

A SHRIDHAR C. SHETTY (DECEASED) THR. LRS.

v.

THE ADDITIONAL COLLECTOR AND COMPETENT
AUTHORITY AND ORS.

B (Civil Appeal No. 2019 of 2010)

SEPTEMBER 02, 2020

[R. F. NARIMAN AND NAVIN SINHA, JJ.]

Urban Land (Ceiling and Regulation) Act, 1976:

- C *ss. 2(d), 20, 21 and 38(4) – Failure of landowner to handover seven tenements to Government nominees as required under the conditions of exemption granted u/s. 20 and 21 – Demand of market value of seven tenements plus interest, penalty and recovery expenses as arrears of land revenue – Demand affirmed by appellate authority as well as High Court – Appeal to Supreme Court – Held: There has been breach by the land-owner in terms of the exemption – The Authority also did not take any action to withdraw the exemption in view of the breach – The tenements, since have been sold, no direction can be issued to hand-over seven more tenements from the construction – The demand for the market value of the seven tenements, fall outside the purview of the Act, and hence cannot be construed as money due to the Government so as to vest in it the nature of arrears of land revenue recoverable u/s. 265 of Maharashtra Land Revenue Code, 1966 – The competent Authority being the creature of statute u/s. 2(d) cannot act beyond its statutory jurisdiction and shall remain circumscribed by the provisions of the Act – The demand being de hors the provisions of the Act and being beyond statutory powers of the Competent Authority is Arbitrary and hence unsustainable.*
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Allowing the appeal, the Court

- G **HELD: 1.1 Sections 20 and 21 of the Urban Land (Ceiling and Regulation) Act, 1976 contain provisions that if the Government or the competent authority, as the case may be is satisfied that any of the conditions subject to which exemption was granted, is not complied with, it shall be competent for it to withdraw the order of exemption or to declare such land to be**
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excess land under Section 21 of the Act with its attendant A consequences as provided under the Act. [Para 9][1009-F-G]

S. Vasudeva v. State of Karnataka and Ors. (1993) 3 SCC 467 : [1993] 2 SCR 715 – relied on.

1.2 In the nature of the composite exemption granted, the failure of the authorities to cancel or withdraw the exemption for breach by transfer of development rights to respondent Nos. 2 to 4 or construction on one plot only and the consequent claim based on the “No Objection Certificate” dated 08.06.1993 issued for purposes of a water connection, is of no avail to the appellant as the certificate expressly recites that so far only seven tenements had been handed over meaning thereby that the further seven tenements remained to be handed over. The certificate was therefore conditional in nature and not absolute. [Para 13][1012-E-F]

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1.3 Subsequent to the grant of exemption, the appellant entered into a development agreement with respondent Nos. 2 to 4 as early as on 29.08.1988 describing himself as the owner and also handed over the title deeds of the property. But the appellant informed the authorities of this fact very belatedly on 15.04.2005. The building plan was approved in the name of the appellant on 19.10.1988. The permission to commence construction was issued in his name on 28.02.1989. He alone had applied for extension of the scheme leading to issuance of the corrigendum dated 29.12.1988. The appellate authority in his order dated 12.07.2006 has adequately noticed that it was the appellant who was the *de facto* owner of the plot, had submitted the application for exemption, given an undertaking on stamped paper dated 16.05.2005 to fulfil the conditions of the exemption by providing the additional seven tenements or market value in respect thereof. The question of any estoppel, therefore, does not arise. Therefore, any dispute between the appellant and respondents Nos. 2 to 4 under the development agreement between them falls in the realm of a private dispute and does not detract from the exclusive liability of the appellant under the order of exemption. [Para 14][1012-H; 1013-A-C]

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- A 1.4 There is thus no dispute with regard to the fact that there had been a breach by the appellant in terms of the exemption. The authority under the Act also did not take any steps to withdraw the exemption because of such breach. The tenements have been constructed and sold. No directions therefore can be issued to hand over seven more tenements from the constructions so raised. [Para 16][1013-E-F]
- B 2. The question whether the competent authority under the Act possesses the power to recover the market value of seven tenements for failure to hand over possession in terms of the order of exemption, being a pure question of law, the facts being undisputed, there is no reason not to allow the appellant to raise the same before this Court for the first time. The competent authority under the Act could have certainly withdrawn the exemption in the event of breach along with all its attended consequences. Failure to do so did not deprive the statutory authority of its powers to proceed appropriately under the Act. But the competent authority being a creature of the statute under Section 2(d) of the Act, cannot act beyond its statutory jurisdiction and the exercise of its powers shall remain circumscribed by the provisions of the Act. The undertaking dated 16.05.2005 by the appellant, to pay the price of the same in the event of the failure to do so cannot expand the statutory powers of the competent authority under the provisions of Sections 20 and 21 of the Act. The demand for the market value of the remaining seven tenements, falling outside the purview of the Act, cannot be construed as money due to the Government so as to vest in it
- C F the nature of arrears of land revenue recoverable under Section 265 of the Maharashtra Land Revenue Code, 1966. Therefore, the impugned demand is *dehors* the provisions of the Act and unsustainable being beyond the statutory powers of the competent authority and thus arbitrary. [Paras 16 and 17][1013-F-H; 1014-A-D]

G *M/s Shantistar Builders v. Narayan Khimalal Totame and Others (1990) 1 SCC 520 – held inapplicable.*

H *Naraindas Indurkhyा v. The State of Madhya Pradesh and Others (1974) 4 SCC 788 : [1974] 3 SCR 624;*

Karmarahi Kanji Chandan v. The State of Maharashtra and Ors. Writ Petition No. 2629 of 1992 dated 03.12.1992; Nargis Jal Haradhvala v. State of Maharashtra and Ors., (2015) 4 SCC 259 : [2015] 1 SCR 8 – referred to.

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<u>Case Law Reference</u>		
[1974] 3 SCR 624	referred to	Para 3
(1990) 1 SCC 520	held inapplicable	Para 4
[2015] 1 SCR 8	referred to	Para 8
[1993] 2 SCR 715	relied on	Para 10

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.2019 of 2010.

From the final Order dated 21.06.2007 of the High Court of Judicature at Bombay in Writ Petition No.2542 of 2006.

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Amar Dave, Mahesh Agarwal, Ankur Saigal, Gaurav Goel, Yatin R. Shah, Anirudh Bhatia, E.C. Agrawala, Advs. for the Appellant.

Sachin Patil, Adv. for the Respondents.

The Judgment of the Court was delivered by

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NAVIN SINHA, J.

1. The appellant is aggrieved by the order of the High Court affirming the demand dated 15.10.2005 by respondent No.1 for Rs. 51,97,196/- plus interest, penalty and recovery expenses as arrears of land revenue. The demand was raised consequent to the failure of the appellant to handover seven tenements to government nominees as required under the conditions of exemption granted under Sections 20 and 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act") (since repealed in 1999). The Additional Commissioner, Konkan Division, Mumbai as the appellate authority affirmed the same by his order dated 12.07.2006.

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2. Shri Amar Dave, learned counsel for the appellant submitted that exemption was granted under Section 20 of the Act on 02.03.1988 for raising construction over two plots being CTS No. 261 and CTS No. 245. In lieu thereof the appellant was required to surrender 20 per cent of the constructed area to government nominees. The competent authority

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- A despite being aware that construction had been raised on only one plot, never withdrew the exemption. On the contrary, it consciously issued a “No Objection Certificate” acknowledging that seven tenements had been handed over. It was next submitted that if there had been any breach of the conditions of exemption, the Act empowered the authorities to withdraw the exemption with all its attendant consequences. Our attention was invited to provisions of Sections 20 and 21 of the Act.
 - 3. It was next submitted that respondent no.1 did not have any statutory authority under the Act to levy the impugned demand much less recover it as arrears of land revenue. Relying upon Section 38(4) of the Act, Shri Dave submitted that the appellant could statutorily impose a punishment of fine, order imprisonment or impose both. The demand being dehors the provisions of the Act must be struck down. Reliance was placed on *Naraindas Indurkhyा vs. The State of Madhya Pradesh and Others*, (1974) 4 SCC 788.
 - 4. Contending that the “No Objection Certificate” dated 08.06.1993 was post 30.01.1990 judgment of this Court in *M/s Shantistar Builders vs. Narayan Khimalal Totame and Others* (1990) 1 SCC 520, the authorities at best could have enforced a 5% limit for handing over of tenements to government nominees.
 - 5. Shri Dave next submitted that the appellant, to the knowledge of respondent no.1, had entered into a development agreement for the exempted lands with respondent nos. 2 to 4 and given a power of Attorney. The liability for breach, if any, and payment in respect thereof were, therefore, the exclusive responsibility of the said respondents who alone were responsible for the occasioned breaches. Acknowledging the same, the authorities had also made direct communication with the said respondents on 20.01.1994 and 27.01.1994.
 - 6. Shri Sachin Patil, learned counsel for Respondent Nos. 1 and 5 submitted that in view of the prohibition contained in Clause 13 of the exemption order, the appellant could not have transferred the development rights to respondent nos. 2 to 4. Any illegal transfer made cannot be of any avail to the appellant by urging that the liability for payment, therefore, rested with the said respondent to the exclusion of the appellant. The exemption granted under the Act was composite in respect of two plots. It is not open for the appellant to contend that construction having been raised on one plot only, he was not bound by the original conditions of
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exemption. The no objection certificate relied upon by the appellant was not conclusive as it expressly recited that seven tenements had been handed over so far, meaning thereby that the remaining seven tenements were yet to be handed over.

7. Shri Patil, refuting the submission on behalf of the appellant that the liability for payment, if any, rested upon respondent Nos. 2 to 4 alone, submitted that it was the appellant who had applied for the exemption under the power of attorney given by the actual land owner. He alone had applied and was granted permission to start construction. The building plans were submitted under his signature. Since the appellant has profiteered by reason of the misuse of the exemption order, the imposition for recovery of the market value of seven tenements along with penalty, interest etc. as arrears of land revenue calls for no interference. The appellant himself on 16.05.2005 undertook in writing to purchase seven tenements in adjoining areas for government nominees or else pay the market value of seven tenements.

8. Referring to the submissions for a cap of 5 per cent tenements to be provided only, it was submitted that *M/s Shantistar Builders* (supra) has been interpreted as prospective in nature by the Mumbai High Court relying on *Karmarahi Kanji Chandan vs. The State of Maharashtra and Ors.*, Writ Petition No. 2629 of 1992 dated 03.12.1992 and which has been followed in other writ petitions. He also drew our attention to *Nargis Jal Haradhvala vs. State of Maharashtra and ors.*, (2015) 4 SCC 259 in context of the same. It was next submitted that any *inter se* dispute between the appellant and respondent nos.2 to 4 in raising the constructions under the original order of exemption pertains to the realm of a private dispute between the parties, and with which the authorities under the Act are not concerned. It was lastly submitted that a mandamus may be issued to the appellant for handing over seven tenements in the event that this court finds that the impugned demand was unsustainable for any reason. None has appeared on behalf of respondent nos.2 to 4 despite service of notice.

9. We have considered the respective submissions made on behalf of the parties. Relevant provisions of the Act which fall for consideration are Sections 2(d), 20, 21 and 38(4) which are set out hereinunder: -

“2(d) “competent authority” means any person or authority authorised by the State Government, by notification in the Official Gazette, to perform the functions of the competent authority under

- A this Act for such area as may be specified in the notification and different persons or authorities may be authorised to perform different functions.
20. Power to exempt.—(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter—
- B (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;
- (b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter: Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.
- Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.
- (2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of subsection (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.
21. Excess vacant land not to be treated as excess in certain cases.—
- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land

in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purposes of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such building are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under subsection (1), the competent authority shall, by order, and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this Chapter shall apply accordingly.”

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38(4) If any person contravenes any of the provisions of this Act for which no penalty has been expressly provided for, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.”

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Both the Sections 20 and 21 of the Act, therefore, contain provisions that if the Government or the competent authority, as the case may be is satisfied that any of the conditions subject to which exemption was granted is not complied with, it shall be competent for it to withdraw the order of exemption or to declare such land to be excess land under Section 21 of the Act with its attendant consequences as provided under the Act.

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10. This court in *S. Vasudeva vs. State of Karnataka and ors.*, (1993) 3 SCC 467 interpreting the provisions of Sections 20 and 21 of the Act held as follows:

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- A “35. This distinction between Sections 20 and 21 may be noticed at this stage. In the first instance, the power given under Section 20 is to the State Government and not to the competent authority. The power given is to exempt the land, and the exemption is to be granted to a person. The purpose of exemption is either public interest or relief from personal undue hardship. It does not appear to be obligatory on the State Government to prescribe any conditions while granting the exemption. However, if any conditions are specified and if the State Government is later satisfied that there is noncompliance with any of the conditions, the State Government is given power to withdraw the exemption.
- C 36. As far as Section 21 is concerned, the power conferred by it is not to exempt the land but to declare it not to be excess for the purposes of Chapter III. The power is given to the competent authority itself. It is to be exercised by it only under one circumstance. That circumstance is that the holder of the vacant land should declare before it within a specified time and in the prescribed form and manner, that he desires to utilise the land for the construction of the dwelling units of not more than the particular size mentioned therein for accommodating the weaker sections and in accordance with any scheme approved by the specified authority. It is the competent authority which is required to make inquiry as it deems fit into such a declaration, and if it is satisfied, to declare that such land shall not be excess within the meaning of the said chapter. However, it appears that the competent authority is required to prescribe certain terms and conditions while declaring the land not to be an excess land, including a condition with regard to the time-limit within which such buildings are to be constructed, and on the breach of any of the conditions, the competent authority is also given power to declare the land to be an excess land.”
- G 11. Shri Bhaskar Govind Bhoir and Shri Waman Govind Bhoir were the original owners of the lands which were declared surplus under the Act on 31.07.1980. The agreement for sale dated 12.03.1984 executed by the owners in favour of the appellant, who was the proprietor of M/s. Jay Pali Builders, itself recited that the sale would be subject to the provisions of the Act and that the appellant would obtain all permissions for development under the same. A general power of attorney dated H 15.01.1985 was then executed by the owners in favour of the appellant

inter alia authorising him to pursue matters before the competent authority under the Act and to obtain all necessary permissions, exemptions etc. for development on the lands. The appellant then applied for exemption which was granted on 02.03.1988 by the State Government under the guidelines issued under Section 20 of the Act being Government Resolution, Housing and Special Assistance Department SS 1086/2340/XIII dated 22.08.1986. The exemption was granted in respect of 78 tenements to be constructed on the exempted lands identified as Survey No. 37 (part corresponding to CTS No. 261) and Survey No. 34 (Part CTS No. 245). The exemption mandated 20 per cent (15 tenements) to be handed over for allotment to government nominees belonging to weaker sections of the society. A corrigendum was issued on 29.12.1988 by the State Government at the request of the appellant, increasing the area for construction under Section 8(4) of the Act from 3785 sq.mtrs to 4412.10 sq.mtrs. The 20 per cent requirement for government nominees accordingly stood enhanced to 18 tenements. As out of the two CTS plots for which exemption was granted, the appellant developed only one plot bearing CTS No. 261, he was therefore liable to surrender 588 sq.mtrs. i.e. 20% of the built-up area in form of 14 tenements for allotment to Government nominees.

12. The order of exemption dated 02.03.1988 contained conditions which were in accord with the statutory provisions. Clauses 5, 9, 13, 17 and 18 are considered relevant and are extracted hereinunder:-

“5. The said person shall commence construction of the tenements within a period of 1 year from the date of this exemption order shall complete the construction work within 3 years, failing the exemption shall stand withdrawn. If only a part of the land utilized by the said person and a part remains vacant at the end above date 22.02.1991 the exemption for the part which remain vacant or where the buildings are incomplete, for the land under incomplete building and the land appurtenant thereto shall be deemed to have been withdrawn and vacant land and such land with structure and land appurtenant shall be acquired as per chapter III of the Urban Land (Ceiling and Regulation) Act, 1976.

9. The said person shall sell 20% of the permitted floor space to the allottees nominated by the Government of Maharashtra at the rate of Rs. Sq.ft. (illegible).

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- A 13. The said person shall not transfer the exempted lands or without building thereon or any part thereof to any other person, except for the purpose of mortgage in favour of any financial institutions specified in sub-section (1) of section 19 of the for raising finance for the purpose of construction of any one of the tenements mentioned above, breach of this conditions shall that exemption granted under this order stands withdrawn.

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- C 17. If at any time, the State Government is satisfied that there is a breach of any of the conditions mentioned in this order, shall be competent for the State Government to withdraw by an the exemption order from the date specified in the order. Provided that, before making any such order the state Government shall give reasonable opportunity to the person whose are exempted for making representation against the proposed withdrawal.
- D 18. when any such exemption is withdrawn or deemed to be withdrawn under these conditions, the provisions of the Chapter-III of the said Act shall apply to the lands as if the land had not been adopted under this order.”
- E 13. We are of the considered opinion that in the nature of the composite exemption granted, the failure of the authorities to cancel or withdraw the exemption for breach by transfer of development rights to respondents nos.2-4 or construction on one plot only and the consequent claim based on the “No Objection Certificate” dated 08.06.1993 issued for purposes of a water connection, is of no avail to the appellant as the certificate expressly recites that so far only seven tenements had been handed over meaning thereby that the further seven tenements remained to be handed over. The certificate was therefore conditional in nature and not absolute.
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- G 14. The plea of the appellant that the liability under the impugned demand rested upon respondent nos. 2 to 4 alone in view of the development agreement between the parties, and that the authorities had made any direct communication with the said respondents also does not merit any consideration in view of the facts of the case coupled with the provisions of the Act. Subsequent to the grant of exemption, the appellant entered into a development agreement with respondent nos. 2 to 4 as early as on 29.08.1988 describing himself as the owner and also
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handed over the title deeds of the property. But the appellant informed the authorities of this fact very belatedly on 15.04.2005. The building plan was approved in the name of the appellant on 19.10.1988. The permission to commence construction was issued in his name on 28.02.1989. He alone had applied for extension of the scheme leading to issuance of the corrigendum dated 29.12.1988. The appellate authority in his order dated 12.07.2006 has adequately noticed that it was the appellant who was the *de facto* owner of the plot, had submitted the application for exemption, given an undertaking on stamped paper dated 16.05.2005 to fulfil the conditions of the exemption by providing the additional seven tenements or market value in respect thereof. The question of any estoppel, therefore, does not arise. Shri Patil is therefore right in his submission that any dispute between the appellant and respondents nos. 2 to 4 under the development agreement between them falls in the realm of a private dispute and does not detract from the exclusive liability of the appellant under the order of exemption.

15. The appellant having failed to hand over the remaining seven tenements, the impugned demand dated 15.10.2005 then came to be raised by respondent no.1 as being the current market value rate of the remaining seven tenements pursuant to the undertaking of the appellant dated 16.05.2005. This was preceded by repeated request to the appellant for handing over seven tenements.

16. There is no dispute with regard to the fact that there had been a breach by the appellant in terms of the exemption. The authority under the Act also did not take any steps to withdraw the exemption because of such breach. The tenements have been constructed and sold as we were informed. No directions therefore can be issued to hand over seven more tenements from the constructions so raised. The question that arises for consideration however is whether the competent authority under the Act possesses the power to recover the market value of seven tenements for failure to hand over possession in terms of the order of exemption. The undertaking dated 16.05.2005 by the appellant, to pay the price of the same in the event of the failure to do so, in our opinion cannot expand the statutory powers of the competent authority under the provisions of Sections 20 and 21 of the Act. The appellant has justifiably raised a pure question of law before us for the first time, which was acknowledged not to have been raised earlier either before the appellate authority or the High Court under Section 38(4) of the Act.

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- A 17. It being a pure question of law, the facts being undisputed, we see no reason not to allow the appellant to raise the same before us for the first time. The competent authority under the Act could have certainly withdrawn the exemption in the event of breach along with all its attended consequences. Failure to do so did not deprive the statutory authority of its powers to proceed appropriately under the Act. But the competent authority being a creature of the statute under Section 2(d) of the Act, cannot act beyond its statutory jurisdiction and the exercise of its powers shall remain circumscribed by the provisions of the Act. Any undertaking by the appellant cannot expand the statutory jurisdiction of the competent authority. The demand for the market value of the remaining seven tenements, falling outside the purview of the Act, cannot be construed as money due to the Government so as to vest in it the nature of an arrears of land revenue recoverable under Section 265 of the Maharashtra Land Revenue Code, 1966. We have, therefore, no hesitation in concluding that the impugned demand is dehors the provisions of the Act and unsustainable being beyond the statutory powers of the competent authority and thus arbitrary.

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- E 18. The submission of Shri Amar Dave with regard to a cap of 5 per cent on the tenements to be handed over in view of the judgement in *M/s. Shantistar Builders* (supra) has to be stated to be rejected. As noticed above, *M/s. Shantistar Builders* (supra) has been interpreted to be prospective in nature. A bare perusal of paragraphs 21 and 22 of the judgement leaves no doubt in our mind also that it was intended to be only prospective in nature in its operation.

- F 19. The order of the High Court is set aside. The appeal stands allowed.

Kalpana K. Tripathy

Appeal allowed.