

**(2025) 03 BOM CK 0225**

**In the Bombay High Court**

**Case No : Writ Petition No. 12014 Of 2024**

Sudarshan Chemical Industries Ltd

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

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**Date of Decision : 13-03-2025**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 8(4), 19(1), 20, 20(1)

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3

**Citation : (2025) 03 BOM CK 0225**

**Hon'ble Judges : G. S. Kulkarni, J; Advait M. Sethna, J**

**Bench : Division Bench**

**Advocate : Pravin Samdani, Shailendra Kanetkar, Shruti D. Vyas, M. M. Pabale, Sunil Chaturvedi**

**Final Decision : Dismissed**

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## **Judgement**

G. S. Kulkarni, J

### **PREFACE**

1. This petition under Article 226 of the Constitution of India raises an issue under the repealed Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act'). The petitioner is a beneficiary of an order dated

29 February 1980 passed under Section 20(1) of the ULC Act whereby the land in question was exempted from Chapter III of the ULC Act, on the condition that the land shall be used only for industrial purposes.

2. The petitioner in the present writ petition has made a money claim, namely, claiming a refund of the premium amount of Rs.5,30,95,030/- paid by the petitioner to the State Government on 11 October 2022 inter alia under Government Resolution dated 1 August 2019. By such Government Resolution, the State Government offered to close all pending cases/issues under Section 20 of the ULC Act, by accepting a one time premium. Another Government

Resolution dated 23 June 2021 was issued by the Government to streamline the process of implementation of earlier Government Resolution dated 1 August 2019. The petitioner taking benefit of the stipulation of the said Government Resolutions, on 11 October, 2022 made lump-sum payment of 15% at the prevailing annual market rate of the entire area, being an amount of Rs.10,47,47,849/-, qua its land admeasuring 23,316.16 sq. mtrs.

3. On deposit/payment of such premium to the State Government, an order dated 20 October, 2022 was passed in favour of the petitioner whereby the State Government declared the entire land of the petitioner free from any ULC encumbrance. The petitioner thereafter vide Deed of Conveyance dated 6 April, 2023 sold the land to third parties. After much water had flown under the bridge and third party rights stood created and after the sale consideration was received by the petitioner, thereby extinguishing all the rights of the petitioner qua the said land, the present petition is filed seeking a refund of the premium paid by the petitioner, i.e., a simplicitor money claim against the State Government.

4. The petitioner purportedly asserts a cause of action contending that the respondents had charged premium on the entire land, namely, the surplus vacant land and the retainable land, and that the same could not have been charged against the surplus land as recently held by the Division Bench of this Court in *Salim Alimohomed Porbanderwalla and Anr. vs. State of Maharashtra & Anr.* 2023 SCC OnLine Bom 731. Thus, a cause of action, being asserted is solely on the basis of the said decision of this Court which was rendered subsequent to the petitioner having taken the benefit of the Government Resolution releasing the land and thereafter the petitioner selling its land. It is on such premise, the present petition has been filed praying for the following reliefs:-

"a) Declare that the Impugned Communication dated 10th October 2022 raising demand of Rs.10,47,47,849/- as premium towards the whole land of the Petitioner admeasuring 23,316.16 sq.mtrs., to the extent that it includes the Retainable Land admeasuring 11,596 sq. mtrs. while computing the premium, is illegal and without authority of law;

b) Issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondents to refund a sum of Rs.5,30,95,030/- paid by the Petitioner on the Retainable Land, along with interest at rate of 12% p.a. from 11th October 2022, i.e. the date of payment, till realisation;"

#### FACTS

5. The relevant facts are:- By an indenture of lease, the petitioner was granted lease of the land bearing Survey No.437-A and 596, situated at Wellesley Road, Tehsil: Pune City, admeasuring 25,762 sq. meters for a period of 97 years commencing from 1 September 1963 described as "Sangamwadi land".

6. On 29 February 1980, an order under Section 20(1) of the ULC Act came to be

passed by the Directorate of Industries, Government of Maharashtra, wherein Sangamwadi was exempted from Chapter III of the ULC Act, provided it was used only for industrial purpose. The following calculation of the land has been furnished by the petitioner for setting out the retainable land and the surplus land relevant to the orders passed under Section 20 of the ULC Act:-

Total land

25,762 sq.m

Retainable Land

11,596 sq.m.

(6450 sq.m. + 5146 sq.m.)

Surplus Land

13,166 sq.m

[(2957 sq.m. + 7754 sq.m. + 3455 sq.m.)

- 1000 sq.m. (ceiling limit)]

7. In the year 1999, the Parliament repealed the ULC Act by Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short 'the Repeal Act'). On 29 November 2007, the State Legislature adopted the Repeal Act. From the even date, it was brought into force in the State of Maharashtra. Section 3 of the Repeal Act provides that the repeal of the ULC 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 the State Government or any person duly authorized 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.

(emphasis supplied)

8. It is the petitioner's case that the effect of an exemption order passed under Section 20 of the ULC Act qua the provisions of the Repeal Act, fell for consideration of the Full Bench of this Court in Maharashtra Chamber of Housing Industries Vs. Maharashtra Government and Ors. Writ Petition No.9872 of 2010, decision dt. 03/09/20214, to which one of us (G.S. Kulkarni, J.) was a member. In the majority judgment rendered by this Court in the said case, it was held that the repeal Act would not nullify/abate the exemption granted under Section 20 of the Act.

9. Such decision of the Full Bench was challenged before the Supreme Court. During the pendency of the said proceedings before the Supreme Court, the Government of Maharashtra appointed a Committee under the Chairmanship of Mr. Justice B. N. Srikrishna (Retd.) to examine the issues as determined by the Full Bench. The said Committee recommended to the State Government that the issue in relation to the exemption orders under Section 20 of the ULC Act, could be closed by accepting payments (premium) from persons having exemption orders. On such backdrop, on 2 July 2019 the Supreme Court disposed of the pending proceedings permitting the State Government to implement the recommendations made by Mr. Justice B. N. Srikrishna Committee. In pursuance thereto, the State

Government in its Urban Development Department issued Government Resolution dated 1 August, 2019, which effectively offered to close all pending issues on exemption granted under Section 20 of the ULC Act, by accepting a payment/premium "as prescribed", under the said Government Resolution inter alia being a lump sum premium at the rate of 15% of the prevailing annual market rate of the land. On 23 June 2021, the State Government issued another Government Resolution to streamline the process of implementation of previous Government Resolution dated 1 August 2019 and providing a basis for computation.

10. These Government Resolutions inter alia prescribe payment of one time premium to permit release or free the land for development by removing the embargo of the exemption granted under Section 20 of the ULC Act. The petitioner contends that as per the scheme of the said Government Resolution, the respondents were calculating the premium as payable on both the surplus land as well as the retainable land in making the owners entitled to retain their lands inclusive of surplus land in terms of the ULC Act.

11. The petitioner contends that concomitant to the imminent sale of the petitioner's land to the third party (prospective purchaser), the petitioner sought development permission for the said land, in terms of its exemption order granted in the year 1980. For such reason, on 26 August, 2022 the petitioner under the said Government Resolutions applied to respondent No.2 to retain the exemption granted under Section 20 of the ULC Act and to utilize the whole land for development without an embargo under the ULC Act. Respondent No.2, after undertaking scrutiny of the petitioner's application, passed an order dated 10 October, 2022 (as impugned), stating that as per clause No. I(B) of the Government Resolution dated 1 August 2019, in case of an exemption granted for industrial purposes under Section 20 of the ULC Act, a lump sum premium at the rate of 15% of the prevailing annual market rate of the land, shall be levied as per the Development Control Rules, relating to such area. Accordingly, the petitioner was ordered to deposit an amount of Rs.10,47,47,849/-, i.e., 15% on the prevailing annual market rate of an area admeasuring 23,316.16 sq.mtrs. of the said land and prescribing that the terms and conditions in the Government

Resolution would be binding on the petitioner.

12. The petitioner on 11 October, 2022, in compliance of and accepting the order dated 10 October, 2022 passed by the respondents, deposited with the State Government the premium amount of Rs.10,47,47,849/-. On 17 October 2022, the petitioner submitted the original challan of the payment being made to respondent No.2. Consequent thereto, on 20 October 2022, respondent No.2 passed an order inter alia recording the compliance of its orders on the payment of the premium amounts by the petitioner. It was ordered that the remark /entry of restriction on the transfer under Section 20 of the ULC Act be removed on certain terms and conditions as set out therein.

13. On payment of such premium and having received the order dated 20 October, 2022 passed by respondent no. 2, the petitioner changed its position by concluding the sale of the land with the third party purchaser, by entering into a "Deed of Conveyance" dated 6 April 2023. The Sale Deed is not annexed to the petition nor the details thereof are set out in the memo of the writ petition.

14. On such backdrop, the contention of the petitioner is interesting. The petitioner contends that the petitioner learnt that the respondents were charging premium, on the entire land consisting of both the surplus land and the land retainable under the ULC Act, as resorted in the petitioner's case. The petitioner learnt that such action was challenged before this Court in the case of Porbanderwalla (supra), wherein it was held that under the said Government Resolutions, the Government could not have charged a premium on the retainable land and that such decision of this Court had clarified that on payment of premium on surplus vacant land, the land was free from all conditions stipulated under Section 20 exemption order. It is thus, the petitioner's case that respondent No.2 in passing the order dated 20 October, 2022 did not have jurisdiction/authority to demand premium on retainable land of the petitioner. It is hence contended that the respondents were under a legal obligation to return to the petitioner an amount of Rs.5,30,95,030/- paid by the petitioner towards the retainable land admeasuring 11,596 sq.meters, as the same was not payable by the petitioner.

15. The petitioner, based upon the decision of this Court in Porbanderwalla (supra), made a representation dated 5 July 2023 to respondent No. 2, requesting that the premium at the rate of 15% was wrongly calculated and imposed upon the petitioner and hence the amount of Rs.5,30,95,030/- be refunded to the petitioner, which was paid by the petitioner on the retainable land. It is stated that as the said representation was not responded, another representation dated 18 August 2023 was made by the petitioner to the respondents seeking refund of the said amount. The petitioner also made similar representation on 21 September 2023 to the Directorate of Town Planning, Urban Development Department and thereafter a representation dated 24 June 2024 was made. As there was inaction on the part of the respondents, the present petition is filed praying for the reliefs as noted above.

## Submissions

16. Mr. Samdani, learned senior counsel for the petitioner would submit that under the Government Resolutions (supra) in question, the respondents did not wield any authority to withhold the payment received from the petitioner qua the retainable land and which, according to him, needs to be refunded after deducting the land admeasuring 2446 sq.meters considering the Town Planning Scheme for Sangamwadi, under which the calculation of the retainable land according to the petitioner would be as under:-

"FINAL PLOT NO.90, SANGAMWADI OF T.P.SCHEME III, PUNE (EARLIER S.N.596 & S.N. 437 A)

In the event, the land admeasuring 2446 sq.m. is deducted from the Retainable Land

### I. TABLE I

Before notification of TP Scheme in 1989

After notification of TP Scheme in 1989

A

Total Area

25,762 sq.m

23,316 sq.m.

B

Retainable Land

12,596 s.m

10,150 sq.m

C

Surplus Vacant Land

13,166 sq.m

13,166 sq.m.

### II. TABLE II

1.

Total Premium Paid

(Upon total area admeasuring 23,316 sq.m)

Rs.10,47,47,849/-

2

Actual Premium Payable

(based on Surplus Vacant Land admeasuring 13,166 sq.m.)

Rs.5,91,48,255/-

3

Amount to be refunded

(total Premium Paid – Actual Premium Payable)

Rs.4,55,99,594/-

(emphasis supplied)

17. Mr. Samdani thus submits that considering the Town Planning Scheme, the amount refundable to the petitioner would be Rs.4,55,99,594/-. Mr. Samdani submits that in the alternative, if the land admeasuring 2446 sq. meters was to be deducted from the surplus vacant land, the following would be the position entitling the petitioner to a refund of Rs.5,65,88,249/-:-

“FINAL PLOT NO.90, SANGAMWADI OF T.P.SCHEME III, PUNE (EARLIER S.N.596 & S.N. 437 A)

In the event, the land admeasuring 2446 sq.m. is deducted from the Surplus Vacant Land

#### I. TABLE I

Before notification of TP Scheme in 1989

After notification of TP Scheme in 1989

A

Total Area

25,762 sq.m

23,316 sq.m.

B

Retainable Land

12,596 s.m

12,596 sq.m

C

Surplus Vacant Land

13,166 sq.m

10,720 sq.m.

## II. TABLE II

1.

Total Premium Paid

(Upon total area admeasuring 23,316 sq.m)

Rs.10,47,47,849/-

2

Actual Premium Payable

(based on Surplus Vacant Land admeasuring 10,720 sq.m.)

Rs.4,81,59,600/-

3

Amount to be refunded

(total Premium Paid – Actual Premium Payable)

Rs.5,65,88,249/-

(emphasis supplied)

18. It is Mr. Samdani's submission that in both the aforesaid situations, the petitioner would become entitled for refund of such amounts, as the State Government had no authority in law to demand premium qua the land which the petitioner was entitled to retain under the orders passed under Section 20 of the ULC Act, as according to the petitioner, these Government Resolutions were applicable, only insofar as the surplus land was concerned. It is submitted that the legal position in this regard is now settled, as held in the decision of the Division Bench of this Court in Porbanderwalla (supra). It is submitted that the decision of the Division Bench in Porbanderwalla (supra) has been followed in the subsequent decisions of a co-ordinate Bench of this Court in Riyaz Ismail Macchiwala & Anr. Vs. The State of Maharashtra & Anr. Writ Petition No.1125 of 2024 dt. 07/08/2024, as also followed in Modern Paints vs. State of Maharashtra 2023 SCC OnLine Bom 1700 and in Jemini Pradip Salot & Ors. Vs. State of Maharashtra 2023 SCC OnLine Bom 1699. It is hence Mr. Samdani's submission that this petition deserves to be allowed by declaring the action of the State Government to retain an amount of Rs.5,30,95,030/- as illegal and the respondents be directed to refund such amount to the petitioner.

Respondent's reply and submissions

19. On behalf of the State Government, a reply affidavit of Mr. Jitendra Dudi, Collector and Competent Authority, Pune Urban Agglomeration, Pune is filed opposing the petition. It is contended that in the year 1980, the subject land was

exempted under Section 20 of the ULC Act and was allowed to be used for industrial purposes. It is stated that the petitioner made an application dated 26 August, 2022 requesting the Government to allow the petitioner to develop the subject land and to retain the exempted land under Section 20 of the ULC Act in CTS Final Plot No. 60. It is stated that in such application, the petitioner referred to the total area of land as 23116 sq. meters. The petitioner along with its application also submitted a Bond dated 14 September, 2022 undertaking that the petitioner would pay the amounts (premium) as may be determined. It is stated that by further letter dated 19 September 2022, the petitioner, while not disputing its application or the contents therein, requested the respondents to take into consideration the total area of land as 23316.16 sq. meters. It is contended that on such application of the petitioner, a report was called from the Tahsildar, who submitted his Report dated 19 September 2022, which confirmed the total area of the petitioner's land as 23,316.16 sq. meters. After such factual position was ascertained by an order dated 10 October 2022, respondent no.2 granted permission to the petitioner to deal with the land, upon payment of premium of Rs. 10,47,47,849/- determined as per the extant ready reckoner values, which was in terms of Clause No.1 (B) of the Government Resolution dated 1 August 2019. It is stated that this communication of respondent No.2 is challenged by the petitioner in the present petition and that too, after the benefit of the said communication was taken and the amount of Rs.10,47,47,849/- being paid to the Government on 14 October 2022 without any objection/demur. It is contended that not only the petitioner accepted the order dated 20 October, 2022 passed by respondent no. 2 by making payment of the said amount of premium, but after the payment of such amount, on 20 October 2022 the petitioner obtained an order, whereby the revenue entry qua the restriction on the transfer under Section 20 the ULC Act was removed from the record of rights, which enabled the petitioner to transfer the land to the third party under Deed of Conveyance dated 6 April, 2023. It is contended that after getting benefit of the order dated 20 October, 2022 and after the land being transferred, the petitioner for the first time vide letter dated 5 July 2023 and thereafter by letters dated 18 August 2023 and 24 June 2024 demanded refund of Rs.5,30,95,030/- on the ground, that the retainable area was wrongfully set out in the application, which the petitioner claimed was filed hastily.

20. The affidavit further contends that after the ULC Act came into force on 17 February 1976, the land holders were not allowed to retain the land more than the ceiling limit, as prescribed under the ULC Act and excess surplus vacant land was required to be handed over to the Government of Maharashtra, which was to be utilized for the public purpose. It is stated that in the present case, the petitioner was in possession of excess surplus land admeasuring 10720 square meters area, after availing the benefit of the Exemption Order dated 29 February 1980, passed under Section 20 of the ULC Act. It is contended that after such exemption order, the petitioner never surrendered the vacant excess land to the Government and it was always utilized by the petitioner.

21. Insofar as the petitioner's contention on the decision as rendered by this Court in Porbanderwalla (supra) is concerned, the respondent's contention is that the facts of the present case are not similar. It is also contended that the State Government has challenged the said decision of this Court before the Supreme Court in the proceedings of SLP No. 46728 of 2024.

22. It is next contended by the State Government that the premium payable by the petitioner was calculated on the basis of total area of land as mentioned in the petitioner's application and in accordance with the said Government Resolutions which at all material times were legal and valid. It is next contended that during the course of hearing of the present petition before a co-ordinate Bench on 17 December, 2024, on behalf of the petitioner, a chart was submitted showing claim of refund in two eventualities, in case of surplus vacant land and retainable land, which was not acceptable to the State Government, as the petitioner had never disputed the payment of premium as ordered. It is stated that prior thereto the petitioner had taken the benefit of the exemption order dated 29 February, 1980. It is stated that the petitioner in its application for exemption had clearly set out the total area of land as 23316.16 sq. meters. It is contended that the petitioner, hence, was estopped from claiming any refund of the premium paid by it. It is next contended that the petitioner has always been in possession of the entire 23316.16 sq. meters of land, which was intended to be sold by the petitioner and for which, the petitioner had moved an application dated 26 August, 2022, which was decided by an Order 20 October, 2022. It is contended that such application of the petitioner was decided prior to the judgment of this Court in Porbanderwalla (supra). It is next contended that this Court by an order dated 3 September 2024 directed the respondents to clarify in the affidavit as to whether the reduction of area was from the vacant surplus land or from the retainable land. In such context, it is stated that the petitioner had claimed exemption under Section 20 of the ULC Act, however, an order under Section 8(4) of the ULC Act was not passed in the petitioner's case, hence, it was not possible to conclude whether the reduction is from the retainable land or from the surplus land. For the purpose of clarity qua the stand of the State Government, the relevant paragraphs of the said reply affidavit are required to be noted, which read thus:

"16. It is submitted that, during the course of hearing held on December 17, 2024, the Ld. Counsel appearing for the Petitioner has submitted a chart showing claim of refund in two eventualities in case of surplus vacant land and retainable land. It is submitted that, since the Petitioner has never disputed the payment of premium prior to taking the benefits of exemption order and considering the fact that the Petitioner has in its application for exemption mentioned the total area of the land as 23316.16 Sq. Mtrs., as the Petitioner is now estopped from claiming the refund. It is reiterated that the Petitioner is and has always been in possession of the entire 23316.16 sq. meter of land.

17. I say that, as the Petitioner's Application has been decided prior to above

judgment of this Hon'ble Court in case of Salim Alimahomad Porbandarwalla Vs the State of Maharashtra., the prayer of Petitioner under present Petition should be rejected.

18. It is submitted that, this Hon'ble Court vide order dated 3.09.2024 directed the Respondent to clarify in the Affidavit as to reduction of area was from the vacant surplus land or was from the retainable land. In this regard it is submitted that, as the Petitioner had claimed exemption under Section 20 of the ULC Act Order U/s 8(4) the ULC Act, is not passed in the case of the Petitioner. Thus, it is not possible to conclude whether the reduction is from the retainable land or the surplus land. In this regard the answering Respondent has taken the following action for ascertaining the factual position to answer the query raised by the Court and presenting the same before this Hon'ble Court:-

(i). That vide Letter dated 3.01.2025, the Respondent No. 2 has directed the City Survey Officer -2 Khadakmall, Alli Pune, to provide details about difference in the area for reduction of the land. Hereto annexed and marked Exhibit "H-1" is a copy of letter dated 03.01.2025, issued by the Respondent No. 2. Hereto annexed and marked Exhibit "H-2" is a copy of English translation of the said letter dated 3.01.2025.

In response to the above Letter, City Survey Officer -2 Khadakmall, Alli Pune vide Letter dated 09.01.2025 has submitted its Report. As per the said Letter, it is clarified that, only 23316.96 sq. mtr. is shown in the account of Petitioner's land. Hereto annexed and marked Exhibit "I-1" is a copy of letter dated 9.01.2025, issued by the City Survey Officer -2 Khadakmall, Alli Pune. Hereto annexed and marked as Exhibit "I-2" is a copy of English translation of the said letter dated 9.01.2025.

(ii) Vide Letter dated 8.01.2025, the Respondent No. 2 has directed to Executive Engineer Pune Municipal Corporation, to provide details about difference in the area for reduction of the land. Hereto annexed and marked Exhibit "J-1" is a copy of letter dated 8.01.2025, issued by the Respondent No. 2. Hereto annexed and marked Exhibit "J-2" is a copy of English translation of the said letter dated 8.01.2025.

(iii) That vide Letter dated 8.01.2025, the Respondent No. 2 has directed to Assistant Director, Valuation Determination Department, Town Planning Department, Pune, to provide details about difference in the area for reduction of the land. Hereto annexed and marked Exhibit "K-1" is a copy of letter dated 8.01.2025, issued by the Respondent No. 2. Hereto annexed and marked as Exhibit "K-2" is a copy of English translation of the said letter dated 8.01.2025.

In response to the above Letter, the Assistant Director, Valuation Department, Town Planning Department, Pune vide Letter dated 13/01/2025 has replied and annexed a copy of the Arbitration Proceeding sheet under the Town Planning Scheme. As per the said Arbitration Proceeding, it is cleared that dispute of new Original Plot No. 90 has been resolved through Arbitration. Hereto annexed and

marked as Exhibit "L-1" is the copy of Letter dated 13.01.2025, issued by the Assistant Director, Valuation Department, Town Planning Department, Pune. Hereto annexed and marked Exhibit "L-2" is a copy of English translation of Letter dated 13.01.2025, Assistant Director, Valuation Department, Town Planning Department, Pune. Hereto annexed and marked Exhibit "M-1" is copy of Arbitration Proceeding. Hereto annexed and marked Exhibit "M-2" is typed copy of said Arbitration Proceeding. From the said record of the Town Planning Authority, Pune during and Arbitration for revised T. P. Scheme 1978 area was reduced. It is further submitted that, for want of Order U/s 8(4) of the ULC Act clear demarcation of retainable land and surplus land maps are not prepared.

19. It is submitted that considering the fact that, the Petitioner has taken the benefit of the exemption under Section 20 of the ULC Act and enjoyed the possession of the entire parcel of the land since 1980, the Petitioner's contention to consider the calculation of the premium on the basis of excess vacant land excluding retainable land can only be considered on payment of 100% cost of surplus /excess land or 15% of the cost of total plot of land which is obtained by the Petitioner. The Petitioner's request to consider 15% cost of surplus land cannot be accepted as by paying 15% of the cost of the total plot of land the Petitioner is getting the entire plot of land free from any ULC Condition and the Petitioner gets sole and absolute ownership of the entire plot of land. Thus, it is submitted that, such a request of the Petitioner at the belated stage is required to be rejected. The Petitioner has obtained an order under Section 20 of ULC Act which mentioned the area, but is silent about demarcation about surplus and retainable area. So, reduction must be considered from total area in view of Arbitration Proceeding. It is further submitted that the Petitioner was aware of the said Arbitration Proceeding referred to hereinabove in Para No. 17. It is further submitted that, the Petitioner were aware about the said Arbitration Proceeding, however the same appears to have not been willfully disclosed before this Hon'ble Court, therefore the claim of the Petitioner is required to be rejected on the ground that the Petitioner has not approached this Hon'ble Court with clean hands.

Under the circumstances, the Respondents humbly submit that, the Petitioner is not entitled for any relief from this Hon'ble Court. The Respondent prays that the present Petition may be rejected, and an appropriate order may be passed in the interest of justice."

(emphasis supplied)

23. Learned Assistant Government Pleader (AGP) has made submissions opposing the petition inter alia on the contentions as urged in the reply affidavit, to which, we have made extensive reference in the foregoing paragraphs. The learned AGP would submit that the petitioner merely relying on the decision of the Division Bench of this Court in Porbanderwalla (supra) would not be entitled to the reliefs as prayed in this Writ Petition. It is submitted that the petitioner has rested its case solely on the decision of this Court in Porbanderwalla (supra)

and that too after accepting and availing the benefit of order dated 20 October 2022. It is submitted that after such order was passed, the entire payment of premium of Rs.10,47,47,849/- as per the Government Resolution(s) was deposited by the petitioner with the Government Treasury. It is hence submitted that once the petitioner had sold the land, merely for the reason that the decision of this Court in Porbanderwalla (supra) was rendered subsequent to the sale of the land, no legal rights would accrue to the petitioner to make a claim for refund. The learned Assistant Government Pleader has accordingly prayed for dismissal of the Writ Petition.

### Analysis

24. We have heard learned Counsel for the parties and with their assistance, we have perused the record. The facts appear to be not in dispute, as noted by us in some detail in the foregoing paragraphs, suffice it to observe that, in the context of applicability of the provisions of the ULC Act, the petitioner had excess land sans an order under Section 8(4) of the ULC Act, demarcating/specifying the land. By an order passed under Section 20 of the ULC Act exempting the vacant land from the provisions of Chapter III of the ULC Act, the petitioner's land was subject to a condition that the exempted land shall be used by the petitioner for industrial purpose and not for any other purpose. Also that the petitioner shall not transfer the exempted land to any other person by way of sale, mortgage, gift, lease or otherwise except for the purpose of mortgage in favour of any financial institution specified in sub-section(1) of section 19 of the ULC Act. The area of vacant land exempted as set out in the Schedule to Section 20 order reads thus:-

### "The Schedule

Details regarding the applicant and the vacant land possessed by him for which exemption is sought under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976.

1)

Name and Address of the person holding the land.

:

M/s.Sudarshan Chemical Industries Ltd., 162, Wellesley Road, Pune-411001.

2)

Status of the person

:

Public Limited Company.

3)

Number and date of the application

:

12.8.1976.

4)

Name of the Urban Agglomeration in which the land for which exemption is sought is situated.

:

Pune Agglomeration.

5)

Description of property for which exemption is sought

: (1) 437-A & 596 of Sangamwadi

T.P. Scheme, Pune.

(2) 710-301, Gultekdi, Pune.

(a) District, Taluka, Village Survey Number

:

Sangamwadi

Gultekdi

(b) Total area in sq. mtrs.

:

25,762.00 sq.mtrs.

5,166.00 sq. mtrs.

(c) Area under the buildings

:

6,450.00 sq.mtrs.

2,412.00 sq. mtrs.

(d) Area of the land appurtenant to the buildings, as per section 2(g) of the Act.

:

5,146.00 sq.mtrs.

2,451.00 sq. mtrs.

(e) Area to be acquired for public purposes by local authority

(f) Area of land kept vacant as per statutory regulations

3,455.00 sq.mtrs.

-

(g) Area of land for proposed structures

-

-

(h) Appurtenant land to proposed structures

-

-

(i) Area of excess appurtenant land

7,754.00 sq. mtrs.

302.00 sq. mtrs.

(j) Area of vacant land within matter of course exemption limit permitted to retain.

2,957.00 sq. mtrs.

-

(k) Area of vacant land exempted.

(A) (A) (B) (A)

2957 + 7754 + 302 + 3455

14468.00

- 1000.00

13468.00

(l) Area upto ceiling limit.

1,000.00 sq. mtrs.

-

Area of excess vacant land, in which : Nil. exemption is rejected (Site Plan attached)

Nil

By order and in the name of the Governor of Maharashtra."

25. The State Legislature applied the Central "Repeal Act" for the State of Maharashtra with effect from 29 November 2007. There was litigation insofar as

the effect of repeal of the ULC Act, qua the orders passed under Section 20 of the ULC Act were concerned, which reached this Court inter alia in the case of Maharashtra Chamber of Housing Industries (supra). In the said case, a Full Bench of this Court in its majority decision held that the exemption orders issued under Section 20 and the proceedings under it, stood protected despite the Repeal Act. It was held that as per the exemption orders, implementation of the approved schemes were required to be mandatorily implemented. The said decision of this Court was challenged before the Supreme Court.

26. On the aforesaid backdrop, the State Government appointed a two member Committee headed by Shri. Justice B. N. Srikrishna (Retired). The said Committee in its report made recommendations, qua the view the State Government could take in cases wherein Section 20 ULC Orders were granted. Such recommendations of the Committee were placed in a Meeting of the Ministers (MOM) held on 18 November 2018 in which, it was decided to accept such recommendations of the Committee. In pursuance thereof, the Government Resolution dated 1 August, 2019 was issued inter alia to the effect that the land owner could become permanently entitled to its land, subject matter of Section 20 ULC orders, on payment of one-time premium by the owners of the land in the following terms:

"B) In the matters wherein exemption has been granted for industrial purpose under section 20 of the Urban Land Ceiling on Holding Act, the area by charging premium in lump sum at the rate of 15% of the rate mentioned in the prevailing Annual Market Value Rate Chart for the total area mentioned in the order of exemption (Maximum area mentioned in the Order without any deduction), should be made available to the Holder of the land under the Scheme for development, as per the Development Control Regulation of the concerned area."

27. Further, a clarificatory Government Resolution dated 23 June 2021 was issued as noted hereinabove.

28. On such backdrop, the facts of the present case are to the effect that the petitioner had made an application on 26 August 2022 to take benefit of the said Government Resolution, on which the Collector/Competent Authority passed an order dated 10 October 2022 calling upon the petitioner to deposit an amount of Rs.10,47,47,849/- i.e. 15% of the prevailing annual market rate of the entire area. The said order is required to be noted which reads thus:

(Official Translation)

"Exhibit – 'F'

OFFICE OF THE COLLECTOR AND COMPETENT AUTHORITY,  
URBAN AGGLOMERATION, PUNE.

'C' Wing, Second Floor, P.M.T. Building, Shankershet Road,  
Swar Gate, Pune – 411037.

Tele No. 020-2446 4334.

e-mail: addcollrulcpune@gmail.com

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No. ULC/S-20/D-3/SR/81/2022.

Outward No. 440/2022.

Pune, Date : 10.10.2022.

To,

Sudarshan Chemicals Industries Limited, Pune;

through Rajesh Balkrishna Rathi,

Wellesley Road, Pune – 411 001.

Subject : Regarding granting permission for carrying out development on the land bearing Survey No. 90, Old C. S. No. 437-A, 596, admeasuring 23116 Sq. Mtrs. situated at Village – Sangamwadi, Taluka – Haveli, District – Pune in T. P. Scheme, exempted as per Section 20 of the U.L.C.H. Act, after taking steps as per the provisions of the

Government Resolution No. U.L.C.-2018/M.

No.51/U.L.C.H.-1, dated 01.08.2019.

Refere : 1) No. U.L.C./S-225/MC/IC/G.A.D./67, Dated nce 29.02.1980 of the Joint Director of Industries.

2) Application dated 29.08.2022 of the Applicant Messrs Sudarshan Chemicals Industries Limited, Pune, through Shri Rajesh Balkrishna Rathi.

3) Government Resolution bearing No. ULC- 2018/M. No.51/ULCH-1, dated 01st August, 2019.

By the Application under the Reference at Sr. No.2 above, you i.e. Applicant – Sudarshan Chemicals Industries Limited, Pune, through Rajesh Balkrishna Rathi have requested to grant permission for carrying out development on the land bearing Survey No. 90, Old C.S. No. 437-A, 596, admeasuring 23,116 Sq. Mtrs., situated at Village – Sangamwadi, Taluka – Haveli, District – Pune in T. P. Scheme, exempted under Section 20 of the Urban Land Ceiling on Holding Act, after taking steps as per the provisions of the Government Resolution bearing No. ULC-2018/M. No. 51/U.L.C.H.-1, dated 01.08.2019.

By the Order under Reference at Sr. No.1 above, passed by the Joint Director of Industries and Additional Deputy Secretary, General Administration Department, exemption for industrial purpose has been granted for the area mentioned in your application.

In Paragraph 1(B) of the Government Resolution NO. ULC 2018/M.No.51/ULCH-1, dated 01.08.2019, it has been mentioned that in the matters wherein exemption has been granted for industrial purpose under section 20 of the Urban Land Ceiling on Holding Act, the area by charging premium in lump sum at the rate of 15% of the rate mentioned in the prevailing Annual Market Value Rate Chart for the total area mentioned in the order of exemption (Maximum area mentioned in the Order without any deduction), should be made available to the Holder of the land under the Scheme for development, as per the Development Control Regulation of the concerned area.

Hence, the Applicant Sudarshan Chemicals Industries Limited, Pune, through Rajesh Balkrishna Rathi should deposit in cash or by way of D.D. / Cheque, an amount of Rs.10,47,47,849/- (In words – Rupees Ten Crores, Forty Seven Lakh, Forty Seven Thousand, Eight Hundred Forty Nine only) calculated at the rate of 15 per cent of the prevailing Annual Market Rate for the area admeasuring 23,316.16 Sq. Mtrs. from out of the land bearing Survey No.90, Old C. S. No. 437-A, 596, situated at Village – Sangamwadi, Taluka – Pune City, District – Pune in T. P. Scheme, in Government Treasury viz. 'SBI Main Branch, Treasury, Pune' under a Challan under the Account Head viz. Major Head : 0217 : Urban Development Department, Sub Major Head : (800) Other Receipt, Minor Head : (01) Other Receipt. Similarly, the terms and conditions mentioned in the Government Resolution dated 01.08.2019 shall be binding on the Applicant / Developer. After the said amount, in lump sum, is deposited in the Government Treasury, the original challan and two photocopies thereof should be submitted to this Office.

[Dr. Rajesh Deshmukh]

Collector and Competent Authority,

Pune Urban Agglomeration, Pune.”

29. The petitioner accepted the aforesaid order and in pursuance thereto, paid/ deposited with the State Treasury an amount of Rs. 10,47,47, 849/-and only thereafter, the petitioner was permitted to deal with the land as per the further order dated 10 October 2022 passed by respondent No.2. Having taken the benefit of the aforesaid order, the petitioner transferred the said land to the third party under the Deed of Conveyance dated 06 April 2023.

30. Thus, without delving on the issue as to what was the nature of the commercial transaction (Deed of Conveyance) or as to on what basis the consideration for sale of the land was arrived between the petitioner and the third party, in transferring such land consequent to the order dated 10 October, 2022, we may observe that indisputedly the petitioner whole-heartedly accepted, acted upon and received the benefits of the order dated 10 October 2022. Under such order, the petitioner deposited an amount of Rs.10,47,47,849/-, thus taking benefit of the Government Resolutions dated 1 August 2019 and 23 June 2021 as they stood, whereunder the petitioner got the land converted into a fully

exempted land to be freely dealt with. Thereafter, the petitioner transferred the land in favour of the third party under the Deed of Conveyance dated 06 April 2023. It is only after such benefit was taken and the land was transferred, the petitioner, resting its case solely on the decision of this Court in *Porbanderwalla* (supra), has approached this Court by filing this petition on 21 August 2024.

31. In these circumstances, the questions which would arise for consideration are:

(I) Whether the respondents are correct in contending that the petitioners are estopped from taking a position contrary to the one taken in its application dated 26 August 2022, on which an order dated 10 October 2022 was passed, on the basis of which the petitioner has already dealt with the land and after transferring the land to third parties, seek a "refund/ money claim", in the present petition; and

(II) Whether merely on the basis of the decision of the Division Bench of this Court in *Porbanderwalla* (supra), a cause of action can accrue to the petitioner to file the present petition, so as to claim the reliefs.

32. Insofar as question no. 1 is concerned, we are of the clear opinion that the purport of the Government Resolution dated 1 August, 2019 read with Government Resolution dated 23 June, 2021, as they stood at the relevant time, was certainly understood by the petitioner in the perspective, as to what was plainly reflected, in the said Government Resolutions, that is consequence of the petitioner requiring to pay such amounts as per its application and as set out in the order dated 10 October, 2022 (supra).

33. Thus, accepting the consequences which were brought about by the Government Resolution, namely, the petitioner being required to pay the amount of premium as determined in respect of its land in question, and more particularly as understood in Clause 1(b) thereof, the petitioner accepted to make the payment of premium amount of Rs.10,47,47,849/-, i.e., 15% on the prevailing market rate of the entire area, as the Government Resolutions contemplated. Hence, the petitioner at all material times, accepted the said Government Resolutions in their entirety and the orders passed on the petitioner's proposal applying such Government Resolutions. This also means that the petitioner in no manner whatsoever, had any second thought to question the legality of the said Government Resolution on any count. The petitioner, accepting this position, deposited an amount of Rs.10,47,47,849/- with the Government treasury on 17 October, 2022. Neither before payment of the said amount nor subsequent thereto i.e.; before transferring the land to the third parties under the Deed of Conveyance dated 26 April, 2023, did the petitioner question the said Government Resolutions or the State's policy in this regard or the amounts of premium so determined, much less its basis or its legality. We do not find that any representation was made by the petitioner while making the payment or that the premium amount was paid under protest or without

prejudice to the legal rights and/or any assertion as to what was prescribed by the Government Resolution vide the Government Resolution dated 1 August, 2019 read with Government Resolution dated 23 June, 2021 was not acceptable to the petitioner.

34. It is well settled that at a given point of time, a person may have legal rights to question a Government action and if such rights are available, it is for the parties to either assert such legal rights or waive such legal rights. In the present context, any rights which the petitioner possessed at the relevant time to take a position contrary to the Government Resolutions dated 1 August, 2019 and 23 June, 2021 were certainly waived by the petitioner, moreso when the petitioner accepted the said Government Resolution and in fact acted upon the same.

35. Thus, in our opinion, this is a clear case that the petitioner having waived its legal rights to take a position contrary to the Government Resolution dated 1 August, 2019 and having acted upon the same, the law would estop the petitioner from reviving/resurrecting any legal rights, which stood extinguished by the petitioner's wholehearted acceptance of the State Government's policy as contained in the Government Resolution dated 23 June 2021, which otherwise were available to the petitioner, before accepting the Government Resolution(s) and making payment of the premium as a consequence thereof. The petitioner, thus acted with open eyes, in not only accepting the Government Resolution in depositing the premium amount but changing its position by transferring the land to a third party. In these circumstances, the law would not permit the petitioner to take a somersault and upset the concluded position which was brought about, so as to permit the petitioner to reverse its position to the one which existed, prior to the State Government passing the order dated 10 October, 2022. We may usefully refer to the decision of Division Bench of this Court, to which one of us (G.S. Kulkarni, J.) is a member, in *Veena Estate Pvt. Ltd. vs. Commissioner of Income-tax 2024 SCC OnLine Bom 77* on the principle of waiver and estoppel although in the context of Income-tax Act, when the Court held it to be a well-settled position in law that a legal right which may accrue to a party can be waived and such party would be estopped/precluded from raising any question on a breach of a right which stood waived. The Division Bench in the context of a plea of prejudice not being raised at earlier stage, had made the following observations:

61. ... .... It is an elementary rule that a litigant cannot be permitted to assume inconsistent positions and to the detriment of the opposite party. If the party has taken up a particular position not only at the early stage of the proceedings but even before the appellate forums, it is not open to a party to appropriate and reprobate and resile from such position. When a question of fact namely whether a prejudice was at all caused, was not raised before the forums below, the parties were estopped from urging it before the appellate forum. Even otherwise and considering the well settled position in law, even a legal right which may accrue to a party can be waived. Such party would be later on

estopped/precluded from raising any question on a breach of a right which stood waived.”

(emphasis supplied)

We thus answer the first question in the affirmative.

36. Our answer to the first question has a direct effect on the second question as framed by us. In such context, we may observe that on a plain reading of the petition, it is clear that the entire cause of action for the petitioner to file a petition is stated to have arisen merely on the basis of the decision of the Division Bench of this Court in the case of Porbanderwalla (*supra*), when the Court in the facts of the said case, held that the Government Resolution dated 1 August, 2019 were applicable insofar as exempted land was concerned, and not in respect of the retainable land.

37. We would not accept that in the facts of the present case, it is open to the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution on a footing, that although all the petitioner’s actions qua its land had stood concluded, as also, the petitioner having transferred its land to a third party the petitioner can be held to be entitled to refund of the premium amount, merely on the basis of the said decision of this Court. We are clearly of the view that no right accrues to the petitioner, to make a money claim that is to seek a refund of the said amounts as voluntarily paid by it to the State Government under the Government policy in vogue.

38. It is settled principle of law that the prospective law as laid down by the Courts would not give rise, to any cause of action, to the parties to upset concluded issues. In this context, we may usefully refer to the decision of the Division Bench of this Court, to which one of us (G.S. Kulkarni, J.) was a member, in *Sansar Texturisers Pvt. Ltd. vs. Union of India & Ors.* 2024 SCC OnLine Bom 235. In the said case, in assailing the impugned notification, the petitioner asserted that such notifications was required to be quashed and set aside, as the cause of action to raise such challenge had arisen to the petitioner in view of the decision of Supreme Court in *Kumho Petrochemicals Company Ltd.* (2017) 8 SCC 307. In examining such contention, this Court framed a categorical question, to the effect, whether in view of the prospective decision of the Supreme Court, a cause of action could be said to have been accrued to the petitioner to maintain a Writ Petition. The Court observed that such contention as urged on behalf of the petitioner that a prospective decision of the Supreme Court can give rise to a cause of action to maintain a Writ Petition, had no legs to stand, when tested on any prudent parameters. It was observed that if such proposition was to be accepted, it would mean that as and when the Courts declare any law on a particular issue, it would give rise to a cause of action, to undo and/or unsettle concluded actions inter se between the parties or on any concluded issue under a Government policy prevalent at a particular time would stand unsettled. Following observations are required to be noted, which reads

thus:

"III. Whether in view of a prospective decision of the Supreme Court, a cause of action can arise to maintain a Writ Petition.

23. We are quite surprised at another logic of the petitioner, which is quite peculiar and astonishing, when the petitioner says that although the petitioner had no grievance at the relevant time and paid duty under the notification(s) in question, now as a decision is rendered by the Supreme Court in Kumho Petrochemicals Company Ltd. (supra), a course of action has arisen to the petitioner. Such contention of the petitioner can have no legs to stand by applying any prudent parameter. If such contention is accepted, it would mean that as and when the Courts declare a law on a particular issue, it would give rise to a cause of action to undo and/or unsettle concluded actions inter se between the parties or on any issue a citizen is expected to act as per the Government policy prevalent at a particular time. Such contention as urged on behalf of the petitioner if accepted, would bring about a chaotic situation and/or the situation of horrendous confusion. We have no manner of doubt that such contention of the petitioner cannot deserve any acceptance to hold that merely because the Supreme Court prospectively pronouncing such decision, the petition can have any cause of action.

24. We thus cannot accept the case of the petitioner that the cause of action has accrued to the petitioner to assail the notifications on the ground of the prospective decision of the Supreme Court in Kumho Petrochemicals Company Ltd. (supra)."

39. The decision of this Court in Sansar Texturisers (supra) was assailed before the Supreme Court in proceedings of SLP (Civil) Diary No. 17323/2024. By an order dated 12 July 2024, the Supreme Court rejected the Special Leave Petition. The judgment in Sansar Texturisers (supra) was also followed by a coordinate bench of this Court in Reagan Fashions Pvt. Ltd. vs. Union of India Civil Writ Petition No. 1268 of 2024, decided on 29 January 2024.

40. This apart, we are also of the clear of the opinion that the decision of the Division Bench in Porbanderwalla (supra) is not applicable in the facts of the present case, the reason being that in the said case, the petitioner was the owner of the land and was asserting contentions under the Government Resolutions with a specific prayer that the Government Resolution dated 1 August, 2019 read with 23 June, 2021 be implemented so that the respondents raise an appropriate demand in respect of surplus vacant land and to implement the policy as contained in the said decisions. The prayers as made in the said petition are noted in paragraph 2 of the said decision. In the present case, the petitioner is certainly not similarly situated. The petitioner has ceased to be the owner of the land. The petitioner has nothing to do with the land in question which has stood transferred under a Deed of Conveyance to a third party, with everything appurtenant thereto along with all its benefits and otherwise. The

petitioner has completely changed its position qua the land and under orders passed on the said land under the ULC Act. On such conspectus the petitioner simplicitor seeking a relief of a money claim having already transferred the land, after taking benefit of the orders as passed in its favour under the Government Resolution(s), in our opinion, is not well founded. This was not the issue which had fell for consideration in *Porbanderwalla* (supra).

41. In *Riyaz Ismail Machhiwala* (supra), a co-ordinate Bench of this Court although was concerned with a similar prayer, it was not a case, wherein the petitioner had already transferred the land in favour of third party, which could have changed the entire complexion of the legal rights. In such case, the petitioner was desirous of developing/selling the entire land and had accordingly filed an application dated 15 March, 2021, inquiring about the one-time premium required to be paid for the exempted surplus vacant land in terms of Government Resolution dated 1 August, 2019. It is in such context, having not transferred the land, the petitioner had approached this Court. The Division Bench simplicitor following the decision in *Porbanderwalla* (supra), allowed the petitioner by directing refund. Thus, the facts cannot be said to be facts which are similar to the facts in hand. The decision in *Modern Paints* (supra) is also not applicable to the present facts inasmuch as the reasoning of the Court does not show that it is a case of the petitioner therein, having approached the Court after having transferred the land. Further, in *Jemini Pradip Salot* (supra), the petitioner had approached the Court challenging a demand of Rs.6,09,66,477/- raised by the District Collector and Competent Authority under the ULC Act, issued in pursuance of Government Resolution dated 1 August, 2019. In the said decision, the Court considering its decision in *Porbanderwalla* (supra) had allowed the said petition. Thus, the facts are completely different.

42. In all the aforesaid decisions as relied on behalf of the petitioner, the Court has not taken into consideration the nature of the petitioner's right post sale of the land and simplicitor based on the decision of this Court in *Porbanderwalla* (supra), the said petitions were allowed. Thus, in our opinion, such decisions are not applicable in the facts of the present case.

43. Before parting, we may also observe that in any event, even on first principles, once the petitioner had lost all its rights in respect of land in question, by virtue of its transfer the petitioner in such situation de hors any corporeal rights in respect of the land, cannot maintain such prayers as made in the petition, of a simplicitor refund of the premium amount paid to the State Government by the petitioner qua the land in question. If such case as urged by the petitioner is accepted, it would lead to devastating consequences and would open a pandora's box, namely, every case wherein parties have acted upon the Government Resolutions in question and after having taken benefits thereunder including to have transferred their land, all those cases could be reopened and refund claims would be required to be allowed. This is not the purport of the judgment in *Porbanderwalla* (supra), nor can the law be interpreted to accept

such consequence. Apart from the facts of the present case, even generally such proposition cannot be countenanced, as accepting such proposition would bring about an uncertainty on concluded issues.

44. In the light of the above discussion, we are certain that this Writ Petition cannot succeed. It is accordingly rejected. No costs.