

LAW & POLICY UPDATE



Bombay High Court's Recent Directive to the Maharashtra Government: ULC Premium to be Charged only on Surplus Land

The Urban Land (Ceiling and Regulation) Act, 1976 (**ULC**) was initially introduced with the aim of promoting an equitable distribution of land. However, this was subsequently substituted with the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (**Repeal Act**), which was adopted by Maharashtra State Legislature on November 29, 2007. The Repeal Act included a saving clause (Section 3 of the Repeal Act stated that the repeal would not affect the vesting of any land of which possession had been taken by the State Government; the validity of any exemption order under Section 20(1) or any action thereunder; any payment made to the State Government as a condition for granting a Section 20(1) exemption) to protect certain aspects of ULC such as land possession by the government and exemption orders.

In 2014, a full bench of Bombay High Court (**BHC**) considered the effect of Repeal Act in ***Maharashtra Chamber of Housing Industry & Ors v. State of Maharashtra & Anr***, which was challenged before the Supreme Court of India (**SC**). During the pendency of appeal, the State Government appointed a committee under the chairmanship of Mr. Justice BN Shrikrishna, which proposed that the issue of exemption orders under Section 20 should be closed by accepting certain payment (which was ratified by SC by virtue of order dated July 2, 2019 in a Civil Appeal). This led the issuance of two Government Resolutions (**GRs**) which inter alia stated that upon payment of one-time premium amount in respect of the entire area exempted under Section 20 exemption order, the remark of ULC would be deleted from the revenue records for the properties concerned.

The BHC finally settled the ULC premium issue in Maharashtra with a judgment dated March 30, 2023 in the matter of ***Salim Alimahomed Porbanderwalla & Anr v. The State of Maharashtra & Anr***. In this matter, a Writ Petition was filed by the Petitioners who were in possession of land bearing C.T.S. Nos. 124 and 125 aggregating to an area of 12025.25 sq meters in Village Marol, Taluka Andheri. Respondent No. 1 was the State of Maharashtra and Respondent No. 2 was The Additional Collector and Competent Authority. The land in question before the BHC admeasured an area of 5387.17 sq meters as surplus vacant land and about 2990.23 sq meters as retainable land which was within the ceiling limit under the ULC Act. The Petitioners, in order to avail the benefits of the scheme as notified in the GRs, requested for computation of premium to which the competent authority demanded an amount of INR 51,540,741 against an area of 5271.75 square meters. However, in doing so, the competent authority left an area of 115.42 square meters (which together would have made up 5387.17 square meters). However, the Petitioners as per the demands of the Competent Authority made a complete payment of premium to the Treasury towards the surplus vacant land, pursuant to which the Petitioners anticipated the removal of the entry in the Section 20 of the ULC order from the revenue records. However, despite making the payment against balance area of 115.42 square meters, the entries in the records of rights and other records regarding the entire property as being affected by the ULC order continued to remain in force.

HSA Viewpoint

The clarification on the meaning of the term 'entire and' provided by the BHC clears up all ambiguity on this aspect. Similarly, the clarification that premium amount is only to be paid on the surplus vacant land and not the whole land, is a welcome move and will reduce the instances of litigation stemming from people directed to pay premium on the entire land. It may be worthwhile to consider whether landowners and developers can claim refunds for premiums they have already paid for land that is not considered surplus and vacant.

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The BHC addressed the issue of whether the Petitioners were liable to pay premium only on the surplus vacant land or on the entire land, including the retainable land, as demanded by the government authorities. In its judgment, BHC concurred on the submission made by the Petitioners that the expression 'entire land' shall mean the whole of the surplus vacant land and not the whole of the land, and noted that the Government Regulation using the term 'entire land' shall not mean the retainable land belonging to the Petitioners already exempted under the Act. In fact, the expression means the surplus vacant land for which the Petitioner has already paid the full premium. Therefore, the Petitioners were entitled to have the revenue entry deleted.

The BHC heavily relied on the decision of the five Judge Bench of the Supreme Court in *Maharao Sahib Shri Bhim Singhji v. Union of India & Ors* which held Section 27(1) of the ULC Act ultra vires, unconstitutional and in violation of Article 14 of the Constitution and, therefore, struck it down. Accordingly, the BHC eventually quashed and set aside the Impugned Letter dated April 22, 2022 addressed by the Respondents to the Petitioners stating that the entries in the Records of Rights shall remain unchanged and shall continue to reflect Section 20 of the ULC. The BHC thereafter directed the Respondents to remove all entries under the ULC Act for the surplus vacant land since the Petitioners had paid the premium to treat their land as free of all conditions stipulated by the exemption order under Section 20 of the ULC Act.

Key takeaways

The *Salim Alimahomed Porbanderwalla* judgment (*supra*) has addressed the confusion that was created with respect to the term 'entire land'. Some of the key takeaways from this judgment are as follows:

- **Clarification on the definition of the term 'entire land':** The BHC clarified that the term 'entire land' or 'ekun shetra' (Marathi) used in GRs means the whole of the surplus vacant land and not the whole land.
- **Terms of payment on surplus vacant land:** On payment of premium on surplus vacant land, the land becomes free of all conditions as stipulated under Section 20 exemption order.
- **Removal of restrictions in the Revenue Records upon payment of premium:** The BHC quashed and set aside the Impugned Letter dated April 22, 2022 addressed by the Respondents to the Petitioners stating that the entries in the Records of Rights shall remain unchanged and shall continue to reflect Section 20 of the ULC. It was held that the restrictions in the revenue records should be removed once the premium calculated as per the GRs on surplus vacant land is paid to the State Government.
- **Interpretation of the GRs:** The BHC has provided enough clarification in terms of calculating the premium of surplus vacant land and not on the entire land as contended by the Respondents. Although, it is yet to be determined as to how the Government of Maharashtra shall deal with the landowners who have already paid premium on the entire land instead of only the surplus land.

