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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.9872 OF 2010**

1 Maharashtra Chamber of Housing
Industry, having its office at
Maker Bhavan-II, 4th Floor,
18, V.Thackersey Marg,
New Marine Lines, Mumbai-400020.

2 Maharashtra Chamber of Housing
Industry, Kalyan Dombivali Unit,
having its office at Gandhare,
Opp.Radha Nagar Tower,
Radha Nagar, Khadak Pada,
Kalyan (West), 421301.

3 Maharashtra Chamber of Housing
Industry, Thane Unit,
having its office at
Ashar IT Park, Ground Floor,
South Wing Road No.16-Z,
Wagle Estate, Bradma,
Thane (West), 400604.

4 Maharashtra Chamber of Housing
Industry, Mira Road to Virar Unit,
having its office at
Rustomjee Evershine Global City,
Shop No.68, Avenue-M,
Building No.8, Narangi Bypass Road,
Virar (West), 401103.

5 Maharashtra Chamber of Housing
Industry, Raigad Unit,
having its office at Prajapati House,
1st Floor, Plot No.13-B,
Panvel Matheran Road,
Sector 19, New Panvel.

..PETITIONERS

***-Versus-***

1 State of Maharashtra.
Through Urban Development Department,
Mantralaya, Mumbai.
Copy to be served through Government
Pleader, High Court, Appellate Side,
Bombay.

2 The Deputy Collector and
Competent Authority (ULC),
Thane Urban Complex, at Thane.
having his office at 2nd floor,
Collectorate Building, Thane.

..RESPONDENTS

**ALONG WITH**

**WRIT PETITION NOS.84/2009, 91/2009, 346/2011, 556/2010, 1113/2010, 1256/2009, 2130/2009, 2201/2009, 2243/2011, 2244/2011, 2582/2010, 3815/2010, 5024/2013, 5161/2010, 5166/2010, 5984/2010, 7198/2008, 8535/2007, 9703/2010, 9812/2009, 10055/2009 AND 10480/2009**

**ALONG WITH**
**ORIGINAL SIDE WRIT PETITION NO.37 OF 2010**

**.....**

Mr.Shekhar Naphade, Senior Advocate a/w Mr.Aniruddha Joshi, Mr.Neil Mandevia, Ms.Jinal Gogri, Ms.Pratiti Naphade, Mr.Tushar Ingale i/by Mr.Nivit Srivastava, Advocates for the Petitioners in Writ Petition No.9872/2010.

Mr.Milind Sathe, Senior Advocate a/w Mr.Prateek Seksaria, Mr.Neil Mandevia, Ms.Jinal Gogri, Mr.Tushar Ingale i/by Mr.Nivit Srivastava, Advocates for the Petitioners in Writ Petition No.9703/2010.

Mr.Milind Sathe, Senior Advocate a/w Mr.Rajiv Narula i/by Jhangiani Narula & Associates, for the Petitioners in Writ Petition No.3815/2010.

Mr.Milind Sathe, Senior Advocate i/by A.G.Revankar & Company, for the Petitioners in Writ Petition No.2201/2009.

Mr.Milind Sathe, Senior Advocate a/w Mr.Nishad Bhatia i/by Cr.Bayley & Company, for the Petitioners in Writ Petition No.9812/2009.

Mr.Pravin Samdani, Senior Advocate a/w Mr.Prateek Seksaria, Ms.Jinal Gogri, Mr.Tushar Ingale i/by Mr.Nivit Srivastava, Advocates for the Petitioners in Writ Petition No.346/2011.

Mr.V.Sridharan, Senior Advocate a/w Mr.R.D.Soni, Mr.H.N.Vakil and Mr.Gajendra Jain i/by Mulla & Mulla, for the Petitioners in Writ Petition Nos.2243/2011 and 2244/2011.

Mr.F.E.Devitre, Senior Advocate with Dr.Birendra Saraf, Ms.Hemlata Jain, Mr.Amey Nabar, Mr.Jahaan Dastur i/by Hariani & Company, for the Petitioners in Writ Petition No.37/2010 (Original Side).

Mr.F.E.Devitre, Senior Advocate a/w Mr.R.H.Daulat, Mr.C.K.Sancheti and Mr.S.V.Doijode i/by Doijode & Associates, for the Petitioners in Writ Petition No.8535/2007.

Mr.S.R.Ganbavale, for the Petitioners in Writ Petition No.84/2009.

Mr.Harshad Palwe, for the Petitioners in Writ Petition No.91/2009.

Ms.Tanmayi Gadre-Rajyadhyaksha i/by Mr.G.M.Savgave, for the Petitioners in Writ Petition No.556/2010.

Mr.K.S.Dewal, for the Petitioners in Writ Petition Nos.1113/2010 and 1256/2009.

Mr.Susheel Mahadeshwar with Ms.Ranjana Todankar and Ms.Prerna Janvekar, for the Petitioners in Writ Petition No.2130/2009.

Mr.S.G.Karandikar, for the Petitioners in Writ Petition Nos.2201/2009, 5161/2010 and 5166/2010.

Mr.V.A.Gangal and Mr.Arup Deshmukh, for the Petitioners in Writ Petition No.5024/2013.

Mr.Rohidas Gawade i/by Mr.Punit B. Anand, for the Petitioners in Writ Petition No.5024/2013.

Mr.Amit Borkar, for the Petitioners in Writ Petition No.5984/2010.

Ms.Gauri Godse, for the Petitioners in Writ Petition No.10055/2009.

Mr.R.D.Soni i/by Ram & Company, for the Petitioners in Writ Petition No.10480/2009.

Mr.D.J.Khambata, Advocate General and Mr.P.K.Dhakephalkar, Senior Advocate a/w Mr.Nitin Deshpande, AGP, Mr.Afroz Khan and Ms.Gauri Raghuvanshi, for the Respondents/State in all petitions.

Mr.D.A.Nalawade, for the Respondent No.3 in Writ Petition Nos.346/2011, 7198/2008, 9703/2010 and for Respondent No.7 in Writ Petition No.2243/2011.

Mr.Jaydeep Deo, for the Respondent/ Government of India in Writ Petition No.9872/2010.

Mr.N.R.Bubna with Ms.Pooja Singh, for the Respondent No.5 in Writ Petition No.2244/2011 and for the Respondent Nos.1 and 2 in Writ Petition No.9812/2009.

Mr.Mandar Limaye, for the Respondent No.6 in Writ Petition No.2243/2011 and for Respondent No.4 in Writ Petition No.5166/2010.

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**CORAM : S.C. DHARMADHIKARI,**
**S.C. GUPTE &**
**G.S. KULKARNI, JJJ.**

**(FULL BENCH)**

**Reserved on : 23rd June, 2014**
**Pronounced on : 03rd September, 2014**

**Judgment (Per S.C.Dharmadhikari, J.):**

1 The Honourable the Chief Justice has constituted this Full Bench in order to resolve a conflict between the conflicting views which

have been expressed by two Division Benches of this Court. In our detailed order dated 24th April, 2014 we noticed that conflict and by consent of parties we formulated the questions which have to be answered by us. They read as under:-

(1) Does Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 read with Section 6 of the General Clauses Act, 1897 r/w Section 7 of the Bombay General Clauses Act, 1904 save the orders of exemption including all terms and conditions thereof passed under Section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 and all actions taken thereunder?

(2) Whether, Section 6 of the General Clauses Act, 1897 r/w Section 7 of the Bombay General Clauses Act, 1904 apply to the repeal of the Principal Act by the Repealing Act, 1999?

(3) Whether in view of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and the Bombay General Clauses Act, 1904:

(a) the order of exemption including all its terms and conditions under Section 20(1) of the Principal Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 can be continued and enforced in accordance with the provisions of the Principal Act;

(b) all remedies and proceedings in respect of the order of exemption including all its terms and

conditions may be instituted, continued and enforced?

(4) Whether in view of the repeal of the Principal Act by the Repeal Act, the Government of Maharashtra can:

(a) recall/ cancel/ modify the exemption order granted either under Section 20 of the Principal Act;

(b) enforce circulars for implementation of exemption orders issued under Section 20 of the Principal Act prior to the repeal of the Principal Act;

(c) acquire the land by issuing notification under Section 10(3) of the Principal Act; and

(d) take any action of whatsoever nature on account of non-compliance/ breach of exemption order issued under Section 20(1) of the Principal Act?

(5) Whether, the view taken by a Division Bench of this Court in the case of *Vithabai Bama Bhandari v/s State of Maharashtra and another* reported in **2009(3) Bombay Cases Reporter 663** (Writ Petition No.4241/2008 decided on 31st March/ 16th April, 2009) and *Damodar Laxman Navare and others v/s State of Maharashtra and others* in **Writ Petition No.6300/2009 dated 08th July, 2010** sets out the correct legal position as regards the ambit and scope of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 or whether, the view

taken in *Mira Bhayandar Builders and Developers Welfare Association v/s the Deputy Collector and Competent Authority, Thane Urban Agglomeration and others* in **Writ Petition No.5745/2009 dated 27th August, 2009** to the contrary should be held to be laying down the correct principle of law?

2 Since both sides have canvassed arguments on legal issues, in order to appreciate them a few facts are required to be noted. We take the facts from a lead case, namely, Writ Petition No.9872/2010. That is a Writ Petition which has been filed by the Maharashtra Chamber of Housing Industry and its various Units. These are associations established to promote the housing and real estate industry. The Writ Petition is filed in the interest of members of these Associations and real estate industry and in the circumstances which are set out in paragraph 4 of the memo of Writ Petition.

3 It is the case of the Petitioners that the State of Maharashtra and Competent Authorities under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "THE PRINCIPAL ACT") continue to enforce and apply the provisions thereof despite enactment of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "THE REPEAL ACT"). The Repeal Act has been brought into effect and is in force in the State of Maharashtra from 29.11.2007.

4 The grievance of the Petitioners is that there is a circular dated 18.03.2009 issued by the State Government, copy of which is at Annexure-A. That circular states that the Repeal Act has been brought into

force in the State of Maharashtra w.e.f. 29.11.2007. The same expressly saves the vesting of excess vacant land in the State as also validity of an exemption order passed under Section 20(1) of the Principal Act. Meaning thereby, the repeal of the Principal Act does not affect the vesting of excess vacant land in the State provided its possession has been taken, so also, validity of an exemption order passed under Section 20(1) of the Principal Act. Therefore, such excess vacant lands of which possession has not been taken, but which are subjected to certain concessions under the order of exemption passed in terms of Section 20(1) of the Principal Act and which are particularly to utilize the lands for residential purpose, for implementing residential housing scheme, for industry and it's expansion, shall not be transferred without prior permission of the State and there are restrictions placed on change of user thereof. The permission for change of user will not be granted unless premium is paid to the Government.

5 A reference is made in this circular and the steps taken to implement the Repeal Act. The steps include two communications from the Government dated 01.03.2008 and 03.03.2008 which outline the scheme for development of these lands or their transfer.

6 It has been revealed that the exempted lands are being dealt with and for the purpose of implementation of the Slum Rehabilitation Scheme, Rental Housing Scheme, etc.. Further, the reservations in respect of these lands have been changed or altered from industry/ agriculture without any reference to the Government/ Competent Authority. The permissions in that regard have been granted without any prior approval from the competent authorities under the Principal Act. Therefore, the

Government has directed that the exempted lands cannot be used for any other purpose nor their reservation can be changed unless the approvals/ remarks are called for from the competent authority under the Principal Act. Any violation of such requirement would visit the persons concerned with all consequences and at their costs.

7 Prior to this circular there are certain Government Resolutions and which enable utilization of Transferable Development Rights (TDR) so as to use the lands for construction of houses for weaker sections and equally to grant development permissions in relation thereto. This is a Government Resolution dated 30.06.2007.

8 There is also an order and which has been referred to because it is the case of the Petitioners that their members had to obtain several permissions from the Respondent Nos.1 and 2 for carrying out the development. It is contended that the Government Resolutions referred by us including dated 30.06.2007 and emphasis by the authorities on compliance of the same continues despite the Repeal Act brought into force with effect from 29.11.2007. There are several instances which have been given and copies of the exemption orders passed under Section 20(1) of the Principal Act are referred to in paragraph 7 of the memo of Writ Petition No.9872/2010.

9 The grievance is that though the order of exemption was passed exempting the excess vacant land from the purview of Chapter-III of the Principal Act, when that Act was in force, but now after it's repeal the exemption order would not survive. In other words, the steps taken by the Authorities to give effect to the order of exemption even after repeal

of the Principal Act in the State of Maharashtra are wholly illegal. The Authorities cannot compel parties like the Petitioners to seek any extension of time to complete the scheme or to comply with the conditions on which the order of exemption under Section 20(1) of the Principal Act has been passed. The stand taken is that the Respondents have no powers to enforce the Principal Act directly or indirectly. Several instances of such alleged attempts are set out. There is reference made to the legal provisions and finally what is prayed is that this Court must restrain by an appropriate writ, order or direction under Article 226 of the Constitution of India, the Respondents from enforcing the provisions of the Principal Act insofar as such exemption orders and their terms and conditions.

10 From the record, what transpires is that a Writ Petition being Writ Petition No.3815/2010 from this group or batch of petitions, appeared before a Division Bench of this Court and it pronounced its judgment on 22.12.2010 noting that two Division Benches in the cases of *Sundersons and others v/s State of Maharashtra and others* reported in **2008 (5) Bombay Cases Reporter 85** and *Damodar Laxman Navre v/s State of Maharashtra* in **Writ Petition No.6300/2009 dated 08th July, 2010**, take a view that certain steps in pursuance of the order of exemption or seeking to enforce the terms and conditions thereof cannot be taken, whereas a conflicting view has been rendered by another Division Bench of this Court in *Mira Bhayandar Builders and Developers Welfare Association v/s the Deputy Collector and Competent Authority, Thane Urban Agglomeration and others* in **Writ Petition No.5745/2009 dated 27th August, 2009.**

11 The attention of the Division Bench in Writ Petition No.3815/2010 (*Jayesh Tokarshi Shah v/s Deputy Collector and Competent Authority, Thane Urban Agglomeration*) was invited to all these judgments and orders and stated to be conflicting. The Division Bench, therefore, in its judgment dated 22nd December, 2010 in the aforesaid matter observed as under:-

> *15. This prompts an answer in favour of a premise that the Additional District Collector, Thane and Competent Authority was not competent to issue the said Circular, and as such the efficacy of the said Circular commanding the Registering Officer to refuse the registration of the documents referred to therein remains questionable. A view congenial to the said premise is found expressed in some of the judgments- Sunderson & Ors Vs. State of Maharashtra & Ors. 2008(5) Bombay Cases Reporter 85, Damodar Laxman Navre & 4 others Vs. State of Maharashtra & 4 others Writ Petition No. 6300 of 2009, delivered previously by the Division Bench of this Court. However, there is a conflicting view expressed in the judgments delivered by the Division Bench of this Court in Writ Petition No.5745 of 2009 Mira Bhayander Builders & Developers Welfare Association Vs. Dy. Collector & Competent Authority, Thane and 3 others. The Circular dated 23.6.2008 was the epicentre of controversy in Mira Bhayander Builders & Developers Welfare Association (Supra). The State contended as in the present case that the scheme holders were trying to wriggle out of their obligations under the scheme sanctioned under Section 20 of U.L.C. Act, and therefore, the said Circular came to be issued to protect the schemes meant for economically weaker sections, and also the government ---. The Division Bench after considering the rival contentions observed thus:-*
>
> *"In our view, if the members of the petitioners' association have taken benefit of the schemes under Section 20 of the said Act by constructing buildings, they now cannot wiggle out of their obligations to surrender flats to the government which the government could sell at fixed rate. The entire tenor of the above petitioners*

*appears to be that the petitioners do not want to fulfil their obligations under the said Schemes viz. surrendering the flats to the State Government and taking advantage of the repeal of the said Act want to contend that their obligations under the said schemes do not survive. In our view the impugned letter as rightly contended by the learned AGP has been issued to protect the public interest and government revenue. It does not befit the Petitioners who have taken advantage of the said scheme now contend that their obligations do not survive, and therefore, there is no need for them to surrender flats to the government. We, therefore, do not find any merit in the challenge raised in the above petition which is accordingly dismissed."*

16. *In the instant case similar situation is portrayed in the affidavit in reply filed by the State. Referring to the Mohan Gopal Mate case (Supra) reported in 2008(6) ALL MR 41, the learned Advocate for the Petitioner submitted that a pertinent question regarding the extent of power of the State under Sections 20 and 21 of U.L.C. Act in the case of breach of conditions of the scheme by the scheme holder has been clearly answered as follows:*

*"Powers of the State under Section 20 in case of breach of condition of the order of exemption is limited to withdraw exemption order only and so far as Section 21 is concerned, declare the land which is not to be treated as excess land in view of the Sub-Section (1) in case of breach of condition State can declare such land to be excess in view of Sub-Section (2) of Section 21. Thereupon, the provisions of Chapter III will apply to the said land."*

17. *Going by strict interpretation of the Sections 20 and 21 of the ULC Act, the power of the State in case of contravention of any of the conditions of the scheme by scheme holder remains limited to withdrawal of the exemption and declaring the exempted land as excess land and to application of the provisions of the Chapter III of the said Act for acquisition of the said land as contemplated under Sub-Section (2) of Section 21 therein.*

> *18. This view is in conflict with the view expressed by the Division Bench in Mira Bhayander Builders & Developers Welfare Association (Supra), and as such the controversy raised by such conflict deserves to be resolved by the Full Bench of this Court.*
>
> *19. This Petition is, therefore, referred to the Hon'ble the Chief Justice for passing appropriate directions in the matter."*

12 It is in view of these events that a Full Bench was constituted and the above formulated questions await an answer from us.

13 At the outset we must clarify that we would be only answering the question/s formulated and reproduced hereinabove. We would not be expressing any opinion on the rival contentions insofar as merits of individual petitions. Each of these petitions thereafter would be placed before the appropriate Division Benches and for a decision on merits and in accordance with law. Our observations and findings, therefore, shall not be construed as expression of any opinion on the merits of the Writ Petitions referred above or pending in this Court.

14 The Petitioners' counsel have made an attempt to show us as to how the Division Bench judgment in the case of *Mira Bhayander Builders and Developers Welfare Association v/s Deputy Collector and Competent Authority, Thane* (supra) does not lay down the correct law. They have all, more or less, urged that repeal of the Principal Act in the State of Maharashtra on 29.11.2007 results in the State and competent authorities being prevented from withdrawing the order of exemption passed under Section 20(1) of the Principal Act. Assuming that the order

of exemption or any action taken thereunder is valid notwithstanding anything contrary held in any judgment or order of the competent court, yet the Repeal Act saves only validity of the order of exemption and nothing more. Such saving would not permit the State Government or competent authority to withdraw the order of exemption or enforce the terms and conditions thereof or to subject the excess vacant land to the consequences under the Principal Act. The saving is thus not absolute, but restricted in nature. Thirdly, it is urged that there being a Repealing Act containing such restricted saving clause, the same rules out applicability of Section 6 of the General Clauses Act, 1897 or its parimateria provision in the Bombay General Clauses Act, 1904.

15 We shall now elaborate these contentions as articulated by Mr.Naphade, learned Senior Counsel and adopted with some additions by Mr.Sathe, Mr.Sridharan, Mr.Devitre, Mr.Samdani, learned Senior Counsel and Mr.Gangal, Mr.Joshi and Ms.Gadre-Rajyadhyaksha, learned counsel appearing for the Petitioners.

16 Mr.Naphade firstly submitted that for understanding the Repeal Act we must have a look at the Principal Act. The Principal Act, according to Mr.Naphade, contains several provisions, but material therefrom are Sections 3, 5, 6, 8, 10 and 38. Mr.Naphade also took us through Section 11 of the Principal Act before coming to Section 20. In his submission the scheme of the Principal Act is that no one shall hold the vacant land in excess of the ceiling limit. The return or statement has to be filed so as to determine the extent of excess vacant land. In other words, Mr.Naphade submits that except as otherwise provided in the Principal Act, on and from the commencement of the Act, no person shall

be entitled to hold any vacant land in excess of ceiling limit in the territories to which the Principal Act applies. Mr.Naphade submits that Section 4 sets out the ceiling limit. He submits that the transfer of vacant land is also an aspect which is taken care of by Section 5. The persons holding the vacant land in excess of ceiling limit have to file the statement. He submits that further provisions enable scrutiny of particulars, preparing a draft statement as regards the vacant land in excess of ceiling limit and the final statement. Mr.Naphade submits that Section 10 is entitled "Acquisition of vacant land in excess of ceiling limit". The extent of the vacant land held by a person in excess of ceiling limit has to be specified by sub-section (1) of Section 10 and the purpose of same is to enable acquisition of the same eventually. That is an aspect dealt with by sub-sections (2) and (3) of Section 10. The vesting of such excess vacant land free from all encumbrances and with effect from the date of publication of a notification under sub-section (3) results in enabling the Government to take possession of the land. In these circumstances, according to Mr.Naphade, only consequence of not filing a return or statement, but which is not accepted in totality is provided by Section 10. There is also a provision, namely, Section 38 which makes such act a punishable offence and Mr.Naphade invites our attention to sub-sections (1) to (4) of Section 38 in that regard. Mr.Naphade's attempt was to show that even if the vacant land is in excess of ceiling limit and there is no compliance with the provisions requiring filing a statement of such vacant land, still the owner is not deprived of his rights in the same. Mr.Naphade in that regard invites our attention to Section 15 of the Principal Act and submits that it reflects the legislative intent. There is no loss of ownership on promulgation of the Principal Act. In these circumstances all that the Principal Act does is to create some sort of clog

or cloud on the rights of a person to hold the land. His ownership rights therein are not affected.

17 Mr.Naphade, therefore, submits that the power to exempt the excess vacant land from applicability of Chapter-III of the Principal Act is exercised by the Government either on its own motion or otherwise and that is also clear by Sections 21 and 22 which permits the excess vacant land not to be treated as such in certain cases and it's retention under certain circumstances. Therefore, merely because a holder of the excess vacant land seeks exemption from applicability of Chapter-III or the State exempts such vacant land from applicability thereof will not mean that the right and particularly ownership therein is surrendered much less waived. Mr.Naphade's attempt was to show that the State seeks to put the excess vacant land beyond application of Chapter-III, but keeping all his rights and options intact. The reference, therefore, will have to be answered by us bearing in mind this vital aspect, is the submission of Mr.Naphade.

18 Mr.Naphade elaborated this aspect by submitting that once the land is exempted, it is out of the purview of the Principal Act. The right to hold it conditionally remains unaffected. The power to exempt is limited in nature. It is legislative in character. By no stretch of imagination it is a right conferred in the Government nor exercise of powers to exempt creates any right in the Government in respect of such excess vacant land. In these circumstances and if Sections 20(2) and 21(2) are read together it would be apparent that neither any action under sub-section (1) of Section 21 or the power under sub-section (2) is saved by repeal of the Principal Act. In fact the Repeal Act does not save Section 21 at all.

Hence, when the Repeal Act in Section 3(1)(b) refers to the validity of exemption order, it deliberately omits to include or refer sub-section (2) of Section 20. Hence, there is no power to withdraw the exemption order under Section 20(1) after repeal of the Principal Act. Hence, even breach or violation of the condition in the exemption order will not result in its cancellation or withdrawal. Apart therefrom any breach or violation of the condition on which the exemption order was granted does not result in automatic withdrawal or cancellation thereof. That is apparent from Section 20(2). It is, therefore, clear that the Repeal Act does not save this power and by omitting sub-section (2) of Section 20 from clause (b) of sub-section (1) of Section 3 of the Repeal Act. The legislature was aware that the power to withdraw the exemption order will have to be exercised only after giving a reasonable opportunity to such person who has violated the conditions subject to which the exemption under clause (a) and (b) of sub-section (1) of Section 20 is granted. That reasonable opportunity is to make representation against the proposed withdrawal. It is the only consequence of either not complying with the conditions subject to which the exemption is granted or not being able to satisfy the Government that such exemption should not be withdrawn or from applicability of Chapter-III to the excess vacant land. Meaning thereby same is capable of being acquired and thereafter, vested in the Government. Once that power cannot be exercised post repeal of the Principal Act, then, we would be in complete error if we hold that the repeal of the Principal Act does not affect the power to withdraw the exemption or to enforce the terms and conditions thereof.

19 In that regard, Mr.Naphade has taken us through Sections 20(2), 21(2) and 22(2) of the Principal Act. He submits that sub-section

(2) of Section 20 confers discretion in the Government and it may not withdraw the exemption order despite the conditions subject to which the same is granted are not complied with by any person. Whereas, sub-section (2) of Section 21 mandates declaring the vacant land to be excess. It is submitted that there are distinct consequences and which are taken care of by sub-section (2) of Section 22. Thus, the power of exemption has different parameters and the legislature was aware that such power cannot survive the repeal of the Principal Act. Hence, in the teeth of this clear language of the Repeal Act recourse to Section 6 of the General Clauses Act, 1897 is impermissible. Once a different intention appears from the provisions contained in the Repeal Act, then, Section 6 of the General Clauses Act, 1897 would not apply. The question of liberal construction of Section 3 of the Repeal Act, therefore, does not arise at all.

20 Mr.Naphade thereafter took us extensively through the Repeal Act to submit that what is saved is specific. By clause (a) of sub-section (1) of Section 3 of the Repeal Act the vesting of land of which possession has been taken by the State is saved. Meaning thereby, any vacant land which is subject matter of declaration under Section 10(3) of which possession has not been taken by the State Government, then its vesting is not saved by the Repeal Act. Such land of which possession has not been taken will have to be restored post repeal after the requirement stipulated in sub-section (2) of Section 3 of the Repeal Act is complied with. Therefore, there is no collision between clause (a) and clause (b). What clause (b) saves is only validity of the order granting exemption under Section 20(1) or any action taken thereunder. The power to withdraw the exemption is not saved. If it is held to be saved, then, clause

(a) of sub-section (1) of Section 3 of the Repeal Act would be rendered redundant. Only consequence of exemption being withdrawn is to subject the land to applicability of Chapter-III of the Principal Act and particularly Section 10(3) thereof. If possession of such excess vacant land cannot be taken even after withdrawal of exemption in terms of sub-section (2) of Section 20 of the Principal Act, then, there was no point in saving its validity. Therefore, the validity of the order of exemption is saved, but neither that saving will enable the State to withdraw the exemption post repeal nor will the State be in a position to give effect to the order of withdrawal of the exemption if cannot take possession of the excess vacant land. That is the reason why the power to withdraw the exemption has not been saved. Section 4 of the Repeal Act, therefore, would throw light on the interpretation of clauses (b) and (c) of sub-section (1) of Section 3 of the Repeal Act. That Section 4 provides for abatement of legal proceedings. If the legal proceedings abate on the date on which the Repeal Act came into force, then, the intent could never be to save the power to withdraw the exemption. Therefore, the words, appearing in clause (b) of sub-section (1) of Section 3, after Section 20 should be read accordingly and that would be consistent with the object and purpose sought to be achieved in enacting the Repeal Act. None of the proceedings relating to any order made or purported to be made under the Principal Act pending immediately before commencement of the Repeal Act are saved. Even if they are pending before any court or tribunal or any other authority they shall abate. In these circumstances the Legislature clearly intended that any past or closed or conclusive action alone is saved. Anything in the pipeline or inchoate is affected and not saved. This is because the Principal Act is a self contained code. It contains substantive and procedural provisions and even creates a forum for the purpose of

enforcing and exercising substantive rights and powers and equally procedural one. A forum is created so as to make and enact a complete code. Nothing beyond the Principal Act can be seen. If the Repeal Act is construed in this manner, then, it envisages complete destruction of the rights under the Principal Act. Any right which is crystallized and which is not a mere hope or chance is alone saved.

21 Mr.Naphade also submits that Section 6 of the General Clauses Act cannot be imported into and read when the Repeal Act is so specific and clear. Alternatively and without prejudice to this submission Mr.Naphade submits that if Section 6 of the General Clauses Act, 1897 is analyzed, it by clauses (a) to (e) saves something which is in force or existing at the time at which the repeal takes effect. It does not affect previous operation of the Act so repealed or anything duly done or suffered thereunder. The repeal does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. Mr.Naphade submits that clause (b) would, therefore, refer to past or complete act and not something which is intended and incomplete. The liabilities that are crystallized under the enactment which is repealed alone are unaffected by repeal of the original or Principal Act and that is clarified by clause (c). This clause cannot be imported in the present Repealing Act for the simple reason that it would create inconsistency. Mr.Naphade submits that clause (e) of Section 6 of the General Clauses Act would have saved Section 20(2) of the Principal Act had Sections 3 and 4 been not enacted in the Repeal Act. That being clearly enacted there will be inconsistency if one imports clause (e) of Section 6 of the General Clauses Act in Section 3(1)(b) of the Repeal Act. For all these reasons Mr.Naphade would submit that the view taken by the

Andhra Pradesh High Court, Delhi High Court and Madras High Court follows the Division Bench judgments of this Court from which Mira Bhayander (supra) differs. That is the only view possible in the present legal backdrop and we must, therefore, hold that Mira Bhayander (supra) does not lay down the correct law and should be overruled. Mr.Naphade submits that when three or four High Courts in the country have taken a consistent view of the provision contained in a Central Act, then, that view ought to be followed so as to bring comity and consistency in interpretation of a Parliamentary statute. The reference, therefore, be answered accordingly.

22 Mr.Naphade in support of the above submissions, has placed heavy reliance on the following decisions:-

1 Mohamed Ashref Noor v/s State of Tamil Nadu, in Writ Petition No.6856/2003 decided on 16.12.2009 by the Madras High Court.

2 Surendra Raj Jaiswal v/s Government of Andhra Pradesh, in Writ Petition No.26474/2009 decided on 24.08.2011 by a Single Judge of Andhra Pradesh High Court.

3 The Principal Secretary to Government, Hyderabad v/s Surendra, in Writ Petition No.951/2012 decided on 25.07.2012 by the Division Bench of Andhra Pradesh High Court.

4 M/s Suri Industries v/s State of Tamil Nadu, in Writ Petition No.8610/2013 decided on 06.09.2010 by the Madras High Court.

5 Manik M. Ragit v/s State of Maharashtra reported in 2013 (2) Mh.L.J. 224. (WP No.1290/2012 decided on 30.07.2012 Nagpur Bench).

6 M/s Nile Limited v/s State of Andhra Pradesh, in

Writ Petition No.23846/2008 decided on 06.11.2013 by the Andhra Pradesh High Court.

7 State of Uttar Pradesh v/s Hari Ram reported in (2013) 4 SCC 280.

8 M/s Tata Coffee Limited v/s Government of Andhra Pradesh, in Writ Petition No.11929/2013 decided on 22.07.2013 by the Andhra Pradesh High Court.

9 Gajanan Kamlya Patil v/s Additional Collector and Competent Authority, in Civil Appeal Nos.2070-2071/2014 arising out of SLP (C) Nos.14904-14905 of 2011 decided on 14.02.2014 by the Honourable Supreme Court.

10 M/s L.G. Polymers India Private Limited v/s State of Andhra Pradesh, in Writ Petition No.21934/2013 decided on 28.03.2014 by the Andhra Pradesh High Court.

11 Synco Industries Limited v/s Assessing Officer, Income Tax, Mumbai reported in (2008) 4 SCC 22.

12 Tej Pratap Singh v/s Union of India, in Writ Petition (C) No.2455/1992 decided on 16.07.2009 by the Delhi High Court.

23 The submissions of Mr.Naphade have been adopted by Mr.Milind Sathe, learned Senior Counsel appearing for the Writ Petitioners in Writ Petition Nos.2201/2009, 3815/2010 and 9703/2010. In addition, Mr.Sathe submits that the Preamble of the Principal Act provides for imposition of a ceiling on vacant land in urban agglomeration, for acquisition of such land in excess of the ceiling limit and to regulate the construction of buildings on such land. It is also to distribute the excess vacant land after it vests in the State. In these

circumstances if the construction placed by the State on the provisions of the Repeal Act is accepted that would result in saving of the consequences following withdrawal of exemption. Section 20(2) of the Principal Act envisages withdrawal of exemption and after such withdrawal what follows is the vesting of the land in terms of Section 10(3) and its possession as envisaged by Section 10(5) and (6). This is specifically not saved by Section 3(1)(a) of the Repeal Act. Having regard to the clear language of the Principal Act this is the only consequence which follows on withdrawal of exemption. If it is not expressly saved, then, by an indirect or oblique method the Court cannot save it. Mr.Sathe's contention is that what is specifically saved is the validity of the order of exemption and the crucial words are to be found in clause (b) of sub-section (1) of Section 3 of the Repeal Act to this effect that the validity of any order granting exemption under Section 20(1) or any action taken thereunder is saved notwithstanding any judgment of any court to the contrary. Therefore, even if the Court declares the order of exemption or any action taken thereunder to be bad or invalid that is unaffected by repeal of the Principal Act. Beyond this nothing more can be read in the saving clause or the Repeal Act as a whole. The Reference, therefore, be answered accordingly. Mr.Sathe relies upon the following judgments:-

1 Mukarram Ali Khan v/s State of Uttar Pradesh reported in (2007) 11 SCC 90.

2 Voltas Limited v/s Additional Collector and Competent Authority, reported in 2008 (5) Bom. C.R. 746.

3 Shanti Bhardwaj v/s State of U.P., reported in (2004) 10 SCC 130.

4 Vinayak Kashinath Shilkar v/s Deputy Collector and Competent Authority, reported in (2012) 4 SCC

718.

5 Ritesh Tewari v/s State of Uttar Pradesh, reported in (2010) 10 SCC 677.

6 Simpson and General Finance Company Limited v/s State of State of Tamil Nadu, reported in (2006) 4 MLJ 1807 (Madras High Court).

7 Mohan Gopalrao Mate v/s Principal Secretary, reported in 2009 (1) Bom. C.R. 275.

8 Vithabai Bama Bhandari v/s State of Maharashtra, reported in 2009 (3) Bom. C.R. 663.

9 Tej Pratap Singh v/s Union of India, in Writ Petition (C) No.2455/1992 decided on 16.07.2009 by the Delhi High Court.

10 Mira Bhyandar Builders and Developers Welfare Association v/s The Deputy Collector and Competent Authority, Thane Urban Agglomeration, in Writ Petition No.5745/2009 decided on 27.08.2009 by the Bombay High Court.

11 Kabbur Industries Private Limited v/s State of Maharashtra, in Writ Petition No.9890/2009 decided on 05.05.2010 by the Bombay High Court.

12 Damodar Laxman Navare v/s State of Maharashtra, in Writ Petition No.6300/2009 decided on 08.07.2010 by the Bombay High Court : Reported in 2010(6) Bom. C.R. 611.

13 Waman Bandu Bhoir v/s State of Maharashtra, in Writ Petition No.4141/2010 decided on 11.10.2010 by the Bombay High Court.

14 Jayesh Tokarshi Shah v/s Deputy Collector and Competent Authority, Thane, in Writ Petition No.3815/2010 decided on 26.10.2010 by the Bombay High Court.

15 Maharaj Singh v/s State of Uttar Pradesh, reported in (1977) 1 SCC 155.

16 Union of India v/s Somasundaram Viswanath, reported in (1989) 1 SCC 175.

17 John Thomas v/s The Government of Tamil Nadu, in Writ Petition No.38507/2002 decided on 29.01.2007 by the Madras High Court.

18 L. Kannappan and L. Thirunavukarasu v/s The Government of Tamil Nadu, in Writ Petition No.46091/2002 decided on 29.01.2007 by the Madras High Court.

19 Anil Nemichand Bafna v/s State of Maharashtra, in Writ Petition No.153/2008 decided on 06.05.2010 by the Bombay High Court.

20 Surendra Raj Jaiswal v/s Government of Andhra Pradesh, in Writ Petition No.26474/2009 decided on 24.08.2011 by a Single Judge of Andhra Pradesh High Court.

21 Manik M. Ragit v/s State of Maharashtra reported in 2013 (2) Mh.L.J. 224. (WP No.1290/2012 decided on 30.07.2012 Nagpur Bench).

22 State of Uttar Pradesh v/s Hari Ram reported in (2013) 4 SCC 280.

24 Mr.Naphade's submissions then have been adopted by Mr.Gangal, learned Counsel appearing for the Petitioners in Writ Petition No.5024/2013. He went further to contend that what is saved by virtue of Section 3(1)(b) of the Repeal Act is the validity of the order of exemption, but not the conditions subject to which such exemption is granted. In that regard Mr.Gangal relied upon the following judgments:-

1 Shanti Bhardwaj v/s State of U.P., reported in (2004) 10 SCC 130.

2 L. Kannappan and L. Thirunavukarasu v/s The Government of Tamil Nadu, in Writ Petition No.46091/2002 decided on 29.01.2007 by the Madras High Court.

3 Surendra Raj Jaiswal v/s Government of Andhra Pradesh, in Writ Petition No.26474/2009 decided on 24.08.2011 by a Single Judge of Andhra Pradesh High Court.

25 Then Mr.Sridharan, learned Senior Counsel appearing for the Petitioners in Writ Petition Nos.2243/2011 and 2244/2011, argued that the Repeal Act envisages application of same in the first instance to the whole of the State of Haryana and Punjab and to all the Union territories. This is envisaged by Section 1(2) of the Repeal Act. The Repeal Act comes into force in other States after other States adopt the Repeal Act by resolution passed in that behalf under Article 252(2) of the Constitution of India. Mr.Sridharan, therefore, submits that this aspect must be borne in mind while considering the submission or stand of the State regarding applicability of Section 6 of the General Clauses Act. Mr.Sridharan submits that Section 6 of the General Clauses Act applies only when either the General Clauses Act or any Central Act or Regulation made after commencement of the General Clauses Act repeals any enactment made prior to the General Clauses Act coming into force or thereafter. In the present case the State Government has adopted by resolution passed under Article 252 of the Constitution of India the Repeal Act in the State of Maharashtra with effect from 29.11.2007. In the light of such adoption by resolution of the State Assembly the Section 6 of the General Clauses Act cannot be resorted to or applied. That applies only when either the

General Clauses Act or any Central Act or Regulation made after commencement of the General Clauses Act repeals any enactment made or to be made by the Parliament. Both are Parliamentary Statues and in such circumstances by virtue of Article 252(2) of the Constitution of India the applicability of Section 6 of the General Clauses Act is ruled out.

26 Alternatively, Mr.Sridharan submits that Section 3(1)(b) of the Repeal Act is a special saving clause demonstrating a clear different intention. Therefore, Section 3 of the Repeal Act saves only what is specifically mentioned therein. There is no room for applying Section 6 of the General Clauses Act, 1897 by implication or impliedly. Mr.Sridharan also submits that in true sense we are not construing a validating statute or clause. What is saved by clause (b) of sub-section (1) of Section 3 is an order under Section 20(1) of the Principal Act and the exemptions which are subject matter of the same. All actions under the same are saved, but that does not mean that the power to take action under Section 20(2) is also saved. The saving in the present case is only to protect the rights of innocent third parties. Even the actions under the exemption are saved with a view to ensure such protection. This is not a substantive provision and therefore, it cannot be construed with reference to the Principal Act. By no stretch of imagination it revives the Principal Act. This is apparent from reading of Section 4 of the Repeal Act because even the proceedings as initiated abate on Principal Act coming into force. By clause (c) of sub-section (1) of Section 3 the liability incurred under the exemption order is not saved, but only the payment made to the State Government as a condition for granting exemption under Section 20(1) is unaffected and thus, saved. Beyond all this we should not read anything into the Repeal Act. Mr.Sridharan relied upon the following decisions in support of the

above contentions:-

1 Kolhapur Canesugar Works Limited v/s Union of India, reported in (2000) 2 SCC 536.

2 Air India v/s Union of India, reported in (1995) 4 SCC 734.

3 Union of India v/s West Coast Paper Mills Limited, reported in 2004 (164) E.L.T. 375 (SC).

4 Shri Prithvi Cotton Mills Limited v/s Broach Borough Municipality, reported in 2000 (123) ELT 3 (SC).

27 It is pertinent to note that Mr.Sridharan's main argument has not been supported or adopted by any counsel. It is clear that Mr.Naphade's contentions and submissions as adopted by Mr.Sathe are further adopted and elaborated by Mr.Devitre, learned Senior Counsel appearing in the Original Side Writ Petition No.37/2010 and Mr.Samdani, learned Senior Counsel appearing in Writ Petition No.346/2011. Both of them have urged that a different intention appears in clause (b) of sub-section (1) of Section 3 of the Repeal Act and therefore, Section 6 of the General Clauses Act has no application. The specific saving is for the benefit of the land holders and therefore, there is no scope for construing clause (b) of sub-section (1) of Section 3 of the Repeal Act on equitable principles. Once there is no room for equitable considerations and particularly as Mr.Samdani urges because of the Principal Act being expropriatory in nature and providing for compulsory acquisition, then, all the more any liberal construction is ruled out. Mr.Samdani submits that even the saving clause has to be strictly construed in this case and the repeal of the Principal Act wipes out the same and obliterates it from

the statute book completely. For all these reasons the Reference should be answered accordingly.

28 Mr.Devitre and Mr.Samdani relied upon the following decisions:-

1 Mohan Gopalrao Mate v/s Principal Secretary, reported in 2009 (1) Bom. C.R. 275.

2 Parripati Chandrasekharrao and Sons v/s Alapati Jalaiah, reported in (1995) 3 SCC 709.

3 Khub Chand v/s State of Rajasthan, reported in AIR 1967 SC 1074.

4 Gujarat Electricity Board v/s Girdharlal Motilal, reported in AIR 1969 SC 267.

5 State of Maharashtra v/s B.E. Billimoria, reported in (2003) 7 SCC 336.

6 Corporation of the City of Victoria v/s Bishop of Vancouver Island, reported in AIR 1921 PC 240.

7 T.R. Thandur v/s Union of India, reported in (1996) 3 SCC 690.

29 Mr.Aniruddha Joshi, learned Counsel appearing for the Petitioners in Writ Petition No.9872/2010 invites our attention to the judgment of the Division Bench of this Court in the case of *Vithabai Bama Bhandari v/s State of Maharashtra (supra)* and submits that there is nothing sacrosanct about Section 20 of the Principal Act. By indirect process we cannot, therefore, save what is not expressly saved by the Repeal Act. Once the power to exempt cannot be exercised and not available after the Repeal Act, then, merely because such power is

exercised during the subsistence of the Principal Act and prior to the Repeal Act coming into force does not mean that further or incidental power envisaged by the primary power to exempt is saved. Even this incidental or ancillary power is unavailable after repeal of the Principal Act. This argument is built more or less on the wording of Section 21 of the General Clauses Act, 1897.

30 Ms.Gadre-Rajyadhyaksha, learned counsel appearing for the Petitioners in Writ Petition No.556/2010, while adopting all arguments of all the Senior Counsel only submitted that when more than one High Court in this country have placed an interpretation on the Parliamentary Statute or construed its provisions in a particular way, then, for the sake of consistency and certainty this Court must follow the reasoning of the Delhi High Court, Madras High Court and Andhra Pradesh High Court.

31 Mr.Joshi and Ms.Gadre-Rajyadhyaksha relied upon the following judgments in support of the above submissions:-

1 Damodar Laxman Navare v/s State of Maharashtra, in Writ Petition No.6300/2009 decided on 08.07.2010 by the Bombay High Court : Reported in 2010(6) Bom. C.R. 611.

2 Commissioner of Income Tax, Bombay v/s Alcock Ashdown & Company Limited, reported in 1979 ITR page 164 : in Income Tax Reference No.40/1969 decided on 07.07.1978 by the Bombay High Court.

3 Commissioner of Income Tax, Bombay v/s T. Maneklal Mfg. Co. Ltd., reported in 1978 ITR Vol.115 page 725.

4 Bhagwat Dharmaraj Radke v/s State of Maharashtra, in Special Leave to Appeal (Civil) No.35883/2012 decided on 31.03.2014 by the

Honourable Supreme Court.

5 Government of Karnataka v/s Gowramma and others, reported in AIR 2008 SC 863.

32 On the other hand, Mr.Khambata, learned Advocate General appearing on behalf of the State submits that it is fallacious to assume that the State or other Respondents, namely, Authorities under the Principal Act are requesting this Court to go by any equitable consideration or liberal principle. The State has throughout maintained that in terms of the Preamble of the Principal Act and Constitutional philosophy as enshrined by Articles 21 and 39(b) and (c) of the Constitution of India a ceiling has been placed by the Principal Act on the holding of vacant land within the urban agglomeration. This ceiling limit, as is reflected from the Principal Act and which cannot be disputed, is placed by a statutory prescription that is to be found in Section 4 of the Principal Act. Chapter-III of the Principal Act is titled as “ceiling on vacant land”. Except as otherwise provided in the Principal Act on and from the commencement of the Principal 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. The obligation under the statute is, therefore, clear and absolute. It relates and dates back to the commencement of the Principal Act. None can dispute that what is exempted from the purview of Chapter-III and by a overriding power conferred in the State Government is the applicability of Chapter-III to the vacant land in excess of ceiling limit. Therefore, when the excess vacant land is exempted in exceptional circumstances and which have been also specified by the statute, then, all that happens is that the excess vacant land is exempted from the provisions of Chapter-III either conditionally or

unconditionally and in terms of the satisfaction in clauses (a) and (b) of sub-section (1) of Section 20 of the Principal Act. The power to exempt is exercised by the State suo-motu or otherwise meaning thereby on the Application of the person holding the excess vacant land. The request is not to apply the Chapter in the light of the factors and circumstances specified therein. This request is made and granted only on the satisfaction reached and not as a matter of course. Thus, application of the chapter is a rule and its non-application is an exception. Despite repeal of the Principal Act if the validity of the order granting exemption under sub-section (1) of Section 20 is saved by Section 3 of the Repeal Act and such validity remains unaffected notwithstanding anything to the contrary contained in the order of the competent court, then, full effect will have to be given to the language of the Repeal Act. Once the Repeal Act is so clear and does not evince anything contrary to the principles enshrined in Section 6 of the General Clauses Act, then, on the strength of the wording of the Repeal Act and in any event with the assistance of Section 6 of the General Clauses Act it can safely be held that there is no intention to destroy the rights and liabilities or consequences which flow from a valid exemption order. In fact the language of Section 3 of the Repeal Act supplements Section 6 of the General Clauses Act. Nothing in Section 3 of the Repeal Act takes away applicability of the Principal Act to the extent of enforcing the obligations in terms of the conditions imposed in the order of exemption. The learned Advocate General submits that the arguments of the Petitioners revolve around the saving clause enacted by Section 3 of the Repeal Act. The submissions are that the Repeal Act shows intention contrary to the applicability of Section 6 of the General Clauses Act inasmuch as neither the exemption order nor any of the terms and conditions therein can be enforced post repeal.

33 The learned Advocate General submitted that the provisions of the Repeal Act and particularly Section 3(1) clauses (b) and (c) require a harmonious interpretation. By reading these clauses together what is apparent is that by clause (a) of sub-section (1) of Section 3 of the Repeal Act it is clarified that repeal of the Principal Act shall not affect the vesting of any vacant land under Section 10(3) of the Principal Act, possession of which has been taken over by the State Government or any person duly authorized by the State in this behalf or by the competent authority. Thus, if the steps as contemplated by sub-section (3) of Section 10 of the Principal Act and equally by sub-sections (5) and (6) thereof are taken, then, the vesting of excess vacant land referred to in a Notification published under Section 10(1) in terms of sub-section (3) thereof is not affected by repeal of the Principal Act. No person then can claim that the excess vacant land to which the Principal Act admittedly applies and which is deemed to have been acquired by the State does not belong to it or the State is not entitled to it because the Principal Act has been repealed and the vesting comes to an end. The vesting is of vacant land in excess of ceiling limit. Undisputedly, if the land in excess of ceiling limit can vest after the notification in terms of Section 10(1) is published in the official Gazette, then, the declaration which is postulated or contemplated by sub-section (3) is in relation to such excess vacant land. What sub-section (3) of Section 10 really contemplates and envisages is that the State can declare that the excess vacant land is deemed to have been acquired by it upon publication of the declaration and particularly with effect from the dates specified therein. By such deemed acquisition the land is further deemed to have vested absolutely in the State free from all encumbrances with effect from the date specified in the declaration. By

the repeal what has been clarified is that unless the State has taken over possession of such excess vacant land and as referred to in the Notification under Section 10(1) either by itself or through any person duly authorized by it in this behalf or by the competent authority, its plain and simple vesting will not enable the Government to take over possession of the excess vacant land after coming into force of the Repeal Act. This coming into force or commencing is reckoned in terms of sub-sections (2) and (3) of Section 1 of the Repeal Act. Thus, the State is disabled from taking possession of the excess vacant land which has already vested in it if it has failed to take possession. Thereupon the land can be restored and that is how sub-section (2) of Section 3 of the Repeal Act would read. Therefore, this is not a restricted or limited saving clause in any sense of the term. Though Section 3 is titled “saving” it contains the substantive provisions. The Legislature or the Parliament did not intend a vacuum. It did not stop by only stating that if possession of the land vested in the State in terms of Section 10(3) is not taken, then, that cannot be taken or the land cannot be made over to the Government after repeal of the Principal Act. It enacts a further provision by which it is possible for the State to restore the land to the holder and that is why restoration is contemplated by virtue of Section 3(2). That restoration is conditional upon repayment of an amount to the State Government by the holder. Section 11 of the Principal Act talks of payment of amount for the vacant land acquired under Section 10(3). That payment can be claimed even without the land being handed over or without the possession of the excess vacant land being taken. The deemed acquisition by virtue of Section 10(3) enables the person or persons having interest in the excess vacant land to claim the amount under Section 11. If any payment has been made after such deemed acquisition, then, that amount

has to be returned to the Government and only then the excess vacant land of which possession has not been taken will be restored to any person or the holder as the case may be. If this was a complete obliteration or destruction of the rights and liabilities under the Principal Act, then, such substantive provision enabling restoration would not have been inserted or incorporated is the submission of the learned Advocate General. The refund of such amount and which has been paid to the person or persons interested in the excess vacant land in terms of Section 11 of the Principal Act alone entitles such person to claim restoration of the land to him. If the repeal had been simplicitor and without such substantive provision, then, it would not have been possible for the holder or any person interested in the excess vacant land to claim its restoration. It is, therefore, erroneous to urge that the Repeal Act evidences an intention contrary to the applicability of Section 6 of the General Clauses Act, 1897.

34 Inviting our attention to clauses (b) and (c) of sub-section (1) of Section 3 of the Repeal Act the learned Advocate General submits that the true nature of the power to exempt under the Principal Act would have to be properly and completely appreciated. He submits that the basis on which the power to exempt is exercised is that the person is holding the vacant land in excess of ceiling limit. It is in case of such vacant land that the State Government must be satisfied either on its own motion or otherwise that having regard to its location, 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 the Government is conferred with discretion to pass an order exempting such vacant land from the provisions of

Chapter-III either conditionally or otherwise. The learned Advocate General submits that it is not just having regard to location of the land, purpose for which the excess vacant land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, but it is necessary and expedient in the public interest that the discretion to exempt such land has to be exercised. That is in terms of clause (a) of sub-section (1) of Section 20. Whereas, in terms of clause (b) of sub-section (1) of Section 20, the State is satisfied either on its own motion or otherwise that the application of the provisions of Chapter-III would cause undue hardship to the persons holding the vacant land in excess of ceiling limit that the Government may by order exempt conditionally or unconditionally the vacant land from the provisions of Chapter-III. Further the order under clause (b) cannot be made unless the reasons for doing so are recorded in writing. That is because clause (b) contemplates relieving the person holding the excess vacant land from undue hardship. Clause (a) necessarily postulates an exercise of powers to exempt the excess vacant land in public interest. When such is the ambit and scope of the powers and it is vacant land in excess of ceiling limit which is exempted from the provisions of Chapter-III that too in exceptional circumstances, then, it is futile to contend that the State Government despite validity of its Act or order being saved by the Repeal Act, would not be able to do anything in relation to such land post repeal of the Principal Act. The learned Advocate General submits that in this case the power of exemption and which is to be exercised for public good and in public interest is so exercised by making an order in that behalf. That the validity of such an order is saved though the Principal Act is repealed, but the legal consequences flowing from exercise of such clause are not saved, would be an incorrect, improper and legally untenable

reading of the saving clause and the Repeal Act itself. The true nature of the power to exempt has not been appreciated in making such submissions. The Petitioners' arguments proceed on an unsound and erroneous basis and namely that the power to exempt in terms of Section 20(1) of the Principal Act is exercised by the State Government only to benefit the holder. The argument is that it is to relieve the holder from the consequences of applicability of Chapter-III that the State exercises such power and therefore, nothing further can be done in pursuance of the valid order of exemption post repeal of the Principal Act.

35 The learned Advocate General submits that implicit and inherent in this is the assumption that even conditional order of exemption, though valid after repeal, cannot be enforced in any manner post such repeal or post commencement of the Repeal Act. Meaning thereby the condition incorporated in the order of exemption though valid or any action taken in pursuance of such valid exemption order or condition gets saved still further acts and consequences would not ensue post repeal of the Principal Act. This construction of such Section 3(1) ignores clause (c) of the said sub-section totally. In that clause any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20 is not affected. The condition of payment and which is for granting exemption is not affected post repeal of the Principal Act. Then that condition can be enforced, would be the sequitur. If that logically follows and qua one condition one fails to understand as to why the Parliament would enact a Repealing Act not only to save the validity of any order granting exemption under Section 20(1) of the Principal Act or any action taken thereunder notwithstanding any judgment of any court to the contrary, but to save

only conditional payment and leaving out all other conditions. It would mean that a condition of payment incorporated in the order granting exemption is valid and validity of such condition shall not be affected by repeal, but the conditions other than payment are affected by repeal of the Principal Act though Section 3(1)(b) saves the validity of the order granting exemption. Such construction of the Repeal Act would lead to absurdity and every interpretation which leads or results in such absurdity must be avoided at all costs. Therefore, when the repeal of the Principal Act shall not affect the validity of any order granting exemption under Section 20(1) it means the order as whole including the conditions incorporated therein is valid notwithstanding any judgment of any court to the contrary. Equally any action taken thereunder is also valid notwithstanding any judgment of any court to the contrary. The action taken under the exemption order could be of enforcing it or any of its conditions or withdrawing it. The repeal of the Principal Act shall not affect the validity of all this notwithstanding any judgment of any court to the contrary. The Parliament is presumed to be aware of the ambit and scope of the power to exempt conferred by the Principal Act in the State Government. It is further presumed to be aware of the fact that such exemption orders are in force or were in force. Therefore, when the repeal of the Principal Act is to take effect from the date of adoption of the Repeal Act, then, the Parliament plainly intended that the repeal of the Principal Act shall not affect the validity of any order granting exemption under Section 20(1) or any action taken thereunder. The Parliament was equally aware of the fact that such exemption order or any action taken thereunder may have been declared as invalid by any judgment of any court. Therefore, it did not stop at merely saving and not affecting any order of exemption under sub-section (1) of Section 20 or

any action taken thereunder, but by a non-obstante clause declared that the validity of any order granting exemption or any action taken thereunder shall not be affected by repeal of the Principal Act notwithstanding any judgment of any Court to the contrary. Far from evincing or demonstrating any contrary intention the saving clause vide Section 3 protects and saves not only the initial order of exemption or any action taken thereunder, but the exemption order or any action taken thereunder is declared valid and expressly saved notwithstanding any judgment of any court to the contrary. Equally, any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20 is saved and shall not be affected. Thus, both the condition and the payment under same shall not be affected by repeal of the Principal Act.

36 The learned Advocate General submits that correct and true understanding of the saving clause is what is the real issue. The Petitioners' arguments are based on erroneous and incorrect understanding of such clause. A saving clause is used to preserve from destruction certain rights, remedies or privileges already existing. It means that it saves all the rights the party previously had. It does not give him any new rights. The saving clauses are introduced into the Acts which repeal others to safeguard the rights which, but for the savings, would be lost. The Legislature may have termed Section 3 as saving provision or clause, but it is well settled that the description of the provision cannot be decisive of its true meaning or interpretation which must depend on the words used therein. But, when two interpretations are sought to be put on a provision which fits the description and which the Legislature has chosen to apply it, is according to sound canons of constructions, to be

adopted, provided of course, it is consistent with the language employed. That is to be preferred to the one which attributes to the provision a different effect. (*See: State of Bombay v/s United Motors (India) Limited AIR 1953 SC 252*). Therefore, it is not safe to hold that Section 3 of the Repeal Act saves only limited rights or consequences.

37 Taking us through Section 4 of the Repeal Act and particularly its proviso the learned Advocate General submitted that all proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act insofar as such proceedings are relatable to the vacant land, possession of which has been taken over by the State Government, do not abate. This is not a total abatement of legal proceedings as is contended. If the interpretation or construction placed on the Repeal Act by the Petitioners is accepted that would mean that the vesting of any vacant land of which possession is taken by the State Government is not affected and therefore, that power or right of the Government is saved. The repeal of the Principal Act shall not affect such vesting as is clear from clause (a) of sub-section (1) of Section 3 of the Repeal Act. However, because of such deemed acquisition and vesting of excess vacant land of which possession is taken by the State Government or competent authority the person holding the vacant land would stand to lose completely. He would not be entitled to claim any payment of the deemed acquisition and vesting of the land in the State Government free from all encumbrances and which is unaffected by the repeal of the Principal Act. He would be totally remedyless. Since the Principal Act is repealed Sections 11 to 14 also would be taken as obliterated from the statute book. If they stand obliterated and removed, then, a person holding the vacant land in excess of ceiling limit though entitled to payment or compensation under the

Principal Act would not be so entitled because the Principal Act is repealed. Without the proviso, the duty of the State to compensate for such vesting, may not have been saved or survived the repeal. It could have been urged that the right to seek compensation from the State is lost as the Principal Act is repealed and all proceedings thereunder abate on the Repeal Act taking effect. That is why the Legislature by proviso to Section 4 of the Repeal Act clarified that such excess vacant land of which possession has been taken and its vesting is saved despite repeal of the Principal Act does not mean that a person holding such land need not be or cannot be compensated. He can claim payment and the proceedings relating to Sections 11 to 14 of the Principal Act insofar as they relate to the vacant land of which possession has been taken, do not abate. This proviso is completely overlooked while arguing in support of the principle of total destruction or obliteration of the rights and liabilities under the Principal Act so also the remedies. If this is demonstrative of a positive legislative intent and which is duly reflected in the statement of objects and reasons of the Repeal Act, then, it would not be proper to accept the contentions of Mr.Naphade and other Senior Counsel. If the intent and purpose is to save all rights and liabilities in relation to the excess vacant land of which possession is taken, then, it would be safe to proceed and hold that Section 6 of the General Clauses Act and its applicability is not ruled out or that the saving section demonstrates a contrary intention and of non applicability of Section 6 of the General Clauses Act.

38 The learned Advocate General also submitted that when the rights, obligations and liabilities are intended to be saved it is not the saving of only vested rights, but those of the nature specified in Section 6 of the General Clauses Act, 1897. He, therefore, submits that understood

thus and in the context of the power to exempt the excess vacant land from applicability of Chapter-III of the Principal Act, then, the only conclusion that can be reached is that not only Section 20(1) of the Principal Act, but sub-section (2) thereof is also saved and remains unaffected by repeal of the Principal Act. He submits that an order of exemption does not take the vacant land out of the purview of the Principal Act or rules out its applicability to it totally. All that results after such power is exercised is that, but for the duration of the exemption, the vacant land in excess of ceiling limit continues to be treated and dealt with as such. Its nature continues to be the same. It also continues to be subject to the Principal Act. All that happens is that such an order of exemption keeps in abeyance the operation of Chapter-III of the Principal Act. As a result of such abeyance and by exercise of a statutory power the rights and liabilities attached to the excess vacant land remain unaffected. In that regard it must not be lost sight that none can hold the excess vacant land beyond the ceiling limit on and from the commencement of the Principal Act. If that is the statutory position and which is recognized even by the Repeal Act, so also, the exemption order only keeping in abeyance the operation or applicability of Chapter-III to such lands, then, all original rights, liabilities in relation thereto remain unaffected. The Repeal Act saves such rights and liabilities and which are accrued and incurred on commencement of the Principal Act. That is why by clause (a) of sub-section (1) of Section 3 it was declared by the Parliament that the repeal of the Principal Act shall not affect the vesting of any vacant land under Section 10(3) the possession of which has been taken over by the State Government otherwise, but for such express declaration it could have been asserted that the Principal Act having been repealed the vesting comes to an end or is obliterated. By clause (b) which cannot be

termed as merely a validating clause or saving theoretically the validity of the exemption order, the Legislature declares that the said order is saved with all legal consequences. This is in consonance with the object and purpose in enacting the Repeal Act and saving from such repeal or leaving unaffected by the repeal the exercise of some of the vital powers conferred by the Principal Act and the actions taken thereunder.

39 The learned Advocate General then submitted that it is not correct to urge that the power to exempt is legislative in character. In that behalf he took us once again through Sections 20(1) and (2), Sections 21 and 22 of the Principal Act, so also, the scheme of the Principal Act to urge that it is an administrative order passed in the case of a excess vacant land. Equally, the conditions imposed are inextricably linked to the said exemption order. The public interest is paramount in imposing such conditions and equally the Preamble of the Principal Act acts as a guide in passing the orders of exemption under clauses (a) and (b) of sub-section (1) of Section 20. In such circumstances and when the order must contain the reasons when it is made under clause (b) of sub-section (1) of Section 20, that order can be made on reaching the requisite satisfaction alone and that withdrawal of the order of this nature is only after compliance with the principles of natural justice, then, that rules out the possibility of the power being termed as legislative in character, that submission of Mr.Naphade has no substance. In these circumstances and when the point is concluded by the judgment of the Constitution Bench of the Honourable Supreme Court in the case of *Bansidhar v/s State of Rajasthan* reported in **(1989) 2 SCC 557**, then, the reference cannot be answered, but by holding that both sub-sections (1) and (2) of Section 20 of the Principal Act are saved and not affected by repeal of the Principal Act. It is

fallacious to contend that withdrawal of the exemption order is axiomatic or automatic on the satisfaction in terms of Section 20(2) being reached. On the other hand what sub-section (2) of Section 20 states is that it shall be competent for the State Government to withdraw by order the exemption if it is satisfied that any of the condition subject to which any exemption under clause (a) or clause (b) of sub-section (1) is not complied with by any person. Further part of sub-section (2) is that the exemption can be withdrawn by an order, but after giving reasonable opportunity to such person of making representation against the proposed withdrawal. This means that the said person can make a representation against the proposed withdrawal and the Government is obliged to consider it. If the State Government is so obliged and it may withdraw the order of exemption though fully competent to do so that would falsify all the contentions to the contrary. If the withdrawal is not automatic or axiomatic or only outcome or result upon the satisfaction under sub-section (2) being reached, then, it is further fallacious to contend that if there is non compliance with any of the conditions subject to which exemption has been granted, then, the only consequence of such non compliance or breach would be applicability of Section 10(3) of the Principal Act. That is not the only consequence because the State Government may or may not withdraw the exemption, but by an order under sub-section (2) of Section 20 stipulate that if the condition is not complied with within the time extended or provided in the further order the exemption may be withdrawn. The Government can also in the order state that some of the terms and conditions have been complied with whereas others are not and since the order of exemption is not complied with in its totality, additional time is being granted for such compliance failing which the State may proceed to withdraw the order and take all

such and further actions as are permissible in law. Therefore, it is not as if sub-section (2) of Section 20 being not referred in the saving clause enacted by Section 3 of the Repeal Act would mean the Legislature never intended to save it. Rather it was not necessary to be mentioned because if the validity of the order of exemption or any action taken thereunder is saved that means the exemption order is valid, but not its conditions and they cannot be enforced or only the exemption order is valid or any action taken thereunder, but other consequences flowing from such valid exemption order or any valid action taken thereunder are ruled out, that is an erroneous submission. Relying on Bansidhar's case (supra) it is submitted that intention contrary to the applicability of Section 6 of the General Clauses Act is not to be assumed only with reference to what is expressly saved and it cannot be further assumed that what is not expressly saved stands destroyed or obliterated. An express saving clause necessarily does not reflect intention contrary to the applicability of Section 6 of the General Clauses Act. Therefore, the reference needs to be answered accordingly.

40 The learned Advocate General while ending his submissions urged that the decisions in the case of *Voltas Limited v/s Additional Collector & Competent Authority* reported in **2008(5) Bom.C.R. 746**, *Vithabai Bama Bhandari v/s State of Maharashtra* reported in **2009(3) Bom. C.R. 663** and *Sundersons and others v/s State of Maharashtra and others* reported in **2008 (5) Bombay Cases Reporter 85** or any observations therein are not binding on construction and interpretation of Section 3(1)(b) and (c) of the Repeal Act. At best, the observations and findings in these decisions can be applied to a case falling under Section 3(1)(a) of the Repeal Act. In that regard as well some further conclusions

rendered in Voltas Case (supra) and all above decisions contrary to what is held in Bansidhar's Case (supra) do not lay down the correct law. In fact Bansidhar's case (supra) was cited before the Division Bench in Votlas Case (supra), but the Division Bench completely omitted it from consideration and made some sweeping observations. These observations, findings and conclusions in Voltas (supra) have been followed in Vithabai (supra), Sundersons (supra) and in *Mohan Gopalrao Mate v/s Principal Secretary and others* reported in **2009(1) Bom. C.R. 275**, all of which, therefore and to the extent indicated above must be held to be not laying down the correct law.

41 These submissions of the learned Advocate General are fully adopted by Mr.P.K.Dhakephalkar, learned Senior Counsel appearing in some of the petitions for the State. He has take us through the scheme of Section 6 of the General Clauses Act and particularly the words of clause (b) thereof to urge that the exemption order including the conditions thereunder and all legal consequences survive the repeal of the Principal Act. That is the only construction which can be placed on Section 3 of the Repeal Act.

42 The learned Advocate General and Mr.Dhakephalkar have relied upon the following decisions:-

1 State of Punjab v/s Mohar Singh Pratap Singh, reported in AIR 1955 SC 84.

2 Brihan Maharashtra Sugar Syndicate v/s Janardan Ramchandra Kulkarni, reported in AIR 1960 SC 794.

3 Her Highness Maharani Shantidevi P. Gaikwad v/s Savjibhai Haribhai Patel, reported in (2001) 5 SCC

101.

4 Commissioner of Income Tax v/s M/s Shah Sadiq and Sons, reported in (1987) 3 SCC 516.

5 Kalawati Devi Harlalka v/s Commissioner of Income Tax, reported in AIR 1968 SC 162.

6 The III Income Tax Officer, Mangalore v/s M.Damodar Bhat, reported in AIR 1969 SC 408.

7 M/s Gurcharan Singh Baldev Singh v/s Yashwant Singh, reported in AIR 1992 SC 180.

8 D.C. Oswal v/s V.K.Subbiah, reported in AIR 1992 SC 184.

9 Udai Singh Dagar v/s Union of India, reported in (2007) 10 SCC 306.

10 Bhikoba Shankar Dhumal v/s Mohan Lal Punchand Tathed, reported in (1982) 1 SCC 680.

11 State of Maharashtra v/s Annapurnabai, reported in 1985 (Supp.) SCC 273.

12 State of A.P. v/s N. Audikesava Reddy, reported in (2002) 1 SCC 227.

13 Atia Mohammadi Begum v/s State of U.P., reported in (1993) 2 SCC 546.

14 Government of A.P. v/s J.Sridevi, reported in (2002) 5 SCC 37.

15 State of U.P. v/s Renusagar Power Company, reported in (1988) 4 SCC 59.

16 Bhagwant Dharmaraj Radke v/s State of Maharashtra, reported in 2012(6) ALL MR 560.

17 Pradip J. Mehta v/s Commissioner of Income Tax,

reported in (2008) 14 SCC 283.

18 Rajendra Kumar v/s State of Madhya Pradesh, reported in AIR 1979 Madhya Pradesh 108.

19 S.N. Rao v/s State of Maharashtra, reported in (1988) 1 SCC 586.

20 TCI Industries Limited v/s Municipal Corporation of Greater Bombay, reported in 2012(5) Bom. C.R. 353.

21 Bansidhar and others v/s State of Rajasthan, reported in (1989) 2 SCC 557.

22 Hasan Nurani Malak v/s S.M.Ismail, Assistant Charity Commissioner, reported in AIR 1967 SC 1742.

23 M/s Universal Imports Agency v/s Chief Controller of Imports and Exports, reported in AIR 1961 SC 41.

24 State of Punjab v/s Harnek Singh, reported in (2002) 3 SCC 481.

25 Deep Chand v/s State of U.P., reported in AIR 1959 SC 648.

43 A brief rejoinder was given by Mr.Naphade to these contentions and he urged that each of the judgments cited by the learned Advocate General are with reference to the statutes which are not parimateria with the Principal Act or the Repeal Act. Therefore, Bansidhar's case (supra) and other judgments are distinguishable. Even otherwise the judgments are not to be read like statutes. One cannot construe the Repeal Act and as clear in the present case to mean reviving the Principal Act. In Bansidhar (supra) and other cases cited there was no

plain and express repeal, but a reenactment of the earlier legislation or law. The Rajasthan Ceiling Act of 1955 was replaced or repealed by a later Ceiling Act. That is, therefore, a case of reenactment. In the reenacted statute there was a saving clause, namely, Section 15 of the Rajasthan Act No.VIII of 1976. That indicated that earlier Ceiling Law, namely, Act of 1955 was still on the statute book albeit for a limited purpose. That is how paragraph 24 of Bansidhar's judgment (supra) would read. Thus, the factual matrix was different. In the present case, the Repeal Act destroys many provisions of the Principal Act. Sections 21 and 22 of the Principal Act are not saved and therefore, parimateria provision like Section 20(2) cannot be held to be saved. Similarly all cases which have been cited by the learned Advocate General on the law enacting ceiling on agricultural lands are inapplicable because firstly those Acts are not parimateria. Secondly, interpretation on the provisions of those Acts was placed by the Honourable Supreme Court when the said Acts were existing on the statute book and not repealed. That is why these judgments cannot be cited as precedent for applicability of Section 6 of the General Clauses Act to the present case. Lastly, Mr.Naphade would submit that the learned Advocate General was in error in placing reliance on the decision of the Honourable Supreme Court in the case of *Smt.Atia Mohammadi Begum v/s State of U.P.* reported in **AIR 1993 SC 2465** because this decision is expressly dissented from in a later decision of the Honourable Supreme Court in *Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel and Others* reported in **(2001) 5 SCC 101**. It is overruled. Thus, if Chapter-III of the Principal Act is the heart of the said law and its applicability is ruled out completely and not temporarily as urged, then, the said Chapter-III does not survive repeal of the Principal Act. For these reasons the Reference must be answered in

terms urged by the Petitioners.

44 For properly appreciating the rival contentions a reference firstly to the Principal Act and thereafter, the Repeal Act is necessary. In **AIR 1979 SC 1415** (*Union of India v/s Valluri Basavaiah Chouwdhary*), the Honourable Supreme Court outlined the object and purpose of the Principal Act in the following words:-

> *"6. The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976, 'the Act', as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, 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 subserve the common good, in furtherance of the directive principles of Art.39(b) and (c)."*

45 Chapter-I of the Principal Act contains preliminary provisions. Firstly, by Section 1 short title, application and commencement is set out and by virtue of sub-section (2) thereof the Principal Act becomes applicable to the State of Maharashtra in the first instance. Then, in Section 2 there are certain definitions. For our purpose the definitions of the term "appointed day" appearing in Section 2(a), "ceiling limit" in Section 2(c), "to hold" in Section 2(l), "urban land" as defined in Section 2(o) and "vacant land" appearing in Section 2(q) are relevant. On perusal of these definitions further provisions of the Principal Act can be properly appreciated. The Principal Act, therefore, must be

seen as applicable to the vacant land and within an urban agglomeration. A person holding such land or possessing it in any of the capacities referred to in Section 2(l) shall be bound by the ceiling limit as specified in Section 4(1) and further sub-sections of that Section. By Section 3 it is mandated that on and from the commencement of the Principal Act except as otherwise provided therein no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Principal Act applies under sub-section (2) of Section 1. Further provision, namely, Section 5 sets out as to what are the consequences on such vacant land being transferred at any time during the period commencing on the appointed day and ending with the commencement of the Principal Act. Then, Section 6 requires the persons holding vacant land in excess of ceiling limit to file a statement. Section 6 of the Principal Act reads as under:-

> *"6. Persons holding vacant land in excess of ceiling limit to file statement:-*
>
> *(1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain:*
>
> *Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words "Every person holding vacant land in excess of the ceiling limit and the commencement of this Act", the words,*

*figures and letters "Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement" had been substituted.*

*Explanation. – In this section, "commencement of this Act" means, –*

*(i) the date on which this Act comes into force in any State;*

*(ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;*

*(iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force; the date of publication of such notification.*

*(2) If the competent authority is of opinion that –*

*(a) in any State to which this Act applies in the first instance, any person held on or after the 17th day of February, 1975 and before the commencement of this Act or holds at such commencement; or*

*(b) in any State which adopts this Act under clause (1) of Article 252 of the Constitution, any person holds at the commencement of this Act,*

*vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).*

*(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit; so, however, that the period or the aggregate of the periods of such extension shall not exceed three months.*

*(4) The statement under this section shall be filed, –*

*(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the Individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf;*

*(b) in the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both;*

*(c) in the case of a company, by the principal officer thereof;*

*(d) in the case of a firm, by any partner thereof;*

*(e) in the case of any other association, by any member of the association or the principal officer thereof; and*

*(f) in the case of any other person, by that person or by a person competent to act on his behalf.*

*Explanation. – For the purposes of this sub-section, "principal officer", –*

*(i) in relation to a company, means the secretary, manager or managing-director of the company;*

*(ii) in relation to any association, means the secretary, treasurer, manager or agent of the association,*

*and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of his intention of treating him as the principal officer thereof."*

46 A bare perusal thereof would indicate as to how the filing of statement is compulsory and by a person holding vacant land in excess of ceiling limit at the commencement of the Principal Act. He being required to file within the prescribed period a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein held by him including the nature of his right, title and interest therein and also specifying the vacant land within the ceiling limit which he desires to retain, that we are of the view that such statement is contemplated by law so as not to allow the holder of excess vacant land to escape the consequence of law. This aspect would become clear if one peruses Sections 7, 8 and 9 of the Principal Act. It is not as if the competent authority does not make any inquiry on the statement filed under Section 6. That such an inquiry has to be made because it is the competent authority who has to prepare the draft statement. The statement gets finality by virtue of Section 9 and thereafter, the consequences follow and those are to be found in Section 10. Much emphasis has been laid on the said provision, namely, Section 10. It is reproduced herein below:-

> *"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 so be acquired by the concerned State Government; and*
> *(ii) the claims of all persons 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 orders 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 vacant 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 a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924, (2 of 1924), means that State Government."*

47 A bare perusal thereof would indicate that it is providing for acquisition of vacant land in excess of ceiling limit. Sections 11 to 14 create a mechanism for the purpose of payment of amount for vacant lands acquired in terms of Section 10. By Section 15 there is a ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees, etc. Then, there are other consequences which are to be found when the Principal Act is adopted subsequently by any State. Then the persons can file the statement and in relation to such State within the time specified by Section 16. By Section 17 the power is given to enter upon any vacant land. By Section 18 there are penalties provided for concealment etc. of particulars or furnishing inaccurate particulars of

vacant land. Section 19 states that the Chapter will not apply to certain vacant lands and those are specified in sub-section (1) of Section 19. By sub-section (2) of Section 19 the intent of the legislature is further clarified inasmuch as there is distinction between the Chapter not applying to certain vacant lands and exemption to vacant lands from the provisions of the Chapter. By sub-section (2) of Section 19 it is clarified that the provisions of sub-section (1) of Section 19 shall not be construed as granting any exemption in favour of any person other than an authority, institution or organization specified in sub-section (1). Such persons may be possessing any vacant land which is owned by such authority, institution or organization. In other words, the Chapter is not applicable to vacant lands which are owned by an authority, institution or organization. Similarly, if any such authority, institution or organization possesses any vacant land belonging to a person, then, that person/ owner does not derive any benefit or advantage merely because the Chapter is not applicable since the vacant land is in possession of the authority, institution or organization. By Section 20 the power to exempt is conferred. Section 20 is reproduced herein below:-

> *"20. Power to exempt:-*
> *(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter. –*
> *(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.*

*(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 sub-section (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."*

48 A bare perusal of Section 20 would indicate that the power thereunder is conferred in the State. The State can exempt the vacant land in excess of ceiling limit from the provisions of the Chapter-III if it is satisfied in terms of clause (a) or (b) of sub-section (1) that the exemption is required because of the location of land, the purpose for which such land is being used or proposed to be used and such other relevant factors as the circumstances of the case may require and that it is necessary and expedient in the public interest so to do. By clause (b) of sub-section (1) of Section 20 to relieve undue hardship to a person holding the vacant land in excess of ceiling limit that the power to exempt is to be exercised. However, the power to exempt is exercised in relation to the excess vacant land. Therefore, such exemption being granted does

not mean that the excess vacant land is out of the purview of the Principal Act. That it is subject to the Principal Act is clear and is undisputed. That it being so subject to the Principal Act is, therefore, empowering the Government to exempt it from the provisions of Chapter-III thereof. That it is the excess vacant land and therefore, Chapter-III would govern the same, is not disputed before us. The question is whether such exemption being granted and after it being granted subject to any conditions will that exemption order survive the repeal of the Principal Act with all consequences or not? The Repeal Act reads thus:-

> *"The Urban Land (Ceiling and Regulation) Repeal Act, 1999. (15 of 1999).*
> *An Act to repeal the Urban Land (Ceiling and Regulation) Act, 1976.*
>
> *BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows: –*
>
> *1. Short title and application commencement: –*
> *(1) This Act may be called the Urban Land (Ceiling and Regulation) Repeal Act, 1999.*
> *(2) It applies in the first instance to the whole of the States of Haryana and Punjab and to all the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (2) of article 252 of the Constitution.*
> *(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.*
>
> *2. Repeal of Act 33 of 1976: – The Urban Land (Ceiling*

*and Regulation) Act, 1976 (hereinafter referred to as the principal Act) is hereby repealed.*

*3. Savings: –*

*(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 by the competent authority;*

*(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, 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. Abatement of legal proceedings : –*

*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.*

*5. Repeal and saving : –*
*(1) The Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord. 5 of 1999) is hereby repealed.*
*(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act."*

49 To our mind if the intent and purpose was not to save the order of exemption with the attendant legal consequences, then, the Legislature was not required to mention or specify anything about its validity in the Repeal Act. The Legislature was then not required to save its validity as well. The argument is that the validity of exemption order is saved because vesting of excess vacant land of which possession alone is taken is saved and that has been specified in clause (a) of Section 3(1) of the Repeal Act. The vesting of such excess vacant lands cannot be questioned because, at one time they may be exempted from applicability of the provisions of Chapter-III, but that exemption was withdrawn and later they were subjected to the consequences specified by Section 10 and particularly sub-sections (3), (5) and (6) thereof, that the validity of the order exempting them has been saved. We do not think that this will be a sound and proper reading of the Repeal Act. Just as the Principal Act would have to be read as a whole, equally the Repeal Act as well. We cannot read the Repeal Act by omitting or leaving out therefrom anything which the Legislature has specifically incorporated or inserted. We, therefore, cannot hold that clause (a) of sub-section (1) of Section 3 of the Repeal Act which is a saving clause having saved the vesting of the

excess vacant land of which possession has been taken over and these vacant lands may be at one time exempted, that the Legislature inserted by way of abundant caution clauses (b) and (c) in sub-section (1) of Section 3 of the Repeal Act. The argument of Mr.Naphade and other Senior Counsel is that this is by way of abundant caution and nothing more.

50 We are unable to agree with them because the excess vacant lands being at one time exempted, but such exemption being withdrawn later would equate such excess vacant lands with those in relation to which the power of exemption was never exercised and the Chapter was throughout applicable. Their status would be on par with those excess vacant lands in relation to which no attempt was made to seek an exemption or such attempt was made, exemption granted, but later on withdrawn and withdrawal never questioned by the affected parties. If in relation to such lands as well the necessary steps and in pursuance of Section 10(1) could have been taken and prior to the repeal had the possession of such lands been taken over, they would have vested in the State and that vesting is saved or survives the repeal of the Principal Act, then, there was absolutely no necessity of saving the exemption order and which has already been acted upon or in relation to which the consequences including those provided by Section 20(2) and ensuing the same have already followed.

51 Then, why is the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder notwithstanding any judgment of any court to the contrary, saved? That is saved and with a purpose. That is because the power to exempt the land

and which could be exercised in a given case in public interest and not for any private purpose or benefit should be allowed to be pursued to its logical end. If the power is conferred and its exercise is contemplated for public good and in public interest, then, the consequences of the same ought to follow and equally in public interest and for public good. The Legislature while repealing the Principal Act was aware of the consequences that may follow the repeal. It was aware of the fact that if certain steps taken or the powers exercised under the Principal Act do not survive the repeal thereof, then, public good and public interest would be adversely affected. The power to exempt is coupled with a duty. If that is coupled with a duty and not an absolute power and is in the nature of a trust and is expected to be exercised in that manner, then, the Legislature was aware that the power having once exercised it must be allowed to take its full course. That is why whatever may be its fate in terms of the order of the Court, but notwithstanding that the validity of exemption order is saved and that is not to allow a person who may be a beneficiary thereof to escape the legal consequences ensuing the same. If that were not to be saved and was not to survive the repeal, then, clauses (b) and (c) of sub-section (1) of Section 3 of the Repeal Act were not required to be inserted. They are not surplusage or superfluous or inserted as and by way of abundant caution. The law in this regard is very clear and in the words of the Honourable Mr. Justice Patanjali Shastri, Chief Justice of India (as His Lordship then was) in the case of *Aswini Kumar Ghose v/s Arabinda Bose* reported in **AIR 1952 SC 369**, "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute." The Honourable Supreme Court has also held that it is incumbent on the court to avoid a

construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application. In other decision reported in **AIR 1961 SC 1170** (*J.K.Cotton Spinning & Weaving Mills Co. Ltd. v/s State of U.P.*), it is held that "To harmonise is not to destroy. The courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect" (see para 7 at page 1174). The Legislature is deemed not to waste its words or to say anything in vain. Hence, it is not possible to easily attribute to the Legislature that a provision has been made or the words have been inserted just as a matter of caution or to chart a safe course. If the vesting of the land of which possession has been taken is saved and repeal of the Principal Act was not to affect it, then, nothing more was required to be stated or saved as the law has taken its course. If vesting of the vacant land under Section 10(3), possession of which has been taken over by the State alone, is to be saved, then, making further provisions and incorporating them in the Repeal Act was unnecessary.

52 The above aspect becomes clear if we peruse the statement of objects and reasons to the Repeal Bill, 1999. That reads as under:-

> *"Statement of Objects and Reasons:-*
>
> *The Urban Land (Ceiling and Regulation) Act, 1976 was passed with a laudable social objective. The main purpose was to prevent concentration of urban land in a few hands and to provide affordable housing to the Economically Weaker Sections. It has on the contrary pushed up land prices, practically brought the housing industry to a stop and provided opportunities for corruption. There is a widespread demand for removing this irritant to land assembly and construction activity. During the implementation of the Urban Land (Ceiling and Regulation) Act,*

*1976, there have been a spate of litigations giving rise to serious hurdles in taking over possession of land, by the State Governments. Public opinion is nearly unanimous that the Act has failed to achieve its objectives as expected.*

2. *Parliament has no power to repeal or amend the Act unless resolutions are passed by two or more State Legislatures as required under clause (2) of Article 252. The Legislatures of Haryana and Punjab have passed resolutions empowering Parliament to repeal the Act in those States. The Act stands repealed in those States and in the Union territories immediately after promulgation of the repeal Ordinance and subsequently if State Legislatures adopt this Repeal Act by resolution, then the Urban Land (Ceiling and Regulation) Act, 1976 will stand repealed in those States, from the date of its adoption.*

3. *The Urban Land (Ceiling and Regulation) Repeal Bill, 1998 was examined by the Standing Committee on Urban and Rural Development. The Committee felt that the land which is yet to be put to use for the original purposes stated in the Act, under possession of the Government should not be restored to previous owners as such restoration may lead to avoidable discrimination. The Committee also suggested that the repeal Bill should contain a provision for abatement of proceedings in the different courts. Keeping in view the recommendations of the Committee, this Bill is being introduced to replace the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord.5 of 1999) notified on 11.01.1999 so that the State Governments would be free to have their own legislation commensurate with their needs and experiences. Till this Act is repealed, States have no power to legislate on this subject.*

4. *The proposed repeal, along with some other incentives and simplification of administrative procedures, is expected to revive the stagnant housing industry. The repeal will facilitate construction of dwelling units both in the public and private sector and help achievement of targets contemplated under National Agenda for Governance. The repeal will not, however,*

*affect vesting of any vacant land under sub-section (3) of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 the possession of which has been taken over by the State Governments. It will not affect payments made to the State Governments for exemptions. The exemptions granted under Section 20 of the Act will continue to be operative. The amounts paid out by the State Governments will become refundable before restoration of the land to the former owners.*

5. *The Bill also seeks to facilitate land assembly and a flexible regime for administering urban land to suit the varying local conditions based on State level legislations or requirements."*

53 If one peruses clause 4 of the Statement of objects and reasons carefully and particularly the part where the intent is not to affect by repeal the exemption under Section 20 of the Principal Act will and that continues to be operative. After adopting the Repeal Act, the States have a freedom to legislate on the same subject as is clear from Clause 3 of the Statement of Objects and Reasons to the Repeal Act. That intent and purpose is not achieved or served by a mere insertion of clause (a) of sub-section (1) of Section 3 of the Repeal Act. It is, therefore, that the Legislature did not exhaust itself and added clause (b) and that too to sub-section (1) of Section 3 of the Repeal Act and by inserting the words of wide import. It is with an intent of not affecting the exemptions granted, but continuing them so also preserving their validity that clause (b) has been so worded. In clause (b) not only the Legislature has saved the validity of exemption order or any action taken thereunder, but has protected or saved this validity notwithstanding anything to the contrary held by a court of competent jurisdiction. The Legislature was aware that the exemptions have been granted under Section 20 across the country by

several State Governments in exercise of their powers to exempt the excess vacant lands from applicability of Chapter-III of the Principal Act. These exemption orders have been passed bearing in mind the location of excess vacant land, the purpose for which it is used or intended to be used and such other relevant factors as the circumstances of the case may require. The power to exempt has been exercised after the Government reached this satisfaction and further that it is necessary and expedient in the public interest so to do. Under clause (a) of sub-section (1) of Section 20, therefore, exemption to the excess vacant lands from the provisions of Chapter-III is not to benefit the land holder as is urged before us. It is to uphold and promote the larger public interest particularly of providing affordable living accommodation and for those who are in a poor state and entitled to public assistance. The Legislature was aware that exemption orders have also been passed in some cases to relieve the hardship to the persons holding excess vacant land on the requisite satisfaction reached by the Government. That satisfaction is that unless the vacant land in excess of ceiling limit held by such person is not exempted from the provisions of Chapter-III undue hardship would be caused to such person. The Legislature was equally aware while enacting the Repeal Act that several exemption orders under clauses (a) and (b) have been passed with conditions attached to them. The conditions may be of imposition of penalties for delay in completion and implementation of a housing project or scheme. The conditions imposed may inter-alia visit the person or holder with the consequence of withdrawal of the exemption and forfeiture of the amounts paid or deposited. Such conditional orders of exemption are in force and not withdrawn because the Government was of the opinion that the lands were being put to such use as would serve the object and purpose in enacting the Principal Act.

That the State Governments were aware that the schemes of housing for weaker sections in the society were promulgated and such excess vacant lands were to be utilized to provide cheap and affordable housing to the economically backward section or class of the society. The schemes of this nature were under several stages of implementation. The houses or tenements in such schemes or in housing projects earmarked for these sections of the society, were to be handed over or were to be taken over so as to reach the ultimate beneficiaries. It is with these objects and peculiar facts and circumstances of each case that the State allowed the exemption to remain in force. That at appropriate stages the extensions to the exemption orders have been granted. Therefore, if the exemption is granted firstly in public interest and secondly to relieve the undue hardship, then, such exemption orders being interfered with by the courts or struck down or quashed would cause serious prejudice and loss to the deprived sections of the society. When these states of affairs are to the knowledge of the Legislature, then, it is not possible to accept the contentions of Mr.Naphade that clauses (b) and (c) of sub-section (1) of Section 3 of the Repeal Act are only added as and by way of abundant caution. We cannot attribute to the Legislature such surplusage.

54 The validity of exemption order is saved so as to ensure that the same serves the purpose for which it is granted. If that is what the Legislature had in mind, then, it is futile to suggest that the Legislature has left unaffected by repeal only the validity of the exemption order, but not its conditions. The argument that the conditions on which the exemption order is based or passed are no longer valid, but it is only the exemption order whose validity is saved, is required to be stated only for being rejected. While canvassing such an argument the counsel lost sight

of clause (c) of sub-section (1) of Section 3 of the Repeal Act. If as a condition for grant of exemption any payment has to be made to the State Government, then, the repeal of the Principal Act was not to affect such payment or condition under which the same is made. The insertion of the words “as a condition for granting exemption” in clause (c) of sub-section (1) of Section 3 would demonstrate the legislative intent. If the payment made to the State Government as a condition for granting exemption and which may be incorporated in the exemption order is saved, then, there is no warrant to exclude from the provision in question the validity of other conditions in the exemption order. The entire order of exemption together with the conditions subject to which it has been granted is thus saved. That is because the Legislature was aware that the Principal Act was a social legislation. That its misuse and abuse by some sectors resulting in laudable social objective being not achieved that its repeal was necessitated. However, despite the repeal the validity of the exemption order or any action taken thereunder and notwithstanding anything to the contrary in any order of the court has been expressly saved. That could never have been inserted and merely to save the validity of the exemption order on paper. The validity of the order is saved so as not to affect the legal consequences of such valid order. To save them and the order as a whole together with the conditions incorporated therein that Section 3(1) (b) and (c) has been inserted in the Repeal Act. By that the State's powers incidental and ancillary to the power to exempt can thus, be exercised and despite the repeal. The exemption order, validity of which has been saved, can, therefore, be enforced, so also, its terms and conditions. These terms and conditions may have been incorporated simply to reaffirm that the power to exempt which is conferred in the highest executive functionary in the State, namely, Government is presumed to be exercised

for public good and in public interest. The exercise of such powers is, therefore, presumed to be bonafide and for achieving the object and purpose for which it is conferred. It is with these presumptions and which were always present to the Legislature that the validity of exemption order has been saved. Having said that and also saving the payment or monetary aspect related to the exemption, it was not necessary for the Parliament to then spell out separately all the legal consequences flowing from such valid order. Even otherwise, that there is no intention contrary to what is spelled out by Section 6 of the General Clauses Act is, therefore, apparent. There is no substance in the argument of the Petitioners that only the exemption order is saved, but not its terms and conditions and further by not referring to sub-section (2) of Section 20 the State's power to withdraw the exemption is taken away by repeal of the Principal Act. The argument is that the power to withdraw the exemption in terms of Section 20(2) of the Principal Act conferred in the State cannot be exercised because of repeal of the Principal Act. This argument is premised on the fact that once the State Government withdraws the exemption order the only consequence could be that the excess vacant land vests in the State under Section 10(3) of the Principal Act and that vesting cannot take place after repeal of the Principal Act.

55 In that regard if one notices Section 4 of the Repeal Act, that would denote that the proceedings under Sections 11 to 14 of the Principal Act are not affected by the abatement or the section in the Repeal Act causing abatement of pending proceedings or proceedings purported to be taken under the Principal Act. This itself throws light on the intent of the Parliament in not completely and totally obliterating the Principal Act. This itself shows that the Principal Act is not wiped out

from the statute book totally. Thus, after the deemed acquisition and vesting of the vacant land in the State if possession thereof is taken, recourse to these sections is permissible despite the Repeal of the Principal Act.

56 The fallacy in the above arguments can be demonstrated by perusing Section 20 of the Principal Act. The difference in the language in Section 19 and Section 20 is that Section 19 says that Chapter-III will not apply to certain vacant lands whereas what Section 20 sets out is the power to exempt the vacant land in excess of ceiling limit and which power can be exercised by the State Government in cases covered by clauses (a) and (b). That the said exemption can be withdrawn provided the Government records a satisfaction that any condition subject to which the exemption order is granted is not complied with by any person. Therefore, a conditional order of exemption can be withdrawn on reaching this satisfaction and conclusion. However, Section 20 does not mandate withdrawal, but confers a discretion in the Government to withdraw the exemption order after giving a reasonable opportunity to such person of making a representation against the proposed withdrawal. It is only when the power of withdrawal is exercised that the provisions of Chapter-III will apply. The language of section is, therefore, clear inasmuch as it is only when the exemption order is withdrawn that the Chapter-III of the Principal Act applies to the excess vacant land. So long as the exemption order is in force to protect its validity despite a contrary court order a saving provision in the Repeal Act will have to be inserted. The Legislature was aware that not only the terms and conditions of the exemption order need to be enforced, but if that order is acted upon by parties the validity as a whole must be saved. That needs to be saved so as

to enable the State Government to apply the provisions of Chapter-III to the excess vacant land covered by the exemption order and the terms and conditions after it is noticed that the exemption is either misused or misutilized or not acted upon so as to subserve the larger public interest. A breach or violation of some of its vital conditions may result in its withdrawal and cancellation. If one way of applying Chapter-III is by withdrawing the exemption order, then, the power to withdraw the same which is implicit and inherent in the power to grant exemption is also saved and not affected by repeal of the Principal Act. That is because the vacant land held by a person is undisputedly in excess of ceiling limit. The power to exempt is exercised when a person holds the vacant land in excess of ceiling limit. That such power can be exercised even after declaration under Section 10(3) of the Principal Act is further undisputed.

57 In this backdrop if Section 20 is perused that confers a power to exempt and it opens with a non-obstante clause, namely, notwithstanding anything contained in any of the foregoing provisions of this Chapter, namely, Chapter-III. The clause (a) of sub-section (1) of Section 20 refers to a person holding the vacant land in excess of ceiling limit. If the State Government is satisfied suo motu or otherwise that having regard to the location of such land, the purpose for which such land is used or is proposed to be used and such other relevant factors as the circumstances of the case may require and it is necessary or expedient in the public interest to do so, then, the Government may, by order, exempt, subject to such conditions as may be specified in the order, such vacant land from the provisions of Chapter-III. Thus, what is required for exemption firstly is that a person holds the vacant land in excess of ceiling limit, satisfaction of the State Government suo motu or otherwise that

having regard to the location of such land, 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 public interest so to do. Upon such satisfaction the Government may by order, exempt the vacant land from the provisions of Chapter-III by making an order and which could be conditional. The word "Exemption" means free from an obligation or liability. In Advanced Law Lexicon by P.Ramanatha Iyer, 3rd Reprint 2007, the word "exempt" shows that a person is put beyond the application of law. It means to give freedom from liability, tax or duty like any exception. It is a privilege.

58 The argument of Mr.Naphade overlooks the position that when the power of exemption has to be exercised notwithstanding anything contained in any of the foregoing provisions of this Chapter, namely, Chapter-III, then, even Section 10 is included therein. Therefore, the land may have been notified in terms of sub-section (3) of Section 10, yet the holder of such vacant land and which is in excess of ceiling limit can seek the Government's intervention and invoke the powers conferred in the State Government vide Section 20(1). Similarly, by clause (b) of sub-section (1) of Section 20 where any person holds the vacant land in excess of ceiling limit and the State Government on its own motion or otherwise is satisfied that the application of the provisions of Chapter III would cause undue hardship to such person, that the Government may by an order, exempt, subject to such conditions as may be specified in the order, such vacant land from the provisions of this Chapter. However, the proviso clarifies that no orders under this clause, namely, clause (b) shall be made unless the reasons for the same are recorded in writing.

59 If the argument of Mr.Naphade is accepted, that would mean

that the powers to exempt cannot be exercised when the land is already vested in the State in terms of Section 10. That the power under Section 20(2) for withdrawal of exemption cannot be exercised after repeal of the Principal Act, presupposes that exemption itself cannot be granted after vesting takes place. Mr.Naphade and other counsel contend that effect of withdrawal of exemption is to vest the vacant land in the State in terms of Section 10 and after repeal that vesting is not possible or that even if the land is vested the further steps cannot be taken. Thus, the argument is premised on the basis that no application for exemption under Section 20 can be filed by a person who holds the vacant land in excess of ceiling limit once it vests in the State. Precisely such an argument was canvassed before the Honourable Supreme Court and rejected in the case of *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad v/s P.S. Rao* reported in **AIR 2000 SC 843** (see paragraphs 6 to 10).

60 Therefore, once the power of exemption can be exercised after the excess vacant land has vested in the State, then, equally the power to withdraw the exemption can also be exercised in case of such vacant land.

61 In the case of *Smt.Darothi Clare Parreira v/s State of Maharashtra* reported in **AIR 1996 SC 2553** this is what is held by the Honourable Supreme Court:-

> "*5. Having considered the respective contentions, the question that arises for consideration is : Whether publication of the notification under Section 10(3) of the Act in the Gazette is in accordance with law? No doubt, this question was not squarely put in issue before the High Court in the manner in which Shri Naik and Shri Bobde have posed before us. Having considered the scheme of the Act, we find that there is no force in their*

*contentions. It is true that Section 3 postulates 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 3. Sections 6 to 10 prescribe the procedure for determination of the excess urban land. Admittedly after filing of statement, opportunity had been given they had been heard and excess land over the ceiling limit had been determined. Pursuant to the decision taken under Section 10(1) of the Act, objections came to be filed under Section 10(2) and objections also were considered and an opportunity was given before their consideration and objections came to be rejected. The question then is : whether the competent authority has to await the decision under Sections 20 and 21 before declaring and publishing the excess land under Section 10(3) by a notification in the Gazette. The scheme of the Act does indicate that until the date of the publication in the Gazette prescribing a date on and from which the excess land stands vested in the State, the owner continues to be the owner of the excess land and entitled to remain in possession thereof. On publication of the notification under Section 10(3) and after putting a date from which the land stands vested in the State and after publication of the notification in the Gazette and on and from the date mentioned therein, the excess vacant land stands vested in the State free from all encumbrances, subject to the decision in appeal, if any, filed according to law.*

*6. The previous owner stands divested of right, title and interest in the land subject to the right to make application provided under Sections 20 and 21. It is difficult to accept the contention of the learned Counsel for the appellants that the competent authority has no power to have the notification under Section 10(3) published in the Gazette until the application either under Section 20 or 21 is disposed of. The very language of Sections 20 and 21 and the exercise of the power thereunder would arise only when the land stands vested in the Government. The power of examination and exemption would arise only when the Government*

> *becomes the owner and the erstwhile owner seeks to obviate the hardships under Section 20 or to subserve the housing scheme for weaker sections under Section 21 as envisaged thereunder. Thereat, the Government is required to consider whether the proposals made by the erstwhile owner for undertaking the scheme as envisaged under Section 21 or hardships as envisaged under Section 20 for exemption would merit consideration. In this case, admittedly, the application under Section 20 came to be filed though that was suppressed before the High Court and this Court and came to be dismissed before notification under Section 10(3) of the Act was published. It also appears, as stated earlier, that application under Section 21 was filed on March 29, 1979, the date on which the appellants had filed the writ petition in the High Court. It would, therefore, be seen that the application came to be filed much after the date of the vesting and publication of the notification under Section 10(3) of the Act. The effect of the vesting is not contingent upon filing an application for disposal under either Section 20 or 21. We do not go into the correctness of the order passed by the Government under Section 21 for the reason that it would be open to the Government and the Government have stated in their order that they have already decided to allot the land for another equally efficacious public purpose. Therefore, we cannot sit over the decision taken by the Government holding it illegal."*

62 Following this view and principle in a later decision reported in *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad and others v/s P.S. Rao* reported in **AIR 2000 SC 843,** the Honourable Supreme Court held as under:-

> *"6. In our view, it is only after the excess land is actually determined under Section 10 that a person can know the exact extent of excess land in his holding and think of asking for exemption. There may, of course, be some cases where the extent is so large that a*

*claimant may be able to seek exemption even at the time of filing the declaration but even in those cases, he cannot be definite about the actual extent of excess land.*

7. *Learned Counsel, however, relied upon the definition of the words "to hold" in Sub-section (1) of Section (2) to contend that once the final declaration is made and the excess vacant land has vested in the State, the person does not 'hold' the excess land and no application for exemption under Section 20 can be filed since Section 20 contemplates filing an application by a person who "holds vacant land in excess of the ceiling area". Section 2(1) states:*

> *"unless the context otherwise requires,..... 'to hold' with its grammatical variations, in relation to any vacant land means:*
>
> *(i) to own such land; or*
>
> *(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.*

8. *The definition of the words "to hold" in Section 2(1) is relevant at the time of computation of the ceiling area and at the stage of the preliminary determination of excess and the final determination, under Sections 8 and 9 of the Act, the excess is to be determined on the basis of the land permitted by the Act to be held by a person.*

9. *But, the word "hold" in Section 20(1)(a) or Section 20(1)(b) cannot, in our opinion, have the same meaning that can be attributed to it as in Section 2(1). The very definition in Section 2(1) states that the sub-section applies unless there is anything in the context which suggests a different meaning to be given. In our view, in the context of Section 20(1)(a) and Section 20(1)(b), the definition given in Section 2(1) cannot be applied. The reason is that such a construction will make Section 20 unworkable and otiose. We have pointed out above that it is not possible to make any meaningful application for exemption under Section 20(1)(a) or (b) unless the*

*exact quantum of excess is determined under Section 10 after following the various provisions of the Act relating to statutory deductions and mode of computation. If the contention of the State referred to above is to be accepted, then the peculiar position will be as follows. As stated by us, before the excess is determined, a person will not able to seek exemption because he does not know what is the actual excess land held and once the excess is determined, he cannot apply because he is not holding the excess land. Thus, the entire object of Section 20 will be frustrated. That is why we say that the definition of the words to hold in Section 2(1) cannot be applied in the context of Section 20(1)(a) or Section 20(1)(b).*

*10. We are, therefore, unable to accept the contention of the learned Counsel for the State that an application for exemption can be maintained only before the excess is determined under Section 10. In our view, the scheme of the Act is to the contrary. The view taken by the High Court following the decision of this Court in T.R. Thandur v. Union of India, (1996) 3 SCC 690 : (1996 AIR SCW 1700 : AIR 1996 SC 1643), Darothi Clare Parreira (Smt.) v. State of Maharashtra, (1996) 9 SCC 633 : (1996 AIR SCW 3179 : AIR 1996 SC 2553) and State of A. P. represented by Secretary to Govt., Revenue Department, Hyderabad v. Valluru Venkateswara Rao, (1997) 3 Andh. LT 417 does not call for any interference."*

63 Once this legal position is noticed we do not see as to how absence of sub-section (2) of Section 20 of the Principal Act in clause (b) of sub-section (1) of Section 3 of the Repeal Act would enable us to hold that the power to withdraw the exemption is not saved. It is possible that the power to withdraw the exemption may not be exercised in every case. However, when the State exercises the power to exempt the vacant land

in excess of ceiling limit and which has already vested in it, then, there is no impediment in withdrawing the exemption from applicability of Chapter-III of the Principal Act in the case of such lands. The legal position, therefore, cannot be otherwise than what is held in the decisions of the Honourable Supreme Court and referred by us above and both of which have been rendered after the judgment in the case of *T.R.Thandur v/s Union of India* reported in **(1996) 3 SCC 690**. The argument of the learned Senior Counsel is that it would be inconsistent and contrary to the legislative intent if we hold that the power to withdraw the exemption conferred vide Section 20(2) of the Principal Act is saved despite the repeal. That would mean that possession of such lands can be taken post vesting and that is permissible even after repeal of the Principal Act. The argument is that it would be incongruous and even absurd to hold that the power to take possession conferred vide Section 10(5) and 10(6) of the Principal Act is saved despite repeal of the Principal Act. It is urged that same would make clause (a) of sub-section (1) of Section 3 of the Repeal Act wholly redundant and even meaningless. We must at once clarify that clause (a) of sub-section (1) of Section 3 of the Repeal Act is not dealing with only exempted lands. It is dealing with all excess vacant lands and which are subject matter of the declaration under Section 10(3) of the Principal Act. Their vesting will not be affected only if possession thereof is taken. Thus, clause (a) itself clarifies that the vesting of such lands would not be affected by repeal if their possession is taken. That only means that the Legislature was fully aware of the legal consequences of declaration under Section 10(3) of the Principal Act. That provides for deemed acquisition of the excess vacant land and their vesting in the State free from all encumbrances. They vest accordingly, but since possession thereof has not been taken that the Repeal Act enacts a

provision whereunder these lands can be restored to any person provided he complies with sub-section (2) of Section 3 of the Repeal Act. In the case of the lands which are subject matter of a valid exemption order and validity of which is not affected even by any court's order to the contrary and equally any action taken thereunder is not affected by repeal of the Principal Act and is saved though the same may not have been upheld by the Court, then, the intent and purpose is not to allow any person holding the excess vacant land and which is already vested in the State to escape the legal consequences resulting from the order of exemption. If that order is passed in order to subserve public interest and to uphold it and to relieve undue hardship, then, such an order of exemption which may be conditional visits the person with consequences. It is not an absolute right or privilege as is claimed. It may be a conditional exemption. It may allow the person to use the land for the stated purpose, but that is not relieving him or the land from the condition or obligation imposed by Law and equally any liability. It is not an advantage or benefit, if at all, which could be enjoyed absolutely. It is to fulfill the object or purpose of the user and to act in public interest or to avoid undue hardship. The applicability of Chapter III being expressly admitted, but seeking to avert the consequences of such applicability in exceptional circumstances that the request to exempt is considered and granted. The power in that behalf is to be exercised sparingly and as an exception. It is not a rule. It is a corresponding right of the State and to be exercised to uphold larger Public Interest. Thus, it is not a one sided right or privilege. It is not relieving the person from the legal consequences of the power to exempt and more so, if it is a conditional order. It is to safeguard public interest that such power is exercised and in a given case conditionally. If relieving somebody on account of his hardship or exempting the vacant land for a

specific purpose by holding in abeyance the applicability of provisions of Chapter-III is the aim, then, that person cannot claim benefit or advantage in himself much less in absolute terms. It is a relief granted to relieve him from undue hardship caused by applicability of the provisions of Chapter-III. If that power under clause (b) of sub-section (1) of Section 20 is exercised subject to such conditions, as can be imposed by the State bearing in mind the object and purpose of the Principal Act and if they are specified in the order, then, that can hardly be said to be an absolute right or privilege. That is a relief together with or appended with an obligation and liability. If that is incurred at the time of exercise of power of exemption, then, the Government can very well enforce the power to exempt by withdrawing the said order and equally without withdrawing it enforce the terms and conditions therein despite the repeal. It is for that purpose that clause (b) of sub-section (1) of Section 3 is enacted. That is also recognition of the legal position that by exempting something from the provisions of an Act it is always understood that one is subjected to the Act or law. It is applicable but the exemption means one does not suffer the legal consequences so long as the exemption is operative.

64 The Legislature was aware that the excess vacant land may have been exempted bearing in mind its location and the purpose for which it is being used or proposed to be used. Clause (a) of sub-section (1) of Section 20 is the power to exempt the excess vacant land from applicability of the provisions of Chapter-III and same is exercised because it is necessary and expedient in public interest to do so. Therefore, it is futile to urge that a person holding any vacant land in excess of ceiling limit derives advantage or benefit when such power is exercised by the State qua the excess vacant land or vacant land in excess

of the ceiling limit, more so conditionally. Once the nature of the power is borne in mind, then, we do not see how repeal of the Principal Act will not save, but will affect the exercise of all powers and as we have held above which are incidental and ancillary to the main power of granting exemption. Thus, the conclusion can be reached and safely that the State exempts the vacant land in excess of ceiling limit from applicability of Chapter-III of the Principal Act in public interest in terms of clause (a) or bearing in mind the undue hardship caused to the person holding it exempts it from applicability of the same Chapter and in both events if the power is exercised also to pass a conditional order or grant conditional exemption, then, the right, if any, created in relation to such land in favour of the person holding it is not absolute and it is conditional upon fulfillment of the obligations and liabilities attached to it. If these conditions are not satisfied, but rather breached and violated, then, the State's power to withdraw the exemption survives the repeal of the Principal Act in all cases including where the power to exempt under Section 20(1) of the Principal Act is exercised post vesting of the lands in the State. It will also survive in those cases where the power is exercised so as to exempt the excess vacant land in terms of the same provision, but in relation to which the unconditional or conditional exemption order is still in force and not withdrawn. In either events the State can proceed despite repeal of the Principal Act because that power of the State survives the repeal. That power survives because despite the repeal the State can enforce the exemption orders as the persons holding such lands do not derive or get an absolute right or advantage or benefit and that is subject to the liabilities and obligations incurred by them. These survive the repeal of the Principal Act because had the intent was not to so protect or save, the Parliament would not have saved the validity of the

exemption order or any action taken thereunder. Any action taken thereunder is also valid together with the exemption order more so if the action contemplates ensuring compliance with certain terms and conditions of the exemption order such as obtaining open spaces and amenities for the public, dwelling units so as to subserve larger public interest. We cannot and do not intend to exhaust the power of the State to enforce its order passed under Section 20(1)(a) and (b) of the Principal Act in the light of the Repeal Act. Further, the nature and ambit of the conditions may be such that their non-compliance and breach, beyond a certain period and intentionally would visit the person with either withdrawal of the exemption itself or any other penalty/ damages in addition to complying with the terms and obligations. Such obligations, liabilities and conditions voluntarily incurred and invited cannot be said to be invalid or inoperative. They bind the parties. If the State can call upon the person concerned to handover the tenements and units meant for either weaker section or its nominees to it or to comply with other such obligation and liability by legally permissible modes of compliance, then, all such steps and measures survive the repeal and can be initiated and taken to their logical end.

65 The order of exemption under Section 20(1) remains valid would mean that a person continues to hold the vacant land in excess of ceiling limit and to which none of the provisions in Chapter-III apply. Chapter-III confers some rights in the holder of excess vacant land as well. Those also cannot be exercised because the exemption order is valid and continues to be so despite the repeal. Nothing is gained by such a situation where the excess vacant land being exempted from the provisions of Chapter-III so as to permit the usage of the land by the

holder or retain it as an exception, but neither the State being able to enforce the conditions if any subject to which exemption is granted or to withdraw the said exemption. Equally, the effect of the repeal being to save the validity of the order granting exemption under Section 20(1) or any action taken thereunder, the person in whose favour such exemption is granted will not be able to do anything in relation to such vacant land which except for the exemption may have vested already in the State by virtue of Section 10(3). He then cannot move the State and seek any payment for acquisition and vesting. Hence, when the Legislature had in mind the saving clause as is carved out by section 3(1)(b) and (c), its intent was not to take away any of the powers conferred in the State nor exclude applicability of the provisions of Chapter-III of the ULC Act to such an extent as would make it impossible for the person to seek payment in terms of Sections 11 to 14 or to seek enforcement of such conditions which are reciprocal and which are to be performed by both. Just as the State would be unable to enforce the conditions on which exemption is granted, equally the members of the public or person holding the excess vacant land would not be able to enforce the conditions which are incorporated therein so as to protect their interest. Such situation can never be envisaged by the Parliament. Such situation being created would render all the provisions of the Repeal Act redundant. The intent as is clear from a harmonious reading of the Repeal Act and in the backdrop of the aims and objects of the Principal Act is to save the applicability of the provisions contained in Chapter-III to the excess vacant lands which are subject matter of exemption under Section 20(1). Section 3(1)(a) covers a situation where there is no exemption order passed under Section 20(1)(a) and (b). That covers the vacant lands which are not subject matter of any order of exemption or such

order being not in force on the date of the Repeal Act and in regard to which the provisions contained in Chapter-III were always applicable. Therefore, if the State does not complete the action in relation to these lands by taking possession thereof, their mere vesting and deemed acquisition by virtue of Section 10(3) is not saved. Section 3(1)(b) deals with a separate and distinct situation and that is applicable to the lands which are vacant and in excess of ceiling limit and in relation to which the order of exemption under Section 20(1) has been passed. The applicability of Chapter-III in relation to such lands is, thus, ruled out and so long as the exemption order is in force. If the order of exemption is withdrawn the Chapter-III becomes applicable and all consequences would follow.

66 We must at once note that way back in the year 1990 in the decision in the case of *M/s Shantistar Builders v/s Narayan Khimalal Totame* reported in **AIR 1990 SC 630**, a Three Judge Bench of the Honourable Supreme Court had framed the guidelines so as to enable construction over the exempted lands covered under Section 20 of the Principal Act. That is to ensure compliance with the constitutional mandate of shelter and guaranteed vide Article 21 of the Constitution of India. In that decision, the Honourable Supreme Court held as under:-

> *"5. Both Sub-sections 20 and 21 contain provisions that if 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 under Section 20 or declare such land to be excess land under Section 21 and bring it within the mischief of the statute.*
>
> *6. In the instant case on January 11, 1978, on the basis of an application made on 24th October, 1987, the State Government made an order of exemption, the*

*salient portions of which are extracted for convenience:*

*GOVERNMENT OF MAHARASHTRA*

*NO. HWE-1077/XXXV*

*GENERAL ADMINISTRATION DEPARTMENT, MANTRALAYA, BOMBAY-400032.*

*11TH JANUARY, 1978.*

*ORDER*

*WHEREAS (1) Shri Kumarpal Vadilal Shah (2) Shri Navinchandra Vadilal Shah (3) Smt. Champaben w/o Vadilal Shah (4) Shri Vasantlal Vadilal Shah (5) Shri Babulal Vadilal Shah (6) Smt. Pushpa Mangaldas Shah (7) Smt. Nirmala Hiralal Shah (8) Smt. Shakuntala Tansukhlal Parekh and (9) Smt. Madhuabala Vadilal Shah (persons at Sr. Nos.2 to 9 by their Constituted Attorney Shri Kumarpal Vadilal Shah), 26, Suneel Shopping center, Opp. Navrang Talkies, Andheri (West), Bombay - 400058, hold vacant lands in excess of the Ceiling Limit in the Greater Bombay Urban Agglomeration, details of which are given in the Schedule 'A' herein:*

*AND WHEREAS the said persons have applied for exemption under Section 20 of the Urban Land (C.& R. ) Act, (33 of 1976).*

*AND WHEREAS, the said persons have mentioned in their application, that their Scheme of construction of houses for Weaker Section will be executed by them, through Messers STAR BUILDERS, 302, Sharda Chambers, 15 New Marine Lines, Bombay - 20.*

*NOW THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 20 of the said Act, after having recorded in writing the reasons for making this Order, the Government of Maharashtra hereby exempts the said vacant lands, from the provisions of Chapter III of the said Act, subject to the following conditions viz.:*

*1) The lands exempted under this exemption order shall be used by the said persons for the purpose of housing for weaker section comprising 1700 (seventeen thousand) tenements consisting of 3,000 (three thousand) tenements of plinth area, not*

*exceeding 20.00 sq. metrs., 10,000 (ten thousand) tenements of plinth area, not exceeding 30.00 sq. metrs., 3,000 (three thousand) tenements of plinth area, not exceeding 44.00 sq. mtrs. and 1,000 (one thousand) tenements of plinth area, not exceeding 57.00 sq. mtrs. Any change made in the user of the land shall amount to a breach of this condition.*

*2) The said persons shall make full utilization of the land so exempted for the purpose aforesaid, by constructing on the land the 17,000 tenements as specified in the condition No. 2 above. The said persons shall commence construction of the tenements within a period of one year from the date of this exemption order and shall complete the construction work within a period of five years from that date, failing which the exemption shall stand withdrawn. If only a part of land is utilized and a part remains vacant at the end of period of five years, exemption shall be deemed to have been withdrawn.*

*3) The final selling price, all inclusive of each of the dwelling units shall not exceed Rs.50/- (Rs. fifty only) per sq. ft. of plinth area. Each tenement is to be provided with all the amenities as mentioned in the Schedule 'B' attached to this Order and as mentioned in the State Government Scheme, announced on 2nd October, 1977 for construction of houses for Weaker Sections of Society on surplus vacant land by the land holder. The details of construction shall not be inferior to those already mentioned in the application. The actual construction and the quality of construction, will be subject to the building regulations of the local authorities, and subject to such other conditions as may be imposed, by the Collector of Thane, Town Planning Authority and the B.M.R.D.A and other Statutory Regulation.*

*4) to 6) ....*

*7) The said persons shall not transfer the exempted lands (with or without buildings thereon) or any part thereof to any other persons, except for the purpose of mortgage in favour of any financial institution, specified in Sub-section (1) of Section 19 of the said Act, for raising finances for the purposes of*

*construction or any one of the tenements mentioned above. Breach of this condition shall mean that the exemption granted under this Order stands withdrawn.*

*8) & 9) ....*

*10) The construction work under the scheme, will be further subject to all other conditions incorporated in the Scheme of Weaker Section Housing announced by the State Government on 2nd October, 1977 and subject to such other conditions as may be imposed by the local authorities, Collector of Thane, Town Planning Authorities and the B.M.R.D.A.*

*11) If at any time, the State Government is satisfied that there is a breach of any of the condition mentioned in this Order, it shall be competent for the State Government by order to withdraw the exemption from the date specified in the Order:*

*7.* ……..

*8.* ……..

*9.* *Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.*

*10.* *With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban*

*areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.*

11. *The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation. Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasis upon weaker sections of the people. That term finds place in Article 46 of the Constitution and Section 21 uses the same language. 'Weaker sections' have, however, not been defined either in the Constitution or in the Act itself. An attempt was made in the Constitution Assembly to provide a definition but was given up. Attempts have thereafter been made from time to time to provide such definition but on account of controversies which arise once the exercise is undertaken, there has been no success. A suggestion for introducing economic criterion for explaining the term was made in the approach to the Seventh Five Year Plan (1985-1990) brought out by the Planning Commission and approved by the*

*National Development Council and the Union Government. A lot of controversy was raised in Parliament and the attempt, was dropped. In the absence of a definition perhaps a proper guideline could be indicated but no serious attention has been devoted to this aspect.*

12. *Members of the Scheduled Castes and Scheduled Tribes have ordinarily been accepted as belonging to the weaker section. Attempt to bring in the test of economic means has often been tried but no guideline has been evolved. Undoubtedly, apart from the members of the Scheduled Castes and Scheduled Tribes, there would be millions of other citizens who would also belong to the weaker sections. The Constitution maker intended all citizens of India belonging to the weaker sections to be benefited when Article 46 was incorporated in the Constitution. Parliament in adopting the same language in Section 21 of the Act also intended people of all weaker sections to have the advantage. It is, therefore, appropriate that the Central Government should come forward with an appropriate guideline to indicate who would be included within weaker sections of the society.*

13. *In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas. Since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation. We, therefore, command to the Central Government to prescribe appropriate guidelines laying down the true scope of the term 'weaker sections of the society' so that everyone charged with administering the statute would find it*

*convenient to implement the same.*

14. *Respondents who claim to belong to weaker sections of the society maintain that they are entitled to allotment of 262 plus 558 flats. It is true that initially the claim was for a smaller number but the number has gone up when further petitions were filed before the High Court. There is, perhaps, some basis in the objection of the builders as also the stand taken by the State Government before us that the respondents' claim should undergo in depth scrutiny. We direct that the genuineness of the claim should be scrutinised in accordance with the guidelines which shall now be indicated but in the event of the claims being found tenable, the builders shall have a direction to provide accommodation in terms of the scheme for those who are found to be acceptable. To ensure implementation of this direction the builders are called upon not to make any commitment or allotments for flats until the claims of the 1420 applicants are scrutinised and allotment of accommodation for such number of persons as are found entitled is provided.*

15. *We shall now proceed to deal with the guidelines. The Government of Maharashtra by the Resolution No. WLC-1090/3422 (D- XIII) in the Housing and Special Assistance Department have laid down the guidelines. We shall refer to the preamble and some of the provisions thereof. The preamble indicates:*

> *"Close and effective monitoring of the implementation of weaker sections housing schemes sanctioned under Sections 20 and 21 of the Urban Land (Ceiling & Regulation) Act, 1976, is one of the most important duties of the competent authorities who have been entrusted with the task of implementing the Urban Land Ceiling Act, 1976, in the nine urban agglomerations in Maharashtra, viz. Bombay, Pune, Thane, Ulhasnagar, Kolhapur, Solapur, Sangli, Nasik and Nagpur. Competent authorities are required to ensure that construction of flats for the weaker sections of the society on land exempted under Sections 20 and 21 is completed within the time-frame stipulated in the exemption*

*order. They are also required to ensure that the terms and conditions of the exemption order such as issue of advertisements, giving particulars of the schemes, sale of fiats at the prices approved by government, sizes of flats, non-eligibility of persons who already own a dwelling unit in the same urban agglomeration to purchase a flat from such schemes, handing over of land affected by development plan, reservations to the planning authority etc. are all complied with. Physical implementation of Weaker sections housing schemes in Maharashtra is one of the important issues on the agenda at the meetings of competent authorities convened by the Housing Department periodically. General and special instructions regarding effective monitoring of implementation of the housing schemes are given to competent authorities in such meetings. Government of Maharashtra have carefully considered the importance attaching to close and effective monitoring of the implementation of weaker sections housing schemes and is now pleased to direct by way of codification of earlier instructions on the subject that competent authorities should ensure that the following instructions are scrupulously complied with...."*

16. *After this preamble, 16 paragraphs in what has been named as the Code - and a copy of this Code is appended to the judgment as annexure for convenience - indicate the guidelines.*

17. *We are of the view that allotment shall be on the basis of 'one family - one flat' and the family shall include husband, wife and dependent children. A family which has one flat in any urban agglomeration within the State shall not be entitled to allotment or acquisition by transfer of a flat under this Code.*

18. *Government nominees contemplated under the Code must belong to weaker sections of the society and shall also be subjected to the rule of one family - one flat. The number of Government nominees should not exceed 5% of the total accommodation available in any scheme.*

19. *Every builder shall maintain a register of applicants chronologically registering them on the basis of the date of receipt of the applications. The register should be up-to-date and available for inspection by the authorities. As and when an application is received by the builder an appropriate receipt acknowledging acceptance of such application shall be issued to the applicant and in such receipt, the number in the Application Register shall be clearly indicated. Simultaneously, a copy of the application with its number shall be sent by the builder to the Committee for its record.*

20. *As a working guideline we direct that a 'means test' for identifying 'weaker sections of the society shall be adopted and for the present income of the family of the applicant must not exceed Rs. 18,000/- (eighteen thousand) to come within the meaning of the term to qualify for allotment. The applicant shall be called upon to satisfy the Committee about the limit of income and the present prescription of Rs. 18,000/- may be varied from time to time by the State Government taking into consideration the fall of the value of the rupee, general improvement in the income of the people now within the annual income limit of Rs. 18,000/- and other relevant factors. It shall be open to the State Government to prescribe appropriate guideline in the matter of identifying the 'weaker sections of the society'.*

21. *'Competent authority' has been defined in Section 2(9) of the Act. From the Code it appears that he is an officer subordinate to the Collector of the District so far as the State of Maharashtra is concerned as an appeal is contemplated from his orders to the Collector. The duties and responsibilities and powers vested in the competent authority under the Code are wide and considerable. We are of the opinion (without in any way casting any aspersion) that it would be difficult for the competent authority to exercise efficiently and to the satisfaction of everyone the duties cast upon him under the Code. In the matter of implementation of the scheme and with a view to providing satisfactory execution thereof and*

*fulfilling the laudable purpose stipulated under the Act and undertaken by the scheme, it is necessary that there should be a committee in respect of the schemes in every urban agglomeration for weaker sections sanctioned under Sections 20 and 21 of the Act for overseeing the implementation of every scheme, particularly in the matter of due compliance of the conditions under which exemption is granted, timely construction of the flats, appropriate advertisement as contemplated, registration of the applications in response to advertisements in a systematic manner, appropriate allotment of flats including priorities on the basis of registration, ensuring legitimate charges only being demanded and monitoring strict compliance to avoid underhand dealing or any unjust treatment. It should be handled by the competent authority in a committee consisting of himself, a judicial officer not below the rank of an Additional District Judge and a Government engineer not below the rank of Superintending Engineer. In the committee, the judicial officer shall function as the Chairman.*

22. *This Committee shall have powers to scrutinise all relevant documents and give appropriate directions to the builders and applicants keeping the requirements of the schemes and the Code in view. To the extent we have indicated the powers conferred on the competent authority in terms of the State Code shall stand vested in the committee. The Bombay High Court shall take steps to ensure that in respect of schemes in every agglomeration undertaken and which the State Government may in future undertake, the services of an efficient judicial officer not below the rank of an Additional District Judge on such terms as the State Government and the High Court consider appropriate shall be made available for discharging the duties indicated and/or as may be provided. We would like to impress upon every Committee that fulfilment of the laudable purpose of the providing a home to the poor homeless depends upon its commitment to the goal and every effort should be made by it to ensure that the builder does not succeed in frustrating the*

*purpose. The State Government shall suitably modify its Code in the light of this judgment and recirculate the same to all concerned within four weeks from today."*

67 A further order in terms of the guidelines formulated above has been passed by the Honourable Supreme Court in the year 1995 and to be precise on 17.11.1995. That order is reported in **(1996) 1 SCC 233** (*Shantistar Builders v/s Narayan Khimalal Totame*). Therefore, the Scheme formulated by the Honourable Supreme Court is in place. This order reads thus:-

*"1. This Court by its judgment in Shantistar Builders v. Narayan Khimalal Totame, while disposing of the matter directed in paragraphs 21 and 22 the State Government to constitute a committee for monitoring allotment of the houses to the weaker sections, as per the scheme sanctioned while exempting the Urban land under Section 21 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act"). One of the members of the committee suggested was Additional District Judge. The Bombay High Court was requested to ensure that an Additional District Judge be made available for enforcing the schemes in every agglomeration, so that the Committee constituted by the State Government would effectively implement the schemes. This Court also impressed upon every Committee to ensure fulfilment of the laudable purpose of providing a home to the poor homeless to effectuate its commitment to the constitutional goal and that every effort should be made by it to ensure that the builder does not succeed in frustrating the purpose. The State Government should suitably modify its scheme in the light of the judgment rendered in Shantistar Builders case and recirculate the same to all concerned within four weeks from the date of the judgment.*

*2. The State had filed an affidavit on March 30, 1990,*

*seeking certain modification or clarifications of the order. One of the modifications sought was that under the Act, the Deputy Commissioner is the competent authority and an appeal was provided under the Act, except for Bombay and Pune, to the Additional Commissioner. For Pune and Bombay, the Commissioner would deal with the same. If the Additional District Judge was to supervise the functioning of the allotment as per the scheme sanctioned under Section 21 of the Act, it would be inconvenient to the appellate authority to consider the scheme under the Act.*

3. *The entire thinking of the Government is wholly misconceived. The Committee had nothing to do with the provisions of the Urban Ceiling Act. After the exemption under Section 20 or 21 is granted, the Committee is required to implement the scheme in terms of the sanction made by the Government for construction of buildings by the builders and allotment to weaker section people. This Court intended to ensure that the builders would abide by the guidelines laid down by this Court in the light of the judgment. The Committee would supervise the allotment of the houses to the homeless weaker section people in the light of the guidelines laid down therein. The State Government was also directed to recirculate the revised schemes in the light of the above judgment. In the circumstances, the question of the Commissioner sitting in an appeal over the working of the Committee does not arise.*

4. *It is submitted that the taking away of the discretionary power of the Government in allotment of the houses is not justified. We do not propose to modify our earlier direction. The Government is directed to comply with the Constitution of the Committee within 30 days from the date of the receipt of this order, since the same has already been delayed for more than five years from the date of the judgment constituting the committee."*

68 We have not been shown anything which would counter to this, but the attempt is to orally demonstrate that all this does not survive the repeal.

69 We have already referred to as to how the schemes devised for the purposes of ensuring compliance with the exemption orders may be at various stages of implementation. There are several conditions and which may have been varied from time to time so as to achieve the object of exemption. Since the exemption under clause (a) of sub-section (1) of Section 20 of the Principal Act is to be granted bearing in mind the location of land, the purpose for which it is being used or proposed to be used and such other relevant factors so also it is necessary and expedient in public interest that the Government devised several schemes and embodied in the circulars and Government Resolutions. Some of the clauses in such schemes presented difficulties and which were resolved by the Honourable Supreme Court. Now the schemes have become part of the orders of the Honourable Supreme Court. These are not orders to the contrary as envisaged by Section 3(1)(b) of the Repeal Act rather they are in consonance with the power to exempt and carry it further. If such orders are in place and the scheme is under various stages of implementation, then, the repeal of the Principal Act will not in any manner prevent the Government from enforcing the conditions and ensuring compliance with the obligations undertaken by the Developers and Builders.

70 The arguments of the Petitioners to the contrary do not take note of any of the above aspects. Even if one proceeds on the footing that the intent of the Parliament was not to save several other provisions, but

that does not mean that what is saved by the Repeal Act or what will not be affected by repeal of the Principal Act is exhaustive. Mr.Naphade places reliance upon Sections 21 and 22 of the Principal Act and submits that these provisions have not been saved, but his argument overlooks the fact that Section 21 is a provision whereunder a person holding the vacant land in excess of ceiling limit comes forward and declares in the prescribed manner before the competent authority that such land is to be utilized for construction of dwelling units of the size specified therein and for accommodation of weaker sections of the society in accordance with the scheme approved by such authority and then that land on inquiry is not to be treated as excess for the purpose of the Chapter. That is permission to such holder to continue to hold such land for the purpose aforesaid. That is also conditional upon inter-alia time to complete the construction. However, merely because this provision is not inserted in the Repeal Act ipso-facto will not mean that sub-section (2) of Section 20 of the Principal Act is not saved. Section 20 is a power to exempt and while exercising that power the Government cannot declare that the excess vacant land will not be treated as excess. Rather the foundation on which the power to exempt is exercised is that the land is vacant and in excess of the ceiling limit and the holder is aware and admits this position. Therefore, Sections 20 and 21 of the Principal Act operate in separate fields. Similar is the case with Section 22 where the vacant land is allowed to be retained under certain circumstances. Therefore, if retention for specified purpose as contemplated by Section 22(1) is where there is a building on the land held by the holder of the vacant land, but that building is demolished by him or demolished or destroyed solely due to natural causes and beyond the control of human agency and as a consequence thereof, then, in the circumstances set out in sub-section (1)

of Section 22 the vacant land can be retained. Once again this provision cannot be equated with Section 20 and would operate in a different field. We need not repeat that the purpose to exempt the excess vacant land is for the reason that the land is located in a peculiar place or location and that the purpose for which it is being or is proposed to be used and such other relevant factors may make it necessary or expedient in public interest that the Government can exercise its discretionary power to exempt and not otherwise. One of the user or proposed user could be construction of tenements for the weaker or deprived sections of the society or handing over of constructed tenements or units to the Government nominees so as to enable the Government to mitigate hardship caused to such nominees. The Totame's case (supra) dealt with such nominees as well. Therefore, the laudable object and purpose being borne in mind it is apparent that in exceptional cases and in public interest the power to exempt is exercised and not as a matter of course.

71 The arguments of the Petitioners' counsel overlook the fundamental aspect that the vacant land in excess of ceiling limit has to be reckoned with effect from the date of commencement of the Act and as far as the State of Maharashtra is concerned that is 17.02.1976. In a Full Bench decision of this Court reported in **AIR 1984 Bombay 122** *Prabhakar Narhar Pawar v/s State of Maharashtra*, the Full Bench held as under:-

> *"11. There is no dispute that the vacant land has to be determined with reference to the date of commencement of the Act and the relevant date is 17th February, 1976. So far as Sub-clause (I) is concerned, the question as to whether construction of a building is or is not permissible according to the building Regulations has to be determined with reference to 17th February, 1976. We have already*

*referred to the definitions of the words "building Regulations", which mean Regulations contained in the master plan, and the meaning of the expression "master plan" is also given in the Act itself in S. 2(h) and it means, in relation to an area within an urban agglomeration or any part thereof, the plan prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out. Now, when a question arises as to whether construction of a building is not permissible under the building Regulations in force, it is possible that there may be an absolute ban or prohibition under the relevant master plan where under no circumstances construction of building is possible on a given piece of land. Such piece of land may have been reserved for a purpose and on such reservation construction of a building would not at all be permissible. But, when we come to an instance like the present one in which there is an open plot of land which is admittedly a house site on which a building could be constructed, it is difficult to see how any part of the land can be excluded under Sub-clause. (I) of S. 2(q) on hypothetical considerations. Section 3 of the Act and the procedural provisions thereof which are intended to implement the provisions of the said section contemplate the determination of the quantum of vacant land on facts as they exist on the date of commencement of the Act. Therefore, in a given case where the owners of a land claims that certain land which is owned by him should be excluded on the ground that construction of a building is not permissible under the building Regulations in force, it is obvious that he will have to show that the building regulations are attracted in his case. For a person, who, on the commencement date, never even intended to construct any building on his land or for a person who has not even submitted a plan for construction of any building, the relevant building Regulations are wholly irrelevant and he is not affected by the building Regulations. It appears to us that when sub*

> *clause (I) refers to land on which construction of a building is not permissible under the building Regulations, it was contemplated that on the date of commencement of the Act, that is, 17th February, 1976, the owner intended to construct a building on the plot in question and the plan of the building was either already sanctioned or he had submitted the plan for sanction. Where a building plan is already sanctioned and such sanctioned plan is operative on 17th February, 1976 or a plan has already been submitted for sanction, it could be ascertained with certainty as to how much land could be identified as land on which construction of a building is not possible. Sub-clause (I) of S. 2(q) does not, in our view, contemplate a general exclusion of land from the purview of the Act to the extent of two-thirds or one-half or whatever may be the extent of land on which no building can be constructed under the relevant building Regulations in force in the area under consideration irrespective of whether a building is proposed to be constructed or not on the date of commencement of the Act. ……."*

72 This decision in Prabhakar Pawar's case (supra) has been specifically approved by the Honourable Supreme Court in the case of *State of Gujarat v/s Parshottamdas Ramdas Patel* reported in **AIR 1988 SC 220**. The arguments of the learned Senior Counsel appearing for the Petitioners in this case overlook the fact that when there is ceiling placed on holding of vacant lands and such lands which are vacant, but in excess of ceiling limit vest in the State, then, it would be futile to urge that the exemption confers an absolute right or privilege. If the exemption is a privilege as is held in the case of *Southern Petrochemical Industries Company Limited v/s Electricity Inspector and E.T.I.O.* reported in **AIR 2007 SC 1984** and it is further held by the Honourable Supreme Court that the right of exemption with a valid notification gives the right to

approve the rates, it is vested right and the word “privilege” has wider meaning, then, the right is, therefore, protected even after repeal of the Principal Act. It goes without saying that if such right is conditional the conditions attached are not wiped out or destroyed if the right or privilege is saved. In this regard, the Honourable Supreme Court holds that when such is the nature of the claim, then, the Court is obliged to consider as to whether the intention of the Legislature is to the contrary meaning thereby there is a different intention than what is spelled out by Section 6 of the General Clauses Act. In that regard this is what the Honourable Supreme Court has held:-

> *“108. We are also unable to agree with Mr. Andhyarujina that exemption from tax is a mere concession defeasible by Government and does not confer any accrued right to the recipient. Right of exemption with a valid notification issued gives rise to an accrued right. It is a vested right. Such right had been granted to them permanently. 'Permanence' would mean unless altered by statute.*
>
> *109. Thus, when a right is accrued or vested, the same can be taken away only by reason of a statute and not otherwise. Thus, a notification which was duly issued would continue to govern unless the same is repealed.*
>
> *110. Mr.Andhyarujina, however, would submit that reference to the words "anything duly done" should be given a restrictive meaning. He referred to "Statutory Interpretation - A Code" by F.A.R. Bennion, Third Edition, page 229, wherein it was stated:*
>
> *“Paragraph (ii) This derives from Interpretation Act 1978 Section 16(1)(b). The reference to 'anything duly done' avoids the need for procedural matters, such as the giving of notices, to be done over again.*
>
> *Example 89.3 The Interpretation Act 1978 Section preserved the effect of a noise nuisance notice served under the Control of Pollution Act, 1974, Section 58(1) before its repeal and replacement by the Environmental Protection Act, 1990, Sections 162*

*and 164(2) and Schedule 16 Pt. III."*

111. *The treatment of the law, in our opinion, is not exhaustive as different consequences are required to be taken into consideration and applied having regard to the nature of the statutory provision.*

112. *Mr.Andhyarujina also relied upon Maxwell on the Interpretation of Statutes, 12th edition, page 18, wherein it was stated:*

> *"When an Act is repealed, any delegated legislation made under the Act falls to the ground with the statute unless it is expressly preserved. Where the subordinate legislation is continued in force, however, the general rule is that its scope and construction are determined according to the repealed Act under which it was made."*

113. *The statement of law therein does not militate against our findings aforementioned. Construction would vary from statute to statute.*

114. *It is profitable to notice at this stage a decision of this Court in M/s. Universal Imports Agency (supra). In that case under the Indo-French Agreement entered into by and between the two nations on 1st November, 1954, the entire Administration of French Settlement vested in the Government of India. The territory of Pondicherry, thus, became a free port without any restriction in case of most imports. However, by reason of a notification dated 30th October, 1954, the importers in Pondicherry were required to obtain validation of licences held by them to import goods as petitioners thereof did not have any merchandise imported by them stood confiscated.*

115. *Clause 6 of the Agreement reads, thus:*

> *"Unless otherwise specifically provided in the Schedule, all laws in force in the French Establishments immediately before the commencement of the Order, which correspond to enactments specified in the Schedule, shall cease to have effect, save as respect things done or omitted to be done before such commencement."*

116. *Analyzing the said provision, this Court held:*

> *"…The words things done in para 6 must be reasonably interpreted and, if so interpreted, they can*

*mean not only things done but also the legal consequences flowing therefrom. If the interpretation suggested by the learned Counsel for the respondents be accepted, the saving clause would become unnecessary. If what it saves is only the executed contracts i.e. the contracts whereunder the goods have been imported and received by the buyer before the merger, no further protection is necessary as ordinarily no question of enforcement of the contracts under the pre-existing law would arise. The phraseology used is not an innovation but is copied from other statutory clauses. Section 6 of the General clauses Act (10 of 1897) says that unless a different intention appears, the repeal of an Act shall not affect anything duly done or suffered thereunder...."*

117. *Thus, a liberal and extensive construction was given by this Court.*

118. *To the same effect is also a decision of this Court in Shri Ram Prasad (supra) wherein power to make rule was held to be a thing done within the meaning of Article 357(2) of the Constitution of India.*

119. *In Harnek Singh (supra), this Court held:*

*"16. The words anything duly done or suffered thereunder used in Clause (b) of Section 6 are often used by the legislature in saving clause which is intended to provide that unless a different intention appears, the repeal of an Act would not affect anything duly done or suffered thereunder. This Court in Hasan Nurani Malak v. S.M. Ismail, Asstt. Charity Commr., Nagpur has held that the object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the preexisting law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. In Universal Imports Agency v. Chief Controller of Imports and Exports this Court while construing the words things done held that a proper interpretation of the expression things done was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom."*

120. *Furthermore, exemption from payment of tax in*

> *favour of the appellants herein would also constitute a right or privilege. The expression "privilege" has a wider meaning than right. A right may be a vested right or an accrued right or an acquired right. Nature of such a right would depend upon and also vary from statute to statute. It has been so held by this Court, while construing Section 6 of the General Clauses Act, in M/s Gurcharan Singh Baldev Singh v. Yashwant Singh and Ors. [(1992) 1 SCC 428] in the following terms:*
>
> *"...The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability...."*"

73 Hence, Section 20(1) of the Principal Act and Section 3(1)(b) and (c) of the Repeal Act have to be read together and harmoneously. That would also save and protect the right of person to move under Sections 11 to 14 of the Principal Act. That is why there is a proviso which has been inserted in Section 4 of the Repeal Act. Equally, by clause (c) of sub-section (1) of Section 3 of the Repeal Act the intent was also to allow the State Government to retain the money/sum paid to it as condition for granting exemption under Section 20(1). All this shows that the excess vacant land continues to be subject to the Principal Act and its repeal does not affect applicability of the provisions of Chapter-III albeit to a limited extent with which we are concerned. The intent is not to allow recourse to Sections 21 and 22 of the Principal Act and that is clearly affected by the repeal of the Principal Act. However, a saving clause enacted in the Repeal Act and construed as above does not manifest an intent to destroy all rights and obligations. Therefore, Section

6 of the General Clauses Act, 1897 can be taken assistance of.

74 While construing a repeal clause or Repeal Act or saving clause therein the application of Section 6 of the General Clauses Act would have to be considered in the light of the afore laid down principles. Therefore, if having found that when the order of exemption is passed, it is in force and conditional, then, the right or privilege created thereunder cannot partake a different character. It would then fall squarely within Section 6 of the General Clauses Act and in the present case we have not found a contrary intention.

75 We find that reliance placed by the learned Advocate General on the decision in the case of Bansidhar (supra) is apposite. There, the Honourable Supreme Court held that a saving provision in the repealing statute is not exhaustive of the rights and obligations so saved and they survive the repeal.

76 In Bansidhar's case (supra) the contentions of the Appellants before the Supreme Court were regarding the legality of certain proceedings for fixation of ceiling on agricultural holdings initiated and continued under the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955. That Act particularly Section 5(6-A) and Chapter III-B thereunder was repealed by the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (11 of 1973). The question was whether the proceedings under the 1955 Act survive the repeal and reenactment of the same in 1973. In that regard the Honourable Supreme Court held as under:-

> *"3. Chapter III-B, pertaining to imposition of ceiling on agricultural holdings, in the State of Rajasthan, was*

*introduced into the '1955 Act' by the Rajasthan Tenancy (Amendment) Act, 1960. As a sequential necessity Section was amended by the introduction in it of Clause (6A) which defined "ceiling-area". The notified-date, as originally fixed, was 1.4.1965; but owing to the uncertainties imparted to the implementation of the law by the challenged made to the provisions of Chapter III-B before the High Court and the interim-orders of the High Court staying the operation of the law, Government had had to re-notify 1.4.1966 as the fresh notified-date, after the challenge to the validity of Chapter III-B had been repelled by the High Court.*

4. *By the time, the '1973 Act' was brought into force disputes touching the determination of the ceiling areas in 33, 471 cases had come to be decided in accordance with the provisions of Chapter III-B of the earlier '1955 Act'. After the '1973 Act' came into force on 1.1.1973, some 8,494 cases for the determination of 'ceiling-areas' under III-B of the '1955 Act. came to be initiated and were sought to be continued under said Chapter III-B of the repealed '1955 Act' on the view that the repeal of Chapter III-B of the 1955 Act by the '1973 Act' did not affect the rights accrued and liabilities incurred under the old law. Appellants' principal contention is that after the coming into force of the 1973 Act which, by its 40th Section, repealed Chapter III-B of the '1955 Act', recourse could not be had to the repealed-law for purposes of commencement, conduct and conclusion of any proceedings for fixation of ceiling as prescribed under the old law. This contention has been repelled by the full bench of the High Court in the judgment under appeal. The correctness of view of the full bench arises for consideration in these appeals.*

5. *The factual antecedents in which the controversy arose before the High Court may be illustrated by the facts of one of the appeals. In CA 1003 [N] of 1977, the appellants' claim to have entered into possession and cultivation of certain parcels of land pursuant to alleged agreements to sell dated 28.4.1957 said to have been executed in their favour by the then land-*

*holder, a certain Sri Had Singh. The sale deeds were passed only on 22,8.1966, after the notified -date. Proceedings for the fixation of ceiling area in the hands of Sri Hari Singh were commenced under the Repealed Chapter III-B of the '1955 Act'. Appellants' purchases were held to be hit by Section DD of the said Chapter III-B, which prescribed certain residential qualifications, which appellants did not possess, for the eligibility for recognition of such transfers. Appellants' contention is that if the new law had been applied to the case of the vendor, the transfers in their favour would have been held valid and that 'invoking of Chapter III-B of the repealed law was impermissible. Apart from the facts of individual cases and their particularities the basic question is one of construction- whether the provisions of the old law are saved and survive to govern pending cases.*

6. *We have heard Sri A.K. Sen, Sri Tarkunde and Sri Shanti Shushan, learned Senior Advocates for the appellants and Sri Lodha, learned Senior Advocate for the State of Rajasthan and its authorities. The appellants' principal contention-which we perceive as one of construction of statutes-is that the later law made manifest, expressly and by necessary implication, an intention inconsistent with the continuance of the rights and obligations under the repealed law and that, accordingly after 1.1.1973, the date of coming into force of the '1973 Act', no proceedings under the old law could be initiated or continued.*

7. *The points that fall for consideration in these appeals are whether:*

*(a) the scheme contemplated by and the different criteria and standards for the determination of "ceiling-area" envisaged in the '1973 Act' and, in particular, having regard to the limited scope of the saving-provision of Section thereof which, quite significantly, omits to invoke and attract Section of the Rajasthan General Clauses Act 1955 to the Repeal of Section and Chapter III-B of the '1955 Act' must be construed and held to manifest an intention contrary*

*to and inconsistent with the keeping alive or saving of the repealed law so as to be invoked in relation to and applied for the pending cases which had not been concluded under the old law before the repeal; and*

*(b) that, at all events even if Section of the Rajasthan General Clauses Act 1955 was attracted and the old law was saved for the purpose, provisions of the old-law could not be invoked as no right had been "accrued" in favour of the State in relation to the surplus area determinable under the old law nor any liability "incurred" by the land-holders under the old law so as to support the initiation of the proceedings for fixation of 'Ceiling-area' under the old-law after its repeal.*

*Re : Contention (a)*

8. *In order that this contention, which is presented with some perspicuity, is apprehended in its proper prospective a conspectus of the essential provisions of the earlier law and later law pertaining to prescription of ceiling on agricultural holdings is necessary.*

9. *In 1955, The Rajasthan Tenancy Act 1955 was enacted. By the Rajasthan Tenancy (Amendment) Act, for the first time, provisions in Chapter III-B prescribing a ceilings on holdings of agricultural lands got introduced into the '1955 Act', This amending Act of 1960 received Presidential assent on 12th March 1960. The Chapter III-B was, by an appropriate notification, brought into force with effect from 15th December, 1963. The notified-date, under the '1955 Act' as stated earlier, was 1.4.1966.*

10. *Section (6A) of the '1955 Act' defined 'Ceiling-area':*

*"Ceiling area" in relation to land held anywhere throughout the State by a person in any capacity whatsoever shall mean the maximum area of land that may be fixed as ceiling area under Section C in relation to such person:*

11. *Section B in Chapter III-B provided:*

*30-B. Definitions-For the purposes of this Chapter-*

*(a) "family" shall mean a family consisting of a*

*husband and wife their children and grand-children being dependent on them and the widowed mother of the husband so dependent and*

*(b) "person" in the case of an individual, shall include the family of such individual.*

*Section 30-C providing for the extent of ceiling area said:*

*30-C. Extent of ceiling area-The ceiling area for a family consisting of five or less than five members shall be thirty standard acres of land :*

*Provided that, where the members of a family exceed five, the ceiling area in relation thereto shall be increased for each additional member by five standard acres, so however that it does not exceed sixty standard acres of land.*

*Explanation--A 'standard acre' shall mean the area of land which, with reference to its productive capacity, situation, soil classification and other prescribed particulars is found in the prescribed manner to be likely to yield ten maunds of wheat yearly ; and in case of land not capable of producing wheat, the other likely produce thereof shall, for the purpose of calculating a standard acre, be determined according to the prescribed scale so as to be equivalent in terms of money value to ten maunds of wheat:*

*Provided that, in determining a ceiling area in terms of standard acres the money value of the produce of well-irrigated (chahi) land shall be taken is being equivalent to the money value of the produce of an equal area of un-irrigated (barani) land.*

*In exercise of the Rule making powers under the '1955 Act', the State Government framed and promulgated. The Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963, which came into force on and with effect from 15.12.1963. Rule 9 required that in order to enable the Sub-Divisional Officer to determine the ceiling area applicable to every person under Section C of the Act and to enforce the provision of Sections E, every land-*

*holder and tenant in possession of lands, in excess of the ceiling area applicable to him, shall file a declaration within six months from the notified-date. The law fixed 30 standard acres as the ceiling area. Thereafter, successive amendments were made to Chapter III-B of the '1955 Act' which, while maintaining the ceiling at 30 standard acres, however, recognised certain transfers effected after 1958, which were not originally so recognised in fixing the ceiling. Again (by an amendment) of the year 1970, Section was deleted. The 1955 Act itself came to be included in the IX Schedule to the Constitution by a Parliamentary law. The challenge to said inclusion was repelled by this Court.*

12. *On 1.1.1973, the Governor of the State of Rajasthan promulgated The Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973 under Article 213 of the Constitution of India. The Ordinance repealed the corresponding provisions relating to ceiling on agricultural holdings contained in Section and Chapter III-B of the '1955 Act' except to the extent indicated in the Second Proviso to Section and Section of the said Ordinance. The Ordinance brought in to existence a new concept of and standards for the" ceiling-area". Certain transfers made by the land-holders even during the operation of the old law were recognised as valid transfers for purposes of computation of ceiling area under the new dispensation brought about by the Ordinance. This Ordinance was replaced by the 1973 Act which was made operative retrospectively from 1.1.1973 being the date of promulgation of the Ordinance. Section of the '1973 Act' repealed as did the predecessor-Ordinance, both the old law in Chapter III-B of the '1955 Act' and the earlier Ordinance for which it substituted.*

13. *Section Section 4(1), Second Proviso and Section of the 1973 Act require particular notice.*

14. *Section 3 provides :*

> *"3. Act to override other laws, contracts, etc.-*
> *The provisions of this Act shall have effect*

*notwithstanding anything inconsistent contained in any other law for the time being in force, on any custom, usage or contract or decree or order of a court or other authority.*

15. *The Second Proviso to the Explanation appended to Section 4(1) of the Act says:*

*Provided further that if the ceiling area applicable to any person or family in accordance with this section exceeds the ceiling area applicable to such person or family according to the provisions of law repealed by Section in that case the ceiling area applicable to such person or family will be the same as was under the provisions of the said repealed law.*

16. *Section 40 provides ;*

*40. Repeal and savings-(1) Except as provided in second proviso to Sub-section (1) of Section and in Sub-section (2) of Section of this Act, the provisions of Clause (6-A) of Section and Chapter III-B of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) are hereby repealed except in the Rajasthan Canal Project area wherein such provisions shall stand repealed on the date on which this Act comes into force in that area.*

*(2) The Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973 Rajasthan (Ordinance-I of 1973) is hereby repealed.*

*(3) Notwithstanding the repeal of the said Ordinance under Sub-section (2), anything done or any action taken or any rules made under the said Ordinance shall be deemed to have been done taken or made under this Act and section of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955) shall apply to such repeal and re-enactment.*

17. *Section contains a statutory declaration that the 'Act' is for giving effect to the directive principles of State policy towards securing the principles specified in Article 39(b) and (c) of the Constitution of India.*

18. *Appellants' learned Counsel contend that when there is a repeal of a statute followed by a re-enactment of a new law on the same subject with or without modifications Section 6 of the General Clauses Act is not attracted and the question as to the extent to*

*which the repealed law is saved would be dependent upon the express provisions of the later statute or what must be held to be its necessary and compelling implications. It was urged that where the repeal is accompanied by a afresh Legislation on the same subject, the new law alone will determine if, and how far the old law is saved and that in the absence of an express appeal to Section 6 of the Genera Clauses Act or of express provisions similar effect in the new law itself, the provisions of the old law must be held to have been effaced except whatever had been done, or having effect as if done. This argument has the familiar ring of what Sulaiman, CJ. had said on the matter in B.Bansgopal v. Emperor. But, it must now be taken to be settled that the mere absence of an express reference to Section 6 of the General Clauses Act is not conclusive, unless such omission to invoke Section 6 of the General Clauses Act is attended with the circumstance that the provisions of the new-law evince and make manifest an intention contrary to what would, otherwise, follow by the operation of Section 6 of the General Clauses Act, the incidents and consequences of Section 6 would follow.*

19. *Appellants' learned Counsel submitted that the legislation in question pertaining, as it did, to the topic of agrarian reform was attendant with the difficulties naturally besetting a task so inextricably intermixed with complex and diverse and, indeed, often conflicting socio-economic interests had to go through stages of empirical evolution and that having regard to the wide-diversity of policy-options manifest between the earlier and the later legislations, the conclusion becomes inescapable that the later legislation, made manifest an intention inconsistent with and contrary to the continuance of the rights and obligations under the repealed law. It was agreed that with the experience gained in the implementation of the policy of agrarian reforms embodied in the repealed law, the new policy-considerations – reflected in the new and basically different thinking on some of the vital components of the new-policy – were evolved and incorporated in the*

*new law, so much so that the repealed and repealing laws represented two entirely different systems and approaches to the policy of agrarian reforms and the two systems, with their marked differences on basically and essential criteria underlying their policies, could not co-exist. it was urged that the statement of objects and reasons appended to the 1973 Bill recognised that the legislative policy and technique underlying the old law were ineffective in removing the great disparity that persisted in the holdings of agricultural lands or in diluting the concentration of agricultural wealth in the hands of a few and recognised the necessity "to reduce such disparity and to re-fix the ceiling area on the agricultural holdings so that agricultural land may be available for distribution to land less persons". It was pointed out that material criteria relevant to the effectuation of the new-policy made manifest an intention contrary to the survival of the policy under the old law. The wide changes in the policy of the later law which reflected a new and basically different approach to the matter, included [i] a fundamental rethinking on the concept of the "ceiling-area" by reducing the 30 standard acres prescribed in the old law to 18 standard acres; [ii] the re-definition of the very concept of 'family' and 'separate unit'; [iii] the point of time with reference to which the composition and strength of the family would require to be ascertained; [vi] a re-thinking, and a fresh policy as to the recognition of transfers made by land-holders including even those transfers made during the period of operation of the old law; [v] the point of time of the vesting of the surplus land in Government; [vi] the re-defining of the principles and priorities guiding the distribution of the surplus land to landless persons; and [vii] the amount to be paid to the land holders for the excess land vesting in the State under the new law.*

20. *It was submitted that the two laws – the old and the new – envisaged two totally different sets of values and policies and were so disparate in their context and effect as to yield the inevitable inference that the*

*policy and the scheme of the later law, by reason alone of the peculiarities and distinction of its prescriptions, should be held to manifest an intention contrary to the saving of the old law even respecting pending cases. The ceiling laws, it was submitted, envisage and provide an integrated and inter-connected set of provisions and the marked distinctions in the vital provisions in the two sets of laws rendered the continued applicability of the old law to any case, not already finally concluded thereunder, as impermissible in law as unreasonable in its consequences if permitted. It was urged that Section of the 1973 Act was a clinching indicator in this behalf when it provided that the provisions of the later law "shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority" (underlining supplied) and that the old Act, even if it was, otherwise, held to be in force in relation to pending cases, was clearly over-borne by Section of the new law.*

21. *When there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Section 6 of the General Clauses Act ensued or not – Section 6 would indeed be attracted unless the new legislation manifests a contrary intention but only for the purpose of determining whether the provisions in the new statute indicate a different intention. Referring to the way in which such incompatibility with the preservation of old rights and liabilities is to be ascertained this Court in State of Punjab v. Mohar Singh said:*

> *...Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Law and the mere absence of a saving clause is by itself not material. The provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment*

*unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed.*

22. *Addressing itself to the question whether, having regard to the particular provisions of the 1973 Act, the inference that the new law manifests such contrary intention could justifiably be drawn, the High Court observed:*

*We have, therefore, to examine whether the new law expressly or otherwise manifests an intention to wipe out or sweep away those rights and liabilities which had accrued and incurred under the old Law...*

*Having carefully gone through all the authorities cited by the parties as referred to above, we are of opinion that the new Act of 1973 does not have the sweeping effect of destroying all the rights accrued and liabilities incurred under the old law...*

23. *One of the indicia that the old law was not effaced is in Section [2] of the new Act. It provides that if the State Government was satisfied that the 'ceiling-area' in relation to a person as fixed under the old-law had been determined in contravention of that law, a decided case could be re-opened and inquired into it and the 'ceiling-area' and the 'surplus area' determined afresh in accordance with the provisions of the old law. Another indicium is in Section [1] read with the Second proviso to Section [1] of '1973 Act' which provides that if the ceiling area applicable to a person or a family in accordance with the said Section [1] exceeds the 'ceiling-area' applicable to such person or family, under the old law, then, the 'ceiling-area' applicable to such person or family would be the same as was provided under the provisions of the old law.*

24. *The High Court relied upon and drew sustenance for its conclusion from, what it called, the internal evidence in the Act which, according to the High Court, indicated that pending-cases were governed only by the old law. The High Court referred to Section [2] inserted by Act No. 8 of 1976 and what,*

*according to it, necessarily flowed from it in support of its conclusion, Section [2] inserted by Act NO. 8 of 1976 runs thus:*

*15(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within five years of the commencement of this Act, direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions.*

25. *The High Court referring to the opening words of the above provision observed:*

*The opening words of the section "without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955)", clearly show that the pending cases have to be governed by the old law. If transactions past and closed have to be reopened and decided afresh under the provisions of the repealed law, and the ceiling area under Chapter III of the Rajasthan Tenancy Act, 1955, has to be fixed under its repealed provisions, then it must follow as a necessary corollary, that the pending cases must be decided under the old law.*

26. *Sri Lodha, learned Counsel for the State of Rajasthan submitted that the 'ceiling-area' had to be fixed with reference to the notified date i.e. 1,4.1966 by the statutory standards prescribed under the Chapter III-B of the '1955 Act'. The two legislations are complementary to each other and constitute two tier provisions. So far as the cases that attracted and fell within Chapter III-B of 1955 Act, as on 1.4.1966, would continue to be governed by that law as the*

*rights and obligations created by the said Chapter III-B amounted to create rights and incur liabilities. Sri Lodha submitted that the view taken by the High Court was unexceptionable.*

27. *On a careful consideration of the matter, we are inclined to agree with the view taken by the High Court on the point. The reliance placed by appellants' learned Counsel on the provisions of Section of 1973 Act as detracting from the tenability of the conclusion reached by the High Court on the point is, in our opinion, somewhat tenuous. The contention of the learned Counsel is that the expression "notwithstanding anything inconsistent contained in any other law for the time being in force" in Section of the 1973 Act would exclude the operation of Chapter III-B of the '1955 Act' which, according to the contention, even if kept alive would yet be a 'law for the time being in force' and, therefore, be excluded by virtue of Section This contention has been negatived by the High Court ...and in our opinion rightly ..by placing reliance on the pronouncements of this Court in Rao Shiv Bahadur Singh and Anr. v. The State of Vindhya Pradesh and Chief Inspector of Mines v. K.C. Thapar. The High Court held that the expression "law for the time being in force" does not take within its sweep a law 'deemed to be in force' and that, accordingly, the opening words of Section relied , upon by the Appellants' learned Counsel will not have an overriding effect so as to exclude the old law.*

28. *A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in I.T. Commissioner v. Shah Sadiq & Sons : (SCC p. 524, para 15)*

> *...In other words whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6[c],*

*General Clauses Act, 1897...*

*We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section [6A] and Chapter III-B of '1955 Act' so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant's contention [a] is, in our opinion, insubstantial.*

*Re : Contention (b):*

29. *This takes us to the next question whether in the present cases even if the provisions of Section of the Rajasthan General Clauses Act, 1955. are attracted, the present cases did not involve any rights "accrued" or obligations "incurred" so as to attract the old law to them to support initiation or continuation of the proceedings against the land-holders after the repeal. It was contended that even if the provisions of the old Act were held to have been saved it could not be said that there was any right accrued in favour of the State or any liability incurred by the land holders in the matter of determination of the 'ceiling-area' so as to attract to their cases the provisions of the old law. The point emphasised by the learned Counsel is that the excess-land would vest in the State only after the completion of the proceedings and upon the land-holder signifying his choice as to the identify of the land to be surrendered. Clauses [c] and [e] of Section of the Rajasthan General Clauses Act, 1955, provide, respectively, that the repeal of an enactment shall not, unless a different intention appears, "affect any right privilege, obligation, or liability, acquired, accrued, or incurred under any enactment so repealed" or "affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid".*

30. *For purposes of these clauses the "right" must be "accrued" and not merely an inchoate one. The distinction between what is and what is not a right*

*preserved by Section 6 of the General Clauses Act, it is said, is often one of great fineness. What is unaffected by the repeal is a right 'acquired' or 'accrued' under the repealed statute and not "a mere hope or expectation" of acquiring a right or liberty to apply for a right.*

31. *In Lalji Raja v. Firm Hansraj Nathuram this Court dealing with the distinction between the "abstract rights" and "specific-rights" for the purpose of the operation of Section 6 of General Clauses Act said: (SCC p. 728, para 16)*

*That a provision to preserve the right accrued under a repealed Act 'was not intended to preserve the abstract rights conferred by the repealed Act...It only applies to specific rights given to an individual upon happening of one or the other of the events specified in statute' – See Lord Atkin's observations in Hamilton Gell v. White. The mere right, existed at the date of repealing statute, to take advantage of provisions of the statute repealed is not a 'right accrued' within the meaning of the usual saving clause-see Abbot v. Minister for Lands and G. Ogden Industries pty. Ltd. v. Lucas.*

32. *……..*

33. *…….*

34. *The rights and obligations under this provision had had to be determined with reference to the notified date i.e. 1.4.1966. Referring to analogous provision of the Maharashtra Agricultural Lands [Ceiling on Holdings] Act, 1961, this Court in Raghunath v. Maharashtra observed: (SCC p. 397, para 17)*

*The scheme of the Act seems to be to determine the ceiling area of each person [including a family] with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day.*

35. *Again in Bhikoba Shankar Dhumal v. Mohan Lal Punchand Thathed, it was observed: (SCC p.687, para 13)*

*A close reading of the aforesaid provisions of the Act shows that the determination of the extent of surplus land of a holder has to be made as on the appointed day. If any person has at any time after the fourth day of August, 1959, but before the appointed day held any land [including any exempted land] in excess of the ceiling area, such person should file a return within the prescribed period from the appointed day furnishing to each of the Collectors within whose jurisdiction any land in his holding is situated, in the form prescribed containing the particulars of all land held by him. If any person acquires, holds or comes into possession of any land including any exempted land in excess of the ceiling area on or after the appointed day, such person has to furnish a return as stated above within the prescribed period from the date of taking possession of any land in excess of the ceiling area.*

36. *A contention similar to the one urged for the appellants here that the title respecting the surplus land would vest in the Government upon such land being taken possession of by Government after the declaration regarding the surplus was noticed in that case. But, it was held that the liability to surrender the surplus land would date back to the appointed day. This Court said: (SCC p.688, para 13)*

*Any other construction would make the Act unworkable and the determination of the extent of surplus land of a holder ambulatory and indefinite.*

*This was again reiterated in State of Maharashtra v. Annapurnabai. This Court said: (SCC p.275, para 4)*

*Section 21 of the Act no doubt states that the title of the holder of the surplus land would become vested in the State Government only on such land being taken possession of after a declaration regarding the surplus land is published in Official Gazette. But the liability to surrender the surplus land relates back to the appointed day in case of those who held land in excess of the ceiling on the appointed day. Therefore, even if the holder dies before declaration of any part of his land as surplus*

*land, the surplus land is liable to be determined with reference to his holding on the appointed day...*

*37. It is, therefore, seen that the right of the State to take over excess land vested in it as on the appointed day and only the quantification remained to be worked out. As observed by Lord Morris, in Director of Public Works v. Ho Po Sang : (ALL ER p.731)*

*It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved, It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to a decide whether some right should be or should not be given. On repeal the former is preserved by the Interpretation Act. The latter is not.*

*38. The above passage was referred to with approval in M.S. Shivananda v. K.S.R.T.C..*

*39. We agree with the High Court that the right of the State to the excess land was not merely an inchoate right under the Act, but a right "accrued" within the meaning of Section [c] of the Rajasthan General Clauses Act, 1955, and the liability of the land-owner to surrender the excess land as on 1.4.1966 was a liability "incurred" also within the meaning of the said provision. There is no substance in contention [b] either."*

77 Mr.Naphade would urge that this judgment is distinguishable because it pertains to a ceiling on agricultural lands. Secondly, the judgment deals with a case where earlier law was repealed, but reenacted in a different form. Yet the Legislature retained the earlier law, namely, the Act of 1955. The factual matrix was, therefore, different. This judgment would have no application to the point before us.

78 We are unable to agree with Mr.Naphade and for more than one reason. The judgment of the Honourable Supreme Court and laying down such principles cannot be brushed aside on a spacious plea that the statute which was subject matter of the judgment was repealed, but reenacted later. This is a judgment on Section 6 of the Rajasthan General Clauses Act, 1955 and which is identical to Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act, 1897 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) revive 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."*

79 A perusal of the judgment and effect of repeal enacted by

Section 6 of the General Clauses Act would show that the Honourable Supreme Court emphasized that a saving provision in the repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. The line of inquiry as has been repeatedly pointed out by the Honourable Supreme Court would be not whether the new Act expressly keeps alive the old rights and liabilities, but whether it manifests an intention to destroy them. Unless such an intention is manifested by the new Act, the rights and liabilities under the repealed Act will continue to exist by force of Section 6 of the General Clauses Act. It is the repealing Act and not the Act repealed which is to manifest the contrary intention so as to exclude the operation of Section 6 of the General Clauses Act. The silence of the repealing Act is consistent and not inconsistent with Section 6 applying. That is how we are of the opinion that if this line of inquiry is carried forward it would show that the Repeal Act did not manifest an intention contrary to Section 6 of the General Clauses Act. The nature of right that is claimed or in other words the privilege being not absolute that all the more we are unable to accept Mr.Naphade's arguments. The Honourable Supreme Court holds that the scheme of the Act seems to be to determine the ceiling area of each person with reference to the appointed day. Hence, the rights and obligations under the provision had to be determined with reference to the notified date. If that is so and in this case if the lands are in excess of ceiling limit and some of them may have vested in the State already, then, the exemption claimed from applicability of Chapter-III would not mean that the character of the lands is in any way altered or their status is changed. The date with reference to which the lands have become excess, thus cannot be ignored while determining the nature of the rights and privilege. All the more if such privilege or right is conditional as noted

above. In these circumstances we see no reason to deviate from the principles in the case of Bansidhar (supra).

80 We are of the clear opinion that clauses (b) and (c) of Section 6 of the General Clauses Act are thus, clearly attracted. Therefore, the repeal will not affect the previous operation of the Principal Act or anything duly done or suffered thereunder.

81 In that regard, assistance can be taken of the judgment of the Honourable Supreme Court in the case of *M/s Universal Imports Agency v/s Chief Controller of Imports* and Exports reported in **AIR 1961 SC 41**. In paragraphs 16 to 18 of this decision this is what is held:-

> *"16. What were the "things done" by the petitioners under the Pondicherry law ? The petitioners in the course of their import trade, having obtained authorization for the foreign exchange through their bankers, entered into firm contracts with foreign dealers on C.I.F. terms. In some cases irrevocable Letters of Credit were opened and in others bank drafts were sent towards the contracts. Under the terms of the contracts the sellers had to ship the goods from various foreign ports and the buyers were to have physical delivery of the goods after they had crossed the customs barrier in India. Pursuant to the terms of the contracts, the sellers placed the goods on board the various ships, some before and others after the merger, and the goods arrived at Pondicherry port after its merger with India. The prices for the goods were paid in full to the foreign sellers and the goods were taken delivery of by the buyers after examining them on arrival. Before the merger if the Customs Authorities had imposed any restrictions not authorized by law, the affected parties could have enforced the free entry of the goods in a court of law. On the said facts a short question arises whether paragraph 6 of the Order protects the petitioners. While learned counsel*

*for the petitioners contends that "things done" take in not only things done but also their legal consequences, learned counsel for the State contends that, as the goods were not brought into India before the merger, it was not a thing done before the merger and, therefore, would be governed by the enactments specified in the Schedule. It is not necessary to consider in this case whether the concept of import not only takes in the factual bringing of goods into India, but also the entire process of import commencing from the date of the application for permission to import and ending with the crossing of the customs barrier in India. The word "things done" in paragraph 6 must be reasonably interpreted and, if so interpreted, they can mean no only things done but also the legal consequences flowing there from. If the interpretation suggested by the learned counsel for the respondents be accepted, the saving clause would become unnecessary. If what it saves is only the executed contracts, i.e., the contracts whereunder the goods have been imported and received by the buyer before the merger, no further protection is necessary as ordinarily no question of enforcement of the contracts under the pre-existing law would arise. The phraseology used is not an innovation but is copied from other statutory clauses. Section 6 of the General Clauses Act (X of 1897) says that unless a different intention appears, the repeal of an Act shall not affect anything duly done or suffered there under So too, the Public Health Act of 1875 (38 & 39 Vict. c. 55) which repealed the Public Health Act of 1848 contained a proviso to s. to the effect that the repeal "shall not affect anything duly done or suffered under the enactment hereby repealed". This proviso came under judicial scrutiny in The Queen v. Justices of the West Riding of Yorkshire There notice was given by a local board of health of intention to make a rate under the Public Health Act, 1848, and amending Acts. Before the notice had expired these Acts were repealed by the Public Health Act, 1875, which contained a saving of "anything duly done" under the repealed enactments and gave power to make a similar rate upon giving a*

*similar notice. The board, in ignorance of the repeal, made a rate purporting to be made under the repealed Acts. It was contended that as the rate was made after the repealing Act, the notice given under the repealed Act was not valid. The learned Judges held that as the notice was given before the Act, the making of the rate was also saved by the words "anything duly done" under the repealed enactments. This case illustrates the point that it is not necessary that an impugned thing in itself should have been done before the Act was repealed, but it would be enough if it was integrally connected with and was a legal consequence of a thing done before the said repeal. Under similar circumstances Lindley, L.J., in Heston and Isleworth Urban district Council v. Grout confirmed the validity of the rate made pursuant to a notice issued prior to the repeal. Adverting to the saving clause, the learned Judge tersely states the principle thus at p. 313 : "That to my mind preserves that notice and the effect of it". On that principle the Court of Appeal held that the rate which was the effect of the notice was good.*

17. *It is suggested that the phraseology of the saving clause of the English Statutes and of the General Clauses Act of 1897 are of wider import than that of paragraph 6 of the Order and, therefore, the English decisions are not of any assistance in considering the scope of the saving clause of the Order. It is further stated that the English decisions apply only to a saving clause of an Act which repeals another but preserves the right created by the latter. We do not see any reason why the same construction cannot be placed upon the wording of paragraph 6 of the Order which is practically similar in terms as those found in the relevant saving clause of the English Statute and that of the General Clauses Act.*

18. *Nor can we find any justification for the second criticism. In the instant case the legal position is exactly the same. By reason of the Indo-French Agreement the Government of India made the Order under the Foreign Jurisdiction Act applying the Indian laws to Pondicherry. The effect of that Order was that*

> *the French laws were repealed by the application of the Indian laws in the same field occupied by the French laws subject to a saving clause. The position is analogous to that of a statute repealing another with a saving clause. If the English decisions apply to the latter situation, we do not see how they do not apply to the former. In both the cases the pre-existing law continues to govern the things done before a particular date. We, therefore, hold that the words "things done" in paragraph 6 of the Order are comprehensive enough to take in a transaction effected before the merger, though some of its legal effects and consequences projected into the post-merger period."*

82 Further in the case of *Amadalavasa Cooperative Agricultural and Industrial Society Limited v/s Union of India* reported in **AIR 1976 SC 958** in the context of compulsory insurance scheme and whether that survives with all attendant conditions upon repeal of the Principal Act, namely, the Emergency Risks (Factories) Insurance Act, 1962 the Honourable Supreme Court held as under:-

> *"18. The appellants challenged the finding of the High Court that the liability to pay the evaded premia arose during the currency of the Acts and contended that the liability itself was dependent on the ascertainment by the authorised officer of the insurable value of the factory or goods in accordance with the Third Schedule and that until the extent of the liability was so ascertained, there could be no liability and so, Section 6 of the General Clauses Act, was not attracted. In other words, the contention was that until the liability of the insured was determined by the authorized officer by ascertaining the correct insurable value in accordance with the provisions of the Third Schedule, no liability to pay the evaded premia arose and therefore, no liability was incurred before the expiry of the Acts which could be enforced under the provisions of Section 6 of the General*

*Clauses Act after their expiry.*

19. *It is clear from the provisions of the Acts that the duty to take out insurance policy for the full insurable value of the factory or goods was mandatory and that the failure to do so was an offence. Be sides, in the case of failure to insure for the full insurable value, provisions were made for recovery of the relative premia. To effectuate this purpose, the procedure for determination of the insurable value of the factory or goods and of the premia evaded was also provided.*

20. *There is no compulsion in a voluntary insurance that the cover should be made for the entire insurable value of the property. The premium collected in a voluntary insurance is related to the quantum of the risk undertaken in the light of the insurable value suggested by the insured. Generally, in a voluntary insurance the premium is paid in consideration of the cover provided. In other words, premium is paid in order to enable the insurer to indemnify the insured against loss or damage on account of the risk specified. The scheme of insurance envisaged by the Acts was different. There was no element of consensus on the fundamental terms of insurance in the scheme. The liability to take insurance policy for the full insurable value of the factory or goods was compulsory. The terms and conditions of the policy to be taken were governed solely by the provisions of the Acts and the Schemes. It is a mistake to assume that the rights and liabilities of the parties in this statutory scheme were similar, to those of a voluntary contract of insurance, If the liability to take the insurance policy for the full insurable value was absolute, and if the terms and conditions of insurance were settled by the terms of the statutes and the Schemes read with the Schedules, there is no merit in the contention of counsel for the appellants that the obligation of the President as insurer was same as that of an insurer in a contract of voluntary insurance. The liability to pay premia in case of under-valuation was not dependent upon the subsequent determination of the full insurable value of the factory or goods insured. If the factory or goods*

> *was under-valued, when the insurance policy was taken, the liability to pay premia on the basis of the full insurable value arose at the time when the policy was taken. That liability was not dependent upon the ascertainment of the full insurable value by the authorised officer in accordance with the Third Schedule."*

83 Once the repeal of the Principal Act has been understood not to affect any right, privilege, obligation or liability accrued or incurred under the Repealed Act, then, we do not find that the Repeal Act in this case has manifested an intention contrary to applicability of Section 6 of the General Clauses Act.

84 When the word and expression used is "obligation or liability incurred under any Repealed Act", then, the term "liability" is understood to be of large and comprehensive significance and when construed in its usual and ordinary sense in which it is commonly employed it expresses the state of being under obligation in law or in justice [see AIR 1959 Punjab 328 (*First National Bank Limited v/s Seth Sant Lal*)].

85 A Full Bench of Delhi High Court in the case of *Mohd. Yaqub v/s Union of India* reported in **AIR 1971 Delhi 45** followed the above Punjab High Court's view and held that the liability is the state of being bound or obliged in law or justice. In Black's Law Dictionary the word "liability" is defined to mean "the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility". It is, therefore, a word of widest import meaning an obligation or duty to do something or to refrain from doing something. [see paras 13 to 16 of AIR 1971 Delhi 45].

86 We cannot, therefore, be unmindful of the fact that the words "liability incurred" have been construed as very general and comprehensive and ordinarily taking both civil and criminal liability. [*See Kapur Chand Pokhraj v/s State of Bombay AIR 1958 SC 993]*.

87 Such being the position in law we cannot accept Mr.Naphade's contentions that the judgment of the Honourable Supreme Court in the case of Bansidhar (supra) would not apply.

88 We are further not in agreement with Mr.Naphade that Bansidhar's case (supra) was confined to agricultural ceiling law and reenactment thereof. Even with regard to the Principal Act before us it has been held by our Court in *Sadashiv Durgaji Ambhore v/s State of Maharashtra* reported in **1992 Mh.L.J. 1300** as under:-

> *"8. Coming to the scheme of the U.L.C. Act it is crystal clear that no person can retain vacant land in urban area more than the prescribed ceiling limit. The excess or better still the surplus land has to vest in the State. There can thus be no question of escaping the prohibition imposed by the statute, the validity of which is already tested before. Therefore, once the surplus land is determined by the Competent Authority the original owner has no right over such land and in due course those lands must vest in the State.*
>
> *9. Looking to the aforestated objectives as well as the scheme of the U.L.C. Act, the lands which are found to be in excess of the prescribed limit can never revert back to the owner under any of the circumstances. It must end with the vesting of such surplus lands with the State Government. Otherwise the very object and purpose for which the Act has been enacted would frustrate and the holder of excess land would contravene the provisions of Section 3 exposing him*

*to prosecution for offence under Section 38 of the Act.*

*10. One more aspect that falls for consideration is the use of the word "may" in Sub-section (3) of Section 10 of the U.L.C. Act. The said section reads as under:*

*"10(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: and 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."*

*The use of word "may" after the words "the competent authority" and before the words "by notification published in Official Gazette ……." will have to be construed as "shall" if the object and purpose of the U.L.C. Act as discussed above have to be achieved. The word "may" though primarily permissive is in certain circumstances to be treated as mandatory and those circumstances are available looking to the scheme of the Act."*

89 Therefore, the land which is vacant and in excess of ceiling limit on the date of commencement of the Act is subject to Chapter-III of the Principal Act and its application thereto is undisputed. If such undisputed absolute application is the position emerging from the statute and because of an exceptional circumstance the applicability is held in abeyance, then, it is not open to those persons holding such lands to contend that the Principal Act has been repealed, therefore, it's applicability to the lands in question will not survive the repeal. If as contended by the learned Advocate General the exemption keeps in

abeyance the applicability of Chapter-III till such exemption order is in force and does not rule out the applicability of the Principal Act, then, we cannot accept the arguments of the learned Senior Counsel for the Petitioners to the contrary. Realizing this position, Mr.Naphade and other Senior Counsel toned down their submissions to some extent. They urged that Section 10 of the Principal Act is the heart of the Principal Act and once the consequences of sub-section (3) of Section 10 of the Principal Act cannot be visited on the Petitioners after repeal of the Principal Act, then, a contrary intention is manifested. If we hold that such contrary intention is not manifested and Section 6 of the General Clauses Act applies to the repeal in question, then, that would result in inconsistency and absurdity. This argument is premised on the fact that sub-section (2) of Section 20 of the Principal Act is not saved and that is not specifically referred in clause (b) of sub-section (1) of Section 3 of the Repeal Act and hence, the above result will follow.

90 For the reasons that we have set out hereinabove it will not be possible to accept any of these contentions. Firstly, as understood in the case of clause (a) of Section 20(1) of the Principal Act the exemption is granted qua the excess vacant land and bearing in mind the factors and circumstances indicated therein. Secondly, it is an exemption granted in public interest and to subserve it. Thirdly, even if the exemption is granted under clause (b) of Section 20(1) that is to relieve the undue hardship. Under both clauses the exemption order could be conditional. If the validity of the exemption order together with the conditions is saved and equally any action taken thereunder, then, it will not be proper to hold that the exemption order and conditions therein cannot be enforced by recourse to the Principal Act. That is because if the exemption is a right

as is claimed, then, it is conditional. It is a right accrued, but the conditions subject to which that right accrues cannot be ignored. Those conditions are linked to the right and privilege acquired or accrued. If that condition is in the nature of obligation or liability attached to the privilege or right, then, a different intention not being spelled out that is saved despite the repeal. The reasons, therefore, indicated above would take care of these submissions of the learned Senior Counsel appearing for the Petitioners and are enough to reject them.

91 If an intention was to the contrary as urged by the learned Senior Counsel for the Petitioners, then, there was no need for the Parliament to have save the validity of any exemption order under sub-section (1) of Section 20 of the Principal Act or any action taken thereunder and declare the same to be not affected by repeal of the Principal Act notwithstanding any judgment of any court to the contrary. There may have been cases before repeal of the Principal Act in which there was challenge to the exemption orders or to the conditions thereunder. Some of these challenges may have succeeded. The validity of the exemption order may have been put in issue and even such pronouncements of the court may affect the order granting exemption or any action taken thereunder. Now, because of Section 3(1)(b) of the Repeal Act, it is apparent that the order or condition or action is not invalid. It is declared to be valid by the Repeal Act and, therefore, the repeal of the Principal Act was not to affect the validity of such an order. In other words during subsistence of the Principal Act and when it was in force the exemption order or condition thereunder or any action taken thereunder may have been declared invalid by a court of law. Now, notwithstanding any judgment of any court to the contrary the validity of

exemption order is saved. That is saved expressly so as to not take away its legal effects. The intent is not to affect adversely the legal consequences flowing from such valid order. Hence, far from manifesting or demonstrating a contrary intention, Section 3 of the Repeal Act is consistent and in consonance with the applicability of Section 6 of the General Clauses Act. In these circumstances we are of the view that the principle laid down in the afore noted cases including Bansidhar (supra) would squarely apply.

92 That leaves us with only one argument of Mr.Sridharan and he submits that Section 6 of the General Clauses Act will not apply because the Repeal Act has to be adopted in terms of sub-section (3) of Section 1 of the Repeal Act by the States other than the States of Haryana and Punjab. He relied upon Article 252 of the Constitution of India and particularly clause (2) thereof.

93 We are unable to accept his contentions and for obvious reasons. Article 252 of the Constitution of India confers power in the Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. Clause (2) thereof states that any Act passed by the Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner, namely, as set out in clause (1) of Article 252 of the Constitution of India by any State to which it applies, but the State Legislature of that State cannot amend or repeal any Act of the Parliament on its own. That it has to adopt it by resolution passed in that behalf is clear by clause (1) of Article 252. However, we do not find anything in the language of Section 6 of the General Clauses Act which would enable us to hold that the same does not apply in the

situation with which we are concerned. It will have to be clarified that the Principal Act in the case is the Central Act. It has been made after commencement of the General Clauses Act, 1897. Equally, the Repeal Act is an Act of Parliament made after the General Clauses Act. Just as the Principal Act had the section of applicability and applied at once to some States, but had to be adopted by other States and a resolution had to be passed in that behalf, similarly, the Repeal Act also contains identical provisions. Merely because the Repeal Act has to be adopted and comes into force in the State which it adopts upon passing of the resolution by the House of that State will not mean that Section 6 of the General Clauses Act does not apply. The applicability of Section 6 of the General Clauses Act has to be seen qua the Repeal Act. Mr.Sridharan does not dispute that it applies to the Repeal Act. His argument is that because of adoption of the Repeal Act by resolution of the House of the State of Maharashtra, Section 6 of the General Clauses Act will not apply. The resolution merely adopts the Repeal Act made by the Parliament in the State. If Section 6 of the General Clauses Act applies to the Repeal Act and that is how its applicability is being tested, then, the argument of Mr.Sridharan need not detain us.

94 Reliance that Mr.Sridharan placed upon the judgment in the case of *Kolhapur Canesugar Works Limited v/s Union of India* reported in **(2000) 2 SCC 536** is entirely misplaced. There, the Honourable Supreme Court was concerned with a situation as to whether Section 6 of the General Clauses Act, which is applicable to repeal of enactments by a Central Act or Regulation, would apply in the case of either omission or rule. The Constitution Bench held that this Section 6 cannot apply in case of omission of a rule and the term regulation in Section 6 of the General

Clauses Act has specific legal connotation. That has been defined legally and in that regard the definitions of the terms “enactment”, “regulation” and “Central Act” have been noted in paragraphs 18 and 19. These definitions are to be found in the General Clauses Act itself. Since a mere rule would not be covered by the term “regulation” as defined that the Constitution Bench held that going by Section 3(51) of the General Clauses Act Section 6 has no applicability in the case of omission of a rule. We do not see how this judgment can have any applicability in our case. Rather the observations in paragraph 32 of this judgment clarify the position that so long as a “Rule” takes its colour from the definition of the terms in the General Clauses Act the repeal of the same cannot be construed in the light of Section 6 of the General Clauses Act.

95 In that regard, reliance placed by the learned Advocate General on the judgment of the Division Bench of the Madhya Pradesh High Court reported in **AIR 1979 Madhya Pradesh 108** (*Rajendra Kumar v/s State of Madhya Pradesh*) is appropriate. In paragraph 7 of this decision the Division Bench clarified the legal position that when the Parliament passes an Act with the consent of States the Act so passed cannot be classified as a State Act. Further, the Division Bench clarified the legal position in the context of Article 252 of the Constitution of India as well. (See paras 4 and 8). Mr.Sridharan's arguments overlook the fact that the Repeal Act has merely been adopted by the State of Maharashtra by passing a resolution by the Legislature of that State and therefore, it is not the resolution of the State Assembly with regard to which we are looking at the applicability of Section 6 of the General Clauses Act. Mr.Sridharan, therefore, rightly canvassed alternate arguments and which are more or less on the same lines as that of Mr.Naphade and other Senior

Counsel. Additionally, Mr.Sridharan submitted that Section 3 of the Repeal Act and particularly clause (b) of sub-section (1) thereof is a special saving and saves only that which is specifically mentioned. There is no room for any implication or reading into it something which is not specifically mentioned therein. It is his argument that it is not a validating statute or clause. It saves a subordinate legislation according to him.

96 None of these arguments are sound in law. We are concerned with Section 3 of the Repeal Act which is titled “saving”, but sub-section (1) thereof states that the repeal of the Principal Act shall not affect and what it is not affected thereby is set out in clauses (a), (b) and (c) of sub-section (1) of Section 3. By clause (a) the repeal will not affect the vesting of any vacant land under Section 10(3), possession of which has been taken over by the State Government. If the intention was to obliterate and wipe out everything, then, there was no need to insert clause (a) as well. Clause (a) has been inserted so as to save the vesting of the land under Section 10(3) and which is in possession of the State Government. The Legislature was aware that in the light of the repeal of the Principal Act it would be necessary to save the vesting inasmuch as sub-section (3) of Section 10 of the Principal Act itself speaks of vesting of the excess vacant land in the State absolutely free from all encumbrances upon its deemed acquisition. That deemed acquisition results after a declaration is published in the official Gazette in terms of Section 10(3). The Parliament stepped into to save only such vesting which has resulted in the land being taken over by the State Government and not otherwise. By a mere declaration in terms of Section 10(3) the vesting which otherwise takes place would not be saved if in pursuance thereof the land is not taken over by the State. Therefore, it is incorrect to urge that Section 3 of the

Repeal Act saves a subordinate legislation. Clause (a) of sub-section (1) of Section 3 of the Repeal Act is a substantive provision and the repeal clearly affects the vesting of land of which possession has not been taken because by sub-section (2) of Section 3 such land can be restored. Hence, a situation where there is a declaration issued and contained in the notification contemplated by Section 10(3) of the Principal Act, but the State failed to act in pursuance thereof and has not exercised it's power under sub-sections (5) and (6) of Section 10 of the Principal Act, is dealt with by Section 3(1)(a) of the Repeal Act. By clause (b) a substantive provision has been made and to deal with a different situation, namely, the excess vacant land and which may or may not be covered by declaration under Section 10(3), but which is exempted in exercise of the statutory power conferred vide Section 20(1) of the Principal Act. It is the exercise of that power to exempt and all consequences which follow a valid exemption order that are saved by clause (b). This is as set out above not only saving the validity of order granting exemption, but any action taken thereunder and notwithstanding anything in any judgment of any court to the contrary. One more aspect or matter is dealt with by clause (c) of sub-section (1) of Section 3 of the Repeal Act inasmuch as if for granting exemption under Section 20(1) of the Principal Act there is a condition to make payment to the State Government and if the payment is made in compliance thereof, then, that payment made to the State Government is also saved. Therefore, on reading Sections 3 and 4 of the Repeal Act it is not possible to accept the arguments of Mr.Sridharan that only a subordinate legislation is saved either by Repeal Act or Section 3. Had it not been so Mr.Sridharan would not have further alternatively argued and adopted the contentions of Mr.Naphade and others that the power to withdraw the exemption or initiate an action under Section

20(2) of the Principal Act is not saved or does not survive the repeal.

97 We have already dealt with that argument and rejected it for the reasons set out above. A faint attempt was made by Mr.Sridharan to show that clause (b) has been inserted in sub-section (1) of Section 3 of the Repeal Act to protect the rights of innocent third parties or action under the exemption orders which may affect them. It is not a substantive provision and by no stretch of imagination revives the Principal Act is his argument. We fail to see as to how in the absence of clause (b) a power of exemption once exercised and when the Principal Act was in force, but that order or any action taken thereunder being declared invalid that could have survived the repeal even with the aid of Section 6 of the General Clauses Act, 1897. In other words, it could have been argued that not only there should be a power of exemption exercised, but the order in that behalf or any action taken thereunder should have been valid, lawful and subsisting on the date of the Repeal Act or at least when it came into force. It could have been then said that only in such a situation that the order would survive the repeal even without insertion of clause (b) in sub-section (1) of Section 3 of the Repeal Act with the aid of Section 6 of the General Clauses Act. To get over this situation and position a substantive provision has been made in the Repeal Act which says that the repeal of the Principal Act shall not affect the validity of any order granting exemption under Section 20(1) of the Principal Act or any action taken thereunder notwithstanding any judgment of any court to the contrary. This is a substantive provision and read together with other clauses of sub-sections (1) and (2) of Section 3 and Section 4 of the Repeal Act, so also, Section 6 of the General Clauses Act and harmoniously does not revive the Principal Act as is urged, but saves the

exemption order in exercise of the powers conferred by the Principal Act or any action taken thereunder by declaring it to be valid notwithstanding any judgment of any court to the contrary. That would be the correct reading of the provisions or else Mr.Sridharan would not have still further argued that clause (c) of sub-section (1) of Section 3 of the Repeal Act does not save the liability incurred under the exemption order, but only saves the payment made to the State Government. This further alternate argument itself would show that Mr.Sridharan is not on a strong and sound legal footing in urging that Section 3 of the Repeal Act is not a substantive provision. That it is titled as "savings", but contains the substantive provisions which do not show any contrary intention to applicability of Section 6 of the General Clauses Act is what is held by us hereinabove. A correct and proper reading of clause (c) of Section 3(1) of the Repeal Act would be that the Legislature had in mind a conditional exemption order. One of the conditions could have been of making payment to the State Government for granting exemption under Section 20(1) of the Principal Act. If the power to exempt does not survive the repeal, but the intent was to save the power to exempt already exercised conditionally or otherwise that the Legislature stepped in to save even payment made to the State Government for grant of such exemption. That is because a beneficiary of the exercise of power of exemption should not, post repeal of the Principal Act, urge that the State has no right to retain the amount paid by him, but must refund it. That he has already made payment and the power to exempt having been exercised when the Principal Act was in force that it is clarified that the payment made to the Government as a condition for granting exemption would survive the Repeal. That is to take care of the plea that such payment will no longer be valid as the exemption comes to an end post repeal. Therefore, in

order to declare that the power of exemption once exercised would survive the repeal and equally the condition of payment thereunder that clauses (b) and (c) have been inserted.

98 We find that Mr.Sridharan is not right in placing reliance on the judgments of the Honourable Supreme Court firstly in the case of *Shri Prithvi Cotton Mills Limited v/s Broach Borough Municipality* reported in **2000 (123) ELT page 3 (SC)**. There, the Honourable Supreme Court was considering a case of the rate on the lands and buildings imposed under the Bombay Municipal Boroughs Act, 1925. Certain Assessees challenged the imposition of these rates and filed the Writ Petitions to question it and get the assessment cancelled. During the pendency of the Writ Petitions the Legislature of Gujarat passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. The Writ Petitions were, therefore, amended and the Validation Act was questioned. The Honourable Supreme Court, therefore, was considering the validity and legality of Section 3 of this Validation Act. It is in that context that the observations regarding a Validating Statute have been made. We do not see as to how this judgment can have any application in the light of our conclusions recorded hereinabove. This judgment is, therefore, clearly distinguishable.

99 Equally, misplaced is the reliance on the judgment of the Honourable Supreme Court in the case of *Union of India v/s West Coast Paper Mills Limited* reported in **2004 (164) ELT 375 (SC)**. There, the question was as to whether the appeal can be considered as continuation of the suit. We do not find how this judgment can assist Mr.Sridharan in his arguments on the Reference before us.

100 Once we have held that neither the power to exempt can be said to be legislative nor can it be held that the Repeal Act saves the subordinate legislation, then, no assistance can be derived from the judgment in the case of *Air India V/s Union of India* reported in **(1995) 4 SCC 734**. Rather some of the observations therein and particularly reference to Bennion on Statutory Interpretation in paragraph 7 of this judgment would assist us and reinforce our above conclusions.

101 We are not in agreement with Mr.Naphade that the power to exempt conferred by Section 20 of the Principal Act is legislative in nature. We are of the clear opinion that this power is Quasi-Judicial in nature. The nature of this power is to exempt the excess vacant lands. In other words, they are vacant lands in excess of ceiling limit. They are exempted from the provisions or applicability of Chapter-III on the satisfaction reached and which is to be found in clause (a) and clause (b) of sub-section (1) of this provision. In a decision reported in **AIR 1982 Madhya Pradesh 33** (*Nandakishore v/s State of M.P.*), the Division Bench of Madhya Pradesh High Court held as under:-

> *"5. …….. Clause (a) of Sub-section (1) of Section 20 of the Act empowers the State Government to exempt any vacant land in public interest; whereas Clause (b) thereof empowers the State Government to grant exemption to any person who holds vacant land in excess of the ceiling limit, where such exemption is considered necessary to avoid undue hardship to such person. The second schedule to the Act inter alia prescribes Rs.10/- as court-fees stamp to be paid on an application for exemption of vacant land under Section 20 of the Act. The power to exempt so conferred on the State Government carries with it an obligation to exercise that power on a case being made out for the purpose. Of course, the power to exempt is exercisable by the State Government on its*

*own motion, but the same can be exercised otherwise also. This is what flows from the use of the expression "either on its own motion or otherwise" used in Clauses (a) and (b) of Section 20(1) of the Act. The words "or otherwise" cannot be construed ejusdem generis and are indicative of the fact that the power is exercisable on being invoked in any other manner. The natural corollary of this position of law is that the petitioners have right to submit a petition invoking the exercise of the power of exemption so conferred on the State Government. This Legislative intendment is also clear from the provision of court-fee on an application for exemption of vacant land under Section 20 of the Act made in Schedule as stated above. The power to exempt by its very nature in cases to which Clause (a) of Section 20(1) of the Act is applicable, appears to be exercisable in public interest; whereas so far as Clause (b) of Section 20(1) of the Act is concerned, the power is exercisable for the benefit of the holders so that undue hardship on account of operation of the Act may be avoided. In present case the petitioners appear to invoke the power vested in the State Government under Section 20(1)(b) of the Act. Now, in order that the power to exempt may be exercised under the aforesaid Clause (b), it is necessary that the State Government should be satisfied that the application of the provisions of the Chapter III (in which Section 20 is placed) would cause undue hardship to the person who holds the vacant land in excess of the ceiling limit. On a case of undue hardship being made out, the State 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 the said Chapter. Thus in essence the provision is for the benefit of the holder and its object appears to be to grant exemption so as to avert causing of undue hardship to him by operation of the law. If the State Government feels satisfied that a case has been made out for grant of exemption claimed, then an order of exemption may be passed even without hearing the claimant. An order in favour of a party can be passed*

*behind his back even. But the question is whether an order affecting the interests of the claimant adversely can be passed without hearing him. Having regard to the object which the provisions placed in Section 20(1)(b) of the Act have to achieve and also having regard to the serious consequences which will ensue in case the claim for exemption is rejected without hearing the claimant, it has to be held that the claimant has to be heard before refusal of his claim for exemption, so that he may show that there will be undue hardship to him in case exemption is not granted. Section 20(1)(b) of the Act does not negate natural justice and in absence of express exclusion of the rule of audi alteram partem, it is fair, indeed fundamental, that the person claiming exemption should not be prejudiced by action without opportunity to show the contrary.*

6. *The power of exemption has the effect of restoring the applicability of the general law by taking away the exemption to it created by the special law, Accordingly, the power to claim exemption is a valuable right. Where under the provisions of an Act an authority is empowered to grant exemption and a person has a right to claim it on fulfilment of statutory conditions, the authority is bound to hear him and pass a speaking order giving reasons in support of its finding that he is not entitled to the exemption.*

7. *Faced with this situation Shri Kulshreshtra contended that the satisfaction postulated by the aforesaid provision is subjective satisfaction merely and that in absence of a corresponding provision in Clause (b) of Section 20(1) for giving an opportunity of hearing, as placed in Sub-section (2) of Section 20 of the Act, hearing of the petitioners prior to passing of the impugned order was not necessary.*

8. *Satisfaction of the State Government contemplated by cl. (b) of Section 20(1) of the Act has to be with regard to the nature of hardship, which would be*

*caused to the claimant. Accordingly, the satisfaction envisaged has to be objective in its character and cannot be subjective satisfaction merely, the touchstone for testing the validity or otherwise of the satisfaction having been provided by the law. The function of the State Government accordingly is of a quasi-judicial character.*

9. *It is true that unlike Sub-section (2) of Section 20 in Clause (b) there is no specific provision for giving a reasonable opportunity to the person concerned, but from the language employed therein and in view of the object which the provision has to achieve it has to be regarded that acting upon the principle of natural justice regarding hearing of the claimant is necessary while deciding his claim for exemption thereunder. A bare perusal of the impugned order will show that it has been passed in accordance with the order passed by the State Government in the department of Land Records and Settlement on 23-1-1980 rejecting the application of the petitioners for grant of exemption. It is not shown that the petitioners were either heard by the State Government prior to passing of the order conveyed vide Annexure R/5, to the Deputy Commissioner of Land Records and Settlement, who passed the order contained in Annexure P/2, in pursuance thereof .*

10. *……*

11. *Another contention put forth by Shri Kulshrestra was that in view of the proviso to Clause (b), recording of reasons is necessary only in case of grant of exemption. This contention does not merit acceptance. The expression "no order under this clause" is wide enough to cover the order of grant as well as refusal. Even otherwise, if in case of granting exemption reasons are required to be stated it beats ones imagination how in cases of rejection a claim for exemption recording of reasons can be regarded to be unnecessary.*

> *12. Lastly, it was contended by Shri Kulshrestra that the use of the word "may" in Clause (b) of Section 20(1) of the Act does show that the power is discretionary and if in its discretion the State Government have rejected the application no challenge can be entertained against the order of rejection. The contention advanced by Shri Kulshrestra on the point overlook the principle of law that when power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it. Where a power is deposited with a public officer for this purpose of being used for the benefit of persons specifically pointed out with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised. --See Jullius v. Lord Bishon of Oxford, ((1874-80) ALL ER Rep. 43 (HL) at p.47. Viewed from this angle, it appears that the provisions placed in Section 20(1)(b) of the Act are for the benefit of holders and the power conferred thereby is exercisable for their benefit for averting undue hardship that would be caused to them if the land in respect of which exemption is claimed is not exempted from the operation of the Act. Accordingly, on case being made out, exemption has to be granted and the State Government cannot withhold the exemption claimed. As such, the word "may" cannot be construed in a manner to clothe the State Government with arbitrary power to reject an application for exemption, even if the conditions for grant thereof stand made out."*

102 This judgment has been followed by another Division Bench of Gujarat High Court in **AIR 1985 Gujarat 47** (*Manilal Hiralal Doshi v/s State of Gujarat*). We are not concerned with other findings and conclusions of the Division Bench of Gujarat High Court, but in paragraph 4 of this judgment the observations of the Madhya Pradesh High Court are referred and followed and in paragraphs 3 and 5 this is what is held:-

*"3. ……. The Government's satisfaction about granting or not granting the exemption under that provision obviously rests on objective facts. The factors which are required to be taken into account by the Government are (1) the location of the land, (2) the purpose for which such land was used at the time the application comes to be made or (3) the purpose for which such land is proposed to be used in future and (4) such other relevant factors as make the Government decide that it is necessary or expedient and that too in the public interest to grant the exemption. What is public interest is a matter difficult to be defined, but not difficult to be understood by description. A good deal of factors would be required to be examined by the Government under this head it is well said that in a complex spectrum of facts like the one required to be examined by the Government for the purpose of exercising its powers under S. 20(1)(a) which powers are not absolute powers but are powers coupled with a duty. The Government must have proper presentation of materials before it More often than not if such a complex issue is taken on hand by the Government ex parte, incorrect or improper decision is likely to arise. It is, therefore, in the fitness of the things that the Government should ordinarily hear the applicant if the Government is prima facie and ex parte inclined to take a view that the exemption was not to be granted. If an applicant has specifically sought for an opportunity to present the case personally or through an agent in a situation like the one arising under S. 20(1)(a) of the Act it is all the more necessary for the State Government to hear the applicant. ……. When a citizen applies for exemption say for example, for establishing any industry and such proposed future user of the land is one of the relevant factors to be counted while dealing with an application under S. 20(1)(a) of the Act, the citizen in such a situation would be able to explain his difficulties more effectively if personal hearing is granted. It is because of this far reaching effect of the Governments decision on his prospects that we say that the hearing is required to be read as the implicit*

*requirement of the provisions of the S. 20(1)(a)(b) of the Act.*

5. *It is no doubt true that the judgment of the Madhya Pradesh High Court was one relating to an application for exemption under sub cl (b) of sub s. (2) of S. 20 of the Act but the underlying principles remain the same. As a matter of fact some petitions in this group are the petitions for exemption under S. 20(1)(b) itself. To our mind the underlying principles remain the same when the Government has to consider an application for exemption either under Cl (a) or Cl (b) of sub s. (1) of S. 20 of the Act. In this view of the matter these nine petitions beginning with the Special Civil Application No.2181/83 are required to be allowed-by setting aside the orders of refusal to grant exemption. The outcome will he that the Government will afford a reasonable opportunity of audience to all these petitioners and then decide their applications afresh in accordance with the provisions of the Act. The extension of opportunity of audience can be best proved to have been given by the necessary corollary of giving reasons if the vigorous submission's of the applicants are dealt with by a reasonably reasoned order, It is in the interest of the Government also to give a reasoned order in order to escape the charge of non- application of mind. We accordingly direct to give personal hearing to these petitioners and decide the matters by a reasonably reasoned order."*

103 The above quoted observations of the Division Bench of the Gujarat High Court and prior thereto of the Madhya Pradesh High Court have our respectful concurrence.

104 Similar view has been taken by the learned Single Judge of Karnataka High Court in the judgment reported in **AIR 1987 Karnataka 5** (*D.Ananthakrishna Bhat v/s Special Deputy Commissioner and Competent*

*Authority, Mangalore*). In paragraph 16 this is what is held:-

> *"16. It is true that unlike sub-section (2) of Section 20, in clauses (a) and (b), there is no specific provision for giving a reasonable opportunity to the person concerned. But it seems to me from the language employed therein and also in view of the object sought to be achieved, it is to be regarded that acting upon the principles of natural justice regarding hearing of the claimant is necessary while deciding his claim for exemption thereunder. Satisfaction of the State Government contemplated under clauses (a) and (b) of sub-section (1) of Section 20 of the Act has to, be with regard to the question of public interest or the nature of hard ship, which would be caused to the claimant. Having regard to these objects to be achieved, it must be reasonable to hold that the satisfaction envisaged has to be objective in its character and cannot be merely subjective satisfaction the touchstone for testing the validity or otherwise of the satisfaction having been provided by the law. In this view, the function of the State Government, appears to me, is of a quasi-judicial character. The view I take gains support from a decision of the Madhya Pradesh High Court in Nandakishore v. State, AIR 1982 Madh. Pra. 33."*

105 The above observations have been followed in a Division Bench judgment of this Court reported in **1988 Mh.L.J. 773** (*Janardhan Gadekar v/s Assistant Collector and Competent Authority*). (see para 13).

106 The above conclusions are enough to show that the power to exempt cannot be said to be legislative, but is held to be quasi-judicial in nature. It is, therefore, clear that the said power can be invoked by the applicant/ individual also. Secondly, it requires an order to be passed in either event and which should be communicated to the party/ person.

This would outline the nature of the power and which surely cannot be said to be legislative in character. We need not, therefore, refer to any further decisions and which would set out the difference between the powers, namely, legislative and quasi-judicial.

107 The judgments that have been cited by Mr.Naphade must now be noted. He strenuously urged that he is supported in his argument by the judgment of the learned Single Judge of Andhra Pradesh High Court in **Writ Petition No.26474 of 2009** (*Surendra Raj Jaiswal v/s Government of Andhra Pradesh*) decided on 24.08.2011. There, the Writ Petition was filed challenging the rejection by the Government of the claim of the Petitioners and permission sought by them to construct a multiplex theatre-cum-shopping complex in the place of existing cinema theatre. It was their case that they had filed declaration declaring various extents of land held by them along with their father on the commencement of the Principal Act. They also filed an application before the Government seeking exemption from Chapter-III of the Principal Act so as to run an existing cinema theatre on their property called Deepak Mahal Cinema situate at Narayanguda in Hyderabad Urban Agglomeration. The order of exemption was passed and with a condition that the said land should be utilized only for running a cinema theatre and subject to further conditions which are incorporated in the order of exemption. It was by virtue of exemption order that cinema theatre was being run. Thereafter, the Principal Act was repealed in the State of Andhra Pradesh after adoption of the Repeal Act with effect from 27.03.2008. It is in these circumstances that the Petitioners argued that they are entitled to use the property for construction of Multiplex Theatre -cum- shopping complex. We find that from paragraphs 2 to 6 the facts

are noted. Thereafter, in paragraph 8 reference is made to the Principal Act and the power to exempt. Then in paragraph 9 reference is made to the Repeal Act. In paragraphs 10 and 11 the learned Single Judge held as under:-

> *"10. From a perusal of the aforesaid provisions under Sections 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act of 1999, it is clear that the orders granting exemption under sub-section (1) of Section 20 of the principal Act are saved. It is also clear from a perusal of the provision under Section 3(1)(c) of the Repealing Act that repeal of the principal Act shall not affect any payments made to the State Government as a condition for granting exemption under sub-section (1) of Section 20 of the principal Act. But, at the same time, the provision under sub-section (2) of Section 20 is not saved. Section 20(1) of the principal Act empowers the Government to exempt any land subject to certain conditions, but under sub-section (2) of Section 20 of the principal Act, the Government was empowered to withdraw such exemption in cases where conditions are violated. A harmonious reading of the provisions under Sections 20(1) and 20(2) of the principal Act, coupled with Section 3 of the Repealing Act, makes it clear that the order granting exemption is saved only with a view to avoid repayment of any amounts collected by the State Government, while granting exemptions. When the principal Act itself is repealed on the ground that it has failed to achieve the objective expected of it, it is not open for the 1st respondent-Government to refuse permission in the instant case, only on the ground that the conditions imposed in the order granting exemption shall continue to operate. In the absence of any saving clause, saving sub-section (2) of Section 20 of the principal Act, even in cases where conditions are violated, Government is not empowered to withdraw the exemptions granted under Section 20(1) of the principal Act, after coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. In*

*the absence of such power, and further, in view of the Repealing Act itself, the conditions imposed in the order granting exemption, have become un-enforceable and are non-est. In the absence of initiation of proceedings or withdrawal of exemption granted under Section 20(1) of the Principal Act before the enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the land, which is exempted, will become a freehold land, and hence, the stand of the respondents that even after coming into force of the Repealing Act, 1999, the conditions imposed in the order granting exemption under Section 20(1) of the principal Act shall continue to operate, cannot be accepted. The said interpretation will run contra to the very objective of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Said view also gains support from the other provisions of the Repealing Act, particularly Section 4, which states that all proceedings relating to any order made or purported to be made under the principal Act, pending immediately before the commencement of the Urban Land (Ceiling and Regulation) Repeal Act of 1999, shall stand abate, except in cases where possession is taken by the State Government or any person duly authorized by the State Government on behalf of the competent authority.*

11. *Having regard to the provisions under Section 20(1) and (2) of the Urban Land (Ceiling and Regulation) Act, 1976 and the provisions under Sections 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, it is to be held that in cases where the vacant land is exempted under Section 20 of the principal Act and where such exemption is not withdrawn before the enforcement of the Repealing Act, 1999, such land will become the free-hold land irrespective of any conditions with regard to usage of the exempted land. As held above, as the land in question has become the free-hold land in view of the Repealing Act, 1999, there appears no reason or justification for not granting permission to use the land covered by exemption proceedings, for the*

> *purpose of multiplex theatre-cum- shopping complex. In a strict sense, no such permission is necessary, but, when the competent authority under the Greater Hyderabad Municipal Corporation Act has not received the application, petitioner had to approach the Government, and as permission is denied by misconstruing the various provisions of the Repealing Act, 1999, the impugned order is liable to be set aside."*

108 We do not see how firstly in the teeth of the factual position where apart from the controversy with regard to survival of the order of exemption and conditions thereunder post repeal, could the permission to construct a multiplex theatre-cum-shopping complex in place of the existing cinema theatre have been refused by the State Government. The user was more or less similar with the original one. Apart therefrom the learned Single Judge of Andhra Pradesh has not referred to any of the judgments of the Honourable Supreme Court on the point and particularly the decision in the case of Bansidhar (supra). The learned Single Judge's attention was not invited to several aspects of the controversy and which we have extensively noted above. The learned Single Judge, therefore, with greatest respect, was not right in holding that in the absence of any reference to sub-section (2) of Section 20 of the Principal Act in clause (b) of sub-section (1) of Section 3 of the Repeal Act the conditions imposed in the order granting exemption do not continue to operate. We do not find any reference made to Section 6 of the General Clauses Act either. With greatest respect, we are unable to agree with the view taken by the learned Single Judge of Andhra Pradesh High Court in the decision referred above.

109 While on this point we also do not agree with Mr.Gangal when he relies on the view taken by another Single Judge of Madras High Court in **Writ Petition No.46091 of 2002 and W.P.M.P. No.30655 of 2004 decided on 29.01.2007** (*L.Kannappan and L. Thirunavukarasu v/s The Government of Tamil Nadu*). There, the arguments were with regard to acquisition of agricultural lands. Therein the Petitioners represented by their father purchased the agricultural lands. After the property was purchased the same was cultivated. The land was always agricultural land. In relation to such an agricultural land the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 were initiated and were sought to be continued. The Petitioners sought to make payment for obtaining extract from the records of right at which point of time it was informed that the lands have been acquired in the name of Dr.N.Sivasamy. In these circumstances and by holding that the acquisition under the said Ceiling Act when it was in force itself was invalid that the Writ Petition was allowed. Apart therefrom it was urged that since the Petitioners are in possession and enjoyment of the lands as reflected in the revenue records and possession was not taken from them the proceedings in that regard abate by virtue of the Repeal Act. This decision more or less is on applicability of Section 3(1)(a) of the Repeal Act and not an authority on the point in the present case. It is, therefore, clearly distinguishable.

110 Mr.Naphade's reliance upon a judgment of the Delhi High Court in the case of *Tej Pratap Singh v/s Union of India* in **Writ Petition (Civil) No.2455/1992 decided on 16.07.2009** must now be noted. There, a Division Bench of the Delhi High Court had before it a situation where the exemption was granted in terms of Section 20(1)(a) and

Section 22 of the Principal Act on 02.07.1992 subject to the condition that the Petitioners before the Delhi High Court would make payment of Rs.18,37,74,528/- to the Land & Building Department, Delhi Administration within 45 days. Aggrieved and dissatisfied with this condition the Writ Petition was filed in the Delhi High Court in 1992 itself which was styled as Writ Petition (Civil) No.2455/1992. During the pendency thereof the Repeal Act came into force. The facts have been noted and particularly that the Petitioner was pursuing his claim for exemption for the purpose of redevelopment of the property. He rather invited a decision from the Authorities on his application. That was because his building plans were not sanctioned. A Division Bench of Delhi High Court passed the interim order in another Civil Writ Petition which is referred to in paragraph 4 of the judgment. That interim order was challenged before the Honourable Supreme Court and the Honourable Supreme Court passed an order directing the competent authority under the Principal Act to decide the Petitioner's application. That is how the order impugned in the subject Writ Petition was passed. The earlier Writ Petition was disposed of as infructuous in the light of the Repeal Act being brought into force.

111 The argument was that the conditional exemption granted would not survive the repeal of the Principal Act. At best and at the highest if a condition of payment is not satisfied, then, the State Government could have withdrawn the exemption order when the Principal Act was in force. But, now same having been repealed that is no longer possible. We find that this was an alternate argument, but the main argument was that because the Principal Act is repealed there is no question of any exemption sought being granted or the question of grant

of any exemption does not arise. Therefore, understood in the above perspective the controversy was whether the claim for exemption made by the Petitioner and the conditional order of exemption would survive post repeal. The Petitioner had challenged the condition imposed in the order of exemption and he had not abided by the condition admittedly. There was thus no exemption order in force. Yet in such a matter a Division Bench of Delhi High Court made the following observations:-

> *"11. The learned counsel for the respondent nos. 2 to 4 submitted that Section 3(1)(b) of the Repealing Act would apply in this case whereby the exemption order has been specifically saved. Therefore, according to the learned counsel, the repeal of the ULCR Act would not affect the conditional exemption granted by virtue of the order dated 02.07.1992. The learned counsel for the respondent nos. 2 to 4 also submitted that the repeal is prospective and not retrospective. He also referred to Section 6 of the General Clauses Act, 1897 which deals with the effect of repeal. The said Section stipulates that repeal of an enactment by a Repealing Act, unless a different intention appears, shall not, inter alia, affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Consequently, it was submitted that the right of the petitioner to get an exemption under Section 20 (1) (a) was subject to the liability of making the said payment and other conditions which were imposed by the exemption order. According to him, by virtue of Section 6 of the General Clauses Act, 1897, the said liability, which had been incurred by the petitioner to make the said payment and to comply with the other conditions for the grant of exemption, was specifically saved by the Repealing Act.*
>
> *12. We have considered the arguments advanced by the counsel for the parties. One thing is clear that the ULCR Act has been repealed by the said Repealing Act. We have already quoted Sections 3 and 4 of the Repealing Act. Section 4 deals with abatement of legal proceedings and stipulates that all proceedings leading to any order made*

*or purported to be made under the principal Act pending immediately before the commencement of the Repealing Act before any court, tribunal or other authority shall abate. In other words, all such proceedings shall abate on and from the coming into force of the Repealing Act. There is a proviso to this Section which stipulates that it would not apply to proceedings relating to Sections 11, 12, 13 and 14 of the ULCR Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority. From a reading of the entire Section 4 of the Repealing Act, it is clear that all proceedings for declaring excess vacant land and acquisition of the said excess vacant land come to a halt except the proceedings pertaining to Sections 11, 12, 13 and 14 of the ULCR Act provided possession of the land in question has not been taken over by the State Government. In other words, those lands which had not been taken into possession by the State Government are excluded even in respect of the proceedings relating to Sections 11, 12, 13 and 14. It is clear that the intent of the Legislature was not to implement the provisions of the ULCR Act any further if they had not already resulted in the taking over of possession of the lands in question. This is the general intent which is discernable from a plain reading of Section 4 of the Repealing Act. In the present case, it is an admitted position that the land in question, which is situated at 23, Barakhamba Road, New Delhi, has not been taken into possession by the State Government. In fact, the stage of the present case is that an order under Section 8(4) of the ULCR Act has been passed and a final statement has also been prepared under Section 9 of the same Act. The matter has not proceeded to the stage of Section 10 which relates to acquisition of excess land and vesting of the said excess land in the State Government. There is, therefore, no question of the case having proceeded to any stage beyond Section 9 of the ULCR Act.*

13. *This takes us to the consideration of the Savings Clause*

*provided in Section 3 of the Repealing Act. Section 3 (1) (a) clearly stipulates that the repeal of the ULCR Act shall not affect 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 authorized by the State Government in this behalf or by the competent authority. We have noted above that the possession of the property in question is still with the petitioners and, therefore, this Clause is clearly inapplicable. Section 3 (1) (b) stipulates that the repeal shall not affect the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary. Section 3 (1) (c) provides that the repeal shall not affect any payment made to the State Government as a condition for granting exemption under sub- section (1) of Section 20. Reading sub-sections 3 (1) (a), (b) and (c) together, it appears to us that the intention of the Legislature is that where an exemption has been granted in favour of a land holder, that is not to be disturbed notwithstanding any judgment of any court to the contrary. The further intention that can be discerned from the said provisions is that the payment made to the State Government as a part of a condition for granting exemption under Section 20 (1) is also saved. From this, it can be understood that had it not been specifically provided that the payment made to the State Government as a condition for grant of exemption will not be affected by the repeal, the same would have been affected by the repeal. In other words, what this provision intends to save is the actual payment, if any, made to the State Government as a condition for granting exemption under Section 20 (1) of ULCR Act and not the condition itself. In the context of section 6 of the General Clauses Act, 1897, the petitioner"s right to exemption under section 20(1) of the ULCR Act is specifically saved, but, not the „liability" to make the payment, unless the payment had already been made prior to the repeal. The General Clauses Act, 1897 would, therefore, apply subject to this intention. And, the intention of Parliament appears to be that: (1) if any payments are made to the State*

> *Government, that is not to be disturbed and (2) if any exemption has been granted, that is also not to be disturbed. It does appear to us that after the repeal, the conditions of exemption which remain unimplemented cannot now be implemented because they are not specifically saved. The reason behind this being that ceiling in respect of urban lands by itself has been repealed altogether."*

112 For the reasons that we have recorded hereinabove, with greatest respect, we are unable to agree with the Division Bench of Delhi High Court. What has been held is that Section 3(1)(c) of the Repeal Act saves is the payment made to the State Government as a condition for granting exemption and not the condition itself. These observations are contrary to the further observations that by virtue of Section 6 of the General Clauses Act the Petitioner's right to exemption under Section 20(1) of the Principal Act is specifically saved, but not the liability to make the payment unless payment had already been made prior to the repeal. We do not see how such conclusion can be reached by the Division Bench after holding that Section 6 of the General Clauses Act, 1897 applies to the repeal. To the extent that we have held to the contrary, with greatest respect, we are unable to agree with the Delhi High Court's judgment.

113 Equally, Mr.Naphade's reliance upon the judgments of the Honourable Supreme Court in the case of *State of U.P. v/s Hari Ram* reported in **(2013) 4 SCC 280**, *M/s Tata Coffee Limited v/s Government of Andhra Pradesh* in **Writ Petition No.11929 of 2013 decided on 22.07.2013** (Andhra Pradesh High Court) and *Gajanan Kamlya Patil v/s Additional Collector & Competent Authority* in **Civil Appeal**

**No.2069/2014 decided on 14.02.2014** by the Honourable Supreme Court, is misplaced. Hari Ram's case (supra) was directly concerned when the State fails to take possession of the excess vacant land pursuant to the notification under Section 10(3) of the Principal Act. This is a decision on applicability of Section 3(1)(a) of the Repeal Act. True it is that the Honourable Supreme Court held that the word “vesting” or “vested” may or may not include transfer of possession, but all such observations must be seen in the context of the controversy, namely, the land being not taken over physically. At the same time, the Honourable Supreme Court has clarified in paragraph 41 of this judgment that the question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of a particular case.

114 Similar is the situation with the judgment in the case of Gajanan Kamlya Patil (supra). There, the question was whether this Court was justified in relegating the parties to file a civil suit to recover the lands so as to get benefit of the Repeal Act. On facts it was found that the Government failed to take actual possession of the surplus land before 29.11.2007. In this backdrop and following the judgment in Hari Ram (supra) that the order passed by the High Court was set aside and the Appeals were allowed.

115 M/s Tata Coffee Limited judgment (supra) is once again by the learned Single Judge of Andhra Pradesh High Court and there, the controversy was more or less identical inasmuch as the application for exemption was filed. The exemption was granted and the land was to be put to a user as specified in the order. That was done by the predecessor-

in-title of M/s Tata Coffee. Thereafter, the successor M/s Tata Coffee sought permission/ no objection certificate from the Joint Collector, Ranga Reddy district for utilization of the subject land for the purpose of development of housing scheme including providing of shelter to the weaker sections of the society. The Collector informed that the NOC cannot be granted unless the State Government accorded permission. That is how the representation was made to the State Government and which was rejected. For the reasons that we have recorded above, with greatest respect, we are unable to agree with the view taken by the learned Single Judge of Andhra Pradesh High Court.

116 Mr.Naphade then placed reliance on the judgment of the Honourable Supreme Court in *Synco Industries Limited v/s Assessing Officer, Income Tax, Mumbai* reported in **(2008) 4 SCC 22** wherein in the context of interpretation placed on the Income Tax Act and some of it's provisions, the Honourable Supreme Court held that where the predominant majority of High Courts have taken a particular view of the legal provision and interpreted it, the Supreme Court would lean in favour of this predominant view, but exceptions to this principle are also set out. Once we have set out the reasons for disagreeing with the views taken by other High Courts, we do not see how this principle can be of any assistance.

117 For the reasons that we have recorded above we do not find that the judgments relied upon by Mr.Naphade carry his submissions any further.

118 Now we are left with reliance placed by Mr.Naphade,

Mr.Sathe and Mr.Devitre on the judgments of this Court.

119 Before that we would refer to some of the judgments which have been relied upon by the learned Advocate General. Apart from Bansidhar (supra) and the *State of Punjab v/s Mohar Singh Pratap Singh* reported in **AIR 1955 SC 84**, the learned Advocate General relied upon the judgment of the Honourable Supreme Court in the case of *Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel and Others* reported in **(2001) 5 SCC 101**. We at once clarify that for our purposes we are not required to decide as to whether the judgment of the Honourable Supreme Court in the case of *Smt.Atia Mohammadi Begum v/s State of U.P.* (supra) stands overruled and to what extent. What we find is that irrespective of whether Atia Begum (supra) is partially overruled or not, the fact remains that compliance with the provisions of the Principal Act is with reference to the date of it's commencement. The land will have to be determined with reference to this date and that is how it is treated and dealt with in the further provisions of the Principal Act. The extent of the excess vacant land may be a matter for determination and computation, but the time and period, so also, the date on which it is so reckoned is not in any way affected. Hence, reliance on the judgment in the case of Atia Begum (supra) and other judgments by Mr.Naphade and equally by the learned Advocate General need not detain us.

120 The learned Advocate General relied upon the judgment in Shantidevi Gaikwad (supra) to show that Bansidhar (supra) is followed and applied. That we find to be accurate on perusal of paragraphs 43 to 45 of this judgment. Mr.Naphade also relied upon these paragraphs to

urge that a different intention appears in the Repeal Act involved in the present case. However, we find that the Honourable Supreme Court has reiterated the principle that a repealing statute is not exhaustive and does not automatically extinguish the accrued rights unless taken away expressly.

121 There is substance in the arguments of the learned Advocate General that if the Petitioners are claiming that the exemption confers in them a right or privilege, then, they cannot turn around and say that if it is conditional then the rights or privilege survive the repeal, but the conditions do not. If their arguments are accepted, then, even the right or privilege claimed would not survive. That would lead to absurd consequences. If relying upon the exemption order the excess vacant land is retained and put to use in accordance with the terms and conditions of the exemption order, then, the repeal of the Principal Act would mean the exemption order even if treated as valid would not survive. However, the exemption order is expressly saved and therefore, arriving at a conclusion that the exemption order is treated valid for all purposes, namely, the right that it creates and the obligation that it imposes on parties. It is only such an interpretation which would subserve the object of the Repeal Act and read as a whole.

122 For the reasons that we have recorded above and since this is the principle which can be culled out from the decisions relied upon by the learned Advocate General that reference to any further judgments on the same point is unnecessary. Suffice it to reiterate that reliance placed by the learned Advocate General on these judgments is well placed.

123 We are also in agreement with the learned Advocate General when he relies on the judgments of the Honourable Supreme Court which have been referred to and followed the view taken in Bansidhar's case (supra). We have already reproduced the paragraphs of those judgments and as extracted in Bansidhar (supra). We agree with the emphasis by Mr.Khambata on the principle that the liability to handover the excess vacant land relates back to the appointed day or the date of commencement of the Principal Act in any event. Therefore, it is clear that these judgments and which are extensively referred in Bansidhar's case (supra) cannot be brushed aside by us.

124 Reliance has been further placed on the judgment in the case of *Voltas Limited v/s Additional Collector & Competent Authority* reported in **2008 (5) Bombay Cases Reporter 746**. While it is true that the judgment of the Honourable Supreme Court in Bansidhar's case (supra) was cited before the Division Bench deciding Voltas, but we do not find any reference being made to the same. First of all this judgment is not interpreting Section 3(1)(b) of the Repeal Act. It is a judgment and it remains a judgment analyzing and interpreting Section 3(1)(a) of the Repeal Act. Mr.Naphade heavily relies upon this judgment and to urge that this judgment supports his submission that the only consequence which would follow withdrawal of exemption order by exercising the powers under Section 20(2) of the Principal Act is to apply Chapter-III of the Principal Act and particularly the Section enabling vesting of the same free from all encumbrances in the State of Maharashtra. His submission presupposes that withdrawal is mandatory or that unless the exemption is withdrawn the terms and conditions, if any, in the exemption order cannot be enforced. We do not see how such absolute proposition

emerges from reading of the judgment in Voltas Limited (supra). If paragraph 11 of this judgment is carefully perused the Division Bench while analyzing Section 3(1)(a) of the Repeal Act, so also, Section 3(2) thereof holds that the land owner will get back title of the land only on payment of the amount that he has received under the Principal Act from the Government. It is in these circumstances that we are of the opinion that this judgment must be seen as confined to this part of the Repeal Act and cannot, therefore, be said to be construing other provisions of the Repeal Act. The observations in paragraph 12 of this judgment in the context of Section 6 of the General Clauses Act must be also seen as being made so as to reinforce the conclusion with regard to applicability of Section 3(1)(a) of the Repeal Act.

125 Then, there is reliance placed on the judgment in the case of *Vithabai Bama Bhandari v/s State of Maharashtra* reported in **2009 (3) BCR 663**. There, the facts are to be found from paragraphs 2 to 12. They would reveal that the essential relief was that the notice issued under Sections 9 and 10 of the Principal Act be declared as abated. The petition was by the holder of the land and more particularly described in the judgment. The Petitioner was declared as holding surplus land. She sought an exemption and the power under Section 20 was exercised with a condition that 31 tenements of 40 sq.mtrs. each i.e. 1180.04 sq.mtrs. to be sold to the Government nominees at fixed rate. The Petitioner, therefore, made an application proposing to develop the land so as to implement the scheme, but that proposal for development was rejected. The Appeals were filed under the Principal Act, namely, under Section 33 and a fresh inquiry under Section 8(4) of the Principal Act was directed. In pursuance thereof the holding of the Petitioner was determined afresh.

An application was made for implementation of the scheme under Section 20 and in accordance with which the construction permission was granted, construction was commenced and was completed within the time frame prescribed for the same. It appears that the Petitioner requested the Government/ competent authority to take possession of the flats meant for the Government nominees, but before any further steps could be taken, the Petitioner was informed that the exemption granted under Section 20 itself was withdrawn. The Petitioner was served with a notice under Section 10(5) calling upon her to handover possession of surplus land due to non compliance of the conditions of exemption under Section 20 of the Principal Act. That notice was challenged in the petition. That is how the Petitioner relied upon the Repeal Act and in order to avoid the consequences which would flow from cancellation or withdrawal of the exemption order. The discussion in paragraphs 42, 43, 44, 45 and 46 of the judgment would reveal that the Division Bench was only concerned with Section 3(1)(a) of the Repeal Act. Nothing else from the Repeal Act has been noticed far from any larger controversy. In such circumstances we do not think that this judgment is on the point and particularly which has been referred to us. Apart therefrom what we find is that the Division Bench did not allow the State to rely upon Section 3(1)(a) of the Repeal Act because the exemption order had already been withdrawn. The question of saving such an order and when the State desired to take possession of the land despite repeal of the Principal Act and in the teeth of Section 3(1)(a) thereof, therefore, rightly did not arise. However, we find that the observations made by the Division Bench in paragraphs 38 to 51 to the extent of applicability of Section 6 of the General Clauses Act insofar as contrary to what we have held above, do not lay down the correct law.

126 In the case of *Mohan Gopalrao Mate v/s Principal Secretary* reported in **2009 (1) Bom.C.R. 275**, once again it must be noted that the Petitioner therein is an ex-MLA. He had challenged certain Government Resolutions which impact large number of housing schemes and affect large number of individual flat owners. That was in relation to handing over and sale to the Government nominees at the prescribed or predetermined rates for the Government quota flats. It was general grievance and projected in public interest which was dealt with by the Division Bench. Paragraphs 3, 4 and 5 of this judgment read as under:-

> *"3. Counsel for the petitioner has further submitted that the petitioner has filed the present petition in the interest of Public as the Government Resolutions dated 8.11.2007 and 12.4.2007 are against the Public Policy and would affect the citizens who are the original owners of the lands and were legally granted exemption to hold vacant lands in excess of the ceiling limit U/s. 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act", which has been repealed w.e.f. 29.11.2007 by the Government by adopting the Urban Land (Ceiling And Regulation) Repeal Act, 1999 (hereinafter referred to as "the Repeal Act"). Though the ULC Act has been repealed intentionally and malafidely, Government has issued the aforesaid resolutions which are impugned in this petition. As a result, the Government, instead of ruling out manipulation, is giving opportunity to the respondent Nos. 2 and 3 to take arbitrary and malafide decision so as to harass the original land owners/scheme holders as well as a common man who has purchased the flats in the said Scheme. It is submitted that, after granting exemption to hold vacant land in excess of the ceiling limit under section 20 of the ULC Act, the land owners have to surrender certain portion of the vacant land to the Government free of cost. The Government, prior to adoption of Repeal Act, allowed*

*to utilize such lands by the original land owners under the provisions of section 23 of the said Act, if it was not possible to use such a land for any public purpose and was likely to be encroached. It is further submitted that considering inability of Government to protect the possession of said land, it was permissible to the land owners to buy-back such lands vide Government Resolution No.ULC 10 (2004)/C No.93/ULCA-2 dated 14.07.2004. However, for no cogent reason, Government has issued the impugned Resolution dated 8.11.2007 which is prima-facie arbitrary, unjust and not in the public interest and therefore, the same is liable to be quashed and set aside. This decision of the Government is arbitrary and that would give rise to the respondent Nos. 2 and 3 to allot such lands (surrendered lands) to the men of their choice. This has happened on a large scale, as has been specifically observed and pointed out by the "JUSTICE BATTA COMMISSION" and therefore, revoking the earlier decision i.e. buy-back of surrendered land, again there would be accumulation of huge lands with the respondent Nos. 2 and 3 and there would be repetition of the mala-fide acts by the respondent Nos. 2 and 3. As a result of which, the main aim and object of the Special Act would be defeated.*

4. *It is submitted by the learned counsel for the petitioner that Government has issued a G.R. dated 31.07.2006, however, the effect and operation of said Government Resolution has been stayed by this Court in Writ Petition No.4966 of 2006 by passing the following orders:*

*Order dt.4.10.2006 :*

*"Heard Mr. C.V.Kale, Adv. for the petitioner.*

*Notice returnable in three weeks.*

*Mr.Agrawal, AGP waives notice on behalf of respondent nos. 1 to 3.*

*In the meanwhile, the parties to maintain status-quo".*

*Order dt. 7.11.2006 :*

*"We grant ad-interim relief in terms of prayer clause (ii) of the petition during the pendency of the petition. With this observation, the application is disposed of.*

*Order dt. 8.12.2006 :*

*"In the meantime, the authorities need not pass orders on the applications made under the scheme until further orders."*

*5. However, the Government has issued a fresh G.R. dt. 12.4.2007 flouting the afore-said orders passed by this Court in Writ Petition No.4966 of 2006 and therefore, the Govt Resolution dt. 12.4.2007 is liable to be quashed and set aside."*

127 Thereafter, the arguments of the Petitioner have been noted and which we find from paragraphs 8 to 21. From paragraph 22 onwards the Additional Government Pleader's arguments have been noted and from paragraph 37 onwards the rival contentions are analyzed. In paragraphs 40 to 42 the necessity to enact the Principal Act and its objectives have been discussed. Thereafter, reference is made to Sections 20 and 21 of the Principal Act in paragraphs 43 to 46. In paragraph 47 the Division Bench held that if there was breach of or violation of the terms and conditions of the Development Permission or Commencement Certificate issued under the Planning Law, then, the Government cannot cancel these permission/ sanction/ building permit in the garb of exercising the powers to withdraw the exemption. That is how paragraphs 47 and 48 would read. We do not find anything in paragraph 48 which would enable us to hold that the Division Bench has decided any controversy and which is subject matter of the present reference. The whole issue was whether for breach of the terms and conditions on which

the order of exemption has been passed and one of which related to the permission to construct or develop the land, can the State while withdrawing the exemption under Section 20(1) also set aside or interfere with the permission under the Maharashtra Regional Town Planning Act, 1966 or related laws. Far from anything which would touch the issues involved in the present Reference we do not think that this judgment lays down or holds that the validity of the order of exemption under Section 20 or any action taken thereunder would not survive with all consequences despite the repeal.

128 The only reference then made to the Repeal Act is to be found in paragraphs 63 and 64. Paragraph 64 of the judgment reads as under:-

> *"64. In the case in hand, we are concerned with Sub-clause (b) of Section (3) of Repeal Act which contemplates that repeal of the principal Act shall not affect validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, not withstanding any judgment of any Court to the counter. It is, therefore, evident that validity of order granting exemption under subsection (1) of Section 20 of the ULC Act though passed prior to Repeal Act came into force, would continue in view of the said saving clause. Similarly, any action taken by the State Government under sub-section (2) of Section 20 prior to the Repeal Act came into force is also continued to be valid even after the Repeal Act came into force. Perusal of provisions of Section 3 (1)(b) makes it evident that repeal of Principal Act shall not affect validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder. Hence, to grant exemption in respect of land which was in excess of the ceiling limit as well as action, if any taken by the State Government thereunder in view of Section 20 (1) is saved. Similarly, any action taken by the State Government against the scheme holder under sub-clause*

> *(2) of Section 20 prior to coming into force of the Repeal Act, is also saved. However, the power of the State Government to alter, change or modify the terms and conditions of any of the Schemes formulated prior to coming into force of the Repeal Act and on the basis thereof, sanction was granted by the Planning Authority is not saved by the saving clause."*

129 We do not think that in the light of these conclusions on Section 3(1)(b) of the Repeal Act, any assistance could be derived from this judgment and to answer the issues and questions posed before us. Rather, the same support our conclusion.

130 Then, we are left with the judgment on which reliance is placed by the Petitioners, namely, *Sundersons and others v/s State of Maharashtra and others* reported in **2008 (5) Bombay Cases Reporter 85 : 2008(6) Mh.L.J. 332**. We do not find that the said judgment dealt with the controversy which has been raised before us. Apart therefrom we find that not only in the said judgment, but in the further judgment of this Court in the case of *Damodar Laxman Navare v/s State of Maharashtra* in **Writ Petition No.6300/2009 decided on 08.07.2010** the same Division Bench clarified in paragraph 10 that it is not inclined to look into the question and aspect of applicability of Section 3(1)(b) of the Repeal Act.

131 Reference is then made to the judgment to which one of us is a party (S.C.Dharmadhikari, J.), reported in **2013(2) Mh.L.J. 224** (*Manik M. Ragit v/s State of Maharashtra*). There, the Division Bench was concerned with the issue post repeal of the Principal Act and particularly about changes in the revenue record. The prayer was to restore the name of the Petitioner in the revenue record pertaining to the land. Paragraph 2

of this judgment would show that the vacant land in excess of ceiling limit was identified. The Petitioner before this Court sought an order of exemption under Section 20(1) of the Principal Act. He presented the scheme in relation to half portion of the excess vacant land that scheme was sanctioned by the competent authority. However, the scheme was not implemented at all. Later on an attempt was made to proceed against this excess vacant land, physical possession of which was always with the Petitioner. He, therefore, argued that Section 3(1)(b) of the Repeal Act would not come into play and the fact situation is fully covered by Section 3(1)(a) of the Repeal Act. If the Respondent/ State cannot take physical possession of the excess vacant land because the scheme has failed in view of this express provision in the Repeal Act, then, the Petitioner's name deserves to be restored to the revenue record was the essential prayer. That has been granted and because there was no opposition from the State. It is in this context that the Division Bench in paragraph 7 relied upon the Repeal Act and essentially Section 3(1)(a) of the same. Paragraph 7 of the judgment reads as under:-

> *"7. With the assistance of the learned counsel appearing for parties we have perused the Writ Petition and also the Division Bench judgment. Facts in our case are not disputed. There has been no step or action taken in pursuance of the order of exemption passed in favour of the petitioner. Thus, the scheme was not implemented. If it was not implemented, then, the Division Bench judgment in Vithabai's case takes the view that the consequence of passing an order under Section 20(1) results in exemption of surplus vacant land from the provisions of the Act. However, on withdrawal of the exemption under Section 20(2) of the Urban Land Ceiling Act, that does not provide that possession of surplus land would automatically or is deemed to have been taken by the Competent Authority. If the State of Maharashtra is required to resort to provisions of Chapter III of Urban Land*

> *Ceiling Act for taking possession and issue notice under Section 10 of the Act, then, they cannot urge that possession was not taken prior to the Repealing Act coming into force. In other words, if possession is not taken prior to Repeal Act coming into force, then, it will be restored to owner. The view taken is that Section 10, does not provide for different procedure to be adopted subsequent to the passing of an order under Section 20(2) of the Urban land Ceiling Act. Therefore, looking at the matter this way, even if the scheme has not been implemented or the exemption has been withdrawn, this judgment holds that the respondent could resort to Section 10 of the Un-repealed Act. That having not been done in the case before us we are of the view that, the controversy is covered by the judgment of this Court in the judgment of Vithabai's case."*

132 We are of the opinion that this judgment cannot be a precedent for answering the questions posed before us. We have already held that the observations in Vithabai's case (supra) to the extent they are contrary to what we have held hereinabove do not lay down the correct law. Therefore, firstly these observations must be seen as restricted to the facts of that case and to which only Section 3(1)(a) of the Repeal Act applies. Secondly, this Court was not called upon to decide the ambit and scope of Section 3(1)(b) of the Repeal Act in that judgment as the scheme never took off and was not acted upon. Once the exemption order was not acted upon by the Petitioner, but the State attempted to take possession of the surplus vacant land and after repeal that relief as prayed by the Petitioner was granted. This judgment, therefore, cannot be seen as answering the controversy.

133 Finally, in Mira Bhayander Developers and Welfare Association (supra) the controversy was with regard to the letter dated

23.06.2008 addressed by the State Government to the Sub-Registrar of Assurances, Thane City. That letter directed the said Authority to ascertain at the time when the scheme holder presents a document for registration as to whether he has sought extension for implementation of the scheme meant for economically weaker sections of the society under Section 20 of the Principal Act and not to register the document otherwise. That was the letter impugned in the Writ Petition and the Division Bench in a short judgment held as under:-

> *"1. The above Petition is filed on behalf of the members of the Petitioner Association. The members of the Petitioner Association who are the builders and developers have taken benefit of the schemes meant for the Economically Weaker Section of the society under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 [hereinafter referred to as "the said Act" for short]. The said Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which came into force in the State of Maharashtra on 29.11.2007. Since a large number of schemes were sanctioned under Section 20 of the said Act, the State Government, with a view to see that the schemes are fully implemented, if partly implemented, after the repeal of the said Act, issued a letter dated 23.06.2008 to the Sub-Registrar of Assurances, Thane City directing him to ascertain at the time when the scheme holder presents a document for registration, whether the scheme holder has sought for extension for implementation of the scheme or not; as otherwise not to register the documents in question.*
>
> *2. It is the said letter dated 23.06.2008, which is impugned in the present Petition. The principal ground on which the said letter is assailed is that such a condition cannot be imposed by the Registering Authority and that the registration cannot be refused on the said ground.*
>
> *3. On the other hand it is contended on behalf of the State by the learned AGP that on the repeal of the said Act, the scheme holders who may be builders/developers are trying to wriggle out of their obligations under the said sanctioned schemes, and therefore the impugned letter*

*came to be issued which has been issued to protect the schemes meant for the Economically Weaker Section, and also the Government revenue.*

4. *We have considered the rival contentions. In our view, if the members of the Petitioners Association have taken benefit of the schemes under Section 20 of the said Act by constructing buildings, they now cannot wriggle out of their obligations to surrender flats to the Government which the Government could sell at a fixed rate. The entire tenor of the above Petition appears to be that the Petitioners do not want to fulfil their obligations under the said schemes viz surrendering the flats to the State Government and taking advantage of the repeal of the said Act want to contend that their obligations under the said schemes do not survive. In our view the impugned letter, as rightly contended by the learned AGP, has been issued to protect the public interest and Government revenue. It does not befit the Petitioners who have taken advantage of the said schemes now to contend that their obligations do not survive, and therefore there is no need for them to surrender the flats to the Government. We, therefore, do not find any merit in the challenge raised in the above Petition which is accordingly dismissed."*

134 Though this judgment is based on the broad principles of equity and that no one can take advantage of his own wrong, yet we are of the opinion that the conclusion therein for the reasons recorded above is correct. The same is in consonance with the conclusions reached by us hereinabove.

135 As a result of the above discussion the questions referred to us are answered as under:-

(a) That the repeal of the Principal Act shall not affect the validity of the order of exemption under Section 20(1) of the Principal Act and all consequences following the same including keeping intact the power to withdraw the said

exemption by recourse to Section 20(2) of the Principal Act. Further, merely because Section 20(2) is not specifically mentioned in the saving clause enacted by Section 3(1)(b) of the Repeal Act that does not mean that the power is not saved. The said power is also saved by virtue of applicability of Section 6 of the General Clauses Act, 1897. That Section of the General Clauses Act, 1897 applies to Section 3(1)(b) of the Repeal Act.

(b) Once having held that the power to withdraw the exemption also survives the repeal of the Principal Act, then, all consequences must follow and the said power can be exercised by the State Government in accordance with law. That power and equally all ancillary and incidental powers to the main power to impose conditions are also saved and survive the repeal. Meaning thereby the terms and conditions of the order of exemption can be enforced in accordance with law.

(c) Question Nos.1 and 2 in the AFFIRMATIVE, by holding that Section 6 of the General Clauses Act, 1897 applies to the savings of the exemption order including all terms and conditions thereof, validity of which or any action taken thereunder has been saved by Section 3(1)(b) notwithstanding any judgment of any court to the contrary.

(d) Question Nos.3 and 4 will have to be answered as above, but by clarifying that though it would be open for the State to enforce the exemption order and terms and conditions thereof, validity of which is saved by the Repeal Act, but having regard to the language of Section 20(2) of the

Principal Act it cannot be held that same can be enforced only by withdrawal of the order of exemption in terms of sub-section (2) of Section 20, which power also survives the repeal of the Principal Act. In other words, though Section 3(1)(b) of the Repeal Act read with Section 6 of the General Clauses Act, 1897 states that repeal of the Principal Act shall not affect the validity of the exemption order passed under Section 20(1) of the Principal Act or any action taken thereunder notwithstanding any judgment of any court to the contrary, still the obligations and liabilities incurred voluntarily under the exemption order by the person holding the vacant land in excess of ceiling limit need not be enforced only by exercise of powers under sub-section (2) of Section 20 of the Principal Act, but by all other legally permissible means.

(e) We also clarify that though our answers to Questions 3 and 4 would be as aforesaid, still whether any of these powers could be exercised and to what extent are all matters which must be decided in the facts and circumstances of each case. In the event the State desires to take any action in terms of Section 20(2) of the Principal Act it would be open for the aggrieved parties to urge that such an action is not permissible in the given facts and circumstances particularly because of enormous and unexplained delay, the parties having altered their position to their detriment, the proceedings as also the orders in that behalf are grossly unfair, unjust, arbitrary, high handed, malafide and violative of the principles of natural justice and of the Constitutional

mandate enshrined in Articles 14, 19(1)(g), 21 and 300A of the Constitution of India. These and other contentions can always be raised and irrespective of our conclusions, individual orders can always be challenged and action thereunder impugned in appropriate legal proceedings including under Article 226 of the Constitution of India.

(f) The aggrieved parties can also urge that while seeking to enforce the terms and conditions of the exemption order or recalling or withdrawing the exemption itself the competent authorities/ State has not adhered to the provisions of law applicable for such exercise. Meaning thereby there has to be a specific order in that behalf and mere issuance of administrative instructions or circulars will not suffice. All such objections can as well be raised and in individual cases.

(g) By our answers to Questions 1 to 4 above, we should not be taken to have held that there is a mandate under the Repeal Act to withdraw the order of exemption passed under Section 20(1) of the Principal Act and the Government is obliged to withdraw it in the event the said order or any terms or conditions thereof have not been satisfied rather violated or breached. In the light of the wording of Section 20(2) of the Principal Act the State is competent to withdraw, but only after giving a reasonable opportunity to the persons concerned for making representation against the proposed withdrawal. The Government is obliged to pass an order withdrawing any exemption and needless to clarify that in the event such an order is passed it can be impugned and challenged by the aggrieved parties in appropriate

proceedings on the grounds that it is unreasoned and/or in the given facts and circumstances such an order could not have been passed or need not be passed and the Government could have granted time to comply with the terms and conditions or that the terms and conditions relying on which and for breach of which the exemption order is withdrawn are not violated or breached, they were not mandatory and have been substantially complied with or were incapable of being complied with because of several factors, obstacles and hurdles each of which cannot be enumerated or termed as exhaustive in any manner. Therefore, if the Government is not mandated to withdraw the exemption order, but can ensure compliance of the terms and conditions without withdrawal of the exemption order or without recourse to Section 20(2) of the Principal Act, then, needless to clarify that all liabilities, obligations and equally the remedies available to the parties are unaffected by repeal and can be resorted to in the afore stated events.

(h) In the light of our conclusions as enumerated in paragraph No.125 above we hold that the view taken by the Division Bench in *Vithabai Bama Bhandari v/s State of Maharashtra and another* reported in **2009(3) Bombay Cases Reporter 663** (Writ Petition No.4241/2008 decided on 31st March/ 16th April, 2009) does not lay down the correct law and to the extent indicated hereinabove.

(i) The Reference is answered accordingly. Each of these Writ Petitions shall now be placed before appropriate Division Benches for disposal in the light of the above principles and

on merits, so also, in accordance with law. We clarify that all contentions of both sides on merits of the said Writ Petitions are kept open.

(j) We are thankful for the able assistance rendered by all the learned counsel for deciding this Reference.

**(S.C. Dharmadhikari, J.)**

**(G.S. Kulkarni, J.)**

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**Judgment (Per S.C. Gupte, J.) :**

1 I have gone through the judgement prepared by my brother Dharmadhikari J. With greatest respect, I am afraid I am unable to agree with some of the key conclusions and reasons discussed in it. I have in the following judgment dealt with the conclusions in respect of which I differ from the views expressed by brother Dharmadhikari J.

2 The questions referred to the Full Bench and the submissions made by learned Counsel appearing on either sides have been elaborately set out by my brother Dharmadhikari J and need not be repeated here. I shall, wherever necessary, refer to these submissions in the context of my conclusions and reasons for the same.

3 Let me briefly dwell at the outset with the conflict in the decisions of Division Benches of our court, which led to the present Full Bench reference, so as to put the whole controversy in a proper perspective and make its context clear. What led to the conflict of the Division Bench decisions of this court were the circulars issued by various Competent Authorities under the Urban Land (Ceiling and Regulation) Act, 1976 ("the Principal Act") after repeal by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ("the Repeal Act") to Sub-Registrars of Assurances and planning authorities not to register documents presented by landholders for registration or sanction plans filed for development of lands unless no objection certificates were issued by these Competent Authorities. These directives were purportedly issued with a view to implement schemes sanctioned by Competent Authorities whilst granting exemptions to the concerned lands under Section 20 of the Principal Act. In some cases, the landholders would have breached the provisions of

these schemes, for example, by not completing the schemes within the stipulated periods, in which cases the concerned Competent Authorities would not issue no objection certificates, thereby ensuring compliance on the part of the landholders with the sanctioned schemes. These circulars were challenged before this Court in a number of petitions.

4 In **Sundersons & Ors. Vs. State of Maharashtra & Ors.**[1], the Collector had issued instructions to Sub-registrars of Assurances to insist upon an NOC from the competent authority, namely, the Collector before registering any document. A Division Bench of this Court held that persual of the circular did not disclose the source of the power under which it had been issued and that it was not open to the Collector to issue such instructions.

5 In **Damodar Laxman Navare Vs. State of Maharashtra**[2], the Court was concerned with two letters – one by which authorities such as the Municipal Corporation and Sub-Registrar were directed not to sanction plans or register documents presented by landholders and the other directing the petitioner landholder in that case to pay penalty for extension of time for completion of a scheme sanctioned under Section 20 of the Principal Act. Both these letters were issued after the repeal of the Principal Act. The Division Bench hearing the petitioners' challenge to the two letters struck down these directions, holding them to be illegal and ultra vires the powers of the authorities under the Principal Act. The challenge to these circulars on the grounds of repeal of the Principal Act and the effect of the saving clause on the exemption orders passed under Section 20 or actions taken thereunder, was, however, not considered by

1 2008 (5) Bombay Cases Reporter 85

2 Writ Petition No.6300/2009 dated 08th July, 2010

the Division Bench in **Damodar Laxman Navare** (supra).

6 Then came the decision of another Division Bench of our Court in **Mira Bhayandar Builders and Developers Welfare Association Vs. Deputy Collector and Competent Authority.**[1] In that case, members of the Petitioner Association, who were builders and developers, had taken benefit of the schemes meant for economically weaker sections of the society sanctioned under Section 20 of the Principal Act. The schemes were partly implemented on the date of the repeal of the Principal Act. The State Government issued a circular after the repeal, with a view to see that the schemes were fully implemented, to the Sub-Registrar of Assurances. The circular directed the Sub-Registrar to ascertain whether the scheme holder had sought extension of time for implementation of the scheme when the scheme holder presented a document for registration and not to register the document in question if such extension was not sought. The scheme holders challenged the circular *inter alia* on the ground that the obligations under the scheme did not survive the repeal. The Division Bench accepted the contention of the learned AGP that the impugned circular had been issued to protect the public interest by ensuring implementation of schemes meant for economically weaker sections. The Division Bench held that if the members of the Petitioner Association had taken benefit of the schemes under Section 20 by constructing buildings, they could not now wriggle out of their obligations to surrender flats to the Government which the Government could sell at fixed rates. The Division Bench accordingly rejected the Petitioners' challenge to the circular.

7 These were then the rulings on the subject, when another

1 Writ Petition No.5745/2009 dated 27th August, 2009

Division Bench of our Court – in **Jayesh Tokarshi Shah Vs. Deputy Collector and Competent Authority**[1] **-** considered similar circulars issued by the Competent Authority after the repeal of the Principal Act, prohibiting registration of conveyances in respect of flats constructed under schemes sanctioned under Section 20 and sold without obtaining extension of periods of completion of the schemes or obtaining no objection certificates from the Competent Authority under the Principal Act. According to the Petitioners in that case, the circulars issued after the repeal of the Principal Act were without authority of law and also that the conditions of the exemption orders under Section 20 did not survive the repeal. On the other hand, the State contended that the circulars were issued for meaningful implementation of sanctions granted under Section 20, as validity of such sanction orders remained saved from the rigours of the Repeal Act. According to the State, the Petitioners had yet to discharge their obligations under the schemes by handing over specified number of tenements to the Government and paying penalty for extension of time to complete the schemes. Based on the decision of our Court in **Mira Bhayandar Builders' case** (supra) it was contended by the State that it was not open to a party, who had taken advantage of a scheme sanctioned under Section 20 of the Principal Act, to contend that the obligations of the scheme did not survive the repeal of the Principal Act. The Division Bench in **Jayesh Tokarshi Shah** (supra) felt that the view expressed by our Court in **Sundersons & Ors** (supra) and **Damodar Laxman Navare** (supra) led to the premise that the Competent Authority under the Principal Act was not competent to issue such circulars, but that there was a conflict with such premise in the view expressed by our Court in **Mira Bhayandar Builders' case** (supra) where challenge to a similar circular was dispelled on the ground that the circular was issued to protect public

1 Writ Petition No.3815/2010 decided on 26.10.2010

interest and having taken advantage of a scheme under Section 20 of the Principal Act, the Petitioners could not wriggle out of their obligations. The Court in **Jayesh Tokarshi Shah** (supra) referred to another decision of our Court in **Mohal Gopal Mate Vs. Principal Secretary**[1]**,** which held that the powers of the State under Section 20 in case of breach of a condition of an exemption order were limited to withdrawal of the exemption order only, whereupon provisions of Chapter III would apply to such land. The Court in **Jayesh Tokarshi Shah** (supra) also felt that going by strict interpretation of Sections 20 and 21 of the Principal Act, the power of the State in case of contravention of any of the conditions of the schemes sanctioned under these Sections by the scheme holders was limited to withdrawal of exemption, declaring such land to be excess vacant land and applying the provisions of Chapter III of the Principal Act for acquisition of the same. The Court, however, felt that such view would be in conflict with the view expressed by the Court in **Mira Bhayander Builders' case** (supra) and that therefore the controversy deserved to be resolved by a Full Bench of this Court.

8 That is how this reference has come before us. The principal controversy before us concerns the effect of the Repeal Act on the schemes sanctioned whilst granting exemptions under Section 20 of the Principal Act to excess vacant lands. Do the conditions of exemption orders survive the repeal and if so, can these conditions be enforced by the State after the date of the repeal, if necessary by withdrawing the exemption and applying the provisions of Chapter III to the lands which were the subject matter of such exemption orders and schemes.

9 At the outset, a brief overview of the Principal Act and the

1 2009 1) BCR 275

Repeal Act may be necessary to understand the impact and reach of the Repeal Act and whatever is left untouched by it from the provisions of the Principal Act or actions taken thereunder.

10 The Principal Act was enacted for (i) imposition of a ceiling on vacant land in urban agglomerations, (ii) acquisition of land in excess of the ceiling limit, and (iii) regulation of construction of buildings on such land and for matters connected therewith. The declared objective of these provisions in the Principal Act was to (i) prevent concentration of urban land in the hands of a few persons and speculation and profiteering therein and (ii) bring about an equitable distribution of land in urban agglomerations to subserve the common good.

11 Chapter III of the Principal Act contains the key provisions for accomplishment of the aforesaid objectives. The Chapter consists of three sets of provisions, namely, (1) Sections 3 to 18 which provide for the ceiling limit, and ascertainment and acquisition of vacant land in excess of such ceiling limit, (2) Sections 19 to 22 dealing with non-application or exemption from application of Chapter III to certain lands and (3) Sections 23 and 24 which deal with disposal of vacant land acquired under Chapter III.

12 Section 3, which is the pivotal section in the Chapter, proscribes any person from holding vacant land in excess of the ceiling limit in the territories covered by the Principal Act. The ceiling limits for various classes of agglomerations and the manner of calculating them for various classes of persons are provided in Section 4. Section 5 provides for a subsidiary rule for calculating the extent of vacant land in cases of

certain transfers (i.e. transfers between the appointed day and the date of commencement of the Principal Act) and also prohibits transfers after the date of commencement without furnishing a statement under Section 6 and publication of a notification of excess land under Section 10(1). The machinery provisions for arriving at the extent of excess vacant land are contained in Sections 6 to 9. The entire determination process starts with a statement to be compulsorily filed by every person holding vacant land in excess of ceiling limit as on the date of commencement of the Principal Act, specifying the requisite particulars of such land. Section 7 contains subsidiary provisions concerning filing of such statement in case such land is situated within the jurisdiction of two or more competent authorities, whether in the same state or in two or more states to which the Principal Act applies. Section 8 provides for preparation of a draft statement by the competent authority. It also requires service of such draft statement on, and consideration of objections, if any, by, the concerned landholder. Section 9 provides for determination of excess vacant land and preparation and service of a final statement concerning such excess vacant land. Section 10 contains provisions concerning acquisition of such excess vacant land by the State Government. Under the scheme of Section 10, the competent authority has to first issue and publish a notification giving particulars of excess vacant land, proposing its acquisition and inviting claims of all persons interested in such land, under Sub-section (1) of Section 10. Sub-section (2) requires the competent authority to determine the nature and extent of such claims. Sub-section (3) empowers the competent authority to declare by notification the acquisition of such excess vacant land with effect from a date specified in that behalf. Upon publication of such notification the land is deemed to be vested absolutely in the State Government with

effect from the date so specified. Sub-section (4) of Section 10 provides for an embargo on transfer of land between the dates of the publication of the respective notifications under Sub-sections (1) and (3). Sub-sections (5) and (6) deal with taking over of possession of the land thus vesting in the State Government. Sub-section (5) authorizes the competent authority to require by notice surrender or delivery of such land to the State Government. Sub-section (6) empowers the competent authority to take possession by use of force in case of failure of the landholder to so surrender or deliver possession. Sections 11 to 14 contain provisions regarding payment of compensation by the State Government to the landholder whose land is so acquired by the State Government. Section 11 contains provisions for determination of such compensation, Section 12 provides for appeals to a tribunal from any determination under Section 11 and Section 13 provides for an appeal to the High Court from the decision of the tribunal. Section 14 provides for the mode of payment of such compensation. Sections 15 to 18 provide for subsidiary matters such as ceiling limit on future acquisition by inheritance, etc., filing of statement when the Principal Act is subsequently adopted by any State, the competent authority's power to enter upon any vacant land for carrying out the purposes of the Principal Act and penalty for concealment of particulars of vacant land, etc.

13 Section 19 provides cases in which the provisions of Chapter III do not apply to certain vacant lands, e.g. lands held by the Central or State Governments, banks, etc. Section 20 provides for the power of the State Government to exempt any vacant land on conditions and to withdraw such exemption on non-compliance of the conditions. (This Section will be dealt with in detail in the following order.) Section 21

provides for circumstances in which excess vacant land may not be treated as excess in certain cases. Section 22 provides for cases where a landholder under certain conditions may be permitted to retain excess vacant land.

14 Sections 23 and 24, as noted above, provide for disposal of vacant lands acquired by the State Government under the Principal Act. These Sections *inter alia* serve the objective of equitable distribution of land in public interest.

15 Chapter IV enacts provisions concerning regulations of transfers of land and use of urban property. Section 25 defines "plinth area". Section 26 provides for a notice to be given of any intended transfer of vacant land to the competent authority, which has the first option to purchase such land on behalf of the State Government. The section also contains machinery provisions for completing such sale in case the option is exercised by the competent authority. Section 27 enacts a prohibition on transfer of urban property. Section 28 makes subsidiary provisions for regulating registration of documents so as to effectively implement the provisions of Sections 26 and 27. Section 29 contains regulatory provisions for construction of buildings with dwelling units. Demolition and stoppage of buildings constructed / being constructed in contravention of the provisions of Section 29 is provided under Section 30.

16 Chapter V contains miscellaneous provisions providing for powers of the competent authority (Section 31), jurisdiction of authorities and tribunals (Section 32), appeal (Section 33), Revision (Section 34),

power of the State Government to issue directions (Section 35), power of the Central Government to give directions (Section 36), returns and reports, offences and penalties, etc. Section 42 in this chapter provides for the overriding effect of the provisions of the Principal Act.

17 After the Principal Act came into force in the State of Maharashtra, statements under Section 6 thereof were filed by landholders. In some cases the land acquisition was completed and excess vacant lands were taken possession of after following the procedure laid down in Sections 8 to 10; whilst in other cases proceedings were pending at various stages provided under Sections 8 to 10 or the appellate and revisional stages under Sections 33 and 34 of the Principal Act. In respect of some lands orders were passed under Sections 20 and 21 sanctioning schemes presented by landholders and accordingly exemptions were granted on conditions or excess vacant land was directed not to be treated as excess, respectively, under Sections 20 and 21; and these schemes were either completed or were at different stages of completion. In some cases, where the conditions of exemption orders were breached, the exemptions were withdrawn and the procedure under Sections 8 to 10 of the Principal Act for acquisition of land thus rendered excess vacant land was being applied to such lands and was at varying stages of completion. This was the position in 1999, when the Parliament passed the Repeal Act.

18 On 11 January 1999, an ordinance to repeal the Principal Act was promulgated by the President. This was followed by a bill to repeal the Principal Act tabled in the Parliament, being Bill No.17/1999. The bill proposed repeal of the Principal Act in the same terms as the ordinance. The statement of objects and reasons contained in the bill is in the

following terms :

> " *The Urban Land (Ceiling and Regulation) Act, 1976 was passed with a laudable social objective. The main purpose was to prevent concentration of urban land in a few hands and to provide affordable housing to the Economically Weaker Sections. It has on the contrary pushed up land prices, practically brought the housing industry to a stop and provided opportunities for corruption. There is a widespread demand for removing this irritant to land assembly and construction activity. During the implementation of the Urban Land (Ceiling and Regulation) Act, 1976, there have been a spate of litigations giving rise to serious hurdles in taking over possession of land, by the State Governments. Public opinion is nearly unanimous that the Act has failed to achieve its objectives as expected.*
>
> *2. Parliament has no power to repeal or amend the Act unless resolutions are passed by two or more State Legislatures as required under clause (2) of Article 252. The Legislatures of Haryana and Punjab have passed resolutions empowering Parliament to repeal the Act in those States. The Act stands repealed in those States and in the Union territories immediately after promulgation of the repeal Ordinance and subsequently if State Legislatures adopt this Repeal Act by resolution, then the Urban Land (Ceiling and Regulation) Act, 1976 will stand repealed in those States, from the date of its adoption.*
>
> *3. The Urban Land (Ceiling and Regulation) Repeal Bill, 1998 was examined by the Standing Committee on Urban and Rural Development. The Committee felt that the land which is yet to be put to use for the original purposes stated in the Act, under possession of the Government should not be restored to previous owners as such restoration may lead to avoidable discrimination. The Committee also suggested that the repeal Bill should contain a provision for abatement*

*of proceedings in the different courts. Keeping in view the recommendations of the Committee, this Bill is being introduced to replace the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord.5 of 1999) notified on 11.01.1999 so that the State Governments would be free to have their own legislation commensurate with their needs and experiences. Till this Act is repealed, States have no power to legislate on this subject.*

*4. The proposed repeal, along with some other incentives and simplification of administrative procedures, is expected to revive the stagnant housing industry. The repeal will facilitate construction of dwelling units both in the public and private sector and help achievement of targets contemplated under National Agenda for Governance. The repeal will not, however, affect vesting of any vacant land under sub-section (3) of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 the possession of which has been taken over by the State Governments. It will not affect payments made to the State Governments for exemptions. The exemptions granted under Section 20 of the Act will continue to be operative. The amounts paid out by the State Governments will become refundable before restoration of the land to the former owners.*

*5. The Bill also seeks to facilitate land assembly and a flexible regime for administering urban land to suit the varying local conditions based on State level legislations or requirements."*

The bill was passed by the Parliament and the Repeal Act was enacted. The Repeal Act contains the following provisions :

*"1. Short title and application commencement: –*

*(1) This Act may be called the Urban Land (Ceiling and Regulation) Repeal Act, 1999.*

*(2) It applies in the first instance to the whole of the States of Haryana and Punjab and to all the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (2) of article 252 of the Constitution.*

*(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.*

*2. Repeal of Act 33 of 1976: – The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principal Act) is hereby repealed.*

*3. Savings: –*

*(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 by the competent authority;*

*(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, 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. Abatement of legal proceedings : –*

*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.*

*5. Repeal and saving : –*

*(1) The Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord. 5 of 1999) is hereby repealed.*

*(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act."*

19 The State of Maharashtra adopted the Repeal Act by a resolution passed and adopted by both houses of State Legislature under Article 252(2) of the Constitution of India on 29 November 2007. The resolution adopted by the State of Maharashtra is in the following terms :

> *"MAHARASTHRA LEGISLATIVE ASSEMBLY RESOLUTION*
>
> *Whereas, the Maharashtra Legislative Assembly on 5th October 1971 and the Maharashtra Legislative Council on the 7th October 1971 had, in pursuance of clause (1) of article 252 of the Constitution of India, resolved that the imposition of ceiling on urban immovable property and acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto should be regulated in the State of Maharashtra by Parliament by law :*
>
> *And Whereas, the Parliament had thereafter enacted the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act No. 33 of 1976);*
>
> *And Whereas, consequent upon the resolutions passed by the Houses of the Legislatures of the States of Haryana and Punjab, under article 252(2) of the Constitution, that the Urban Land (Ceiling and Regulation) Act, 1976, in its application to those States, be repealed by Parliament by law, the*
>
> *Parliament has enacted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No. 15 of 1999);*
>
> *And Whereas, sub-section (2) of section 1 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, provides that the said Act shall apply to such other State which adopts the said Act by resolution passed in that behalf under clause (2) of*

*article 252 of the Constitution;*

*And Whereas, the Government of Maharashtra is of the opinion that the Urban Land (Ceiling and Regulation) Act, 1976 should be repealed, in its application to the State of Maharashtra, so that land in urban area may be available for housing;*

*Now, therefore, in pursuance of clause (2) of article 252 of the Constitution of India, the Maharashtra Legislative Assembly hereby resolves that the Urban Land (Ceiling and Regulation) Repeal Act, 1999, passed by the Parliament be adopted for this State."*

Accordingly, the Repeal Act was brought into force in the State of Maharashtra on 29 November 2007.

20 Under the common law rule, the consequence of repeal of a statute is that the statute is as completely obliterated as if it had never been enacted except of course as to transactions past and closed. The clearest statement of this law is contained in the judgment of Tindal J. in the case of **Kay vs. Goodwin**[1] to the following effect :

'The effect of repealing a statute is to obliterate it as completely from the records of the parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law.'

The march of law since those days is noted by the Supreme Court in one of its oldest judgments on the point, in the case of **State of**

1 1830 English Reports (Volume 130) at page 1403, Chief Justice Tindal

**Punjab vs. Mohar Singh**[1], in the following words :

> " (6) Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law :Vide Craies on Statute Law, 5th edn. page 323. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right: Vide Crawford on Statutory Constitution, pp. 599-600. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment.
>
> Later on, to dispense with the necessity of having to insert a saving clause on each occasion, section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as section 38(2) of the Interpretation Act of England. "

The net result then would be that though the repealed statute is obliterated from the statute book, to see what is saved despite the repeal, one has to go by the saving clause, if any, of the repealing statute and the provisions of Section 6 of the General Clauses Act insofar as they apply.

1 AIR 1955 S.C. 84 (Vol. 42 C.N. 20)

21 The savings clause of the Repeal Act, in our case, saves firstly the vesting of any vacant land under sub-section (3) of Section 10 of the Principal Act, but with a caveat. Such vesting is saved only if possession of such vacant land has already been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority (Section 3(1)(a) of the Repeal Act). Secondly, it saves the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, and it saves such validity notwithstanding a judgment of any court to the contrary (Section 3(1)(b) of the Repeal Act). Thirdly, the savings clause saves any payment made to the State Government as a condition for granting exemption under Sub-Section (1) of Section 20 (Section 3(1)(c) of the Repeal Act). A further saving provision is contained in sub-section (2) of Section 3, which does not require restoration of any land which 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, subject to two conditions – one, any amount has been paid by the State government with respect to such land and two, such amount has not been refunded to the State Government. In other words, if these two conditions are fulfilled, the vesting of such land continues and is saved from the effects of the repeal. Lastly, the savings clause saves 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 authorized by the State Government or any person authorized by the State Government or by the competent authority. This is a necessary corollary of saving the vesting of such land. If the land is vested and the vesting saved by the Repeal Act, the proceedings relating to such land for (I) determination of compensation

(Section 11), appeals to a tribunal from such determinations (Section 12), appeals to the High Court from the appellate orders of tribunals (Section 13) and (ii) determination of mode of payment of compensation (Section 14), are also saved.

22 The scheme of the Repeal Act is thus absolutely clear and there are unambiguous indications in this scheme that the Repeal Act was meant to completely do away with the Principal Act except in cases of actions taken under the Principal Act which had achieved a finality. In the first place, we may note the principal Section in the Repeal Act, i.e. Section 2, which repeals the Principal Act as a whole without any reservation. Secondly, the saving clause in Section 3(2) read with Section 3(1) shows that any land which is deemed to be vested in the State Government under Section 10(3) of the Principal Act will stand restored to the owner of such land except in two cases. One, where the vesting is accompanied by taking over of possession of the land (i.e. where possession is surrendered to the State Government by the owner in pursuance of a notice under Section 10(5) or where possession is taken by the competent authority under Section 10(6) of the Principal Act). And the other, where possession is not taken but any amount has been paid by the State Government with respect to such land. In the latter case, such land shall not be restored unless the amount paid by the State Government is refunded to it. No vesting order except in the two contingencies noted above is saved by the Repeal Act. Thirdly, it may be noted that Section 3(1)(b) saves the validity of an order granting exemption under Section 20(1) of the Principal Act or any action taken thereunder. It does not in terms save any action to be taken thereunder, but saves validity of any action already taken thereunder. Fourthly,

Section 3(1)(c) saves only the payment made to the State Government as a condition for granting exemption under Section 20(1) of the Principal Act. It must be noted that in clause 3(1) (c) it is not the condition of payment *per se* that is saved, but actual payment which is saved. The next important consequence provided by the Repeal Act is the abatement of all legal proceedings relating to any order made or purported to be made under the Principal Act. There is, however, an exception in case of proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act – but it is made clear that this saving applies only to proceedings relatable to the land, possession of which is taken over under the Principal Act after the vesting thereof in the State Government.

23 From these provisions, it is clear that apart from saving the validity of an exemption order under Section 20(1) of the Principal Act (the effect of which will be considered later), the scheme of the Repeal Act is that every consequence of a person holding excess land under the Principal Act is done away with except in these cases:

**(i)** Where the land is not only vested in, but taken possession of by, the State Government under the Principal Act;

**(ii)** Where the land is vested, though possession is not taken, but payment is made by the State Government in respect of such land;

**(iii)** Where there is a payment made to the State Government or an action taken under an

exemption order under Section 20(1) of the Principal Act.

In case (i), the Repeal Act has no effect whatsoever. It is to be treated as a transaction past and closed. It is fully saved despite the repeal. In case of (ii), the Repeal Act shall have an effect subject to refund being made to the State Government of the amount paid by it. If such refund is made, the Repeal Act will have its full effect and the vesting will not be saved at all. In case of (iii), the payment made or action taken, as the case may be, will be saved.

24 These provisions are clear and loud. They imply a complete repeal or obliteration of the law except in cases particularly provided for. But if and to the extent there is any ambiguity (thereby permitting external aids for interpretation of the repealing statute), we may have reference to the Statement of Objects and Reasons of the repealing statute. The Statement of Objects, as noted above, shows that whereas the main purpose of the Principal Act was to prevent concentration of urban land in a few hands and provide affordable housing to economically weaker sections, the Act actually resulted in pushing up land prices, practically brought the housing industry to a stop and provided opportunities for corruption. The Objects and Reasons acknowledge a near unanimous public opinion that the Act has failed to achieve its objectives as expected. In these premises, the Repeal Act proposes a complete repeal without any reservation, saving only the consequences specially provided for.

25 In the backdrop of what is stated above, we may now discuss

the effect of the saving clause insofar as it saves the validity of an exemption order. At the outset, we may note that the very idea of saving from the effect of a repeal is to save something that is accrued or incurred under the repealed statute. It is the right or liability which is crystallized before the repeal. The effect of saving of an exemption order must be considered in that light. At the same time, it may be noted that it is the exemption order as a whole which is saved. The exemption order, as rightly noted by brother Dharmadhikari J, grants a privilege, but such privilege is granted on certain conditions. The entire exemption order would be valid, that is to say, both the privilege and the conditions would be valid. In the absence of any valid reasons, it cannot possibly be suggested that only the privilege is valid and not the conditions on which it is granted.

26 Now the question is, what are the consequences of such validity. The obvious consequences, which are provided in the Repeal Act itself, are (a) all actions taken under the exemption order are valid and (b) payment made thereunder to the State Government is valid. But what are the other consequences. Could it be that the breach of the conditions of a valid exemption order would attract the provisions of Section 20(2) and all provisions of Chapter III including those relating to vesting of the land would thereupon apply to such land (i.e. land becoming excess vacant land as a result of withdrawal of exemption under Section 20(2)).

27 There are clear indications in the Repeal Act that these consequences are not contemplated. In the first place, withdrawal of an exemption order renders the land 'excess vacant land' just as any other vacant land which is in excess of the ceiling limit and which is not subject

to an exemption order under Section 20(1). If such other vacant land could not continue to be vested in the State Government even after the provisions of Section 10(3) applied to it, if possession of the land was not already taken by the Government on the date of the repeal, there is no reason why the provisions of Section 20(2) and consequences of withdrawal of exemption thereunder should apply to a land which is exempted under Section 20(1), but conditions of such exemption are breached as on, or after, the date of the repeal.

28 If Chapter III were to apply to such land, which has become excess vacant land by reason of withdrawal of the exemption order in connection therewith, but not to other excess vacant lands, anomalous and incongruent consequences would follow. Take for example, the case of two pieces of land - one where the exemption order has already been withdrawn before the repeal and a statement under Section 6 is filed in connection with such land, but no further steps have been taken and the other land, which had no exemption order at any time and therefore, was excess vacant land ever since the appointed day. In the case of this latter land, not only is a statement under Section 6 filed, but further proceedings have culminated into a declaration under Section 10(3) and this has resulted in deemed vesting of the land in the State Government. Yet the latter land stands restored to the land owner upon repeal , but the proceedings under Sections 8, 9 and 10 would have to continue in respect of the former land despite the repeal and that land at the conclusion of these proceedings could vest in, and would have to be surrendered to, and if not surrendered, forcibly taken possession of by, the State Government. It is difficult to see the rationale behind such anomalous and incongruent treatment to the two lands in our example.

29 There has never been any controversy so far on the point that once the exemption order was withdrawn under Section 20(2), the land would count as excess vacant land and the provisions of Chapter III would apply to it. If in a given case, such land, upon withdrawal of exemption, was under acquisition under chapter III on the date of the repeal but possession of the same was not taken over under sub-section (5) or (6) of Section 10 on that date, such land could not vest in the State Government after the date of the repeal. The case of **Vithabai Bama Bhandari vs. State of Maharashtra**[1] is one of the cases in point. In the case of **Vithabai Bama Bhandari**, the landholders had been granted exemption under Section 20 of the Principal Act on condition of a certain number of tenements having to be sold to Government nominees at a fixed rate. The Landholder completed the construction after the stipulated period for completion of the scheme was over and thereafter offered the possession of the flats to the Government. At that stage, the landholder was informed that the exemption granted under Section 20(1) had been withdrawn. Thereafter, further steps under Section 10 of the Principal Act were taken and finally the landholder was issued a notice under Section 10(5) to surrender possession of the excess vacant land. That notice was challenged before this Court in a writ petition. No physical possession was, however, taken of the excess vacant land by then. In the meanwhile, the Principal Act had been repealed by the Repeal Act. A Division Bench of this Court, after analyzing the scheme of the Principal Act and the Repeal Act, held that with the withdrawal of the exemption under Section 20(2) of the Principal Act, provisions of Chapter III became applicable to the land; that the Competent Authority thereupon actually applied the provisions of Chapter III to the land and followed the procedure under

1 2009 (3) BCR 663

Section 10; that it was an admitted position that though a declaration was made under Section 10(3) followed by a notice under Section 10(5), actual physical possession was not taken over by the State Government or the Competent Authority under the Principal Act by the time the Repeal Act was brought in force; and that accordingly, the vesting of the land in the Government was not saved. The Division Bench relied upon a judgment of another Division Bench of our Court in **Voltas Ltd. Vs. Additional Collector and Competent Authority**[1] in this behalf.

30 The law stated in **Vithabai Bama Bhandari** (supra) in this behalf has not been contested by the State. The learned Advocate General, in his submissions, accepts that any land, earlier exempted under Section 20(1), but exemption of which was already withdrawn under Section 20(2) before the repeal of the Principal Act, cannot vest in the State Government after the repeal if possession of such land was not taken over by the State before the date of repeal. That indeed would be the effect of Section 3(1)(a) of the Repeal Act. Once this position is accepted, there is possibly no logic or justification for not applying this law to the land exempted under Section 20(1) but exemption of which is withdrawn after the date of repeal. If the power of the Government to acquire the land in the event of withdrawal of exemption before the repeal is not saved by the Repeal Act except in a case where the exercise of such power is completed by not just deemed vesting under Section 10(3) but by taking over of physical possession under Section 10(5) or 10(6), there is no reason why such power is saved for a land, the exemption of which is withdrawn after the repeal.

31 Even Section 4 of the Repeal Act is a pointer to show that

1 2008(5) Bom.C.R. 746

applicability of Sub-Section(2) of Section 20 of the Principal Act as also applicability of the provisions of Chapter III to lands earlier subject to exemptions under Sub-Section(1) of Section 20, but which exemptions were withdrawn either before or after the repeal, is not saved. Section 4 makes it clear that all proceedings relating to any order made or purported to be made under the Principal Act shall lapse save and except proceedings under Section 11 to 14 in relation to land, possession of which has been taken over by the State Government under the Act. Section 4 does not make any distinction in respect of proceedings in relation to (i) land which has become excess vacant land by reason of withdrawal of exemption order Section 20(2) and (ii) all other excess vacant lands. Just as in the case of all other lands, where possession is not taken over, even in the case of lands, to which Chapter III is being applied by reason of withdrawal of the exemption order, the proceedings would clearly abate. Any other interpretation would be clearly contrary to the plain reading of Section 4.

32 The Repeal Act, thus, does not save any order passed or to be passed under Section 20(2) withdrawing exemption under Section 20(1) of the Principal Act and thereby applying Chapter III to the land in question. If anything, the repealing statute would have expressly provided so. It does not provide for saving of either Section 20(2) or any order passed under Section 20(2). When the applicability of the whole of Chapter III is done away with in relation to all excess vacant land other than land of which possession is taken by the State under that chapter, there is no discernible reason why that Chapter should apply to land exemption of which has been withdrawn under Section 20(2) of the Principal Act. Upon withdrawal of exemption, such land is like any other

excess vacant land and the provisions of the Principal Act including Chapter III will cease to apply to it unless the vesting of such land in the State Government is followed by taking over of possession. Thus, it is clear that the saving clause of the Repeal Act does not save the land once exempted under Section 20(1) of the Principal Act from the application of the repeal.

33 Let us now consider if it is saved by the provisions of Section 6 of the General Clauses Act. Learned Advocate General relied upon the judgment of the Supreme Court in **Bansidhar Vs. State of Rajasthan**[1] and submitted that a saving provision in a repealing statute is not exhaustive of the rights and liabilities which are saved or which survive the repeal, and Section 6 of the General Clauses Act can still be invoked so as to save other rights, privileges, obligations and liabilities which have been acquired or accrued or incurred under the repealed statute before the date of the repeal. The Court in that case reiterated the law laid down in **I.T. Commissioner Vs. Shah Sadiq & Sons**[2]**,** to the following effect: (SCC P. 524, para 15)

> " ...In other words whatever rights are expressly saved by the 'savings' provision stand saved. But that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897.... "

But then as the Supreme Court has held in **Bansidhar's** case itself, as also in a numerous other cases, what we have to also see is,

1 (1989) 2 Supreme Court Cases 557
2 (1987) 3 SCC 516

whether the repealing statute exhibits a contrary intention. Section 6 of the General Clauses Act provides the various contingencies which a repeal does not affect, but prefaces that by providing: “unless a different intention appears”. **In Kalawati Devi Harlake Vs. The Commissioner of Income Tax, West Bengal**[1]**,** the Supreme Court was concerned with the Income Tax Act, 1922, which was repealed by the Income Tax Act, 1961. The Commissioner of Income Tax in that case had issued a notice regarding income-tax assessments of the assessee for the years 1952-53 to 1960-61, which, according to the Commissioner, were erroneous and prejudicial to the interest of the revenue, and for which the Commissioner proposed to issue proceedings under Section 33 B of the Income Tax Act, 1922. The assessee claimed that the Income Tax Act, 1922 was repealed by the Income Tax Act, 1961 which came into force on April 1, 1962, and that powers under the repealed Act under Section 33 B could not any longer be exercised. Section 297 of the Income Tax Act, 1961 provided for the repeal of the 1922 Act and also provided savings therefrom. Section 297 did not cover saving of the proceedings under Section 33B of the repealed Act after the repeal. The Department, however, relied upon Section 6 of the General Clauses Act. The Supreme Court noted that Section 297 of the Income Tax Act, 1961 provided for various 'proceedings' which may be initiated and prosecuted or continued in respect of any past matter or assessment. The Court observed that Section 297 was meant to provide as far as possible for all contingencies which may arise out of the repeal of the 1922 Act and that Section 297 did not provide for saving of provisions regarding appeals, revisions etc. in respect of assessment orders already made or which were authorized to be made under that Section. The Income Tax department, however, argued that the Parliament had Section 6 of the General Clauses Act in

1 AIR 1968 SC 162

view and therefore no express provision was made dealing with appeals and revisions, etc. This contention was rejected the Supreme Court in the following words: (Pg 168 of AIR 1968 SC 162)

> " (15) The learned counsel for the appellant submits that Parliament had S. 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) 24 ITR 58 = (AIR 1954 SC 158) while interpreting Section 13 of the Finance Act, 1950, already extracted above, this Court observed at p. 68 (of ITR) = (at p. 162 of AIR) :
>
> "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. "

34 The repealing statute in our case, as noted above, exhibits a contrary intention to not to save anything which is not expressly saved by the saving clauses contained in Sections 3 and 4 thereof.

35 Even otherwise, assuming that Clauses (a) to (e) of Section 6

of the General Clauses Act were to apply to acts, or rights and liabilities, or proceedings under the Principal Act after the repeal, it is difficult to see how the exemption order can be withdrawn or provisions of Chapter III can be applied to such land upon withdrawal of exemption. The argument of the State is that by virtue of Clause (c) of Section 6, rights, privileges, obligations or liabilities under the repealed Principal Act, are saved. Clause (c) talks about any right, privilege, obligation or liability *"acquired, accrued or incurred"* under the repealed enactment. Mere existence of a right, which has not been "acquired" or "accrued" on the date of the repeal, would not get protection under Clause (c) of Section 6. So also a liability cannot be enforced under the provisions of the repealed statute unless the same is "incurred".

36 In the case of **Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal & Co.**[1], the Supreme Court explained the provision thus:

> " 25. The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clauses Act, Central Act or regulations made after the commencement of General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no effect over the matters covered in its clauses viz. (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any

1 (2001) 8 SCC 397

> penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Thus the central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or regulation had not come into force.
>
> 26. As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not effect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties gets crystalised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the words "any right, privilege, obligation... *acquired or accrued*" under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being "acquired" or "accrued", on the date of the repeal, would not get protection of Section 6 of the General Clauses Act. "

In **Ambalal Sarabhai Enterprises** (supra), the Supreme Court quoted its decision in **M. S. Shivananda Vs. Karnataka SRTC**[1] in this connection, which in turn quoted the eloquent observations of the Privy Council in the case of **Director of Public Works Vs. Ho Po Sang**[2] in this behalf, as follows:

> 'It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. *But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether*

1(1980) 1 SCC 149

2[1961] A.C. 901 (P.C.)

> *some right should be or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not.*'
>
> (emphasis supplied)

Even in **Bansidhar's** case the Supreme Court, whilst construing Clauses (c) and (e) of Section 6 of the General Clauses Act, had said this:

> " 30. For purposes of these clauses the 'right' must be 'accrued' and not merely an inchoate one. The distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is said, if often one of great fineness. What is unaffected by the repeal is a right 'acquired' or 'accrued' under the repealed statute and not 'a mere hope or expectation' of acquiring a right or liberty to apply for a right.' "

37 Now let us see, how the provisions of the Principal Act with which we are concerned in the present case, namely, Section 20(2) and generally the provisions of Chapter III, fare in the context of an order under Section 20(2), in this behalf. What is argued is that the landholder holding an exemption under Section 20(1) attracts the liability to have the exemption withdrawn and Chapter III of the Principal Act applied to the land. This may certainly be called an existing liability and the Government can be said to have a corresponding right to withdraw the exemption and apply Chapter III to the land in question. But the question is, is it an "incurred" or "accrued" right, as understood by law in the context of application of Section 6. The consequence of a purported non-compliance with any of the conditions of an exemption order under Section 20(1) of the Principal Act is that "it shall be competent for the State Government to withdraw, by order, such exemption." Such order can be passed if "the State Government is satisfied" that any condition is not

complied with, and such satisfaction can be reached only "after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal". And only after all this is done and an order of withdrawal of exemption is passed that "the provisions of this Chapter shall apply". Even application of Chapter III itself does not *ispso facto* imply vesting of the land in the State Government. It only means that the elaborate machinery of Section 6, 8, 9 and 10, including the hearings at each of these stages, will have to be gone through before the vesting can take place. It is not as if the exemption stands *ispso facto* withdrawn and the land is deemed to be vested in the State Government upon breach of a condition of exemption.

38 In the first place, whether there is a breach and therefore, a corresponding right to the State to acquire excess vacant land, will itself have to be ascertained. An investigation and a proceeding involving an opportunity to show cause to the defaulting landholder are required to enable the Government to pass an order withdrawing the exemption. Thereafter, further investigation and proceedings will have to be undertaken to ascertain if the land is excess vacant land and whether the land is to be acquired. During these proceedings, the landowner may even apply that the excess vacant land may not be treated as excess under the provisions of Section 21 or even present another Scheme under Section 20 for exemption. In other words, before an "accrued" or "acquired" vesting right can be claimed by the State, a whole of gamut of investigation and proceedings will have to be gone through. Thus, neither is any divesting of the land to the State "incurred" by the landholder nor is the vesting "accrued" to, or "acquired" by, the State.

39 Thus, in the first place, there is no “withdrawal of exemption” under Section 20(2) “incurred” nor any right to withdraw exemption and apply Chapter III is “accrued” or “acquired” by the State. And as for 'vesting' of the land in the State, there is not even a statable case that the 'vesting' is in any way “acquired” or “accrued” in favour of the State at the stage of breach of a condition or even at the stage of withdrawal of the exemption. There is, in that case, no question of application of Section 6(c) of the General Clauses Act to the breach of a condition of an exemption order and saving of the Government's power to withdraw the exemption or apply Chapter III or acquire the land thereunder.

40 Thus, neither the savings clause of the Repeal Act nor Section 6 of the General Clauses Act saves the provisions of Section 20(2) or the applicability of Chapter III of the Principal Act in relation to an exemption order passed under Section 20(1). If the conditions of exemption granted under Section 20(1) are breached, neither can the exemption be withdrawn after the repeal nor could Chapter III be applied to the land upon withdrawal of such exemption after the repeal. There is no question of the State Government seeking to acquire such land any time after the repeal.

41 That still leaves the question: Are there any consequences (apart from the ones discussed above) of the validity of the exemption order saved under Section 3(1) (b) of the Repeal Act. We have noted that the validity of an exemption order covers both the privilege, namely, the exemption, and the conditions attached to that privilege. But we have also noted that breach of these conditions cannot be visited with the consequence of either withdrawal of exemption under Section 20(2) or

application of the other provisions of Chapter III after such withdrawal. If, however, the exemption order together with its conditions could be implemented or enforced by the State or any beneficiary of a scheme sanctioned under Section 20(1), otherwise than by recourse to Section 20(2) or other provisions of Chapter III of the Principal Act, when the Principal Act was in force, there is no reason why such implementation or enforcement is not possible after the repeal. Take the case of an exemption order under Section 20(1) for a housing scheme with an express condition of handing over a specified number of tenements to the State Government. If the scheme is not implemented at all, the State has no means of implementing the condition except by recourse to Section 20(2) by withdrawing the exemption and applying the provisions of Chapter III to the land. The Principal Act not being in force, this course is not available to the State after the repeal. But if the scheme is implemented, and a housing project is actually brought up on the land, but the tenements have not been handed over to the State Government, can the State Government not require the land owner to hand over the tenements to the State Government, without withdrawing the exemption under Section 20(2). The answer is yes. The State may go to a court of law or devise any other means, legislative or executive, acceptable to law to recover the possession of the tenements due to it. If the State could do it when the principal statute was in force, there is no reason why it cannot do so after the repeal, especially if the repealing statute expressly saves the validity of both the exemption and the conditions on which it is based. Take another case. An exemption order is issued under Section 20(1) in respect of a land on a condition that such land shall be used only for industrial purpose. This condition could have been implemented by the State otherwise than by recourse to Section 20(2) of the Principal Act, say

by not sanctioning any plans for a non – industrial user. If the State could do it before the repeal, it can do so even after the repeal. After all the exemption order and its conditions are valid even after the repeal.

42 In a sense, these are actions taken under the Principal Act which have achieved a finality. In the case of the housing scheme referred to in the example above, the housing scheme is completed. (It may even be substantially completed.) The liability to hand over the tenements to the Government has crystalized and has been incurred. The Government in turn has acquired an enforceable right to get the tenements. In the second case, namely, exemption on the condition of industrial user, the exemption is a completed act. The land has been exempted under the provisions of Section 20(1) on the condition that the only permissible user would be the industrial user. No further act is required either on the part of the landholder or the Government to make the condition enforceable. The liability to not to use the land for a non-industrial user is incurred by the landholder and can be enforced by the Government in any manner known to law.

43 This, then, is the answer to the main question posed to the Full Bench. What is saved by the saving clause of the repealing statute is the validity of an exemption order, and it means the validity of both the exemption and the conditions on which it is granted. But that does not mean that the breach of any condition of the exemption order can be visited with the consequence of either withdrawal of exemption under Section 20(2) or application of Chapter III of the Principal Act to the land. At the same time, if it were permissible to implement or enforce the exemption order in any manner acceptable to law otherwise than by

recourse to Section 20(2) or Chapter III of the Principal Act, such implementation or enforcement is permissible even after the repeal.

44 To this extent, I am not in agreement with the view expressed by the Andhra Pradesh and Delhi High Courts, respectively, in **Surendra Raj Jaiswal vs. Government of Andhra Pradesh**[1] and **Tej Pratap Singh vs. Union of India**[2]. I am in respectful agreement with the view of the learned Single Judge of Andhra Pradesh High Court in the case of **Surendra Raj Jaiswal** (supra) that on non-compliance of conditions of an exemption order, the State Government after the repeal of the Principal Act was not empowered to withdraw the exemption granted under Section 20(1). With respect, however, I do not agree with his view that in the absence of the power to withdraw the exemption, the conditions have become un-enforceable and are non-est or that such land has become free-hold land irrespective of any conditions with regard to the usage of the exempted land. So also, for the reasons discussed above, I am in respectful disagreement with the statement of law by the Delhi High Court in the case of **Tej Pratap Singh** (supra) that after the repeal, the conditions of exemption, which remain unimplemented, cannot be implemented because they are not specifically saved. The conditions are saved because the exemption order as a whole is saved. They can even be enforced, if the liability created thereby has been incurred, as discussed above. One of the reasons cited by the Delhi High Court whilst arriving at this conclusion was the provision of Section 3(1) (c) of the Repeal Act. In **Tej Pratap Singh's** case (supra) the exemption under Section 20(1) was granted on a condition requiring certain payment to be made to the State Government. The Delhi High Court held that under Section 3(1) (c) the

1 2011 (6) ALD 198
2 46 (1992) DLT 303

actual payment was saved, but not the condition of payment. The Court felt that had it not been specifically provided that the payment made to the State Government was saved despite the repeal, the same would have been affected by the repeal. From this, the Court deduced that in the context of Section 6 of the General Clauses Act, the landholder's right to exemption under Section 20(1) is specifically saved, but not the 'liability' to make the payment, unless the payment had already been made prior to the repeal. I am afraid that would not be a correct way of dealing with the question of validity of a condition or any liability created thereunder. As discussed by me above, and explained in the judgment of my brother Dharmadhikari J, the exemption order and its conditions are both valid. That is the consequence of Section 3(1) (b) itself. One need not have recourse to Section 3(1) (c) for that validity. Just as any other condition is valid, so is the condition requiring payment is valid. The question only is whether, and to what extent, this valid condition can be enforced. As explained by me above, if the scheme under which exemption was granted was not implemented or acted upon at all (or even substantially), the only consequence of non-compliance of such condition (say, of payment) would be to withdraw the exemption and apply Chapter III to the land. That is, as explained above, not permissible. But if it is implemented or substantially acted upon, then surely in a given case the condition can be enforced without withdrawal of exemption in a manner known to law, i.e. by any acceptable judicial, legislative or executive device.

45. The only question is, why is then the provision of Section 3(1) (c) at all necessary, for a completed payment, it may be argued, may be saved on the above logic under Section 3(1) (b) itself. The answer, to

my mind, is two-fold. Firstly, one does not know whether in all cases of actual payment already made before the repeal, the scheme itself providing amongst other things payment to the Government is implemented or even substantially acted upon (other than making of such payment). It may be that only payment to the Government is made, but nothing else is acted upon. In that case, the payment may not be saved under the general clause, namely, Section 3(1) (b) and a special provision may be necessary to save such payment. Secondly, making a special provision by way of abundant caution despite application of the general provision, is a well known legislative device, which the legislature many a time adopts. In a case which is covered by reason of the general provision of Section 3(1) (b), the provision of Section 3(1) (c) acts *ex majori cautela*. Thus, the existence of Section 3(1) (c) can be justified in the face of Section 3(1) (b).

46. In the light of the above discussion, my answers to the questions referred to the Full Bench are as follows :-

(a) Question No.(1) in the Affirmative. Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 saves the validity of the orders of exemption under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 including the validity of all terms and conditions thereof and all actions taken thereunder. Section 6 of the General Clauses Act, 1897 and Section 7 of the Bombay General Clauses Act, 1904 have no application in this behalf.

(b) Question No.(2) in the Negative. Section 6 of the General Clauses Act, 1897 read with or without Section 7 of the Bombay General Clauses Act, 1904 does not apply to the repeal of the Urban Land (Ceiling

and Regulation) Act, 1976 by the Repealing Act, 1999. The application of these sections is excluded by the contrary intention expressed in the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

(c) Question (3) (a) in the Negative. There is no question of enforcement of the order of exemption under Section 20(1) or its terms and conditions, in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Neither can the exemption granted under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 be withdrawn for breach of conditions under Section 20(2) nor can Chapter III be applied to the land exempted under Section 20(1) after withdrawal of the exemption under Section 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976.

(d) Question (3)(b) in the Affirmative, with a clarification that the order of exemption can be implemented or enforced in any manner acceptable to law, if, and to the extent, such order could be implemented or enforced otherwise than by recourse to the Urban Land (Ceiling and Regulation) Act, 1976. The State may enforce the order together with its conditions through a Court of law or devise any legislative or executive means to implement the order of exemption and its conditions. The enforceability of the order, and legality of the measure adopted for its implementation will, however, have to be decided in the facts and circumstances of each individual case.

(e) Question No.(4) (a) in the Negative. The State cannot recall/cancel/modify any exemption order granted under Section 20 of the Principal Act at any time after the coming into force of the Repeal Act.

(f) Question No.(4)(b) in the Affirmative, subject to a clarification that though enforceability of any circular issued for implementation of an order of exemption issued under Section 20 of the Principal Act is not affected by the repeal, whether, and to what extent, such circular is valid will have to be decided in the facts and circumstances of each case. It is not possible to lay down any general proposition with respect to its validity.

(g) Question No.(4)(c) in the Negative. The State Government cannot acquire the land which was exempted under Section 20(1) of the Principal Act by issuing notification under Section 10(3) of the Principal Act.

(h) Question No.(4)(d) in the Affirmative, but with a clarification that no action is possible at any time after the repeal of the Principal Act in respect of non-compliance/breach of an exemption order issued under Section 20(1) of the Principal Act under the provisions of either Section 20(2) of the Principal Act or under Chapter III of the Principal Act in any manner whatsoever.

(i) Answer to Question No.(5) as follows. The view taken in the case of **Vithabai Bama Bhandari vs. State of Maharashtra** sets out the correct legal position as regards the ambit and scope of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. It has no conflict with the view taken by this Court in the case of **Mira Bhayandar Builders and Developers Welfare Association vs. The Deputy Collector and Competent Authority, Thane Urban Agglomeration and others**. The case of **Damodar Laxman Navare and others vs. State of**

**Maharashtra and others** deals with the question as to whether it was open to the Collector and Competent Authority in that case to issue instructions to the Sub-Registrar of Assurances to not to register any document. The view taken in that case that it was not open to the Collector to issue such instructions as he had no Appellate, Supervisory or Revisional powers over the Registering Officer, is correct and in consonance with the law laid down by our Court in the case of **Sundersons & Ors. Vs. State of Maharashtra & Ors.** The judgment in **Damodar Laxman Navare and others Vs. State of Maharashtra and others** does not deal with the question as to whether any order passed before the repeal of the Principal Act under Section 10(1) or (3) in respect of a land, after its exemption under Section 20(1) was withdrawn under Section 20(2), is saved after the repeal. As held by me above, such order does not survive the repeal of the Principal Act. In so far as the judgment of our Court in **Mira Bhayandar Builders and Developers Welfare Association vs. The Deputy Collector and Competent Authority** is concerned, the view expressed therein that the landholders, who have taken the benefit of the schemes under Section 20 of the Principal Act by constructing buildings, cannot after the repeal of the Principal Act wriggle out of their obligations to surrender flats to the Government, is correct, but for the reasons discussed above. The legality of the means adopted by the State Government or any other person for holding the landholders to their respective obligations under such schemes will, however, have to be decided in each case having regard to the facts and circumstances of the individual case.

**(S.C. Gupte, J.)**

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**(Per G.S.Kulkarni, J):** I have gone through the erudite judgment of my learned brother S.C.Dharmadhikari, J. While I am fully in agreement with the reasoning and conclusions as arrived by my learned brother, I wish to pen down few thoughts.

1. The principal question is as to whether after the repeal of the Urban Land (Ceiling and Regulation) Act 1976 (for short the 'Principal Act') what would be the legal position of an order granting exemption under sub-section (1) of section 20. To what extent Section 3 sub-section (1) (b) of the Urban Land (Ceiling and Regulation) Repeal Act 1999 (for short Repeal Act) saves the validity of such an exemption order or any action taken thereunder? This position is required to be ascertained from the examination of the provisions of the Repeal Act and mainly the provisions of Section 3 and 4 of the Repeal Act and the application of section 6 of the General Clauses Act vis-a-vis the Principal Act.

2. The Repeal Act was brought into effect by the State Legislature w.e.f. 29.11.2007. Section 3 is the saving clause which provides that the repeal of the principal Act shall not affect the following:

(i) 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 authorized by the State government in this behalf or by the competent authority;

(ii) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder notwithstanding any judgment of any Court to the contrary;

(iii) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20,

Sub-section (2) postulates that where 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, **AND**

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.

3. Section 4 of the Repeal Act provides for abatement of the legal proceedings and provides that all proceedings relating to any order or purporting to be made under the principal Act pending immediately before the commencement of the repeal Act before any Court, tribunal shall abate.

The proviso to this section, stipulates that the section shall not apply to the provisions relating to section 11 to 14, of the principal Act in so far as such provisions are relatable to the land possession of which has been taken over by the State Government.

4. The intention of the legislature in regard to the repeal of the principal Act is required to be gathered from the provisions of sections 1 to 4 of the Repeal Act. The Repeal Act is required to be seen in its entirety so as to find out

as to what is the true nature of the repeal as contemplated by the legislation. The intention of the legislature which can be gathered from these provisions is as under:-.

(i) That the principal Act stands repealed. **(Section 2)**

(ii) The repeal of the principal Act shall not affect the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government . (**Section 3(1)(a)**)

(iii) The repeal of the principal Act shall not affect the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary. (**Section 3(1)(b)**)

(iv) The repeal of the principal Act shall not affect any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20. (**Section 3(1)(c)**)

(v) The repeal of the principal Act shall not affect any land which is deemed to have been 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 **and** any amount which 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.

**(Section 3(2)(a) & (b))**

(vi) That on the repeal of the principal Act 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 any other authority shall stand abated and that abatement shall not apply to the proceedings relating to Section 11 to 14 of the principal Act, insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government. (**Section 4**)

7. The aforesaid consequences of the Repeal Act if seen in the context of Section 3 of the Repeal Act, it becomes apparent that **firstly** the Repeal Act in no uncertain terms saves vesting of any vacant land, possession of which has been taken over by the State Government; **secondly**, the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder is also saved.

8. The plain wordings of sub-clause (b) of Section 3(1) of the Repeal Act are required to be given due meaning as they deserve. The interpretation of sub-clause (b) of Section 3(1) is required to be meaningful so as to protect the object which the provision intends to achieve. What is sought to be achieved is the validity of an exemption order issued under sub-section (1) of Section 20 or any action taken thereunder. Not only the validity of Section 20(1) is saved but also any action taken thereunder notwithstanding any judgment of any Court to the contrary.

9. To appreciate the meaning which needs to be attributed to Section 3(1)(b) of the Repeal Act, an exemption order issued under Section 20(1) is required to be kept in mind. A sample copy of the exemption order has been tendered to the Court on behalf of the petitioners. A perusal of this exemption

order shows the following attributes:-

(i) That the beneficiary of an exemption order admittedly holds vacant land in excess of ceiling limit. This is by virtue of the application of the Principal Act more particularly Chapter III.

(ii) The beneficiary applies for exemption under Section 20 of the Act in regard to the excess land for providing sites and services, core, house and construction of tenements as per the guidelines issued under the Government Resolutions, Housing & Special Assistance Department dated 22.8.1988.

(iii) The beneficiary undertakes that the construction of tenements would be governed under the MOFA Act or the MCS Act,1960.

(iv) On such application the Government takes an action of being satisfied that having regard to the location of the land the purpose for which the land is being proposed to be used and other relevant factors it is necessary in public interest to grant exemption and thus exempts the vacant land from the provisions of Chapter III of the ULC Act.

(v) The exemption is granted by the State Government on several conditions inter alia being:-

(a) the land exempted shall be for the purpose of construction of tenements;

(b) any change made in the user of the land would amount to breach of the conditions;

(c) tenements to be constructed are required to be of a particular specification;

(d) the beneficiary shall get the lay out of the building plan approved from the concerned planning authority;

(e) that the construction is required to be commenced and completed as per the time limit as specified;

(f) in case buildings are incomplete and/or construction is not completed, the

exemption shall be deemed to have been withdrawn and vacant land and such land with structures and the land appurtenant shall be acquired as per Chapter III of ULC Act,1976.

(g) that the exempted land with or without building shall not be transferred except for the purpose of mortgage (in favour of financial institutions) failing which the exemption granted shall stand withdrawn. Necessary returns are required to be filed to the State Government in a prescribed form to show the progress of the work done by the beneficiary. In case of breach of the order, it shall be competent for the State Government to withdraw by an order exemption from the date specified in the order.

(h) The beneficiary will advertise the entire scheme within six months from the date of sanction order of the State Government.

An exemption order issued under Section 20(1) of the Principal Act stipulates these different conditions, and it is on these conditions the vacant land would cease to be out of the purview of Chapter III of the Principal Act. These conditions include the condition on the part of the beneficiary to subject himself

to the provision of Chapter III in case there is breach of any conditions of the exemption order on his part.

It is significant that the power to exempt as provided under section 20 of the principal Act begins with a non-obstante clause and reads thus:

> " 20. Power to exempt: (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,.....".(Emphasis supplied)

It is therefore clear that power under section 20 is an independent power

notwithstanding the other provisions as contained in Chapter III namely section 3 to section 19 and Section 21 to section 24. If the Government exercises powers under section 20 sub-section (1) such an exercise would be an independent exercise, irrespective of the applicability of other provisions of the provisions of chapter III. It certainly cannot be construed that once an exemption order under section 20 sub-section (1) was issued, the land which is otherwise subject to the provision of section 3 to section 19 of the Principal Act, for the exemption becomes immune from the applicability of the said provisions, the consequences of which are deemed to have taken place the moment of the Act became applicable to such vacant land. Further once an exemption is granted under section 20 (1) it is an admitted position that the land is a vacant land and the beneficiary by his volition subjects himself to the terms and conditions of the exemption order. Once this position is established a beneficiary of section 20 (1) order cannot contend that everything under the exemption order has become redundant due to the repeal of the Act. Such contention in my opinion is wholly against the express provisions of section 3 (1) (b) of the Repeal Act which saves the validity of an exemption order. It is therefore seen that Section 20 is in the nature of an exception to the general rules as contained in Chapter III of the principal Act which deal with the ceiling on vacant land and the manner in which such lands would be dealt under the provisions of chapter III of the Act.

The intention of the Legislature which is apparent from the wordings of Section 3(1)(b) of the Repeal Act is to save in totality the validity of an order granting exemption under sub-section (1) of Section 20 of the Act or any action taken thereunder. When the legislature saves the validity of a Section 20(1) order which includes all the conditions including the condition that in case of breach of any of the conditions provisions of Chapter III would become applicable, then it will not be possible to read into the provisions of Section 3(1) (b) of the Repeal Act that the legislature intended otherwise. In other words, the

validity of an exemption order as saved by Section 3(1)(b) of the Repeal Act cannot be read de hors its conditions inasmuch as the said provision mandates that an order granting exemption under Sub-section (1) of Section 20 is valid wholesomely. It would be an absurdity to say that such an exemption order would remain valid de hors the conditions on which it is issued. The word "validity" as used in Section 3(1)(b) is of considerable significance. **Black Law Dictionary** (8th Edition) would refer the word "**valid**" to mean as under:-

"**legally sufficient, binding, a valid contract**"

If this is what the Legislature intended then necessarily the validity of an exemption order under Section 20(1) would include all attributes necessary to keep an exemption order valid and therefore would also include the applicability of Chapter III of the Principal Act. De hors the applicability of Chapter III which is one of the prime conditions of a Section 20(1) exemption order, the validity of such exemption order as saved by the provisions of Section 3(1)(b) of the Repeal Act would be rendered meaningless. In any event the beneficiary of an exemption order can be the last person to quarrel about this proposition as he has accepted the exemption order in totality which includes acceptance to the applicability of Chapter III of the Principal Act.

It is well settled that if the words used by the legislature in framing the legislation have a necessary meaning, it is the duty of the Court to construe the clause accordingly irrespective of the inconvenience that may be caused *(Argumentum Ab Inconvenienti Plurimum Valet In Lege)*. In the context of a Section 20 exemption order and considering the plain reading of section 3 (1) (b) of the Repeal Act the interpretation as suggested by the petitioners would lead to extravagant results, away from the object which the saving provision intends to

achieve.

It is settled that a saving provision in a repeal statute is not exhaustive of the rights, obligations so saved or rights that survives the repeal as is clear from the judgment of the Constitution Bench in the case of "***Bansidhar & Ors. Vs. State of Rajasthan & ors***" reported in **(1998) 2 SCC 557** It is, therefore, imperative that Section 6 of the General Clauses Act which provides for the effect of a repeal, stands completely attracted. Section 6(c) of the General Clauses Act provides that the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment was repealed unless a different intention appears.

A proper examination of the provisions of the Repeal Act and more particularly the provisions of Sections 3 and 4 do not indicate that it would be the intention of the Legislature to save the validity of a Section 20(1) Exemption Order to exclude the enforcing power being applicability of Chapter III of the Principal Act being one of the conditions under the exemption order. It cannot be said that the rights accrued and the liabilities incurred under Section 20(1) exemption order stands completely effaced when the validity of such an exemption order has been saved by the provisions of Section 3(1)(b) of the Repeal Act. As no such contrary intention can be gathered from the provisions of the Repeal Act, the petitioner's contentions that the validity of the exemption order as saved by Section 3(1)(b) of the Repeal Act is valid de hors the conditions of the exemption order cannot be accepted on the basis of the plain wordings of Section 3(1)(b) of the Repeal Act. In the decision of the Supreme Court in the case of "***Shantibai Gaikwad Vs. Shivajibhai Haribhai***" reported in "***2005(5) SCC 101***", the Supreme Court has once again recognized the principle

that a repealing statute is not exhaustive and does not automatically extinguish accrued rights unless they are taken away completely. The Repeal Act in no manner expressly takes away the applicability of the conditions under Section 20(1) exemption order. In fact the intention of the legislature is to wholesomely save the validity of an exemption order which ipso facto include the teeth namely to take action under Chapter III of the Principal Act in case of breach of the condition under which an exemption has been granted for the beneficiary of the Section 20(1) of the order.

The petitioners contention that for some reason the scheme under a section 20 (1) order could not be completed and hence the exemption order cannot be enforced due to the repeal of the Principal Act, cannot be accepted. Once the legislature holds an exemption order issued under section 20 (1) to be valid, all incidental powers which are necessary to preserve its validity would be available to the State. This would be firstly by virtue of the clear provisions of section 3 (1) (b) of the Repeal Act and secondly by virtue of the provisions of section 6 of the General Clauses Act. Any other interpretation would be nothing short of doing a violence to the solemn intention of the legislature in saving the validity of an exception order by in view of the express provisions of section 3 (1) (b) of the Repeal Act.

In view of the aforesaid discussion, the legal position as would emerge can be summarized as under:-

(a) Section 3(1)(b) of the Repeal Act saves the validity of an order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary.

(b) this would mean that the validity of Section 20(1) exemption order is saved in every regard so as to hold the same valid for all the purposes.

(c) the phrase "validity" would mean that an exemption order would be construed to be valid in regard to all the rights and liability attached to such an exemption order. These rights and liabilities may be either of the beneficiary of the exemption order or the Government.

(d) As Section 3(1)(b) of the Repeal Act does not expressly bar or take away the rights and liabilities under an exemption order, Section 6 of the General Clauses Act becomes applicable with all its force, and hence, the repeal of the Principal Act, would not affect the rights, privileges, obligation or liability, acquired, accrued, or incurred under the Principal Act qua a Section 20(1) exemption order.

(e) Any other interpretation would render Section 3(1)(b) of the Repeal Act to the extent it saves the validity of a Section 20(1) exemption order meaningless, as Section 3(1)(b) of the Repeal Act not only saves the validity of Section 20(1) exemption order but also any action taken thereunder notwithstanding any judgment of any Court to the contrary.

(f) If the Legislature in so many words has saved the validity of a section 20 (I) exemption order then it would be absurdity to say that on one hand the legislature has saved its validity and on the other hand such a validity would be required to be read as meaningless in view of repeal of the Principal Act.

(g) The arguments of the petitioners that what is saved under Section 3(1)(b) of the Repeal Act are only actions which stand completed and closed, is per se not acceptable for the reason that such interpretation would only be

possible when there is no saving clause in the repealing statute. More particularly it is also unacceptable in view of a saving clause of the nature section 3 (1) (b) of the Repeal Act provides. A plain reading of Section 3(1)(b) definitely cannot be construed to attribute such a meaning to Section 3(1)(b).

(h) The Repeal Act, if construed in its entirety, manifest a clear intention of the Legislature to save the validity of a Section 20 (1) exemption order in totality including its enforceability as observed by my learned brother S.C.Dharmadhikari, J.

**(G.S.Kulkarni, J)**