State Of Gujarat & Anr vs Manoharsinhji Pradyumansinhji Jadeja on 4 December, 2012

Equivalent citations: 2013 AIR SCW 131, 2013 (2) SCC 300, AIR 2012 SC (SUPP) 983, AIR 2013 SC (CIVIL) 369, (2013) 1 CLR 204 (SC), (2013) 1 RAJ LW 449, (2012) 11 SCALE 670

Bench: Fakkir Mohamed Ibrahim Kalifulla, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.612 OF 2002

State of Gujarat & another …Appellants

VERSUS

Manoharsinhji Pradyumansinhji Jadeja …Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. The State of Gujarat and the Mamlatdar & Agriculture are the appellants. The appellants are aggrieved by the judgment of the Single Judge of the High Court of Gujarat at Ahmedabad dated 11.10.2000 and the final order of the Division Bench dated 20.10.2000 passed in Letters Patent Appeal No.597/2000 in Special Civil Application No.4015 of 1990. By the said impugned judgment and the final order, the Letters Patent Appeal preferred by the appellants came to be dismissed confirming the judgment of the learned Single Judge passed in Special Civil Application No.4015 of 1990 dated 06.05.1999.

2. The second appellant herein initiated proceedings under the provisions of The Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter called as 'the Act of 1960') and after hearing the interested party, passed an order dated 24.08.1982 in Ceiling Case No.2 of 1976 holding that the land to an extent of 587 acres 35 Gunthas was in excess of ceiling limit and the respondent was entitled to retain only balance land i.e. 51 acres.

3. The respondent preferred an appeal under Section 35 of the 1960 Act to the Deputy Collector, Rajkot. The Deputy Collector dismissed the appeal by an order dated 10.11.1983. The respondent preferred a revision under Section 38 of the Act of 1960 which was registered as TEN.B.R.4/84 before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by its judgment dated 08.09.1989 partly allowed the revision and directed that Randarda lands admeasuring 40 acres to be included in the total holding, that Bhomeshwar Temple admeasuring 12 acres 34 Gunthas to be excluded from the holding of the respondent and remanded the matter back to the second appellant for taking evidence regarding the age of the members of the family.

4. Aggrieved by the order of the Gujarat Revenue Tribunal, the respondent preferred the writ petition in Special Civil Application No.4015 of 1990. Before the learned Single Judge, the respondent took the stand that his lands were covered by the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the 'Act, 1976') and was not governed by the Act of 1960. In fact, the said stand of the respondent was raised for the first time in the writ petition. The stand of the respondent was accepted by the learned Single Judge and by the judgment and order dated 06.05.1999 passed in Special Civil Application No.4015 of 1990, the judgment and order of the Gujarat Revenue Tribunal dated 08.09.1989 in Revision Application No.TEN.B.R.4/84 was set aside and the Rule was made absolute.

5. The appellants preferred Letters Patent Appeal No.597/2000 and by the order impugned in this civil appeal, the said LPA having been dismissed, the appellants have come forward with this appeal.

6. We heard Mr. Soli J. Sorabjee, learned senior counsel for the appellants and Mr. Shekhar Naphade, learned senior counsel for the respondent. Mr. Soli J. Sorabjee, learned senior counsel for the appellants in the first instance traced the existence of the Act of 1960 as it originally stood which was enforced on 15.06.1961 and, thereafter, the initiative taken by the Gujarat State Legislative Assembly by passing a resolution on 14.08.1972 under Article 252 (1) of the Constitution of India authorizing the Parliament to legislate with respect to 'imposition of ceiling on the holding of urban immovable property'. Learned senior counsel also referred to the amendment passed by the State Legislature to the definition of 'land' in the Act of 1960 by way of 'removal of doubts' to the expression 'Bid lands' also to be included in the definition of 'land' on 23.02.1974 which amendment was notified on 01.04.1976 under the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972. Learned senior counsel also brought to our notice the coming into force of the Act, 1976 on and from 17.02.1976.

7. While elaborating his submissions on the various provisions contained in the different enactments, in the foremost, the learned senior counsel referred to the expressions 'agriculture' under Section 2(1) and 'land' under Section 2(17) of the un-amended, Act of 1960. Learned counsel also referred to Section 6 which sought to fix the ceiling on holding of such agricultural land. In that context, learned senior counsel brought to our notice the Statement of Objects and Reasons for bringing out the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (being Gujarat Act No.2 of 1974) (hereinafter called the Amendment Act, 1974) wherein, inter alia, it sought to remove doubts relating to 'Bid lands' of former Princes, as well as, Girasdars and Barkhalidars in the Saurashtra area which were duly covered under the definition of 'land' and submitted that it was

only with a view to remove doubts that the Amendment Act was brought out and that it was not by virtue of the said amendment alone 'Bid lands' fell within the definition of 'land'.

8. In other words, according to learned senior counsel, even as per the definition of 'land' under Section 2(17) read along with the definition of "agriculture" under Section 2(1) of the un-amended Act of 1960, 'Bid lands' were duly covered within the said expression of 'land' and the Amendment Act, 1974 only sought to remove any doubt in the mind of anyone as regards the character of the 'Bid lands'.

9. The learned senior counsel then referred to Section 2(q), namely, the definition of 'vacant land' and Section 2(o), the definition of 'urban land' under the provisions of the Act, 1976 to contend that even going by the said definitions, such land within the urban agglomeration which fall within the definition of 'agricultural land' stood excluded for the purpose of application of the Act, 1976.

10. Learned senior counsel also brought to our notice the definition of 'Bid land' under Section 2(a) of the Saurashtra Estates Acquisition Act, 1952 (hereinafter called as the "Saurashtra Act No. III of 1952") as well as the definition of the very same expression, namely, 'Bid land' under the Saurashtra Land Reforms Act, 1951 (hereinafter called as the "Saurashtra Act No.XXV of 1951) as well as Saurashtra Barkhali Abolition Act (hereinafter called as the "Saurashtra Act No.XXVI of 1951) and contended that even long prior to the Amendment Act 1974 'Bid land' has been defined to mean a land used by Girasdars or Barkhalidars for grazing cattle or for cutting grass, for the use of cattle, meaning thereby that such lands were nonetheless 'agricultural lands'. In the light of the above statutory provisions relating to the 'Bid land' learned counsel submitted that de hors the Amendment Act 1974 which came to be notified on 01.04.1976 'Bid land' fell within the definition of 'land' under the Act of 1960 and consequently there was no scope for the respondent to fall back upon the Act, 1976 in order to challenge the order passed by the second appellant which ultimately came to be confirmed by the Gujarat Revenue Tribunal which was set aside by the judgment of the Division Bench in the order impugned in this appeal.

11. The learned senior counsel further contended that this very issue was considered by this Court in a recent decision in Nagbhai Najbhai Khackar Vs. State of Gujarat reported in (2010) 10 SCC 594 which has taken the view that the definition of 'land' under Section 2(17) read along with Section 2(1) of the Act of 1960 'Bid land' would fall within the definition of 'agriculture' and consequently governed by the definition Section 2(17) which define the expression 'land' and, therefore, the ceiling limit prescribed under Section 6 of Act of 1960 would be applicable to the 'Bid lands' of the respondent. The learned senior counsel also relied upon the decision of the Privy Council in London Jewellers Limited Vs. Attenborough – (1934) 2 K.B. 206; the House of Lords decision in Jacobs Vs. London County Council – (1950) 1 All E.R. 737; and the Queens Bench decision in Behrens and another Vs. Bertram Mills Circus Ltd. – (1957) 1 All E.R. 583 for the proposition that wherein a decision more than one reason is assigned to support the ultimate conclusion, both the reasons will have binding effect and that one cannot be excluded under any pretext. The learned senior counsel also relied upon Smt. Somawanti and others Vs. State of Punjab and others - AIR 1963 SC 151 wherein it was held that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an

argument was subsequently advanced was actually decided. The learned senior counsel, therefore, contended that in the recent judgment of this Court in Nagbhai Najbhai Khackar (supra) when the ultimate decision was reached based on two grounds, both the grounds, would be the ratio of the decision and, therefore, the said decision will be complete answer to the question involved in this appeal.

12. In the alternate learned senior counsel submitted that the argument of the respondent which weighed with the learned Single Judge as well as the Division Bench of the High Court in the impugned judgment based on the Act, 1976 vis-à-vis the Act of 1960 read along with Amendment Act 1974 was not sustainable. According to learned senior counsel, in the first place, there could not be any repugnancy as between the Act of 1960 and the Act, 1976, inasmuch as the amendment of the definition of 'land' in the Act of 1960 was amended as early as on 23.02.1974, namely, long prior to the coming into force of the Act, 1976. According to learned senior counsel the relevant date is the date when the Amendment Act came to be passed in the Assembly on 23.02.1974 and the subsequent notification dated 01.04.1976 bringing into effect the Amendment Act 1974 was not the relevant date. In other words, according to him, when once the amending legislation was passed in the Assembly in the year 1974 the subsequent notification though was made in the year 1976 for bringing into force the amendments, the relevant date would be the date when the Act was passed and not the date when it was notified. The learned counsel then contended that in any case the resolution dated 14.08.1972 was passed under Article 252(1) of the Constitution relating to the legislation with respect to ceiling on 'urban immovable property' and it had nothing to do with the 'agricultural land'. The learned counsel, therefore, contended that the conclusion of the learned Single Judge, as well as, that of the Division Bench in having non-suited the appellants on the specific ground that by virtue of the provisions of the Act, 1976 the appellants' action in proceeding against the respondent under the Act of 1960 was null and void was unsustainable in law. Learned senior counsel contended that once the Act, 1976 stood repealed, as a corollary, the Act of 1960 with all the Amendments carried to it would automatically get revived and it will not become a dead letter as contended on behalf of the respondent. Learned senior counsel referred to the decision of this Court in M.P.V. Sundararamier & Co. Vs. The State of Andhra Pradesh & another - 1958 SCR 1422 in support of the said submission. Learned senior counsel also relied upon Thumati Venkaiah and others Vs. State of Andhra Pradesh and others - (1980) 4 SCC 295 for the said proposition. The learned counsel, therefore, contended that, in the light of the recent decision of this Court in Nagbhai Najbhai Khackar (supra), which squarely covers the case on hand, the order impugned is liable to be set aside.

13. As against the above submission, Mr. Naphade, learned senior counsel prefaced his submission by contending that the stand of the appellants that 'Bid lands' were agriculture lands under the Act was not correct. Learned senior counsel pointed out that the appellant initiated proceedings against the respondent both under the Act of 1960, as well as, the Act, 1976 and that in fact they were also keen to proceed under the Act, 1976. While referring to the submission of learned senior counsel for the appellant Mr. Naphade contended that the argument based on Article 252 of the Constitution and its effect was almost given up by the appellant. The learned senior counsel after referring to the unamended Act of 1960 and the definition of 'agriculture', 'agriculturist' and 'to cultivate personally' and the definition of 'agricultural land' and 'Bid Land' of Girasdar under the Saurashtra Act No.XXV

of 1951 contended that the various definitions under the Act of 1960 were more concerned with the 'agriculturists' and their close proximity to the land held by them, while under the Saurashtra Reforms Act the stress was more on the lands held by the grantees as tenure holders in some form or the other. In that context, learned senior counsel submitted that the definition between the 'Bid land' and the 'agriculture land' was clearly known to the Legislature as could be seen from the definition so drawn in the provisions contained under the Act of 1960, as well as, the Saurashtra Land Reforms Act. According to learned senior counsel, the reference to the description of 'Bid lands' under Saurashtra Act No.XXV of 1951 and the 'Act XXVI of 1951 disclose that the Legislature was conscious of the fact that the Act of 1960 did not include 'Bid lands' in the definition of 'land'.

14. While referring to the amendment which was brought out to the definition of 'land' in the Act of 1960, in particular Sections 4, 5 and 10 of the Amendment Act by which amendment was brought into Sections 2(1) and 2(17) and introduction of Section 2(27A) in the principal Act the learned counsel contended that the intention of the Legislature to bring into effect certain consequences pursuant to the amendment after the specified date, namely, 01.04.1976 was clearly spelt out. According to learned counsel, it was not merely by way of removal of doubt that the Amendment Act of 1974 was brought in but a significant purport was intended in bringing out such amendments to take effect on and after 01.04.1976 which has been specifically mentioned in Section 2 (27A) which came to be introduced by Amendment Act of 1974.

15. The learned senior counsel then contended that even assuming that the Amendment Act of 1974 would apply to the case on hand, since the respondent did not fall under the definition of 'Ruler' as stipulated in Section 2(17)(ii)(d) of the Amended Act, the Act of 1960 cannot be applied to the case of the respondent. Learned senior counsel by referring to Article 366 of the Constitution pointed out that under sub- clause 22 of Article 366 a 'Ruler' has been defined to mean the Prince, Chief or other person who at any time before the commencement of the Constitution (26th Amendment) Act, 1971 was recognized by the President as the 'Ruler' of an Indian State or any person who at any time before such commencement was recognized by the President as the successor of such 'Ruler' and a person thus fulfill the above criteria alone would come within the definition of 'Ruler'. The learned senior counsel contended that the respondent was never recognized in accordance with such constitutional provision and, therefore, the said Section 2(17)(ii)(d) of the Amended Act can have no application to the case of the respondent. It was further contended that the respondent would neither fall under the category of Girasdar or Barkhalidar or in the category of 'Ruler' and, therefore, even if the Amended Act of 1974 is applied, the respondent stood excluded from the coverage of the Act.

16. The learned senior counsel, therefore, contended that the argument that 'Bid lands' were already governed by the definition of 'agriculture' (i.e.) long prior to the coming into force of the 1974 Act, namely, from 01.04.1976 cannot be accepted. A fortiori, learned senior counsel contended that when the statute is clear in its ambit and scope and there being no ambiguity, there was no necessity to rely upon or refer to the Objects and Reasons to understand the purport of the enactment and relied upon the Constitution Bench decision of this Court reported in Pathumma & Others Vs. State of Kerala & Ors. reported in (1978) 2 SCC

1. The learned senior counsel, therefore, contended that whatever argument now raised based on the expression 'Bid lands' on behalf of the appellant may hold good only after 01.04.1976 and that the heavy reliance placed upon Nagbhai Najbhai Khackar (supra) cannot also come to the aid of the appellant since the various principles set out in the said decision were solely based on the Amendment Act, 1974 as has been specifically spelt out in various paragraphs of the said decision. The learned senior counsel pointed out that the said decision, does not, apply to the facts of this case, inasmuch as, there was no reference to the implication of the Act, 1976 which came into effect as early as on 17.02.1976 vis-à-vis the Act of 1960 and the said Act being an Act of Parliament, the appellant was bound by the provisions contained therein which would negate the entire submission made on behalf of the appellant.

17. According to learned senior counsel when the application of Act, 1976 was not the subject matter of consideration while deciding the scope of the amendment Act of 1974 in the judgment reported in Nagbhai Najbhai Khackar (supra), reliance placed upon the said decision on behalf of the appellant is of no relevance.

18. The next submission of Mr. Naphade was that the Act, 1976 and the Act of 1960 were operating in their respective fields, though relatable to holding of lands. Learned counsel after making reference to Section 1(2), 2 (A), 2 (C), 2(N) and the Schedule to the Act, 1976 pointed out that Rajkot where the disputed land situate, fell within the urban agglomeration area, that the land in question is admittedly a land referred to in the Master Plan as has been stipulated under Section 2(o) of the Act, 1976 and, therefore, there is a world of difference for considering the land classified as 'agricultural land' under both the enactments. According to learned senior counsel, having regard to the Explanations A, B & C of Section 2(q) of the Act, 1976 a conscious departure has been made with reference to the description of 'agricultural land' inasmuch as under the said Act it must be shown that the land was being 'used' for agricultural purposes in contradistinction to the Act of 1960 where a land simpliciter falling under the definition of 'agriculture' would alone be the relevant factor. Mr. Naphade in his submissions contended that having regard to the emergence of Act, 1976 on and from 17.02.1976 and by virtue of the Constitutional mandate, the Act of 1960 ceased to have any effect on any 'agricultural land' in the State of Gujarat. In other words, according to learned senior counsel, since admittedly the lands belonged to the respondent were lying within the urban agglomeration specified under the Schedule to the Act, 1976 the application of Act of 1960 ceased to have any effect on the said land and, therefore, the appellant had no authority to invoke the provisions of the Act of 1960 for the purpose of acquisition.

19. Learned senior counsel contended that the 1974 Amendment to the Act of 1960 was a 'still born child' inasmuch as it came into effect only from 01.04.1976 whereas the Act, 1976 was brought into force on 17.02.1976 itself and was holding the field. The learned counsel stressed the point that the date of passing of the Act was not the relevant date and what was relevant was the date of implementation of the Act which legal principle was well settled as per the decision reported in In the matter of the Hindu Women's Rights to Property Act, 1937 - AIR 1941 F.C. 72.

20. While meeting the argument of Shri Soli Sorabjee, the contention of Mr. Naphade on Article 252 was that having regard to the invocation of the said Article by the State of Gujarat, there was a

virtual surrender of its power to legislate and thereby it was denuded of bringing out any legislation afresh or by way of amendment on the subject governed by this legislation brought out pursuant to invocation of Article 252 of the Constitution. In that context, learned senior counsel brought to our notice Section 103 of the 1935 Act which was the comparative provision to Article 252 of the Constitution and pointed out that under Section 103 of the 1935 Act while the States could approach the Federal Government for bringing out a legislation, having regard to the specific provisions contained in the said Section, the power to deal with such legislation for any future contingency was retained by the State Government, while on the contrary the framers of our Constitution even after a specific point raised in the Constituent Assembly proceedings for retention of such a power by the State Government, Article 252 (2) ultimately came to be framed making it clear that once the power of the legislative competence of the State was surrendered to the Parliament, thereafter any future legislation on the subject could only be dealt with by the Parliament and the state was completely denuded of such power. In support of the said submission, learned senior counsel relied upon M/s R.M.D.C. (Mysore) Private Ltd. (supra) and State of U.P. Vs. Nand Kumar Aggarwal and others - (1997) 11 SCC 754.

21. Learned senior counsel after referring to the orders of the Mamlatdar dated 24.08.1982, the Deputy Collector dated 10.11.1983 and the Gujarat Revenue Tribunal dated 08.09.1989 as compared to the return filed by the respondent under Section 6 of the Act, 1976 dated 13.08.1976, the order of the competent authority dated 25.05.1983 and the order of the Tribunal under the Act, 1976 dated 18.09.1991 contended that even according to the appellants themselves as stated in their reply affidavit no agricultural operation was carried out in survey No.111/2- 30 and thereby virtually admitting the position that the lands in question can never be held to be 'agricultural lands'. The learned counsel contended that the appellants were blowing hot and cold, that for the purpose of coverage under the Act, 1976 they wanted to contend that the lands were not agricultural land, while when it came to the question of coverage under the Act of 1960, they contended that the very same lands as 'Bid lands' would fall within the definition of 'agriculture'. The learned counsel, therefore, submitted that the impugned judgment of the High Court was well justified and does not call for interference.

22. Lastly, it was contended by the learned senior counsel for the respondent that the case of the appellant is also hit by the principle of res judicata. The learned senior counsel by referring to an order passed by the Deputy Collector, Bhavnagar relating to Bhavnagar 'Bid lands' in his order dated 09.11.1979 specifically held that the Act of 1960 was not applicable to the said lands and that only Act, 1976 would apply. It was pointed out that when the issue went before the High Court of Gujarat in Special Civil Application No.941 of 1980 a joint affidavit of two Deputy Collectors dated 06.10.1980 came to be filed with reference to Bhavnagar 'Bid lands' wherein it was reiterated on behalf of the Government that only Act, 1976 would apply to 'Bid land' in urban agglomeration of Bhavnagar and that the Act of 1960 was not applicable. Learned senior counsel also referred to an affidavit dated 16.02.2000 filed by the Deputy Secretary, Revenue Department, Government of Gujarat in relation to Bhavnagar 'Bid lands' before the High Court of Gujarat in Civil Application No.15529/1999 in S.C.A. No, 10108/1994 wherein a clear stand was taken by the State Government that possession of Bhavnagar 'Bid land' not having been acquired and taken under the Act, 1976 when the Act was in force, after its repeal, there was no scope to take possession of those lands.

23. The learned senior counsel also referred to the decision of this Court in Palitana Sugar Mills (P) Ltd. and another Vs. State of Gujarat and others - (2004) 12 SCC 645 and contended that in a contempt petition filed at the instance of a purchaser of Bhavnagar 'Bid lands' this Court after tracing the history of the earlier litigation wherein it was concluded that Bhavnagar 'Bid lands' were controlled by the provisions of the Act, 1976 and not by the Act of 1960 and consequently the matter having been finally decided by the Courts and reached its finality the authorities cannot reopen the same. The learned senior counsel, therefore, contended that since the decision on the applicability of the Act of 1960 vis-à-vis the Act, 1976 in relation to 'Bid lands' of the 'Ruler' of erstwhile Bhavnagar State having been examined and ultimately concluded that in respect of such lands only the Act, 1976 would apply, in the case on hand as the lands in question were lying within the 'urban agglomeration' area, the said conclusion which reached its finality in this Court would operate as res judicata. The learned senior counsel contended that though this contention was raised before the High Court, the Division Bench after referring to the contention felt it unnecessary to decide the issue since the stand of the appellant was rejected on other grounds.

24. While meeting the last of the submission of learned senior counsel for the respondent, Mr. Soli J. Sorabji contended that the principle of res judicata can have no application to the case on hand since none of the earlier proceedings relating to Bhavnagar 'Bid lands' had anything to do with the lands of the respondent with reference to which alone we are concerned and, therefore, on that score itself the said contention should be rejected. According to learned senior counsel, the application of the principle of res judicata, as set out in Section 11 of CPC, was not fulfilled and, therefore, the said submission made on behalf of the respondent cannot be considered. The learned senior counsel pointed out to the specific facts which were referred to in the joint affidavits of two Deputy Collectors filed in S.C.A. No.941/1980 wherein it was specifically averred to the effect that since a long time to the knowledge of the land holder, the land in question were demonstrated or meant for residential purpose in the master plan which was prepared since August 1976, that the land in question fell within the definition of 'urban land' under Section 2(o) of the Act, 1976 and, therefore, the overriding effect of Section 42 of the Act, 1976 excluded the application of the Act of 1960. The learned senior counsel contended that in the light of the above peculiar facts relating to Bhavnagar 'Bid lands' which ceased to be a 'Bid land' and was classified as residential plot in the Master Plan at the relevant point of time, the stand of the authorities as regards the exclusive application of Act, 1976 continued to be maintained even after the said Act came to be repealed. The learned senior counsel contended that it will be preposterous if a decision reached in regard to a case which was governed by its own special facts to apply the principle of res judicata to a different case where the fact situations are entirely different and in which case in no prior proceedings it was admitted by the authorities concerned that Act, 1976 alone would apply to the exclusion of the Act of 1960.

25. Having heard the eloquent submissions of Shri Soli J. Sorabjee, learned senior counsel for the appellant and the enlightening submissions of Shri Naphade, learned senior counsel for the respondent, we find that while the simple case of the appellant, namely, the State of Gujarat is that the respondents' lands being 'Bid lands' are agricultural lands and thereby governed by the provisions of Act of 1960, the whole endeavour of the respondent was that the lands were never classified as "agricultural lands", that they were indisputably "urban lands" governed by the provisions of the Act, 1976 and consequently the application of the Act of 1960 stood excluded. The

enlightening submissions of the respective counsel oblige us to set out various legal principles highlighted before us in order to appreciate the respective submissions and thereby arrive at a just conclusion.

26. In the forefront, we want to make a detailed reference to certain relevant provisions of the Act of 1960 prior to its amendment and after its amendment, Saurashtra Act No.III of 1952, Saurashtra Act No.XXV of 1951, Saurashtra Act No. XXVI of 1951, Section 103 of The Government of India Act, 1935 and Article 252 of the Constitution. The relevant provisions under the unamended Act of 1960 are Section 2(1), Section 2(3), Section 2(11), Section 2 (12), Section 2(17) and Section 6. Under the amended Act of 1960, the relevant provisions are Section 2(1) (a)

(b), (c), Section 2(17) (i) (ii) (a), (b), (c), (d) and Section (27A). Under Saurashtra Act No.III of 1952, the relevant provisions are Section 2(a), (b), (e), (f), Section 4 and Section 5(1), (2). Under Saurashtra Act XXV of 1951, the relevant provision are Sections 2(6), 2 (15) and 2(18). Under the Saurashtra Act No.XXVI of 1951, the relevant provision is Section 2 (ii).

27. For easy reference, the above provisions are extracted hereunder:

> The Gujarat Agricultural Lands Ceiling Act, 1960 Section 2. Definitions- In this Act, unless the context requires otherwise-
>
> 1) “agriculture” includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or part thereof for grazing but does not include-
>
> i) the use of any land, whether or not an appenage to rice or paddy land, for the purpose of rab-mannure;
>
> ii) the cutting of wood, only;
>
> iii) dairy farming;
>
> iv) poultry farming;
>
> v) breeding of live-stock; and
>
> vi) such other pursuits as may be prescribed.

Explanation – If any question arises as to whether any land or part thereof is used for any of the pursuits specified in any of the sub-clauses (i) to (vi), such question shall be decided by the Tribunal;

(3) “agriculturist” means a person who cultivates land personally” (11) “to cultivate” with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or

machinery or to carry on any agricultural operation thereon;

Explanation- A person who enters into a contract only to cut grass or to gather the fruits or other produce of trees, on any land, shall not on that account only, be deemed to cultivate such land;

(12) "to cultivate personally" means to cultivate land on one's own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share;

Explanation- I.-A widow or a minor or a person who is subject to any physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate land personally, if such land is cultivated by her or his servants or hired labour;

Explanation II.- In the case of a joint family, land shall be deemed to be cultivated personally, if it is so cultivated by any member of such family;

(17) "land" means land which is used or capable of being used for agricultural purposes and includes the sites of farm buildings appurtenant to such land;

Section 6. Ceiling on holding land – (1) Notwithstanding anything contained in any law for the time being in force or in any agreement usage or decree or order of a Court, with effect from the appointed day no person shall, subject to the provisions of sub-sections (2) and (3) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(2) Where an individual, who holds land, is a member of a family, not being a joint family and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family shall be grouped together for the purposes of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land had been held by one person.

(3) Where on the appointed day a person holds exempted land along with other land then-

(i) if the area of exempted land is equal to or more than the ceiling area he shall not be entitled to hold other land; and

(ii) if the area of exempted land is less than the ceiling area, he shall not be entitled to hold other land in excess of the area by which the exempted land is less than the ceiling area.

(4) Land which under the foregoing provisions of this section a person is not entitled to hold shall be deemed to be surplus land held by such person.

The Gujarat Agricultural Lands Ceiling Act 1960 (After the amendment)

2. In this Act, unless the context requires otherwise-

1) "agriculture" includes-

a) horticulture,

b) the raising of crops, grass or garden produce,

c) the use by an agriculturist of the land held by him or part thereof for grazing

17. "land" means-

i) in relation to any period prior to the specified date, land which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such land;

ii) In relation to any other period, land which is used or capable of being used for agricultural purposes, and includes-

a) the sites of farm buildings appurtenant to such land;

b) the lands on which grass grows naturally;

c) the bid lands held by the Girasdars or Barkhalidars under the Saurashtra Land Reforms Act, 1951, the Saurashtra Barkhali Abolition Act, 1951 or the Saurashtra Estates Acquisition Act, 1952, as the case may be;

d) such bid lands as are held by a person who, before the commencement of the Constitution (Twenty-Sixth Amendment) Act, 1971 was a Ruler of an Indian State comprised in the Saurashtra area of the State of Gujarat, as his private property in pursuance of the covenant entered into by the Ruler of such State:

> (27A) "specified date" means the date of coming into force of the Amending Act of 1972.

Under Saurashtra Act No.III of 1952 the relevant provisions are Section 2(a), (b), (e), (f), Section 4 and Section 5(1), (2):

> "2. In this Act, unless there is anything repugnant to the subject or context-

(a) "Bid land" means such land as on the 17th April, 1951 was specifically reserved and was being used by a Girasdar or Barkhalidar for grazing cattle or for cutting grass:

(b) "cultivable waste" means cultivable land which has remained uncultivated for a period of three years or more before the 17th April, 1951

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) "land" means land of any description whatsoever and includes benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth.

(f) words and expressions used but not defined, in this Act, and defined in the Saurashtra Land Reforms Act, 1951 and the Saurashtra Barkhali Abolition Act, 1951 shall have the meanings assigned to them in those Acts.

3. xxx xxx xxx

4. When a notification is issued by the Government in respect of an estate or any part thereof under section 3, then, with effect from the date specified in the notification, the following consequences shall, in respect of that estate or part thereof, ensue, namely:-

(a) (i) all public roads, lanes, paths, bridges, ditches, dikes and fences on, or beside the same, the bed of the sea and/or harbours, creeks below high water mark, and of rivers streams, nalas, lakes, public wells and tanks, all bunds and palas, standing and flowing water and gauchars;

(ii) all cultivable and uncultivable waste lands (excluding land used for building or other non agricultural purposes),

iii) all bid lands,

iv) all unbuilt village site lands and village site lands on which dwelling houses of artisans and landless labourers are situated, and

v) all schools, Dharmashalas, village choras, public temples and such other public buildings or structures as may be specified in the notification together with the sites on which such buildings and structures stand, Which are comprised in the estates so notified shall, except in so far as any rights of any person other than the Girasdar or the Barkhalidar may be established in and over the same, and except as may otherwise be provided by any law, for the time being in force, vest in, and shall be

deemed to be, with all rights in or over the same or appertaining thereto, the property of the State of Gujarat and all rights held by a Girasdar or a Barkahalidar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Collector, to dispose of them as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

(b) A Girasdar or a Barkhalidar shall, subject to the provisions of this Act, be deemed to be an occupant in respect of all other land held by him.

5. (1) Notwithstanding anything contained in section 3, or section 4 –

(a) no bid land which is also uncultivable waste, wadas and kodias shall vest in, and be the property of the State of Gujarat

(b) no bid land comprised in the estate of a Girasdar who is considered to be of B and C class for the purpose of making rehabilitation grant under the Saurashtra Land Reforms Act 1951, or of a Barkhalidar, the total area of agricultural land comprised in whose estate does not exceed eight hundred acres, shall vest in and be the property of the State of Gujarat] and

(c) no bid land which is also cultivable waste or no village site land shall be acquired unless it is in excess of the requirements of the Girasdar or Barkhalidar in accordance with the rules to be made in this behalf; and

(d) in the case of Girasdari Majmu villages, one fourth of the total area of bid land in the village shall not be acquired.

(2) If any bid land or village site, land is not acquired under the provisions of sub-section (1) and such bid land or village site land is use by the Girasdar or Barkhalidar for a different purpose, it shall be liable to be acquired under the provision of section 4." Under Saurashtra Act No.XXV of 1951, the relevant provisions are Sections 2 (6), 2(15) and 2(18). They are as follows:

"2. In this Act, unless there is anything repugnant in the subject or context:-

(6) "bid land" means such land as has been used by the Girasdar for grazing his cattle or for cutting grass for the use of his cattle.

(15) "Girasdar" means any talukdar, bhagdar, bhayat, cadet or mulgirasia and includes any person whom the Government may, by notification in the Official Gazette, declare to be a Girasdar for the purposes of this Act.

(18) "land" means any agricultural land, bid land or cultivable waste" Under Saurashtra Act No.XXVI of 1951 the relevant provision is Section 2(ii).

2. In this Act, unless there is anything repugnant to the subject or context-

(i) xxx xxx xxx

(ii) "bid land" means such land as has been used by Barkhalidar for grazing his cattle or for cutting grass for the use of his cattle;"

28. In order to appreciate the contentions raised before us, we wish to make a specific reference to the Preamble as well as the object of the Act of 1960. The Preamble shows that the Act was contemplated and was brought into effect since it was felt expedient in public interest to make a uniform provision for the whole of the State of Gujarat and in particular in respect of restrictions upon holding agricultural land in excess of certain limits. The expediency so noted was for securing the distribution of agricultural land to subserve the common good for the purpose of allotment of some lands to persons who are in need of land for agriculture and also to appreciate for other consequential and incidental matters. As far as the object of the Act was concerned, it is stated therein that the said enactment came to be enacted only for the purpose of fixing the ceiling area and not with any intention directly to interfere with the rights and liabilities of landlords and tenants.

29. Keeping the above perspective of the law makers in mind, when we examine Section 2(17) which defines the expression 'land' it means the land which is used or capable of being used for agricultural purposes including the sites of farm, building appurtenant to such land. Section 6 of the 1960 act imposes restriction in the holding of the land which has been defined under Section 2(17) of the Act which is in excess of the ceiling area. The ceiling area has been set out under Section 2(5) of the Act. The definition of 'land' in its cognates and expression is specific in its tenor and mentions about its usage as well as its capability of usage for agricultural purposes. The expression "agriculture" has been defined under section 2(1) of the act which inter alia includes horticulture, raising of crops, grass or garden produce and the use by an agriculturist of the land held by him either in full or part for grazing purposes. The definition of "agriculturist" under Section 2(3) read along with Section 2(11) and 2(12) which define the expression 'to cultivate' and 'to cultivate personally' make the position clear that it would include a person who indulges in the avocation of agriculture by way of cultivation of the land either by himself or through other persons again under the supervision of his own men.

30. A careful consideration of the above provisions under the Act of 1960 gives a clear idea that lands which are used as well as which are capable of being used for the purpose of agriculture including lands used for raising grass or either full or part of it used for grazing purposes would come within the ambit of the Act, which in turn would be subject to the restrictions imposed for the purpose of ascertaining the ceiling limit. Consequently, the excess or surplus land in the holding of a person who is an agriculturist is to be ascertained in order to initiate and ultimately acquire such surplus land. Such acquisition as expressed in the Preamble to the Act would be for the purpose of equal distribution of land to other landless persons.

31. Keeping the above statutory provisions in mind, when we consider the respective submissions, the following broad legal principles are required to be dealt with by us.

i) Whether 'Bid Land' would fall within the definition 'Land' read along with the definition of 'Agriculture' as defined under Sections 2(17) and 2(1) of the Act of 1960 ?

ii) In order to ascertain the nature of description of 'Bid Land' can the definition of the said expression under the earlier statutes viz. Act No.XXV of 1951, Act No.XXVI of 1951 and Act No.III of 1952 can be imported ?

iii) What is the implication of the Urban Land Ceiling Act, 1976 vis-à-vis the Act of 1960 in respect of 'Bid Land' ?

iv) Whether the Amendment Act of 1974 which came into effect from 01.04.1976 and the definition of 'Bid Land' under the said Amendment Act of 1974 can be applied for the purpose of deciding the issue involved in this litigation ?

v) Whether the ratio decidendi of this Court in Nagbhai Najbhai Khackar (supra) can be applied to the facts of this case ?

vi) Whether the orders of the authorities under the Act of 1960 impugned before the High Court were hit by the principles of Res Judicata ?

vii) What is the effect of the repealing of the Urban Land Ceiling Act over the Act of 1960 ?

32. Though the definition of 'land' and 'agriculture' read together would include a 'land' used for raising grass or used for grazing purposes, the question for our consideration is whether 'Bid lands' can be brought within the scope of the said expression, namely, the definition of 'land' read along with the definition of 'agriculture' under the Act of 1960 as has been so construed by the authorities constituted under the provisions of Act of 1960 up to the level of Gujarat Revenue Tribunal. On behalf of the appellant it was contended that the subsequent amendment brought out under the 1974 amending Act which came to be notified on 01.04.1976 was only by way of clarification about 'Bid lands' in consonance with the definition of 'agriculture'. According to the respondent even such a clarification sought to be made under the amending Act 1974 by way of removal of doubts only revealed that as on the date when Act, 1976 which came into effect from 17.02.1976 'Bid lands' were not part of agricultural lands as defined under Section 2(1) read along with 2(17) of the 1960 Act.

33. Mr. Soli Sorabjee, learned senior counsel, to support the submission made on behalf of the appellant, would draw succor to the definition of the very same expression 'Bid land' under Act No.XXV of 1951 as well as Act No.XXVI of 1951 and Act No.III of 1952. Under Act XXV of 1951 in Section 2(6) definition of 'Bid land' has been defined to mean such land raised by Girasdar for grazing his cattle or for cutting grass for the use of his cattle. Under Section 2(18) of Act No.XXV of 1951, the definition of 'land' under said Act included 'Bid land'. The purport of the said enactment was to end Girasdar system and while doing so regulate the relationship between the Girasdars and

their tenants and to enable the latter to become occupants of the 'land' held by them as tenants and simultaneously to provide for the amount of compensation payable to Girasdars for the extinguishment of their rights. Whatever be the purport of the enactment, the definition of 'land' as defined under Section 2(18) and 'Bid land' as defined under Section 2(6) discloses that 'Bid land' would be a land which was treated on par with agricultural land and such land is none other than the land which is used for grazing by cattle as well as for cutting grass for the use of cattle.

34. With that when we come to the nature of description of 'Bid land' in the Act No.III of 1952, under Section 2(a) 'Bid land' has been defined to mean such land as on 17.04.1951 specifically reserved for being used by a Girasdar or Barkhalidar for grazing cattle or for cutting grass. Under Section 4 the manner of vesting of such of those lands described therein vested in the State and thereby assuming the character of the property of the State of Gujarat and consequently all rights held by Girasdars or Barkhalidars in such property deemed to have been extinguished. For our limited purpose, it will be sufficient to confine our consideration to the definition under Section 2 (a) of Act No.III of 1952 which defines 'Bid land'. As stated earlier 'Bid land' is a land used for grazing by cattle or for cutting grass in the tenure lands held by Girasdar or Barkhalidar. When we refer to Saurashtra Abolition Act 1951 i.e. Act XXVI of 1951 the definition under section 2 (ii) which defines 'Bid land' to mean such land as has been used by Barkhalidars for grazing his cattle or for cutting grass for the use of his cattle. The purport of the said enactment was for improvement of the land revenue administration and agrarian reforms which necessitated abolition of Barkhalidars tenure prevailing in certain parts of Saurashtra. Under Section 6(1) of Act XXVI of 1951, the right of allotment of land under the said act in favour of Barkhalidar is stipulated. The manner in which the application for allotment is to be made is also provided therein. Under sub-section (2) of Section 6 while making an application for allotment the details to be furnished by Barkhalidar has been set out wherein under clause (c) (iii) of sub clause (2) of Section 6 it is stipulated that full particulars of a Barkhalidar's estate containing the area of agriculture also, 'Bid land' and 'cultivable waste' in his estate should be furnished. Apparently in order to fulfill the said obligation by a Barkhalidar, the definition of 'Bid land' has been set out in Section 2(ii) of Act No.XXVI of 1951.

35. Keeping the above statutory prescription relating to the description of 'Bid land' in the above enactments which were all prior to coming into force of Act, 1976 namely, 17.02.1976 the nature of 'Bid land' has been succinctly described to mean a land which was used for grazing of cattle or for cutting grass for the use of rearing of cattle. To recapitulate the definition of 'agriculture' under Section 2(1), as well as, the definition of 'land' under Section 2(17) of the unamended Act of 1960, the expression 'agriculture' included inter alia, the land used for raising of grass, as well as, the land held by the agriculturist for grazing purpose. When we consider the explanation part of sub section (1) of Section 2 which contains as many as Clauses (i) to (vi) the lands used for grazing purposes as well as cutting of grass for rearing of cattle are not the lands to be excluded from the definition of 'agriculture'. The definition of 'land' under Section 2(17) categorically mentions that the land which is either used or capable of being used for agriculture purposes would fall within the said definition. Therefore reading the above definitions together a 'land' where grass is grown or used for grazing purposes fall within the inclusive provision of the definition of 'agriculture'. The definition of 'Bid land' in the earlier enactments namely Act Nos.XXV of 1951, XXVI of 1951 and Act No.III of 1952 make the position clear that the 'Bid land' is nothing but the land used for grazing of cattle and for

raising grass for the purpose of rearing of cattle.

36. Under the amended Act of 1960 the definition of agriculture under Section 2(1) as it existed prior to the said amendment was maintained. In addition, some of those excluded categories, namely, the one mentioned in sub clauses (i), (ii), (iii), (iv) and (v) were also included as falling within the definition of the expression 'agriculture'. Further the nature of exclusion as mentioned in sub- clause (vi) of clause 1 of Section 2, namely, such other pursuits as may be described was also mentioned by stating that such of those pursuits which have been prescribed prior to the specified date would continue to stand excluded for that period which was prior in point of time to the specified date as mentioned in the Amendment Act which was notified on 01.04.1976. Here and now it is relevant to mention the date which was specified under the Amendment Act which as per Section 2 (27A) meant the date of the coming into force of the amended act of 1972, namely, 01.04.1976. Therefore, the conclusion to be drawn would be that while as from 01.04.1976 the definition of 'agriculture' under the amended Act was wider in scope which included land used whether or not as an appendage to rice or paddy land for the purpose of rabmanure, dairy farming, poultry farming, breeding of livestock and the cutting of woods and such of those lands which were in the excluded category under the unamended Act cease to have effect of such exclusion on and after 01.04.1976.

37. Having regard to the reference to the specified date, namely, the date of notification (i.e.) 01.04.1976, the expanded definition of 'land' under Section 2(17) was brought to our notice wherein specific reference to the 'Bid lands' held by Girasdars and Barkhalidars under Act Nos.XXV of 1951, XXVI of 1951 and III of 1952 and also such 'Bid lands' held by a person prior to the commencement of the Constitution 26th Amendment Act 1971 as a 'ruler' of an Indian State comprised in the Saurashtra Area of State of Gujarat. The endeavour of learned counsel for the respondent while drawing our attention to the new Section 2(17), in particular, the reference to 'Bid lands' in clause (c) and (d) of Section 2 (17) (ii) was to stress upon the point that a clear distinction was drawn as regards the land falling within the said definition held by a person prior to the specified date and after the specified date. Under Section 2(17) (i) after the amendment the provision relating to the definition of 'land' was sought to be distinguished as was existing prior to the specified date while under Section 2(17)(ii) a wider scope of such definition of 'land' was introduced. Having regard to such distinction shown in respect of a 'land' one prior to the specified date and the one in relation to any other period, learned counsel contended that the specific reference to 'Bid lands' held by Girasdar and Barkhalidar under sub clause (c) and

(d) in Section 2 (17) (ii) makes a world of difference, as the scope of inclusion of the 'Bid lands' within the ambit of the expression 'land' under Section 2(17) was introduced on and after 01.04.1976 namely the specified date which was not the position prior to the said date.

38. The submission of leaned counsel was two fold, namely, that the specific reference to 'Bid lands' under Section 2(17) sub clause (ii)

(c) and (d) came to be introduced for the first time on and after 01.04.1976 and hence the said situation requires a different consideration in the light of the Central enactment namely the Act,

1976 which had already come into force from 17.02.1976 by the State Legislature surrendering its legislative competence to the Union Government by invoking Article 252 (1) of the Constitution. The further submission is that in the light of the field being occupied by the Central Act, having regard to the restriction contained in Article 252 (2) of the Constitution there could not have been any competence for State Government to bring about an amendment effective from 01.04.1976 in relation to the Act and the subject with reference to which the State Government has surrendered its legislative power that bringing any amendment was exclusively within the competence of the Parliament and thereby the State amendment had no effect and was void as from its inception.

39. Before considering the said submission it is necessary to also refer to the provisions contained in the Act, 1976 for an effective consideration and to reach a just conclusion. Under the Act, 1976 by virtue of Section 1(2) of the Act, the Act was applied to the whole of the State of Gujarat. Under Section 2(a) the appointed day was defined to mean in relation to any State to which the Act applied in the first instance the date of introduction of the Act, 1976 in the Parliament which was admittedly 17.02.1976. Under Section 2(n) what is an 'urban agglomeration' has been defined and it is not in dispute that district Rajkot where the lands in question situate falls within the definition of urban agglomeration mentioned in Schedule 1 of the Act. Under Section 2(o) 'Urban Land' has been defined to mean any land situated within the limits of an urban agglomeration referred to as such in the Master Plan. However, it does not include any such 'land' which is mainly used for the purpose of 'agriculture'. Under Section 2 (q) 'vacant land' has been defined to mean land not being mainly used for the purpose of agriculture in an urban agglomeration subject to other exclusions contained in the said sub-clause (q). The expression 'agriculture' has been specifically defined under the Explanation (A) to Section 2(o) by which it is stated that agriculture would include 'Horticulture' but would not include 'raising of grass', 'dairy farming', 'poultry farming', 'breeding of livestock' and such cultivation or growing of such plant as may be prescribed. Under Explanation (B) it is mentioned that lands are not being used mainly for the purpose of 'agriculture' if such land has not entered in the revenue or land records before the appointed day as for the purpose of 'agriculture'. Under Explanation (C) it is further stipulated that notwithstanding anything contained in Explanation (B) 'land' shall not be deemed mainly used for the purpose of agriculture if the land has been specified in the Master Plan for the purpose other than agriculture. Section 6 of the Act, 1976 prescribes the ceiling limit of vacant land which a person can hold in an urban agglomeration of the Act, 1976. If a person holds vacant land in excess of the ceiling limit at the commencement of the Act, he should file the statement before the competent authority of all vacant land to enable the State Government to acquire such vacant land in excess of ceiling limit under the Act.

40. In the light of the above provisions contained in the Act, 1976 Mr. Naphade learned senior counsel contended that Amendment Act of 1974 would be a 'still born child' having regard to the existence of the Act, 1976 as from 17.02.1976. The learned counsel also sought to repel the contention of the appellants that the date of passing of the Act alone would be relevant and not the date of notification. For that purpose, learned counsel relied upon In the matter of the Hindu Women's Rights to Property Act, 1937 (supra). In the said decision the Federal Court considered the question referred to by His Excellency the Governor General under Section 213 of the Constitution Act. The first question is relevant for our purpose which reads as under:-

> "(1) Does either the Hindu Women's Rights to Property Act, 1937 (Central Act, 18 of 1937) which was passed by the Legislative Assembly on 4th February, 1937, and by the Council of State on 6th April 1937, and which received the Governor-General's assent on 14th April 1937, or the Hindu Women's rights to Property (Amendment) Act, 1938 (Central Act, 11 of 1938) which was passed in all its stages after 1st April 1937, operate to regulate (a)succession to agricultural land? (b) devolution by survivorship of property other than agricultural land?
>
> (underlining is ours)

41. At page 75 the Federal Court has answered the said question in the following words:-

> ".....It is not to be supposed that a legislative body will waste its time by discussing a bill which, even if it receives the Governor- General's assent, would obviously be beyond the competence of the Legislature to enact, but if it chooses to do so, that is its own affair, and the only function of a Court is to pronounce upon the bill after it has become an Act. In the opinion of this Court, therefore, it is immaterial that the powers of the Legislature changed during the passage of the bill from the Legislative Assembly to the Council of State. The only date with which the Court is concerned is 14th April 1937, the date on which the Governor-General's assent was given; and the question whether the Act was or was not within the competence of the Legislature must be determined with reference to that date and to none other." (underlining is ours)

42. By relying upon the said decision, learned counsel contended that the date of passing of the Act was irrelevant and what was relevant is the date when the Act was notified, namely, 01.04.1976. We find force in the said submission and without diluting much on the said contention we proceed to consider the other contentions raised on the footing that the amendment came into effect only from 01.04.1976 i.e. after the coming into force of the Act, 1976, namely, 17.02.1976. We have kept ourselves abreast of the various provisions of the unamended Act of 1960, the definition of 'Bid land' under Act XXV of 1951, XXVI of 1951 and III of 1952 and keeping aside whatever amendment sought to be introduced by the Amendment act of 1974 with effect from 01.04.1976 we proceed to examine whether the contention of the respondent can be countenanced.

43. In this context, we are also obliged to note the definition of 'vacant land' under the Act, 1976 as defined under Section 2(q) and also the definition of 'Urban Land' under Section 2(o). Since the respondent strongly relied upon the operation of the Act, 1976 as from 17.02.1976 in order to contend that the Amendment Act of 1974 will be of no consequence being a still born child after the coming into force of the Act, 1976 it will be appropriate to examine the said contention in the first instance.

44. Under the Act, 1976 while defining 'vacant land', the said definition specifically excludes a 'land' used for the purpose of 'agriculture'. The definition of 'Urban Land' again makes the position clear that any land situated within the urban agglomeration referred to as such in the Master Plan would

exclude any such land which is mainly used for the purpose of 'agriculture'. Under the Explanation A to Section 2(o) such of those lands which are used for 'raising of grass' stood excluded from the use of 'agriculture'. It is worthwhile to note that the 'land used for grazing' has however not been specifically excluded from the definition of 'agriculture' in the said Explanation 'A'. The conspectus consideration of the above provisions leads us to conclude that the apparent purport and intent, therefore, was to exclude lands used for agriculture from the purview of Act, 1976 which would enable the holders of lands of such character used for agriculture to be benefited by protecting their holdings even if such lands are within the urban agglomeration limits and thereby depriving the competent authority from seeking to acquire those lands as excess lands in the hands of the holder of such lands.

45. That being the position, by the implication of the Act, 1976 in respect of the land used for agriculture within the urban agglomeration, the question for consideration is whether such exclusion from acquisition having regard to the character of the land as used for agriculture would entitle the owner of such land to contend that such exclusion would deprive the competent authorities under the 1960 Act to restrict their powers to be exercised under the said Act and from resorting to acquisition by applying the provisions contained in the said Act. We are of the considered opinion that the conspectus consideration of the various provisions of the Act, 1976 considered again in the light of the object and purport of the 1960 Act which was intended for equal distribution of agricultural lands to the landless poor agriculturists, the application of the said Act will have to be independently made and can be so applied as it stood prior to the coming into force of the Act, 1976 as from 17.02.1976. At this juncture it will have to be noted and stated that the subject namely, the 'land' being an item falling under Entry 18 of List II of Schedule VII of the Constitution, by virtue of the so-called surrender of power of legislation in respect of the said entry namely 'land' by way of Central Legislation namely Act, 1976 to be enacted by the Parliament pursuant to a State resolution by invoking Article 252 (1) of the Constitution, there would be every justification in the submission on behalf of the respondent that any subsequent legislation by way of Amendment or otherwise with regard to the said Entry, namely, 'land' will be directly hit by the specific embargo contained in Article 252 (2) of the Constitution.

46. Once we steer clear of the said legal position and proceed to examine the contention raised, as was highlighted by us in the initial part of our judgment the concept of 'Bid land' was not a new phenomenon to the 1960 Act. The definition of 'Bid land' under Section 2 (6) of the Saurashtra Act, 1951 clearly stated that it would refer to the lands used for grazing of cattle and for cutting grass for the use of cattle. The said definition was consistently maintained in the Saurashtra Act No.XXVI of 1951, as well as, Saurashtra Act No.III of 1952. When we examine the definition of the expression 'agriculture' under Section 2(1) of the 1960 Act uninfluenced by the Amendment Act of 1974, it specifically define 'agriculture' to include the land used for raising of grass, crops or garden produce, the use by an agriculturist of the land held by him or part thereof for grazing. Grazing as per the dictionary meaning "graze land suitable for pasture". The word "pasture" means the land covered with grass etc. suitable for grazing animals especially cattle or sheep or herbage for animals or for animals to graze. Therefore, the land meant for grazing has got its own intrinsic link with the cattle for its pasturing. The apparent intention of the legislature in including the land used for grazing or for raising grass as per the definition of 'agriculture' under the 1960 Act is quite explicit, inasmuch

as, the use of cattle in farming operation was inseparable at the relevant point of time. Therefore, when the Legislature thought it fit to include the land for raising grass and used for grazing as part of definition of 'agriculture' there is no need to seek succour from any other definition which was sought to be introduced at any later point of time by way of amendment under the Amendment Act of 1974.

47. While rebutting the submission of the appellant in placing reliance upon the definition of 'Bid land' under the provisions of Saurashtra Act Nos.XXV of 1951, XXVI of 1951 and III of 1952, Mr. Naphade learned senior counsel for the respondent contended that the definition of 'Bid land' in these enactments was with particular reference to the land held and used by Girasdars and Barkhalidars and that there was no reference to the lands held by any Ruler of an erstwhile State. It was the further submission of learned senior counsel that those legislations were specifically dealing with the tenure holdings of Girasdars and Barkhalidars and that the purport of those legislations were to denude those large scale tenure holders of the lands held by them with a view to entrust such lands with the cultivating tenants themselves and, therefore import of the definition of 'Bid land' in those legislations will not be appropriate while considering the implication of the provisions contained in the 1960 Act.

48. Though, we appreciate the ingenious submissions put forth before us on behalf of the respondent, we are not in a position to accept such an argument for more than one reason. The said submission cannot be accepted for the simple reason that what we are concerned with is the definition of 'Bid land' de hors the ownership or in whose possession such land remain or vest on any particular date. In other words, the character of 'Bid land' cannot vary simply because it is in the hands of Girasdars and Barkhalidars or with any other person including a former Ruler of a State. The reference to the definition of 'Bid land' under those enactments can be definitely considered in order to find out as to what is the nature and character of a 'land' and not as to who was holding it.

49. The Saurashtra Act No.XXV of 1951 was introduced for the improvement of land revenue administration and for ultimately putting an end to the Girasdari system. The purport of the legislation was to regulate the relationship of Girasdars and their tenants in order to enable the latter to become occupants of the lands held by them and to provide for the payment of compensation to the Girasdars for the extinguishment of their rights. Again Saurashtra Act No.XXVI of 1951 was brought in to provide for certain measures for the abolition of Barkhalidar tenure for Saurashtra and also for the improvement of the land revenue administration. In other words, the said legislation was for the improvement of land revenue administration and for agrarian reforms which necessitated abolition of Barkhalidar tenure prevailing in certain parts of Saurashtra. In order to ascertain the extent of lands held by the Girasdars and Barkhalidars the definition of 'agricultural land', 'agriculture' and 'Bid Land' was specified in the respective statutes. Such definition was required in order to ascertain the extent of lands held by Girasdars and Barkhalidars. 'Bid land' was one type of land held by such tenure holder by way of grant and it was in that context the character of 'Bid Land' was defined for the purpose of ascertaining the total extent of land held by each of the Girasdar and Barkhalidar. Under Section 3 and 4 of Saurashtra Act No. III of 1952 which Act was introduced to provide for acquisition of certain estates of Girasdars and Barkhalidars 'Bid Land' was defined under Section 2(a) of the Act.

50. Section 3 of the Act empowered the Government to issue notification from time to time in the Official Gazette and declare that with effect from such date that may be specified in the notification, all rights, title and interest of Girasdars or Barkhalidars in respect of any estate or part of an estate comprised in the notification would cease and vest in the State of Gujarat. As a sequel to such vesting, all the incidents of the tenure attached to any land comprised in such estate or part thereof would be deemed to have been extinguished. What are all the consequences that would follow pursuant to issuance of notification, has been set out in Section 4. However, under Section 5(1) which is a non- obstante clause which makes it clear that notwithstanding anything contained in Section 3 or Section 4 'Bid Land' were exempted from such acquisition.

51. It is true that though under the Saurashtra Act XXV of 1951, Saurashtra Act XXVI of 1951 and Saurashtra Act III of 1952, the purport of the enactments were to extinguish all rights held by Girasdars and Barkhalidars as well as the Rulers of the State in the State of Gujarat in respect of their estates which among other kinds of lands included 'Bid Land' also.

52. Here again, it will have to be stated that this Act was also enacted to provide certain measures for the abolition of the Barkhalidars tenure in Saurashtra. Therefore, while the submissions of the learned senior counsel for the respondent that the above enactments were brought into effect with particular reference to the holding of certain estates by Girasdars and Barkhalidars as well as erstwhile Rulers of State, such restricted application of the Act cannot be held to mean that the definition of 'Bid land' should also be read out in a restricted fashion. As stated by us earlier, the operation of extinguishment of the rights of such specific persons viz., Girasdars and Barkhalidars as well as the Rulers does not mean that the definition assigned to 'Bid land' should be restricted in respect of those specific persons alone and cannot be applied in general for any other purpose. After all, the attempt of the appellants in relying upon the definition of 'Bid land' in those enactments was to understand the nature and use for which the 'Bid land' is put to. It cannot be said that merely because those enactments were brought out for the purpose of extinguishment of the rights of certain class of persons viz. Girasdars and Barkhalidars, the definition of 'Bid land' contained in those Legislations should under no circumstances be considered by any other authority functioning under other enactments. We are convinced that though Saurashtra Act Nos.III of 1952, XXV of 1951 and XXVI of 1951 pertain to the estates held by Girasdars and Barkhalidars as well as the Rulers of the erstwhile Saurashtra State, the definition of 'Bid land' contained in those legislations could however be taken into account for the purpose of understanding the meaning of 'Bid land'. Therefore, the arguments of the learned senior counsel for the respondent in seeking to restrict the meaning of 'Bid land' in the Saurashtra Act Nos.XXV of 1951, Act XXVI of 1951 and Act III of 1952 exclusively to those specified persons viz., Girasdars, Barkhalidars and the Rulers cannot be accepted. In other words once the 'Bid land' can be defined to mean such land used for grazing of cattle or for cutting grass for the use of cattle irrespective of the nature of possession of such lands with whomsoever it may be, a 'Bid land' would be a 'Bid land' for all practical purposes. It is also to be noted that nothing was brought to our notice that a 'Bid land' is capable of being defined differently or that it was being used for different purpose by different persons.

53. We shall deal with the object of the Amendment Act 1974, namely, for removal of doubts a little later. For the present, inasmuch as, we have to a very large extent accepted the submission of

learned counsel for the respondent that the invocation of the Amendment Act of 1974 cannot be made having regard to its subsequent emergence, namely, 01.04.1976 i.e. after the coming into force of Act, 1976 as from 17.02.1976, we confine our consideration to the position that prevailed under the unamended Act of 1960. After all our endeavour is only to find out whether the 1960 Act is applicable in respect of the lands held by the respondent for the purpose of its enforcement or otherwise against the respondent.

54. One other submission of the learned senior counsel for the respondent was that the respondent was once a Ruler cannot be held to be an 'agriculturalist', inasmuch as, the definition of 'agriculturist' under Section 2(3) means a person who cultivate the land personally. We were not impressed by the said submission, inasmuch as, the definition of an 'agriculturist' is not merely confined to Section 2(3) alone. The said definition has to be necessarily considered along with the definition "to cultivate" as defined under Section 2(11), as well as, the expression "to cultivate personally" as defined under Section 2(12) of the Act. Those expressions considered together make the position clear that even a person cultivating the lands by ones own labour or by any other member of one's family or under the personal supervision of oneself or any member of ones' family by hired labour or by servants on wages payable in cash or kind would nonetheless fall within the four corners of the expression "agriculturist". Therefore, the expression "agriculturist" used in the definition Clause 2(3) or "agriculture" under Section 2(1) is wide enough to include the respondent who though was once a 'Ruler' and was not tilling the land by himself would still fall within the definition of 'agriculturist' when such agricultural operation namely cultivation of land is carried out with the support of any one of his family members by supervising such operation or by engaging any labour to carry out such cultivation. We are therefore of the firm view that the 'Bid land', the nomenclature of which was categorically admitted by the respondent and having regard to its nature and purpose for which it was put to use would squarely fall within the definition of 'agriculture' as defined under Section 2(1) of the Act of 1960 as it originally stood unaffected by the coming into force of the Act, 1976 as well as the Amendment of 1974. In the result, its application to those 'Bid lands' held by the respondent cannot be thwarted.

55. We shall now deal with the question whether the amendment Act of 1974 which was notified as from 01.04.1976 does in any way affect the application of 1960 Act as it originally stood having regard to the enforcement of the Amendment Act by drawing a clear distinction as between the position which was existing prior to the specified date namely 01.04.1976 and after the said date.

56. According to learned senior counsel for the respondent the definition of 'land' under Section 2(17) after the amendment, namely, after 01.04.1976 seeks to differentiate between the nature of land which would be governed by the provisions of the 1960 Act i.e. one prior to the specified date and thereafter. Under sub-clause (i) of Section 2(17) of the 1960 Act while defining the 'land' it is specifically mentioned that the same would mean "in relation to any period prior to the specified date, 'land' which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such "land". For that purpose when we refer to the definition of 'agriculture' under Section 2(1) of the Amended Act a wider definition was brought in by including in the said definition clauses (d) to (h) which, inter alia, covered the use of any land, whether or not an appanage to rice or paddy land for the purpose of rabmanure, dairy farming, poultry farming,

breeding of live-stock, and the cutting of wood which class of lands were specifically excluded from the definition of 'agriculture' prior to the amendment. The proviso to the said sub- clause (1) of Section 2 also specifies that such inclusion in the definition of 'agriculture' was not applicable in relation to any period prior to the specified date, namely, 01.04.1976. That apart, under Section 2(17)(ii) in regard to the period subsequent to the specified date, namely, 01.04.1976 the definition of 'land' would include the lands on which grass grown on its own, the 'Bid land' held by Girasdars and Barkhalidars under the Saurashtra Act Nos.XXV of 1951, XXVI of 1951 and III of 1952 as well as such 'Bid lands' which were held by a person who before the commencement of the Constitution was a 'Ruler' of an Indian State comprised in the Saurashtra area of the State of Gujarat. The contention, therefore, was that but for such inclusion of 'Bid lands' in the amended definition of Section 2(17)(ii) there was no scope to proceed against such 'Bid lands' held by Girasdars and Barkhalidars as well as the 'Rulers' of erstwhile State.

57. In this context learned senior counsel for the respondent placed reliance upon the decision of this Court in State of Karnataka Vs. Union of India & another - (1978) 2 SCR 1 and contended that when the language is clear and unambiguous one need not have to delve into the Objects and Reasons in order to find out its implication. The said contention was by way of rebuttal to the submission of learned senior counsel for the appellants that the Objects and Reasons of the 1974 Act disclose that the same was brought into effect only with a view to remove certain doubts as regards 'Bid lands' and, therefore, the amendment was not contemplated to include 'Bid lands' for the first time in addition to the other type of lands described under the unamended Act of 1960.

58. There can be no quarrel about the proposition of law as propounded by the learned senior counsel for the respondent and as has been stated by the Constitution Bench of this Court in paragraphs 38 and 39 of Pathumma (supra). In paragraph 39 this Court did say:

> "39.....We are, however, unable to agree with this argument because in view of the clear and unambiguous provisions of the Act, it is not necessary for us to delve into the statement of objects and reasons of the Act....."

59. We too are not inclined to go by the argument based on the objects and reasons in relation to a 'Bid land'. We have considered the definition of 'agriculture' under Section 2(1), the definition of 'agriculturist' under Section 2(3) along with the expressions 'a person who cultivates land personally' and the definition of 'land' under Section 2(17) of the unamended Act. Having examined the nature of description of those expressions contained therein, we are convinced that the legislature intended and did include 'lands' held by 'agriculturist' where grass is raised or used for grazing purposes as part of agricultural land which was in the possession of agriculturist. Such lands where grass is grown or used for grazing purpose are always known as 'Bid land'. Such 'Bid land' was ultimately brought within the definition of 'land' under Section 2(17) of the Act of 1960. Therefore, even by keeping aside the implication of the wider definition which was introduced by the Amendment Act of 1974 in regard to 'Bid lands' and going by the definition of 'agriculture' and 'land' under Section 2(1) and 2(17) of the Act of 1960, we have no difficulty in taking a definite conclusion that such definition contained in the Act as it originally stood did include 'Bid lands' which lands were exclusively meant for cutting grass for cattle or used for grazing purposes. Therefore, there was

no necessity for this Court to draw any further assistance either from the Objects and Reasons or from the provisions of the Amended Act of 1974 in order to hold that 'Bid lands' were part of agricultural land governed by the provisions of the Act of 1960.

60. In that respect when reliance was placed upon the recent decision of this Court in Nagbhai Najbhai Khackar (supra) on behalf of the appellant, we find that the said decision fully support the stand of the appellant. Of course, in the said decision the question posed for consideration was "whether Bid lands were required to be taken into consideration for the purpose of land ceiling under the 1960 Act as amended by the Act of 1974 which came into force on 01.04.1976". This Court while examining the said question posed for its consideration however dealt with a specific submission made on behalf of the appellant herein which has been set out in paragraph 11:

> "11. It was further submitted that the lands in question are in fact "agricultural" lands. They survived acquisition under the earlier three Acts only because they were "bid lands" which by definition under those Acts were lands "being used" by Girasdars/Barkhalidars for grazing cattle. That, under the Ceiling Act, Section 2(1) defines the use of land for the purposes of grazing cattle as agricultural purpose and thus, according to the learned counsel, by their very definition "bid lands" are capable of being used for agricultural purpose, namely, grazing cattle."

61. In paragraphs 20 and 21 it has been held as under:

> "20. There is one more reason for not accepting the argument of the appellants. The subject lands survived acquisition under the 1952 Act only because they were "bid lands" which by definition under those Acts were treated as lands being used by the girasdars for grazing cattle (see Section 2(a) of the 1952 Act). Now, under the present Ceiling Act, Section 2(1) defines the use of land for the purpose of grazing cattle as an agricultural purpose. Thus, "bid lands" fall under Section 2(1) of the Ceiling Act. This is one more reason for coming to the conclusion that the Ceiling Act as amended applies to "bid lands". (underline ours)
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> 21. It is also important to note that under Section 5(1) of the 1952 Act all lands saved from acquisition had to be "bid lands" which by definition under Section 2(a) of the 1952 Act were the lands being used by a Girasdar or a Barkhalidar for grazing cattle or for cutting grass. If the lands in question were put to any other use, they were liable to acquisition under Section 5(2). Because the subject lands were used for grazing cattle, they got saved under the 1952 Act and, therefore, it is now not open to the appellants to contend that the subject lands are not capable of being used for agricultural purpose."

62. In fact our conclusion on this aspect in the earlier part of our judgment is in tune with what has been propounded by this Court in the said paragraph. The learned senior counsel for the respondent contended that the said decision cannot be applied to the facts of this case. The submission of the learned counsel was twofold. According to him, the said decision came to be rendered in the light of

the definition of 'Bid land' which came to be introduced for the first time after the coming into force of the Amendment Act of 1974 and, therefore, whatever decided in the said decision was exclusively in the context of the Amendment Act of 1974 which cannot be applied to the case on hand. The second submission of the learned senior counsel was that in the said decision the implication of the Act, 1976 was not considered and, therefore, whatever said in the said decision was applicable only to the facts involved in that case and can have no universal application. To buttress the former argument, Mr. Soli J. Sorabjee, the learned counsel for the appellants contended that though the question posted for consideration in the said decision was in the context of the definition of 'Bid land' as described in the Amendment Act 1974, this Court while holding that 'Bid land' would fall within the definition of 'agricultural land' under the Act of 1960 also examined the issue as to what is a 'Bid land' under the 1952 Act independent of the definition of 'Bid land' introduced in the Amendment Act 1974. The learned senior counsel by drawing our attention to paragraph 20 of the said decision contended that the said independent consideration of what is a 'Bid land' was an added reason to hold that the said kind of land would also fall within the definition of 'agricultural land' as defined in Section 2(1) of the Act of 1960.

63. Having considered the respective submissions, we find force in the submission of the learned senior counsel for the appellants. A close reading of paragraph 20 is clear to the pointer that irrespective of the definition of 'Bid land' under the Amendment Act 1974, having regard to the definition of 'Bid land' under Act III of 1952, such land would fall within the definition of 'Agricultural Land' as defined in Section 2(1) of the Act of 1960. This Court in fact made it very clear in its perception while stating the said position by holding that it was an added reason for holding that the Land Ceiling Act, as amended, applied to 'Bid land'. One more reason which this Court mentioned was that the land in question survived acquisition under the 1952 Act only because they were 'Bid lands' which, by virtue of its character was being used by Girasdars for grazing by cattle and thereby stood excluded from acquisition. Therefore, when this Court examined the character of the 'Bid land' which was used for grazing purpose as one falling within the definition of 'agriculture land' even without the implication of the Amendment Act of 1974, the reliance placed upon the said decision merits acceptance. The said submission of the learned senior counsel for the appellants is supported by the decisions in London Jewellers (supra), Jacobs (supra), Behrens (supra) and Smt.Somawanti (supra). In the decision in London Jewellers (supra), it has been held as under:

> ".....I cannot help feeling that if we were unhampered by authority there is much to be said for this proposition which commended itself to Swift J. and which commended itself to me in Folkes v. King, but that view is not open to us in view of the decision of the Court of Appeal in Folkes v King. In that case two reasons were given by all the members of the Court of Appeal for their decision and we are not entitled to pick out the first reason as the ratio decidendi and neglect the second, or to pick out the second reason as the ratio decidendi and neglect the first; we must take both as forming the ground of the judgment." (Emphasis added)

64. The ratio of the said decision was followed in Jacobs (supra). In the decision in Behrens (supra), it has been held as under:

> ".....This question depends, I think, on the language used by Cozens- Hardy, M.R. It is well established that, if a judge gives two reasons for his decision, both are binding. It is not permissible to pick out one as being supposedly the better reason and ignore the other one; nor does it matter for this purpose which comes first and which comes second. The practice of making judicial observations obiter is also well established. A judge may often give additional reasons for his decision without wishing to make them part of the ratio decidendi; he may not be sufficiently convinced of their cogency as to want them to have the full authority of precedent, and yet may wish to state them so that those who later may have the duty of investigating the same point will start with some guidance. This is a matter which the judge himself is alone capable of deciding and any judge who comes after him must ascertain which course has been adopted from the language used and not by consulting his own preference." (Emphasis added)

65. The proposition of law has thus been so lucidly expressed in the above decisions, it will have to be held that the additional reasons adduced in our decision in Nagbhai Najbhai Khackar (supra) directly covers the issue raised before us. One more reason, which weighed with this Court for holding that 'Bid land" falls within the definition of 'Agriculture Land' as defined under Section 2(1) of the Act of 1960 is binding and thus there is no scope to exclude the said decision from its application. Therefore, we reiterate that merely because the question posed for consideration related to the character of 'Bid lands' after the 1974 amendment what has been held in paragraphs 20 and 21 mutantis mutandis is in tune with what has now been held by us based on the definition of 'agriculture' as well as 'land' under Sections 2(1) and 2(17) of the un-amended Act of 1960 itself.

66. As far as the next submission is concerned, the argument raised was that the said decision never dealt with the issue which has been presently raised in this appeal, namely, the implication of the Act, 1976 which came into force on 17.02.1976 while the Amendment Act of 1974 was brought into force subsequently i.e. on and after 01.04.1976 and, therefore, the said decision can have no application to the facts of this case. In so far as the said contention is concerned, the same is liable to be rejected inasmuch as the said decision is for the simple proposition as to how a land where grass is raised or used for grazing purposes is to be included under the definition of 'agriculture' and consequently within the definition of 'land' as provided under Sections 2(1) and 2(17) of the Act of 1960. Therefore, non-consideration of the implication of Act, 1976 in the said decision does not in any way deter us from relying upon the ratio laid down in the said decision to support our conclusion.

67. The next submission of learned counsel for the respondent related to the supervening effect of the Act, 1976 in the State of Gujarat on and after 17.02.1976 which according to learned senior counsel has made the Act of 1974 a 'still born child' and also the submission that after the coming into force of the Act, 1976 there was no authority in the respondent to invoke the 1960 Act in order to acquire the lands of the respondent. As we have refrained from relying upon the Amended Act of 1974 while approving the action of the appellant in seeking to proceed against the respondent for acquiring the surplus lands of the respondent under the Act of 1960, we do not find any dire necessity to deal with the said contention in extenso. The formidable submission raised on behalf of

the respondent related to the supremacy of the Act, 1976 over the 1960 Act. The learned counsel pointed out that the respondent filed its return under the provisions of the Act, 1976 on 13.08.1976, that the said return was considered by the competent authority by passing its Order dated 21.05.1983 which was thereafter considered by the Tribunal in its order dated 08.09.1989 and that the appellant/State while dealing with the respondent and the Act, 1976 themselves have mentioned in the reply affidavit in paragraph 4.1 that the lands in Survey No.111/2-3 situated in Madhopur village was reserved for site and service project meaning thereby that they were not agricultural lands. The learned counsel would, therefore, contend that while on the one hand when it came to the question of determining the surplus lands under the provisions of the Act, 1976 the appellant would contend that the lands held by the respondent were not classified as agricultural land and thereby not entitled for exclusion under the said Act, when it came to the question of applicability of 1960 Act they contend that such lands are to be treated as agricultural lands.

68. We do not find any such contradiction in the stand of the appellant even in the reply affidavit. At page 5 of the reply affidavit while referring to the lands in Survey No.111/2-3 of Madhopur village it is specifically mentioned that those lands are 'Bid lands' and are located within the industrial development industrial area. What was contended was that admittedly no agricultural operation was being carried out in respect of Survey No.111/2-3 along with Survey Nos.91/3 and 129. In this respect it will also be necessary to refer to the stand of the respondent himself in his appeal filed under Section 33 of the Act, 1976. In paragraphs 9 and 10 the appellant claimed the character of the land in the following manner:

> "9. Land admeasuring 30 acres and 30 Gunthas i.e. 1,24,412 sq. mts., of survey No.111/2 of village Madhopur is a vidi land of the Appellant and that has been brought under the recreational zone of RUDA. That should not have been included in the holding of the Appellant. Here also the application under section 20 is pending with the Government for exemption.
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> 10. Survey No.111/3 of village Madhopur admeasuring 579 acres 27 Gunthas is falling in agricultural zone of RUDA. A certificate has been produced before the Competent Authority and this should not be included in the holding of the Appellant. The Competent Authority has shown Appellant's flat in Bombay admeasuring 223 sq. mts. From the records the Bombay flat was shown as 575.06 sq. mts., being built up property it should not be declared as surplus. Of course the flat is situated in Bombay it should be calculated as 1725.18 sq. mts." (underlining is ours)

69. In paragraph 9 respondent has referred to the land admeasuring 30 acres and 30 Gunthas i.e. 1,24,412 sq. mts. in survey No.111/2 of village Madhopur as vidi land which was brought under the recreational zone of RUDA and, therefore, those lands should not have been included in the holding of the appellant. As far as the land admeasuring 579 acres 27 Gunthas in the very same village Madhopur in survey No.111/3 is concerned, it was specifically claimed that those lands fell in the 'AGRICULTURAL ZONE' of RUDA and, therefore, it should not have been brought within the category of excess lands held by the respondent. In fact, the above submission made on behalf of the appellant far from supporting the stand of the respondent fully supports the stand of the appellant.

We, therefore, do not find any conflict in the stand of the appellant while dealing with the nature of land held by the respondent which was earlier dealt with under the Act of 1960 which came to be considered by the authorities under the Act, 1976 pursuant to the return submitted by the respondent on 13.08.1976 under Section 6(1) of the Act, 1976.

70. When we consider the submission of the learned senior counsel for the respondent pertaining to the implication of the Act, 1976 vis-à-vis Act of 1960, the submission was again two fold. In the first place, it was contended that as the entire lands were lying within the urban agglomeration of the scheduled area viz., Rajkot, the Act, 1976 would alone govern the subject land and thereby exclude the application of the Act of 1960. Though in the first blush, the argument appears to be appealing, on a deeper scrutiny, it will have to be held that the said submission cannot be accepted. Even according to the respondent, the subject land having been classified as 'agricultural land' stood excluded from the application of the provisions of the Act, 1976 though lying within the urban agglomeration area. It was, therefore, axiomatic that de hors the implication of the provision of the Act, 1976 by virtue of the character of the Land held by the respondent, the application of the Act of 1960, as it originally stood prior to 17.2.1976 was imperative. Such a legal consequence existed. Even accepting the arguments of the learned senior counsel for the respondent, that being agricultural land lying within the urban agglomeration, the application of the Act, 1976 stood excluded, we fail to see as to how there would be any scope at all for the respondent to contend on that score the application of the Act of 1960 should also be excluded. Therefore, taking note of the categorical stand of the respondent himself, having claimed exclusion of such of those lands which were classified as 'agricultural land', which included 'Bid land' as well, to be excluded from the application of the provisions of the Act, 1976 and thereby the authorities competent under the provisions of such other enactments which would govern such agricultural lands would be free to exercise their powers under these enactments. The respondent cannot be heard to contend that there would be a vacuum in so far as the application of any Statute over the lands held by the respondent that have been classified as 'agricultural land'. Such a proposition, expounded on behalf of the appellants can never be countenanced. Therefore, the legal position that would emerge would be that going by the stand of the respondent, his lands to an extent of 579 acres 27 Gunthas being 'agricultural land' if stood excluded from the application of the provisions of the Act, 1976 such lands were already governed by the provisions of the Act of 1960 as it originally stood and applied and there can be no demur to it.

71. On this aspect, the next submission of the learned senior counsel for the respondent was that since the Act, 1976 having been passed by the Parliament, at the instance of the appellant State which came into effect from 17.02.1976, no other law on the said subject viz, 'land' would operate in the field. The sum and substance of the submission was that having regard to the emergence of the Act, 1976 on and from 17.02.1976, the application of the Act of 1960 would automatically cease to operate. To some extent, we appreciate the submission in so far as it related to the implementation of the Act of 1974 by which the amendment was introduced to the Act of 1960. In that respect, we consider the invocation of Article 252 of the Constitution wherein Sub-clause (2) specifically stipulated that in future, amendments could be carried out only by the Parliament and not by the State. Here we are concerned with the Act of 1960 in its un-amended form which was holding the field insofar as it related to the agricultural lands. We do find some logic to accede to the contention

of the learned senior counsel in regard to the application of 1974 Act after the emergence of the Act, 1976 but same is not the position in relation to the un-amended Act of 1960. In the first place, such an argument does not find support by the specific embargo contained in Article 252(2) of the Constitution. Going by the specific stipulation contained in Article 252 (2) of the Constitution, such an extended meaning cannot be imported into the said provision in order to nullify the effect and operation of the un-amended Act of 1960 in so far as it related to 'agricultural lands' in the appellant State. We, therefore, hold that the Act of 1960 in its un-amended form applied on its own and continue to hold the field and was in operation over the 'agricultural lands' over which the implication of the Act, 1976 had no effect. The said legal position has to be necessarily understood in the said manner and cannot be stated in any other manner, much less in the manner contended on behalf of the respondent. Thus the said contention made on behalf of the respondent, therefore, stands rejected.

72. In support of the said submission, reliance was placed upon a decision of this Court in Union of India & Ors. Vs. Valluri Basavaiah Chowdhary & Ors. reported in (1979) 3 SCC 324. Having bestowed our serious consideration in the reliance placed upon the said decision, we find that the said decision has no application to the legal issues involved in the case on hand. That was a case where in regard to the passing of the Act, 1976 itself, based on the resolution passed by the Andhra Pradesh Legislative Assembly on 08.04.1972. The challenge was made to the vires of the Act in the High Court of Andhra Pradesh. The ground raised was that the Parliament lacked legislative competence. Such lack of competence was raised on two grounds. In the first place, it was contended that the Governor of Andhra Pradesh did not participate in the process of authorization in the passing of the Act by the Parliament and the second ground was that the resolution of the State Legislature gave authorization to the imposition of ceiling on the basis of the valuation of the immovable property i.e. for ceiling on ownership on immovable property and not on the area of land. It was contended that the ultimate act in imposing ceiling on the area of the land was not in conformity with the real intendment of the resolution of the State and therefore it lacked competence. On the first ground viz., due to the non participation of the Governor of Andhra Pradesh, the Parliament lacked competence found favour with the High Court of Andhra Pradesh which struck down the Act on that ground itself. While dealing with the said ground, this Court dealt with the scope of Article 252 (1) & (2) of the Constitution and by relying upon the earlier decision of this Court in State of Bihar Vs. Sir Kameshwar Singh reported in AIR 1952 SC 252, ruled that in the passing of the resolution of the State Legislature, the Governor nowhere comes in the picture.

73. As far as the second contention was concerned, it was held as under in Valluri Basavaiah Chowdhary (supra) at paragraphs 28, 31 and 32.

"28. We are afraid, the contention cannot be accepted. It is not disputed that the subject-matter of Entry 18, List II of the Seventh Schedule, i.e. 'land' covers 'land and building' and would, therefore, necessarily include 'vacant land'. The expression 'urban immovable property' may mean 'land and buildings', or 'buildings' or 'land'. It would take in lands of every description, i.e., agricultural land, urban land or any other kind and it necessarily includes vacant land.

* * *

31. It is but axiomatic that once the legislatures of two or more States, by a resolution in terms of Article 252(1), abdicate or surrender the area, i.e., their power of legislation on a State subject, the Parliament is competent to make a law relating to the subject. It would indeed be contrary to the terms of Article 252 (1) to read the resolution passed by the State legislature subject to any restriction. The resolution, contemplated under Article 252(1) is not hedged in with conditions. In making such a law, the Parliament was not bound to exhaust the whole field of legislation. It could make a law, like the present Act, with respect to ceiling on vacant land in an urban agglomeration, as a first step towards the eventual imposition of ceiling on immovable property of every other description.

32. There is no need to dilate on the question any further in this judgment, as it can be better dealt with separately. It is sufficient for purposes of these appeals to say that when Parliament was invested with the power to legislate on the subject, i.e. 'ceiling on immovable property', it was competent for the Parliament to enact the impugned Act i.e., a law relating to 'ceiling on urban land'."

74. Whatever stated in Paragraph 28 can only be understood to mean that when the State Legislature authorizes the Parliament to pass a legislation in respect of the subject matter of Entry 18, List II of the Seventh Schedule, i.e. 'land' it would cover 'land and building' and would necessarily include 'vacant land' and would take in land of every description including 'agriculture land' or any other kind of land. It also went on to hold that the resolution passed by the State Legislature cannot be said to impose any restriction as it would be contrary to the terms of Article 252 (1) of the Constitution. It was further held that the Parliament was empowered to enact the law pursuant to the surrender of the State to enact a law with said subject by formulating its own prescription as to the nature of urban land in different stages. Beyond that, we do not find any other statement of law propounded in the said decision. Applying the said legal principle, it can only be held that the Act, 1976 in having imposed a restriction by way of ceiling on urban land within the urban agglomeration by excluding agricultural land it was a valid piece of legislation. In this respect, the contention of Mr. Soli J. Sorabji that the State Legislature only intended in its authorization to bring about a legislation only on 'urban immovable land' and not on any agriculture land is quite appealing. We can also state that in paragraph 32 of the said decision, this Court consciously decided not to dilate on the question any further in that judgment as it can be better dealt with separately at a later point of time. We now hold that the situation has now come where the position has to be made loud and clear to state that the Act, 1976 would govern only such of those lands which would fall within its area of operation within urban agglomeration to the specific exclusion of the agriculture lands and consequently the continued application of the un-amended Act of 1960 remain without any restriction.

75. On the other hand Mr. Soli J. Sorabjee, the learned senior counsel for the appellants placed reliance upon a Constitutional Bench decision of this Court in Thumati Venkaiah (supra). Almost an identical situation was dealt with by this Court in the said decision. That case also arose from the State of Andhra Pradesh. To briefly refer to the facts, in the State of Andhra Pradesh a ceiling of agricultural holdings was sought to be imposed by enacting an Act called The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act (Act 1 of 1973 (hereinafter referred to as the 'Andhra

Pradesh Act'). It was enacted by the Andhra Pradesh Legislature on 01.01.1973. The Act was challenged before the High Court of Andhra Pradesh. However a Full Bench of the High Court negatived the challenge by its judgment dated 11.04.1973. The Act was however brought into force on and from 01.01.1975. The amendments were brought to the said Act by Amendment Act of 1977 with retrospective effect from 01.01.1975. After the amendments, again the Act was challenged on the main ground that by reason of enactment of the Act, 1976, the Andhra Pradesh Act has become void and inactive. It can be validly mentioned that the subsequent contention of the respondent herein was the focal point in the said decision. Dealing with the said contention, the Constitutional Bench has held as under in paragraph 5:

> "5. Now, as we have already pointed out above, the Andhra Pradesh Legislature had, at the time when the Andhra Pradesh Act was enacted, no power to legislate with respect to ceiling on urban immovable property. That power stood transferred to Parliament and as a first step towards the eventual imposition of ceiling on immovable property of every other description, Parliament enacted the Central Act with a view to imposing ceiling on vacant land, other than land mainly used for the purpose of agriculture, in an urban agglomeration. The argument of the landholders was that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomerations and since the concept of urban agglomeration defined in Section 2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This argument, plausible though it may seem, is in our opinion, unsustainable. It is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immovable property. But the only urban agglomerations in the State of Andhra Pradesh recognized in the Central Act were those referred to in Section 2(n)(A)(i) and there can be no doubt that, so far as these urban agglomerations are concerned, it was not within the legislative competence of the Andhra Pradesh Legislature to provide for imposition of ceiling on land situate within these urban agglomerations. It is, however, difficult to see how the Andhra Pradesh Act could be said to be outside the legislative competence of the Andhra Pradesh Legislature insofar as land situate in the other areas of the State of Andhra Pradesh is concerned. We agree that any other area in the State of Andhra Pradesh with a population of more than one lakh could be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, but until it is so notified it would not be an urban agglomeration and the Andhra Pradesh Legislature would have legislative competence to provide for imposition of ceiling on land situate within such area. No sooner such area is notified to be an urban agglomeration, the Central Act would apply in relation to land situate within such area, but until that happens, the Andhra Pradesh Act would continue to be applicable to determine the ceiling on holding of land in such area. It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with

> reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is therefore clear that in an area other than that comprised in the urban agglomerations referred to in Section 2(n)(A)(i), land held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only land within the ceiling area would be allowed to remain with him. It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply, if and when the area in question is notified to be an urban agglomeration under Section 2(n)(a)(ii) of the Central Act. We fail to see how it can at all be contended that merely because an area may possibly in the future be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration at the date of enactment of the Andhra Pradesh Act. Undoubtedly, when an area is notified as an urban agglomeration under Section 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is, therefore, not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature." (Emphasis added)

76. In the first blush, it appears as though the said decision support the contention of the respondent. But in paragraph 5, we have highlighted certain relevant conclusions which fully support the stand of the appellants. This Court made it clear thereunder that the Parliament enacted the Central Act with a view to impose ceiling on vacant land other than the land mainly used for the purpose of agriculture in an urban agglomeration. The arguments of the land holders that the concept of urban agglomeration defined in Section 2(n) was an expansive concept and any area which was already notified as urban agglomeration, as well as, which can be notified in future based on the increase in population as urban agglomeration and, therefore, the Andhra Pradesh Act was ultra vires lacking legislative competence was held to be unsustainable. It was also held that the Andhra Pradesh Act seeks to impose ceiling on land falling within the urban agglomeration, it would be outside the area of its legislative competence as it cannot provide for imposition of ceiling on urban immovable property after the emergence of Act, 1976. It was thus made clear that after the coming into force of the Act, 1976 by virtue of Article 252 (1) and (2) of the Constitution, there would have been no scope for the State Legislature to bring about a legislation for imposing a ceiling on an urban immovable property which falls within the urban agglomeration. It was also made clear that other areas which were not declared as urban agglomeration came to be subsequently declared as urban agglomeration and notified as such, the Central Act would automatically apply and in relation to such notified area also, the State Legislature would be incompetent to make any legislation by way of imposition of ceiling on and after such declaration is made. While referring to such a situation, this Court made it clear that the Andhra Pradesh Act continue to be applicable for determining the ceiling of holding of lands in such area, prior to any such subsequent notification

under the Act, 1976. It was further made clear that since the Andhra Pradesh Act came into force on and from 01.01.1975, the surplus holding of land in excess of the ceiling area were required to be determined with reference to that date and if there was any surplus, it was to be surrendered to the State Government. It was further reinforced by stating that in an area other than that comprised in the urban agglomeration, the land held by a person in excess of the ceiling area would be liable to be determined as on 01.01.1975 under the Andhra Pradesh Act and the land within the ceiling area alone would be allowed to remain with him.

77. The crucial words in the said paragraph can be mentioned again in order to appreciate and understand the legal position noted. They are:

> "It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is, therefore, clear that in an area other than that comprised with Urban Agglomeration referred to in Section 2(n)(A) (i), land held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only Land within the ceiling area would be allowed to remain with him. It is only in respect of Land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply...." "Undoubtedly, when an area is notified as an urban agglomeration under Section 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is therefore not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature." (Emphasis added) A close and careful reading of the said statement of law declared by this Court makes it clear that if as on the date when the Andhra Pradesh Act was already in force i.e. as on 01.01.1975, the determination of surplus land as per the provisions of the said Act should have been determined and only thereafter the implication of the Act, 1976 could be applied. The specific statements "It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply....." ".....but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area....." makes the above position clear without any ambiguity.

78. Afortiori if the said ratio decided by the Constitution Bench of this Court is applied, there would be no difficulty in holding that as held by us earlier, since as per the un-amended Act of 1960, 'Bid land' held by the respondent fell within the definition of 'agriculture' under Section 2(1) and consequent definition of 'land' as defined in Section 2(17) of the Act of 1960, the determination of

holding of such excess agriculture land under the said Act of 1960 prior to the coming into force of the Act, 1976 should be operated upon. Having regard to the said legal position, we hold that the action of the appellants in having passed the orders impugned before the High Court were fully justified and interfering with the same by the learned Single Judge and the Division Bench of the High Court by the impugned order in this Civil Appeal are liable to be set aside.

79. The impugned judgment of the Division Bench of the High Court proceeded mainly on the footing that the Amended Act of 1974 cannot form the basis for proceeding against the respondent for the purpose of acquisition under the 1960 Act in the light of the field being occupied by the Act, 1976 which came into force prior to the coming into force of the 1974 Act, namely, on 17.02.1976 and the Amendment Act of 1974 which came to be notified only on 01.04.1976. The said conclusion was based on the implication of Article 252(2) of the Constitution wherein once at the instance of the State Government even in relation to any entry in List II an enactment came to be made by the Parliament, any subsequent amendment relating to the said subject can only be made by the Parliament and not by the State. The Division Bench referred to the claim of the appellant that even by ignoring the Amendment Act 1974 which came into effect from 01.04.1976 having regard to the existence of the Act, 1976 as from 17.02.1976, the ceiling with regard to the agricultural land has to be determined as it was existing prior to 17.02.1976, namely, as agricultural land and the same being not part of urban agglomeration the 1960 Act would apply. We find that the said argument was simply brushed aside. The submission was not dealt with in the proper perspective.

80. It was lastly contended by the learned senior counsel for the respondent that the case of the appellants was hit by the principle of res judicata. In support of the said submission, reliance was placed upon the joint affidavit filed by two Deputy Collector dated 06.10.1980, filed in a different case viz., in Special Civil Application No.941 of 1980 before the High Court of Gujarat where on behalf of the State of Gujarat, it was contended that in respect of 'Bid land' only Act, 1976 would apply where such 'Bid land' lie within the agglomeration of Bhavnagar and that Act of 1960 was not applicable. Reliance was also placed upon another affidavit dated 16.02.2000, filed by the Deputy Secretary, Revenue Department, Government of Gujarat in relation to Bhavnagar 'Bid lands' before the High Court of Gujarat in S.C.A.No.15529 of 1999, wherein a stand was taken by the State Government that possession of Bhavnagar 'Bid land' not having been acquired and taken under the Act, 1976 prior to its repeal, there was no scope to take possession of those lands. Reliance was placed upon the decision of this Court in Palitana Sugar Mills (P) Ltd. and another Vs. State of Gujarat and others (supra)wherein, it was concluded by this Court that Bhavnagar 'Bid lands' were controlled by the provisions of Act, 1976 and not by the Act of 1960. By referring to those affidavits and the decision of this Court, the contention was that the stand taken by the appellant in regard to the Bhavnagar 'Bid lands' would apply in all force to the 'Bid lands' belonging to the respondent though they were situated in Rajkot.

81. In reply to the said submission Mr. Soli J. Sorabjee, learned senior counsel for the appellants contended that the principle of res judicata cannot be applied as the parties were different and the subject lands were different and the respondent had nothing to do with the issue raised in the decision relied upon by the learned senior counsel for the respondent. It was also submitted that since the ingredients to support the principle of res judicata as set out under Section 11 of the Code

of Civil Procedure not having been fulfilled, the submission of the learned senior counsel for the respondent cannot be considered. The learned senior counsel for the appellants brought to our notice the facts set out in the joint affidavits of the two Deputy Collectors in S.C.A. No.941 of 1980, wherein it was specifically averred to the effect that since long time, to the knowledge of the land holders, the land in question was demonstrated as meant for residential purpose in the Master Plan which was prepared since August, 1976 and that the land in question fell within the definition of 'urban land' under Section 2(o) of the Act, 1976 and therefore the overriding effect of Section 42 of the Act, 1976 excluded the application of the Act of 1960.

82. When we refer to the facts mentioned in the joint affidavit of the two Deputy Collector in S.C.A.No.941 of 1980, we find that the submissions of the learned senior counsel for the appellants were clearly set out therein. The lands which were originally classified as 'Bid lands' came to be specifically classified as land meant for residential purpose in the Master Plan prepared in the year August, 1976 and thereby came within the definition of 'urban land' under Section 2(o) of the Act, 1976. Whatever decision rendered based on those facts cannot be equated to the facts involved in the case on hand, in order to apply the principle of res judicata and thereby non-suit the appellants. The principle of res judicata is governed by Section 11 of the Code of Civil Procedure. Applying the ingredients set out in the said provision, the respondent is bound to show that the issue which was directly and substantially involved between the same parties in the former suit and was tried in the subsequent suit, in order to fall within the principles of res judicata. Applying the substantive part of Section 11 of C.P.C. we fail to see how any of the ingredients set out therein are fulfilled in order to apply the principle of res judicata. The parties are entirely different, the fact in issue as pointed out by the learned senior counsel for the appellants would disclose that they were based on entirely different set of facts and circumstances and therefore we do not find any substance in the said submission raised on behalf of the respondent. The said submission, therefore, stands rejected.

83. When we come to the submission relating to the concept of eclipse in relation to the Act of 1960, as it originally stood as well as after the Amendment Act of 1974 by virtue of the coming into force of the Act, 1976 w.e.f. 17.02.1976, we wish to only touch upon the position that occurred due to the subsequent repeal of the Act, 1976 in the year 2000. We are conscious of the fact that we are not solely concerned with the said issue of eclipse of the Act of 1960 and its revival after the repeal of the Act, 1976. However, since the said issue was argued by the respective counsel and reliance was placed upon a Constitution Bench decision of this Court on this issue in M.P.V. Sundararamier (supra) we are obliged to deal with the said submission. In the said decision among other contentions a contention was raised on behalf of the petitioner therein which was as under:

> "Section 22 having been unconstitutional when it was enacted and, therefore, void, no proceedings could be taken thereunder on the basis of the Validation Act as the effect of unconstitutionality of the law was to efface it out of the statute book." Dealing with the said contention, the Constitution Bench has held at page 1469 and 1474-75 as under:
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> ".....If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the

effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment.

The result of the authorities may thus be summed up: Where an enactment is unconstitutional in part but valid as to the rest, assuming of course that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground that it is unconstitutional will operate proprio vigore when the Constitutional bar is removed, and there is no need for a fresh legislation to give effect thereto. On this view, the contention of the petitioners with reference to the Explanation in s.22 of the Madras Act must fail...." (emphasis added) In the light of the said proposition of law laid down by the Constitution Bench decision of this Court, it will have to be held that once the Act, 1976 came to be repealed whatever constitutional embargo that was existing as against the Act of 1960 as well as the Amendment Act of 1974 ceased to exist and the Act would operate in full force. In the light of the said settled legal position, we need not dilate much on this issue and we leave it at that.

84. Having regard to our above conclusions, the judgment impugned in this appeal is liable to be set aside. The appeal, therefore, stands allowed. The order of the learned Single Judge as well as the impugned judgment of the Division Bench are set aside. The judgment dated 08.09.1989 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.R.4/84 confirming the orders of the Deputy Collector and Mamlatdar and A.L.T in so far as Bid lands in survey No.111/2 admeasuring 30 acres 30 Gunthas and survey No.111/3 admeasuring 579 acres 27 Gunthas stands restored. In the facts and circumstances of the case where we have dealt with pure questions of law there will be no order as to costs.

.....J .

[Dr. B.S. Chauhan] .....J. [Fakkir Mohamed Ibrahim Kalifulla] New Delhi;

December 04, 2012