

Supreme Court of India

S.Vasudeva Etc. Etc vs State Of Karnataka And Ors on 30 March, 1993

Equivalent citations: 1994 AIR 923, 1993 SCR (2) 715

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

S.VASUDEVA ETC. ETC.

Vs.

RESPONDENT:

STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT 30/03/1993

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

SINGH N.P. (J)

CITATION:

1994 AIR 923 1993 SCR (2) 715

1993 SCC (3) 467 JT 1993 (2) 465

1993 SCALE (2) 244

ACT:

Urban Land (Ceiling & Regulation) Act, 1976:

Sections 20(1)(a) & (b) and 21--Vacant land in excess of ceiling limit--Exemption could be granted only for the purpose of user of such land--Not for purposes of transfer--State Government has no power to permit sale of such land even on ground of undue hardship.

Section 20(1)(b): Exemption--Permission to transfer excess vacant land--Classification of land-owners as debtors and non-debtors--Reasonableness of--Discretion of State Government in granting exemption--Unguided and untrammelled--Transfer of land--Restriction on registration in respect of land not exempted--Discrimination Irrational--Hence S.20(1)(b) held violative of Article 14 of the Constitution of India, 1950.

Sections 26, 27, 28. Transfer of excess vacant land--Not permissible unless encumbered with a building or portion thereof.

Constitution of India, 1950:

Article 14--Whether S.20(1)(b) of the Urban Land (Ceiling & Regulation) Act, 1976 is violative of.

Words & Phrases:

"Person", "Undue hardship"-- Meaning in the context of Urban Land (Ceiling & Regulation) Act, 1976--Sections 2(1) and 20(1)(b) respectively.

HEADNOTE:

The second respondent, a partnership firm was carrying on the business of manufacturing and selling polished granites. It was running its factory in a small portion of the land owned by it and the rest of the land was vacant when the Urban Land (Ceiling & Regulation) Act, 1976 was made applicable to that area. The firm made an application to the State Government for exemption of the vacant land from the provisions of 715

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the said Act, and the exemption was granted subject to certain conditions.

The Competent Authority under the Act came to the conclusion that there was some excess vacant land and directed the publication of a notification u/s 10(1) of the Act for acquisition of the same. Later, the firm made an application to the State Government for permission to sell the vacant land to the third respondent (builders) mainly on the ground that the firm had been incurring huge losses in its business. On 6.3.1987 the State Government permitted the firm to sell the land to the builders, only to the extent of 16194 sq. mtrs. Again the firm riled another application to transfer the remaining 3444 sq. mtrs. of land to the builders, and on 18.4.1987 the State Government permitted the same subject to certain conditions.

Consequently, by a sale deed dated 30.9.1987 the firm entered into a deed of absolute sale with the builders for sale of the entire vacant land.

Writ Petitions by way of Public Interest Litigation were riled in the High Court challenging the exemptions granted by the State Government, for declaring the sale deed void and inoperative and for acquiring the land for the weaker sections. A Single Judge allowed the Writ Petitions and gave certain directions including sale of plots to be carved out from the land and only such number of plots as would be necessary to discharge the debts of the firm were to be sold and the remaining portion of the vacant land was to be acquired under the Act. He also held that there were no mala fides in the State Government granting exemptions by its orders date 63.1987 and 18.4.1987.

Against the decision of the Single Judge, appeals were preferred before the Division Bench of the High Court and the Division Bench set aside the findings as well as the direction given by the Single Judge. Aggrieved by the Judgment of the Division Bench, the appellants preferred the present appeals.

Allowing the appeals, this Court,

HELD:

BY THE COURT.

I.I.The provisions of Section 20(1)(b) of the Urban Land

(Ceiling and Regulation) Act, 1976 do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purposes

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of transferring the same. [757 C]

1.2.The orders dated 63.1987 and 18.4.1987 granting exemption and permission to the firm for sale of the land are void ab initio having been passed without jurisdiction. Accordingly, the sale-deed dated 30.9.1987 executed by the 2nd respondent-firm in favour of the 3rd respondent. builders is invalid and inoperative, as the respondent-firm had no legal right to transfer the land in favour of the builders. [757 F, G]

13.In view of the above conclusions, it is not necessary to go into the questions as to whether the State Government has the power to grant exemption; the circumstances in which it can be exercised; and whether financial hardship such as the indebtedness of the land-holder is sufficient to warrant such exemption or not; and the date on which such indebtedness is to be assessed and in what manner; and whether in the present case, the said aspects of the indebtedness were properly investigated or not for this very reason, there is no need to go into the other question regarding the mala fide on the part of the authorities while granting permission to the firm to sell the land to the builders in question. [757 D, E]

Per Sawant, J.

1.The provisions of Section 20(1)(b) of the Urban Land (Ceiling & Regulation) Act, 1976 do not permit the State Government to exempt vacant land in excess of the ceiling limit for the purposes of transfer. [753 B]

2.The central object of the Act, as is evident both from the preamble as well as the statement of objects and reasons, is to acquire vacant land in excess of the ceiling area and to prevent speculation and profiteering in the same and also to distribute the land equitably to subserve the common good. It is, therefore, per se against the said object to permit the sale of the excess vacant land for whatever reasons, including the undue hardship of the land-holder. To construe the provisions of Section 20 (1) (b) so as to read in them the conferment of such power on the State Government for whatever reasons, is to distort and defeat the whole purpose of the legislation. Further, neither the plain language of the clause nor its context and intendment merit such construction. Section 20 itself is titled "Power to exempt". The power given to the State Government under the Section is only to exempt certain excess vacant lands from the operation of the provisions of Sections 3 to 19 of Chapter 111, none of which refers to the subject of transfer or

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restrictions on transfer. Those provisions relate to the calculation. declaration, acquisition and vesting of the

excess vacant land. It is Chapter IV which relates to the transfers of vacant lands and the restrictions thereon. Further, from the scheme of the Act. it is evident that the transfers of the vacant land were to be regulated by the specific provisions made in it. They were not to be left to be governed by the unguided discretion of any authority including the State Government. The specific provisions for regulating the transfer have been incorporated in Sections 26 to 28 of the Act. Those provisions permit transfer of only vacant lands within the ceiling limit but without buildings, and of vacant lands in excess of the ceiling limit but with buildings thereon and subject to the conditions laid down there. It cannot be suggested that in defiance of the said provisions, Section 20(1)(b) vests power in the State Government to sanction sales of excess vacant lands with or without building thereon. Under Section 20(1) (b), the State Government can only exempt such excess vacant land from being acquired by it. The Government cannot permit its transfer when the Act, does not even by implication, authorise it to do so but permits the transfer subject only to the conditions prescribed by Section 27. The legislature cannot be presumed to have prescribed different conditions for transfer of the same or similar lands. [746 C-H; 747 A]

3. The restriction on transfer even of vacant land within the ceiling limit but without building is deemed to be valid. Thus the transfer of the vacant land without building even if it is within the ceiling limit and of the vacant land in excess of the ceiling limit with a building or a portion of the building are subject to the restrictions placed by the Act. Section 20 is subject to the provisions of sections which follow it including Sections 26 to 28. Hence no construction can be placed on clause (b) of sub-section (1) thereof which will be in conflict with the provisions of sections 26 to 28. [747 E, F]

Maharao Sahib Shri Bhim? Singhji v. Union of India, [1981] 1 SCC 166, referred to.

4. Since as per the definition of "person" in Section 2(i), the said provision viz. S.20(1) (a) is applicable not only to individuals, but also to a family, a firm, a company or an association or body of individuals whether incorporated or not, the hardship spoken of there, is obviously one related to the user of the land. In fact, it is difficult to understand the precise purpose for which clause (b) has been enacted and the meaning of the expression "undue hardship" there. One is left only to speculate on the subject. The

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speculation itself may not be valid. The lands are held by companies, trusts and associations for industrial and commercial use, for the use of medical and educational institutes, sports, clubs, cultural activities, gardens, exhibitions etc. There is no special provision made in the

Act to protect or take care of such users. The only provision under which a relief can be given to preserve and safeguard such user is Section 20(1) (a). But that provision can be pressed into service only on the basis of the location of the land and its present or prospective user and only if it passes the test of public interest. However, all lands in excess of the ceiling limit may not strictly be necessary for such user, even if the user is in the public interest. Nevertheless, the withdrawal of a part of the land found to be in excess may cause an avoidable hardship to the land-holder which may be disproportionate to the benefit that is to accrue to the public on account of such withdrawal. The excess of land may be meager or the severance of such excess land itself may result in unnecessary hardship. The hardship further has to be undue and not merely an ordinary hardship which is bound to be caused on account of the application of the Act to every holder of the excess vacant land. The undue hardship must be one which cannot be avoided except by granting a relief of exemption as contemplated by the said provision. The relief from financial hardship or from indebtedness to the land-holder of such land is alien both to the object and the scheme of the Act. The classification of the owners of land for this purpose between debtors and non-debtors is itself irrational and has no plausible nexus with the object of the Act. Such a classification is, therefore, discriminatory and violative of Article 14 of the Constitution. (748 B-H; 749 A)

Thakorbbhai Dajibhai Desai v. State of Gujarat, AIR 1980 Guj. 1891, overruled.

5. The exemption which is granted under Section 20(1)(b) has to be supported by reasons to be recorded in writing. This requirement also contemplates an exemption which is related to and promoted by the use or better use of the land. If it is the financial hardship which was under the contemplation of the legislature, there was nothing easier than to make a reference to the same in clause (b) itself and to lay down guidelines for the inquiry into such hardship. The provisions of sub-section (2) of Section 20, directly negative either exemption on account of financial hardship or for the purpose of the transfer of the land, since that sub-section empowers the State Government to withdraw the exemption already granted. If the

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State Government is satisfied that any of the conditions subject to which the exemption is granted either under clause (a) or clause (b) of sub-section (1) is not complied with. It is inconceivable that the legislature had in mind the cancellation of the transfer including sale, which cannot be done when it has already taken place. [749 E-G]

6. It cannot be said that the legislature which places restrictions on the transfer of the land within the ceiling limit would at the same time give a carte blanche for the

sale of the land in excess of the ceiling limit. For it would mean, that the State Government cannot have an option to purchase such land and that the sale can be made by the holder of the excess land at any price that he chooses. Such a reading of Section 20(i)(b) would militate against one of the objects of the Act, viz., to prevent speculation and profiteering in the sale and purchase of land. Moreover, it would be patently discriminatory. Whereas the holder of vacant land within the ceiling limit would have to suffer the restrictions placed by Section 26, the holder of the vacant land in excess of the ceiling limit has not to do so. He would in fact be in a better position. The provisions with regard to granting such exemption subject to certain conditions contained in Section 20(1)(b) do not in any way mitigate the discrimination. When the statute itself places specific restrictions under Section 26 on the sale of land within the ceiling limit, it is not possible to reach a conclusion that the conditions on which the State Government is empowered to permit the sale can be left to the discretion of the State Government. In fact, such discretion given to the State Government would itself be violative of Article 14 of the Constitution, the same being unguided and untrammelled. This also shows that the legislature has not given power to the State Government under Section 20(1)(b) to permit exemption for sale of the land. Otherwise it would have provided in the section itself for the conditions on which the permission to sell can be given and such conditions could not be less onerous than those provided under Section 26 of the Act. If the power, to permit sale of the land was intended to be given only for relieving the land-holder of his financial hardship, the section could very well have provided for sale of such land under Section 26 of the Act or made provision in Section 20(1)(b) itself for the first option of the State Government to purchase it. It cannot be said that by not making such provision either in Section 20(1)(b) or Section 26, the legislature intended to permit the sale of such land at a price above the fair market price payable under the Land Acquisition Act, 1894 or the corresponding law and thereby encourage

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speculation and profiteering, the very evils which the Act intended to curb-A [750 E-H; 751 A-C]

7.The provisions of Section 27 also militate against the conferment of the power on the State Government to permit exemption of land for the purpose of its transfer. The provisions of Section 27 refer to any urban or urbanisable land with a building. The vacant land in excess of the ceiling limit may be with or without a building. In fact, the provisions of Section 27 directly negative the conferment of such power, for the said provisions show that the legislature did not want the sale of any urban or urbanisable land with a building whether it is within or

without the ceiling limit except in accordance with the provisions of Section 27. For Section 27 speaks of transfer of any urban or urbanisable land with a building or a portion only of such building, only with the permission of the competent authority and on the terms mentioned therein. This Court has invalidated the provisions of the said section to the extent they apply to the vacant land with a building when the land is within the ceiling limit. But it does apply to land in excess of the ceiling limit and with a building or a portion of it thereon. It is not possible to accept that there are two provisions, viz. Section 20(1)(b) and Section 27 operating at the same time in the same area. Also there is nothing either in Section 20(1)(b) or Section 27 to exclude the operation of Section 27. [751 G, H; 752 A] Maharao Sahib Shri Bhim Singhji etc. etc. v. Union of India
JUDGMENT:

8. Section 28 does not make any reference to the transfer permitted by the State Government under Section 20(1) (b). The holder of the vacant land in excess of the ceiling limit has not to face the restriction on the registration of the document of transfer of his land provided under Section 28 when such transfer is permitted by the State Government under Section 20(1)(b), whereas the holder of similar land who does not approach the State Government has to suffer the same when he transfers the land held by him. The discrimination between the transfers under the different provisions is irrational and, has no nexus with the object ought to be achieved by the classification. [752 E-G]

9. If the power to exempt the land for sale is read in Section 20 (1) (b) with such conditions as the State Government may choose to place and if either the State Government chooses not to place any conditions or to place such conditions as are inconsistent with the provisions of Sections 29 and 30, it would create two sets of lands one where no restrictions are applicable to the construction thereon or only such restrictions as the State Government may choose to impose, and the other where the restrictions on constructions as provided by Section 29 and 30 would be applicable. [752 G-H; 753 A] Per N.P. Singh, J. (Concurring):

1. The object of the Act being imposition of ceiling on vacant land in urban agglomerations and for acquisition of such land in excess of ceiling limit, with a view to prevent the concentration of urban land in the hands of a few persons, speculations and profiteering therein, that object will be defeated if the power under Section 20(1) of the Act is exercised by the State Government to exempt the excess vacant lands, from the application of Chapter III of the Act, so that the holder thereof can transfer such lands. [753 C, D]

2. Under Indian conditions the expression "undue hardship" is normally related to economic hardship. That is why from time to time many holders of lands in excess of the ceiling limit, while claiming exemption under clause (b) put forth their bad economic condition and indebtedness to claim exemption along with permission to sell such excess lands. In the modern set up many holders of such excess lands having undertaken commercial or industrial ventures with the help of the loans from the Banks and other financial institutions, put the plea of repayment of such loans as undue

hardship for claiming exemption under clause (b) of section 20(1) aforesaid. When different provisions take into consideration the lands already transferred by the holder, between the period 17th February, 1975 (as specified in sub. sec. (4) of S.4; and the appointed day as well as between the period commencing from the appointed day and ending with the commencement of the Act, it should not be easily inferred that the framers of the Act desired that after the commencement of the Act while exercising the power of exemption under section 20(1) (b) permission should be granted to holders of such excess lands to transfer such lands to third parties in order to meet their financial liabilities. [753 G, H; 754 A-F]

3.If Section 21 provides for granting exemption in respect of excess land held by the holder only on a specific condition that the holder shall utilise the same for the construction of dwelling units for weaker section, to serve a public cause, the framers of the Act could not have conceived the grant of exemption under Section 20(1)(b) to the holder of the excess land, only to serve his interest, by selling such excess lands. [754 H; 755 A-F]

4.If the State Government can exempt the vacant land held by the land holder in excess of the ceiling limit, from the applicability of the provisions of Chapter III of the Act, in order that the said holder sells such land to liquidate his debts which amounts to an "undue hardship", then there will be an apparent conflict between the interest of the land holder and the public interest. In the interest of the land holder the maximum price fetched by sale of such land will be the solution of his hardship, whereas that will run counter, to the object of the Act to prevent speculations and profiteering". It cannot be said that even in such transfers the dominant purpose of the legislation, to prevent "the concentration of urban land in hands of few persons" is nonetheless served. The concentration of urban land in hands of few persons has to be prevented with a view to bring about "an equitable distribution of land in urban agglomerations to subserve the common good". [755 B-D]

5.If the vacant lands which have vested in the State are also to be disposed of as stipulated under S.23 strictly keeping in view the spirit and object or the Act, exemption u/s20(1)(b) cannot be granted to holders of such lands to dispose of the lands in the manner they like, to the persons they prefer, at the price they dictate, for clearing their debts. If it is conceded that indebtedness amounts to an undue hardship, then it may cover the debts incurred even after the commencement of the Act. [756 D, E]

6.This Court has already held that Section 27(1) in so far as it imposes restriction on transfer of any urban or urbanisable land with a building or of a portion of such building which is within ceiling area, was invalid. The said sub-section (1) of Section 27 was struck down being unconstitutional. Section 26 of the Act also imposes certain restrictions on transfer of vacant land even within ceiling limit. It can therefore be stated that Section 26(1) suffers from the same vice. But neither in that case nor in this case, this court was or is concerned with Section 26. As such, it is not necessary to express any opinion in respect of Section 26 of the Act, while considering the issue involved in the present appeals. [756 G, H; 757 A, B] Maharao Sahib Shri Bhim Singhji etc. etc. v. Union of India & Ors., [1981] 1 SCC 166, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1454-56 of 1993 etc. etc. From the Judgment and Order dated 15.2.1991 of the Karnataka High Court in Writ Appeal Nos. 2083, 2084 and 2085 of 1989. K.Madhava Reddy, P.P. Rao, N.D.B. Raju, Guntur Prabhakar, Dr. Sumand Bhardwaj, Yatish Mohan Verma and Ranjit Kumar for the Appellants.

Soli J. Sorabjee, N.B. Shetye, R.N. Narasimha murthy, S.Ganesh, Vineet Kumar, M. Veerappa, Nobin Singh, P.R. Ramasesh, P. Mahale (NP), S.K. Kulkarni and Surya Kant for the Respondents.

The Judgment of the Court was delivered by SAWANT, J. Leave granted.

2.These appeals arise out of the same facts and judgments of the Karnataka High Court and are being disposed of by this common judgment. For the sake of the narration of events Civil Appeal Nos. 1461-72/ 1993 arising out of SLP (Civil) Nos. 7230-41 of 1991 may be referred to.

The 2nd respondent M/s Naryanaswamy & Sons is a partnership firm. While it was carrying on the business of manufacturing and selling of polished granites, it acquired on 30.9.1953, 6 acres and 4 gunthas of land in Survey Nos. 6/1 and 6/2 of Dasarahalli in the heart of Jayanagar Extension of the city of Bangalore. Out of the said land, 1 acre and 2 gunthas had already been acquired by the 1st respondent-State Government under notification dated 1.4.1948. The acquisition proceedings had culminated in an award, granting compensation to the land owner on 3.3.1955. In a small portion of the said land, the 2nd respondent-firm (hereinafter referred to as the 'firm'), established a granite factory and the rest of the land was vacant when the Urban Land (Ceiling and Regulation) Act, 1976 (the 'Act') was made applicable to the Bangalore Agglomeration consisting of the area within the jurisdiction of the Bangalore City Municipal Corporation and the Trust Board, and the peripheral area of 5 kms.

3.On 9.6.1983, the firm preferred an application to the State Government for exemption of the vacant land from the provisions of Chapter III of the Act. By an order of 17.7.1985, the State Government granted exemption under Section 20 of the Act for industrial use of a granite factory. The exemption related to 16194 sq. mtrs. of land and was granted on the following conditions:

[i] The entire land utilisation shall be completed within a period of two years from the date of the order.

[ii] The exempted land shall be exclusively used for the purpose for which the exemption was granted and for the purposes related thereto.

[iii] The land shall not be transferred by way of sale, mortgage, gift, lease or otherwise without prior permission of the Government and that such permission, when given, shall be subject to such conditions as the Government may deem fit to impose.

4.The 3rd respondent-partnership firm M/s. Reevajethu, Builders and Developers [the 'builders'] was constituted on 6.1.1987 with Smt. Shobha Makhija as the major partner with 50% share and other 18 partners, mainly "to develop the immovable property to be acquired by the firm of an

extent of 5 acres and 24 gunthas situated at Survey Nos. 6/1 and 6/2 of Dasarahalli of Bangalore City and to carry on the business as builders and developers of flats, shops, commercial complexes and other types of buildings, dealers in real estate and all other allied business and activities" and to "carry on any other business as may be mutually agreed upon by all the partners". It is not in dispute that Smt. Shobha Makhija is the sister of the son-in-law of the 4th respondent who was then the Chief Minister of the State of Karnataka..

5.On 9.1.1987, the competent authority under the Act came to the conclusion that the excess vacant land out of the said Survey Nos. 6/1 and 6/2 after the grant of exemption by the Government Order dated 17.7.1985, was 3444 sq. mtrs. The competent authority accordingly directed the publication of a notification under Section 10 [1] of the Act for the acquisition of the said excess vacant land.

6.On the same day, i.e., 9.1.1987, the firm made an application to the State Government for permission to sell land to the extent of 5 acres and 24 gunthas comprised in the said Survey Nos. 6/1 and 6/2 to the builders. The grounds made out in the application were that due to stiff competition, and nationalisation of black and pink granite by the southern States including Karnataka, the firm was running under losses; that its Woodlands Hotel at Madras was also not making profits since the hotel building had become very old and there were no funds for modernising it; that its theaters in Madras were also not yielding profits due to unhealthy competition by the video piracy and the advent of the television; that the partners of the firm individually and jointly were indebted to Andhra Bank, of India, State Bank of Mysore and Dena Bank; that the said debts were of more than Rs. 1 crore 65 lakhs; that suits had been filed in the High Court of Madras against the partners; that the business of the partners had been suffering huge losses specially due to continuing heavy interest burden; that the families of the seven partners of the firm had no other source of income and had been over-drawing from the firms for their maintenance; and that one of the partners was seriously ill in a hospital at Bangalore and he had to borrow money for taking medical treatment.

7.On 6.3.1987, the State Government under Section 20 [1] of the Act permitted the firm to sell land to the extent of 16194 sq. mtrs. to the builders subject to certain conditions.

8.On 23.3.1987, the firm filed another application before the State Government seeking permission to transfer the remaining 3444 sq. mtrs. of vacant land from Survey Nos. 6/1 and 6/2 to the builders on the ground of undue hardship since the firm had incurred debts. On 18.4.1987 the State Government under Section 20 [1](a) of the Act granted exemption for the said land from the purview of Chapter III of the Act and also permitted the firm to sell the said 3444 sq. mtrs. of vacant land from Survey Nos. 6/1 and 6/2 subject to certain conditions.

9.By a sale deed of 30.9.1987, i.e., a day before the extension of Chapter XXC of the Income-tax Act providing for preemptive purchase by the Central Government of immovable property in certain cases on transfer, the firm entered into a deed of absolute sale for the sale of the property consisting of land to the extent of 5 acres and 24 gunthas situated in the said Survey Nos. 6/1 and 6/2.

10.On this undisputed factual matrix, writ petitions were filed by way of public interest litigation, under Article 226 and 227 of the Constitution before the High Court for issue of a writ of mandamus

[a] directing the respondent- Government to take action for forfeiture of the land for con-

travention of Section 79 of the Karnataka Land Reforms Act; [b] for acquiring the land for the purpose of weaker sections under the provisions of the Act; [c] for quashing the orders dated 6.3.1987. and 18.4.1987 granting exemption to the land in question from the purview of the Act under Section 20 111(a) & (b) of the Act and for declaring the sale deeds dated 30.9.1987 executed by the firm in favour of the builders as void and inoperative; (d). for directing the State Government to take action under Section 6 of the Karnataka Parks, Play-fields, and Open Space [Reservation and Regulation] Act, 1985 and for other reliefs.

11. The learned Single Judge by his judgment and order dated 8.9.1989 allowed the writ petition, and among others, [i] quashed the Group Housing Policy of the State Government as embodied in the decision of the Committee held on 22.10.1986 and communicated under letter dated 24.11.1986 insofar as it encouraged the Group Housing Scheme through individuals and partnership of individuals by transferring vacant land to such persons; [ii] restrained the State Government from enforcing the said Policy through individuals and partnership of individuals against the vacant land; [iii] declared as null and void and quashed the orders dated 6.3.1987 and 18.4.1987 granting exemption; [iv] declared the sale deed dated 30.9.1987 executed by the firm in favour of the builders as null and void so far as it related to the extent of land admeasuring 19368 Sq. mtrs. covered by the exemption orders of 6.3.1987 and 18.4.1987. The validity of the sale deed so far as it related to the remaining land mentioned therein was, however, saved by the said declaration; [v] directed the State Government, the Special Deputy Commissioner under the Act, the Bangalore Development Authority and the Municipal Corporation of Bangalore to identify the extent of 1 acre, 2 gunthas and 58 square yards which was acquired in 1948 out of the said Survey No. 6/1 and to set them apart for the purpose of road and Boulevard and use it only for said purpose; [vi] remitted the applications dated 9.1.1987 and 24.3.1987 made by the firm to the State Government with the direction to consider them in accordance with law under Section 20 [1](b) of the Act and to exempt them in the light of the extent of the debt owed by the firm to the creditors prior to the coming into force of the Act; [vii] directed that even if after examining the application in the aforesaid light the State Government granted permission, to the firm to sell the vacant land on the ground of hardship, the Government should see that, in the vacant land, sites are formed of various dimensions not exceeding 60' x 90' keeping in view the sites already formed in the locality. The learned Judge further directed that each such site should be sold by public auction by the competent authority with the condition that no person is entitled to purchase in public auction more than one site, and to credit the sale proceeds in the office of the competent authority under the Act who would pay the amount to the creditors of the firm. The learned Judge also further directed that only such number of sites should be sold which are necessary to discharge the debts and the remaining portion of the vacant land should be acquired under the Act. It may be noted here that the learned Judge held that the allegations of mala fides in granting exemptions by the orders of 6.3.1987 and 18.4.1987 against respondents 4 and 8, were not proved.

12. Against the said decision of the learned Single Judge, appeals were preferred before the Division Bench of the High Court, among others, by writ petitioners as well as the firm and the builders. All the appeals were heard together and the learned Judges of the Division Bench gave separate but

concurring judgments and set aside the findings as well as the directions given by the learned Single Judge and dismissed the writ petitions.

13.The precise questions which arise for our consideration in these appeals are:

[i] Were the permissions granted by the State Government to sell land admeasuring 16194 sq. mtrs. and 3444 sq. mtrs. by its orders of 6.3.1987 and 18.4.1987 respectively valid under the Act?

[ii] Were the said orders motivated by mala fides ? and [iii] Is the sale deed executed by the firm in favour of the builders on 30.9.1987 void and inoperative?

14.In order to appreciate the answer to the first and the third question, it is necessary to understand the scheme of the Act which came into force on 17.2.1976. As the preamble of the Act states, it has been placed on the statute book [i] to provide for the imposition of a ceiling on vacant land in urban agglomerations;, [ii] to provide for the acquisition of which vacant land in excess of the ceiling limit; and [iii] to regulate the construction of buildings on such land and for matters connected therewith with a view to [a] preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and [b] bringing, about an equitable distribution of land in urban agglomerations to subserve the common good. These objects which are otherwise clear from the preamble of the Act have been explained in the statement of objects and reasons accompanying the Bill which, among other things, states as follows:

"There has been a demand for imposing a ceiling on urban property also, especially after the imposition of a ceiling on agricultural lands by the State Governments .

With the growth of population and increasing urbanisation, a need for orderly development of urban areas has also been felt. It is, therefore, considered necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections of society and also avoiding speculative transactions relating to land in urban agglomerations.

xx xx xx The Bill is intended to achieve the following objectives:-

[i] to prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;

[ii]to bring about socialisation of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution;

[iii] to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilisation of such materials; and [iv] to secure orderly urbanisation. The Bill mainly provides for

the following:- [i] imposition of a ceiling on both ownership and posses-

sion of vacant land in urban agglomerations, the ceiling being on a graded basis according to the classification of the urban agglomeration;

[ii] acquisition of the excess vacant land by the State Government with powers to dispose of the vacant land to subserve the common good; [iii] payment of an amount for the acquisition of the excess vacant land, in cash and in bonds; [iv] granting exemptions in respect of certain specific categories of vacant land; [v] regulating the transfer of vacant land within the ceiling limit;

[vi] regulating the transfer of urban or urbanisable land with any building [whether constructed before or after the commencement of the proposed legislation], for a period of 10 years from the commencement of the legislation or the construction of the building whichever is later;

[vii] restricting the plinth area for the construction of future residential buildings; and [viii] other procedural and miscellaneous matters."

It is needless to emphasise that while interpreting the various provisions of the Act the said objects will have to be kept in view, constantly. However, only those provisions of the Act which have a bearing on the controversy before us may be referred to.

The 'vacant land' has been defined in Section 2 (q) as follows:

"vacant land' means land, not being land mainly used for the purpose of agriculture,, in an urban agglomeration, but does not include [i] land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated, [ii] in an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and [iii] in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building; Provided....."

The 'land appurtenant', in relation to any building, has been defined in Section 2(g) 'as follows:

" land appurtenant", in relation to any building, means [i] in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed' five hundred square metres; or [ii] in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by such building, and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five

hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause [i] or the extent referred to in sub-clause [ii], as the case may be".

Section 3 states that except as provided in the Act, on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit. The "ceiling limit" is prescribed in Section 4. The provisions of Section 4, so far as they are relevant for our purpose, may be reproduced verbatim:

"4. Ceiling Limit. [1] Subject to the other provisions of this section, in the case of every person, the ceiling limit shall be,- [a] x x x x x x [b] where such land is situated in an urban agglomeration falling within category B specified in Schedule 1, one thousand square metres;

[c] x x x x x x [d] x x x x x x

2. x x x x x x

3. Notwithstanding anything contained in sub-section [1], where in respect of any vacant land any scheme for group housing has been sanctioned by any authority competent in this behalf immediately before the commencement of this Act, then, the person holding such vacant land at such commencement shall be entitled to continue to hold such land for the purpose of group housing:

Provided that no more than one dwelling unit in the group housing shall be owned by one single person;

Provided further, that the extent of vacant land which such person shall be entitled to hold shall, in no case, exceed-

[a] the extent required under any building regulations governing such group housing; or [b] the extent calculated by multiplying the number of dwelling units in the group housing and the appropriate ceiling limit referred to in sub-section [1], whichever is less."

Section 5(3) prohibits transfer of the vacant land in excess of the ceiling limit or any part thereof by way of sale, mortgage, gift, lease or otherwise until the land-holder has furnished a statement under Section 6 of the Act and a notification regarding the excess vacant land held by him, has been published under sub-section [1] of Section 10. Any such transfer is deemed to be null and void. Section 6(1) requires every person holding vacant land in excess of the ceiling limit at the commencement of the Act, to file a statement before the competent authority under the Act. Read with Section 7, it is clear that the statement to be filed under Section 6(1) has to include vacant land not only situate in the same State but also in other States to which the Act applies. In the present case, admittedly, the firm held land also in Madras in addition to the land in dispute in the city of Bangalore. It is not known whether the firm had vacant land in its possession in Madras in addition to the land in dispute and whether it had shown such land in its return. However, that is not the

subject matter of dispute before us.

Section 8 provides for a draft statement to be prepared by the competent authority, as regards the vacant land held by the person concerned and calculated on the basis of the statement filed by him under Section 6 after holding an inquiry into the matter. The draft statement is to be served on the person concerned with the notice requiring him to prefer his objections, if any.

Section 9 provides for the final statement with regard to the vacant land in excess of the ceiling limit to be prepared by the competent authority and to be served on the person concerned.

After the service of the final statement under Section 9, on the person concerned, the competent authority is required by Section 10(1) to cause a notification to be published in Official Gazette giving the particulars of such vacant land and stating therein [i] that such land is to be acquired by the concerned State Government and [ii] the claims of all the persons interested in such vacant land be made by them giving particulars of the nature of their interest in the land. Under Section 10(2), the competent authority is required to determine the nature and extent of such claims and pass such orders as it deems fit. Section 10(3) provides that at any time after the publication of the notification under Section 10(1), the competent authority may by another notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under Section 10(1) shall with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government. Upon the publication of such declaration, the vacant land is deemed to have been vested absolutely in the State Government free from all encumbrances with effect from the date so specified. Section 10 (4) then prohibits transfer of the excess vacant land and also the alteration of the use of such land between the date of notification published under Section 10(1) and that of the notification published under Section 10(3). Section 10(5) enables the competent authority to pass an order requiring the person in possession of the excess vacant land to surrender the same to the State Government. Section 11 requires the State Government to pay compensation to the person or persons having interest in the vacant land acquired under Section 10(3), at the rates mentioned therein.

Section 19 exempts certain lands from the provisions of Chapter III of the Act which comprises Sections 3 to 24. Then come the provisions of Section 20 to 24 of Chapter 11. We are directly concerned in the present appeals with the said sections along with the provisions of chapter IV of the Act.

Section 20 permits the State Government to give exemption to any vacant land in excess of the ceiling limit, from the provisions of Chapter III, for two distinct purposes. It is necessary to reproduce here the said section:

20. Power to exempt. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to

the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such con-

ditions, if any as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

[2] If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.

It would be apparent from clause (a) of sub-section [1] of the section that under it, the State Government is given power to exempt the excess vacant land from the operation of Chapter III only if the State Government is satisfied that having regard to [i] the location of the land and [ii] the purpose for which it is being or is proposed to be used, it is necessary or expedient in the public interest to exempt it. The paramount consideration is the public interest. The exemption granted under this provision may be subject to certain conditions. But, it does not appear that it is obligatory to impose such conditions. Nor is it necessary to record reasons when exemption is granted under this clause.

The power to exempt such land under clause (b) of sub- section [1] can be exercised by the State Government, if it is satisfied that the application of Chapter III would cause undue hardship to the landholder. The exemption may be granted under this clause subject to such conditions, if any, as may be specified in the order. But, unlike under clause (a), there is no obligation to prescribe the conditions. The 'permission given under this clause, however, has to be supported by reasons to be recorded in writing.

Sub-section [2] of the section enables the government to withdraw the exemption granted either under clause (a) or

(b), if it is satisfied that any of the conditions subject to which the exemption is given, is not complied' with. Clauses (a) and (b) of sub-section [1] read with subsection [2] make it clear that the exemption may either be conditional or absolute. Where it is conditional, it may be withdrawn, if any of the conditions are not complied with. The very fact, however, that the legislature has contemplated imposition of conditions on exemptions granted under both the clauses, shows that the purpose of the exemption under either of the clauses cannot be the transfer of the land. The exemption under clause (a) is obviously for the land being put to a particular use which use is also necessary or expedient in the public interest, while exemption under clause (b) is for relieving the person concerned from any undue hardship which may be caused to him personally, by the withdrawal of the excess land from his possession probably such as when the person may require the land for the expansion of the use to which he has already put it, such as his growing business or activities or to accommodate his growing family. The clause unfortunately is completely silent on what it intends to convey by the expression "undue hardship". Section 21 also contemplates exemption of the excess vacant land from the operation of the said Chapter but for a purpose other than for the use of the holder of the land. The purpose contemplated there is the construction of dwelling units of the plinth area of not more than 80 sq. mtrs. for accommodation of the weaker sections of the society and in accordance with a scheme approved by such authority as the State Government may specify in that behalf. The person desiring exemption under this Section has further to declare his intention for construction of such dwelling units for weaker sections within such time, in such form and in such manner as may be prescribed. Such declaration is to be made before the competent authority. The competent authority, after receiving such declaration may, after making such inquiry as it deems fit, declare such land not to be excess land for the purposes of the said Chapter and permit such person to continue to hold such land for the aforesaid purpose subject to such terms and conditions as may be prescribed. Where any such condition is contravened, the competent authority has been given power to declare the land to be excess land and on such declaration, the, provisions of Chapter III of the Act are to apply.

The distinction between Sections 20 and 21 may be noticed at this stage. In the first instance, the power given under Section 20 is to the State Government and not to the competent authority. The power given is to exempt the land, and the exemption is to be granted to a person. The purpose of exemption is either public interest or relief from personal undue hardship. It does not appear to be obligatory on the State Government to prescribe any conditions while granting the exemption. However, if any conditions are specified and if the State Government later satisfied that there is non-compliance of any of the conditions, the State Government is given power to withdraw the exemption.

As far as Section 21 is concerned, the power conferred by it is not to exempt the land but to declare it not to be excess for the purposes of Chapter III. The power is given to the competent authority itself. It is to be exercised by it only under one circumstance. That circumstance is that the holder of the vacant land should declare before it within a specified time and in the prescribed form and manner, that he desires to utilise the land for the construction of the dwelling units of not more than the particular size mentioned therein for accommodating the weaker sections and in accordance with any scheme approved by the specified authority. It is the competent authority which is required to make inquiry as it deems fit into such a declaration, and if it is satisfied, to declare that such land

shall not be excess within the meaning of the said Chapter. However, it appears that the competent authority is required to prescribe certain terms and conditions while declaring the land not to be an excess land, including a condition with regard to the time limit within which such buildings are to be constructed, and on the breach of any of the conditions, the competent authority is also given power to declare the land to be an excess land.

Section 22 enables a person to hold the vacant land on which there stood a building which he demolished or destroyed or which was demolished or destroyed on account of natural causes. The holder of such land is required to file a statement in that behalf within the specified time and if the competent authority is satisfied that such land is required by the holder for the purpose of redevelopment in accordance with the master plan, the authority may, subject to such conditions and restrictions, permit the holder to retain such land for such purpose. However, if the competent authority is not so. satisfied and does not therefore, give permission for redevelopment, the provisions of Sections 6 to 14 of the Act become applicable even to such land.

Section 23 provides for the disposal by the State Government of the vacant land acquired under the Act or acquired under any other law. The State Government may allot such land to any person for any purpose relating to or in connection with any industry or for providing residential accommodation, of such type as may be approved by the State Government, to the employees of any industry. The 'industry' is defined for the purpose to mean any business, profession, trade, undertaking or manufacture. While making such allotment, the State Government may impose such conditions as may be specified in the order of allotment. A breach of any of the conditions imposed enables the State Government to cancel the allotment, and on such cancellation the land reverts in the State Government free from all encumbrances. Sub- section [4] thereof also enjoins the State Government to dispose of the vacant lands to subserve the common good on such terms and conditions as the State Government may deem fit to impose. Sub-section 15] thereof gives the State Government an overriding power and enables it to retain or reserve any vacant land acquired under the Act for the benefit of the public, notwithstanding anything contained in sub-sections [1] to [4].

Section 24 enables the State Government to assign a part or whole of the acquired land to those persons who had leased out or mortgaged with possession, of the said land or had given such land under a hire-purchase agreement and as a consequence of which they are left with no vacant land or. are left with vacant land which is less in extent than the ceiling limit.

Chapter IV of the Act deals with the regulation of transfer and use of urban property. Section 26 prohibits the sale of vacant land within the ceiling limit except after giving notice in writing to the competent authority, of the intended transfer. Where the notice is given, the competent authority shall have the first option to purchase the land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 or of any other corresponding law for the time being in force. The option has, however, to be exercised within a period of sixty days from the date of the receipt of the notice and if no such option is exercised, it will be presumed that the competent authority has no intention to purchase the land, and it shall then be lawful for such person to transfer the land to whomsoever, he may like.

Section 27 prohibits transfer of any urban or urbanisable land by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, if such land is with a building, whether constructed before or after the commencement of the Act. It also prohibits a similar transfer of the land with a portion only of such building. The restriction on the transfer of Such land is for a period of ten years of the commencement of the Act or from the date on which the building is constructed whichever is later, except with the previous permission of the competent authority. The competent authority is given power to grant or refuse permission to transfer, after holding an inquiry. If the permission is not refused within sixty days of the receipt of the application, the permission is deemed to have been granted. If the permission applied for is for the transfer of such land by way of sale, the competent authority is given the first option to purchase such land with the building or a portion of the building, as the case may be, and if the option is not exercised within sixty days, the applicant is free to sell the land to any person he may like. For the purpose of calculating the price, where the purchase is made by the authority, the provisions of the Land Acquisition Act, 1894 or of the corresponding- law are made applicable. This Section has since been, struck down by this Court in *Maharao Sahib Shri Bhim Singhji etc. etc. v. Union of India & Ors.*, [1981] 1 SCC 166 to the extent it operates on the vacant lands within the ceiling limit. In other words, as the law stands today, the section applies only to transfer of the urban and urbanisable lands in excess of the ceiling limit and which have a building or a portion of building constructed thereon. Section 29 prohibit s construction of buildings with dwelling units with a plinth area exceeding particular dimensions, depending upon the category to which the urban agglomerations belong.

Section 30 gives power to the competent authority to stop or demolish construction which is being made or made in contravention of Section 29.

Section 35 gives power to the State Government to issue orders and directions of a general character as it may consider necessary in respect of any matter relating to the powers and duties of the competent authority and the competent authority has to give effect to such orders and directions.

Section 36 gives power to the Central Government to. give such directions to any State as may appear to it to be necessary for carrying into execution in the State concerned, any of the provisions of the Act or-of any rules made thereunder. The Central Government may also under this Section require any State Government to furnish such returns, statistics, accounts and other information as may be deemed necessary.

15.The examination of the aforesaid relevant provisions of the Act shows a clear intention of the legislature and reveals a definite scheme. It has to be admitted that the provisions of the Act as are drafted have not succeeded in translating into, words the clear intention of the legislature and to that extent the Act is an inelegant and confused piece of drafting. However, since the intention is clear, a harmonious reading of all the provisions consistent with that intention is necessary to interpret and understand each of the said provisions. The intention of the legislature is to acquire all vacant land in excess of the ceiling limit prescribed by the Act and the main purpose of the Act, as stated earlier, is three-fold, viz., [i] to prevent concentration of the urban land in the hands of a few persons and to prevent speculation and profiteering therein; [ii] to distribute the urban land equitably and [iii] to regulate the construction of buildings on the urban lands. Consistent with these

objectives, the Act provides for acquisition of all urban vacant land in excess of the ceiling limit and prohibits its transfer in any form absolutely. All that the Act permits in the case of such excess vacant land is either express exemption from the operation of Sections 3 to 19 of Chapter III of the Act by the State Government under Section 20 or non-declaration of such land as an excess vacant land by the competent authority under Section 21 or the retention of such land with the land-holder to be permitted by the competent authority under Section 22 of the Act.

The effect of exemption of the land from the provisions of Sections 3 to 19 or of the non-declaration of the land as excess land or of the retention of the land with the land-holder under Sections 20, 21 and 22 respectively, is not to permit the land-holder to deal with it as he likes including to transfer it. In fact, the exemption, the non-declaration and the retention permitted, is on certain conditions which are required to be prescribed by the State Government or the competent authority as the case may be. If those conditions are not complied with or are contravened, the State Government or the competent authority is given power to withdraw the exemption or to declare the land as excess. This power given to the State Government and the competent authority itself negatives either power to permit the transfer or the right to transfer. What is more, Chapter IV which alone makes provisions for transfer and use of urban property, makes provision for transfer of vacant land within the ceiling limit subject to certain conditions. It also makes provisions for the transfer of land in excess of the ceiling limit with a building thereon or with a portion of such building. It makes, however, no provision for transfer of land in excess of the ceiling limit without a building or a portion of a building thereon. That is consistent with the object of the Act since the Act does not contemplate transfer of the vacant land in excess of the ceiling limit. It only provides for exemption of such land from being acquired and vested in the State Government or for non-declaration of it as an excess land or for the retention of the same with the holder and that too subject to certain conditions which may be prescribed, as stated earlier.

16. It is against the background of the aforesaid provisions of the Act that we have to consider whether the two permissions given by the State Government to the firm on 6.3.1987 and 18.4.1987 to sell land admeasuring 16194 sq.mtrs. and 3444 Sq. mtrs. respectively under Section 20 (1), are legal.

17. Taking, first, the order dated 6.3.1987, it does not mention under which provision of Section 20 (1) the exemption is granted, viz., whether under clause (a) or (b) thereof. It is, however, conceded before us on behalf of the respondents that the exemption is not under clause (a) but is under clause (b). We have, therefore, to examine the said exemption with reference to the provisions of clause

(b). Section 20 (1)(b), as stated earlier, permits the State Government to exempt the vacant land from the provisions of Chapter III of the Act, if either on its own motion or otherwise, it is satisfied that the application of the said Chapter "would cause undue hardship to such person". The order of exemption may further be subject to such conditions, if any, as in any be specified in it. The reasons for passing the order have further to be recorded in writing. The preamble of the present order states that by the earlier order dated 17.7.1985, the firm was granted exemption of the very same land for locating industry on conditions contained in it. One of the conditions was that the declarant

shall not transfer the land in question without prior permission of the Government. The order then proceeds to refer to a letter dated 20.1.1987 of the Special Deputy Commissioner, Bangalore recommending the grant of permission to sell the said land on certain conditions. The order states that the Government has considered the undue hardship of the applicants and agrees to grant permission to sell the said land. The order does not discuss the undue hardship of the applicants. It is possible that the Government for that purpose relied upon the report of the Special Deputy Commissioner. It appears from the record that the report of the Special Deputy Commissioner is of 29.1.1987 and not of 20.1.1987. It is possible that there is a typographical error either in the record or in the order. Be that as it may. The said report of the Special Deputy Commissioner refers to the application made by the firm for grant of permission for the sale of the land "for their undue hardship'. The report then mentions the properties declared by the firm. All the properties, which are four in number and one of which is the land in dispute, are situated in Bangalore. There is no mention of the properties which admittedly the appellants had in Madras. What is necessary to note here is that it is also stated in the report that the land in dispute has a building of dwelling units and non-dwelling units over a plinth area of 1618.80 sq. mtrs. constructed prior to the commencement of the Act. It also states that there is a factory on the land running since 50 years which manufactures the polished stones, exported to foreign countries. The report then refers to what the firm had stated in its application for permission to sell the land. The application had mentioned among other things, as follows "[a] due to lot of competition and nationalisation of the black and pink granites by southern States including Karnataka, the firm had been suffering losses in the abovesaid business;

[b] the partners of this firm are the partners of a firm known as "Woodlands" which has been carrying business in hoteliers and the said hotel is not making profits due to the fact that the buildings are very old and due to paucity of funds;

[c] that firm has constructed twin-theatres on the front side of the hotel just to diversify the business.

[d] that they have incurred heavy loans from banks and private parties for the purpose of construction of theaters and the partners who are the partners of the applicant firm are responsible to liquidate the loans;

[e] the Madras firm has suffered heavy loss to a tune, of Rs. 22,23,016.26 as on 31.3.1986." [The firm has under this head shown term loan (if Rs. 57.57 lakhs from the Andhra Bank and Rs. 19.03 lakhs from the Bank of India and Rs. 17.29 lakhs from the State Bank of Mysore.

They have also mentioned Rs. 51.80 lakhs from private parties but their names are not disclosed. They have also mentioned other liabilities to the tune of Rs. 3.87 lakhs but their details are not given.] "[f] that the net capital and current accounts show a debit balance of Rs. 47.94 lakhs".

[They also further state that if the loan from 1.4.1986 to 31.12.1986 is taken into account, the debit balance of the partners would be about Rs. 68 lakhs.] "[g] that the bank-authorities have filed suits in the High Court of Madras to attach their properties both in Bangalore and Madras; [h] that a

private party by the name of Sri P.L. Narayanaswamy Reddivar has also filed a suit in the Karnataka High Court to recover the loan due to them from, the Madras firm;" The application had further stated that the Madras firm is not able even to pay the interest as it is running at a huge loss. It had also been stated that it had become a mental torture to clear the liabilities and to face the court cases pending for attachment. It had then gone on to state that there was no other way to dispose of the property in Bangalore, i.e., the disputed property to clear the above debts and that even the amount derived from the sale of the land in question would not be sufficient to liquidate the liabilities.

The report further states that the firm had produced the statement of profit and loss account and balance sheet as on 31.3.1986 and copies of suits filed by the Bank of India in Madras and by the said Sri P.D. Narayanaswamy Reddiyar in the High Court of Karnataka. After only reciting the above facts but without mentioning even the price at which the land in dispute was proposed to be sold, the Special Deputy Commissioner has proceeded to recommend the permission to sell the land to the builders under Section 20 of the Act. The application for permission itself had not mentioned the price. The recommendation is in respect of not only 16194 sq. mtrs. but also in respect of 3444 sq. mtrs. It may be mentioned here that the firm had not made any application for exemption or permission to sell the said 3444 sq. mtrs. till at least 24th March, 1987. Yet, the Special Deputy Commissioner recommended in his report of 20/29.1.87 that the earlier exempted land of 16194 sq. mtrs. may be permitted to be sold along with the said 3444 sq. mtrs. He has of course recommended conditions to be imposed while granting the permission to sell.

The State Government has also not independently enquired into the genuineness of the debts, the value of all the assets of the firm held by it in Bangalore, Madras or elsewhere, and whether the debts were as on the date of the commencement of the Act and whether any of the debts were incurred subsequent to the said date, what was the price at which the land was proposed to be sold, whether the assets other than the land in question could not have been sold to meet the debts and if at all it was necessary to sell the land in question, whether the sale only of a part of the land would not have relieved the firm of its obligations. Without such inquiry, the Government by its order in question granted permission to sell 16194 sq. mtrs. of land. Close on the heels, however, followed another order dated 18.4.1987 by which the balance of 3444 sq. mtrs. was permitted to be sold relying upon another report of the Special Deputy Commissioner. The record before us shows that the said report is of 27.3.1989. We may, however, presume a typographical error and construe it as a report of 27.3.1987. However, what is worth nothing is that the application for permission to sell the said 3444 sq. mtrs. was filed by the firm allegedly on 24.3.87. It seems that with commendable alacrity the Special Deputy Commissioner made his report on the said application, on 27.3.1987 [if we are to read the year as 1987 instead of 1989 as the document shows]. What he has stated in his report may be summarised as under: That the Government by its order dated 6.3.1987 had already accorded permission to sell excess vacant land admeasuring 16194 sq. mtrs. The remaining excess vacant land held by the firm is 3444 sq. mtrs. Orders had been passed as required under Section 8(4) of the Act on 9.1.1987 confirming the said excess vacant land. In the meanwhile, the firm presented another application on 24.3.1987 to the Government requesting for grant of exemption under Section 20 with permission to sell the said excess land admeasuring 3444 sq. mtrs. and another land admeasuring 5,648 sq. mtrs. which consisted of land with building as per Section 4 (1)(b) of the Act, to the builders. That the firm stated that they had got the liabilities to the private

parties [who were for the first time named there]. They are 13 in number. The liabilities were shown as having arisen between 20.1.1975 and 7.12.1977 with a specific mention that the liabilities were from a date prior to the coming into force of the Act. These liabilities to the private parties amounted to Rs. 4,11,279.56. In addition to 13 private creditors, Dena Bank is the 14th and the last editor shown there to whom Rs. 65,420.44 were owed from 15.4.1969. The firm had produced certificates from the creditors and a certificate from the auditors in support of the said liabilities. The report ends by stating that "in the cir- cumstances explained above, the requests of the firm to grant exemption under Section 20 with permission to sell the said balance vacant land of 3444 sq. mtrs. to the builders may be considered."

It is not known when the reference of the said application was made to the Special Deputy Commissioner for giving his report. All that is known is that on 18.4.1987, the Government passed an order permitting the firm to sell the land admeasuring 3444 sq. mtrs. on the conditions mentioned therein. This order also does not discuss, like the earlier order of 6.3.1987, the various factors which need to be considered while granting permission to sell. It is, however, not necessary to discuss this aspect of the matter since we are allowing the appeals on the primary ground that the State Government had no power to grant permission to the firm to sell the land in question. If, however, it was necessary to go into the said question, it must be stated that there is much force in the contention of the appellants that the State Government had not applied its mind to the relevant factors relating to the alleged indebtedness of the firm and hence the permission granted to the firm to sell the land was liable to be struck down on that ground also.

18.The first question that arises is whether the provisions of Section 20(1)(b) permit the State Government to permit the sale of the excess vacant land to a third party. According to us, the answer has to be in the negative for reasons more than one.

In the first instance, the central object of the Act, as is evident both from the preamble as well as the statement of objects and reasons, is to acquire vacant land in excess of the ceiling area and to prevent speculation and profiteering in the same and also to distribute the land equitably to subserve the common good. It is, therefore, per se against the said object to permit the sale of the excess vacant land for whatever reasons, including the undue hardship of the' land-holder. To construe the provisions of Section 20 [1]

(b) so as to read in them the conferment of such power on the State Government for whatever reasons, is to distort and defeat the whole purpose of the legislation. Further, neither the plain language of the clause nor its context and intendment merit such construction. Section 20 itself is titled "Power to exempt". The power given to the State Governments under the Section is only to exempt certain excess vacant lands from the operation of the provisions of Sections 3 to 19 of Chapter III, none of which refers to the subject of transfer or restrictions on transfer. Those provisions relate to the calculation, declaration, acquisition and vesting of the excess vacant land. It is Chapter IV which relates to the transfers of vacant lands and the restrictions thereon. Further, from the scheme of the Act, it is evident that the transfers of the vacant land were to be regulated by the specific provisions made in it. They were not to be left to be governed by the unguided discretion of any authority including the State Government. The specific provisions for regulating the transfer

have been incorporated in Sections 20 to 28 of the Act. Those provisions permit transfer of only vacant lands within the ceiling limit but without buildings, and of vacant lands in excess of the ceiling limit but with buildings thereon and subject to the conditions laid down there. It cannot be suggested that in defiance of the said provisions, Section 20 [1](b) vests power in the State Government to sanction sales of excess vacant lands with or without building thereon. Under Section 20 [1](b), the State Government can only exempt such excess vacant land from being acquired by it. The Government cannot permit its transfer when the Act does not even by implication authorises it to do so but permits the transfer subject only to the conditions prescribed by Section 27. The legislature cannot be presumed to have prescribed different conditions for transfer of the same or similar lands.

Secondly, Section 20 begins with the non-obstante clause "notwithstanding anything contained in any of the foregoing provisions of this Chapter", meaning thereby Chapter III of the Act. The foregoing provisions of Chapter III viz., Sections 3 to 19, as stated earlier, do not contain any provision permitting or restricting the transfer of the vacant land in excess of the ceiling limit. The provisions relating to the transfer of the vacant land are contained in Sections 26 to 28 of Chapter IV. Section 26 lays down restrictions on the transfer of the vacant land even if it is within the ceiling limit, while Section 27 places restriction on the transfer of any urban or urbanisable land with a building or portion of such building thereon for a period of ten years from the commencement of the Act or from the date on which the building is constructed, whichever is later, except with the previous permission of the competent authority. Section 27 as couched is wide in its implication and hence this Court by its decision in Bhuimsinghji's case Supral restricted its operation to lands with buildings which are above the ceiling limit. However, the court has upheld the validity of the rest of the Act including that of Section 26. The result is, the restriction on transfer even of vacant land within the ceiling limit but without building is deemed to be valid. Thus the transfer of the vacant land without building even if it is within the ceiling limit and of the vacant land in excess of the ceiling limit with a building or a portion of the building are subject to the restrictions placed by the Act. Section 20, as pointed out earlier, is subject to the provisions of sections which follow it including Sections 26 to 28. Hence no construction can be placed on clause (b) of sub-section [1] thereof which will be in conflict with the provisions of Sections 26 to 28.

Thirdly, the provisions of clauses (a) and (b) of sub- section [1] of Section 20 make it clear that what the legislature has in mind is an exemption for the purposes of the use- of the land and not for the purposes of selling it. Sub-section Ill (a) speaks of exemption of such land having regard to its location, the purposes for which the land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require. The said provisions further require that even after taking into consideration the said circumstances, the State Government has to examine, before giving ex-

emption, whether it is necessary or expedient in the public interest to do so. The Government is also empowered under the said provisions to grant such exemption conditionally. Sub-section [1] (b) similarly, speaks of the undue hardship caused on account of the application of the provisions of Chapter III. Since as per the definition of "person" in Section 2 [i], the said provision is applicable not only to individuals, but also to a family, a firm, a company or an association or body of

individuals whether incorporated or not, the hardship spoken of there is obviously one related to the user of the land. In fact, it is difficult to understand the precise purpose for which clause (b) has been enacted and the meaning of the expression "undue hardship" there. We are left only to speculate on the subject. The speculation itself may not be valid. The lands are held by companies, trusts and associations for industrial and commercial use, for the use of medical and educational institutes, sports, clubs, cultural activities, gardens, exhibitions etc. There is no special provision made in the Act to protect or take care of such users. The only provision under which a relief can be given to preserve and safeguard such user is Section 20 [1] (a). But that provision can be pressed into service only on the basis of the location of the land and its present or prospective user and only if it passes the test of public interest. However, all lands in excess of the ceiling limit may not strictly be necessary for such user, even if the user is in the public interest. Nevertheless, the withdrawal of a part of the land found to be in excess may cause an avoidable hardship to the land-holder which may be disproportionate to the benefit that is to accrue to the public on account of such withdrawal. The excess of land may be meager or the severance of such excess land itself may result in unnecessary hardship. The hardship further has to be undue and not merely an ordinary hardship which is bound to be caused on account of the application of the Act to every holder of the excess vacant land. The undue hardship must be one which cannot be avoided except by granting a relief of exemption as contemplated by the said provision. The relief from financial hardship or from indebtedness to the land- holder of such land is alien both to the object and the scheme of the Act. Even the debates in the Parliament do not refer to financial hardship or to the power of the State Government to exempt the land to permit its transfer on that account. To hold that indebtedness and financial hardship would entitle the landholder to get exemption for sale of the excess vacant land in his possession is to place the holders of land with debts in an advantageous position as against those who were unwise enough to manage their affairs with financial discipline. The classification of the owners of land for this purpose between debtors and non-debtors is itself irrational and has no plausible nexus with the object of the Act. Such a classification is, therefore, discriminatory and violative of Article 14 of the Constitution. It is not, therefore, possible to agree with the view taken by the Gujarat High Court in *Thakorbbhai Dajibhai Desai v. State of Gujarat*, AIR 1980 Guj. 189 that the indebtedness of the land-holder on the date of the commencement of the Act can be a ground for exemption under Section 20 [1] (b). Much less can such a ground vest the State Government with the power to permit the sale of the land. As has been explained earlier, under the Act no transfer of vacant land in excess of the ceiling limit is permitted whether with or without condition, if it is not encumbered with a building or a portion of a building. It can either be acquired by the State Government under Section 10 [3] of the Act or exempted from being acquired or permitted to be retained under Sections 20, 21 and 22 respectively. It can in no case be transferred. However, if it is so encumbered, the provisions of Section 27 become applicable to the transfer of the land and no transfer of such land can be effected in contravention of the provisions of the said section. There is nothing either in Section 20 or Section 27 which exempts the transfer of such land from the operation of the provisions of Section 27, assuming that Section 20 (1) (b) gives power to the State Government to permit the sale of such land.

Fourthly, the exemption which is granted under Section 20 [1] (b) has to be supported by reasons to be recorded in writing. This requirement also contemplates an exemption which is related to and prompted by the use or better use of the land. If it is the financial hardship which was under the

contemplation of the legislature, there was nothing easier than to make a reference to the same in clause (b) itself and to lay down guidelines for the inquiry into such hardship.

Fifthly, the provisions of sub-section [2] of Section 20, directly negative either exemption on account of financial hardship or for the purpose of the transfer of the land, since that sub-section empowers the State Government to withdraw the exemption already granted if the State Government is satisfied that any of the conditions subject to which the exemption is granted either under clause (a) or clause (b) of sub-section [1] is not complied with. It is inconceivable that the legislature had in mind the cancellation of the transfer including sale, which cannot be done when it has already taken place.

Sixthly, as pointed out earlier, when the legislature wanted to provide for sale or transfer of the vacant land, it has done so specifically in Chapter IV which exclusively deals with the "Regulation of transfer and use of urban property". Sections 26, 27 and 28 of the said Chapter together provide for sales of vacant land and for the registration of such sales. Section 26 restricts the sale of land even if it is within the ceiling limit except after giving notice in writing of the intended transfer to the competent authority. When such notice is given, the competent authority has the first option to purchase the land on behalf of the State Government and at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 or of any other corresponding law for the time being in force. It is only when the competent authority does not exercise its option to purchase the land within sixty days from the date of receipt of the notice, that it is lawful for the holder of the land to transfer the same to whomsoever he may like. The provisions of Section 26 further show that the price to be calculated for the purchase of the land when the competent authority exercises its option is on the basis that the notification under sub-section [1] of Section 4 of the Land Acquisition Act or under the relevant provision of any other corresponding law had been issued on the date on which the notice was given of the intended transfer by the holder of the land, to the competent authority. This provision makes it abundantly clear that the exemption to be granted under Section 20 1 11 (b) is not for the sale of the excess vacant land. It is difficult to hold that the legislature which places restrictions on the transfer of the land within the ceiling limit would at the same time give a carte blanche for the sale of the land in excess of the ceiling limit. For it would mean, firstly, that the State Government cannot have an option to purchase such land and secondly the sale can be made by the holder of the excess land at any price that he chooses. In the first instance, such a reading of Section 20 Ill (b) would militate against one of the objects of the Act, viz., to prevent speculation and profiteering in the sale and purchase of land. Secondly, it would be patently discriminatory. Whereas the holder of vacant land within the ceiling limit would have to suffer the restrictions placed by Section 26, the holder of the vacant land in excess of the ceiling limit has not to do so. He would in fact be in a better position. The provisions with regard to granting such exemption subject to certain conditions contained in Section 20 [1] (b) do not in any way mitigate the discrimination. Firstly, when the statute itself places specific restrictions under Section 26 on the sale of land within the ceiling limit, it is not possible to hold that the conditions on which the State Government is empowered to permit the sale can be left to the discretion of the State Government. In fact, such discretion given to the State Government would itself be violative of Article 14 of the Constitution the same being unguided and untrammelled. This also shows that the legislature has not given power to the State Government under Section 20 ill (b) to permit exemption for sale of the land. Otherwise

it would have provided in the section itself for the conditions on which the permission to sell can be given and such conditions could not be less onerous than those provided under Section 26 of the Act. Secondly, if the power to permit sale of the land was intended to be given only for relieving the land-holder of his financial hardship, the section could very well have provided for sale of such land under Section 26 of the Act or made provision in Section 20 ill (b) itself for the first option of the State Government to purchase it. It is not suggested that by not making such provision either in Section 20 111 (b) or Section 26, the legislature intended to permit the sale of such land at a price above the fair market price payable under the Land Acquisition Act, 1894 or the corresponding law and thereby encourage speculation and profiteering, the very evils which the Act intended to curb. Seventhly, section 27 in Chapter IV is another provision which prohibits the transfer of any urban or urbanisable land with a building whether constructed before or after the commencement of the Act or a portion only of such building, for a period of ten years from the commencement of the Act or from the date on which the building is constructed, whichever is later, except with the previous permission of the competent authority. Sub-section 151 thereof again gives the first option to the competent authority to purchase such land and at a price either as agreed upon between the competent authority and the land-holder or where there is no such agreement at a price to be calculated in accordance with the provisions of the Land Acquisition Act, 1894 or any other corresponding law for the time being in force. It is only if the option is not exercised within sixty days or the competent authority has not refused permission to sell the land that the holder of the land can legally transfer the same to whomsoever he may like. These provisions of Section 27 also militate against the conferment of the power on the State Government to permit exemption of land for the purpose of its transfer for the same 'reasons as are based on the provisions of Section 26 discussed above. The provisions of Section 27 refer to any urban or urbanisable land with a building. The vacant land in excess of the ceiling limit may be with or without a building. In fact, the provisions of Section 27 directly negative the conferment of such power, for the said provisions show, firstly, that the legislature did not want the sale of any urban or urbanisable land with a building whether it is within or without the ceiling limit except in accordance with the provisions of Section 27. For Section 27 speaks of transfer of any urban or urbanisable land with a building or a portion only of such building, only with the permission of the competent authority and on the terms mentioned therein. This Court, as stated earlier, has invalidated the provisions of the said section to the extent they apply to the vacant land with a building when the land is within the ceiling limit. But it does apply to land in excess of the ceiling limit and with a building or a portion of it thereon. It is not possible to hold that there are two provisions, viz. Section 20 ill (b) and Section 27 operating at the same time in the same area. For the land permitted to be transferred under Section 20 [1] (b) may also be a land with a building or a portion of a building thereon. In one case the restriction imposed by Section 27 on the transfer would not apply and the State Government will be deemed to have been given power to permit the sale even in contravention of the provisions of Section 27. In another case, the holder of similar land will have to suffer the restrictions placed by Section 27. There is nothing either in Section 20 [1] (b) or Section 27 to exclude the operation of the section, as pointed out earlier. Eighthly, the provisions of Section 28 require a special procedure to be followed by the registering officer under the Registration Act, 1908 while registering documents under Section 17 [1] (a) to (e) of that Act when the transfer of the land is either under Section 26 or Section 27. Section 28 does not make any reference to the transfer permitted by the State Government under Section 20 [1] (b). In other words, the holder of the vacant land in excess of the ceiling limit

has not to face the restriction on the registration of the document of transfer of his land provided under Section 28 when such transfer is permitted by the State Government under Section 20 [1] (b), whereas the holder of similar land who does not approach the State Government has to suffer the same when he transfers the land held by him. The discrimination between the transfers under the different provisions is irrational and has no nexus with the object ought to be achieved by the classification. Lastly, if the power to exempt the land for sale is read in Section 20 [1] (b) with such conditions as the State Government may choose to place and if either the State Government chooses not to place any conditions or to place such conditions as are inconsistent with the provisions of Sections 29 and 30, it would create two sets of lands—one where no restriction are applicable to the construction thereon or only such restrictions as the State Government may choose to impose, and the other where the restrictions on constructions as provided by Sections 29 and 30 would be applicable.

It is, therefore, more than clear that the provisions of Section 20 (1) (b) do not permit the State Government to exempt vacant land in excess of the ceiling limit for the purposes of transfer.

N.P. SINGH, J. I agree with brother Sawant, J. that it is not possible to hold that State Government can grant exemption under Section 20 [1] (b) of the Act, to the holder of the excess vacant land, so that he may transfer the same in the manner he desires. The object of the Act being imposition of ceiling on vacant land in urban agglomerations and for acquisition of such land in excess of ceiling limit, with a view to prevent the concentration of urban land in the hands of a few persons, speculations and profiteering therein, will that object be not defeated if it is held that power under Section 20(1) of the Act can be exercised by the State Government to exempt the excess vacant lands, from the application of Chapter III of the Act, so that the holder thereof can transfer such lands? Sub-section (1) of section 20 is in two parts. The exemption under clause (a) of the said sub-section is to be granted in the public interest whereas under clause (b) the exemption is to be granted taking into consideration the "undue hardship" of the holder of the land in excess of the ceiling limit. Both the expressions "public interest" and "undue hardship" are comprehensive in nature. But at the same time, it is not easy even for courts to say as to whether under different circumstances the exemption was in the "public interest" or was necessary in the interest of the holder of the land because of his "undue hardship".

Under Indian conditions expression "undue hardship" is normally related to economic hardship. That is why from time to time many holders of lands in excess of the ceiling limit, while claiming exemption under clause (b) put forth their bad economic condition and indebtedness to claim exemption along with permission to sell such excess lands. In the modern set up many holders of such excess lands having undertaken commercial or industrial ventures with the help of the loans from the Banks and other financial institutions, put the plea of repayment of such loans as undue hardship for claiming exemption under clause (b) of section 20(1) aforesaid. How the holders of excess lands having incurred losses or having failed to discharge their debts can claim exemption on the ground of "undue hardship" in such a situation? Section 4 while fixing the ceiling limit, under subsection (3) takes note of the fact that "where in respect of any vacant land any scheme for group housing has been sanctioned by an authority competent in this behalf immediately before the commencement of this Act, then, the person holding such vacant land at such commencement shall

be entitled to continue to hold such land for the purpose of group housing". But at the same time under sub-section (4) of section 4 it has been specified that "if on or after the 17th day of February, 1975, but before the appointed day, any person has made any transfer by way of sale, mortgage, gift, lease or otherwise (other than a bona fide sale under a registered deed for valuable consideration) of any vacant land held by him and situated in such State to any other person, whether or not for consideration, then, for the purposes of calculating the extent of vacant land held by such person the land so transferred shall be taken into account, without prejudice to the rights or interests of the transferee in the land so transferred". Similarly in section 5 it has been provided that "where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person". When different provisions take into consideration the lands already transferred by the holder, (i) between the period 17th February, 1975 and the appointed day; (ii) as well as between the period commencing from the appointed day and ending with the commencement of the Act, it should not be easily inferred that the framers of the Act desired that after the commencement of the Act while exercising the power of exemption under section 20(1)(b) permission should be granted to holders of such excess lands to transfer such lands to third parties in order to meet their financial liabilities.

Section 21 is yet another provision in the Act under which excess vacant land is not to be treated as excess. Under the said Section exemption is to be granted in respect of such excess vacant land, if the holder undertakes to utilise the same for the constructions of dwelling units for accommodation of the weaker sections of the society in accordance with the scheme approved by the competent authority or the State Government subject to such terms and conditions as may be prescribed. If Section 21 provides for granting exemption in respect of excess land held by the holder only on a specific condition that the holder shall utilise the same for the construction of dwelling units for weaker section, to serve a public cause, how the framers of the Act could have conceived the grant of exemption under Section 20(1)

(b) to the holder of the excess land, only to serve his interest, by selling such excess lands.

If it is held that the State Government can exempt the vacant land held by the land holder in excess of the ceiling limit, from the applicability of the provisions of Chapter III of the Act, in order that the said holder sells such land to liquidate his debts which amounts to an "undue hardship", then there will be an apparent conflict between the interest of the land holder and the public interest. In the interest of the land holder the maximum price fetched by sale of such land will be the solution of his hardship, whereas that will run counter to the object of the Act to prevent "speculations and profiteering". It is futile to urge that even in such transfers the dominant purpose of the legislation to prevent "the concentration of urban land in hands of few persons" is none the less served. The concentration of urban land in hands of few persons has to be prevented with a view to bring about "an equitable distribution of land in urban agglomerations to subserve the common good". Section 23 prescribes the priorities for disposal or distribution of excess vacant lands after such lands vest in the State under the provisions of the Act. In the case of *Bhim Singhji v. Union of India*, [1981] 1 SCC

166, it has been said:-

"The definition of the word 'industry' in clause (b) of the Explanation to that section is undoubtedly unduly wide since it includes "any business, profession, trade, undertaking or manufacture". If sub-section (1) of Section 23 were to stand alone, no doubt could have arisen that the Urban Land Ceiling Act is a facade of a social welfare legislation and that its true, though concealed, purpose is to benefit favored private individuals or associations of individuals. But the preponderating provision governing the disposal of excess vacant land acquired under the Act is the one contained in sub-section (4) of Section 23 whereby all vacant lands deemed to have been acquired by the State Government under the Act "shall be disposed of ... to subserve the common good". The provisions of sub-section (4) are "subject to the provisions of sub-sections (1), (2) and (3)" but the provisions of sub-section (1) are enabling and not compulsive and those of sub-sections (2) and (3) are incidental to the provisions of sub-section (1). The disposal of excess vacant lands must therefore be made strictly in accordance with the mandate of sub-section (4) of Section 23, subject to this, that in a given case such land may be allotted to any person, for any purpose relating to, or in connection with, any 'industry' or for the other purposes mentioned in sub-section (1), provided that by such allotment, common good will be subserved. The governing test of disposal of excess land being 'social good', any disposal in any particular case or cases which does not subserve that purpose will be liable to be struck down as being contrary to the scheme and intendment of the Act."

If the vacant lands which have vested in the State are also to be disposed of strictly keeping in view the spirit and object of the Act, how under section 20(1)(b) exemption can be granted to holders of such lands to dispose of such lands in the manner they like, the persons they prefer, the price they dictate, for clearing their debts? If it is conceded that indebtedness amounts to an undue hardship, then it may cover the debts incurred even after the commencement of the Act. The ceiling limit has been fixed by section 3 with reference to the date of the commencement of the Act, but exception can be granted till such excess lands vest in the State Government under sub-section (3) of section 10, after publication of the notification, in terms of the said sub-section. Although it was not possible even for the framers of the Act to exhaustively indicate as to what shall be deemed to be "undue hardship" within the meaning of section 20(1)(b) but it would have been better, if it had been illustratively indicated, leaving the rest for the courts to decide.

20.1 have made no reference to Section 26 or Section 27 of the Act, while considering the question whether on the ground of "undue hardship" the holder of the excess vacant land can be granted exemption and then permission to sell such excess land, because he is financially crippled or burdened with liabilities. In the case of *Bhim Singhji v. Union of India* (supra) this court held that Section 27(1) in so far as it imposes restriction on transfer of any urban or urbanisable land with a building or of a portion of such building which is within ceiling area, was invalid. The said sub-section (1) of Section 27 was struck down being unconstitutional. Section 26 of the Act also imposes certain restrictions on transfer of vacant land even within ceiling limit. It can be urged that Section 26(1) suffers from the same vice which was pointed out in respect of sub-section (1) of

Section 27 of Act, in the aforesaid case of *bhim Singhji v. Union of India* (supra) by this Court. But neither in the aforesaid case nor in this case this court was or is concerned with Section 26 and as such, according to me, it is not necessary to express any opinion in respect of Section 26 of the Act, while considering the issue involved in the present appeals. ORDER

21. For the reasons given by us above, we are of view that the provisions of Section 20 [1] (b) of the Act do not permit the State Government to give exemption to the vacant in excess of the ceiling limit for the purposes of transferring the same.

22. In view of our conclusion as above, it is not necessary to go into the further question, viz., if the State Government has such power, in which circumstances it can be exercised and whether financial hardship such as the indebtedness of the land-holder is sufficient to warrant such exemption or not and with respect to which date such indebtedness is to be assessed and in what manner, and whether in the present case, the said aspects of the indebtedness were investigated or properly investigated or not. For this very reason, we also do not propose to go into the other question regarding the mala fides on the part of the authorities while granting permission to the firm to sell the land to the builders in question.

23. Since we have come to the conclusion that the State Government has no power to grant permission to sell the land under Section 20 [1] (b), the orders dated 6.3.87 and 18.4.87 granting exemption and permission to the firm for sale of the land are void ab initio having been passed without jurisdiction. Accordingly, the sale-deed dated 30.9.1987 executed by the 2nd respondent firm in favour of the 3rd respondent-builders is held invalid and inoperative, as the respondent-firm had no legal right to transfer the land in favour of the builders. We accordingly allow the appeals and set aside the impugned order of the High Court. The respondents State of Karnataka, M/s. Narayanaswamy & Sons and M/s. Reevajethu, Builders & Developers will pay the costs to the appellants in one set.

G.N.

Appeals allowed.