Smt. Meera Gupta vs State Of West Bengal And Ors on 22 October, 1991

Equivalent citations: 1992 AIR 1567, 1991 SCR SUPL. (1) 501, AIR 1992 SUPREME COURT 1567, 1992 (2) SCC 494, 1992 AIR SCW 1665, 1992 (2) PATLJR 7, 1992 (1) UJ (SC) 93, (1991) 18 ALL LR 533, (1991) 4 JT 162 (SC), 1992 (2) ALL CJ 881, 1992 (2) BLJR 1280, 1992 UJ(SC) 1 93, (1992) 2 PAT LJR 17, 1991 HRR 607, (1993) 1 MAHLR 1, (1992) 2 RENCR 348, (1992) 1 SCJ 7, (1992) 6 LACC 230, (1992) 1 ALL WC 202, (1992) 1 BLJ 688, (1992) 1 CALLT 28, (1992) 1 CIVLJ 203, (1991) 3 CURCC 712

Author: M.M. Punchhi

Bench: M.M. Punchhi, Rangnath Misra, K. Ramaswamy

PETITIONER:
SMT. MEERA GUPTA

Vs.

RESPONDENT:
STATE OF WEST BENGAL AND ORS.

DATE OF JUDGMENT22/10/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MISRA, RANGNATH (CJ)
RAMASWAMY, K.

CITATION:
1992 AIR 1567 1991 SCR Supl. (1) 501
1992 SCC (2) 494 JT 1991 (4) 162
1991 SCALE (2)836

ACT:
Urban Land Ceiling and Regulation Act, 1976: Sections 2(g)(q)(ii) & (iii), 2A, 4(9), 4(11)--Schedule 1--Item 15--Category 'A:
Land Ceiling--Mode of computation of 'Vacant land'--What is---Distinction between---'Vacant land' and 'any other land'--What is---'Urban Agglomeration'--Propeny built up before the commencement of Act--Held outside tire purview of 'Vacant Land'---Object of the Act explained.

HEADNOTE:

The appellant's predecessor-in-interest, respondent herein, was the owner of two properties consisting of a 'built up property' and a 'vacant property' in the city of Calcutta. The built up property comprised of 414.56 sq. mtrs. of land of which 321 sq. mtrs. was covered by a building with a dwelling unit therein and the said property was constructed long before the Urban Land (Ceiling and Regulation) Act, 1976 came into force. The second property comprised of 339.65 sq. mtrs. of vacant land. The Act came into force on February 17, 1976 but under Section 2A of the Act the appointed day in relation to State of West Bengal was 28th January, 1976. Thus between the appointed day and the date of enforcement of the Act there was a 20 days' gap.

On 8th July, 1978 the respondent entered into an agreement with the appellant to sell the vacant property. Since both the properties were covered by the Urban agglomeration as specified in category 'A' in Scheduled 1 to the 1976 Act, under which the ceiling limit prescribed was 500 sq. mtrs., the appellant and the respondent gave a notice of the proposed sale under Section 26 of the Act to the competent authority.

The competent authority held that the respondent was holding 25421 sq. mtrs. of land in excess of the ceiling limit. The excess land was determined by totalling 414.56 sq. mtrs. of the built-up property and 339.65 sq. mtrs. of vacant property to 754.21 sq. mtrs., and substracting
502
therefrom 500 sq.mtrs. resulting in 254.21 sq. mtrs. in excess of the ceiling limit. Accordingly the competent authority issued order vesting the excess land in the State. Against the decision of the competent authority the respondent preferred an appeal before the Appellate Authority which was dismissed in default.

In the meantime the appellant filed a suit against the respondent for specific performance of the agreement dated 8th July, 1978 which was decreed and consequently a deed of conveyance was executed in favour of the appellant and the possession of the property was also given to her.

Subsequently the appellant came to know of the dismissal of the respondent's appeal. Thereupon she filed a Review Petition before the Appellate Authority stating that she had become the owner of the vacant property and prayed for retrieval of the same from being treated as excess land in the hands of respondent which was dismissed. The appellant filed a writ petition in the High Court and a Single Judge allowed the same. On appeal by State a Division Bench of the High Court reversed the judgment of the Single Judge. Against the decision of the Division Bench, appeal was filed in this Court.

Setting aside the judgment of the Division Bench of the High Court and allowing the appeal, this Court,

HELD: 1. The primary objective of the Urban Land Ceiling and Regulation Act, 1976 is to fix a ceiling limit on the holding of vacant lands, conditioned as they are on the appointed day, and as held on the date of commencement of the Act. [512-F]

2. Under Section 3 of the Urban Land (Ceiling and Regulation) Act, 1973 no person is entitled to bold any vacant land in excess of the ceiling limit. Ceiling limit of vacant land in case of every person like the predecessor-in-interest of the appellant is 500 sq. mtrs. as set up under Section 4. [508 E-F]

2.1 However, as per Section 2(g), 'Vacant land' does not include land of three categories. The first category is land on which construction of a building is not permissible under building regulation in force in the area in which such land is situated. The second category is of land occupied by any building in an area, where there are building regulations, which has

503

been constructed upon, or is under construction on the appointed day, with the approval of the appropriate authority, and the land appurtenant tO such building. Thus if the building stood constructed on the land prior to January 28, 1976, the land occupied under the building is not vacant land. It also covers the land on which any building was in the process of construction on January 28, 1976 with the approval of the appropriate authority. Additionally, the land appurtenant to these two kinds of buildings is also not "vacant land". The third category likewise conditioned is of land occupied by any building in an area where there are no building regulations, which has been constructed before January 28, 1976 or is in the process of construction on such date, and the land appurtenant to these two kinds of buildings. [510A-D]

2.2 The expression "land appurtenant" as defined in Section 2(g) when related to any building in an area where there are building regulations as well as in an area where there are no building regulations reveals that the additional extent as permitted is based on the principle of contiguity. The expression applies to buildings constructed before the "appointed day" as well as to buildings, construction of which commenced before the "appointed day", and was in progress on that day. Therefore, if the construction of a building with a dwelling unit therein had begun after the appointed day, then it is all the same "any other land" to be reckoned for calculating the extent of vacant land held by a person. And if the construction of a building with a dwelling unit therein on land had been completed or was in progress by and on the appointed day, then it is not "any other land" to be reckoned for calculating the extent of vacant land held by a person. [512G-H, 513A-B]

The built-up property in question had been constructed prior to the commencement of the Act. Therefore, it is outside the purview of "vacant land". If that is excluded from being reckoned towards calculating the extent of vacant land held by the predecessor-in-interest of the appellant, the vacant land in the vacant property cannot be declared excess for that is within the permissible limits. Even if no land is left as land appurtenant to the built-up area, then 93.56 sq. mtrs. the remainder plus 339.65 sq. mtrs. of the unbuilt property would total up to the figure less than 500 sq. mtrs.; which is again within the permissible limit. Accordingly the entire proceedings towards declaring excess land in the hands of the appellant and her predecessor-in-title are quashed. [513C-E]

504

State of U.P. & Or3. v.L.J. Johnson & Ors. [1983] 4 SCC 110, held inapplicable.

Union of India etc. v.V.B. Chaudhary etc. etc. [1979] 3 SCR 802; Maharao Sahib Shri Bhim Singhji etc. etc. v. Union of India & Ors., [1981] 1 SCC 166, referred to.

Eastern Oxygen v. State AIR 1981 M.P. 17; Prabhakar Narhar Pawar v. State, AIR 1984 Bom. 122; State v. Radha Raman Aggarwal, AIR 1987 All. 272, cited.

3. In the scheme of sub-section (9) of Section 4 of the Act the visible contrast between "vacant land" and "any other land" held by a person on which there is a building with a dwelling unit therein is prominent. The said "any other land" is reckoned and brought at par with the "vacant land" for the purpose of calculating the final extent of vacant land. The expression "vacant land" in the first portion of the provision connotes land minus land under buildings constructed or in the process of construction before and on the appointed day, and the expression "vacant land" in the latter portion of the provision connotes the sum total of "vacant land" of the first order and distinctly the "other land" on which is a building with a dwelling unit therein of which construction commenced after the appointed day, and the land appurtenant thereto. Such an interpretation is required by the context as otherwise the concept of the appointed day and the gap period would be rendered otiose. The legislature cannot be accused to have indulged in trickery in giving something with one hand and taking it away with the other. "Any other land" in the sequence would thus mean any other built-upon land except the one excluded from the expression "vacant land" on account of it being occupied by a building which stood constructed. or was in the process of construction, on the appointed day. [510F-H, 511A-B]

4. Section 5 is reflective of the scheme of the Act in as much as transfers of vacant land within the gap period are ignorable, and likewise, vacant land brought under construction of building by a person within the

j gap period is also ignorable for the purposes of calculat-

ing the extent of vacant land, so that the provision of law are not defeated by human ingenuity. [512-BC]

5. Though Sub-section (11) of Section 4 is not happily worded, yet when meaningfully construed in the context, it means that a building which
505
gets excluded by virtue of the definition of "vacant land" gets clothed with the protective cloak for not being reckoned again as any other land, over which there is a building with a dwelling unit therein. This provision means to convey that what is not vacant land under sub-clauses (ii) and (iii) of clause (q) of Section 2 cannot go to add up as "vacant land" under sub-section (9) of Section 4 by descriptive overlapping. To wipe out the distinction of "vacant land" and "any other land" as demonstrated in sub-section (9) of section 4 is to strangulate and destroy the spirit and life-blood of the "appointed day" and the gap period. [512 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION:CiviIAppeaINo. 4235 of 1991.

From the Judgment and Order dated 5.6.1987 of the Cal- cutta High Court in original order no. 129 of 1985 and/915 of 1983.

A.K. Ganguly, A.K. Chakraborty, A.D. Sikri and Ms. Mridula Ray for the Appellants.

D.N. Mukherjee and Rathin Das for the Respondents. The Judgment of the Court was delivered by PUNCHHI, J. We are required in this matter to interplay some of the provisions of the Urban Land (Ceiling and Regu- lation) Act, 1976 to determine whether the appellant herein had any excess vacant land.

Smt. Probhavati Poddar (Proforma respondent herein) was the owner of two properties in the city of Calcutta being

(i) premises No. P-290, C.I.T. Road, comprising 414.56 sq. mtrs. of land of which 321 sq. mtrs. was covered by a build- ing, constructed thereon long before the coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (hereafter referred to as 'the Act'), with a dwelling unit therein, and (ii) property No. P-210, C.I.T. Scheme VII(M), Calcutta comprising 339.65 sq. mtrs. of vacant land. Hereaf- ter these would be referred to as the 'built-up property' and 'vacant property' respectively. The exact date/period of the construction of the built-up property is not available on the present record but the litigation has proceeded on the footing that it was constructed long before February 17, 1976, the day when the Act came into force in the State of West Bengal.

The State 1egislatures of 11 States, including the State of West Bengal, considered it desirable to have a uniform legislation enacted by Parlia-

ment for the imposition of ceiling on urban property for the country as a whole, and in compliance with clause (1) of Article 252 of the Constitution, passed a Resolution to that effect. Accordingly, the Urban Land (Ceiling and Regulation) Bill, 1976 was introduced in the Lock Sabha on January 28, 1976 covering all the Union Territories and the 11 resolving States. After the passing of the Bill by the Parliament, the Act came into force on February 17, 1976 at once..Later from time to time, the Act was adopted by some other States after passing Resolutions under Article 252(1) of the Constitution. The Act now apparently is in force in 17 States and all the Union Territories in the country. The primary object and purpose of the Act was to provide for the imposition of the ceiling on vacant land in urban ag- glomerations, for the 'acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to sub-serve the common good, and in furtherance of the directive princi- ples of Articles 39(B) & (C) of the Constitution. These features were .spelled out by this Court in Union of India etc. v.V.B. Chaudhary etc. etc. [1979]3 SCR 802. That it is valid piece of legislation, save and except Section 27(1), and had received the protective umbrella of Article 31-C as it stood prior to its amendment by 42nd Amendment Act was held by this Court in Maharao Sahib Shri Bhim Singhji etc. etc. v. Union of India & Others. [1981]1 SCC 166.

> "Appointed day" has been defined in Section 2-A of the Act. It means (i) in relation to any State to which the Act applies in the first instance, the date of introduction of the Urban Land (Ceiling and Regulation) Bill, 1976 in Par- liament, and (ii) in relation to any State which adopts the Act under Clause (1) of Article 252 of the Constitution, the date of such adoption. In relation to the State of West Bengal, in which the town of Calcutta is situated, the "appointed day" is January 28, 1976. It is thus evident that between the appointed day and the date of enforcement of the Act, there is a 20 day's gap.
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> The Act ordains a ceiling limit of 500 sq. mtrs. for the urban agglomeration of Calcutta, as per item 15 of Category A in .Schedule I of the Act. Both the properties of Smt. Poddar,. the proforma respondent herein, thus became liable to be screened by the Authorities under the Act. Before-hand on July 8, 1978, Smt. Poddar entered into an agreement with Smt. Meera Gupta, the appellant herein, to sell the vacant property on terms entered. On November 23, 1978, the proposed vendor and the proposed vendee gave notice under Section 26 of the Act to the Competent Authority, appointed for the purpose of the proposed sale. On August 7, 1980, the competent authority in exercise of powers under Section 6(2) of the said Act, issued a notice under Section 6(1) thereof to Smt. Poddar directing her to file a statement in Form No. 1 on the basis that she held vacant land in the Calcutta Urban Area in excess of the ceiling limit of 500 sq. mtrs. Having got no response, a reminder was sent to her, but in vain. The Competent Authority thereafter initiated suomo to proceed- ings

against Smt. Poddar and sent her a draft statement on September 18, 1979, exercising powers under Section 8(1) of the Act intimating that she could submit her objection, if any, to the draft statement. It was specified in the said statement that she was tentatively required to surrender 254.21 sq. mtrs. of land (figure arrived by totalling .414.56 sq. mtrs. of the built-up property and 339.65 sq. mtrs. of the vacant property to 754.21 sq. mtrs, are substracting therefrom 500 sq. mtrs. resulting in 254.21 sq. mtrs.). The objections of Smt. Poddar filed to the draft statement were rejected by the Competent Authority, who published the final statement under section 9 of the Act vesting the said 254.21 sq. mtrs. of excess land in the State, and the same was communicated to Smt. Poddar on June 22, 1981. She preferred an appeal under Section 33 of the Act before the Special Secretary, Land and Land Reforms Department, Government of West Bengal, the Appellate Author- ity under the Act, but the same was dismissed in default on January 18, 1983.

Before-hand the appellant herein filed suit No. 121 of 1981 against Smt. Poddar in the Calcutta High Court claiming specific performance of the agreement dated July 8, 1978. On August 21, 1981, a decree for specific performance was passed in favour of the appellant in the usual terms. Pursu- ant to the said decree, the deed of conveyance in respect of the vacant property was executed in favour of the appellant on November 19, 1981 for a consideration of Rs.1,26,000/- paid over to Smt. Poddar. Possession of the vacant property was delivered to the appellant and necessary entries were made in the municipal and revenue registers. The appellant then got scent of the dismissal of the appeal of Smt. Poddar in default on July 2, 1983. The appel- lant then filed a Review Petition before the Appellate Authority stating, inter alia, that she had become the owner of the vacant property and prayed for retrieval of the same from being treated as excess land in the hands of Smt. Podar. The Review Petition was rejected on August 10, 1983, which occasioned a petition under Article 226 of the Consti- tution being filed by the appellant in the Calcutta High Court on a variety of grounds. The Writ Petition was opposed on each and every ground. The learned Single Judge, before whom the writ petition was placed, taking aid from some observations in two decisions of this Court in Maharao Sahib Shri Bhim Singhji's case (supra), and State of U.P. & Others v. L J. Johnson & Others, [1983] 4 SCC 110 allowed the writ petition on November 27, 1984. On appeal by the State of West Bengal and its responding officers, a Division Bench of the High Court reversed the judgment and order of the Single Judge on June 5, 1987 in Appeal No. 129 of 1985, leading to this appeal by special leave at the instance of the appellant. The matter having come before a two-Judge Bench of this Court, of which one of us was a member, on 28.7.1988, it was felt that lohnson's case (supra) may have to be tested, and thus the matter was ordered to be heard by a larger Bench at least of three Judges. This is how the matter stands placed before us.

As said at the outset, we have to interplay some of the provisions occurring in Chapter 3 titled as "Ceiling on Vacant Lands" in the Act. We shall presently set out those provisions which have a bearing in the case. But before we do that we do not

wish to leave the impression that we have not viewed the statute as a whole. The endeavour on our behalf to construe the provisions has not left any part thereof altogether.

So we proceed thenceforth to the interpretative process.

Section 3 of the Act provides that except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of Section 1. Ceiling limit of vacant land in case of every person like the prece- dessor-in-interest of the appellant is 500 sq. mtrs. as set up under Section 4. Clauses (g) and (q) defining "vacant land" and "land appurtenant" and sub-sections (9) and (11) of Section 4 which have precedence in engaging our attention are set out below, but without the Explanation to sub-sec- tion (11), for it is not relevant for our purpose:

"2(g) - "Land appurtenant", in rela- tion to any building means - (i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which is no case shall exceed five hundred square meters; or

(ii) in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land oc-

cupied by such building, and includes, in the case of any building constructed before the appointed day and with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in subclause (i) or the extent referred to in sub-clause (ii), as the case may be;

2(q) -"Vacant Land", means land, not being land mainly used for the purpose of agricul- ture, in an urban agglomeration, but does not include -

(i) land on which construction of a building is not permissible under the building regula- tions in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building.

4(9) - where a person holds vacant land and also holds any other land on which there is a building with a dwelling unit therein, the extent of such other land occupied by the building and the land appurtenant thereto shall also be taken into account in calculat- ing the extent of vacant land held by such person.

4(11) - For the removal of doubts it is hereby declared that nothing in sub-sections (5), (6), (7), (9) and (10) shall be construed as empowering the competent authority to declare any land referred to in sub-clause (ii) or sub-clause (iii) of clause (q) of section 2 as excess vacant land under this Chapter." To begin with "vacant land" as per the definition given in clause (q) of Section 2 means land as such, not being land mainly used for the put-

pose of agriculture, but situated in an urban agglomeration.

> "Vacant Land", however, does not include, as per the defini- tion, land of three categories. The first category is land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated. But this is a category with which we are not concerned in the instant case. Johnson's case (supra) is of this category. The second category is of land occupied by any building in an area, where there are building regula- tions, which has been constructed upon, or is under con- struction on the appointed day, with the approval of the appropriate authority, and the land appurtenant to such building. This means that if the building stood constructed on the land prior to January 28, 1976, the land occupied under the building is not vacant land. It also covers the land on which any building was in the process of construc- tion on January 28, 1976 with the approval of the appropri- ate authority. That too is not "vacant land". Additionally, the land appurtenant to these two kinds of buildings is also not "vacant land". The third category likewise conditioned is of land occupied by any building in an area where there are no building regulations, which has been constructed before January 28, 1976 or is in the process of construction on such date, and the land appurtenant to these two kinds of buildings.
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> The aforesaid three categories of lands would otherwise be "vacant land" but for the definitional exclusion. The specific non-inclusion of these three categories of land is by itself an integral part of the definitional and function- al sphere. The question that arises what happens to lands over which buildings are commenced after the appointed day and the building progresses to complete thereafter. On the appointed day, these lands were vacant lands, but not so thereafter because of the surface change. Here the skill of the draftsman and the wisdom of the legislature comes to the fore in cognizing and filling up the gap period and covering it up in the scheme of sub-section (9) of Section 4. The visible contrast between "vacant land" and "any other land"

held by a person on which there is a building with a dwell- ing unit therein becomes prominent. The said "any other land" is reckoned and brought at par with the "vacant land"

for the purpose of calculating the final extent of vacant land. It seems to us that the expression "vacant land" in the first portion of the provision connotes land minus land under buildings constructed or in the process of construc- tion before and on the appointed day, and the expression "vacant land" in the latter portion of the provision con- notes the sum total of "vacant land" of the first order and distinctly the "other land" on which is a building with a dwelling unit therein of which construction commenced after the appointed day, and the land appurtenant thereto. Such an interpretation is required by the conext as otherwise the concept of the appointed day and the gap period would be rendered otiose. The legislature cannot be accused to have indulged in trickery or futility in giving something with one hand and taking it away with the other. "Any other land"in the sequence would thus mean any other built-upon land except the one excluded from the expression "vacant land" on account of it being occupied by a building which stood constructed, or was in the process of construc- tion, on the appointed day.

Such interpretation of ours finds support from Section 5 of the Act which pursues and does not leave alone transfer of vacant land in the gap period. It provides as follows:

"5. TRANSFER OF VACANT LAND - (1) In any State to which this Act applies in the first in- stance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so trans- ferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the pur- poses of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the trans- fer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has trans- ferred his vacant land to more than one per- son, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land trans- ferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-

section (1), the transfer of the excess vacant land so selected shah be deemed to be null and void.

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part

thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 6 and a notification regarding the excess vacant land held by him has been pub- lished under sub-section (1.) of Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void." [Underlining ours]. The underlining is reflective of the scheme of the Act in as much as transfers of vacant land within the gap period are ignorable, and likewise, in our view, vacant land brought under construction of building by a person within the gap period is also ignorable for the purposes of calcu- lating the extent of vacant land, so that the provisions of law are not defeated by human ingenuity.

At this juncture, sub-section (11) of Section 4 may be noticed. It provides removal of doubts declaring. inter alia, that nothing in sub-section (9) shall be construed as empowering the competent authority to declare any land referred to in sub-clause (ii) or sub-clause (iii) of clause

(q) of Section 2 as excess vacant land under this Chapter. Though this provision is not happily worded, yet when mean- ingfully construed in the context, it means that a building which gets excluded by virtue of the definition of "vacant land" gets clothed with the protective cloak for not being reckoned again as any other land, over which there is a building with a dwelling unit therein. Sub-section (11) of Section 4 means to convey that what is not vacant land under sub-clauses (ii) and (iii) of clause (q) of Section 2 cannot go to add up as "vacant land" under sub-section (9) of Section 4 by descriptive overlapping. If we wipe out the distinction of "vacant land" and "any other land" as demon- strated in sub-section (9) of section 4, we strangulate and destroy the spirit and life-blood of the "appointed day" and the gap period. We would loathe giving such a construction and would rather opt for a construction which carries out the objectives of the Act, primary of which is to fix a ceiling limit on the holding of vacant lands, conditioned as they are on the appointed day, and as held on the date of the commencement of the Act.

It would be worthwhile at this stage to take note of the expression "land appurtenant" as defined in Section 2(g). When related to any building in an area where there are building regulations, as well as in an area where there are no building regulations, the additional extent as permitted is based on the principle of contiguity. The expression applies to buildings constructed before the "appointed day"

> as well as to buildings, construction of which commenced before the "appointed day", and was in progress on that day. It, no doubt, applies to buildings, constructed thereafter too.
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> When we import this understanding to sub-section (9) of Section 4, two different results discernably follow, based on the commencement of the construction. If the construction of a building with a dwelling unit therein had begun after the appointed day, then it is all the same "any other land"

to be reckoned for calculating the extent of vacant land held by a person. And if the construction of a building with a dwelling unit therein on land had been completed or was in progress by and on the appointee day, then is not "any' other land" to be reckoned for calculating the extent of vacant land held by a person. This is the interpretation which commends to us of sub-section (9) of Section 4 as

also of sub-section (11) of Section 4 and the definitive expres- sions used therein as explained and highlighted earlier. Applying that interpretation on the facts found by the High Court we hold that the built-up property, which in any event had been built-up prior to the commencement of the Act, and it is nobody's case that construction thereof had begun after the "appointed day", is outside the purview of "vacant land". If that is excluded from being reckoned towards calculating the extent of vacant land held by the predeces- sor-in- interest of the appellant, the vacant land in the vacant property cannot be declared excess for that is within the permissible limits. Even if no land is left as land appurtenant to the built-up area, then 93.56 sq. mtrs, the remainder plus 339.65 sq. mtrs, of the unbuilt-property would total up to the figure less than 500 sq. mtrs.; again within the permissible limit. Therefore, interpretation to the contrary of the dealt with provisions by the Division Bench of the High Court, bereft as it is of the concept of the appointed day and the gap period, would have to give way, meriting the acceptance of this appeal and setting aside of the judgment of the Division Bench of the High Court by issuing the necessary writ, direction and order so as to quash the entire proceedings towards declaring excess land in the hands of the appellant and her predecessor-in- title. We order accordingly. The interpretation we have put to the provisions pertinently relate to sub-clause (ii) and

(iii) of clause (q) of Section 2. This interpretation in express terms cannot apply to sub-clause (i) of clause (q) of Section 2. Johnson's case (supra) as said before, is a case under sub-clause (i) of clause (q) of Section 2. In the instant case, there appears to be no occasion to test its correctness or even to dilate upon the judgments of the High Courts reported in AIR 1981 Madhya Pradesh 17, AIR 1984 Bombay 122 and AIR 1987 Allahabad 272, cited at the bar. As a result, this appeal is allowed. The appellant shall have her costs throughout.

T.N.A. Appeal allowed.