Voltas Ltd. and anr. Vs. Additional Collector and Competent Authority and ors.

Voltas Ltd. and anr. Vs. Additional Collector and Competent Authority and ors.

SooperKanoon Citation : sooperkanoon.com/366523

Court : Mumbai

Decided On : Jul-25-2008

Reported in : 2008(5)BomCR746

Judge : Deshmukh D.K. and ;Daga V.C., JJ.

Acts : Companies Act, 1913; Companies (Amendment) Act, 1956; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 6(1), 8(4), 9, 10(1), 10(3), 10(5), 11, 20 and 34; Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Sections 1(3), 2, 3, 3(1), 3(2) and 4; Principal Act - Sections 1(2), 2, 3, 3(1), 4, 5, 6 to 14, 15, 20, 20(1), 21, 23 and 34; General Clauses Act, 1897 - Sections 6; Cantonments Act, 1924 - Sections 3; Finance Act, 1950 - Sections 2 and 13; Constitution of India - Articles 39, 249, 250, 252 and 252(1); Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999

Appeal No. : Writ Petition No. 8356 of 2006

Appellant : Voltas Ltd. and anr.

Respondent : Additional Collector and Competent Authority and ors.

Advocate for Def. : Walawalkar, Spe. Cou. and ;S.R. Nargolkar, ;A.H. Palekar, Advs. and ;V.P. Malvankar, A.G.P. for respondent Nos. 1 and 2

Advocate for Pet/Ap. : F. Devitre and ;C.S. Balsara, ;H.N. Vakil, Advs., i/b., ;Mulla and Mulla and ;Craigie Blunt and ;Caroe, Advs.

Disposition : Petition allowed

Judgement :

Deshmukh D.K., J.

1. The facts that are material and relevant for deciding this petition are that the first petitioner is a company incorporated pursuant to the provisions of the Indian Companies Act, 1913 and now governed under the provisions of the Companies Act, 1956. The second petitioner is a shareholder of the petitioner No. 1 company.

2. The first petitioner is the owner of lands situated at Village Panchpakhadai, at Thane and Village Majiwade at Thane. On the commencement of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the ULC Act'), pursuant to the first petitioner's return dated 14th August, 1976 under Section 6(1) of the ULC Act, the Competent Authority passed an order dated 28th September, 1984 under Section 8(4) of the ULC Act declaring a large area as surplus vacant land. The first petitioner challenged the aforesaid order before the Additional Collector, Thane, who by his order dated 29th April, 1985 stayed the operation of the order dated 28th September, 1984 and eventually by order dated 19th February, 1990 remanded the matter back to the Competent Authority for fresh adjudication.

3. The Competent Authority issued Corrigendums dated 2nd December, 2002 and dated 2nd January, 2003 to the said order dated 28th September, 1984. Thereafter, a final Corrigendum dated 13th May, 2003 came to be issued under Section 8(4) of the ULC Act, whereby 77,630.63 square meters was declared as surplus vacant land under Section 8(4) of the ULC Act. This was confirmed in the final statement of the Competent Authority dated 17th June, 2003 under Section 9 of the ULC Act. The first petitioner pointed out the discrepancies in the area of the land described as surplus vacant land in the Corrigendum dated 13th May, 2003 and also objected to the same, inter alia, on the ground that most of the land was

already utilized for factory (pursuant to 1976 and 1980 Exemption Orders from the Director of Industries under Section 20 of the Act), a part was encroached upon, some lands had been sanctioned for extension of H.R.D. Centre, etc. Therefore, the same could not be declared as surplus vacant land. On 17th June, 2003 the Competent Authority issued a Notification under Section 10(1) of the ULC Act. Thereafter the Competent Authority issued a Notification dated 3rd February, 2004 under Sections 10(3) of the ULC Act stating that the surplus vacant land is deemed to be acquired. On 24th August, 2004 the first petitioner submitted a scheme under Section 20 of the ULC Act for land admeasuring 22,885 square metres at Village Panchpakhadi. An earlier scheme submitted under Section 20 had not been decided upon. On 8th November, 2004 notice under Section 10(5) of the ULC Act came to be issued, whereby the first petitioner was called upon to hand over possession of the aforesaid land stated to be surplus vacant land admeasuring 77,630.63 square meters under the Corrigendum dated 13th May, 2003. The first petitioner made several representations seeking withdrawal of the Section 10(3) and Section 10(5) notifications, setting out inter alia that the aforesaid scheme under Section 20 had been submitted and was pending and the reasons why the aforesaid land could not be declared surplus vacant land. The petitioners also represented that an exemption Order dated 10th March, 1980 had been issued by the Directorate of Industries. The first petitioner further submitted that there were plans sanctioned to construct a H.R.D. Centre and Staff quarters, etc., due to which, the aforesaid land was not surplus vacant land. In response to the aforesaid representations by the first petitioner, the Competent Authority by its letter dated 28th April, 2005 informed the first petitioner that only the State Government could withdraw the Section 10(3) and Section 10(5) Notification and that its remedy was to file a Revision Application under Section 34 of the ULC Act. The said Revision Application was filed by the first petitioner on 25th May, 2005. On 25th October, 2005 the Revisional Authority directed that as the matter was pending hearing, no further action should be taken in the matter. By Notice dated 8th November, 2005 the first petitioner was given notice of hearing before the Revisional Authority on 11th November, 2005. Hearing took place on 11th November, 2005, when the first petitioner filed its written submissions. The Revisional Authority passed an oral order, remanding the entire matter to the

Competent Authority. As no written order was passed in accordance with the oral order, the first petitioner addressed a letter dated 3rd February, 2006 recording that no written order was passed. By a further letter dated 24th August, 2006 the first petitioner placed on record that no written order of remand had been issued. The petitioners filed a Writ Petition No. 6190 of 2006, which came to be disposed of by an Order dated 11th October, 2006, recording the statement of the repondents that the said Revision Application would be disposed of within a period of three weeks and that in case an Order against the first petitioner was made, the same shall not be given effect to for a period of three weeks thereafter. The Revisional Authority by its order dated 30th October, 2006 remanded the matter back to the Competent Authority in regard to in claim of S. No. 68 in as part of surplus vacant land and confirmed the Section 10(3) and 10(5) notification. It also directed that the scheme submitted by the first petitioner under Section 20 of the ULC Act be considered on merits. The Revisional Authority by the aforesaid Order dated 30th October, 2006 upheld the notices of the Competent Authority under Section 10(3) and 10(5) of the ULC Act. The first petitioner being aggrieved by the aforesaid Order dated 30th October, 2006 passed by the Revisional Authority filed the present Writ Petition No. 8356 of 2006 challenging the same. This Court by its Order dated 19th December, 2006 granted interim relief in terms of prayer Clause (c) and issued Notice to the repondents. Prayer (c) of the writ petition inter alia, seeks an injunction restraining the repondents from taking any further steps in pursuance of the aforesaid Order dated 30th October, 2006. The petition was amended pursuant to order dated 18.1.2008 consequent upon the repeal of the ULC Act by the Repeal Act, 1999 which was adopted by both Houses of the Maharashtra Legislature on 29-11-2007 as notified on 1.12.2007.

4. After the amendment to the petition, the principal case of the petitioners is that as a result of repeal of the principal Act as possession of the land which was declared surplus from the holdings of the petitioner No. 1 was not taken by the respondents, all proceedings initiated against the petitioners under the Principal Act have lapsed. Therefore, the only factual aspect necessary to be determined for deciding the principal contention urged on behalf of the petitioners is 'as to whether the possession of the land declared as surplus was taken at any point of time by the respondents.' The respondents have filed affidavit and in the affidavit

they have not contended that they have taken possession of the land. On the basis of the affidavit filed on behalf of the respondents, it can be taken as an admitted position that the possession of surplus land has not been taken. The question, therefore, that arises for consideration is 'whether by reason of repeal of the Act, all proceedings under the principal Act in regard to the petitioners' land declared as surplus vacant land, have abated and whether the land of the petitioner has reverted to the petitioners.' It was also submitted that pursuant to the order passed by the State Government remanding the proceedings back, fresh notices for further hearing were to be issued and fresh order under Section 8(4) of the Principal Act were to be passed. It was submitted that as a result of the Repeal Act, now it is not possible to continue the proceedings that are to be taken pursuant to the remand order.

5. It was submitted that it is an undisputed position that the repondents had not taken possession of the petitioners' land declared as surplus vacant land as on the date of the coming into force of the Repeal Act. It was submitted that the petitioners are and have been in possession of the land at all times. It was submitted that the declaration under Section 10(3) of the Principal Act was notified on 3-2-2004 and the Order/Notice under Section 10(5) of the Principal Act is dated 8.11.2004. It was submitted that it is an admitted position that Section 10(6) of the Principal Act-for forcible possession, was not resorted to at any stage. It was submitted that in these circumstances, by reason of the Repeal Act, all proceedings under the Principal Act in regard to the petitioners' land declared as surplus vacant land have abated and that the petitioners' said land has reverted to the petitioners. It was further submitted that in the repondents' Affidavit in Reply dated 22nd February, 2007, the repondents contend that after remand, fresh notices for further hearing were issued to the petitioners and that fresh Orders under Section 8(4) of the Principal Act will be passed by them. It was submitted that in any event, after the Repeal Act, this cannot be done by the repondents as the underlying proceedings under the Act have abated by reason of the Repeal Act. It was submitted that the Principal Act was passed with the objects, inter alia, to prevent the concentration of urban properties in the hands of few persons and to ensure equitable distribution and utilization of urban properties. It was further submitted that the Objects and Reasons of the Repeal Act record that public

opinion was nearly unanimous that the Principal Act had failed to achieve what was expected of it and that on the contrary, the Principal Act had pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption and had become a potent clog on housing. It was submitted that the Repeal Act brings about a simpliciter repeal of the Principal Act and there is no 're-enactment' of the Principal Act. It was submitted that accordingly, except to the extent saved by the Repeal Act, the Principal Act has been obliterated in its entirety. It was submitted that the saving provisions of the Repeal Act-viz., Sections 3(1), 3(2) and 4 thereof-manifest an express legislative intent to save the repondents' rights only in regard to that land which vested in the State under the deeming provisions of Section 10(3) of the Principal Act and of which possession was taken over by the State. It was submitted that this legislative intent is clear from the provisions of Section 3(1)(a) of the Repeal Act which in terms provides that the Repeal of the Principal Act shall not affect the vesting of any vacant land under Section 10(3) of the Principal Act only where possession of such land has been taken. It was submitted that had the legislative intent been to save the vesting of all land once a Section 10(3) notification was issued, the words 'possession of which has been taken over by .... Competent Authority' would not have found place in Section 3(1) of the Repeal Act. It was submitted that the said words cannot be ignored as mere surplusage and must be given full effect to. It was submitted that had the legislative intent been otherwise, the Legislature would have stopped at the words 'the vesting of any vacant land under Sub-section (3) of Section 10', thus, the addition of the words 'possession of which has been taken over by ...Competent Authority' is critical in determining the effect of the savings clause in the Repeal Act. It was submitted that this legislative intention is re-enforced by the provisions of Section 3(2) of the Repeal Act, which provides that where any land is deemed to have vested in the State under Section 10(3) of the Principal Act but possession has not been taken and payment has been made in respect of such land, then such land shall not be restored unless the amount paid has been refunded to the State Government. It was submitted that the 'restoration' contemplated under Section 3(2) of the Repeal Act is of the ownership rights which are deemed to have vested in the State. It was further submitted that under the Principal Act, it is open to the

State to make payment of compensation under Section 11 of the Act once the land is deemed to have vested under Section 10(3), even where possession has not been surrendered or delivered or taken under Sections 10(5) or 10(6) of the Principal Act. It was submitted that Section 3(2) of the Repeal Act manifests a clear legislative intent to restore ownership of surplus land otherwise deemed to have vested in the State (of which possession has not been taken), to the land holders on refund of amounts paid by the State Government to them. It was submitted that Section 2 of the Repeal Act expressly and unequivocally repealed the Principal Act in its entirety. It was submitted that the 'savings' provisions in the Repeal Act expressly are made applicable only to that land which satisfies a dual requirement i.e. deemed vesting under Section 10(3) of the Principal Act and possession of which has been taken over under Sections 10(5) or (6) of the Principal Act. It was submitted that the addition of the words 'possession of which has been taken over...' in Section 10(3)(1)(a) and the exclusion of proceedings under Section 10 in the proviso to Section 4 of the Repeal Act are crucial indicators of the legislative intention. It was submitted that the Supreme Court in several matters has noted the effect of Section 4 of the Repeal Act on proceedings under the Principal Act where possession has not been taken of the land and has allowed the writ petitions challenging orders passed under the Principal Act on the basis that the proceedings under the Principal Act have abated. Reliance was placed on the following orders of the Supreme Court:

(a) (Ghasiteylal Sahu and Anr. v. Competent Authority) 2004 (13) S.C.C. 452;

(b) (Mukarram Ali Khan v. State of U.P. and Ors.) 2007 DGLS 757 : A.I.R. 2007 S.C.W. 6286;

(c) (Pandit Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P.) : AIR 2000 SC3415 ;

(d) (Shanti Bhardwaj (Smt.) v. State of U.P. and Anr.) 2004 (10) S.C.C. 130.

It was submitted that Several High Courts in India have also construed the Repeal Act and held as submitted above i.e. that where possession of land has not been taken over by the State Government under the Principal Act on the coming into force of the Repeal Act, the land re-vest in the land holder and all underlying proceedings under the Act abate. Reliance was placed on the following citations:

(a) (Indrajitsing P. Geel v. Competent Authority & Deputy Collector, Ahmedabad and Anr.) 2007 (1) G.L.R. 677;

(b) (B.T.L. Education Trust, Bangalore v. State of Karnataka and Ors.) A.I.R. 2006 Kar 12;

(c) (V. Gunmathan v. Assistant Commissioner of Urban Land, Tax & Ceiling) 2007 (5) Mh. L.J. 103;

(d) (Chabi Nath v. State of U.P. : 2005(2)AWC1405 ;

(e) (Kailash and Anr. v. State of U.P. and Ors.) 2006 (I) A.W.C. 497,

(f) (Bal Krishna v. State of U.P.) : 2007(3)AWC2715 .

Reliance was also placed on behalf of the petitioners on the judgment of the Supreme Court in the case of (Udai Singh Dagar and Ors. v. Union of India and Ors.) : AIR 2007 SC2599 .

6. On behalf of the respondents, it was contended that repealing statute is not exhaustive of saving and destruction of the vested rights and liabilities incurred, and there are several judgments of the Hon'ble Supreme Court, which have taken a view that the rights saved by the repealing statute are not only those rights mentioned to have been saved and it certainly does not mean rights which are not saved expressly are destroyed but the destruction of the vested rights by the Act of Repeal must be clear and express or by necessary implication. Reliance is placed on the observations made by the Supreme Court in the following judgments:

(a) : [2001]2SCR590 , (Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel and Ors.);

(b) : [1989]2SCR152 , (Bansidhar and Ors. v. State of Rajasthan and Ors.);

(c) : [1987]166ITR102(SC) , (Commissioner of Income Tax, U.P. v. Shah Sadiq and Sons).

Then it was submitted that the Supreme Court has held that to find out the effect of the Repeal Act Section 6 of the General Clauses Act can be relied on. Then it was contended that the Supreme Court has held in Bansidhar's case that rights had accrued in favour of the State Government to take over the lands declared as excess under the Ceiling Act and the holder of the land had incurred liability to surrender that land which was declared to be excess on the relevant date. It was submitted that in the present case on declaration under Section 10(3) of the Principal Act, the land had vested with the State Government and there is no provision in the Repeal Act for divesting of the title of the State Government in the land. It was further submitted that vesting of ownership into Government under Section 10(3) of the Principal Act must be seen having regard to the laudable object of the Principal Act to acquire land and re-distribute it for housing the poor. The Act provided for vesting of ownership of the excess lands in State Government by operation of statute by providing deemed vesting in Government and such deemed vesting was to precede by the Competent Authority publishing a Notification in the Official Gazette that the excess vacant land referred to in the Notification shall be deemed to have been acquired by the State Government and upon publication of such declaration, such lands shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the dates so specified. It was further submitted that in view of such vesting by such clear and strong language of the statute, which was intended to achieve the object of the said Principal Act during its operation, the holder/owner of the land was divested of his ownership and he had no right to the said land. It was further submitted that the possession to be taken over by the State Government under Section 10(5) of the Principal Act was to enable the Government to utilise such land for the purpose of housing the poor but the vesting of ownership of the excess land was not kept dependent on Government taking over such land under Section 10(5), the vesting become complete the moment the notification under Section 10(3) was issued by Government. It was further submitted that the petitioners argument that now in view of the provisions of the Repeal Act, the provisions of Sections 10 and 11 do not to apply to the lands of which possession has not been take and the State will not be able to take possession of the lands, so vested in Government under Section 10(3) of the Principal Act is not sound, because non-availability of mechanism of Section 10(5) of the Principal Act for taking over possession will not preclude the Government from taking possession of the lands so vested in Government as owner thereof free from all encumbrances by following due process of law even if it is assumed for the sake of arguments that the mechanism of Section 10(5) is no longer available because of the Act of Repeal. It was submitted that even if it is assumed for the sake of arguments that the benefit of Section 10(5) and Section 10(6)Udai Singh Dagar and Ors. v. Union of India and Ors. : AIR 2007 SC2599 .

8. The Urban Land (Ceiling & Regulation) Act, 1976 hereinafter referred to as 'the Principal Act' in the first instance came into force on the its introduction in Loksabha on 28.1.1976 which covers the Union territories and 11 States which had already passed requisite resolution under Article 252(1) of the Constitution of India. This provision of the Constitution empowers the Parliament to legislate, if two or more States legislature pass resolutions to authorise the Parliament, on any other matter in respect of which it has no power to make law except Articles 249 and 250 of the Constitution of India. The effect of passing of resolution under Clause 1 of Article 252 of the Constitution of India is that the Parliament which has no power to legislate with respect to the matter which is subject-matter of the resolution becomes entitled to legislate with respect to it. On the other hand, the State legislature ceases to have power to make law relating to that matter. In view of the resolution passed by the legislature of the State of Maharashtra, in the State of Maharashtra the Principal Act came into force on 17.2.1976 the date on which it received the assent of President of India. The primary objects and purpose of the Principal Act was to provide for imposition of ceiling on holding of vacant land in urban agglomerations, for acquisition of land in excess of ceiling limit, to regulate such land and for the matters connected therewith with a view to prevent the concentration of urban land in the hands of few persons and to arrest the speculation and profiteering thereunder and with a view to bring about an equitable distribution of land in urban agglomeration, to sub-serve the common good in furtherance of directive principles of the State policy contained in Article 39(b) and (c) of the Constitution of India.

9. Section 3 of the Principal Act provides that except as otherwise provided in the Act, on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies under Sub-section (2) of Section 1 of the Principal Act. The expression 'vacant land' is defined by Section 2(q) of the Act. The term 'Urban Land' is defined under Section 2(o) of the Principal Act. Section 4 of the Principal Act fixes different ceiling limit with respect to vacant land falling in categories (a), (b), (c), (d). Section 5 prohibits certain transfer of vacant land. Sub-section (3) of Section 5 provides that transfer made in contravention of said provision shall be deemed to be null and void. Section 6 of the Principal Act provides for filing of statement before the Competent Authority by the persons holding vacant land in excess of ceiling limit. Section 8 provides for preparation of draft statement as regards vacant land held in excess of ceiling limit. The particulars of statement shall contain details as enumerated in Sub-section (2) of Section 8. Sub-section (3) of Section 8 provides for service of draft statement on the person concerned and also calls from him objections on draft statement. Sub-section (4) of Section 8 provides that the Competent Authority shall duly consider any objections received from such person. It also obliges authority to give such person reasonable opportunity to be heard and then the authority can pass such orders as it deems fit. After disposal of the objections, if any, received under Sub-section (4) of Section 8, final statement is to be prepared under Section 9 of the Act. Sub-section (1) of Section 10 of the Principal Act provides that after the final statement under Section 9 is served, the Competent Authority shall cause a notification to be published in the Official Gazette of the State concerned declaring the vacant land which was found in excess is to be acquired by the State Government and calling upon the persons interested in such vacant land to lodge their objections. Sub-section (2) of Section 10 provides for consideration of those objections by the Competent Authority. Sub-section (3) of Section 10 provides that after deciding the objections received, the Competent Authority may by notification published in the Official Gazette declare that the excess vacant land referred to in the notification shall with effect from such date as may be specified in the declaration be deemed to have been acquired by the State Government. It further lays down that on such declaration being published, such land shall be deemed to have been vested absolutely in the State

Government free from all encumbrances. Sub-section (4) of Section 10 provides for prohibition of transfer of the land from the date of publication of notification under Sub-section (1) of Section 10 and making of declaration under Sub-section (3) of Section 10. Sub-section (5) of Section 10 lays down that after the surplus land is vested in the State Government by reason of declaration made under Sub-section (3) of Section 10, the Competent Authority by notice in writing order any person who may be in possession of the land to surrender or deliver possession of the land to the State Government. Sub-section (6) of Section 10 lays down that if the notice issued under Sub-section (5) is not complied with then the Competent Authority may take possession of the vacant land. Section 11 deals with payment of amount for vacant land acquired. Section 12 provides for constitution of Urban Land Tribunal and appeal to Urban Land Tribunal. Section 13 provides for appeal to this Court from the order made by the Urban Land Tribunal. Section 14 deals with mode of payment of amount determined under Section 11. Section 15 provides that where any person acquires for any reasons like by inheritance, bequest or by sale etc., any vacant land which together with the vacant land which is already held by him exceeds the aggregate ceiling limit, such person shall have to file statement before the Competent Authority and the provisions of Sections 6 to 14 shall, so far as may be, apply to the statement filed under that section and to the vacant land held by such person in excess of the ceiling limit. Section 20 empowers State Government to exempt any land in public interest and also in the cases where such exemption is considered to be necessary to avoid undue hardship to any person. Section 21 of the Principal Act provides for the cases where excess vacant land will not be treated as excess. Section 23 provides for disposal of the vacant land acquired under the Act.

10. It appears that a resolution was passed by the legislature of the State Government of Haryana and Punjab for repeal of the Principal Act. It appears that pursuant to the resolution passed by the legislature of State of Haryana and Punjab, the Urban Land (Ceiling & Regulation) Repeal Bill, 1998 was prepared for repeal of the Principal Act. Thereafter, the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 was issued on 11.1.1999 repealing the Principal Act. But that ordinance did not become applicable in the State of Maharashtra. Thereafter, the Parliament enacted the Urban Land (Ceiling & Regulation) Repeal Act, 1999

((hereinafter referred to as 'Repeal Act'). Sub-section (3) of Section 1 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 reads as under:

1(3) It shall be deemed to have come into force in the States of Haryana and Punjab and in all the Union territories on the 11th day of January, 1999 and in any other State which adopts this Act under Clause (2) of Article 252 of the Constitution on the date of such adoption; and the reference to repeal of the Urban Land (Ceiling and Regulation) Act, 1976 shall, in relation to any State or Union territory, mean the date on which this Act comes into force in such State or Union territory.

Perusal of the above provision shows that so far as the State of Maharashtra is concerned, the Repeal Act was to come into force on such date as the legislature of State of Maharashtra would pass a resolution adopting the Repeal Act under Clause (2) of Article 252 of the Constitution of India. The Maharashtra Legislative Assembly and the Maharashtra Legislative Council passed a resolution for adopting the Repeal Act in the State of Maharashtra with effect from 29.11.2007. It is Section (2), (3) and (4) of the Repeal Act which are relevant for the present purpose. They read as under:

2. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter refer to as the principal Act) is hereby repealed.

3. (1) The repeal of the Principal Act shall not affect:

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or the Competent Authority.

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken there under, notwithstanding any judgment of any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where:

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority.

It is obvious that Section 2 contains repealing provision and Sections 3 and 4 contain saving provisions. Now taking up first for consideration the provisions of Section 4 of the Repeal Act, because of the order made by the State Government under Section 34 of the Principal Act, the proceedings in relation to some lands owned by the first petitioner were remanded back for fresh consideration and for taking action under Section 8 of the Act. Perusal of Section 4 of the Repeal Act shows that all the proceedings relating to any order which were pending on the date of commencement of the Act before any Court, Tribunal or other authority abate. Therefore, so far as the proceedings which were to be taken up by the authorities under the Act pursuant to the remand order made by the State Government will definitely abate. In fact this position was not even disputed on behalf of the State Government.

11. Now so far as those lands which are owned by the petitioners in relation to which a notification under Sub-section (3) of Section 10 of the Principal Act was issued and the order under Sub-section (5) of Section 10 of the Principal Act was made are concerned, it is the provisions of Section 3 of the Repeal Act which are relevant. Reading of Section 3 of the Repeal Act shows that it is a saving clause and Sub-section 1(a) of Section 3 of the Repeal Act saves vesting of any vacant land under Sub-section (3) of Section 10 of the Principal Act, possession of which has been taken over by the State Government. In other words, vesting of vacant lands under Sub-section (3) of Section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved. In the present case, it is an admitted position that though declaration under Sub-section (3) of Section 10 of the Principal Act was made, the possession of the land was not taken over by the Government or by the Competent Authority. Therefore, on bare reading of the provisions, it can be said that by virtue of repeal, vesting of the land of the first petitioner in the State by virtue of declaration made under Sub-section (3) of Section 10 of the Principal Act, is not saved. A submission on behalf of the State Government was made that by virtue of declaration made Sub-section (3) of Section 10 of the Principal Act in relation to the petitioners' land, the land has vested in the Government, but there is no provision in the Repeal Act which divest the State Government of the ownership of the land. In our opinion, this submission has no substance. Firstly, because the purpose of enacting Section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government and out of the vacant lands that might have vested in the State Government by virtue of declarations made under Sub-section (3) of Section 10 of the Principal Act, only vesting of those lands in the State Government of which possession has been taken has been saved. Therefore, by necessary implication it follows that vesting of those lands in the State Government under Sub-section (3) of Section 10 of the Principal Act of which possession has not been taken has been repealed or made ineffective. Vesting of the lands in the State Government had occurred because of the Principal Act which has been repealed. The Supreme Court in its judgment in the case of (India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore and Ors.) : [1975]2SCR612 , has observed that 'Repeal' connotes abrogation or obliteration of one statute by another, from the statute book as

completely 'as if it had never been passed'. Therefore, the effect of the repeal is to wipe out the statute from existence. Therefore, the normal effect of repeal is to wipe out everything done under the repealed statute except that which is saved either expressly or by necessary implication. In the same judgment i.e. 'India Tobacco Co. Ltd.' the Supreme Court has observed that the repeal is not a matter of mere form but one of substance, depending upon the intention of the Legislature. If the intention of the legislature in repealing the enactment was to abrogate or wipe off the former enactment, wholly or in part, then that enactment will cease and would be deemed to have never exist at all, in so far as the part which the Legislature wants to wipe out totally is concerned. The principal submission of the State Government is that as the land of the petitioners has vested in the State Government because of the declaration made Sub-section (3) of Section 10 of the Principal Act and as there is no express provision made in the Repeal Act wiping out vesting of the land in the State Government, the State Government will continue to be the owner of the land. In our opinion, the submission has no substance. As indicated above, if it is assumed that there was no saving clause contained in the Repeal Act or had there been no Section 6 of the General Clauses Act in existence then mere repeal of the enactment will wipe out the enactment out of existence and everything done under the enactment will also go away, and in this situation, therefore, to avoid that effect, the legislature enacts saving clause and the Parliament has also enacted Section 6 of the General Clauses Act to save certain things from the effect of repeal. Therefore, it follows that except for that which is saved by the legislature by making specific provision or in the absence of specific provision by Section 6 of the General Clauses Act, everything else under the Repeal Act is wiped out. In the present case by the saving clause contained in Section 3(1)(a) of the Repeal Act what is saved is vesting of the land in the State Government under Sub-section (3) of Section 10 of the Principal Act possession of which was already taken over by the Government. In other words, therefore, vesting of land in the State Government in relation to those lands of which possession was not taken is wiped out. This position also becomes clear from the provisions of Sub-section (2) of Section 3 of the Repeal Act. Sub-section (2) of Section 3 of the Repeal Act is in the nature of a proviso or exception to Section 3(1)(a) of the Repeal Act. If Sub-section (2) of

Section 3 of the Repeal Act had not been enacted, vesting of even those lands in the State Government in relation to which the amount has been paid by the State Government to the land owner but possession has not been taken, will also stand wiped out. Because of Sub-section (2) of Section 3 of the Repeal Act, now the land continues to be vested in the State Government though the possession of the land was not taken till the owner pays back the amount received by him. Had Sub-section (2) not been enacted because of the operation of Section 3(1)(a) of the Repeal Act, the vesting of the land in the State Government would have been wiped out because the possession is not taken and the land owner would be entitled to retain the amount received by him from the State Government as also the land. Sub-section (2) of Section 3 of the Repeal Act was enacted by the legislature to ensure that the Government gets back the amount which is paid by it before the land reverts to the land owner. In other words the effect of the provision of Section 3(2) of the Repeal Act is to postpone cancellation of vesting of the land in the State Government till the land owner pays back the amount received by him. In the case covered by Section 3(2) of the Repeal Act, the land owner gets back title of the land only on payment of the amount that he had received under the Act from the Government. In our opinion, what is contained in Section 4 of the Repeal Act also indicate that vesting of those lands possession of which has not been taken over by the State Government will revert back to the land owner. It is to be seen that the land is, by operation of the provisions of Sub-section (3) of Section 10 of the Principal Act, vested in the State Government, so that the State Government, can deal with that land under the Principal Act. Perusal of Section (4) of the Repeal Act shows that only the provisions of Sections 11, 12, 13 and 14 of the Principal Act continue to operate even after the repeal in relation to the land of which possession has been taken. In other words, after 29.11.2007 the provisions of Sections 11, 12, 13 and 14 of the Principal Act are not available to the State Government in relation to the land of which possession has not been taken. Thus, if it is held that even after the Repeal Act, the State Government continues to have title of the land of which it has not taken possession, then it will mean that the Government has become title holder of the land without paying any amount to the land owner and with no possibility of amount being determined and paid under Section 11 of the Principal Act because those provisions do not continue to apply after the repeal in relation to the lands possession of which has not been taken. At this juncture, it becomes necessary to refer to the scheme of Section 10 of the Principal Act. Section 10 of the Principal Act reads as under:

10. Acquisition of vacant land in excess of ceiling limit:

(1) As soon as may be after the service of the statement under Section 9 on the person concerned, the Competent Authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that:

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the Competent Authority in pursuance of the notification published under Sub-section (1), the Competent Authority shall determine the nature and extent of such claims and pass such others as it deems fit.

(3) At any time after the publication of the notification under Sub-section (1) the Competent Authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under Sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under Sub-section (1) and ending with the date specified in the declaration made under Sub-section (3):

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vaant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under Sub-section (3), the Competent Authority may by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under Sub-section (5), the Competent Authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation:- In this section, in Sub-section (1) of Section 11 and in Sections 14 and 23, 'State Government', in relation to:

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in the Union Territory or within the local limits of a cantonment declared as such under Section 3 of the Cantonments Act, 1924, means that State Government.

Perusal of the above provisions shows that vesting of the land in the State Government occurs on publication of notification in the Official Gazette under Sub-section (3) of Section 10 of the Principal Act. Thereafter, the Competent Authority gets power to make order directing the person who is in possession of the land to surrender or deliver the possession of the land to the State Government, and if that person does not deliver the possession then the Competent Authority becomes competent to take possession under Sub-section (6) of Section 10 of the

Principal Act. Thus, after 29.11.2007, the provisions of Sub-section (5) and Sub-section (6) of Section 10 of the Principal Act are not available to the State Government, therefore, in relation to that land with respect to which declaration under Sub-section (3) of Section 10 of the Principal Act has been made but possession has not been taken, the Competent Authority will not be entitled to make an order directing the person in possession of the land to deliver the possession to the Government nor the Competent Authority-would be entitled to take possession under Sub-section (6) of Section 10 of the Principal Act on failure of the person in possession to deliver the possession. Thus, the State Government will not be in a position to take possession of the land under the provisions of the Principal Act, it will also not be in a position to determine the compensation of the land under Section 11 of the Principal Act and make payment to that compensation to the interested persons under Section 14 of the Principal Act. Section 4 of the Repeal Act keeps the provisions of Sections 11, 12, 13 and 14 relating to determination of amount and payment of amount alive only in relation to the land possession of which has been taken by the Government. In our opinion, therefore, it is clear from the provisions of the Repeal Act that as a result of the Repeal Act neither any proceedings can continue nor the State Government can claim that the land continued to vest in it if possession of the land in relation to which declaration under Sub-section (3) of Section 10 of the Principal Act has been made, has not been taken before 29.11.2007. In other words to claim that vesting of the land in the State Government is saved, it will have to be shown by the State Government that the possession of the land in accordance with the provisions of the Principal Act has been taken by the Government before 29.11.2007.

12. There was a debate before us as to whether the provisions of Section 6 of the General Clauses Act would apply to continue the vesting of the land in the State Government though the possession is not taken. Section 6 of the General Clauses Act reads as under:

6. Effect of repeal.- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) receive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation - Where any (Central Act) or Regulation made after the commencement of this Act repeals any enactment by which the text of any (Central Act) or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

Perusal of the above provisions makes it clear that Section 6 of the General Clauses Act applies unless a different intention appears in the Repeal Act. The Supreme Court in its judgment in the case (Kalawati Devi Harlalka v. The Commissioner of Income-tax, West Bengal and Ors.) : [1967]66ITR680(SC) , has considered whether Section 6 of the General Clauses Act can be said to apply in a case where the Parliament chooses to enact a comprehensively worded saving clause and whether the act of the Legislature of enacting a comprehensive saving clause can be said to express a different intention mentioned in Section 6 of the General Clauses Act. What is observed by the Supreme Court in paragraph 15 of the 'Kalawati Devi Harlalka' case is relevant, it reads as under:

The learned Counsel for the appellant submits that Parliament had Section 6 of the General Clauses Act in view, and therefore, no express provision was made dealing with appeals and revisions, etc. In our view, Section 6 of the General Clauses Act would not apply because Section 297(2) evidences an intention to the contrary. In (Union of India v. Madan Gopal Kabra) : [1954]25ITR58(SC) , while interpreting Section 13 of the Finance Act, 1950, already extracted above, this Court observed at p. 68 (of I.T.R.) : at p. 162 of A.I.R.:

Nor can Section 6 of the General Clauses Act, 1897, serve to keep alive the liability to pay tax on the income of the year 1949-50 assuming it to have accrued under the repealed State law, for a 'different intention' clearly appears in Sections 2 and 13 of the Finance Act read together as indicated above.It is true that whether a different intention appears or not must depend on the language and content of Section 297(2). It seems to us, however, that by providing for so many matters mentioned above some in accord with what would have been the result under Section 6 of the General Clauses Act and some contrary to what have been the result under Section 6, Parliament has clearly evidenced an intention to the contrary.

The decision of the Supreme Court in the 'Kalawati Devi Harlalka' case has been referred to by the Supreme Court in its judgment in the case (The III Income Tax Officer, Mangalore v. M. Damodar Bhat) : [1969]71ITR806(SC) , and the Supreme Court has observed thus:

In other words, the procedure of the new Act will apply to the cases contemplated by Section 297(2)(j)of the new Act mutatis mutandis. In this connection it is relevant to refer to the decision of this Court in Kalawati Devi Harlalka v. C.I.T., West Bengal : [1967]66ITR680(SC) , in which it was pointed out that Section 6 of the General Clauses Act will not apply in respect of those matters where Parliament had clearly expressed its intention to the contrary by making detailed provisions for similar matters mentioned in that section.

It, thus, appears that Section 6 of the General Clauses Act is a general provision in relation to saving in case of repeal of Central enactment. But if the Parliament while enacting the repeal enactment choses to make provision in the repeal enactment in relation to the saving of the thing done and action taken under the repeal enactment, the saving clause in the repeal enactment will be the special provisions and therefore, if the matter is covered by that special provision, the general provision contained in Section 6 of the General Clauses Act will not apply or its application will be excluded to the extent the matter is specifically covered by the specific saving clause enacted in that legislation. In our opinion, therefore, as in the Repeal Act the provision, in relation to the land which vested in the State Government under Sub-section (3) of Section 10 of the Principal Act but of which possession has not been taken, has been specifically made, to that extent application of Section 6 of the General Clauses Act will stand excluded.

13. It was one of the submission made on behalf of the Government that because there is no specific provision made in the Repeal Act that the title of the State Government in the lands which are vested in the State Government because of declaration made under Sub-section (3) of Section 10 of the Act will not revert back to the owner as a consequence of Repeal Act and the State Government will continue to have title to the lands. We have already indicated that this submission is not sound. In our opinion, even assuming that there is no specific provision made in the Repeal Act as contended on behalf of the State Government, in our opinion, looking to the scheme of the Repeal Act it can be said that the title will revert back to the land owner on coming into force the Repeal Act because it is implicit in the scheme of the Repeal Act that the title of the lands of which possession is not taken though declaration under Sub-section (3) of Section 10 of the Principal Act is made, should revert back to the owner. In our opinion, in this connection observations of the Supreme Court found in paragraph (70) of the judgment in the case Uday Singh Dagar and Ors. v. Union of India and Ors. : AIR 2007 SC2599 , are relevant. In that case, the Supreme Court was considering the effect of the provisions of Section 6 of the General Clauses Act. Paragraph 71 of the judgment reads as under:

71. The expression 'unless a different intention appears' contained in Section 6 of the General Clauses Act, thus, in this case, would be clearly attracted. A right, whether inchoate or accrued or acquired right, can be held to be protected provided the right survives. If the right itself does not survive and either expressly or by necessary implication it stands abrogated, the question of applicability of Section 6 of the General Clauses Act would not arise at all. See Bansidhar v. State of Rajasthan and (Thyssen Stahlunion GmbH v. Steel Authority of India Ltd.) : AIR 1999 SC3923 .

It is, thus, clear that abrogation of rights accrued or acquired under the Repealed enactment can be brought about by the legislature either by making express provision or by necessary implication. Therefore, if the scheme of the Repeal Act shows that vesting of the land in the State Government will not continue after the repeal if the possession of the land has not been taken, then it will have to be said that vesting of the land in the State Government stands cancelled or abrogated by the provisions of the Repeal Act by necessary implication.

14. In our opinion, one more aspect that is relevant and needs to be considered is the provision of Clause (3) of the Urban Land (Ceiling and Regulation) Repeal Bill, 1998, which reads as under:

3. Savings:- The repeal of the Principal Act shall not affect:

(a) the vesting of any vacant land under Sub-section (3) of Section 10 with respect to which the Competent Authority has:

(i) by notice in writing under Sub-section (5) of that section ordered any person to surrender or deliver possession of such land to the State Government or to any person duly authorised by the State Government in this behalf, or

(ii) taken possession of such vacant land under Sub-section (6) of that section,

and the use of such land for the purposes of the principal Act has commenced

Provided that where such use for the purposes of the Principal Act has not commenced, then the State Government shall restore such land to the person from whom it was taken over and the amount paid shall be liable to be refunded.

Provided further that where such land was subject to any encumbrance before vesting absolutely in the State Government under Sub-section (3) of that section, such land shall be restored with all the encumbrances from which it was freed under that sub-section as if no declaration had been made under that sub-section:

Provided also that no such land shall be restored unless the amount paid has been refunded to the State Government;

(b) any exemption granted by the State Government under Sub-section (1) of Section 20.

Perusal of the above Clause (3) of the Bill shows that it was intended to protect or save vesting of even those lands with the State Government in relation to which an order under Sub-section (5) of Section 10 of the Principal Act has been made for delivery of possession as also those lands of which possession has been taken. But while enacting Repeal Act, the land in relation to which notice under Sub-section (5) of Section 10 was given has been deleted. Comparison of Clause 3 of the Bill quoted above with the provisions Sub-sections (3) and (4) of the Repeal Act which are also quoted above shows that it was the clear intention of the Legislature not to save vesting of the land in the State Government of which possession was not taken. One more aspect that is to be kept in mind, in our opinion, while interpreting the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 is that what is stated in the Statement of Objects and Reasons of the Repeal Act. Paragraph 1 of the Statement of Objects and Reasons of the Repeal Act, in our opinion, is relevant which reads as under:

The Urban Land (Ceiling and Regulation) Act, 1976 was passed when Proclamation of emergency was in operation with a laudable social objective in mind. The said Act was passed pursuant to resolutions passed by the State Legislatures under Clause (1) of Article 252. Unfortunately public opinion is nearly unanimous that the Act has failed to achieve what was expected of it. It has on the contrary pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption. There is wide spread clamour for removing this most potent clog on housing.

15. Perusal of the above referred paragraph from the Statement of Objects and Reasons of the Repeal Act shows that the Principal Act was required to be repealed because of the unanimous public opinion that not only the Principal Act has failed to activate what was expected of it but it has pushed up the land prices to unconscionable levels. In this background, therefore, if despite clear words used in the Repeal Act, it is held that the Government continues to hold title of those lands of which possession is not taken though after the Repeal Act came into force it ceases to have power to take possession of those lands, ceases to have power to decide the amount to be paid under the Principal Act, in our opinion, will defeat the very intention of the legislature in enacting the Repeal Act. In our opinion, therefore, it is clear from the provisions of the Repeal Act that neither the proceedings after the remand order made by the State Government can continue after 29.11.2007 nor can the State Government claim that the land of the petitioners which was subject-matter of the notification under Sub-section (3) of Section 10 of the Principal Act, possession of which has not been taken by the State Government continues to vest in the State Government.

16. In the result, for the reasons recorded, the petition succeeds and is allowed. It is held that as a consequence of the Repeal Act, further proceedings pursuant to the order made by the State Government dated 30.10.2006 abate and can no longer be proceeded further. That all further proceedings under the provisions of the Principal Act in relation to the land of the petitioner No. 1 mentioned in the declaration made under Sub-section (3) of Section 10 of the Principal Act lapses and those lands no longer vest in the State Government. Rule made absolute accordingly. No order as to costs. At the request of the learned Counsel appearing for respondents, it is directed that both the sides shall maintain status quo both in relation to the proceedings to be taken up after remand as also in relation to the land involved in this petition for a period of Ten weeks from today.