

MCHI
Managing Committee
2011 - 2012

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Ajay Ashar - Secretary

(MCHI Thane Unit)

Shrikant Shitole - Secretary

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(MCHI Mira Virar City Unit)

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Mofatraj Munot

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(Late) Lalit Gandhi

(Late) Babubhai Majethia

Ref. No.: MCHI/SEC/11-12/146

November 22, 2011

Shri T. C. Benjamin
Principal Secretary,
Urban Development Dept. (I),
(424M), Mantralaya,
Mumbai - 400 032

Sub.: **ULC Representation by MCHI**

Respected Sir,

Greetings from MCHI!

We thank you for kind courtesy extended to MCHI members on Thursday, 20th October, 2011, at your office.

Our Sr. Counsel, Shri. Anirudh Joshi and our Managing Committee members explained and discussed various issues in reference to ULC. The meeting was extremely positive and you had decided to refer the matter to the Attorney General for his opinion.

In reference to the same we have submitted our representation to your office on 16th November, 2011, (Representation attached for your ready reference).

It is our earnest request to you to push for the same at the earliest as more than 2 lakh affordable homes are jeopardized.

This bold step will help to fulfill joint agenda of MCHI and Govt. of Maharashtra under "Homes for All Committee".

Thanking you,

With respectful regards
For Maharashtra Chamber of Housing Industry

Boman Irani
Hon. Secretary

Encl: ULC Representation



Maharashtra Chamber of Housing Industry

Maker Bhavan - II, 4th Floor, 18, Vithaldas Thackersey Marg, New Marine Lines, Mumbai - 400 020.
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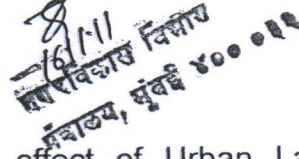
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Ref. No.: MCHI/PRES/11-12/153

November 15, 2011

To,
Shri T. C. Benjamin
Principal Secretary
Urban Development Dept. (I),
(424M), Mantralaya,
Mumbai - 400 032.


16/11
महाराष्ट्र विकास
मंत्रालय, मुंबई ४०० ०३२

Sub: Representation on the effect of Urban Land (Ceiling and Regulation) Repeal Act 1999 (Repeal Act) pertaining to cases where Exemption under Section 20(1) of the Urban Land (Ceiling and Regulation) Act 1976 (ULC Act) has been granted.

Respected Sir,

1. Please refer to the personal discussions we had with your goodself on 20th October 2011 in respect of the actions continued by Government of Maharashtra (GoM) pursuant to the circulars issued by GoM, prior to adoption of the Repeal Act viz. 23rd November 2007 and/or after the Repeal Act viz. 18th March 2009, 2nd July 2010 and 27th November 2010 etc.) under the garb of the Repeal Act from time to time. The said Circulars restrict the development and/or free enjoyment of the lands in respect of which exemption under Section 20(1) of the ULC Act has been granted. The said circulars are creating road blocks in development of lands where earlier exemption under Section 20(1) of the ULC Act was granted for lands for residential, Industrial, agricultural use etc. in the public interest and/or undue hardship to person.
2. The Repeal Act clearly provided for abatement of all proceedings under the ULC Act after the date of adoption of the Repeal Act viz. 28th November, 2007. However, it appears that the GoM is now attempting to revive the principles of the ULC Act by issuance of such circulars.
3. It is necessary to understand the provisions of Sections 3 and 4 of the Repeal Act so as to understand the intent of the Legislature in framing the Repeal Act. Therefore, Sections 3 and 4 of the Repeal Act are reproduced hereunder:



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"3. (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession

of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

4. Now in the light of the aforesaid provisions, it is evident that the Repeal Act is drafted in a way so as to destroy the impact of the ULC Act, completely as far as possible. In fact it clearly provides in Section 4 as to what are the provisions specifically saved. Only the proceedings (which have been initiated under sections 11 to 14 of the ULC Act) are saved specifically and save and except the same all other proceedings stand abated viz. destroyed.
- a. So far as the land which is to be acquired is concerned, the same is dealt with in Section 3 of the Repeal Act which states that in order for a land to be acquired under the ULC, Act two conditions should be concurrently satisfied on the date of adoption of the Repeal Act. These two conditions are:
 - i. Land should have been vested in the Government [Section 10 (3) of the ULC Act]; and
 - ii. The Government should have taken possession of the land [Sections 10 (5) and 10 (6) of the ULC Act].
 - b. Thus if any one of these conditions is not satisfied, the land is to be restored to the land owner. This view is also clarified by the Hon'ble Bombay High Court in the judgment dated 25th July, 2008 in the case of Voltas Ltd. & Anr. V/s. Additional Collector and Competent Authority, Thane and Ors.
 - c. Your goodself will appreciate that the Hon'ble Bombay High Court was pleased to hold against the haphazard action for acquisition, just prior to the adoption of the Repeal Act. It was further held that the said lands would have to be restored to the land owners as such actions were illegal and arbitrary. It is a matter of record that in most of the cases order under Section 10(3) of the ULC Act was passed, but the possession was not taken by the GoM.
 - d. Now, looking at the overall scheme of the Repeal Act, which is drafted in a manner to wipe out the effect of the provisions of the ULC Act, as far as possible, it is clear that what Section 3(1)(b) is attempting to state is that:
 - i. If an exemption is already granted under the ULC Act, the Repeal act will not affect the validity of such exemption. This means that once an exemption is granted, then in no circumstances,

- the land can be acquired by the GoM and even after the repeal the "**exemption**" continues to apply; and
- ii. If any actions are taken in pursuance of Section 20 (1) of the ULC Act, then such actions would not be affected. Now it is extremely important to understand as to which "**actions**" are referred here. It surely cannot be an action which exempts the land as the same is specifically dealt with as stated above. Thus the only actions which are taken are actions whereby certain low cost housing dwellings are developed and handed over to the Government nominees by the developer as per the directions in a order under Section 20 (1). Why is this specifically saved, this is done since if this was not saved, the title of the low cost housing dwellings would not be passed to the Government nominees. Save and except these "**actions**", in a plain interpretation of the Repeal Act, no other actions can be saved, including the actions under, the circulars issued prior to adoption of the Repeal Act and/or after the Repeal Act.
- e. Now assuming without admitting that the legislature had intended to save the entire Section 20(1) and all permissions granted thereunder, the effect would be as follows:
- i. Section 20(1) permission would stand cancelled by the GoM under Section 20(2) in case of breach of conditions of exemption;
 - ii. Thereafter, the draft statement under Section 8(3) would have to be drawn up and after considering the objections and giving hearing to the land owner a final statement of surplus holding would have to be issued under Section 8(4) of the ULC Act.
 - iii. Thereafter proceedings under Sections 10(3), 10(5) and 10(6) of the ULC Act viz. vesting of the Land in the GoM and taking possession thereof by the GoM and thereafter the land would stand acquired by the GoM.
- f. Hence, looking at the absurdity of the consequences of saving the entire Section 20(1) of the ULC Act, it is clear that the intention of the Repeal Act, is not to save the entire Section 20(1) of the ULC Act, but only to save the exemption and actions taken as stated above. In fact

the intention is clear that even the conditions that were mentioned in Section 20(1) order issued under the ULC Act need not be complied any more by the land owner.

5. The GoM has by the said Circulars intending to do is that if the land in respect of which 20 (1) has been granted is sought to be further developed and/or transferred, then a further permission from the GoM will be required to be obtained by the land owner/developer. The directions and/or actions under such Circulars are clearly against the principles of the Repeal Act and the GoM is still trying to enforce the provisions of the ULC Act, through issuance of the said Circulars. Moreover, the said Circulars seem to grant an absolute discretionary power to the GoM to permit or not to permit development of properties where exemptions were granted earlier. There is no basis of consideration on which such permission from the GoM would be rejected or granted. Your goodself will appreciate that these circulars in fact are even worse and more draconian than the ULC Act itself, since in a situation if the GoM does not grant the permission as is contemplated under the said circulars, there would be no remedy available to the land owner/developer, except to approach the Hon'ble Courts.
6. In fact, the said Circulars do not even mention as to under which provision of law the same are issued. It is also pertinent to mention here that the Repeal Act does not empower a GoM to issue such circulars. Thus, the GoM has arbitrarily issued the same without any authority and on an absolute convenient and illogical reading and interpretation of the Repeal Act and is a novel manner of creating further bureaucratic hurdles in development of properties taking aid of laws that do not exist.
7. In the matter of Mohan Gopalrao Mate Vs Principal Secretary and Ors 2009(1) Bom. C.R. 275 and also in the case of Shri Damodar Laxman Navare Vs. State of Maharashtra in Writ Petition No.6300 of 2009, it was held that there is no absolute power vested in the State Government under Sections 20 or 21 or any other provisions of the ULC Act to nullify or cancel the order passed or building permission issued by the Planning Authority under the MRTP Act. Therefore, the GoM cannot issue any circulars or directions which will restrict the powers of the Planning Authority.

8. In the matter of Vithabai Bama Bhandari Vs State of Maharashtra & Anr. 2009(4) Mh. L.J. 693, the Hon'ble Court specifically refused the submission of GoM that by virtue of exemption under Section 20(1) of the ULC Act and withdrawal thereof under Section 20(2) of the ULC Act, the requirement of Section 10 of the ULC Act partakes the nature of the terms of the contract. The Hon'ble Court specifically recorded that such submission is untenable. Therefore, the contention of the GoM that the terms of the exemption order are in the nature of terms of the contract is specifically refused by the Hon'ble Court.
9. During the personal discussed we had, your goodself referred to an order passed in Writ Petition No.5745 of 2009 filed by Mira-Bhayander Builders and Developers Welfare Association against Deputy Collector and Competent Authority, Thane Urban Agglomeration & Ors. The said order has not set out any ratio by considering the provisions of Repeal Act. Therefore, at the highest the said order is an order in the facts of the said particular case. The said order does not discuss and/or refers to the provisions of the Repeal Act and hence, it has not considered the effect of Repeal Act. In any event, the said order is pending before the Hon'ble High Court in a reference.
10. We therefore, request your goodself to kindly consider the effect of Repeal Act and the power to issue said Circulars in view of the above representation and thereafter, necessary steps be taken for withdrawal of such circulars.

Thanking you,

Yours truly,

For Maharashtra Chamber of Housing Industry



Paras Gundecha

President

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