

Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11329 OF 2014**

M/s. S. P. Developers

..Petitioner

*Versus*The Municipal Corporation for the
City of Pimpri–Chinchwad & Ors.

..Respondents

.....
Mr. P.K. Dhakephalkar, Senior Advocate, a/w Nilesh Kadam i/b. Sachin Dhakephalkar for the petitioner.

Mr. Deepak R. More a/w Nitesh J. Mohit for the respondent nos.1 to 3.

Mr. Manish M. Pabale, AGP, for the respondent no.4.

.....

CORAM: A. S. OKA &**A. K. MENON, JJ.****RESERVED ON : 27TH APRIL, 2017****PRONOUNCED ON : 6TH JUNE, 2017****JUDGMENT (PER A.K. MENON,J.):-**

1. Rule. Returnable forthwith. By consent of parties, writ petition taken up for final disposal.

2. By this petition, the petitioners seek a writ of mandamus to quash and set aside the order dated 20th August, 2014 passed by the respondent no.3 – Deputy

City Engineer, Construction Permission Department, and for a writ of mandamus directing the respondent to consider the building proposal no.BP/Wakad/815/2014 dated 5th August, 2014 in respect of the suit land without demanding No Objection Certificate under the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as ULCRA).

3. The facts in brief leading to the present petition are as follows:-

The petitioner is a partnership firm engaged in the development of property. The respondent no.1 is the Municipal Corporation for the city of Pimpri-Chinchwad. Respondent no.2 is the Commissioner of the Corporation and the Deputy City Engineer in-charge of Construction, respondent no.4 is the State of Maharashtra and the respondent nos.5 and 6 who have been subsequently impleaded are the competent authority of Pune Urban Agglomeration and the Deputy Superintendent of Police, Economic Offences Wing.

4. It transpires that Shri Ramchandra Nivruti Bhujbal is the owner of agricultural land bearing survey no.172/1B (hereinafter referred to as the suit land) admeasuring 59.7 R situated at Village Wakad, Taluka Mulshi, District-Pune. The said land was in an agricultural zone and was within the purview of the said Act. Since the land was cultivated no returns were filed under Section

6(1) of ULCRA. On 6th August, 2014 the said Bujbal and others entered into a registered Development Agreement with one Pankaj Builders and Promoters through its proprietor Dr.Suresh Pandit Borole in respect of the 39.7 R out of the total area of 59.7R of the suit land. An irrevocable power of attorney was also executed in favour of the said builders and promoters. On 12th September, 2007 Dr. Suresh Borole of the builders, executed an agreement of Assignment of Development Rights along with power of attorney in favour of M/s. Kasturi Erectors. Thereafter on 30th March, 2013 the said Bujbal acting through the Kasturi Erectors as its partner executed a registered Sale Deed in favour of the petitioner in respect of the suit land as also a power of attorney dated 30th March, 2013. On 5th August, 2014, the petitioner submitted building plans along with the requisite documents. On 20th August, 2014 the respondent no.3 rejected the proposal only on the ground that the suit land formed part of a fabricated ULC order dated 20th November, 1998 bearing ULC case No.1360-BH and resulting in Criminal Case No.444 of 2005 which was still pending. The petitioner was called upon to obtain a No Objection Certificate from the Competent Authority, Pune Urban Agglomeration, Pune under the ULCRA. On 29th November, 2007 the said ULC Act of 1976 was repealed by the Repeal Act and the land of which possession had not taken by the ULCRA became the freehold lands of the respective land holders. The suit land it is submitted was free hold land especially since there was no scheme under Section 20 of the

Repeal Act.

5. An F.I.R. No.444 of 2005 was registered on 1st June, 2005 at Swargate Police Station under Section 420, 468, 471, 472 r/w 34 of the Indian Penal Code in relation to a fraudulent Order under the ULCRA wherein the suit lands find mention. It is submitted that in various cases similar issues have arisen and the land had not been taken possession of by the State pursuant to the ULCRA. No further steps will be taken since there was no saving under the Repeal Act in respect of such lands. Mr. Dhakephalkar on behalf of the petitioner submitted that no part of the suit land admeasuring 39.7 R had been taken possession of by the State. In view of the repealed of the ULCRA no part of the said land can now be declared as excess land. There was no impediment therefore in considering the building proposal. It is further submitted that the pendency of the criminal case had nothing to do with the said lands which were not a subject matter of the criminal complaint. For the aforesaid reasons, the order dated 20th November, 1998 declining to consider the petitioners case was unsustainable.

6. On behalf of the Municipal Corporation, an affidavit has been filed by one Mr. Makarand D. Nikam contending that the petition is not maintainable in the light of alternate remedy by way of a statutory appeal under Section 47 of the Maharashtra Regional Town Planning Act, 1966 being available. It is

further contended that the land in question is forming part of Survey no.172/1B, Village Wakad, Taluka Mulshi, District Pune, which find mention in a bogus ULC order in respect of which the aforesaid offence has been registered and which was being investigated by the State CID Pune. It is further contended that in other cases as well lands were involved in criminal cases and no objection letters were sought.

7. On behalf of the State, one Saurabh Avadh Rao, District Collector, Pune, has filed an affidavit dated 15th March, 2017 wherein it is stated that the order under Section 8(4) relied upon by the petitioner does not tally with the original order available in the office of the Collector. The original order pertains to land bearing S. No.737/A, 134, Gat no.737/B and others, S. No.65/A/5, at Village Kondhva and S.no.57/1/3/1 and others at village Undri and S. no.2/3 and others at Village Pisoli. This order is issued by the Additional Collector and Competent Authority Shri Bhaskarrao Mundhe on 20th May, 1999. Whereas the petitioner relies upon an order pertaining to S. No.172/1B (part) and 17/1/1 admeasuring 7170.00 sq. mtrs and is issued on 20th November, 1998. Having realized these discrepancies vide order dated 21st April, 2005. It transpires that the then Additional Collector and the Competent Authority filed a complaint with the Swargate Police Station and criminal case no.444 of 2005 came to be registered in relation to the fabricated order ULC no.1360/BH. Subsequently a charge-

sheet has been filed in the Court of First Judicial Magistrate, Shivajinagar, Pune and seven accused persons have been arrested. Later, in the year 2006, C.R. No.2 of 2006 was registered with Pimpri Police Station, Pune and C.R. No.622 of 2006 came to be registered with Deccan Gymkhana Police Station in relation to yet another offence pertaining to fabricated orders of exemption. It is further contended that a Criminal Public Interest Litigation No.6 of 2008 by an order dated 22nd February, 2011 this Court has directed setting up of an Special Investigation Team. The State Government challenged the said Order in SLP bearing no.2404 of 2011 and the operation of the judgment in PIL No.6 of 2008 was stayed. In the circumstances, it is contended that the investigations are not complete and the investigation agency is not finalized and therefore, no investigating agency can give a clean chit to the petitioner.

8. An affidavit of one Sourabhi Sharadchandra Pawar, Police Inspector, EOW, C.I.D., Pune has been filed. The facts pertaining to the registration of the offence concerning the present case has been set out in paragraph 4 of the affidavit. It is stated that a charge-sheet is filed against seven accused namely (1) Sanjay Bhausaheb Shinde, (2) Atul Ramchandra Panse, (3) Sujay Surendra Chopade, (4) Sanjay Chandanmal Jain, (5) Kailas Babulal Wani, (6) Suresh Pandit Borole and (7) Bapusaheb Gurupad Karande. In paragraph 5 it is stated that the said Bhujbal had entered into a registered Development Agreement and granted a power of attorney to Dr. Suresh Borole who had hired the middlemen

Sanjay Jain, Kailas Wani and Babu Karande who conspired with the three accused viz. Sanjay Shinde, Atul Panse and Sujay Chopade in order to procure false and forged certificates bearing no.1360-BH in respect of the said suit land Survey no.172/1B, Village Wakad. It appears that Dr. Borole executed a registered Deed in favour of M/s. Kasturi Erectors and thereafter said Dr. Borole and others acting under power of attorney and executed a registered Sale Deed and power of attorney in favour of the present petitioner. Since the suit land is involved in fictitious ULC case the petitioner's application has not been considered.

9. An affidavit in rejoinder is filed on behalf of the petitioner by one Anil Shamandas Aswani, partner of the petitioner, wherein it is contended that the ULCRA having been repealed proceedings under the said Act have abated and the lands whose possession was not taken were rendered free hold lands of the respective land holders. There was no scheme under Section 20 of the Repealed Act. The land bearing survey no.172/1B was thus out of the purview of the ULC Act and since the land was not declared as excess land, no part of the suit land can be declared as an excess land and the petitioner was therefore entitled to seek and receive approval of the building proposal. In paragraph 7 of the affidavit, the deponent has stated that neither the original owners of the land nor the petitioner have been accused in F.I.R. bearing no.444 of 2005 and it is not the case of the respondent that the petitioner is taking advantage of the false

and fabricated ULC order. According to the deponent, the investigation has then concluded and the charge-sheet has been filed and the case is awaiting trial. Since the petitioners are not accused in the said case, there is no justification in sustaining the impugned order.

10. Having heard the learned counsel for the parties and having considered the facts of the case, it is now well settled that if the State had not taken possession of the vacant lands before the Repeal Act which came into force on before 29th November, 2007, the mere vesting of the land in favour of the State, would not entitle the Competent Authority to proceed under the Act. Mere vesting of the land by an operation of law without actually taking the possession is not sufficient for invoking the provisions of Section 3(1)(a) of the Repeal Act. This position of the law as laid down by this Court in the case of ***Voltas Ltd. & Anr. v/s. Additional Collector and Competent Authority, Thane & Ors.***¹ which in express terms has held that by virtue of Section 4 of the Repeal Act, the land in question would revert to landowner. With effect from 29th November, 2007 the provisions of Section 10(5) and (6) are no longer available to the State Government in relation to the said land and as such the Competent Authority will not be entitled to direct the landholder to deliver possession to the State nor could the State take possession on failure of the landholder to deliver the possession. In the circumstances, by virtue of the

¹2008(5) ALL MR 537

Repeal Act coming into force, there was no ground whatsoever to contend that the land was not freehold land and subject to the saving under the Repeal Act.

11. In paragraph 14 of the Voltas judgment, this Court has also dealt with and observed that intention of the legislature was not to save vesting of land of which possession was not taken. Although when the Repeal Bill was introduced clause (3) of the Repeal Bill considered provisions which intended to protect and save vesting of even those with the State Government in relation to which an order under Section 10(5) of the Principal Act has been made for delivery of possession as also those lands of which possession has been taken. The Repeal Act does not provide for such saving if possession has not been taken. This position of law, it has been also affirmed by the Supreme Court in the case of *Vinayak Kashinath Shilkar v/s. Deputy Collector and Competent Authority & Others*² which holds in no uncertain terms in paragraph 10 that where possession of the vacant land has not been taken over by the State Government or by any person duly authorized by the State Government in this behalf or by the Competent Authority, proceedings under the Act would not survive and without actual possession the vesting would be inconsequential. This Court in a number of petitions being *Writ Petition No.1972 of 2013* in the case of *Parshuram Kashinath Joshi and others v/s. The State of Maharashtra and others* has held that the mere pendency of CID enquiry

2 2012 (4) ALL MR 461

would not entitle the respondents to reject the petitioner's application in the case for grant of occupancy certificate. Similarly, in the case of ***Anil Nemichand Bafna and others v/s. The Collector, Pune and others in Writ Petition no.3695 of 2014***, this Court has held in its judgment dated 3rd July, 2015 to which one of us (A.S.Oka, J.) is a party, that the pendency of investigations in certain criminal complaints pending in relation to illegal/irregular orders passed by the Competent Authority or by the Appellate Authorities pursuant to fake/fabricated and/or forged documents should not come in the way of the District Collector considering the application for grant of non-agricultural use of the said land.

12. In the instant case, as well, it is seen that the charge sheet filed does not indicate that the original owner nor the present holder has been indicted and accordingly they were not accused in the cases and merely because the case is pending will not entitle the Corporation to decline considering the building proposal. The demand of the respondents to produce the no objection certificate from the ULC Department also is devoid of any merit since the lands in any case would not constitute vacant/excess lands since they are within the purview of the ULCRA.

13. The only other aspect to be noted is that one Suresh Borole who is one of the accused persons is the proprietor of one Pankaj Builders had sold the said

land to the Petitioners vendor on or about 12th September 2007 i.e. before 29th November 2007, the effective date of repeal of ULCRA. We do not see this by itself as reason to deny the petitioner consideration of the petitioner's application. It is pertinent to note that on behalf of Respondent no.6 Deputy Superintendent of Police EOW, and additional affidavit of Sourabhi Sharadchandra Pawar, Police Inspector, EOW, C.I.D., Pune has been filed in which the deponent in his capacity as officer in charge of the case no.444/2005, states that the present petitioner is not involved in the offence and not charge-sheeted. The case against the said Borole may proceed and does not impact the petitioners right to pursue its application before the authorities.

14. In our view, considering all of the above there is no justification in refusing to consider the building plans for want of a no objection certificate. In the circumstances, we pass the following order:-

- (i) The impugned order dated 20th August, 2014 passed by the respondent no.3 in relation to proposal no.BP/Wakad/815/2014 is quashed and set aside;
- (ii) The respondents are directed to consider the proposal no. BP/Wakad/815/2014 in accordance with law and uninfluenced of the pendency of the criminal case no.444 of 2005 relating to ULC Order no.1360 BH and without insisting for any no objection certificate from respondent nos.4 and/or 5.

(iii) Rule made absolute in the above terms.

(iv) There will be no orders as to costs.

(A. K. MENON, J.)

(A. S. OKA, J.)

