Ganesh

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 20916 OF 2023

Modern Paints,
a partnership firm registered under the Indian Partnership Act, 1932, having its office at C-15 Dalia Industrial estate, Veera Desai road, Andheri West, Mumbai 400053 **...Petitioner**

~ versus ~

1. **The State of Maharashtra,** through its Chief Secretary, having his address at Mantralaya, Mumbai 400 032
2. **The Collector and Competent Authority (ULC) - III,** Greater Mumbai, New Administrative Building, Fifth Floor, Bandra (East), Mumbai 400 051 **...Respondents**

Appearances

FOR THE PETITIONER **Mr Mayur Khandeparkar**, *with Nishant Chotani, Nivit Srivastava, Saurabh Kshirsagar & Anish Gandhi, i/b Maniar Srivastava Associates.*

FOR RESPONDENT-STATE	**Mr Himanshu Takke, AGP,** *with* *Jyoti Chavan, AGP.*

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

DATED : 9th August 2023

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

1. **Rule**. Rule returnable forthwith. The Petition is taken up for hearing and final disposal.

2. Under a conveyance dated 12th June 1975, the Petitioner acquired land bearing Survey No. 42 (Part), CTS No. 637, Plot No. C15, Oshiwara, Andheri West, Mumbai aggregating to 873.54 sq mts and 840.54 sq mts. On 1st August 1977, the Petitioner filed a statement under Section 6(1) of the now repealed the Urban Land (Ceiling and Regulation) Act, 1976 ("**ULC Act**"). An order under Section 20 followed, exempting the property from Chapter III of the ULC Act.

3. On 12th December 2022, the Petitioner applied to 2nd Respondent agreeing to pay the premium as required, and asking that the remark mentioned in the property card be removed. A demand for a premium of Rs 1,46,36,057/- came to be issued on 9th February 2023 in respect of the *entire* land (i.e., including the vacant portion and the main portion admeasuring 873.54 sq mts).

4. We believe the matter is fully covered by our recent decisions in *Salim Alimohomed Porbanderwalla & Anr vs State of Maharashtra & Anr*,[1] read with the later decisions in *Voltas Ltd & Anr v Municipal Commissioner of Thane Municipal Corporation & Ors*[2] and *RR Realtors v State of Maharashtra & Ors*.[3] In those decisions, we considered an issue of law, viz., whether under the provisions of the now repealed ULC Act, demands could be raised for the entire area that was once the subject of ULC proceedings, i.e., including the area of vacant land as well.

5. In the present case, as the undisputed record at pages 53 and 54 shows, being the Schedule of the Exemption Order under Section 20 of the ULC Act, the *total* area was 4854 sq mts.[4] That very Schedule shows the *vacant* land to be 1606.14 sq mts.

6. In the *Salim Porbanderwalla* case, we analysed the legislative and jurisprudential background of the ULC Act and its repeal. We have since followed this in *Voltas Ltd* and *RR Realtors*, *supra*.

7. The ULC Act was repealed by the Urban Land (Ceiling and Regulations) Repeal Act 1999. On 29th November 2007, the State Legislature adopted the Repeal Act and it was brought into force in

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1 2023 SCC OnLine Bom 731 : (2023) 3 Bom CR 140. Decided on 30th March 2023.

2 Interim Application No 1463 of 2022 in Writ Petition No 7222 of 2007, decided on 6th June 2023.

3 Writ Petition No. 1268 of 2019, decided on 31st July 2023.

4 There is a small difference because of the entry in the property record card.

the State of Maharashtra. As we shall presently see, the Repeal Act had a solitary savings clause in Section 3.

8. 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*.[5] The majority held that exemptions granted under Section 20 of the ULC Act did not abate on repeal.[6]

9. 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).[7]

10. This led to the State Government issuing the first of the GRs 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 we shall call a premium, since this is the terminology commonly used throughout these proceedings. There was a second GR dated 16th September 2019.

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5 2014 SCC OnLine Bom 1083 : (2014) 6 Mah LJ 829 (FB) : (2014) 6 Bom CR 247 (FB).

6 Per SC Dharmadhikari and GS Kulkarni JJ; SC Gupte J dissenting. Kulkarni J delivered a separate judgment concurring with Dharmadhikari J.

7 *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*.

11. The position in law is as follows. 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.

12. Chapter III of the ULC Act had specific provisions directed towards these objectives. 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).

13. Historically, not all acquisitions were completed. Some indeed were, and possession followed. Others were pending, winding their way through appeals and revisions. 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.

14. 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;[8] 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 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.

15. It is the savings clause that fell for consideration. The reference to the Full Bench was made because there were as many as

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

five Division Bench decisions that took conflicting views.[9] 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 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.

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9 *Sundersons v State of Maharashtra*, 2008 SCC Online 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.

(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."

16. As regards Section 21, this Court passed an order on 11th March 2015 in Writ Petition No. 1178 of 2014, *Swastik Constructions v State of Maharashtra & Ors*.[10] That decision *inter alia* held that Section 21 of the ULC Act would not survive the repeal of the ULC Act. The conditions of the Exemption Order under Section 21 are not enforceable. The Division Bench held, inter alia following an earlier decision of this Court in *Voltas Ltd & Anr v Additional Collector and Competent Authority & Ors*:[11]

> "9. The effect of an order under Sub-Section (1) of Section 21 is that the vacant land held in excess of ceiling limit which is covered by the order under Sub-Section (1) is declared as not be excess land for the purposes of Chapter III and permit such person to continue to hold such land for the purposes set out in Sub-Section (1), subject to the terms and conditions incorporated in the said order. Sub-Section

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10 2015 SCC OnLine Bom 3848.

11 NC: 2008:BHC-AS:14572-DB : 2008 SCC OnLine Bom 701 : (2008) 5 Bom CR 746.

(2) provides that if there is any contravention of the conditions incorporated in the permission under Sub-Section (1) of Section 21, the Competent Authority is empowered to declare such land to be a vacant land held in excess of ceiling limits and thereupon all the provisions of Chapter III shall apply to the land held in excess of ceiling limit.

10. It will be necessary to make a reference to Sections 3 and 4 of the Repeal Act. From Clause (b) of Sub-Section (1) of Section 3, it appears that notwithstanding the Repeal, the validity of any order granting exemption under Sub-Section (1) of Section 20 will not be affected. In short, the validity of such order has been saved. Section 4 provides that all proceedings relating to any order made or purportedly made under the Principal Act (ULC Act) pending immediately before the commencement of the Repeal Act, before any Court, Tribunal or other authority shall abate. **Section 4 saves the proceedings only relating to Sections 11, 13 and 14 of the ULC Act insofar as such proceedings are relatable to the land, the possession of which has been taken by the State Government.**

11. We have perused the order dated 27th November, 1983 under Sub-Section (1) of Section 21 of the ULC Act. The legal effect of order under Sub-Section (1) of Section 21 is already noted above. Once there is such an order under Sub-Section (1) of Section 21, the vacant land held in excess of ceiling limit cannot be treated as an excess land for the purposes of Chapter III. Only in case of breach of terms and conditions of the order under Sub-Section (1) of Section 21 that the power under Sub-Section (2) can be exercised by the Competent Authority of declaring the vacant land to be an excess land. **On plain reading of the Repeal Act, the validity of order under Sub-Section (1) of Section 21 has not been saved. Even the power under Sub-Section (2) of Section 21 has not been saved. Therefore, till the date**

> **of Repeal (i.e. 29th November, 2007), the said land was not a vacant land held in excess of ceiling limit. Though the repeal Act does not save the validity of an order under Sub-Section (1) of Section 21 of the ULC Act, after 29th November, 2007, the provisions of Chapter III cannot be applied to the said land**."
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> (*Emphasis added*)

17. A Special Leave Petition against this order was dismissed on 5th October 2015,[12] and the decision in *Swastik Constructions* thus attained finality.

18. Following the *Swastik Constructions* decision and the dismissal of the Special Leave Petition, the State Government issued a Circular dated 5th December 2018. This specifically references the *Swastik Constructions* judgment, and it directs all Municipal Corporations not to insist on compliance with ULC conditions under Section 21 of the ULC Act. The 1st August 2019 GR has to be seen in this context. It imposed a one-time premium for development of areas exempted under Section 20.

19. Prayer clauses (a) and (b) at pages 31 and 32 read as follows:

> "(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 and 23rd June 2021, as interpreted by this Hon'ble Court in the order dated 30th March 2023, passed in Writ Petition No. 4849 of 2022; and to raise the

12 SLP (C) No 18067 of 2015.

appropriate demand in respect of only the surplus vacant land admeasuring 340.50 square meters out of the said Property bearing Survey No.42 (part), CTS no. 637 and Plot no.C15 of Village Oshiwara, Taluka Andheri, Mumbai Suburban District and to implement the policy decision as contained in the said Government Resolutions dated 1st August 2019 and 23rd June 2021 and upon payment of such demand being made and complied with by the Petitioner to relieve the Petitioner of all the terms and conditions of exemption order dated 1stAugust 1977;

(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 Impugned Communication dated 5th July 2023 (Exhibit "K" hereto) issued by Respondent No. 2 and after examining the legality, validity and propriety thereof, be pleased to quash and set aside the same."

20. We believe that the *Porbanderwalla* decision and the subsequent orders set out the correct position following the Repeal Act, and the survival under Section 20 of the ULC Act, 1976. We have previously dealt with questions raised under Section 21 as well, as also a situation under Section 8 but where possession has not been taken. Those additional considerations may not apply in the facts and circumstances of this case. The only question is whether a demand is leviable for the entirety of the land in question. As we have noted, the demand raised is contrary to the clear legal position.

21. We need to return to the *Porbanderwalla* decision for an appreciation of the 1st August 2019 GR.[13] 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 repealing the Urban Land (Ceiling and Regulation) Repeal Act 1999., Aas per the afore stated 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.
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> 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 Versues 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.
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> 3. …

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13 The later GR of 23rd June 2021 does not materially alter the position. It is an attempt to streamline the implementation of the 1st August 2019 GR.

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 develop 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*)

22. As we held in *Porbanderwalla*, 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 in 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*. 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 not vacant land cannot be computed or reckoned for the purposes of computing a premium; and no revenue entry under Section 20 can apply to it. The expression "entire land" or ",dw.k {ks=" means the *whole of the surplus vacant land*. If the GR is made to apply to the entirety of the land, it would fall afoul of Article 300-A of the Constitution of India and be unconstitutional. Alternatively, it would imply a re-introduction of Section 27(1), though that has been struck down as unconstitutional. We cannot accept an interpretation that would invalidate the GR. In fact, the Petitioners are seeking to enforce it, but in a constitutionally valid manner.

23. We are told that the reason the government persists in raising this demand is because we have not 'struck down' the 1st August 2019 GR. Indeed we have not. We are not asked to. A representation made by the Petitioners on 20th June 2023 was rejected apparently on this ground. But we have interpreted the 1st August 2019 GR,

and it is our interpretation that binds the government. It is not open to the government, after our judgment in *Porbanderwalla*, to insist that its own erroneous and possibly unconstitutional interpretation of the 1st August 2019 GR will prevail. We have no intention of repeating this law again and again.

24. In *Porbanderwalla*, we held:

> "30. He draws our attention to paragraph 44 of the five Judge decision of the Supreme Court in the celebrated case of *Olga Tellis & Ors v Bombay Municipal Corporation & Ors*.[14] **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**.
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> 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-fledged constitutional challenge**.
>
> 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**

14 (1985) 3 SCC 545.

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**."

(*Emphasis added*)

25. To make it perfectly clear, once and for all:

(a) No demand under the 1st August 2019 GR or the later GR of 23rd June 2021 can be made applicable to the land that is retainable, i.e., exempted, and is in the ownership of and has vested in the private owner.

(b) The Government has no power to demand a premium for the private party's own land.

(c) The retention land, i.e., that which was within the ceiling limit permissible under the ULC Act and which

was not vacant land, cannot be computed or reckoned for the purposes of computing a premium.

(d) The expression "entire land" or ",dw.k {ks=" in the 1st August 2019 GR or the later GR of 23rd June 2021 means the *whole of the surplus vacant land* not the whole of the land, i.e., not the portion including the retention / retainable land.

(e) Any demand for a premium for the retainable land is illegal, unconstitutional and unlawful.

(f) There cannot be a continuance of the Section 20 order in the revenue entry against the *whole* of the land.

(g) No revenue entry under Section 20 can apply to the retention land.

(h) Any revenue entry showing the State Government in respect of the retainable / retention land is also illegal.

26. This judgment is not restricted to the facts of this case. It applies to all cases to which the GRs of 1st August 2019 and 23rd June 2021 are sought to be applied. Consequently, the State Government cannot refuse or fail to follow this judgment. It cannot make premium demands for the whole land or make revenue entries favouring the State Government for the whole land — i.e., including the retention/retainable land that is private property. Any such demands or entries are illegal and unconstitutional.

27. Accordingly, Rule is made absolute in terms of prayer clauses (a) and (b), set out above.

28. No costs.

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