

Dixit

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15 OF 2024

1. **Suresh Devchand Shah,**
2. **Jitendra Devchand Shah,**
3. **Atul Devchand Shah,**
All having their Office at 122/A-
Thakurdwar Road, Datta Mandir
Compound, Mumbai – 400 002.

..PETITIONERS

~ versus ~

1. **The State of Maharashtra**
2. **The Collector and Competent
Authority,**
Urban Land Agglomeration, Thane
3. **The Tahsildar,**
Mira-Bhayandar
4. **Mira Bhayander Municipal
Corporation,**
Indira Gandhi Bhavan, Shivaji Road,
Bhayandar (West), Thane–401 101.

5. **M/s. Raj Project and Infrastructure,**
B/29, 02, Sector-11, Shantinagar,
Mira Road (East), Thane – 401 107.

..RESPONDENTS

APPEARANCES

For the Petitioner	Mr. Kailas Dewal with Mr. Yash Dewal and Mr. Ashwin Kulkarni, Advocates.
For Respondent Nos. 1 to 3-State of Maharashtra	Mrs. Shruti D. Vyas, Additional Government Pleader with Mrs. M.S. Bane, Assistant Government Pleader.

**CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ**

RESERVED ON : 29th SEPTEMBER, 2026.

PRONOUNCED ON : 16th OCTOBER, 2026.

JUDGMENT (Per Gautam Ankhad, J):-

1. Rule. Rule is made returnable forthwith and the Writ Petition is heard finally with the consent of the parties.

2. The Petitioners are the owners and currently in possession of land bearing Survey No.153/1 (Old Survey No.392/1), admeasuring 58.80 Ares situated at Village Navghar, District Thane. The Petitioners have impugned the legality and validity of the orders dated 1st December, 2008 and 3rd November, 2020 passed by Respondent Nos.1 and 2 respectively, directing Respondent No.3 and its officers to enter a remark regarding the obligation/responsibility with reference to Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (“**ULC Act**”). Pursuant thereto, Mutation Entry No.2222 dated 22nd December, 2015 and Mutation Entry No.2760 dated 2nd July, 2021 came to be entered in the revenue records by Respondent No.3, which is also impugned in this Petition.

3. The brief facts leading to the filing of the present Petition are as follows:-

- (i) Caroline Jasin Rebello, Philip Jasin Rebellow, Walter Jasin Rebello, Plasid Jasin Rebello, Moras Jasin Rebello, Elsie Michael Pareira and Nebal Patel were the original owners of the land admeasuring 65.30 Ares (“**said land**”), out of which land admeasuring 3,026 square meters was declared as surplus land under Section 8(4) of the ULC Act by an order dated 17th February, 1982. However, the original owners/predecessors-in-title of the Petitioners continued to remain in possession of the said land.
- (ii) On 8th June, 2005, Respondent No.2 issued a Notification under Section 10(1) of the ULC Act, in respect of the said land and furnished particulars of the vacant land held in excess of the ceiling limit.
- (iii) On 23rd April, 2007, on an application for Exemption under Section 20 of the ULC Act filed by

the original owners, Respondent No.2 issued the Exemption Order pursuant to a Scheme submitted for constructing tenements of different categories under the said Order. Respondent No.2 exempted 210 square metres of vacant land, as mentioned in the Schedule. The Exemption Order *inter alia* records at Condition Nos.5, 13 and 17 as follows:-

“5. The said person/Developer shall commence construction of tenements within a period of One year from the date of this exemption order and shall complete the construction work within three years failing which the exemption shall stand withdrawn. If part of land is utilized and part remains unutilized, then the land under such incomplete buildings along with land appurtenant there at will attract provision of Chapter III of Urban Land (Ceiling and Regulation) Act, 1976.

... ..

13. The exemption granted under Section 20 of said Act shall be deemed to have been withdrawn for such vacant land which have not been built upon as and when such exempted lands are required for any Government organization in public interest.

... ..

17. If at any time Competent Authority or the State Government has noticed that there is breach of any of these conditions mentioned in this order, it shall be

lawful for Competent Authority or State Government to withdraw the exemption order from the date specified in such order.”

- (iv) On 7th July, 2007, a Notification under Section 10(3) of the ULC Act was published declaring the vesting of the excess vacant land admeasuring 3,026 square metres and its deemed acquisition by the State Government.
- (v) On 14th November, 2007, a Notice under Section 10(5) of the ULC Act was issued by Respondent No.2 calling upon the Petitioners to surrender and handover possession of the vacant land admeasuring 3,026 square metres within twenty days of receipt of the said notice.
- (vi) On 29th November, 2007, the ULC Act was repealed by Respondent No.1 by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (“**Repeal Act**”). Section 3 of the Repeal Act, which contains the

“Saving clause”, provides that the repeal would not affect (a) the vesting of any land in respect of which possession had been taken by the State Government; (b) the validity of any exemption under Section 20(1) or any action taken thereunder notwithstanding any judgment of any Court to the contrary; and (c) any payment made to the State Government as a condition for granting exemption under Section 20(1).

(vii) On 11th November, 2008, the original owners/Petitioners’ predecessors-in-title filed Writ Petition No.441 of 2009 (*Philip Jasin Rebellow (since deceased), through Legal Heirs: 1(a) Sheela Philip Rebellow & Ors. Vs. The State of Maharashtra & Ors.*) *inter alia* seeking the following reliefs:

“(a) This Honourable Court may be pleased to, by an appropriate writ and/or order and/or direction, quash and set aside the orders passed/notices issued under Section 10, sub-clause (1) dated 8th June, 2005, under Section 10, sub-clause (3) dated 7th July, 2007 and

under Section 10, sub-clause (5) dated 14th November, 2007 of the said Act;

- (b) Pending the hearing and final disposal of the present Writ Petition, this Honourable Court may be pleased to restrain the Respondents from giving effect to and/or implementing the orders passed/notices issued dated 8th June, 2005, 7th July, 2007 and 14th November, 2007 on such terms and conditions this Honourable Court may deem fit and proper under the circumstances.”

(viii) The said Petition was, *inter alia*, filed on the basis that possession of the surplus land had not been taken by Respondent No.1 on or before 29th November 2007, i.e., date of the ULC Repeal Act. This fact was confirmed by Respondent No.2 in its affidavit-in-reply dated 9th July, 2009. After considering the record, this Court by its order dated 18th November, 2009 allowed Writ Petition No.441 of 2009. For convenience, the said order is quoted:

- “1. Rule. Rule is made returnable forthwith. Heard finally by consent of parties.
2. The following facts can be taken as admitted.

3. By order under Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the ULC Act”), land admeasuring 3,226 square meters was declared as surplus land from the holding of the petitioner. Out of that land, land admeasuring 210 square meters was exempted because of sanction of the Scheme under Section 20 of the said Act for sanction in relation to that land. One of the conditions of exemption was that the petitioner shall build upon the land within one year of the sanction of the Scheme. The petitioner could not build upon the land and comply with the condition. Therefore, the State Government assumed that exemption is deemed to have been withdrawn and, therefore, issued notification under Section 10(1) of the Act in relation to the entire surplus land. A notice under sub-section (3) of Section 10 was issued on 7.7.2007. Then on 14.11.2007 notice under sub-section (5) of Section 10 was issued asking the petitioner to deliver possession of the surplus land within a period of 20 days from the date of the notice.
4. According to the petitioner, this notice under sub-section (5) of Section 10 is invalid. It gives only 20 days to the petitioner to deliver possession. In any case, according to the petitioner, pursuant to notice dated 14.11.2007, possession of the surplus land has not been taken by the respondent before 29.11.2007, the date when the ULC Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999.
5. The learned counsel appearing for the petitioners therefore relying on the judgment of this Court in the case of *Voltas Ltd. and another Vs. Additional Collector and Competent Authority and others* reported in 2008(5) Bom.C.R. 746 submitted that as the possession of the land has not been taken before 29.11.2007 and further proceedings under the ULC Act in relation to the land of the petitioner have abated.

6. The respondent Government has filed their affidavit. In the affidavit, they do not claim that possession has been taken. In fact, in para-1 a categorical statement has been made that the respondents have not taken possession of the land. In this view of the matter, in the light of the law laid-down by Division Bench of this Court in the case of *Voltas Ltd. (supra)*, the Petition succeeds and is allowed. It is declared that all further proceedings in relation to the land which is subject matter of this Petition under ULC Act have abated. Rule is made absolute accordingly. No order as to costs.”

(ix) The said order has not been challenged by the Respondents. Meanwhile, on 1st December, 2008, Respondent No.1 issued the impugned communication directing all Deputy Collectors and Competent Authorities to record an entry in the “Other Rights” column of the 7/12 Extract in respect of all lands in relation to which the scheme submitted by the landowners under Section 20 of the ULC Act was pending. This was followed by letters dated 26th March, 2009 and 5th November, 2009, by which Respondent No.2 directed Respondent No.3 and its officers to

record a mutation entry in respect of the Petitioners' land and impose restrictions on the sale/ transfer of the said land.

- (x) On 3rd September 2010, Respondent No.2 issued a Notification recording that physical possession had not been taken by Respondent No.2 and that the entry reflecting the State's ownership had itself been cancelled. A copy of the said Notification was tendered by the Petitioner's counsel during the course of hearing, which is taken on record and marked 'X' for identification. The said Notification is not disputed by the learned Additional Government Pleader.
- (xi) The Petitioners purchased the said land from the original owners by and under registered Sale Deed dated 26th December, 2011 and 31st December, 2012. Thereafter, Petitioner Nos.1 to 3

sold a portion of the said land admeasuring 650 square metres to Respondent No.5 and are currently in occupation and possession of 58.80 Ares.

(xii) On 22nd December, 2015, Respondent No.3, without serving any notice upon the Petitioners or their predecessors-in-title, entered Mutation Entry No. 2222 in the revenue records of the said land. Thereafter, on 3rd November, 2020, Respondent No.2 issued the impugned communication directing Respondent No.3 to enter, in the “Other Rights” column of the 7/12 Extract, the remark that the “obligation towards Section 20 of the ULC Act in respect of 650 square metres will be of M/s. Raj Project and Infrastructure”. Pursuant to the said order, on 2nd July, 2021, Respondent No.3 entered impugned Mutation Entry No.2760 in the revenue records.

(xiii) The Petitioners, whilst intending to develop a portion of the said land, learnt of the aforesaid mutation entries. On 28th September, 2022, the Petitioners issued a legal notice calling upon Respondent Nos.2 and 3 to cancel mutation entries and withdraw the impugned communication dated 3rd November, 2020 particularly in view of the order dated 18th November, 2009 passed by this Court.

(xiv) Aggrieved by the inaction of the Respondents, the present Petition has been filed.

4. Mr. Kailas Dewal, learned counsel appearing for the Petitioners, assails the impugned orders dated 1st December, 2008 and 3rd November, 2020, as also Mutation Entries bearing Nos. 2222 and 2760 and all subsequent actions, on the ground that, under the Exemption Order dated 23rd April, 2007 granted in respect of 210 square metres of land,

the Petitioners were required to commence construction within one year from the date of the said Order, failing which the exemption granted under Section 20 of the ULC Act would lapse. The construction had not commenced on the said land within the said period. Thereafter, the exemption under the ULC Act lapsed when the Notifications under Sections 10(3) and 10(5) of the Act were issued by the Respondents. However, the Petitioners' predecessors-in-title continued to remain in occupation and possession of the said land. As the ULC Act stood repealed with effect from 29th November, 2007, all proceedings under the ULC Act, pending before the commencement of the Repeal Act stood, abated. This includes proceedings in respect of the said land.

5. Mr. Dewal submits that the above factual matrix was considered by this Court in the order dated 18th November, 2009 passed in Writ Petition No.441 of 2009, after which this Court declared that all further proceedings in relation

to the land stood abated. The Respondents have not challenged the said order and are bound by the same. The impugned orders and mutation entries are contrary to the said order and cannot be sustained. The impugned actions deprive the Petitioners of their vested rights in the said land and ought to be quashed and set aside. In support of these submissions, learned counsel for the Petitioners has placed reliance on the judgments of (i) *V. S. Charati Vs. Hussein Nhanu Jamadar (Dead) By LRs.*¹; (ii) *Vithabai Bama Bhandari Vs. State of Maharashtra and Another*²; and (iii) *Manik M. Ragit Vs. State of Maharashtra and Another*³.

6. On the other hand, Ms. Shruti Vyas, learned Additional Government Pleader appearing for Respondent Nos.1 to 3, submits that this Court, in its order dated 18th November, 2009, did not make any declaration regarding the withdrawal of the Scheme under Section 20(1) of the

1 (1999) 1 SCC 273

2 2009(4) Mh.L.J. 693

3 2013(2) Mh.L.J. 224

ULC Act and the Petitioners are estopped from seeking such a declaration in the second round of litigation.

7. It is contended that the Repeal Act has no effect on the validity of the Exemption Order or on any action taken thereunder. It is submitted that the Exemption Order and the Scheme were to be implemented within a period of one year from 23rd April, 2007. However, before the expiry of the said period, the Repeal Act was enacted on 29th November, 2007. Therefore, Respondent Nos.1 and 2 could not take over possession of the said land. Lastly, it is contended that since there is no specific order of withdrawal, as required under Condition no.17, the Exemption Order has not lapsed and the impugned orders and mutation entries call for no interference. Reliance is placed upon the decision of the Full Bench of this Court in *Maharashtra Chamber of Housing Industry, Mumbai and*

*Others Vs. State of Maharashtra and Another*⁴ for dismissal of the Petition.

Reasons and Conclusion:

8. We have perused the record and have heard the learned counsel for the parties. The short question that arises for our consideration is whether, having regard to the order dated 18th November, 2009, passed in Writ Petition No.441 of 2009, the Respondents can maintain the impugned communications and Mutation Entries in respect of the said land.

9. This Court, in its order dated 18th November, 2009, had expressly recorded that exemption under Section 20 of the ULC Act was deemed to have been withdrawn and therefore the Respondents issued the Notification under Section 10(1) of the ULC Act. The said order was passed

⁴ 2014 (6) Mh.L.J. 829

after considering the status of the Section 20 exemption, the proceedings under Section 10 and, most importantly, the Respondent's admission in its affidavit-in-reply that possession had not been taken before the Repeal Act. It is in this background that this Court declared that "all further proceedings in relation to the land", which is the subject matter of the Petition, had abated. The said order has attained finality and will bind the Respondents and the Petitioner. Therefore we cannot accept the Respondents submission and dilute/ignore the consequences of the expression "all further proceedings in relation to the land". It is settled law as held by the Hon'ble Supreme Court in *Erach Boman Khavar v. Tukaram Shridhar Bhat*⁵ that when a question of fact or law is decided between the parties in one suit or proceeding and the decision is final, either because no appeal was filed or an appeal was dismissed, neither party will be allowed in a future suit or proceeding

5 (2013) 15 SCC 655

between the same parties to canvass the matter again. Similarly In *Hope Plantations Ltd. v. Taluk Land Board, Peermade*⁶ the Hon'ble Supreme Court held that the general principle underlying the doctrine of *Res Judicata* is ultimately based on public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities and a person should not be made to face the same kind of litigation twice over, such process being contrary to considerations of fair play and justice. The Hon'ble Court further held that even where Section 11 of CPC does not apply, the principle of *Res Judicata* has been applied by courts for the purpose of achieving finality in litigation. Thus, we are required to proceed on the basis that the order dated 18th November, 2009 is correct and binding on the Respondents.

6 (1999) 5 SCC 590

10. Mr. Dewal has rightly relied upon *V.S. Charati* (supra), wherein the Hon'ble Supreme Court held that decision rendered by the Court in absence of challenge becomes final and binding on both the parties and until the same is set aside, it would not amount to a nullity, merely because it is wrong. For convenience, relevant portion is extracted and quoted:

“9. It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31-5-1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of *Nago Dattu Mahajan v. Yeshodabai Huna Mahajan* [(1976) 78 Bom LR 427] where this Court had held that under Section 31, the landlords have a choice to avail of one of the two provisions of resumption, namely, either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent, therefore, contends that in the present case, the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 32-G his disability as a minor under Section 31(3). The order of 31-5-1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31-5-1961 has become final and the decision rendered by the Agricultural Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue

to bind the parties unless set aside. The effect of the decision of 31-5-1961 on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser.”

11. In the present case, the Petitioners are not seeking to reopen an issue decided in their favour. They only seek enforcement of the legal consequences flowing from that final order against subsequent administrative actions. The distinction sought to be drawn by the learned AGP that the Respondents that there is no specific order of “withdrawal of exemption” cannot be accepted. Once the proceedings under the ULC Act concerning the said land had been judicially declared to have abated, a revenue entry cannot itself confer or revive a right, liability or statutory obligation which no longer survives. The Respondents cannot by an administrative action seek to override or nullify a judicial order.

12. The reliance placed by the learned AGP upon Section 3 of the Repeal Act is also misplaced. Section 3 contains a saving provision and, *inter alia*, protects the validity of Exemption Order granted under Section 20(1) and the action taken thereunder. The saving clause preserves what falls within its statutory field. It does not confer a power upon the State to resurrect the issue or override a final judicial determination inter parties concerning the very land and proceedings in question.

13. We are also unable to agree with the Respondents' contention based on Condition No.17 that the exemption could not have lapsed before the expiry of one year from 23rd April 2007 because the Repeal Act came into force on 29th November, 2007, as it overlooks the fact that the Respondents themselves proceeded on the basis that the exemption was withdrawn or deemed to have been withdrawn by initiating proceedings under Sections 10(1), 10(3) and 10(5) of the Act. The Respondents cannot now

rely upon the unexpired portion of that period to revive proceedings which no longer survive in law. Even assuming that Condition No.17 contemplated a formal order for withdrawal of the exemption, such a requirement now cannot be invoked to defeat the binding effect of the order dated 18th November, 2009.

14. We are fortified in our view by the judgment of the Co-ordinate Bench in *Manik M. Ragit* (supra) which follows *Vithabai Bama Bhandari* (supra) wherein this Court ordered correction of revenue records in similar circumstances where the Scheme was not implemented. Once Respondents have issued notice under Section 10 of the Act and if possession is not taken, prior to the Repeal Act coming into force, then the land shall stand restored to the owner. We may also note that the subsequent Notification dated 3rd September 2010, tendered by the Petitioners and which is not disputed by the learned AGP, further supports the factual position that actual physical

possession had not been taken by Respondent No.2 and that the entry reflecting the State's ownership had itself been cancelled. The revenue record, therefore, cannot be permitted to convey a position inconsistent with the adjudicated and admitted factual position. The judgment of the Full Bench of this Court in *Maharashtra Chamber of Housing Industry, Mumbai and Others* (supra) does not alter this position and does not assist the Respondents.

15. For all the above reasons, the Petition is allowed in terms of prayer clauses (a), (b) and (c), as modified, which read as under:-

- “a. This Hon'ble Court may be pleased to issue an appropriate writ and/or order and/or direction thereby quashing and setting aside the order dated 03/11/2020 passed by the Respondent No.2 i.e., the learned Collector & Competent Authority, Urban Land Agglomeration, Thane and Order dated 01/12/2008 passed/issued by the Deputy Secretary of Respondent No.1-State of Maharashtra and its effect in respect of Survey No.153/1 (Old Survey No.392/1) and amalgamated Survey No.153/1A situated at village Navghar, taluka and district Thane in view of the abatement of all proceedings under ULC Act, 1976 and order dated 18/11/2009 passed by this Hon'ble Court in Writ Petition No.441 of 2009 and declare that Petitioners are free to deal with the land in any manner as they deem fit without there

being any restriction as regards Scheme sanctioned under Section 20 of the ULC Act bearing No.SR/1769 as the same has lapsed and is not in existence;

- b. This Hon'ble Court may be pleased to issue an appropriate writ and/or order and/or direction and direct Respondent No.2 and/or 3 and its concerned officers to forthwith delete/cancel/rectify the Mutation Entry No.2222 dated 22/12/2015 and Mutation Entry No.2760 dated 02/07/2021 so far as they records existence of scheme u/s. 20 of the ULC Act, bearing No.SR/1769, from the revenue records of the Survey No.153/1 (Old Survey No.392/1) and amalgamated Survey No.153/1A situated at Village Navghar, taluka and district Thane in view of the order dated 18/11/2009 passed by this Hon'ble Court in Writ Petition No.441 of 2009;
- c. This Hon'ble Court may be pleased to issue an appropriate writ and/or order and/or direction and direct Respondent Nos.1 to 3 and its officers to delete/cancel/rectify Mutation Entry No.2222 dated 22/12/2015 and Mutation Entry No.2760 dated 02/07/2021 so far as they records existence of scheme u/s. 20 of the ULC Act, from the revenue records of Survey No.153/1 (Old Survey No.392/1) and amalgamated Survey No.153/1A situated at village Navghar, taluka and district Thane and further direct Respondent No.4 to forthwith grant certificate of Transfer of Development Rights ("TDR") to Petitioner No.4 in respect of the Parking Building handed over by Petitioner No.4."

16. Rule is partly allowed in the above terms. There shall be no order as to costs.

(GAUTAM A. ANKHAD, J.)

(SUMAN SHYAM, J.)