of the ready reckoner land valuation may be accepted for release of the surplus vacant land from the purview of the Repeal Act. CRIDAI had also suggested that the one-time premium be calculated only in respect of surplus vacant land to be released. However, in the representation made to the Committee, CRIDAI has requested that one time of 10% premium of surplus vacant land be calculated as of



41

2007 and after considering the area under reservations, internal roads, recreational ground and open spaces.

32. It would be well nigh impossible to calculate the net surplus area in each and every case after considering the area under reservations, internal roads, garden and such other open spaces as required under the applicable Development Control Regulations. The Committee suggests that the same objective can be achieved by levying a flat 10% premium of the current annual scheduled rates in respect of the total exempted land under the exemption order. The lands which become are exempted for housing purposes should be released on the condition that the tenements to be constructed on such freehold land, shall not be of more than 80 sq. mtrs carpet area. If this proposal is implemented, the State Government would accumulate funds from the exempted land which funds should be used for the further development of affordable housing for lower income and middle-income groups through Government agencies in order to construct affordable housing of sizes not exceeding 40 sq.

mtrs. area at appropriate prices as may be fixed by the State Government.

**(B) Lands exempted for industrial purposes:**

33. In nine agglomerations, a total of 2178 hectare land has been exempted under Section 20 of the Act for industrial purposes. Restrictions have been imposed on the transfer of said lands without prior permission of the State Government by Government Resolution dated 23<sup>rd</sup> November 2007. Presently, permissions are being granted by the State Government for transfer/ change of user of such lands by charging current ready reckoner rate for the net surplus vacant land as per Government Resolution dated 23<sup>rd</sup> November 2007.

34. Most of the lands exempted for industrial purposes presently fall within residential zones due to revised/new development plans. Hence, these lands can no longer be used for industrial purposes, as originally intended, under the exemption order. Continuing the

status quo, would mean that these lands would remain undeveloped for an indefinite time in the future.

35. The Committee recommends that such lands should be released from the conditions of exemption order by charging a premium at the rate of 15% of the annual scheduled rates in respect of the total exempted land as a one time settlement. This will, of course, be subject to the conversion being permitted under the applicable Development Control Regulations and also subject to the charges that may need to be paid under the Development Control Regulations and also the restrictions thereunder.

**(C) Lands exempted for agricultural purpose:**

36. The surplus lands under this category have been exempted under Section 20 of the Act for agricultural purposes, livestock breeding, gardening purposes, etc. Most of these lands now fall in the residential zones as per the development plans/ revised development plans. Hence, there is no point in locking of these lands under the, now futile, exemption for agricultural purposes.



37. The Committee recommends that in respect of such lands exempted for agricultural purposes, the restrictive conditions of the exemption be removed by charging one time premium at the rate of 10% of the current annual scheduled rates in respect of the total exempted land with the condition that tenements be constructed on such freehold land not exceeding 80 sq. mtrs. Carpet area.

38. Where lands have been exempted for other purposes, namely, gardens, open to sky, etc., the lands may be released from the conditions of exemption by charging 10% of the current Annual Schedule of rates for the total exempted land in the exemption order. If the FSI of such land has not been used, then the premium to be charged shall be at the rate of 20% of the current annual schedule of rates for the total exempted area.

**CATEGORY-III: Application of Government Resolution of 9<sup>th</sup> June, 2016.**

39. Under the provisions of the repeal Act, lands exempted under Section 20, of which possession has already been taken by the State

45

Government under Section 10(3) and 10 (5) of the Principal Act, are protected. In such cases, the Committee recommends that the provisions of the Government Resolution dated 9<sup>th</sup> June 2016 be applied to industrial, agricultural and other exempted lands which have already taken possession of by the State Government and are, therefore, beyond the purview of the repealing Act.

**Category-IV: Deletion of entries of 'State Government' from property cards and 7/12 extracts.**

40. When the Principal Act was applicable, all surplus vacant lands declared under Section 8(4) of the Act were acquired under the said Act. It has been brought to the notice of the Committee that, in several cases, there were buildings already constructed on the lands prior to the acquisition under Sections' 10(3) and 10(5) of the Act. Some buildings had been constructed after obtaining permission, IOD and Commencement Certificate from the concerned local authorities (namely, Municipal Corporation/Council). Some of the buildings have also obtained occupation certificates. However, in all such cases, the entries on the property card and 7/12 extract

continue to show that the land is vested in the State Government. Consequently, the state of the property cards of the land records has become a hurdle in conveyance of such lands to the co-operative societies formed by bona fide purchasers. Hence, such societies have requested that the restrictive entries in the property cards and the 7/12 extracts of all such properties be removed.

41. In the view of the Committee, under the provisions of the repeal Act, the Government had the option of either acquiring the surplus land or exempting the surplus vacant land from the provisions of the exemption subject to conditions in the exemption order. In neither eventuality was such a suspended status contemplated by the Government or the land holders. The Committee, therefore, suggests that the following action may be taken in all such cases:

- (a) If the buildings have been constructed prior to the enactment of the Act, with valid permissions of the concerned planning authority, then obviously such lands could not have been treated as vacant lands under the Act



and any action taken under Sections 10(3) and 10(5) on such lands would be bad in law. In all such cases, if the building had already been constructed with valid permissions, and an exemption order under Section 20 has not been made, then all such entries showing the vesting the land of Government must be removed as those were not vacant lands, no exemption orders were tenable under Section 20 of the Act and such decision to exempt would have no application to them.

- (b) If such buildings have been constructed after the coming into force of the Principal Act and exemption orders under Section 20 have not been made, then in such cases the entries made under Sections 10(3) and 10(5) may be deleted by charging a premium to the land holder at the rate of 5% of the current Annual Schedule of Rates in respect of the total constructed area of the building as a one-time settlement.

#### **Category-V: Miscellaneous Cases**

42. Some of the representations made to the Committee suggested that lands exempted under Section 20 of the Principal Act may be used for Pradhan Mantri Awas Yojana (Urban) Programme launched

by the Central Government for providing housing for all by 2022 through public and private sector partnership.

43. The Committee is not in favour of this suggestion. On the other hand, those lands were exempted under Section 20 for housing, formation of plots, industrial and agricultural purposes. Hence, the release of such lands from the condition of exemption may be considered by charging appropriate premium as applicable in the aforesaid categories so that the fund generated could be used for construction of affordable housing by the State Government.

44. The details of the incomplete Section 20 schemes, the revenue that is likely to be generated and the number of tenements which could be constructed if these recommendations are implemented have been worked out by the State Government and it is estimated that a fund of approximately Rs.12000 crores would be generated from this one time settlement. This is without taking into account the revenue that may accrue from the permission for redevelopment of Category I buildings dealt with in para 26 supra. This is left out of

49

account since the extent and pace of response to the proposed settlement cannot be gauged at this juncture. With this fund of a little over Rs. 12000 Crores a total of 1,00,000 tenements of 30 sq. mtrs could be constructed using the current cost norms of construction along with normal infrastructure. On the other hand, with the status quo continuing, the Government would not be able to carry the matter forward and most of the lands which were exempt under the Principal Act would still continue to be under restrictions on development as a consequence of the current mire of litigation.

45. In the considered view of the Committee, implementation of its recommendations would thus generate approximately 1,00,000 tenements of smaller sizes at affordable rates across the State. The rates charged for such tenements should be as per the pricing policy of MHADA. Further, there would be a large addition to the pool of affordable housing resulting from the construction of sub-80 sq mtr. tenements on lands released from restrictions in the wake of the one-time settlement. Their number is estimated at another one lakh units.



50

46. On the other hand, if the currently sanctioned schemes were to be implemented, the Government is expected to get 7500 tenements because it gets 5% of constructed area from the lands exempted under the schemes. These would be of 40 sq mtrs. area. The total tenements likely to be available in open market with both price and area restrictions are approximately one lakh. Thus the number of affordable housing units under the one-time settlement option is likely to be double the figure under the currently deadlocked option of enforcement of the scheme as per the exemption orders.

47. The Committee is, therefore, of the view that it would be in the interest of all stake holders, public benefit and advancement of the affordable housing policy of the State Government if these recommendations are accepted and implemented.

48. These recommendations can be accepted only if all parties to the pending Appeals before the Supreme Court agree and work out a mutually acceptable settlement which should be placed before the Supreme Court with a prayer to dispose of the pending Appeals by

51

an order in terms thereof. If that happens, then the State Government would be bound to act in accordance with the terms of the settlement which would become merged with the Supreme Court's order and the benefits contemplated thereunder would become available to all concerned. If, for any reasons, either parties are unable to agree or the Supreme Court declines the prayer, all parties including the State Government are left with the status quo until the Appeals are disposed of. The Committee feels that all efforts should be made as soon possible to resolve the present situation of deadlock and hopes that acceptance and implementation of its recommendations would pave the way for that.

Mumbai, dated this 9<sup>th</sup> day of August, 2018.

**(B.N.MAKHIJA)**  
I.A.S. (Retd.)  
MEMBER

**(B.N.SHRIKRISHNA)**  
Supreme Court Judge (Retd.)  
CHAIRMAN