
(1993) 04 GUJ CK 0030
In the Gujarat High Court

Anilbhai Dwarkadas Patel and Another	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 30-04-1993

Acts Referred:

Constitution of India, 1950 — Article 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 20, 20(1)(a), 20(1)(a)

Citation : (1993) 2 GLR 1024

Hon'ble Judges : B.C. Patel, J

Bench : Single Bench

Judgement

B.C. Patel, J.—This matter was heard at length on 29th and 30th March, 1993. The learned Advocate for the petitioners as well as Mr. Dave, learned Asst. Govt. Pleader have advanced various arguments in this matter.

2. Petitioners have preferred this application under Articles 226 and 227 of the Constitution of India challenging the order passed by Urban Land Ceiling Tribunal which has confirmed the order passed by the Competent Officer under provisions of Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the Act). Only two contentions have been advanced before me:

(i) With regard to the property situated at Shahpur, which is referred to at Sl. No. 3 in the order passed by the Competent Authority at Annexure "A", the authorities ought to have come to the conclusion that the land being occupied by buildings, is not a "vacant land", and,

(ii) Property referred to at Sl. No. 5 Survey No. 274 of Hirpur which is a piece of land being used by the petitioner as agricultural land, is not a vacant land or u/s 20 it be exempted being agricultural land.

3. Before considering the second question raised by the learned Advocate, it is necessary to consider the provisions contained in the Constitution of India (for short "Constitution" hereinafter), Bombay Tenancy and Agricultural Lands Act

1948 (for short "Tenancy Act" hereinafter), the provisions contained in Gujarat Agricultural Land Ceiling Act, 1960 (for short "Ceiling Act" hereinafter) and the provisions contained in the Act. It is also necessary to consider guidelines issued by the Government of India (Ministry of Works and Housing) under the provisions of the Act.

Under the caption "Socialisation of Urban Land", it is observed as under in the aforesaid guidelines:

Urban Situation:

Although only 20 per cent of the total population in India lives in urban areas, in terms of magnitude, the urban population is about 120 million. India has the third largest urban population amongst countries of the World. Estimates have it that by 2001 A.D. India may contain about 300 to 400 million urban population and may rank as perhaps the country with the largest urban population in the World.

Pattern of Urbanisation:

The population distribution, however, is skewed in the Urban areas. While the growth rate of population in urban areas has been 3.8 per cent against 2.4 per cent for the general population, the growth rate inter se amongst the urban areas has been very varied: for the metropolitan cities it has been 8.4 per cent, for cities with a population of 300,000 to one million 7.5 per cent and for smaller cities with a population of 100,000 to 300,000 it has been 3.4 percent. The "Pull" of metropolitan and bigger sized cities has been much more than that of smaller and medium sized cities resulting in a distorted picture of urbanisation. This leads to social and economic cost of an order which could certainly be avoided if the process is canalised. Proper development of the urban areas to distribute population on healthy lines is, therefore, called for. However, in respect of towns with populations of 300,000 and below, not all such towns can become proper "growth centres" as many of them lack the economic prerequisites and physical infrastructure for the purpose. On the other hand, many of such towns have the necessary potential and can be properly developed in a planned manner. There was, therefore, recognition that in adopting a policy of socialising the land there would have to be a selective and differential approach aimed at reducing the disparities in the rate of growth and ensuring more equitable distribution of population than at present.

Policy approach:

A package of measures to prevent the decay of metropolitan and bigger cities by off-loading them of the excess population and making the smaller cities attractive enough to exert a "pull" on migrants, is envisaged. This conceives a rigorous approach in the metropolitan areas and large cities and a fairly liberal and positive approach in small and medium cities.

Land as the crucial question:

Land in urban areas is a vital physical resource capable of generating and sustaining economic and social activities. It should be properly utilised by the community for social good. But the attraction of urban areas has led to profiteering and racketeering in land in these areas. There is also a misapplication of this scarce resource of urban land for undesirable purposes. Therefore, a comprehensive policy of effective control of land covering its use, distribution amongst the various sections of the society and individuals and for different social purposes, and its disposal by owners subject to their sharing the profits with the community at large, has been evolved.

Unique features:

A unique feature of the Urban Land (Ceiling and Regulation) Act passed by the Parliament is that it covers many States of India and provides for aggregation of holdings in urban agglomerations in the different States where the law is applicable for purposes of ceiling limits. In other words, persons holding vacant lands or vacant land and with other built-up property with dwelling units therein in different urban agglomerations would have to make a choice in retaining only one piece of vacant land, and surrender excess vacant land elsewhere. Thus, persons are discouraged to hold more than one single piece of land for dwelling purposes.

Since the Act applies to firms, companies and undertakings, future construction of industrial or commercial premises requiring large areas cannot take place in the notified urban agglomerations without obtaining requisite land from Government. This enables Government to regulate and canalise the location of industries and thus serve the broad policy approach in dispersal of economic activity. Hoarding of land by industrialist, based on prospects for expansion in the distant future would be discouraged.

With the coming into force of the Act, there is also a greater awareness on the part of public authorities for earmarking lands for specific use, providing for mixed functions to be performed, wherever necessary.

Under Section 20 of the Act, there is scheme for granting exemption, which reads as under:

20. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter:

(a) Where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

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

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

12) 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.

21. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (esch such dwelling unit having a plinth area not exceeding eighty square meters) for the accommodation of the weaker sections of the Society, in accordance with any scheme approved by such authority as the State Government may. by notification in the Official Gazettee, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purpose of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time-limit within which such buildings are to be constructed.

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

The primary object and purpose of the Act, as the long title and the preamble show, is to provide for the imposition of a ceding on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persona and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the directive principles of Article

39(b) and (c) Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others, .

The Hon"ble Supreme Court in the case of M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others, has observed as under in para 4 of the judgment:

4. Under the scheme of the Act, urban agglomerations have been divided into four classes and a ceiling has been prescribed for each classification. The vacant land in excess of the ceiling under the provisions of Section 10 of the Act vests in the State by way of acquisition and the vacant sites thus acquired by the State are intended to be utilised for purposes of housing and Sections 23 and 24 of the Act provide for disposal of vacant land. The Act, therefore, purports to take away the excess land from the holders thereof and utilise the same for purposes of housing and other public purposes. Chapter IV of the Act provides for regulation of transfer as also use of urban property. Section 20 empowers the State to exempt lands from the purview of the Act by providing:

20. Power to exempt. xxx xxx 21. xxx xxx xxx

It would be relevant in this case to quote paragraphs 5, 9, 10, 11 and 13 of the said, which reads as under:

5. Both Sections 20 and 21 contain provisions that if Government or the Competent Authority as the case may be, is satisfied that any of the conditions subject to which exemption was granted is not complied with, ii shall be competent for it to withdraw the order u/s 20 or declare such land to be excess land u/s 21 and bring it within the mischief of the statute.

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

10. With the increase of population and the shift of the rural masses to urban areas over the decades, the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work more to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries These are features

which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.

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

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

From the provisions of law, policy laid down by Government of India and the decision of the Hon'ble Supreme Court, it is very clear that Sections 20 and 21 empowers the Government and the Competent Authority to exempt vacant land from ceiling if housing schemes are promoted in the residential zone by the

owners of vacant urban land and as referred to hereinabove, it is very clear that looking to the need in the urban agglomeration and particularly for the land which is situated in the residential zone, u/s 21 of the Act, exemption could be granted only for housing scheme for the weaker sections of the Society. If application is u/s 20(1)(a) of the Act, one has to approach the Government for construction of houses. However, if one intends to develop a scheme for weaker sections of the society, he can approach the competent authority as well.

4. Provisions contained in Sections 63 and 64 of the Tenancy Act, which of course is a local Act, is also required to be considered, which reads as under:

63. (1) Save as provided in this Act-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee. or (e) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area, whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage or for such agreement on such conditions as may be prescribed:

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purposes, if the annual income of such person from other sources exceeds five thousand rupees.

(2) xxx xxx xxx (3) xxx xxx xxx (4) xxx xxx xxx 64. (1) Where a landlord intends to sell any land, he shall apply to the Tribunal for determining the reasonable price thereof. The Tribunal shall thereupon determine reasonable price of the land in accordance with the provisions of Section 63A. The Tribunal shall also direct that the price shall be payable either in lump sum or in annual instalments not exceeding six carrying simple interest at 4 1/2 per cent, per annum:

Provided that in the case of sale of the land in favour of a permanent tenant when he is in possession thereof, the price shall be at six times the annual rent.

(2) After the Tribunal has determined the reasonable price, the landlord shall simultaneously in the prescribed manner make an offer:

(a) in the case of agricultural land-

(i) to the tenant in actual possession thereof, notwithstanding the fact that such land is a fragment, and

(ii) to all persons and bodies mentioned in the priority list,

(b) in the case of a dwelling house, or a site of a dwelling house or land appurtenant to such house when such dwelling house, site or land is not used or is not necessary to carry on agricultural operations in the adjoining lands-

(i) to the tenant thereof:

(ii) to the person residing in the village who is not in possession of any dwelling house:

Provided that if there are more than one such person the offer shall be made to such person or persons and in such order of priority as the Collector may determine in this behalf having regard to the needs of the following persons, namely:

(i) an agricultural labourer, (ii) an artisan,

(iii) a person carrying on an allied pursuit, (iv) any other person in the village.

(3) xxx xxx xxx (4) xxx xxx xxx (5) xxx xxx xxx (6) xxx xxx xxx (7) xxx xxx xxx
(8) Any sale made in contravention of this section shall be invalid. (9) xxx xxx
xxx

Therefore, considering the Scheme, even if a landlord intends to sell, he has to sell as per Section 64 of the Tenancy Act. Thus, considering the provisions, the persons residing in urban agglomeration and not being a person qualified as per the requirement of Tenancy Act to purchase the land for agricultural operation or for housing purposes under normal circumstances, cannot purchase the land, and as a matter of course, exemption u/s 20 of the Act is granted to the land for agricultural operation and if it is in the residential zone, then in that case, though there is, scarce of the land, because of the exemption, land is not available to the landless persons residing in the urban agglomeration. Provisions in the Ceiling Act provide for acquisition and disposal of surplus agricultural land in public interest to make a uniform provision for the whole of State of Gujarat in respect of restrictions upon holding agricultural land in excess of certain limits and for securing the distribution of agricultural land as best to subserve the common good to provide for the acquisition of surplus agricultural land for the allotment thereof to persons who are in need of lands for agriculture (including co-operative farming societies, landless persons, agricultural labourers and small holders) or for the allotment of such surplus agricultural lands the integrity of which is maintained in compact blocks to a department of Government or to cooperative farming societies or Corporations owned and controlled by the State for ensuring the full and efficient use thereof and to provide for other consequential and incidental matters, the Act was enacted. Chapter II of the Ceiling Act provides for ceiling the area, while fixing of ceiling on the holding of

land, determination of surplus land and acquisition thereof is provided in Chapter III. So far as allotment of land vesting in the Government under the Ceiling Act is concerned, the same is provided for in Chapter V. In Section 29, there is a provision for allotment on payment of occupancy price to agricultural labourers and landless persons. Thus, if in urban agglomeration, an agriculturalist, on account of the Act is losing the land, he can purchase agricultural land and equally he is entitled to get land under provisions of the Ceiling Act. But so far as non-agriculturists residing in urban agglomeration is concerned, it is difficult for him to purchase land outside the urban agglomeration for development for residential purpose. Authorities exercising power under the Act has to keep all these aspect in mind while deciding an application when submitted more particularly for a land which is situated in residential zone and which is in excess of the ceiling limit.

5. If articles contained in the Constitution pertaining to directive principles of State Policy are perused, it becomes clear that it is the duty of the State to apply this principle even in making lands available. Article 47 reads as under:

47. Duty of the State to raise the level of nutrition and the standard of living and to prove public health-

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

This Article is in two parts: The earlier part refers to raising level of nutrition, standard of living and improvement of public health. The later part pertaining to prohibition policy which covers prohibition of intoxicating drinks, drugs etc., which are injurious to health. Therefore, the later part goes with the improvement of health which is referred to in the first part. But so far as raising of level of nutrition and the standard of living of its people is concerned, it is the duty of the State to make laws in this regard. The right to live in peace, sleep in peace and the right to repose and health are part of the right to live and it is the duty of the State to see that the same is provided. Article 21 of the Constitution is also required to be considered. Right of life as enshrined by Article 21 means something more than mere survival or animal existence. It includes the right to live with human dignity. It includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Thus, considering the constitutional mandate, with a view to bring about equitable distribution of land in urban agglomeration to subserve the common good, law has been enacted. It is not only for a limited purpose or with a limited view of preventing concentration of urban land in the hands of few persons and speculation of profiteering, but also for equitable distribution of urban land so as to subserve common good. Therefore, while applying the provisions of the Act, all these aspects are to be kept in mind.

6. Government of India has issued guidelines which also does not provide for exemption u/s 20 of the Act for agricultural purposes. u/s 20 of the Act, guidelines have been issued for industrial purposes or in connection with industry or for stud farm business or for coloniser to develop the land (Circular No. GIM of WH Circular letter No. 1/57/76 UCW dated 28-8-1976, Circular letter No. 1/231/76/UCU dated 17-8-1976 and circular letter No. 1/105/76/UCU dated 6-12-1976 u/s 20(1)(a) of the Act) no guideline is placed before the Court issued u/s 20(1)(a) of the Act for agricultural purpose but on the contrary, guidelines have been issued under Circular No. GIM of WH Circular letter No. 1/218/76 UCW dated 19-10-1976. Section 10 of the Act provides for acquisition of vacant land in excess of ceiling limit. Section 10(3) being relevant for this purpose, the same is quoted herebelow:

10. (3) At any time after the publication of the notification under Sub-section (1). the competent authority may, by notification published in the Official Gazette, of the State concerned, declare that the excess vacant land referred to in the notification published under Sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

Guidelines which are issued are reproduced below:

(I). Agricultural lands: Question whether agricultural lands falling within the Master Plan in an Urban Agglomeration could be cultivated,

It has been brought to notice, that large tracts of agricultural land situated in the periphery of towns have been included in the Master Plan, which thus become urban or urbanisable land and is subject to the ceiling necessitating the holder of such land to submit a statement to the competent authority, in case he possesses vacant land in excess of the ceiling and that this would mean that agriculture will suffer. It has, therefore, been suggested that land in question which may not be required immediately for urban development could be allowed for cultivation till it is actually required for urban development. Another question that has been raised is whether under the provisions of Section 10(3) of the Act, i.e., the stage of acquisition of vacant land in excess of the ceiling limit, the competent authority may postpone the actual date of taking over, thereby allowing the cultivation to go on till such date the land is actually required for urban development.

2. The matter was considered by the Central Co-ordination Committee at its second meeting held on the 17th May, 1976. The Committee felt that Section 10 of the Act gave sufficient flexibility to State Governments to allow the owner to continue to use the land for agriculture till it was required for urban development. It also felt that it would be better that the State Governments took over the excess vacant land and then leased it out to the same persons or other

persons till it is actually required for urban development.

3. The views of the Central Co-ordination Committee have been considered by the Government of India who have accepted them. The Government of India considers that such excess vacant lands should be licensed to the holders or other persons till such time they are required for urban development on such terms and conditions as the State Governments may prescribe, the licence being renewable on year to year basis. The State Governments are, therefore, requested to take necessary action accordingly.

(G.I.M. of W & H, Circular Letter No. 1/218/76-UCU dated 19-10-1976) Thus, in case of towns only and not cities and in case of town also, tract of agricultural land is situated in periphery of towns, the guideline will be applicable, and according to the policy, exemption, is not to be granted u/s 20 of the Act, but u/s 10 of the Act, the Government may allow the owner to continue to use the land and the Government may prescribe a licence being renewable on year to year basis. State Governments were requested, as per this guideline, to issue certificate or licence and not beyond that. In Cities like Ahmedabad, Baroda, Surat and Rajkot where the growth rate is very high, people from other parts of the State and the country have migrated to these cities and looking to the size of the population which is increasing fantastically, naturally, demand for housing is also increasing day by day. In such circumstances, if the land though situated in residential zone in urban agglomeration is permitted to be used for agricultural operation without keeping in mind the object and purpose of the Act, the same would be frustrated. However, as per guidelines referred to above, u/s 10 permission can be granted. u/s 10(3) of the Act, Competent Authority is given the power to declare the excess vacant land to vest in Government from the date to be notified subsequently. Therefore, till then, if the area is not developed or there is no demand from housing societies or individuals, the land may be allowed to be utilised for agricultural purpose for (the time being though the same is earmarked as residential. This would avoid speculative activity and diversion of land and its haphazard use in an unhealthy manner. But the land earmarked for non agricultural use if allowed to continue for the use of agricultural operation in cities where on account of growth demand for housing accommodation is increasing, the purpose of the Act can never be achieved.

Therefore, looking to the Scheme and object of the Act and the provisions contained in the sections, if the guidelines are for proper implementation of the statute, then that being of assistance, the same can be considered for the purpose to deal with relevant factors in their proper perspective.

7. Section 23 of the Act provides for disposal of vacant land acquired under the Act. That Section empowers the Government to allot land which is in excess of ceiling limit which is deemed to have been acquired by the State Government under provisions of the Act or acquired under any other law 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 and it shall be also lawful to hold such land in excess of the ceiling limit. The word "industry" by clause of explanation means any business, profession, trade, undertaking or manufacture. Guidelines have been issued u/s 23 of the Act under which procedure is prescribed for disposal of plots of vacant land exceeding ceiling limit for construction of hotels, cinemas, institutions, etc. Guidelines have also been provided for allotment of land for purpose of industry, viz., any business, profession, trade, undertaking or manufacture and also for public benefit for social housing provision of basic amenities, Government purpose, local authorities, institutions, for the purpose of construction of housing for employees of industries. So far as residential areas are concerned which are earmarked for residential use, broad approach which should be adopted is also provided in the guidelines. Accordingly, it should be utilised for such purpose for allotting it to housing board or any other public housing agencies or any employees of the State Government or local authorities or for a quasi-public institution. Such land also can be sold in auction. According to guidelines, if the land is situated in an area where the land is very costly and housing scheme is for high income and middle income group, can be sold in auction and if the same is situated where low or economically weaker sections are occupying the area, land can be allotted individually at the rate of acquisition. Purpose also can be fixed. In the said guidelines, it is specifically observed that:

1 to 8. xxx xxx xxx 9 (i) xxx xxx xxx

(ii) Large areas which are yet to be developed-

It is likely that large areas of open land not used for agriculture would be vested with Government as excess vacant land. Such land would naturally have to be handed over to a public housing/development agency for development in accordance with appropriate lay-out plans and for disposal according to the needs of the population. Priority can also be given to Housing Co-operative Societies for construction of houses for Low Income Groups/Economically Weaker Section/Middle Income Group housing. It is also desirable that large tracts of land which are put to agricultural use and which have to be declared as excess vacant land because they are earmarked for non-agricultural use in the Master Plan, should be allowed to be continued to be used for the purpose of agriculture until the land is to be taken over for actual development. It is, infact, to enable such an approach that Section K) contemplates two stages of action for vesting the excess vacant land in Government. Initially u/s 10(1) only a notification is to issue specifying the excess vacant land. u/s 10(3) the Competent Authority is given the power to declare the excess vacant land to vest in the Government from a date to be notified subsequently. Therefore, after having declared an area as excess, it is not necessary to take over that land immediately. This approach, if followed, will enable present land use to be continued and at the same time avoid speculative activity and diversion of land use haphazardly.

These guidelines are found in Circular No. GIM of WH Circular letter No.

1/244/76 UCU dated 14-1-1977.

Thus, reading all these guidelines, it is very clear that there is nothing to indicate that exemption u/s 20 can be granted for the purpose of agricultural operation. When application is presented, it is known to the authority as to what is the total holding of land as the same is required to be mentioned in the form itself. Over and above this, the income and occupation of the holder and other members of the family, etc., are to be taken into consideration while granting permission even u/s 10(3) of the Act.

8. Section 47 of the Act empowers the Central Government to do anything by order but not inconsistent with the provisions of the Act. And that too, within a period of two years from the commencement of the Act. Except the aforesaid circular, nothing has been pointed out for proper implementation. Considering these guidelines, it is a futile attempt made by the learned Advocate that as the land is being used for agricultural purpose, there is no need to approach for exemption.

9. For the purpose of Section 20(1)(a) of the Act, a person must be holding vacant land in excess of the ceiling limit and if the Government is satisfied, then considering the location of such land, purpose for which the land is being proposed to be used and such other relevant factors as the circumstances of the case may require and if it is necessary or expedient in public interest so to do, then and then only, the Government may by order exempt, subject to such condition as may be specified in the order. In such a case, though a person holds land in excess of ceiling limit, then such land may be exempted from ceiling. The important aspect is location of such land, meaning thereby where the land is situated, in residential zone or any other zone. Once the land is situated in residential zone, it is necessary to see that the same is developed for residential purpose, and that is the relevant factor to be considered. Again duty is cast upon the Government to see whether it is expedient in the public interest to grant exemption. As observed above, Central Government, considering all these aspects, issued circulars. Therefore, beyond that, it is not possible to accept the submissions made by the learned Advocate.

The second question raised by the learned Advocate that the land held by the petitioner is being used as an agricultural land, is not a vacant land has no merit. If the land is used mainly for agricultural purposes and is also mentioned in the revenue records but on the determination of the vacant land is earmarked in the Master Plan for the purpose other than agriculture, it has to be included in vacant land held by the person and it ceases to be agricultural land for the purposes of the present Act. Sub-clause (c) of explanation for the purpose of Clause (o) as well as Clause (q) to Section 2 is relevant. It reads that "notwithstanding anything contained in Clause (b) of this explanation land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the Master Plan for a purpose other than agriculture." Clause (q) defines "vacant land" means land, not being land mainly used for the purpose of agriculture, in

an urban agglomeration but does not include..." It is not in dispute that the land in question is in a residential zone - in an urban agglomeration. Explanation (C) is in the nature of over-riding provision. The effect of the said provision is that, if the land is used as specified in the Master Plan for a purpose other than agriculture, the user of such land, for agricultural purpose or its classification in the revenue or land record, would be irrelevant and it would be deemed to be urban land. In view of this clear provision, the submission requires to be rejected that merely the petitioners are using the land as agricultural land, is not a vacant land.

10. Considering this background, now question of exemption raised by the learned Advocate is to be considered, i.e., with regard to the property referred to at Sl. No. 5 which is being used as agricultural land. It is stated by Mr. Sharma that application u/s 20 was pending on 28-6-1991, and therefore, it was the duty of the appellate authority not to pass any order and even the competent authority ought not to have passed any order as it was also brought to the notice of the competent authority. The petitioner has produced two documents at Annx. "E". These are copies of Form 7/12 Reading this form it appears that the property is divided into plots. Plot No 1 has gone to the share of Anilkumar petitioner No. 1. Plot No. 2 has gone to the share of Ronakkumar, petitioner No. 2. Plot No. 3 is reserved for the purpose of constructing a road. Plot No. 4 is given to Shri Arvindbhai. Thus, it is clear that piece of land bearing aforesaid survey number is divided into sub-plots. There is also an endorsement in that 7x12 document to the effect that exemption application u/s 20 has been rejected.

Thus, it is very clear that on 27-10-1989, there was no exemption to the land in question. Therefore, it was a vacant land. Mr. Sharma, learned Advocate asserts that the subsequent application dated 28-6-1990, which is submitted is required to be considered first. In the application, it is clearly mentioned that in the Master Plan, land bearing Survey No. 274 of Hirpur is in a residential zone, and according to the submissions, as it is a land being used for agricultural purpose, it cannot be declared to be a vacant land. It is further averred that though the land may be in residential zone, as it is being used for agricultural operation, it should be taken for granted that exemption u/s 20 is granted. The application is in detail but the substance in short is as stated above, and it is prayed that the entire piece of land should be considered as agricultural land, and therefore, exemption should be granted u/s 20(1)(a) of the Act or in alternative, exemption should be granted u/s 20(1)(b) of the Act. It is to be noted that even according to the submissions of the learned Advocate, this is a second application. Learned Advocate states that there is no bar in law to file any number of applications. If the petitioners were aggrieved by the rejection of application u/s 20 of the Act, they ought to have moved the higher authorities for claiming exemption, but they having once accepted the order passed by the authority, cannot contend that another application should also be considered. In this case, on an earlier occasion, application presented was rejected. However, on the same ground, another application is made. By allowing a person to repeat applications on the

same ground, it may defeat the very purpose and object of the Act. As stated earlier, in the instant case, though the application for exemption was rejected on 27-10-1989, the petitioners have not challenged but accepted the same and before the appellate authority, no submissions are made in this behalf.

11. Learned Advocate for the petitioners now submit that this petition be granted so that he can approach the competent authority with a housing scheme for the weaker sections. Under the provisions of the Act, rules have been framed and within the stipulated time in Rule 11, declaration under Sub-section (1) of Section 21 is to be made by a person holding the land. That's to be made within 1139 days from the commencement of the Act in the prescribed Form V. No such application is made by the petitioner within that time-limit. Vacant land held by the petitioner was not exempted under Sub-section (1) of Section 20. Therefore, Clause (b) of Rule 11 will be of no assistance to the petitioners. Thus, it is also a futile attempt on the part of the learned Advocate for the petitioners to submit that he should be permitted to move the Government with a scheme u/s 21 of the Act as under the law, application under Rule 11 of Sub-section (1) of Section 21 of the Act would not be maintainable and that is no ground to allow this petition.

12. Learned Advocate submits that second application is filed at the stage of proceedings u/s 10(1) of the Act. Appellate authority passed order dated 25-10-1989 and by an interim order it was directed that the competent authority can proceed further in the matter under Sections 10(1) and 10(2) of the Act. However, competent authority was restrained from publication of notification u/s 10(3) of the Act. It was also further directed that the petitioners herein shall maintain status quo with regard to the land in question as on 16-2-1976 and shall not transfer the land by way of sale, mortgage or by any mode and shall not use the land for any other purpose than for which it was being used. According to the learned Advocate, in view of the order passed on 25-10-1989 by the appellate authority, as there is no notification issued u/s 10(3) of the Act and as the application is pending, further orders u/s 10(3) need not be passed.

In the instant case, competent authority passed an order at Annx. "A" on 2-8-1989 u/s 8(iv) of the Act. The appeal, preferred on 9-10-1989, came to be disposed of on 27-8-1991. It is not the case that the competent authority passed order u/s 8(iv) without giving reasonable opportunity of hearing.

Till the land does not vest in the Government, one can apply for exemption u/s 20. Once the land is vested in the Government, there is no question of invoking aid of Clause 1(a) or (b) of Section 20, but until then there is a right to move the Government for exemption and there is an obligation on the Government to exempt the land in case the condition which warrant exemption are satisfied. The Full Bench of This Court in the case of Avanti Organisation, Rajkot and etc. Vs. The Competent Authority and Additional Collector, Rajkot and Another, has observed as under (at page 604 para 16):

We agree with the learned Advocates for the petitioners that such a situation cannot be allowed and it would, therefore, be in the fitness of things that the proceedings should in no case be allowed to proceed beyond the Section 10(2) stage if the exemption application has not been disposed of by then. If the process is not arrested at the end of Section 10(2) stage and is allowed to proceed upto Section 10(3) stage, a difficult and tricky situation may arise in that, on the one hand the acquisition of the excess lands would be completed and the lands would vest in the State Government absolutely free from all encumbrances whereas on the other hand the State Government may grant exemption in respect of the very same lands from the application of the provisions of Chapter HI (Sections 3 to 24) of the Act. Such a situation can best be avoided by arresting the process at the end of Section 10(2) stage. Even the learned Government Pleader fairly conceded that if the exemption application is not disposed of by then, it would not be permissible for the competent authority to proceed beyond the Section 10(2) stage.

In the instant case, there is nothing to indicate that under u/s 10(3) notification is issued and before the issuance of notification the petitioners have moved the Government for exemption u/s 20 and under the circumstances, application u/s 20(1)(b) is required to be considered. Till application at Annx. "F" dated 20-6-1991 is received by the Government on 23-8-1991 vide Annx. "G" and it reveals that application u/s 20(1)(a) or in alternative 20(1)(b) is pending before the Government and before issuance of notification u/s 10(3) of the Act. On behalf of the petitioners it was submitted that though first application was rejected and though they have not moved further in the matter, but as he has preferred a second application u/s 20(1)(a) of the Act, it should be considered by the Government. As observed earlier, there is no provision contemplating application u/s 20 of the Act for agricultural purposes for the lands situated in a residential zone. Assuming that first application was rejected under the law and the second application is made, even then learned Government Pleader submits that on the same ground, a second application is not maintainable and an unreported decision in the case of Special Civil Application No. 5605 of 1986 decided by Court (Coram A.P. Ravani, J.) has been pressed into service by learned A.G.P. Reading the judgment it appears that the Government partially granted the application. Thereafter a Society submitted another application for exemption u/s 20 of the Act. That application was rejected by the Government. The Society again submitted an application praying exemption and that was also rejected by the Government. The Court observed that:

The order passed by the Government dated January 10, 1979 has become final. It has not been challenged before any authority whatsoever

... It is doubtful that such an order can be reopened even if there is any fresh material. If such a course is permitted it would amount to circumventing the provisions of law and such a course cannot be permitted to be taken in a petition under Articles 226/227 of Constitution of India.

... The fact remains that two orders were passed in respect of this very land (1) dated January 10, 1979 and (2) dated January 15, 1986. Thereafter this third attempt is made by the land holder by filing a Review Application on July 13, 1986. As disclosed (See page 35 of the petition) in the order rejecting the application, this application has been rightly treated as review application by the Government.

Relying on this decision, it was submitted by learned A.G.P. that so far as Section 20(1)(a) is concerned, second application should not be considered.

13. As against this, learned Advocate for the petitioners has relied on the decision in Letters Patent Appeal No. 273 of 1987 decided by the Division Bench of This Court (Coram: G.T. Nanavati & R.D. Vyas, JJ.) on 17-6-1992. From the narration therein, it appears the petitioner No. 1 purchased the land in an auction and was put in possession of the land. The land was mutated in the name of the petitioner No. 1 in the revenue records. Sale Certificate was also issued. The petitioners through their promoters applied on 29-6-1981 u/s 20 of the Act for exemption from the operation of the provisions of the said Act which was rejected on 2-7-1982 on the ground that the Society was not registered prior to 28-1-1976 and there was no question of public hardship. However, another proposed Society was granted permission even though it was not registered prior to 28-1-1976 and therefore the Society again applied to the State u/s 20 of the Act for exemption. In that application, there was a reference to granting of such an application to another Society which was not registered and on that basis request was made to reconsider the case, but the said application was also rejected on 4-4-1986, Being aggrieved by that order a petition (Special Civil Application No. 1322 of 1987) was preferred which was rejected by the learned single Judge on the ground that it was a review application and there is no provision for review in the Act. Against that order, the aforesaid L.P.A. was preferred. The Court considered the aspect that the case was required to be considered in the light of new developments which was a subsequent development and therefore it was open for the applicant to request the Government to reconsider its decision. In that sense, it was a fresh application u/s 20 for exemption. The Court observed that:

In view of the policy statement made by the Chief Minister, as alleged in the application and the granting of permission to another Society, even though it was not registered, the Government would not have rejected that application without affording an opportunity of hearing to petitioner No. 1. The petitioner No. 1 could have pointed out to the Government that another Society, to which exemption was granted, was similarly situated and that in view of the facts and circumstances of the case, as pointed out in the application, hardship would be caused to number of persons who have become the members of the Society. As the impugned order dated 4-4-1986 was passed without affording any opportunity to petitioner No. 1, it deserves to be set aside. The learned Assistant Government Pleader did not dispute the legal position that if the petition dated

17-12-1985 made by petitioner No. 1 is regarded as maintainable, then the petitioner No. 1 was entitled to be heard.

Another ground on which the learned single Judge rejected the petition was that the petitioner No. 1 was not shown to be the owner of the land. In that connection, the Division Bench has observed that:

A person who is in lawful possession of the land can be regarded as a holder of the land under the Act. Thus, the appellant No. 1 is entitled to make an application u/s 20 of the Act.

This decision on which reliance is placed by the learned Advocate is of no assistance to him for the reasons that in this decision in the facts and circumstances of the case has observed that if there is a change of circumstance, there is a scope to make another application and such application should not be rejected without giving any hearing. The learned A.G.P. did not dispute the legal position. There is no change in the circumstances in the present case. Applications u/s 20 referred to hereinabove in the two cases were pertaining to exemption for residential purpose. Therefore, it can be said that those applications were in the true spirit of the statute. There is no grievance that the earlier application is decided without giving hearing. The learned A.G.P. vehemently argues that second application is not permissible. Hence the submissions advanced by the learned Advocate for the petitioners are considered. Moreover, learned Advocate has not placed any application submitted earlier u/s 20 of the Act and the order passed thereon. The order of rejection is referred to in Annx. "E" and the same has not been disputed. In the application at Annx. "F", there is no reference to earlier application. Therefore, the benefit of the decision of the Division Bench that if there is any change in circumstances, a second application is required to be considered, cannot be given in the instant case at all where there is nothing to indicate that the second application is based on a change of circumstance or is based on a different ground. The situation would have been different if there was any change of circumstances after rejection of the first application. It is also clear that the earlier application has been rejected on 27-10-1989. That was also an application for the purpose of agricultural operation. Therefore, even assuming that application u/s 20(1)(a) for exemption for agricultural operation is permissible in the absence of change of circumstances or new developments, a second application on the same ground is not tenable. So far as application u/s 20(1)(b) is concerned, it is a fresh application.

14. As observed earlier, there is no provision for exemption u/s 20(1)(a) of the Act in so far as it relates to the use of agricultural land in a residential zone. However, it is for the Government to allow on yearly permit basis, the use of land as agricultural land by postponing the declaration u/s 10(3) of the Act or after vesting vacant land in Government u/s 10(3) by postponing the issuance of notice for possession u/s 10(5) of the Act till the land is required for urban development on the ground that the land was being used by the holder as

agricultural land prior to the Act came into force. This too will be applicable only in towns (not cities) and to land which forms a part of large tracts of agricultural land situated in the periphery of towns till the land is required for urban development. As observed, the requirement of housing accommodation is to be seen. On account of much demand and acute shortage of land, said provision ordinarily should not be pressed into service but either excess vacant land be granted for housing purpose to "industries" as per Section 23 of the Act or to persons or to housing societies, etc., u/s 23 of the Act or to holders u/s 20 or 21 of the Act, as the case may be for use of construction of houses in a residential zone and certainly not for agricultural operations under the said provision. In the instant case, application for vacant land is for agricultural operations and in view of the above, the request to direct to consider the same cannot be entertained. In the absence of any application u/s 20(1)(a) of the Act for exemption for housing scheme, the request for issuance of direction to consider such a request does not arise.

15. Under the circumstances, it is directed that the competent authority Shall consider the case of the petitioners so far as the property situated at Shahpur is concerned in the light of the documents supplied by the petitioners.

16. So far as the properties which are situated at Rajpur Hirpur Ward is concerned, the authority shall decided the application u/s (20)(1)(b) of the Act within a period of 60 (sixty) days. The decision which may be taken in this behalf shall be intimated to the petitioners and if it is adverse to the petitioners, die same shall not be implemented for 15 days from the date of service of mat decision. Application allowed to the aforesaid extent with no order as to costs.