

Voltas Limited. Vs. Tehsildar, Thane and ors.

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Court : Supreme Court of India

Decided On : Nov-08-2012

Judge : G.S. Singhvi; Sudhansu Jyoti Mukhopadhaya, Jj.

Acts : [Land Acquisition Act, 1894](#); Land Acquisition (Companies) Rules, 1963 - Rule 5(1)(iv); Urban Land (Ceiling and Regulation) Act, 1976 - Sections 21, 41

Appeal No. : CIVIL APPEAL NO.8557 OF 2003 WITH CIVIL APPEAL NO. 8558 OF 2003

Appellant : Voltas Limited.

Respondent : Tehsildar, Thane and ors.

Judgement :

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. The Government of Maharashtra acquired the land in question in favour of the appellant - Voltas Limited, (hereinafter referred to as 'Company' for short) and issued a Sanad (order of allotment) with the specific condition that the Company shall not in any way whatsoever, alienate the said land or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise howsoever except with the prior permission in writing, of the Government. After about 24 years, the order of allotment was stayed and the Company was called upon to show cause as to why the land should not be forfeited and the amount of Rs.14,11,45,851/- towards

unearned income be not charged as it violated the terms and conditions of the order of allotment by granting rights to the developers for the construction of houses and selling them after development, thereby benefiting to a large extent. After submitting their reply, the respondents issued the impugned orders against which two writ petitions were preferred by the Company for setting aside the orders imposing the charge towards unearned income and the demand notice, both of which were dismissed by the impugned common judgement dated 10th March, 2003. The Division Bench of the Bombay High Court held that there was a breach of terms and conditions of the order of allotment and, therefore, it was open to the respondents to take the appropriate proceedings in accordance with law, including the recovery of unearned profit.

2. For proper understanding of the question involved, it is necessary to state a few facts as hereunder:

The appellant, a Public Limited Company engaged in manufacturing air conditioners, refrigerators and other items, set up a factory in the year 1966 at Thane, to carry out manufacturing activities and for the said purpose, purchased land admeasuring about 98,000 sq. mtrs. at village Majiwada from a private party. For additional land needed to effectively continue with the manufacturing process, the Company approached the Government of Maharashtra with the request to acquire land for the company under the provisions of the [Land Acquisition Act, 1894](#) read with the Land Acquisition (Companies) Rules, 1963. On its request, the State of Maharashtra acquired more than one lakh square metres of land and handed it over to the Company. An order of allotment was issued in favour of the Company on 20.1.1969 with certain terms and conditions mentioned in the said order, the Condition No.7 of which reads as under: "The Company shall not in anywise whatsoever alienate the said land or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise howsoever except with previous permission in writing of the Government."

3. It was also mentioned in the order of allotment, that the land will be vested with the Company and shall be held by it as its property, to be used for the purpose of constructing dwelling houses for workmen employed by the Company and the

provisions of the amenities directly connected therewith, subject to the provisions of the Maharashtra Land Revenue Code, 1966 and the Rules framed thereunder. It was also stipulated that, except with the previous permission in writing of the Government, the land shall not be transferred, for any purpose other than that for which it was acquired. A condition regarding the construction of work was also imposed, with a further proviso, that should the Company commit a breach of the terms and conditions, the transfer of land in favour of the Company would be treated as null and void and the land would revert back to the Government.

4. In the year 1976, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Urban Land Ceiling Act") came to be enacted. In accordance with the provisions of Section 20 of the Urban Land Ceiling Act, the Company submitted an application for holding land in excess of the ceiling limit by grant of an exemption. The Company also made an application under Section 21 of the Urban Land Ceiling Act on 23.3.1979 for granting an exemption for utilising the land for construction of dwelling units to accommodate the weaker sections of society. Pursuant to the application, a Scheme under Section 21 of the Urban Land Ceiling Act was passed by the competent authority on 11.1.1984, permitting the Company to use the land for the stated purpose.

According to the Company, it complied with the said order and to implement it, entered into an agreement with one "Eversmile Construction Private Limited" (hereinafter referred to as 'developers), for development of the land.

5. Since one of the conditions of the allotment order, was that the Company could not alienate the land in any manner without prior permission of the Government, the Company wrote a letter to the Collector and also to the Competent Authority, Thane on 30.9.1986 and sought clarification as to whether the conditions imposed under the Exemption Orders dated 11.1.1984 would prevail over and supersede the conditions of the order of allotment dated 20.1.1969. In reply to the said letter the Deputy Collector and Competent Authority, Thane, Urban Agglomeration issued a clarification on 29.10.1986 stating that the condition relating to alienation of land without prior permission as mentioned in the order of allotment, would stand overridden by the terms of exemption granted under Section 21, which

reads as follows:

"With reference to your above letter I have to inform you that the conditions stipulated in this office Order No. ULC/TA/F-62/SR-18 dated 11.1.1984 though inconsistent with the conditions of the original sanad, having overriding effect, stand operative (vide section 42 of the Urban Land (Ceiling & Regulation) Act, 1976."

6. In the meantime, at the instance of the Company and permission of the State Government, the Developer proceeded with the following work:

Filed applications to the municipal and other authorities for commencement of work; Cutting and falling of trees and filling of land; Construction of roads as per development plans; Laying down of sewerage lines and water lines; Recreational area providing gardens, parks, pathways, plantation of trees etc.; Sub-stations and electrical cabling etc.

On getting permission, over 1200 flats were constructed and possession of over 600 flats was given in between July 1986 and 1989.

7. A writ petition was filed by certain employees before the Bombay High Court in Writ Petition No.2197 of 1987, challenging the exemption order dated 11.1.1984, issued under Section 21 of the Urban Land Ceiling Act and the order granting development of the land. The said writ petition was dismissed by the Bombay High Court on 18.6.1987.

8. In spite of the dismissal of the writ petition, after 25 years of implementation of the housing scheme, the Collector, Thane stayed the said scheme by a letter dated 15.2.1989 followed by the letter dated 27.2.1989.

The stay order was however not given effect which is clear from the order dated 25.6.1991, issued by the State Government, whereby the application filed by the builder was entertained and he was further allowed an eight years extension for completion of the housing project.

9. Pursuant to the information sought for by the Competent Authority, the Additional Secretary, Housing & Special Assistance Department, Government of Maharashtra by its letter dated 2.12.1991 informed the Competent Authority about the Government policy with regard to lands originally acquired for industrial units but part of which were subsequently declared excess under the Urban Land Ceiling Act. By the said letter, the circumstances under which 50% of the unearned income can be recovered from the land holder, if allowed to be retained and developed, was intimated.

10. In the meantime, the State Government granted further extension to the builder for completion of the housing project by orders dated 29.12.1993 and 1.7.1999.

11. While the work was in progress, the Collector by letter dated 5.2.2002 informed the Company that the land allotted to it for construction of residences for its employees, was not utilized for the said purpose and instead the developer had been given the right for construction of the housing project and to sell them after development. It was alleged that by such action, the Company breached the terms and conditions of the order of allotment and, thereby, was liable to pay 50% of its unearned income to the State Government. As such the amount had not been deposited, the Company was asked to show cause as to why the land should not be confiscated.

12. The Company denied the allegation and explained vide reply dated 15.2.2002 but the same was not taken into consideration. The Collector vide impugned order dated 18.2.2002 held that the Company breached the terms and conditions of the order of allotment and thereby was liable to pay 50% of the difference amount of the unearned income amounting to Rs. 14,11,45,851/- .

13. Being aggrieved the Company moved before the High Court. Initially a writ petition, W.P.No.1481 of 2002 was filed by the Company to set aside orders dated 5.2.2002, 18.2.2002 and the demand notice dated 6.3.2002. During the pendency of the said writ petition, the respondents issued orders dated 30.3.2002, 13.5.2002 and 9.10.2002 and called upon the Company to pay 75% of the amount, i.e. Rs.5,63,70,555/- towards 'unearned income', which was challenged by the

Company in the second writ petition, W.P.No.7457 of 2002.

14. The respondents in their counter-affidavit informed the High Court that they have no objection if the matter is remanded to the Collector, for fresh determination. Accordingly, the order of demand was set aside and the matter was remitted to the Collector, Thane for a fresh determination of "unearned income" but with adverse observations against the Company.

15. The arguments of the learned counsel for the Company are as follows:

(a) In absence of a specific finding regarding breach of any condition, the proceeding against the Company is not warranted.

(b) In view of Section 42 of the Urban Land Ceiling Act, the conditions mentioned in the housing project scheme dated 11.1.1984 has an overriding effect on the conditions specified in the original order of allotment.

(c) The Company is not liable to pay any portion of differential amount of the unearned income, in absence of its determination; and

(d) In absence of any notice and hearing given to the Company, the demand for payment of a portion of unearned income is violative of the principles of natural justice and fair play.

16. The learned counsel for the respondents countered this argument by stating that the additional land was acquired in favour of the Company which was to be used for the stated purpose. The terms and conditions have been specified in the order of allotment dated 20.1.1969. They are applicable to the total acquired land, including the land which was declared to be in excess and allowed to be retained. The principal object was the construction of dwelling houses for the workmen employed by the Company and for providing amenities to them. As per the terms and conditions, the Company cannot alienate the land or any part thereof, either by way of sale, mortgage, gift, lease or otherwise. In the event of a breach of condition, the transaction can be declared null and void and the land would revert back to the State Government.

It was further contended that the Company constructed a huge housing and commercial complex known as "Vasant Vihar" in contravention of terms and conditions. For the said reason the notice for reverting the land was rightly issued on the Company. Further, as the Company disposed the land in favour of the builder, it was asked to deposit 50% of the difference of the unearned income, which is legal and in accordance with the law.

17. We have heard the learned counsel for the parties and perused the record.

18. The correctness of the impugned order can be determined with reference to the following questions:

(i) whether the Company breached any of the terms and conditions of the order of allotment;

(ii) whether the notice of demand of 50% of unearned income is legal and valid; and

(iii) whether the Company was required to be heard before passing of the impugned orders;

19. We will first consider the question in regard to the breach of the terms and conditions of the order of allotment, if any, committed by the Company.

20. The conditions at Clauses 2, 4, 5, 7 and 10 of the 'order of allotment' dated 20.1.1969 relate to conditional restrictions on the alienation of land or its use for any purpose other than that for which it was allotted and read as follows:

"2. The Company shall -

(i) Not, except with the previous sanction in writing, of the Government use the transferred land for any purpose other than that for which it is acquired;

(ii) undertake the work of erecting, constructing building or buildings required by the Company within six months from the date on which possession of the said land is handed over to the Company and complete the case within three years from the aforesaid date;

Provided that if the Government is satisfied, after making such enquiry as it may deem necessary that the company was prevented by reasons beyond its control from erecting, constructing or executing the buildings within the aforesaid period of three years, it may extend the time for completion by a period not exceeding one year at a time.

Provided further that the total period of extension shall not exceed three years.

(v) not use the said land or any building or work that may be erected or executed upon it for any purpose which in the opinion of the Government is objectionable.

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4. (a) If the Company commits a breach of any of the terms and conditions hereof, Government may make an order declaring that the transfer of the said land to the Company is null and void and thereupon the said land shall revert back to the Government and the Government may by the said order further direct that an amount not exceeding one-fourth of the account paid by the Company to the Government as cost of acquisition under Sub-section (1) of Section 41 of the said Act, shall be forfeited to the Government as damages and the balance shall be refunded to the Company. The order so made shall be final and binding on the Company.

(b) The Company may with the previous permission in writing of the Government and within three months from the date of the Government Order passed under rule 5(1)(iv) of the said Rules declaring the transfer of the said land to the Company as null and void, remove all such buildings, erections or structures as may be then standing upon the said land shall deliver up the said land to the Government in good order and levelled to the satisfaction of the Executive Engineer, Thane Division.

5. If the Company utilises only a portion of the said land for the purpose for which it has been acquired and Government is satisfied that the Company can continue to utilise the portion of the said land used by it, even if the unutilized part thereof is resumed, Government may, make an order declaring the transfer of the said land

with respect to the unutilised portion shall revert back to the Government and Government may by the said order further direct that an amount not exceeding one-fourth of the amount paid by the Company as cost of acquisition under sub-section(1) of Section 41 of the said Act, as is relatable to the unutilized portion and be forfeited to the Government as damages and the balance of the portion shall be refunded to the Company. The order so made shall be final and binding on the Company. Provided further that the order referred to in this condition shall not be made, unless the Company has been given as opportunity of being heard in the matter and that there is any dispute the said land such dispute shall be referred to the Court within whose jurisdiction the said land or any part thereof, is situated and the decision of that Court thereon, shall be final and binding on the Company.

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7. The Company shall not analyse whatsoever alienate the said land or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise however except with previous permission in writing of the Government.

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10. Any moneys payable to the Government by the Company or any persons claiming under it by reason of any term and condition imposed by the Government as aforesaid shall without prejudice to any other rights and remedies of the Government be recovered from the Company or such person/s as arrears of land revenue."

21. From the terms and conditions of the order of allotment, it is apparent that there is a restriction imposed on the Company to transfer the land or change of use of the land etc. which can be made only with a prior permission of the State Government, such as;

(i) No land can be transferred for any purpose other than that for which it is allotted without prior permission of the State Government.

[Clause 2(i)].

(ii) The construction to be completed within the prescribed time frame. Extension of time for completion of the construction of buildings etc. can be granted only by the State Government [Clause 2(ii)].

(iii) The Company cannot alienate the land or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise except with the prior permission of the State Government in writing [Clause 7]

The following penal clause has also been specified:

(i) In case the Company commits any breach of conditions and transfers the land or portion thereof or changes the use of the land other than for the stated purpose without prior permission, the Government may declare the transfer as null and void and revert back the allotted land to itself [Clause 4(a)].

(ii) In case the Company utilises only a portion of the land for the stated purpose and does not use the rest of the portion of the land within the specified period, the State Government may revert back such unutilized portion of land and may direct that an amount not exceeding one-fourth of the amount paid by the Company for the cost of acquisition, as is relatable to the unutilised portion, be forfeited as damages [Clause 5].

However, no such final order can be passed without giving an opportunity of hearing to the Company as per the proviso to Clause 5, which reads as follows:

"Provided further that the order referred to in this condition shall not be made, unless Company has been given an opportunity of being heard in the matter and that where there is any dispute in the said land such dispute shall be referred to the Court within whose jurisdiction the said land or any part thereof, is situated and the decision of that Court thereon, shall be final and binding on the Company."

22. Admittedly, regarding that portion of the acquired land which was declared surplus, the Company wanted to retain it for weaker section. On an application filed by the Company, the Competent Authority approved the housing scheme

under Section 21(1) of the Urban Land Ceiling Act by its letter dated 11.1.1984 with conditions and restrictions, as follows:

"Circle No.ULC/TA/F-62/SR-18

Collectorate and Competent Authority to:

Thane Urban Agglomeration,

Collectorate, Thane

Dated: 11.1.1984

Read: The Scheme approved by the Collector and the Competent Authority No.3, Thane's Order No.ULC/TA/F-62/II dated 13.2.1979.

2) The declaration filed by M/s. Voltas Ltd. under Section 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976.

DECLARATION UNDER SECTION 21(1) OF THE URBAN LAND (CEILING AND REGULATION) ACT, 1976

WHEREAS M/s. Voltas Limited holds vacant land in excess of the ceiling limit in the Thane Urban Agglomeration the details of which are given in the Schedule I, hereto appended;

AND WHEREAS the said declarant has applied to hold the said land in excess of the ceiling limit for undertaking construction of houses for Weaker Section of the Society under Section 21(1) of the Urban Land (Ceiling & Regulation) Act, 1976;

AND WHEREAS the Competent Authority is satisfied that having regard to the location of the land the purpose for which the land is proposed to be used;

AND WHEREAS the Competent Authority is satisfied that the scheme contained in this declaration for construction of houses for weaker section of the society by M/s. Voltas Ltd. is in conformity with the scheme approved by the Authority specified in this regard by the State Government;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of Section 21 of the Act, after having recorded in writing the reasons for making this order, the Competent Authority, hereby allows the said declarant to continue to hold the vacant land in excess of the ceiling limit for construction of houses for weaker section of society, as specified in Schedule I, subject to the following terms and conditions:

(1) Any construction of tenements for weaker section of society under the Scheme by the said declarant shall necessarily be in accordance with the prevailing Municipal Corporation Regulations, Town Planning requirements and such other regulations. In case land development is necessary before construction, it shall be carried out by the said declarants at their own cost. The vacant plots for school, shopping centre, dispensary, recreational ground etc. shall be provided in the layout shall be constructed by the said declarant at their own cost.

(2) The said M/s Voltas Ltd. shall utilise at least 33% of the permissible built up area as per density regulations under this Scheme.

(3) The land allowed to be retained in excess of the ceiling limit under this order shall be fully utilized by the said declarant for the purpose of construction of tenements of the plinth area not exceeding 40 sq. mtrs. and tenements having plinth area less than 80 sq. mtrs in respect of the lands specified at Annexure-I. (4) The said M/s. Voltas Ltd. on receipt of the exemption shall commence construction within a period of two years and shall complete the project within a period of six years.

(5) The said M/s Voltas Ltd. shall reserve 10% of the dwelling unit for the sale to the allottees nominated by the Government and additional 10% tenements shall be received for the sale to the nominees of Collector, Thane.

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(7) The said M/s Voltas Ltd. shall not sell or otherwise transfer the dwelling unit to a person if he or his family also owns a dwelling unit in the same urban agglomeration and he shall obtain from the intending purchasers of dwelling unit

an affidavit to this effect.

(8) The selling price of the 10% tenements to be sold to Government nominees shall not exceed Rs.1345 per sq. mtrs. of plinth area (e.g. Rs.125 per sq.ft. of pinth) area and there will be no price restriction on the remaining 90% tenements to be sold in the open market.

(9) The said M/s Voltas Ltd. shall convey the land under the building the land to be kept open as per building regulations to the buyers of the tenements as and when they form Co-operative Housing Society.

(10) The said M/s Voltas Ltd. shall transfer only tenements constructed under this Scheme or building alongwith the land appurtenant and vacant land to the extent necessary to be kept unbuilt as per the Municipal Regulations and other statutory requirement if in the lay-out for the Scheme the concerned Municipal Authority has stipulated certain reservations for various public amenities such land, as well as the internal roads of the lay-out, shall be transferred by the said declarant to the concerned Municipal Authority without charging any consideration. Internal roads shall be brought upto the standard laid down by the Municipal Authority before they are transferred.

(11) The entire construction programme shall be regulated by the Maharashtra Ownership flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1965, if the said person collects advances to finance the Scheme from the prospective occupants.

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(15) In case the said declarant fails to complete the housing Scheme and give possession to the intending purchasers, to the extent it is not complied with, the exemption shall be deemed to be withdrawn and the land with structures shall be acquired under the Urban Land (Ceiling and Regulation) Act, 1976 as if it were vacant

land.

(16) If at any time Competent Authority to satisfy that there is breach of any of the conditions mentioned in the order it shall be competent for the Competent Authority by order to withdraw the order from the date specified in the order.

(17) Provided that before making any such order the Competent Authority shall give the reasonable opportunity to the person making representation against the proposed withdrawal.

(18) When order is withdrawn or is deemed to be withdrawn under these conditions the provisions of the Chapter III of the said Act shall apply to the land as if the land has not been allowed to be retained in excess of the ceiling limit under this order.

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(20) Due publicity in the local newspapers should be given by the applicant before starting the booking of the flats.

(21) Declarant shall surrender 30% of their present land under Weaker Section Housing Scheme particularly as shown in "Yellow verge" for public purpose viz. for Maharashtra Housing Area Development Authority.

Sd/-

Collector & Competent Authority No.3

Thane Urban Agglomeration, Thane."

23. A question was raised by the Company as to which of the terms and conditions, including the restrictions imposed by the order of allotment as well as the housing scheme, under Section 21 will prevail over other. The Competent Authority by its reply dated 29.10.1986 clarified and intimated the Company that the conditions and restrictions in the order of allotment as regards the alienation of the land without permission, would be over-ridden by the exemption granted and the terms and conditions mentioned in the order of housing scheme. The said

letter reads as follows:

"No. ULC/TA/F.62/SR-18

Office of the Competent Authority

Thane Urban Agglomeration,

Mahatma Phule Sahakar Bhavan,

2nd Floor, Kadva Lane, Thane

Date: 29.10.1986

To,

Estate Manager,

M/s Voltas Limited,

Central Administration Deptt.,

19, J.N. Heredia Marg,

Ballard Estate, Bombay - 400036.

Sub: Exemption order No. ULC/TA/F-62/SR-18

Dated 11.1.84 in respect of land at Majiwade, Thane.

Ref: Your letter Majiwada dated 30.9.1986.

Sir,

With reference to your above letter I have to inform you that the conditions stipulated in this office Order No. ULC/TA/F-62/SR-18 dated 11.1.1984 though inconsistent with the conditions of the original sanad, having over riding effect, stand operative (vide section 42 of the Urban Land (Ceiling & Regulation) Act, 1976.

Yours faithfully,

Sd/-

Dy. Collector &

Competent Authority,

Thane Urban Agglomeration & Kms.

Peripheral Area of Gr. Bombay.

As approved by the Collector."

24. In order to implement the said housing scheme dated 11.1.1984, the Company engaged the builder with the knowledge of the State Government as is apparent from the letters of extension issued by the State Government from time to time including the letter dated 2.12.1989 whereby the State Government extended the period of construction. The letter reads as follows:

"No. HWS-1086/(313)/D/XV.

Housing and Special Assistance

Department

Mantralaya, Bombay-400 032

Date: 2.12.89

M/s Eversmile Construction Company Pvt. Ltd.,

Conwood House, Yashodham

Gen. A.K. Vaidya Marg,

Goregaon (East), Bombay - 400 063.

Gentlemen:

Please refer to your letter No. A/ECC/3515(A), dated the 13th November, 1989 seeking clarification regarding the period for completion of the economically weaker section housing Scheme sanctioned on 1,46,610.25 sq. mtrs. of surplus vacant land sanctioned by Collector, Thane u/s. 21 of the Urban Land Ceiling Act, 1976 vide orderNo.ULC/TA/F-62/SR-18, dated 11th Janurary 1984.

Government have now decided that a period of 8 years should be allowed for completion of housing Schemes on land admeasuring 10 acres or more. I am therefore, directed to inform you that your firm has time upto 11th January 1992 for completion of the project. Kindly note that all other terms and conditions of the exemption order remain unchanged and shall continue to be binding upon the landholders M/s. Voltas Ltd. and your Firm.

Yours faithfully,

(S.V. Yadkikar)

Under Secretary to Government

Copy to:

- Collector, Thane
- City Engineer, Thane Municipal Corporation, Thane
- Deputy Collector and Competent Authority, Thane

Select File"

25. The completion of the project was extended from time to time and the developer engaged by the Company was granted further time by the State Government by a letter dated 25.6.1991, which reads as follows:

"No. HWS-1086/(313)/D.XV.

Housing & Special Assistance Department

Mantralaya, Bombay-400 032

25th June 1991

Shri. D.N. Shah

M/s Eversmile Construction Company Pvt. Ltd.,

Conwood House, Yashodham

Gen. A.K. Vaidya Marg,

Goregaon (East), Bombay - 400 063.

SUB: Order bearing No. Ulc/Ta/F-62/Sr-18 dated: 11th January 1984

Sir,

Please refer to your letter No. A/ECC/91/862 dated 17th April, 1991 seeking an extension in time for completion of construction on 1,46,610.25 sq. mtrs. of Surplus vacant land which has been permitted to be retained for weaker sections housing vide the captioned order dated 11th January 1984.

2. I am directed to state that in supersession of Govt. letter of even number dated 2.12.1989, the State Govt. is pleased to grant a further extension of 2 years for completion of construction on the exempted land. You would be required to complete construction on or before 11th January 1994.

Yours faithfully,

(S.S. Jadhav)

Under Secretary to Government"

26. In this case, learned counsel for the respondent could not lay his hand on any specific breach of the terms and conditions with regard to the surplus land. There is no allegation of breach of any terms and conditions of the order of allotment in regard to rest of the land which has not been declared surplus.

From the housing scheme dated 11.1.1984 it is apparent that the State Government allowed the change in its utilization for developmental purposes other than stipulated. By the said housing scheme dated 11.1.1984 the excess land was allowed to be developed for construction of the houses for the weaker sections; for school, shopping centre, dispensary, recreational ground, etc. The Company was allowed to utilise at least 33% of the built up area for its purpose and the rest for other purposes. The development work was done by the Company at its own cost; 10% of the dwelling unit was reserved in favour of the State Government to be sold to its nominated allottees and an additional 10% of the tenements were to be sold to the nominees of the Collector. The sale price of the 10% tenements reserved for the nominee of the State Government was fixed at Rs. 1345/- per sq. mtrs. of plinth area; no price restriction was made for the remaining 90% tenements which are to be sold in the open market. The Company was asked to give due publication in the local newspapers for booking of flats to be sold in the open market with the further condition that 30% of their land was to be surrendered to the Maharashtra Housing Area Development Authority.

27. The Company decided to develop the land as per the Housing Scheme dated 11.1.1984 through the Developer M/s Eversmile Construction Company Pvt. Ltd. This was intimated to the State Government which agreed to the proposal, as is clear from the State Government's letter dated 2.12.1989 issued from the Department of Housing and Special Assistance, Government of Maharashtra, Bombay. The State Government at the request of the Developer, M/s Eversmile Construction Company Pvt. Ltd. also extended the period of completion for the housing scheme, vide letter dated 25th June, 1991.

28. We, therefore, hold that the State Government allowed the Company to change the use of the land and to develop the surplus land for purposes other than that for which the said land was originally allotted and such permission is in accordance with the terms and conditions as mentioned in the order of allotment dated 20.1.1969. The first question is thus answered in negative, in favour of the company.

29. Turning now to the second question, we find that the order of allotment dated 20.1.1969 and the scheme dated 11.1.1984 do not stipulate any charge on the unearned income of the Company. The respondents have failed to show the provision under which the Company is required to pay 50% of its unearned income.

30. The communication dated 2.12.1991 between the Additional Secretary of the State and the Competent Authority discloses the entitlement of the State to charge part of the unearned income in certain cases where lands have been provided to the industrial units after acquiring land under the Urban Land Ceiling Act but part of which is subsequently declared surplus under the Urban Land Ceiling Act but allowed to be retained. As per the said guideline, in case, the land acquired is declared excess but allowed to be retained by a scheme framed under Section 21, then 50% of the unearned income is to be recovered subject to the conditions prescribed therein which reads as follows:

"NO.ULC 1089 (0007)/D-13

Housing & Special Assistance Department

Mantralay, Mumbai - 400 032

Date: 2.12.91.

To

The Additional Collector &

Competent Authority,

Mumbai (Pune)

The Dy. Collector & Competent Authority

Thane/Ulhasnagar/Pune/solapur/Kolhapur/Nagpur Nashik

Subject: Lands which have been provided to the Industrial Units after acquiring as per Part Seven of the Land Acquisition Act 1894.

Schemes which have been sanctioned as per Urban Land Ceiling Act, 1976.

Instructions have been given as per the Semi-official letter dated 13.3.1987 bearing some number that as the Government is again entitled for the rights of holding on the lands which have been acquired and provided to the Industrial Units as per the Part Seven of the Land Acquisition Act 1894 but which have not been brought in the use within the prescribed time limit and if such lands will be included by the Industrial Units in the Statement u/s 6 of the Urban Land Ceiling Act 1976 the same should be pointed to the Revenue and Forest Department.

In this connection you are being informed that as per provisions Part Seven of the Land Acquisition Act 1894, if the Schemes have not been actually started which have been sanctioned u/s 20 and 21 of the Urban Land Ceiling Act 1976, then exemption granted for the lands should be cancelled.

If an accordance with the Exemption Order if the development work on the land which has been acquired/allotted as per Section 20 and 21 is in progress then 50% amount of undecided income in such case should be recovered from the landholder.

If at that time in accordance with the existing Scheme if the landholder had returned 40% and 30% additional land to the Government, then in such case, 50% unearned income should not be recovered.

Sd/-

(H.M. Komalkar)

Additional Secretary,

Government of Maharashtra.

Copy forwarded to:

The Desk Officer,

Desk No.13, 14, 15 and 16

Housing & Special Assistance Department,

Desk 13, Selection File

The Collector, Mumbai

Suburban/Thane/Pune/Nagpur/Nashik/Solapur/Kohapur/

Sangali"

31. In the present case, the respondents have failed to show the category to which the Company belongs for determining its liability towards unearned income.

32. Before this Court the respondents have not produced GO dated 21.11.1957; in absence of 1957 policy it is not possible to decide whether the company is liable to pay any amount towards unearned income as per the said policy. The second question is, therefore, not answered and left open for determination.

33. So far as the third question is concerned, admittedly, no hearing was given to the Company before passing the impugned orders. There is nothing on record to suggest the basis on which the respondents determined the unearned income.

It is a settled law that no Penal order can be passed without giving any notice and hearing to the affected person. In the present case, admittedly, the impugned orders were passed without giving such notice and hearing to the company; the impugned orders were passed in violation of the Rules of Natural Justice. The third question is thus answered in affirmative in favour of the company.

34. The High Court failed to notice the aforesaid facts and erred in holding that the Company breached terms and conditions of the order of allotment.

35. For the reasons aforesaid, we cannot uphold the impugned orders and the demand notice dated 6.3.2002 issued by the Collector and the order passed by the High Court. All the aforesaid orders are accordingly set aside. The matters are remitted to the Competent Authority to decide whether the Company is liable to pay any amount towards part of the unearned income. Before passing such order, the Competent Authority will issue a fresh show cause notice to the company

referring therein the rule/order/guideline, if any, pursuant to which the company is liable to pay part of the unearned income. The company may file an effective show cause reply within four weeks thereof. Thereafter, the Competent Authority after hearing the Company will decide the question and pass an appropriate order in accordance with law. The appeals are allowed with the aforesaid observations and directions but there shall be no order as to costs.

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