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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9691 OF 2016

1. Bombay Fibre Industries Pvt. Ltd. )  
A Company incorporated under the )  
Companies Act, 1956 and having its )  
registered office at – 601, Commerce )  
House, Nagindas Master Road, )  
Fort, Mumbai 400 001. )
2. Mr. Amit Kothari, )  
Director and shareholder of the )  
Petitioner No. 1 having his office at )  
601, Commerce House, Nagindas )  
Master Road, Fort, Mumbai 400 001 ... Petitioners

Vs.

1. State of Maharashtra, )  
though the office of the Govt. Pleader)
2. The Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai – 400 032 )

3. Additional Collector and )  
Competent Authority, Thane )  
Urban Agglomeration and 8 Km. )  
Periphery of the Greater Mumai )  
Agglomeration, being the )  
Competent Authority under the )  
provisions of the Urban Land )  
(Ceiling & Regulation) Act, 1976 )  
having its office at Collectorate )  
Building, 2<sup>nd</sup> floor, Thane )  
Sub-Divisional Officer, )  
Thane Division, Thane, having his )  
office at then Nagri District – Thane )
4. Mamlatdar, )  
Majiwada, District – Thane, )  
Village Manpada, Thane )
5. Sub-Divisional Officer, Thane )  
Having his office at Nagri, Thane )
6. Circle Officer, )  
Majiwade, District – Thane, )
7. Director of Industries, )  
Having office at Mantralaya, )  
Maharashtra ... Respondents

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Mr. Milind Sathe /w Rajesh Satpalkar, Ms. Paka i/b Mulla & Mulla & Craigie Blunt & Caroe, for the Petitioners.

Ms. Jyoti Jadhav, AGP for the Respondents.

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CORAM : ANOOP V. MOHTA, &  
MANISH PITALE, JJ.

RESERVED ON : NOVEMBER 13, 2017

PRONOUNCED ON : NOVEMBER 16, 2017

JUDGMENT [PER : MANISH PITALE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for the Respondents. By consent of parties, petition is taken up for final hearing.

2. Petitioner No. 1 is a private limited company while Petitioner No. 2 is a Director of the said Company. The grievance raised in this petition is in respect of Mutation Entry No. 813, dated 25<sup>th</sup> May, 2009 wherein it has been recorded that land bearing Gat Nos. 1-1/B, 1/6A, 1/6B and 1/7 of village Manpada, district Thane, admeasuring about 34664 sq. mtrs. is subject to exemption under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 (for

short the “said Act) for industrial user. It is the contention of the Petitioners that in view of order dated 4.4.2003 passed under Section 8(4) of the said Act declaring that the Petitioners did not have vacant land in excess of ceiling limit, earlier exemption order dated 24.4.1980 passed under Section 20(1) of the said Act ceased to exist.

3. Although in the prayer clauses in the petition, Petitioners have also challenged Mutation No. 835 dated 14.1.2010 in respect of the land, a statement is made at the bar on behalf of the Petitioners that the said challenge to Mutation Entry is not being pressed, seeking liberty to challenge the same in appropriate proceedings. Thus, we are concerned only with the challenge in respect of Mutation Entry No. 813 dated 25.5.2009, concerning the remark in the record that the aforesaid land was subject to exemption under Section 20 for industrial user.

4. The facts of the present case, in brief, are as follows:

. Petitioner No. 1 entered into lease-cum-agreement of sale in respect of the said land with the original owner M/s. Hind Dyes Manufacturing Company dated 7.6.1976 and in pursuance of the said

agreement, Petitioner No. 1 has been in possession of the said land since 1976. The proceedings under the provisions of the said Act were undertaken in respect of the said land, and on 29.1.1980 order was passed under Section 8(4) of the said Act by Respondent No. 3 i.e. the Competent Authority under the said Act declaring that an area 21,976 sq. mtrs. was in excess of the ceiling limit. Being aggrieved by the same, the Petitioners filed an appeal before the Collector, Thane. In the meantime, on 24.4.1980, the Jt. Director of Industries (Respondent No. 7 herein) issued an order as a matter-of-course exemption under Section 20 of the said Act, in view of the industrial use of the said land. This order was passed in favour of the original owner in pursuance of the policy of 1977 whereby a matter-of-course exemption was granted to lands that were under industrial use without any inquiry or scrutiny by the office of Respondent No. 7.

5. The appeal filed by the Petitioners before the Collector, Thane against the order dated 29.1.1980 passed by the Competent Authority under Section 8(4) of the said Act was heard, and the Collector on 29.11.1980 allowed the appeal, setting aside the order under challenge, and the matter was remanded back for fresh

adjudication under the provisions of the said Act.

6. It is relevant to mention here that in the meanwhile, the Petitioners have filed Special Civil Suit No. 216 of 1982 in the Civil Court at Thane, seeking specific performance of the aforesaid agreement for sale dated 7.6.1976. The original owner also filed Special Civil Suit No. 23 of 1985 before the Civil Court, Thane seeking cancellation of the said agreement dated 7.6.1976. By separate orders dated 7.11.2001, the Civil Court decreed the suit of the Petitioner while dismissing the suit filed by the original owner. The original owner had filed two separate appeals before this Court, challenging the said orders dated 7.11.2001, which are pending.

7. Thereafter on 4.4.2003 the Competent Authority passed the order of remand of the case under Section 8(4) of the said Act, holding that the original owner did not hold vacant land in excess of the ceiling limit. This order was passed after a detailed inquiry and it was specifically held in para 5 of the said order that the earlier order of exemption dated 24.4.1980 issued as a matter-of-course by Respondent No. 7 had come to an end. This order passed by the

Competent Authority has a crucial bearing on the issue that arises for determination in this writ petition.

8. On 29.11.2007 the Urban Land (Ceiling & Regulation) Act, 1976 stood repealed in the State of Maharashtra, by Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short the “Repeal Act”). The Government Resolution repealing the said Act was published in the Gazette on 6.12.2007. Section 3(1)(b) of the Repeal Act, being a saving clause, specifically provided that repeal under the said Act would not affect validity of any order granting exemption under Section 20(1) of the Principal Act. It appears that on 1.12.2008 the Respondent State Government by its letter addressed to all revenue authorities directed that wherever an exemption order under Section 20 of the said Act had been issued, an entry to that effect should be made in the revenue record. It appears that in pursuance of said direction, Mutation Entry No. 813 was made on 25.5.2009 in respect of the land in question, stating that the land was subject to exemption for industrial user.

9. It is this entry, which is challenged by the petitioners in

the present petition on the basis that in view of order dated 4.4.2003 passed by the Competent Authority under Section 8(4) of the said Act, declaring that the owner did not hold land in excess of the ceiling limit, such Mutation Entry was unsustainable, and that it was required to be corrected.

10. Mr. Milind Sathe, learned senior counsel appearing for the Petitioners submitted that the said Mutation Entry No. 813, dated 25.5.2009 in respect of the subject land was erroneous and that it was required to be set aside.

11. He further contended that in view of order dated 4.4.2003 passed by the Competent Authority under Section 8(4) of the said Act, the earlier order dated 24.4.1980 granting exemption as a matter-of-course under Section 20(1) of the said Act stood cancelled and that therefore, there would be no basis for the said Mutation Entry No. 813 dated 25.5.2009 in respect of the subject land.

12. Ms. Jyoti Jadhav, learned AGP appearing for the Respondents relied upon affidavit dated 10.11.2017 filed on behalf of Respondent No. 3 and submitted that the order dated 4.4.2003 passed



by the Competent Authority under Section 8(4) of the said Act was improper because earlier exemption order dated 24.4.1980 passed under Section 20 of the said Act was passed by Respondent No. 7. It was also contended that exemption under Section 20 of the said Act continued to operate under Section 3(1)(b) of the Repeal Act. She has also relied upon judgment of the Full Bench of this Court in the case of *-Maharashtra Chamber of Housing Industry, Mumbai & Ors, Petitioners Vs. State of Maharashtra & Anr., Respondents*<sup>1</sup>. It is contended that since the exemption order dated 24.4.1980 was passed in respect of subject land, Mutation Entry No. 813 dated 25.5.2009 was sustainable.

13. We have heard the learned counsel appearing for the respective parties, as also perused the documents on record. The question is, as to what is the effect of order passed under Section 8(4) of the said Act by the Competent Authority holding that the original owner does not hold land in excess of the ceiling limit, on the earlier order passed under Section 20 of the said Act. This question was considered by this Court in the judgment dated 7.11.2017 passed in

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1 2014 (6) Mh.L.J. 829

Writ Petition No. 3730 of 2015 (*M/s. Essen Realtors Vs. State of Maharashtra & Ors.*). In that case, the subsequent order passed by the Competent Authority under Section 8(4) of the said Act took note of the earlier order of exemption passed as a matter-of-course under Section 20 by the Jt. Director of Industries, although it did not specifically hold that the exemption order stood cancelled. In that case also it was contended on behalf of the Respondent State that the exemption order under Section 20 of the said Act continued to operate although conceding that in view of subsequent order under Section 8(4) of the said Act holding that owner did not have land in excess of the ceiling limit, the earlier exemption order had become “irrelevant”.

It was held by this Court in the aforesaid case as follows:

“14. In fact, a perusal of the affidavit-in-reply filed on behalf of Respondent Nos. 1 to 3 shows that in paragraph 3 thereof, it has been stated as follows:

“3. I say that thereafter, by order dated 20.07.2005, the return under Section 6(i) was decided under the order under Section 8(4), it was held that the land owner is not in possession of any excess land. Ordinarily, this made the exemption under order under Section 20 unnecessary and irrelevant. However, the Petitioner did not take any steps to get the order under Section 20 set aside.”

Thus, the said Respondents were also clearly aware that

the order dated 20.7.2005 passed by the Competent Authority under the said Act concluding that the original did not hold surplus vacant land in excess of the ceiling limit, rendered the exemption order dated 11.7.1984 under Section 20 the said Act as “unnecessary” and “irrelevant”. Once the said admission is given by the Respondents, it cannot lie in their mouth that the impugned order dated 1.10.2014 was justified, as it was issued on the basis of the exemption order dated 11.7.1984 passed by the Jt. Director of Industries. The only contention raised on behalf of the Respondent – State was that the Petitioner failed to take any steps to set aside the exemption order dated 11.7.1984 and therefore, the impugned order dated 1.10.2014 was justified. But, this contention is unsustainable because in the facts of the present case, a valid exemption order is not in existence, in view of the order dated 20.7.2005 passed by the competent authority under the said Act, holding that the original owner did not hold vacant land in excess of the ceiling limit. It is clear that upon passing of the order Section 8(4) of the said Act holding that the original owner did not hold vacant land in excess of ceiling limit, the exemption order under Section 20 of the Act becomes *non est* and a declaration regarding cancellation of the exemption order is not necessary.”

14. In the present case, the Competent Authority in the subsequent judgment dated 4.4.2003 passed upon remand, under Section 8(4) of the said Act, categorically held that the original owner did not hold land in excess of the ceiling limit. In this order, it was specifically held that the earlier exemption order dated 24.4.1980, passed as a matter-of-course under Section 20 of the said Act by the Jt. Director of Industries, ceased to exist. Therefore, there was a specific

declaration in the present case about the fact that the exemption order stood cancelled and that it ceased to exist. The said order dated 4.4.2003 passed by the Competent Authority under Section 8(4) of the said Act was never challenged and it has attained finality.

15. In this backdrop, Respondent No. 3 is not justified in claiming in its affidavit-in-reply that the order dated 4.4.2003 was improper because it was passed by the Competent Authority under the provisions of the said Act while the earlier exemption order dated 24.4.1980 was issued by the Jt. Director of Industries. The said Respondent is also not justified in claiming that the exemption order dated 24.4.1980 was issued by the Jt. Director of Industries after a detailed inquiry, because as per the policy of 1977, exemption orders concerning the lands put to industrial use, were issued, as a matter-of-course without holding any inquiry. It was only the order dated 4.4.2003 passed by the Competent Authority, which was passed after a detailed inquiry, holding that the owner did not have land in excess of the ceiling limit. Thus, the Respondent No. 3 cannot by way of affidavit before this Court claim that the order dated 4.4.2003 passed under Section 8(4) of the said Act by the Competent Authority, was

not proper.

16. It is also clear that when a valid order of exemption under Section 20 of the said Act does not exist in the present case, reliance placed by the learned AGP on Section 3(1)(b) of the Repeal Act, and the Full Bench judgment of this Court, in the case of *Maharashtra Chamber of Housing Industry, Mumbai & Ors. (supra)*, is wholly misplaced. The saving clause under Section 3 of the Repeal Act would operate only in cases where a valid exemption order under Section 20 of the said Act is existing. In the present case, the subsequent order dated 4.4.2003 passed by the Competent Authority under Section 8(4) of the said Act clearly holds the field whereby it has been held that the owner does not have land in excess of the ceiling limit. Section 20 of the said Act comes into operation when an owner holds land in excess of the ceiling limit, and therefore, in the absence of such a factual position in the present case, there is no question of existence of exemption order under Section 20 of the said Act.

17. Once it is held that exemption order under Section 20 of

the said Act dated 24.4.1980 ceased to exist and it stood cancelled upon Competent Authority passing the order dated 4.4.2003 under Section 8(4) of the said Act, there can be no mutation entry pertaining to the land in question stating that the land is subject to exemption under Section 20 of the said Act for industrial user. Therefore, Mutation Entry dated 25.5.2009 in the revenue record pertaining to the land in question is wholly unsustainable and deserves to be quashed and set aside. In view of above, writ petition is partly allowed as follows:

- (a) The Mutation Entry No. 813 dated 25.5.2009 in respect of land bearing Gat Nos. 1-1/B, 1/6A, 1/6B and 1/7 of village Chitalsar Manpada, district Thane, admeasuring about 34664 sq. mtrs., to the effect that the land was subject exemption under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 is quashed and set aside. Consequently, appropriate correction be made in the revenue record by the Respondents.

- (b) The Petitioners are allowed to deal with the said land and develop the same in accordance with law without any restriction with reference to the provisions of the Urban Land (Ceiling & Regulation) Act, 1976.
- (c) The Petitioners are granted liberty to challenge Mutation Entry No. 835 dated 14.1.2010, in accordance with law, before the appropriate forum.
- (d) Rule is made absolute in the aforesaid terms, with no order as to costs.

Sd/-  
[MANISH PITALE, J.]

Sd/-  
[ANOOP V. MOHTA, J.]

Vinayak Halemth