

PREMIUM UNDER THE REPEALED URBAN LAND (CEILING AND REGULATION) ACT, 1976, IS TO BE PAID ONLY FOR SURPLUS VACANT LAND

INTRODUCTION:

*The Bombay High Court in a recent decision in **Salim Alimahomed Porbanderwalla and Anr. Vs The State of Maharashtra and Anr.**¹ observed that where premium was paid for any surplus vacant land held by a landowner under the repealed Urban Land (Ceiling and Regulation) Act, 1976, then in such cases, the landowner was entitled to have revenue entries deleted in regard to such surplus vacant land*

FACTS:

The Petitioner No. 1 owned lands bearing CTS Nos. 124 and 125 in Village Marol, Taluka Andheri, admeasuring about 17492.70 sq. mtrs. The Petitioner No. 2 was a developer.

On 15th May, 2008, 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., belonging to the Petitioner No. 1, from the total holding was surplus vacant land.

The area in possession of the Petitioners was 12025.25 sq. mtrs. About 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. The "net balance land" was computed at 8377.40 sq. mtrs. The retainable land within the ceiling limit under the ULC Act and not being vacant land was stated to be 2990.23 sq. mtrs.

The surplus vacant land was admeasuring about 5387.17 sq. mtrs. after deducting the retainable land.

The ULC Act was thereafter repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999 ("**Repeal Act**").

On 29th November 2007, the Repeal Act came into effect in the State of Maharashtra.

On 3rd September 2014, a Full Bench of the Bombay High Court considered the effect of the Repeal Act in **Maharashtra Chamber of Housing Industry and Ors. vs State of Maharashtra and Anr.**² The majority decision of the Bombay High Court was that exemptions granted under Section 20 of the ULC Act did not abate under the Repeal Act.

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 of the ULC Act could and should be closed by accepting a certain payment. That proposal by the State Government was ultimately accepted in a Civil

¹ Writ Petition No. 4849 of 2022

² 2014 SCC OnLine Bom 1083

Appeal before the Supreme Court in ***Maharashtra Chamber of Housing Industry and Ors. vs State of Maharashtra and Anr.***³

This led to the State Government issuing the first Government Resolution in challenge dated 1st August 2019 by which it effectively offered to close all pending issues regarding surplus land and retention land by accepting a payment, which for want of a better word would be called a premium.

On 23rd June 2021, the State Government issued another Government Resolution in challenge, to streamline the process of implementation of the previous Government Resolution dated 1st August 2019 and provided a basis for computation.

The Government Resolutions dated 1st August 2019 and 23rd June 2021 are collectively referred to as "**Government Resolutions**".

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 the two Government Resolutions. The Petitioners requested that their payment be accepted and that they be relieved of the terms and conditions of the exemption order dated 15th May 2008 passed by the competent authority. The Petitioners requested that the demand be computed so that the Petitioners could make payment.

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.

The area of 5271.75 sq. mtrs. was clearly part of the surplus vacant land. That is to say, it was 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 of the ULC Act, to be implemented by the land holders.

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 order under Section 20 of the ULC Act.

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 present Petition was filed sometime on 17th June 2022. On 23rd September 2022, the Petitioners deposited the entire amount of Rs.12,32,869/- with the Treasury and on 22nd November 2022 submitted an original challan.

The only point for controversy was about the interpretation of the Government Resolution dated 1st August 2019.

³ Civil Appeal No 558 of 2017

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Bombay High Court was as follows:

Whether a premium could be charged on the land that was retainable and was in the ownership of and vested with the Petitioners?

SUBMISSIONS ON BEHALF OF THE PETITIONERS

It was submitted on behalf of the Petitioners that a premium could not be charged on land that was retainable, i.e., exempted, and which was the ownership of and vested in the Petitioners. It was unclear and on what basis, or by what power under a statute, the Government could require the Petitioners to pay the Government a premium, no matter how computed, for the Petitioners' own land.

It was submitted that there could not be a continuance of the order under Section 20 of the ULC Act 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. could not be computed or reckoned for the purposes of computing a premium; and no revenue entry under the ULC Act could apply to it.

It was further submitted that the Petitioners were in fact seeking enforcement of the Government Resolution and seeking an enforcement of the Government Resolution as correctly read and as constitutionally valid. The Government's interpretation, would render vulnerable the Government Resolution in itself and the consequence of that would be that the

Government could demand no premium at all. That was not in the Government's interest.

Relying on *Olga Tellis and Ors v Bombay Municipal Corporation and Ors.*⁴ wherein the Supreme Court enunciated the principle that where two interpretations were possible, a Court must strive towards an interpretation that was consistent with a constitutional mandate i.e., such interpretation must be a manner by which the Government Resolutions could be upheld and enforced.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

It was submitted on behalf of the Respondents that first, the premium should be charged on the entire land i.e., the "net balance land" of 8377.40 sq. mtrs. for the simple reason that it was the failure of the Petitioners to implement the scheme under Section 20 of the ULC Act that resulted in this situation. The second submission was that following any principle of purposive construction, avoidance of mischief, or a principle of executive interpretation, the Government Resolution, referred to the whole land or the entire land. There could not be, a reference to a part of the land or a reference to the net balance land.

It was submitted that revenue entries should continue against the entire land because what was being permitted was a development over what was then computed as "surplus vacant land", i.e., 5387.17 sq. mtrs., until the premium was paid on the whole land.

JUDGMENT:

The Bombay High Court observed that the claim in the Petition was in regards to the continuance of the entries in the Revenue Records for the

⁴ (1985) 3 SCC 545

land that was retained within the ceiling limit despite the payment of the full premium, which was unlawful. The Bombay High Court observed that the Petitioners also demanded that the revenue entries for the exempted land be deleted as the Petitioners were required to 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.

The Bombay High Court observed that although the Government Resolution used the words "entire land" but this had to be read in a context. It could not be an elastic term. It could not be unreasonably expanded to include lands that under no process of logic or law could be subjected to a premium.

The Bombay High Court further observed that there were two parcels of land. One was the land which the Petitioners were entitled to continue to hold. There could not be a premium for this, nor could there be a revenue entry relating to Section 20 of the ULC Act for this. The other

parcel was the surplus vacant land, for which the Petitioners paid the full premium, against which the Petitioners were entitled to have the revenue entry deleted.

In view of the above observations, the Bombay High Court directed the Respondents to remove all entries under the ULC Act for the surplus vacant land as the Petitioners paid the premium in full and to treat the surplus vacant land as free from all conditions stipulated by the exemption order of 15th May 2008 under Section 20 of the ULC Act.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.