

(2015) 04 BOM CK 0139

In the Bombay High Court

Case No : Writ Petition No. 6312 of 2010 and Civil Application No. 449 of 2015
in Writ Petition No. 6312 of 2010

Sitabai Ramchandra Lonkar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Bombay General Clauses Act, 1904 — Section 7
Constitution of India, 1950 — Article 14, 19(1)(g), 21, 226, 300-A
General Clauses Act, 1897 — Section 6
Maharashtra Regional and Town Planning Act, 1966 — Section 46
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 10(5), 10(6), 11
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(1)(b), 4

Citation : (2015) 3 ABR 623 : (2015) 5 BomCR 310

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S.G. Karandikar and Manjiri Parasnis, for the Appellant; Sunil V. Manohar, Advocate General and V.S. Gokhale, AGP, Advocates for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—This Petition was listed for final hearing after the notice for final disposal has been issued in this Writ Petition. The Petition relates to the land bearing Survey No. 26/5(Old) corresponding to Survey No. 29/5(New) admeasuring 26800 sq. meters together with House No. 17 admeasuring 353.03 sq. meters constructed thereon situated at Village Katraj, Taluka-Haveli, District-Pune.

2. The Petitioner filed a statement under Sub-section (1) of Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULC Act"). By an order dated 13th August 2002 of the Deputy Collector and Competent Authority No. III, Pune Urban Agglomeration, Pune, passed in exercise of the powers under Sub-section (4) of Section 8 of the ULC Act, it was declared that the Petitioner was holding vacant land admeasuring 14,715 sq. meters in excess of the ceiling limit. The said order was amended by a further order dated 17th December 2004

and it was held that the Petitioner was holding the land admeasuring 13,243.50 sq. meters in excess of the ceiling limit. On an Application made by the Petitioner, an order of exemption dated 2nd February 2005 was passed under Sub-section (1) of Section 20 of the ULC Act by the State Government. The said order of exemption was in relation to the land admeasuring 13243.50 sq. meters (for short "the said land").

3. The case sought to be pleaded by the Petitioner in this Petition under Article 226 of the Constitution of India is that a Draft Development Plan under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") was published on 30th November 2005 and that in the said Draft Development Plan, a substantial portion of the said land was shown as reserved for various public purposes.

4. The Petitioner made a representation dated 31st December 2007 to the Additional Collector and Competent Authority, Pune Urban Agglomeration, Pune (for short "the Competent Authority") pointing out that considering the fact that the substantial portion of the said land was under reservation under the Draft Development Plan, it was not possible for her to implement the terms and conditions of the Scheme under Section 20 of the ULC Act sanctioned under the order dated 2nd February 2005 by making construction of dwelling units. The Competent Authority responded by its letter dated 1st January 2008. The Competent Authority informed the Petitioner to surrender the reserved portions of the said land to the Planning Authority in terms of Clause (11) of the order of exemption dated 2nd February 2005 (for short "the said order") and to implement the Scheme on the balance area. He informed the Petitioner that after surrender of reserved portion of the said land, if nothing remains balance, the prayer made by the Petitioner for cancellation of the said order can be considered.

5. The Petitioner has relied upon the letter dated 12th January 2009 addressed by the State Government to the Competent Authority by which the Competent Authority was called upon to submit its remarks on the Application submitted by the Petitioner to the State Government. By the letter dated 3rd February 2009, the Pune Municipal Corporation (Planning Authority) called upon the Petitioner to surrender the reserved portions of the said land shown in the Draft Development Plan. The said requisition was made on the basis of the letter dated 1st January 2008 addressed by the Competent Authority.

6. The Petitioner made a representation dated 11th February 2009 to the Principal Secretary of the Urban Development Department of the State of Maharashtra. In the said representation, it was contended that 95% of the said land was under reservation and on account of repeal of the ULC Act, even the order under Sub-section (4) of Section 8 of the ULC Act cannot be modified. The Petitioner offered to pay market value of 5% area required to be handed over to the State Government as per the said order. The Petitioner requested that subject to payment of the market value, the said order and the Scheme sanctioned under the said order be cancelled. The Petitioner informed the Pune

Municipal Corporation that as the representation made by her was pending with the State Government, no steps should be taken by the Municipal Corporation. Thereafter, further correspondence was made by the Petitioner with the State Government. On 17th June 2009, the Competent Authority addressed a letter to the Additional Secretary of the Urban Development Department. In the said letter, it was observed that the Draft Development Plan is not yet sanctioned. It was stated in the said letter that the possibility of modification of the reservations under the Draft Development Plan while sanctioning the same cannot be ruled out. The Competent Authority requested the State Government to take appropriate decision on the question of the acceptance of the market value from the Petitioner in respect of 5% of the area for permitting the Petitioner to implement the Scheme on the balance area. The State Government by letter dated 20th July 2009 informed the Competent Authority that appropriate decision can be taken only after the Draft Development Plan is sanctioned. Thereafter, the Petitioner made representations to the Hon''ble Chief Minister, State of Maharashtra.

7. The first prayer in this Petition is for setting aside the order passed under Sub-section (4) of Section 8 of the ULC Act and for setting aside the said order by which the exemption was granted under Section 20 of the ULC Act. The second prayer is for a declaration that all the proceedings initiated under the ULC Act in respect of the said land stood abated on 29th November 2007 in view of the Repeal Act.

8. Shri Bhanudas Pandurang Gaikwad, Deputy Collector and Competent Authority, Pune Urban Agglomeration, Pune, (the Competent Authority) filed an affidavit dated 12th October 2010. In the said affidavit, it is stated that only after finalization of the Development Plan, an appropriate decision will be taken. It was contended that the Petitioner is bound to implement the said order. The Petitioner filed a rejoinder dated 2nd November 2012 by contending that now the Development Plan has been sanctioned and the reservations on the said land have been confirmed. Therefore, she contended that it is impossible to implement the said order and the scheme sanctioned thereunder.

9. There is a further affidavit filed by Shri Subhash Ramchandra Dharmadhikari, the Competent Authority. In the said affidavit, it is contended that after taking into consideration the reservation for shopping centre, vegetable market, parking, fire brigade, public housing, 18 meter wide link road etc., an area of 3035.90 sq. meters will remain with the Petitioner on which the scheme can be implemented. There is an additional affidavit filed by Shri Subhash Ramchandra Dharmadhikari on 28th January 2015. In the said affidavit, it was reiterated that the scheme can be implemented on the balance area of 3055.90 sq. meters. It was contended that the Government of Maharashtra has already accorded sanction for modifying the said Scheme vide letter dated 14th January 2015.

10. Civil Application No. 449 of 2015 has been taken out by the State Government seeking permission of this Court to modify the said order.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. The learned counsel appearing for the Petitioner submitted that the stand of the Competent Authority that the area of 3055.90 sq. meters is available for development is completely erroneous. He pointed out that practically, no part of the said land will remain available for development in the light of the reservations under the sanctioned Development Plan. He submitted that thus the said order is not capable of being implemented. He relied upon a decision of the Apex Court in the case of Her Highness Maharani Shantidevi P. Gaikwad Vs. Savjibai Haribai Patel and Others etc. etc., AIR 2001 SC 1462 : (2001) 4 JT 43 : (2001) 2 SCALE 647 : (2001) 5 SCC 101 : (2001) 2 SCR 590 : (2001) AIRSCW 1240 : (2001) 2 Supreme 516 . He relied upon the various Paragraphs of the said decision including Paragraph Nos. 37 and 41. He invited the attention of the Court to another decision of the Apex Court in the case of T.R. Thandur Vs. Union of India (UOI) and Others, AIR 1996 SC 1643 : (1996) 4 JT 14 : (1996) 3 SCALE 322 : (1996) 3 SCC 690 : (1996) 1 SCR 26 Supp . He invited our attention to the majority view in the decision of the Full Bench of this Court in the case of Maharashtra Chamber of Housing Industry Vs. State of Maharashtra, (2014) 6 ALLMR 720 : (2014) 6 BomCR 247 : (2014) 6 MhLj 829 . He urged that the decision of the Full Bench holds that the power under Sub-section (2) of Section 20 of the ULC Act can be exercised even after the Repeal of the ULC Act with effect from 29th November 2007. He urged that the power to modify a Scheme under Section 20 of the ULC Act is distinct from the power to revoke or cancel the Scheme. Inviting our attention to the provisions of the Repeal Act, he urged that the power to modify the Scheme under Section 20 of the ULC Act is not saved. He placed heavy reliance on the decision in the case of T.R. Thandur. He, therefore, urged that as the Scheme under the said order is incapable of being implemented and as there is no power to modify the Scheme, the State Government cannot take recourse to the provisions of Chapter III of the ULC Act after its repeal. He urged that even if this Court passes an order quashing the Scheme on the ground that it was never capable of being implemented, the Chapter III of the ULC Act cannot be invoked inasmuch as even going by the decision of the Full Bench, the same can be invoked only when there is an order made by the State Government under Sub-section (2) of Section 20 of the ULC Act.

SUBMISSIONS OF THE ADVOCATE GENERAL

12. The learned Advocate General urged that the Petitioner has come out with the case that the Scheme is incapable of being implemented only after the repeal of the ULC Act. He submitted that the Petitioner has not even attempted to start the development work by complying with the terms and conditions of the said order. He submitted that the grievance that the Scheme is incapable of being implemented is an after-thought which is being agitated for the first time after the repeal of the ULC Act.

13. He invited our attention to what is held by the Full Bench of this Court in the

case of Maharashtra Chamber of Housing Industry. He urged that the Full Bench has held that the powers of the State Government which are incidental and ancillary to the power to exempt can be exercised even after the repeal. He urged that the Full Bench has held that the power of the State Government to withdraw the exemption granted under Section 20 of the ULC Act has been saved and, therefore, the State Government can always exercise a lesser power of the modification of the Scheme after the repeal. He pointed out that the Full Bench has held that Section 3 of the Repeal Act is consistent with the applicability of Section 6 of the General Clauses Act, 1897. He, would, therefore, urge that the State Government retains the power to modify the Scheme under Section 20 of the ULC Act even after the repeal of the ULC Act. He, therefore, submitted that the Writ Petition be dismissed while holding that the State Government has power to amend the Scheme.

14. The learned counsel appearing for the Petitioner for countering the submissions of the learned Advocate General, relied upon a decision of the Apex Court in the case of Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, AIR 2000 SC 811 : (2000) 68 ECC 1 : (2000) 119 ELT 257 : (2000) 1 JT 453 : (2000) 1 SCALE 369 : (2000) 2 SCC 536 : (2000) 1 SCR 518 : (2000) AIRSCW 364 : (2001) AIRSCW 2399 : (2000) 1 Supreme 412 .

CONSIDERATION OF SUBMISSIONS

15. We have carefully considered the submissions. Section 20 of the ULC Act reads thus:

"20. Power to exempt.--(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,--

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions

subject to which any exemption under clause (a) or clause (b) of subsection (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

16. The ULC Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Repeal Act"). The Repeal Act came into force in the State of Maharashtra with effect from 29th November 2007. Sections 3 and 4 of the Repeal Act read thus:

"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 authorized by the State Government in this behalf or the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken there under, 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 authorized 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 authorized by the State Government in this behalf or by the competent authority."

17. It will be necessary to make a reference to the relevant conditions incorporated in the said order by which the Scheme under Section 20 of the ULC Act was sanctioned. Clauses 1, 4, 11, 20, 23 and 26 of the said order are relevant, which read thus:

"1) The land exempted under this exemption order shall be used for the purpose of providing plots and flats in accordance with the terms and conditions of this exemption order. Any change made in the use of land shall amount to breach of these conditions.

4) The holder shall advertise the entire scheme within six months from the date of sanction of the order in at least two local news paper giving full details of the scheme including the area and the final selling price for the tenements for plinth and carpet area specifications, location, terms and conditions of the allotment of tenements in accordance with Maharashtra Ownership Flat Act 1963. He shall send copies of the advertisement to the Competent Authority within one week from the date of publication of the advertisement.

11) The land under development plan reservation prescribed by the local authority in a layout for various public amenities as well as the internal roads (wherever they are to be transferred as per the local authorities Rule) shall be transferred by the said persons to Government the Municipal Authorities without charging any consideration either before the work is actually commenced or at a later date as will be prescribed in this regard. No commencement certificate shall be obtained unless the land under reservation etc is actually handed over to the government/Municipal Authorities if it is so prescribed internal roads shall be brought up to the standard laid down by the Municipal Corporation/Council before they are transferred.

20) When any such exemption is withdrawn or deemed to be withdrawn for the breach of conditions, the provisions of the Chapter III of the said Act shall apply to the lands as if the land had not been exempted under this order, and Competent Authority or State Government would be empowered to acquire such land with buildings thereon under the provisions of section 10 of the Urban Land (Ceiling and Regulation) Act, 1976.

23) The exemption granted under section 20 of the said Act will be deemed to have been withdrawn for such vacant land which have not been built upon. If any, when such exempted lands are required for any Government organization in the public interest.

26) The State Government and C.A. reserves the right to alter any of the conditions prescribed herein."

18. The Clause 6 of the Schedule "A" to the said order provides for total number of tenements to be constructed. Clause (6) gives the number of tenements to be constructed of different sizes by specifically stating that the same will be subject to the approval of the Planning Authority. As noted earlier, the Draft Development Plan was published on 30th November 2005. Thus, the Draft Development Plan was published after the expiry of the period of nine months from the date of the said order. It is not the case of the Petitioner made out in this Petition that during the said period of nine months, even an Application was made by the Petitioner for a grant of Development permission. As per the Clause (5) of the said order,

the Petitioner was required to first commence on priority the development of the Component "A" as specified in the Schedule "A" to the said order. The said component "A" was of Site and Services, Core Houses and Single Tenements. The construction was to be completed within a period of one year from the date of the exemption order. Thus, construction of Component "A" was to be commenced on or before 1st February 2006. The construction was to be completed within a period of three years from the date of the said order. It is not even the case of the Petitioner that an Application for grant of development permission was made and within one year, commencement of construction was to be made. The grievance regarding substantial part of the said land being covered by the proposed reservations was made for the first time on 31st December 2007 by the Petitioner by addressing a letter to the Competent Authority. Thus, the said grievance was made for the first time after the Repeal Act came into force in the State. Even the said letter does not record that till 30th November 2005, any steps were taken by the Petitioner to obtain a Development permission. In the said letter, the Petitioner applied for cancellation of the said order granting exemption. In the subsequent representation, the Petitioner offered to pay market value of 5% Component to be handed over to the State Government. Thus, there was an inaction on the part of the Petitioner for taking steps for implementation of the said order till 30th November 2005. The submission of the learned Advocate General is that this conduct of the Petitioner will have to be considered in the light of the fact that the Petitioner has invoked equitable and discretionary power of this Court under Article 226 of the Constitution of India. As stated earlier, the contention regarding impossibility of the implementation of the said order was raised only after the Repeal Act came into force. The Repeal Act came into force after a lapse of 2 years and 9 months from the date of the said order granting exemption. However, we must note here that when the Draft Development Plan was published, the time provided under the said order to commence construction had not expired.

19. As far as the reservation under the Draft Development Plan and the sanctioned Development Plan is concerned, the stand of the Competent Authority is that out of the total area of the said land of 13243.50 sq. meters, an area of 3055.90 sq. meters is available for development. By a letter dated 14th January 2015, the State Government permitted the modification of the said order granting exemption under Section 20 of the ULC Act. That is the reason why the Civil Application was made by the State Government seeking modification of the Scheme.

WHETHER POWER TO MODIFY A SANCTIONED SCHEME UNDER SECTION 20 OF THE ULC ACT CAN BE EXERCISED AFTER REPEAL:

20. Now, it will be necessary to make a reference to the decision of the Full Bench of this Court in the case of Maharashtra Chamber of Housing Industry, Mumbai. We are considering the majority view of the Full Bench of this Court. The Question Nos. 1 to 4 formulated by the Full Bench read thus:

"(1) Does section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 read with section 6 of the General Clauses Act, 1897 read with section 7 of the Bombay General Clauses Act, 1904 save the orders of exemption including all terms and conditions thereof passed under section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 and all actions taken thereunder?

(2) Whether, section 6 of the General Clauses Act, 1897 read with section 7 of the Bombay General Clauses Act, 1904 apply to the repeal of the Principal Act by the Repealing Act, 1999?

(3) Whether in view of section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and the Bombay General Clauses Act, 1904:

(a) the order of exemption including all its terms and conditions under section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 can be continued and enforced in accordance with the provisions of the Principal Act;

(b) all remedies and proceedings in respect of the order of exemption including all its terms and conditions may be instituted, continued and enforced?

(4) Whether in view of the repeal of the Principal Act by the Repeal Act, the Government of Maharashtra can:

(a) recall/cancel/modify the exemption order granted either under section 20 of the Principal Act;

(b) enforce circulars for implementation of exemption orders issued under section 20 of the Principal Act prior to the repeal of the Principal Act;

(c) acquire the land by issuing notification under section 10(3) of the Principal Act; and

(d) take any action of whatsoever nature on account of noncompliance/breach of exemption order issued under section 20(1) of the Principal Act?"

(Emphasis supplied)

21. It will be necessary to consider what is held by the majority judgment of the Full Bench. In Paragraph 54, the Full Bench held thus:-

"54. The validity of exemption order is saved so as to ensure that the same serves the purpose for which it is granted. If that is what the Legislature had in mind, then, it is futile to suggest that the Legislature has left unaffected by repeal only the validity of the exemption order, but not its conditions. The argument that the conditions on which the exemption order is based or passed are no longer valid, but it is only the exemption order whose validity is saved, is required to be stated only for being rejected. While canvassing such an argument the counsel lost sight of clause (c) of subsection (1) of section 3 of the Repeal Act. If as a condition for grant of exemption any payment has to be made to the

State Government, then, the repeal of the Principal Act was not to affect such payment or condition under which the same is made. The insertion of the words "as a condition for granting exemption" in clause (c) of sub-section (1) of section 3 would demonstrate the legislative intent. If the payment made to the State Government as a condition for granting exemption and which may be incorporated in the exemption order is saved, then, there is no warrant to exclude from the provision in question the validity of other conditions in the exemption order. The entire order of exemption together with the conditions subject to which it has been granted is thus saved. That is because the Legislature was aware that the Principal Act was a social legislation. That its misuse and abuse by some sectors resulting in laudable social objective being not achieved that its repeal was necessitated. However, despite the repeal the validity of the exemption order or any action taken thereunder and notwithstanding anything to the contrary in any order of the Court has been expressly saved. That could never have been inserted and merely to save the validity of the exemption order on paper. The validity of the order is saved so as not to affect the legal consequences of such valid order. To save them and the order as a whole together with the conditions incorporated therein that section 3(1)(b) and (c) has been inserted in the Repeal Act. By that the State's powers incidental and ancillary to the power to exempt can thus, be exercised and despite the repeal. The exemption order, validity of which has been saved, can, therefore, be enforced, so also, its terms and conditions. These terms and conditions may have been incorporated simply to reaffirm that the power to exempt which is conferred in the highest executive functionary in the State, namely, Government is presumed to be exercised for public good and in public interest. The exercise of such powers is, therefore, presumed to be bona fide and for achieving the object and purpose for which it is conferred. It is with these presumptions and which were always present to the Legislature that the validity of exemption order has been saved. Having said that and also saving the payment or monetary aspect related to the exemption, it was not necessary for the Parliament to then spell out separately all the legal consequences flowing from such valid order. Even otherwise, that there is no intention contrary to what is spelled out by section 6 of the General Clauses Act is, therefore, apparent. There is no substance in the argument of the Petitioners that only the exemption order is saved, but not its terms and conditions and further by not referring to sub-section (2) of section 20 the State's power to withdraw the exemption is taken away by repeal of the Principal Act. The argument is that the power to withdraw the exemption in terms of section 20(2) of the Principal Act conferred in the State cannot be exercised because of repeal of the Principal Act. This argument is premised on the fact that once the State Government withdraws the exemption order the only consequence could be that the excess vacant land vests in the State under section 10(3) of the Principal Act and that vesting cannot take place after repeal of the Principal Act."

(emphasis added)

22. In Paragraph 56, the Full Bench proceeded to observe as under:

"So long as the exemption order is in force to protect its validity despite a contrary Court order a saving provision in the Repeal Act will have to be inserted. The Legislature was aware that not only the terms and conditions of the exemption order need to be enforced, but if that order is acted upon by parties the validity as a whole must be saved. That needs to be saved so as to enable the State Government to apply the provisions of Chapter-III to the excess vacant land covered by the exemption order and the terms and conditions after it is noticed that the exemption is either misused or misutilized or not acted upon so as to subserve the larger public interest. A breach or violation of some of its vital conditions may result in its withdrawal and cancellation. If one way of applying Chapter-III is by withdrawing the exemption order, then, the power to withdraw the same which is implicit and inherent in the power to grant exemption is also saved and not affected by repeal of the Principal Act. That is because the vacant land held by a person is undisputedly in excess of ceiling limit. The power to exempt is exercised when a person holds the vacant land in excess of ceiling limit. That such power can be exercised even after declaration under section 10(3) of the Principal Act is further undisputed."

(emphasis added)

23. As regards the exemption under Section 20 of the ULC Act, in Paragraph 63, the Full Bench observed thus:

"63. Once this legal position is noticed we do not see as to how absence of sub-section (2) of section 20 of the Principal Act in clause (b) of sub-section (1) of section 3 of the Repeal Act would enable us to hold that the power to withdraw the exemption is not saved. It is possible that the power to withdraw the exemption may not be exercised in every case. However, when the State exercises the power to exempt the vacant land in excess of ceiling limit and which has already vested in it, then, there is no impediment in withdrawing the exemption from applicability of Chapter-III of the Principal Act in the case of such lands. The legal position, therefore, cannot be otherwise than what is held in the decisions of the Honourable Supreme Court and referred by us above and both of which have been rendered after the judgment in the case of T.R. Thandur Vs. Union of India (UOI) and Others, AIR 1996 SC 1643 : (1996) 4 JT 14 : (1996) 3 SCALE 322 : (1996) 3 SCC 690 : (1996) 1 SCR 26 Supp . The argument of the learned Senior Counsel is that it would be inconsistent and contrary to the legislative intent if we hold that the power to withdraw the exemption conferred vide section 20(2) of the Principal Act is saved despite the repeal. That would mean that possession of such lands can be taken post vesting and that is permissible even after repeal of the Principal Act. The argument is that it would be incongruous and even absurd to hold that the power to take possession conferred vide section 10(5) and 10(6) of the Principal Act is saved despite repeal of the Principal Act. It is urged that same would make clause (a) of sub-section (1) of section 3 of the Repeal Act wholly redundant and even

meaningless. We must at once clarify that clause (a) of subsection (1) of section 3 of the Repeal Act is not dealing with only exempted lands. It is dealing with all excess vacant lands and which are subject-matter of the declaration under section 10(3) of the Principal Act. Their vesting will not be affected only if possession thereof is taken. Thus, clause (a) itself clarifies that the vesting of such lands would not be affected by repeal if their possession is taken. That only means that the Legislature was fully aware of the legal consequences of declaration under section 10(3) of the Principal Act. That provides for deemed acquisition of the excess vacant land and their vesting in the State free from all encumbrances. They vest accordingly, but since possession thereof has not been taken that the Repeal Act enacts a provision whereunder these lands can be restored to any person provided he complies with sub-section (2) of section 3 of the Repeal Act. In the case of the lands which are subject-matter of a valid exemption order and validity of which is not affected even by any Court's order to the contrary and equally any action taken thereunder is not affected by repeal of the Principal Act and is saved though the same may not have been upheld by the Court, then, the intent and purpose is not to allow any person holding the excess vacant land and which is already vested in the State to escape the legal consequences resulting from the order of exemption. If that order is passed in order to sub-serve public interest and to uphold it and to relieve undue hardship, then, such an order of exemption which may be conditional visits the person with consequences. It is not an absolute right or privilege as is claimed. It may be a conditional exemption. It may allow the person to use the land for the stated purpose, but that is not relieving him or the land from the condition or obligation imposed by Law and equally any liability. It is not an advantage or benefit, if at all, which could be enjoyed absolutely. It is to fulfil the object or purpose of the user and to act in public interest or to avoid undue hardship. The applicability of Chapter III being expressly admitted, but seeking to avert the consequences of such applicability in exceptional circumstances that the request to exempt is considered and granted. The power in that behalf is to be exercised sparingly and as an exception. It is not a rule. It is a corresponding right of the State and to be exercised to uphold larger Public Interest. Thus, it is not a one sided right or privilege. It is not relieving the person from the legal consequences of the power to exempt and more so, if it is a conditional order. It is to safeguard public interest that such power is exercised and in a given case conditionally. If relieving somebody on account of his hardship or exempting the vacant land for a specific purpose by holding in abeyance the applicability of provisions of Chapter-III is the aim, then, that person cannot claim benefit or advantage in himself much less in absolute terms. It is a relief granted to relieve him from undue hardship caused by applicability of the provisions of Chapter-III. If that power under clause (b) of subsection (1) of section 20 is exercised subject to such conditions, as can be imposed by the State bearing in mind the object and purpose of the Principal Act and if they are specified in the order, then, that can hardly be said to be an absolute right or privilege. That is a relief together with or appended with an obligation and liability. If that is incurred at the time of

exercise of power of exemption, then, the Government can very well enforce the power to exempt by withdrawing the said order and equally without withdrawing it enforce the terms and conditions therein despite the repeal. It is for that purpose that clause (b) of sub-section (1) of section 3 is enacted. That is also recognition of the legal position that by exempting something from the provisions of an Act it is always understood that one is subjected to the Act or law. It is applicable but the exemption means one does not suffer the legal consequences so long as the exemption is operative."

(Emphasis supplied)

24. In Paragraph 64, the majority Judgment deals with the issue of non-compliance and the breach of terms and conditions in an order granting exemption under Section 20 of the ULC Act. The Full Bench held thus:

"64. The Legislature was aware that the excess vacant land may have been exempted bearing in mind its location and the purpose for which it is being used or proposed to be used. Clause (a) of sub-section (1) of section 20 is the power to exempt the excess vacant land from applicability of the provisions of Chapter-III and same is exercised because it is necessary and expedient in public interest to do so. Therefore, it is futile to urge that a person holding any vacant land in excess of ceiling limit derives advantage or benefit when such power is exercised by the State qua the excess vacant land or vacant land in excess of the ceiling limit, more so conditionally. Once the nature of the power is borne in mind, then, we do not see how repeal of the Principal Act will not save, but will affect the exercise of all powers and as we have held above which are incidental and ancillary to the main power of granting exemption. Thus, the conclusion can be reached and safely that the State exempts the vacant land in excess of ceiling limit from applicability of Chapter-III of the Principal Act in public interest in terms of clause (a) or bearing in mind the undue hardship caused to the person holding it exempts it from applicability of the same Chapter and in both events if the power is exercised also to pass a conditional order or grant conditional exemption, then, the right, if any, created in relation to such land in favour of the person holding it is not absolute and it is conditional upon fulfilment of the obligations and liabilities attached to it. If these conditions are not satisfied, but rather breached and violated, then, the State's power to withdraw the exemption survives the repeal of the Principal Act in all cases including where the power to exempt under section 20(1) of the Principal Act is exercised post vesting of the lands in the State. It will also survive in those cases where the power is exercised so as to exempt the excess vacant land in terms of the same provision, but in relation to which the unconditional or conditional exemption order is still in force and not withdrawn. In either events the State can proceed despite repeal of the Principal Act because that power of the State survives the repeal. That power survives because despite the repeal the State can enforce the exemption orders as the persons holding such lands do not derive or get an absolute right or advantage or benefit and that is subject to the liabilities and

obligations incurred by them. These survive the repeal of the Principal Act because had the intent was not to so protect or save, the Parliament would not have saved the validity of the exemption order or any action taken thereunder. Any action taken thereunder is also valid together with the exemption order more so if the action contemplates ensuring compliance with certain terms and conditions of the exemption order such as obtaining open spaces and amenities for the public, dwelling units so as to sub-serve larger public interest. We cannot and do not intend to exhaust the power of the State to enforce its order passed under section 20(1)(a) and (b) of the Principal Act in the light of the Repeal Act. Further, the nature and ambit of the conditions may be such that their non-compliance and breach, beyond a certain period and intentionally would visit the person with either withdrawal of the exemption itself or any other penalty/damages in addition to complying with the terms and obligations. Such obligations, liabilities and conditions voluntarily incurred and invited cannot be said to be invalid or inoperative. They bind the parties. If the State can call upon the person concerned to handover the tenements and units meant for either weaker section or its nominees to it or to comply with other such obligation and liability by legally permissible modes of compliance, then, all such steps and measures survive the repeal and can be initiated and taken to their logical end.

(emphasis added)

25. In Paragraphs 90 and 91, the Full Bench held thus:

"90. For the reasons that we have set out hereinabove it will not be possible to accept any of these contentions. Firstly, as understood in the case of clause (a) of section 20(1) of the Principal Act the exemption is granted qua the excess vacant land and bearing in mind the factors and circumstances indicated therein. Secondly, it is an exemption granted in public interest and to sub-serve it. Thirdly, even if the exemption is granted under clause (b) of section 20(1) that is to relieve the undue hardship. Under both clauses the exemption order could be conditional. If the validity of the exemption order together with the conditions is saved and equally any action taken thereunder, then, it will not be proper to hold that the exemption order and conditions therein cannot be enforced by recourse to the Principal Act. That is because if the exemption is a right as is claimed, then, it is conditional. It is a right accrued, but the conditions subject to which that right accrues cannot be ignored. Those conditions are linked to the right and privilege acquired or accrued. If that condition is in the nature of obligation or liability attached to the privilege or right, then, a different intention not being spelled out that is saved despite the repeal. The reasons, therefore, indicated above would take care of these submissions of the learned Senior Counsel appearing for the Petitioners and are enough to reject them.

91. If an intention was to the contrary as urged by the learned Senior Counsel for the Petitioners, then, there was no need for the Parliament to have save the validity of any exemption order under sub-section (1) of section 20 of the Principal Act or any action taken thereunder and declare the same to be not

affected by repeal of the Principal Act notwithstanding any judgment of any Court to the contrary. There may have been cases before repeal of the Principal Act in which there was challenge to the exemption orders or to the conditions thereunder. Some of these challenges may have succeeded. The validity of the exemption order may have been put in issue and even such pronouncements of the Court may affect the order granting exemption or any action taken thereunder. Now, because of section 3(1)(b) of the Repeal Act, it is apparent that the order or condition or action is not invalid. It is declared to be valid by the Repeal Act and, therefore, the repeal of the Principal Act was not to affect the validity of such an order. In other words during subsistence of the Principal Act and when it was in force the exemption order or condition thereunder or any action taken thereunder may have been declared invalid by a Court of law. Now, notwithstanding any judgment of any Court to the contrary the validity of exemption order is saved. That is saved expressly so as to not take away its legal effects. The intent is not to affect adversely the legal consequences flowing from such valid order. Hence, far from manifesting or demonstrating a contrary intention, section 3 of the Repeal Act is consistent and in consonance with the applicability of section 6 of the General Clauses Act.

(emphasis added)

26. In Paragraph 135, the majority judgment has summed up the law laid down. The Clauses (a) to (g) of Paragraph 135 read thus:

"(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.

(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 subsection (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."

(emphasis supplied)

27. Thus, the majority view in so many words holds that after the repeal of the ULC Act, the Repeal Act not only saves the validity of the orders granting exemption under Section 20 of the ULC Act, but all consequences must follow and even the power to withdraw the exemption can be exercised by the State Government in accordance with law. It is specifically held that the power to withdraw and equally all ancillary and incidental powers to the main power to impose conditions are also saved and survive the repeal. The power to enforce the conditions on which exemption is granted under Section 20 has been saved. It follows that the ancillary and incidental power to the main power to impose conditions in the order granting exemption will include a power to modify the terms and conditions and the power to modify the order granting exemption. In any event, as held by the full Bench, notwithstanding the repeal, the power to enforce the terms and conditions is also retained. Therefore, if an order under Sub-section (1) of Section 20 incorporates a condition that the order or the terms and conditions can be modified, even the said clause can be enforced by making modification of the terms and conditions after repeal. While deciding this Petition, the majority view of the Full Bench binds this Court. As the Full Bench holds that the power to withdraw the exemption survives the repeal, it is obvious that a lesser power of modification of the terms and conditions incorporated in the said Scheme or a lesser power of withdrawal of the exemption in respect of a part of the land subject matter of exemption can be exercised. The nature and the extent of the exercise of the power will depend on the fact situation in each case.

CONSIDERATION OF THE FACTS OF THE CASE AND THE CONCLUSION:

28. In the present case, in clause 20 of the said order, the right of the State Government and the Competent Authority to alter any of the conditions

incorporated therein has been specifically reserved. Therefore, the said condition can be enforced by exercising the power of modification. Hence, we uphold the contention of the learned Advocate General. However, the power can be exercised only after an opportunity of being heard is granted on the proposed modification to all those who are likely to be affected by the proposed modification. The modification can be opposed on all permissible grounds including the ground of an inordinate delay.

29. Now we come back to the facts of the case. Clause (11) of the said order provides that the land under Development Plan Reservation prescribed by the Local Authority in a layout for various public amenities as well as the internal roads shall be transferred by the owner to the Government and Municipal Authorities without charging any consideration either before the work is actually commenced or at a later date as will be prescribed in this regard. Thus, when the said order granting exemption was issued, the Petitioner was aware that in the event any portion of the land is reserved, the same will have to be surrendered by her to the State Government or the Planning Authority, as the case may be, free of cost. The Petitioner accepted the order of exemption with the knowledge that in the eventuality of any portion of the said land being reserved, she will have to surrender the same and notwithstanding the surrender, she will have to implement the Scheme.

30. Even going by the stand taken by the Competent Authority in his last affidavit, out of the total area of the said land admeasuring 13,243.50 sq. meters, only an area of 3055.90 sq. meters can be used for the implementation of the said Scheme. The Petitioner has disputed the said contention and has come out with the case that the area available for development is not even 3055.90 sq. meters. However, we cannot go into the said disputed question of fact in this Petition. However, we cannot ignore that even as per the stand of the Competent Authority, the area available for development is only 3055.90 sq. meters. It is also not disputed that the reservation as provided on the said land in the draft Development Plan has been incorporated in the sanctioned Development Plan. Going by the case of the Competent Authority, an area of 10,187.60 is under reservation out of the total area of 13,243.50 sq. meters.

31. It is true that the contention regarding impossibility of implementation of the said order was raised belatedly by the Petitioner. However, it is necessary to consider Section 46 of the MRTP Act which reads thus:

"46. Provisions of Development plan to be considered before granting permission:-The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposals,] [published by means of notice] [submitted] or sanctioned under this Act."

32. Thus, as of 30th November 2005, considering the reservations proposed under the draft development Plan, the Planning Authority could not have permitted the development save and except on the area of approximately

3055.90 sq. meters. Therefore, the Petitioner could not have commenced the construction on the substantial portion of 10,187.60 sq. meters out of the said land admeasuring 13,243.50 sq. meters. The Petitioner had time available up to 1st February 2006 to obtain development permission and to commence construction. The Petitioner may not have done anything till 30th November 2005. But she had time upto 1st February 2006 to obtain development permission and to commence construction. Thus, to the extent of the said area under proposed reservation as on 30th November 2005, it cannot be said that the Petitioner has committed a breach of the terms and conditions on which the exemption was granted. That is the reason the stand of the State as reflected from the correspondence annexed to the Petition and the affidavits is that no decision can be taken on the representations of the Petitioner till the sanction of the Development Plan as there is some possibility that the reservations may be deleted while sanctioning the Development Plan. Moreover, the State Government never took a stand that the Petitioner has committed any breach of the terms and conditions. Perhaps the State was aware of the legal implications of the reservations in the Draft Development Plan. In fact the State Government has accepted that the said order as it stands today cannot be implemented. Hence, a decision has been taken by the State to modify the said order. As held earlier, the State can modify the said order. However, the power of withdrawal of the exemption in relation to the said area shown reserved (minimum 10,187.60 sq. meters) in the Draft Development Plan as on 30th November 2005 cannot be exercised as the Petitioner could not have developed the reserved portion.

33. The stand taken on oath by the State Government is that the State Government is of the view that the Scheme can be implemented only on the area of 3055.90 sq. meters. We have held that the State Government retains the power to modify the terms and conditions of the said order granting exemption under Section 20 of the ULC Act even notwithstanding the applicability of the Repeal Act. As the State Government intends to exercise the power of modification, the relief of cancelling or setting aside the said order cannot be granted at this stage. We must note here that the order under Sub-section (4) of Section 8 of the ULC Act has become final and, therefore, the prayer for setting aside the said order will have to be rejected.

34. None of the decisions relied upon by the learned counsel appearing for the Petitioner assist him in support of his submission that the power to modify the said order granting exemption under Section 20 of the ULC Act cannot be exercised after the Repeal of the ULC Act. The Full Bench has elaborately considered all the decisions relied upon by the Petitioner. The decision of the Full Bench is against the Petitioner on the said aspect.

35. Hence, we dispose of the Petition by passing the following order:

ORDER:

(a) The prayer for setting aside or cancelling the order under Sub-section (4) of

Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 dated 13th August 2002 as modified on 17th December 2004 is hereby rejected;

(b) We hold that the State Government is not entitled to withdraw the order of exemption as regards the area shown under the proposed reservation as on 30th November 2005 out of the land admeasuring 13243.50 sq. meters by exercising the power under Sub-section (2) of Section 20 of the ULC Act;

(c) We hold that notwithstanding the Repeal of the ULC Act, the State Government retains the powers to modify an order granting exemption under Section 20 of the ULC Act including the power to modify the terms and conditions incorporated in the said order;

(d) It will be open for the State Government to modify the said order dated 2nd February 2005 in accordance with law;

(e) We, however, direct that the State Government shall not exercise the said power without giving a reasonable opportunity of being heard to the Petitioner on the proposed modification;

(f) It follows that the Petitioner shall be informed of the date fixed for hearing on the proposed modification by giving a show cause notice;

(g) If the power of modification of the said order granting exemption is not exercised by the State Government within a period of six months from today, it will be open for the Petitioner to file a fresh Petition seeking quashing of the order of exemption dated 2nd February 2005;

(h) We make it clear that if the Petitioner is aggrieved by the order of modification of the said order dated 2nd February 2005 or modified terms and conditions incorporated therein, it will be open for the Petitioner to adopt appropriate remedies in accordance with law;

(i) The Civil Application No. 449 of 2015 is partly allowed to the aforesaid extent;

(j) The Rule is partly made absolute on above terms;

(k) There shall be no order as to costs.