

(1991) 12 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1237 of 1986 (R)

Arun Nath Shahdeo and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0033

Judgement

S.B. Sinha, J.—This application is directed against the order dated 14-12-1985 passed by the respondent No. 3 as contained in Annexure 6 to this writ application as also the order dated 1-7-1986 passed by the respondent No. 2 as contained in Annexure No. 7 to this writ application.

2. By reason of the aforesaid orders, the respondent Nos. 3 and 2 respectively in purported exercise of their powers conferred upon them under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the sake of brevity of "the Act") held that surplus vacant lands are available at the hands of the petitioners.

3. The fact of the matter lies in a very narrow compass and are not much in disputes.

4. The petitioner No. 1 and his two sons constituted a Hindu joint family. The petitioner Nos. 2 and 3 when the Act came into force were minors.

On or about 4-8-1971 the petitioners together with Smt. Kiranbala Shahdeo (since deceased) wife of the petitioner No. 1 and the mother of the petitioner Nos. 2 and 3 partitioned their properties by metes and bounds, in terms whereof 1/4th share of the properties in question was allotted to each of them.

5. The properties in question were the ancestral properties of the petitioners. According to the petitioners consequent upon the said partition, the parties came in exclusive possession of the properties allotted in their share and got their names mutated in the revenue records of the respondent No. 1.

The petitioners also assert that late Kiranbala Shahdeo during her life time sold and transferred some portions of R.S. Plot No. 43 to Central Housing Co-operative Society by a registered deed of sale dated 12th May, 1982. The petitioner Nos. 2 and 3 also through their mother and natural guardian Smt. Kiranbala Shahdeo sold and transferred certain lands within plot No. 43 by virtue of two registered deeds of sale on 12-7-1982 in favour of Smt. Laxmi Sinha and Birendra Kumar Sharma who have also come in possession of the said respective purchased properties, Copies of the aforesaid sale deeds have been annexed with this writ application and marked as Annexures 3 and 3/1.

6. It is further the case of the petitioners that the petitioner No. 1, his wife and their two sons also made various transfers to several persons, out of the lands allotted in their respective shares and delivered possession of the transferred properties to the respective purchaser.

Allegedly, two deeds of sale executed by the petitioner No. 1. in favour of one Dr. Ram Gopal Bazaz and another in favour of one Sri Anil Kumar Bazaz on 5-2-1984 have also been recognised by the respondent No. 4.

7. In terms of the provisions of the said Act, the petitioners and the aforementioned late Kiranbala Shahdeo filed their respective returns before the competent authority which gave rise to initiation of four different proceedings, namely, Urban Land Ceiling Case No. 235 of 1976, 236 of 1976, 238 of 1976 and 239 of 1976. It appears that two of the purchasers from the petitioner Nos. 2 and 3, namely, Smt. Laxmi Sinha and Birendra Kumar Sharma also filed their respective returns which gave rise to Urban Land Ceiling Case Nos. 234 and 237 of 1976 respectively.

8. In the aforementioned cases a draft statement was published in terms of Section 10 of the said Act by amalgamating all the aforementioned urban land ceiling cases, which is contained in Annexure 4 to this writ application. During the pendency of the said case, the aforementioned Kiranbala Shahdeo died on 23-11-1983. The petitioners filed an objection to the aforementioned draft statement on 28th March, 1984 contending inter alia therein:

(a) That the properties being ancestral in the hands of the petitioner No. 1 his sons being petitioner Nos. 2 and 3 would also be entitled to have separate units.

(b) That since at the time of the commencement of the Act there were four "persons within the meaning of the provisions of the Act, therefore, a total of four units should have been allotted. Since after the registered partition the four separated owners have made numerous transfers out of their own exclusive shares and the same have been duly recognized by the respondent No. 1, the lands covered by the said deeds of sale should be excluded from computation of "vacant land".

(c) Plot No. 18 measuring an area of 0.15 acres is a rocky land and plot No. 45 measuring an area of 40 decimals is a road and they have also been recorded as

such in the khatian but nevertheless additional lands of 1000 sq. metre has been given out of the plot recorded as a "Rasta" R.S. Plot No. 43 is recorded as "Fulwari" that is an orchard and that the said plot had been requisitioned by the Defence Department of the Government of India during the second World War for which compensation was claimed and paid by D.D. Lands Hirings, Eastern Command. The Defence Department of Government of India had instructed 58 (fifty eight) structures including 39 (thirty nine) dwelling units during the period of occupation of the Army over portions of plot No 43 which had however, been released in favour of the petitioners in the year 1955 vide letter No. BIH/20234 dated 19-9-1955 from the Ministry of Defence addressed to Attorney of petitioner No. 1 whereby and where under the structures on the lands were stated to have been transferred to respondent No. 1 with a clear stipulation that the latter would have to acquired title of the lands from the petitioner No. 1.

(d) The petitioner Nos. 2 and 3 had attained majority during the pendency of the case before the determination of excess vacant lands by respondent No. 3. In view of the existence of the "Phulwari" and in view of existence of structures containing dwelling units on R.S. plot No. 43, the said lands cannot be treated as vacant lands.

(e) The draft statement was otherwise incorrect, arbitrary and illegal as it seeks to give the lands recorded as road and rock to the petitioners as vacant lands and seeks to treat substantially good and lucrative as land surplus lands without giving the petitioners chance to exercise their option in the matter.

9. The said objection is contained in Annexure 5 to the writ application. By the impugned order dated 14-12-1985, the respondent No. 3 overruled some of the objections of the petitioners, but sustained some of them.

10. The petitioner thereafter preferred an appeal before the respondent No. 2 which was registered as Urban Land Ceiling Case No. 123 of 1986 and by reason of an order dated 1-7-1986 as constined Annexure 7 to the writ application, the said appeal was also dismissed.

11. By reason of the aforementioned order dated 14-12-1985 and 1-7-1986 the respondent Nos. 2 and 3 respectively held that as the petitioners constituted a "family" within the meaning of the provisions of the said Act, they are entitled to only one unit in terms of Section 4 thereof i.e. 2000 squares metres of land only.

12. The competent authority also did not recognise the two sale deeds which are contained in Annexures 3 and 3/1 to the writ application inter alia on the ground that the said deeds of sale were not produced.

The competent authority, further, held that the structures standing on plot No. 43 would not be taken into consideration for exclusion thereof from the purview of surplus vacant land available at the hands of the petitioners as the said structures did not belong to the petitioners, but belonged to the military authoriries which have since been transferred to the State of Bihar.

The competent authority also rejected the contention of the petitioners that the land occupied by Rasta, Phulwari and rock should be excluded.

13. The respondent No. 3 in his impugned order also recommended the following for computing the surplus vacant lands u/s 9 of the Act which reads as follows:--

(a) as per Building Regulation existing in Ranchi, the land appurtenant to their residential plot of land holding measuring 671 sq. mts. should be calculated separately. The appurtenant land thus measured or 500 sq. mts. whichever is less, should be included in the total area of the residential building and servant quarter as per Section 29(i) of the Act.

(b) Since both the dwelling units were constructed before the appointed date and they seem to have vast area contiguous to those calculated in (a) above, additional appurtenant area of 500 sq. mts. for each dwelling unit should be allowed, thus a total of 1000 sq. mts. area of appurtenant land should be allowed.

(c) The land holder will be allowed only one unit the ceiling limit for which is 2000 sq. mts. since Ranchi comes under category "D" for the purpose of Urban Ceiling.

(d) Total residential area including the servant quarters land appurtenant area of 1000 sq. mts. all put together will be allowed to the land holder if it is more than 2000 sq. mts. or a maximum of 2000 sq. mts. should be allowed in case the total area thus calculated is less than 2000 sq. mts. as per the ruling of the Hon'ble Supreme Court in the State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, .

(e) The balance out total of 1,00,985 sq. mts. thus calculated will be declared as surplus land, and a final statement will be published u/s 9 of the Act.

(f) The vacant land which is in possession of the State Government or its Institution Department and which will be declared as the surplus land will continue to be under the possession of State Government as per Section 19 of the Act.

14. In this case, a supplementary affidavit has been filed on behalf of the petitioners on 2-8-1987 wherein they have annexed a copy of the letter dated 6-8-1977 issued by the Government of India (Ministry of Work and Housing) as communicated to the Secretary of the State Government (Bihar) wherein it has been stated that the land which is occupied by a building either constructed or under construction on the appointed day cannot be construed to be vacant land. The said letter further states that it is not necessary that the structure should belong to the owner of the land in view of the definition of the vacant land.

15. The petitioners in the said supplementary affidavit have also annexed a copy of the letter dated 18-12-1987 issued by the Central Government from a perusal whereof it appears that it was directed therein that only 1.54 acres of land are surplus at the hands of the petitioners.

16. The respondent Nos. 3 and 4 in their counter-affidavit accepted the possession that the petitioners along with Smt. Kiranbala Shahdeo partitioned their lands by way of family arrangement in 1971. It has also been accepted that 6 (six) returns were filed in respect of the land; four return separately filed by the petitioners and the aforementioned Smt. Kiranbala Shahdeo and two returns were filed on behalf of the purchasers. It has however been asserted that as the petitioner Nos. 2 and 3 were minors on the "appointed day" as they were born on 16-7-1964 and 8-9-1967 respectively and attained majority in the years 1985 and 1987 and thus the petitioners together with the aforementioned Smt. Kiranbala Shahdeo constituted a "family" within the meaning Section 2(f) of the said Act and as such they are entitled to only one unit.

17. With regard to the transfers made on 26-7-1976 to Smt Laxmi Smha and Shri Birendra Kumar Sharma, it was contended that the said purchasers did not put in appearance at all and as such the said transfers were not taken into consideration by the competent authority. It is further stated that the petitioner No. 1 is in possession of the aforementioned land.

18. Mr. N.K. Prasad, the learned Counsel appearing on behalf of the petitioners raised four contentions in support of this writ application. He firstly submitted that in view of definition of person" as contained in Section 2(i) of the said Act, the petitioners as also the aforementioned Smt. Kiranbala Shahdeo were entitled to one unit each that is four units in all and not one unit as has been held by the competent authority.

The learned Counsel further submitted that as there has been a partition by metes and bounds by reason of a registered deed dated 4-8-1971 i.e. much before coming into force of the said Act and the said partition having been accepted to be genuine, the parties thereto became owners of the lands which were allotted to their respective shares and as such each of them became a "person" within the meaning of Section 2(i) of the said Act. In this connection the learned Counsel has placed strong reliance in *Prabhakar Narhar Pawar Vs. State of Maharashtra and Another*, and in *Pratima Paul and others Vs. Competent Authority and others*, .

The learned Counsel secondly contended that the competent authority recognized three transfers but did not recognise the deeds of sale as contained in Annexures 3 and 3/1 the writ application solely on the ground that the said deeds of sale were not produced without taking into consideration that the purchasers had also filed returns giving rise to Urban Land Ceiling Case Nos. 234 of 1976 and 237 of 1976. The learned Counsel further contended that in view of Section 4(4)(a) of the said Act any transfer made before 17-2-1975 must be excluded from consideration for computing excess vacant lands at the hands of the petitioners.

19. The learned Counsel thirdly contended that as far plot No. 53 is concerned, as there had been 58 structures standing thereon; in view of the definition of

vacant land as contained in Section 2(q) as well as letter of the Central Government as contained in Annexure 8 to the writ application, all lands covered by the said structures must be excluded from consideration of the extent of the vacant land.

The learned Counsel, in this connection, relied upon a decision in State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, , in Mrs. Malati Madhav Pobthare v. Madhav Gopal Pobthare report in AIR 1984 Bom 112 and in Mrs. Shaheen Begum and others Vs. The Commissioner of Land Revenue and Urban Land Ceilings, Govt. of A.P., Hyderabad and another, .

20. The learned Counsel lastly contended that the competent authority committed an error in holding that the petitioners are entitled to hold only 2000 sq. mts. land which included the lands occupied by the building inasmuch as the land occupied by the building must be excluded from consideration for the purpose of computing the area of vacant land.

According to the learned Counsel the instructions given by the Central Government as contained in Annexures 8 and 9 having been issued u/s 36 of the Act are binding upon the authorities.

The learned Counsel in this connection further drew our attention to Section 4(ii) of the said Act and submitted that in terms thereof lands falling under Clauses (ii) and (iii) of Section 2(f) cannot be taken into consideration for computing the excess vacant land. The learned Counsel in this connection relied upon a decision in Prem Nath Kapur v. Secretary to Government Punjab reported in AIR 1981 P & H 48 and a decision of Allahabad High Court in State of U.P. v. Rakesh Murthy and Anr. in 1984(1) All LR 690.

21. Mr. M.Y. Eqbal, the learned Government Pleader No. I appearing on behalf of the respondents, on the other hand, submitted that in view of scope and object of the said fact, if the petitioners along with late Kiranbala Shahdeo constituted a family, they were entitled to only one unit and thus one unit had rightly been allotted to them in terms of the provisions of the said Act.

According to the learned Counsel, for that purpose, even the separate property of spouse of a person and their minors children would have to be clubbed together.

The learned Counsel has placed strong reliance upon Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, and in Seth Nand Lal and Another Vs. State of Haryana and Others, .

22. With regard to the second contention raised on behalf of the petitioners, the learned Government Pleader submitted that as the petitioner No. 1 was found in possession of the lands which were allegedly transferred in favour of Smt. Laxmi Sinha and Sri Birender Kumar Sharma, the same were not recognized.

23. With regard to the third and fourth contentions raised on behalf of the

petitioners, it was submitted that if the petitioners intended to get the lands covered by the building excluded from the purview of the vacant lands in terms of the definition of the "vacant lands" as contained in Section 1(q) of the said Act, it was obligatory on their part to show that the said buildings were constructed after obtaining approval of the competent authority under the building regulations available in Ranchi and as the petitioners had failed to show that they had obtained a prior approval from the competent authority, the lands covered by the buildings would also come within the purview of definition of "vacant land".

The learned Counsel, in this connection, has relied upon a decision of the Supreme Court in *State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others*, ; *State of Uttar Pradesh and Others Vs. L.J. Johnson and Others*, and in *State of U.P. Vs. Prem Singh Vahi and Another*, .

24. Before dealing with the respective contentions of the parties as referred to hereinbefore, the relevant provisions of the said Act may be noticed. The said Act was enacted to provide for imposition of a ceiling on vacant land in urban agglomeration, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of building of such land and for matters connected therewith with a view to preventing the concentration of urban land in the hands of a few persons or speculation and profiting therein and with a view to bringing sic equitable distribution of the land in urban agglomeration to subserve the common goods.

25. Section 2 is the interpretation clause which begins with the words "In this act, unless the context otherwise requires."

Section 2(f) defines "family" in relation to a person means individual the wife or husband as the case may be, of such individual and there unmarried minor children.

Section 2(i) defined a "person" as including an individual, a family, a firm, a company or an association or body or individuals whether incorporated or not.

"Urban land" has been defined in Section 2(o) of the Act in the following terms:--

(i) Any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) In a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the the limits of an urban agglomeration and situated in any area including within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat.

but does not include any such land which is mainly used for the purpose of agriculture.

26. Section 3 imposes prohibition upon a person to held vacant lands in excess of a ceiling limit in the following terms:

Except as otherwise provided in the Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land, in excess of the ceiling limit, in the territories to (which this Act applies under Sub-section (2) of Section 1.

Section 4 provides for a ceiling limit.

Sub-section (7) of Section 4 provides "Where a person is a member of a Hindu undivided family, so much of the vacant land and of any contained on which there is a building with a dwelling unit therein as would have fallen to his share had the entire vacant land and such other land held by the Hindu undivided family been partitioned amongst. Its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such persons".

Sub-section (9) of Section 4 reads as follows:--

Where a person holds vacant land also holds any other land on which there is a building with a dwelling unit therein, the extent of such other land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of vacant land held by such person.

Sub-section (11) of Section 4 reads as follows:--

For the removal of doubts it is hereby declared that nothing in Sub-sections (5), (6), (7), (9) and (10) shall be empowering the competent authority to declare any land referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (c) of Section 2 as excess vacant land under this Chapter: Explanation.--For the purposes of this section and Sections 6 8 and 18, a person shall be deemed to hold any land on which there is a building (whether or not with a dwelling unit therein) if he:

(i) Owns such land and the building; or

(ii) Owns such land but possesses the building or possesses such land and the building, the possession, in either case, being as a tenant under a lease, the unexpired period of which is not less than ten years at the commencement of this Act, or as a mortgagee or under an irrevocable power of attorney or a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity of capacities; or

(iii) Possesses such land but owns the building, the possession being as a tenant under a lease or as a mortgagee or under an irrevocable power of attorney or a hire-purchase agreement or partly in one of the said capacities and partly is any other of the said capacity or capacities.

Section 5 regulates transfer of vacant lands and reads as follows:

In any State to which this Act applies in the first instance, 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 and the excess vacant land in relation to such persons shall, for the purposes of this chapter be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee.

Provided that where such person has transferred his vacant land to more than one persons, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the local area of the land transferred to all the transferees;

(2) Where any excess vacant land is selected out of the vacant land transferred under Sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.

(3) In any State to which this Act applies, in the first instance and in any State which adopts this Act under Clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement u/s 6 and a notification regarding the excess vacant land held by him has been published under Sub-section (1) of Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

Section 6 mandates all persons holding such vacant land in excess of ceiling limit to file statement.

Section 10 provides for the manner in which the vacant land in excess of the ceiling limit is to be acquired.

27. Keeping in view the provisions aforementioned, the contentions of the learned Counsels appearing for the parties have to be appreciated.

28. Ref. Contention-1:

It is admitted that the petitioners and their mother entered into a family arrangement in terms whereof the lands belonging to them were partitioned.

It is however, not in dispute that the properties in question were acquired by the latter of the petitioner No. 1, who died on 1-12-1950. It has also not been denied that the said properties were the self-acquired properties of the father of the petitioner No. 1. The question, which now, arises, for consideration are:

(i) Whether the said properties became ancestral properties at the hands of the

petitioner No. 1; and

(ii) Whether in any event the separate properties of co-sharers can be clubbed together for the purpose of allotment of unit in view of the definition of "family" as contended in Section 2(f) of the said Act.

29. In Bhim Singhji's case (supra), the Supreme Court while upholding the validity of the said Act held in the definition of "family" as contained in Section 2(f) of the Act, is in accordance with the current life time in urban condition and is neither arbitrary nor violative of Article 14 of the Constitution of India.

30. In terms of the provisions of the said Act, a person is prohibited from holding vacant land in excess of the ceiling limit.

As noticed hereinbefore, the definition of a person includes a "family" as also a partnership firm, a body corporate and an association of a person,

The unit which is required to be allotted is to the "person", be it an individual or a family or a juristic person or association of persons.

In relation to the property held by a person in terms of the definition of "to hold" as contained in Section 2(1) of the said Act inter alia denotes ownership.

In this connection, it is also relevant to notice the definition of "to hold" as contained in Section 2(1) of the said Act which reads as follows:--

"to hold" with its grammatical variations, in relation to any vacant land, means,--

(i) to own such land; or

(ii) to possess such land as owner or as tenant or mortgagee or under an irrevocable power of attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

Before proceedings to determine the issue, it is necessary to consider the admitted facts of this case.

31. By reason of a registered deed of sale dated 10-11-1944, the father of the petitioner No. 1 purchased the property in question. The property in question was thus his self acquired property.

32. The father of the petitioner No. 1 dated on 1-12-1950. The petitioner No. 1, therefore, being his only heir, became the owner of the entire properties.

33. The petitioner No. 2 was born on 14-7-1964 and petitioner No. 3 born on 8-9-1967. In this view of the matter, the entire properties having been belonging to the petitioner No. 1 alone, the question of his holding the properties for the benefit of his two minor sons did not arise. The said property was thus not an ancestral properties at the hands of the petitioner No. 1.

34. It is not the case of the petitioners that at any time after the birth of the

petitioner Nos. 2 and 3, a Hindu undivided family was constituted by and between the petitioner No. 1 on the other hand and the petitioner Nos. 2 and 3 on the other hand the properties in question which were the subject-matter of acquisition by the father of the petitioner No. 1 by reason of a deed of sale dated 10-11-1944 was thrown in the common hot potch of the joint family. It is also not known as to whether that there had been any Hindu undivided family consisting of the petitioner No. 1 and the petitioner Nos. 2 and 3 or whether there was any other ancestral property.

35. In this situation, it cannot be said that only by reason of the original deed of partition the petitioner Nos. 2 and 3 acquired any interest as evidently the property inherited by the petitioner No. 1 was not an ancestral property in view of the fact as stated hereinbefore.

36. However, assuming that the said property at the hand of the petitioner No. 1 was ancestral one, evidently by reason of a registered deed of partition dated 4-8-1981. If there was a severance in the said joint family and thus, the properties allotted to the sharers of the petitioner Nos. 1, 2 and 3 respectively as also the deceased Kiranbala Shahdeo became separate properties at their hands.

In this view of the matter too, on the date when the said Act came into force in the State of Bihar, namely, 1-4-1976, no Hindu undivided family consisting of the petitioner Nos. 1, 2 and 3 existed. The petitioner therefore cannot take advantage of Sub-section (7) of Section 4 of the said Act.

37. In *Praitma Paul v. Competent Authority* reported in AIR 1990 Cal 186, upon strong reliance has been placed by Mr. N.K. Prasad has no application in the facts and circumstances of this case.

38. The decision of the Calcutta High Court in *Pratima Paul's* case (supra), was rendered in a situation where a joint family consisted of the mother and her two minor children existed and there had been a partition by and between the mother and her two minor sons. It was held that their separate properties cannot be considered to be the properties belonging to a "family" within the meaning of Section 2(f) of the said Act.

39. In terms of the provisions of the said Act, a person is prohibited from holding vacant land in excess of the ceiling limit.

40. In my opinion, Section 3 read as a whole does not contemplate ownership in respect of the land only when various persons are in possession thereof without referring to title in relation to the properties in question is absolute one or limited one.

41. To hold a property in the context of Section 2(1) of the said Act, must therefore, mean, to have a right to hold the property. From the definition of the word "to hold" read with the definition of the word "person" in the context of Section 3 clearly pointed out to the effect that an embargo has been put upon a person including a family etc. to hold the property in excess of ceiling limit in

respect of which the person is an individual or he is a co-sharer of the family or a member of a firm in partnership any other or as a sharer holder of a company has a right to hold the said property.

42. In this case, it has not been contended that the partition effected by reason of the registered deed of partition dated 4-8-1971 as contained in Annexure 2 to the writ application was executed mala fide and/or in order to defeat the provisions of the said Act. As a matter of fact in the counter, affidavit itself, the respondents accepted the provisions that the aforementioned family arrangement dated 4-8-1971 was bona fide and not entered into in order to defeat the provisions of the said the inter alia on the ground that in the year 1971 nobody contemplated the legislation of the said Act.

43. Partition "under Hindu law comprehends both division of right and a division of property. As soon as a partition has effected, the character of the undivided property and joint enjoyment is taken away and as soon as a partition is effected the same results in separate members deemed to have their respective shares as their separate property and the share of each member will pass on his death to his heirs.

44. If this being the position under law, whether the separate property of a person who constitute a family would have to be clubbed together for the purpose of the said Act is the question which requires to be answered. Under various acts which provides for a ceiling limit and contemplate allocation of a unit to a family within the meaning of the respective Acts contemplate a different situation. In such an act, a family and a unit it cotemplated for the purpose of calculating the ceiling limit.

45. In Vengadasalam Pillai Vs. Union Territory of Pondicherry, , it was held that artificial definition of a family under the Pondicherry (Fixation of Ceiling Land) Act, does not have the same concept pf the "joint family" as, known Hindu law,

It was held that in terms of the provisions of Section 4 of the said Act, the separate properties belonging to an individual, his wife and two minor children would be clubbed together for the purpose of computation of the ceiling limit.

Reference in this connection may be made to Begulla Bapi Raju and Others Vs. State of Andhra Pradesh, .

46. However, it is well known that a statute has to be interpreted taking into consideration its legislative intends. The charging section prohibits a "person" from holding vacant land in excess of one unit. The definition of "family" as contained in Section 2(f) of the Act, as noticed hereinbefore is an artificial definition. In Bhimsinghji's case (supra), the Supreme Court held that such a definition is valid and has been enacted taking into consideration, the current life style in urban condition.

47. The provisions of the Act apply to the Hindu, Mohammedans and Christians alike.

48. Only in the Mitakshra School of Hindu Law, the minor will have a share in the property during the life time of his father. However, in the other school of Hindu Law viz. Dayabhaya school or other persons governed by the Mohammedan law or other laws a right in respect of the property devolve upon a son only upon death of his father. It is also relevant to note that the allotment of units in respect of properties belonging to a Hindu joint family is dealt with in a separate provision of the Act viz. Sub-section (7) of Section 4 of the Act.

49. The object of the Act is to bring all the persons constituting a "family" within the mischief of the provisions of the said Act. Secondly the family as such has not been defined but what has been defined is family in relation to a person.

Thus, although, the members of the family may have separate properties for the purpose of Section 3, one unit has to be allotted to the family, when such a family in relation to a person is available.

50. If, for the purpose of the provisions of the said Act, separate properties belonging to the spouses could be clubbed together, there is no reason as to why when the minor sons have been holding separate properties by reason of a partition, would otherwise be treated.

51. Thus, I am of the view that in the instant case the petitioners had rightly been allotted one unit inasmuch as separated minor sons of a person would also come within the purview of the artificial definition of family created u/s 2(h) of the said Act.

52. In *Seth Nand Lal and Another Vs. State of Haryana and Others*, the Supreme Court held that artificial definition of family u/s 3(f) of the Haryana Ceiling on Land Holdings Act, 1972 was not ultra vires the Constitution of India.

53. As notice hereinbefore, in *Bhimsinghji's case (supra)* the Supreme Court has also upheld the constitutional validity of the said Act ignoring the definition of family.

54. In *State of U.P. and Another Vs. District Judge, Varanasi and Another*, wherein K.C. Agrawal, J. as he then was held:

Since u/s 3, no person is entitled to hold any vacant land in excess of the ceiling limit and the definition of the word "person" includes wife and minor children as well, the result would be that the interest of the minor would go with that of the father and he will not be entitled to have a separate share in the joint family property. The expression "minor children as embodied in Sub-section (f) of Section 2 shall be construed in the context of the date of the commencement of the Act in respect of the respective State as defined in Sub-section (2) of Section 1 of the Act.

55. Mr. N.K. Prasad, however, submitted that under the said Act, one unit has to be allotted to each person which includes an individual and in that view of the matter, the petitioner Nos. 1, 2 and 3 separately as also late Kiranbala Shahdeo

being individual would be entitled to the allocation of a unit each.

56. According to Mr. Prasad, the definition of a person has to be so interpreted to mean that where an unit has to be allotted to an "individual" and not to a family. The submissions of Mr. Prasad cannot be accepted.

57. As noticed hereinbefore, the definition of a person includes a family. If thus a "person" answers the definition of the family, one unit has to be allotted to a family. However, if an individual does not have any "family" within the meaning of Section 2(f) of the said Act, one unit will be allotted to him separately.

58. As noticed hereinbefore; the object of the Act to prevent concentration of urban land under the ceiling of a few persons; such a purpose would be defeated if any other interpretation is adopted.

59. Re: Contention 2:

In the instant case, the respondent Nos. 2 and 3 did not recognise the transfers made by the petitioner Nos. 2 and 3 made in favour of Smt. Laxmi Sinha and Birendra Kumar Sharma as evidenced by Annexures-3 and 7A to the writ application. If a deed of transfer is valid, there cannot be any doubt in transfer made prior to the appointed date would be excluded from consideration.

It is evident from Section 4(4)(a) of the said Act which reads as follows:--

On any State to which this Act applies in the first instance, if, on or after the 17th day of February, 1976, 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.

From the aforementioned provisions, it is clear that any transfer made after 17th February, 1976 and before the appointed date, the same for the purpose of calculating the extent of the vacant land by such person the land so transferred shall be taken into account. There cannot, therefore, be any doubt that any deed of transfer executed prior to 17-2-1975 would stand on a different footing in as much as a case of bona fide sale which has been made after 17-2-1975 but before the appointed date will also have to be excluded from consideration. Exts. 3 and 3/A were executed in the year, 1972. Thus, in my opinion, there cannot be any doubt that the same shall be excluded from consideration for the purpose of computing the ceiling area under the said Act.

60. However, it may be noticed that Mr. Prasad has very fairly stated that apart from the registered deeds of sale executed by the petitioners or late Kiranbala Shahdeo in favour of Smt. Laxmi Sinha and Birendra Kumar Sharma (Exts 3 and 3/A), no other agreement of sale executed by the petitioners or late Kiranbala

Shahdeo can be considered for the purpose of exclusion thereof from the purview of the said Act.

61. Re: Contentions 3 and 4;

That it is admitted that on plot Nos. 43 and 58 small structures are standing which were constructed by the military personnel. The said structures however, have been transferred to the State of Bihar. The question which thus, falls for consideration as is to whether the land which is covered by the building would be excluded from the computation of the area of vacant land.

Section 2(q) of the said Act reads as follows:--

(q) "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; and

(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 approval of the appropriate authority, and the land appurtenant to such building;

(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 that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

In *Prabhakar Narhar Pawar Vs. State of Maharashtra and Another*, , the Bombay High Court laid down the law as follows:--

When the extent of the vacant land is to be determined, it is clear that what is sought to be separately determined by the Competent Authority. The owner of the land will be entitled to the benefit of each one of the sub-clauses as well as the proviso if they are relevant on the facts of a given case. There may be cases where the land which is sought to be excluded by Sub-clause (ii) can be included in the land which is sought to be excluded by Sub-clause (i) where, for example, on a given piece of land the area of two-thirds of the land is not to be constructed upon BLJR (1)--82 but this area of the two-thirds is more than the land occupied by the building as well as the land appurtenant to the building, then the owner will not be entitled to a separate exclusion both under Sub-clause (i) and (ii), because they are under Sub-clause (i) will obviously include the land appurtenant which is referred to in Sub-clauses (i) and (ii). Indeed this position was not disputed by Mr. Karnik. But, since vacant land has to be determined on

the basis of totality of the land owned by or in possession of the owner as contemplated by Section 2(1) of the Act, the competent authority will have to determine separately the land which falls under Sub-clauses (i), (ii), (iii) and the proviso of Section 2(q) of the Act subject to some land falling in Clause (ii) being covered by Clause (i). Having regard what we have said earlier, we cannot accept the contention advanced before us on behalf of the petitioners, on the ratio of the decision of B.B. Billimoria and Another Vs. State of Maharashtra and Others, , that two-thirds of the total area of the land in the instant case will be stright way liable to be excluded for the purpose of computation of vacant land and ceiling area.

62. The aforementioned decision of the Bombay High Court has been approved by the Supreme Court in State of Gujarat and Ors. v. Purshottamdas Ramdash Patel and Ors. reported in 19S8(1) SCC 132.

63. The learned Counsel for the State, however, submitted that a building which has not been constructed upon receipt of the approval of the plan by the Town Planning Authority in accordance with the building Regulation prevailing in the Urban Area is not entitled to any exception in terms of the "vacant land".

Vacant land has been defined in negative.

64. In the case of State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, , the Supreme Court while interpreting the words "lands appertaining to a vacant land" approved the decision of Madhya Pradesh High Court in Eastern Oxygen and Acetylene Ltd., Jabalpur Vs. State of Madhya Pradesh and Others, . The Supreme Court laid down the law in the following terms:--

In the ultimate analysis the position is quite clear that Section 4(9) contemplates that if a person holds vacant land as also other portion of land on which there is building with a dwelling unit, the extent of land occupied by the building and the land appirtenant thereto shall be taken into account in calculating the extent of the vacant land. This sub-section has to be read in conjunction with Section 2(q) (ii) and (iii). A combined reading of these two statutory provisions would lead to the irresistible inference that in cases which fall within the third category mentioned above the (1) total area of the land-holder is first to be determined and if the total area, built or inbuilt, falls below 2000 sq. metres in category D areas, there would be no question of any excess land. (2) Where, however, there is a building and a dwelling unit then the area beneath the building and the dwelling unit would have to be excluded while computing the ceiling. Further, if there are any bye-laws requiring a portion of the land to be kept vacant, the land-holder would be allowed to set apart the said land to the maximum extent of 50J sq metres. He would also be allowed to retain an additional area of 500 sq, metres for the beneficial use of the building so that he may enjoy the use of a little compound also for various purposes.

After excluding these items if the land falls below the ceiling limit there would be no question of excess but if there is excess that is beyond the ceiling limit, the

same would have to be taken over by the Government. For instance, A has 4000 sq. metres of land out of which 2000 sq. metres is covered by building then in such a case the land-holder will be entitled to keep the whole of the covered area, i.e. 2000 sq. metres plus 1000 sq. metres (500 under the municipal bye-laws and another 500 for beneficial use) and the excess would be only 1000 sq. metres. The scheme of the Act seems to be that if there is a constructed building with a dwelling unit, the structure thereon cannot be treated as open land for the purpose of declaring it as in excess land beyond the ceiling limit. Similarly the land kept open under the municipal regulations (up to 500 sq. metres) and an additional 1500 sq. metres appurtenant to the land would not be available for being declared as excess land beyond the ceiling limit. The central idea governing this philosophy of putting a ceiling on urban land is that in an urban area none can hold land in excess of the ceiling regardless of whether the land is entirely open or whether there is a structure consisting of a dwelling unit thereon, subject to the rider mentioned above. Indeed if the intention would have been to take over the entire open land without giving any benefit of appurtenant land to the land-holder then the Act would perhaps be liable to be challenged on the ground of being of a confiscatory nature and would fall beyond the permissible limits of the directive principles enshrined in part IV of the Constitution. Furthermore, such an interpretation would discourage new building enterprises or factories or industrial units coming up in the urban areas which would be contrary to the very tenor and spirit of the Act.

65. Recently the Delhi High Court in *Surinder Nath Malhotra Vs. S.C. Jain and Others*, held as follows:--

What is, therefore, to be determined is as to what is "vacant land. Vacant land has been defined by Section 2(d). The said definition is comprehensive and it is specifically provided that vacant land would not include land on which building is under construction on the appointed day, with the approval of the appropriate authority, and the land appurtenant to such building. The provisions of Section 2(c)(ii) have been clearly overlooked by the authorities. By virtue of Section 2(q)(ii) an area of 79.92 sq. metres plus land appurtenant thereto is not to be regarded as vacant land. It is only in order to determine as to what is land appurtenant that it becomes necessary to refer to Section 2(g). The said Section 2(g) no doubt uses the expression "any building constructed before the appointed day" but the said provision has to be read in consonance and in harmony with the provisions of Section 2(g). The only way in which the same can be read together is to regard not only the building already constructed but also the building in the process of construction as being covered in Section 2(g). In any event, the petitioner's case would be covered by Section 2(g)(i) which defines land appurtenant as meaning an area which, as per the building regulations, is required to be kept as open space for enjoyment of such building which is not to be in excess of 500 sq. metres. As per the building regulations 60% of the area, namely, 60 percent of 584.44 sq. metres had to be kept vacant. In the present case, as per the building plans which had been passed, 504.52 sq.

metres of land would have been unbuilt and vacant. This land was contiguous to a building which was under construction. By virtue of the provisions of Section 2(q) read with Section 2(g) the area which could not be regarded as vacant land would be 7992 sq. metres on which the building was being constructed, plus 500 sq. metres being land contiguous thereto. The area of vacant land which the petitioner would be holding would, therefore be only 4.52 metres.

66. The Calcutta High Court also recently had the occasion to consider this aspect of the matter in *Kamal Kanti Mukherjee Vs. Competent Authority and Others*, wherein it was held that if a building unit had been constructed prior to the appointed day, the same shall be excluded from computation of vacant land despite the fact that a part of it was not in a habitable condition, being partly damaged and found to be abandoned on date of enquiry.

67. In *Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others*, it was held that entry 18 of List II of the Seventh Schedule of the Constitution referring to "land" and the same covers "land and building" and thus the expression "land" would take in hand lands of every description.

68. The aforementioned decision was interpreted in *Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, stating "we are unable to agree with Dr. Chitale that this further proposition emerges from decision in *Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others*. The Urban Land Ceiling Act also was a legislation primarily intended to deal with vacant land. If one scans the provisions of the Act it is clear that the scheme of the Act was only to place a ceiling on vacant lands in cities or what we call urban agglomerations and to ensure equitable distribution of such urban vacant lands. The pith and substance of the legislation was with regard to urban land and its provisions in respect of buildings were incidental to the main objective of the urban land ceiling. In this context it is perhaps not without significance that as against the proposal of the States for a ceiling on urban immovable property". Parliament restricted the legislation to vacant land. In the light of these circumstances the declaration in the preamble to the Act is basically correct that the pith and substance of the legislation was "land" and this is exclusively within the State's legislative domain by virtue of entry 18 of List II. We also do not agree with the counted that the passage extracted from the judgment reflects a decision of the Court that land includes "lands and building". It proceeds on a concession to that effect. That apart, the context of the above observation is also interesting. The Court was dealing with a contention that the resolution of the State had authorised Parliament to impose a ceiling on urban immovable property and that the legislation imposing a ceiling on urban land was on a different subject and thus contrary to the resolution. The Court, rejecting this argument, pointed out that since "urban immovable property" was a wider expression which also included "land", there was no contradiction between the resolution and the legislation. It is in this context that a reference, on admission, regarding the scope of entry 18 finds a place in the

passage. Neither was the scope of the entry in issue in the case nor can the isolated sentence on admission, be treated as a decision by the Court.

It is, therefore, possible to hold that the provision of Section 2(q) of the Act may have to be given restricted meaning that the requirement of approval of the appropriate authority is confined only to the buildings which were constructed after the appointed day. However, in this case, the petitioner has filed a supplementary affidavit for the purpose of showing that the lands in question are situate in a village and thus the building regulation which were applicable an area covered by a Municipality, were not applicable. Further, the Central Government itself by a letter dated 6-8-1 77 as contained in Annexure 8 to the writ application stated as follows:--

Any land occupied by a building either constructed before or being constructed on the appointed day and the land appurtenant to such building is excluded from the definition of "vacant land" in Section 2(q) of the Act. Neither this definition nor any provision of the Act provides that the structure should also be owned by the owner of the land for the purpose of excluding that land from the definition of "vacant land". The provisions of Chapter III of the Act regarding filing of return and acquisition of excess vacant land and not in respect of any land occupied by a building are owned by different persons. The definition of the expression "to hold" in Section 2(1) has been given in relation to any vacant land only.

By another letter dated 18-12-1978 as contained in Annexure 9 to the supplementary affidavit, the Central Government held that only 154 acres of land becomes surplus at the hands of the petitioner.

69. In State of U.P. v. Rakesh Murthy reported in 1984 (10) All LR 690, a division bench of the Allahabad High Court has held that circular of the Central Government having been issued u/s 36 of the said Act, the same is binding upon the competent authority. It is a settled principle of law that where the Government is entitled to issue directions, the same of binding upon the authorities of the State (See: S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another,).

70. This aspect of the matter has also been considered recently in Revenue Divisional Officer Vs. Dasari Ganga Raju and others, , wherein it has been held that any building which has been constructed prior to the appointed day would not come within the purview of the definition of vacant land.

In that case, while considering the question as to whether a structure is a building or not, the Andhra Pradesh High Court relied upon a decision of Re St. Peter the Great, Chichester report in 1961(2) All ER 513, wherein three tests had appointed to decide whether a particular structure is "building" or not, namely:

(i) would an ordinary man think that the structure was a building ?

(ii) has the relevant structure four walls and a roof ? and

(iii) can any one say that the structure was built ?

Reference in this connection may be made to Dr. Sampat Singh Bhandawat Vs. State of Rajasthan, .

71. It is, therefore, clear that all lands covered by the structures which answer the definition of building would not come within the purview of vacant land is also no longer res integra. (See: State of U.P. v. Rakesh Murthy reported in 1980 (10) All LR 699 where in the Allahabad High Court referred to the clarification of the guidelines of the Central Government dated 12-1-1977 and held:

It would appear from the above that the Central Government has taken the view that separate allowance has to be made u/s 2(g) of the Act for servants quarters and out-house. According to this guideline also, the number of dwelling units in a building is irrelevant.

72. In State of U.P. Vs. Prem Singh Vahi and Another, , the Allahabad High Court held:

I am accordingly of the view that for applying Section 4(9) it is not necessary at all that there should be two distinct pieces of land. Section 4(9) will apply even in case of one plot on a portion of which there is a building with dwelling unit and its land appurtenant while remaining portion is vacant. If there is one plot on which there is a building with dwelling unit therein, in that case the built up area would be 1000 sq. mtrs. as the land appurtenant u/s 2(q) will first be excluded. If some surplus land remains then Section 4(9) will be attracted and built up area and the land appurtenant will be taken into account to determine whether the person holds vacant land beyond the ceiling limit or not. In this way the provisions of Section 2(q) (i), (ii), (iii) and Section 4(9) of the Act have to be interpreted.

73. In Kamal Kanti Mukherjee Vs. Competent Authority and Others, , it has been held that a dwelling unit does not cease to be a dwelling unit only because a portion of it is in a dilapidated condition and is not in use for a long time.

74. In Pran Nath Kapur and Others Vs. Secretary to Government, Punjab and Others, , the Punjab and Haryana High Court in view of the decision of the Supreme Court in Johnson's case (supra) held:

In other words, what their Lordships had ruled is that notwithstanding the definition of the vacant land is given in Clause (q) of Section 2 of the Act, total area of a plot including the built up area and the area appurtenant thereto and the contiguous area shall be treated as vacant land while calculating the extent of vacant land held by such a person. Sub-section (ii) of Section 4, makes that fact evident, which is in the following terms, had been enacted by the Legislature by way of safeguard to area, a appurtenant to the constructed area and the contiguous area, being declared as an excess vacant area, by virtue of the provisions of Sub-section (9) of Section 4 of the Act:--

For the removal of doubts it is hereby declared that nothing in Sub-section (5), (6), (7), (9) and (10) shall be construed as empowering the competent authority

to declare any land referred to in Sub-clause (ii) of Sub-clause (iii) of Clause (q) of Section 2 as excess vacant land under this Chapter.

Provision of Sub-section (11) was enacted with a view to see that the land appurtenant thereto and the contiguous area is never declared as excess vacant land under this Chapter, in the event of the area under construction along with the permissible land appurtenant thereto and the contiguous land happen to exceed the permissible limit of vacant land allowed to the owner u/s 4 of the Act.

75. It is not disputed that plot No. 43 is being a plot which was recorded as "Fulwari" but admittedly there exists various structures constructed by the Military authorities. The lands in question were handed over to the State for the purpose of acquisition of the Land Acquisition Act but the State has not yet acquired the same.

In that view of the matter, the vacant land obtaining in plot No. 43 except those covered under the exceptions to the "vacant land" i.e. covered by the buildings and lands appurtenant thereto may be taken into consideration for the purpose of computation of excess vacant, land available at the hands of the petitioners.

76. However, the submission of Mr. N.K. Prasad to the effect that the lands which are rocky lands (Plot No. 18 are not vacant lands within the meaning of the provisions of the said Act, cannot be accepted.

77. Plot No. 45 has been recorded as road. In view of Exception 1 to Section 2(q) of the Act, no construction is possible to be raised on a land which has been recorded as "road" and this but the said land would be excluded from the computation of excess vacant land at the hands of the petitioners. However, while considering the same totality of the "vacant land" as defined in Section 2(q) of the Act has to be considered.

78. In view of my findings aforementioned, the impugned orders as contained in Annexures 6 and 7 have to be quashed and the matter has to be sent back to the Deputy Commissioner, Ranchi for his reconsideration in the light of this judgment. However, as the petitioners have filed, their returns as far back as in 1976, the respondent No. 3 is hereby directed to dispose of the matter with utmost expedition and preferably within a period of three months from the date of receipt of a copy of this judgment.

79. In the result, this application is allowed in part and to the extent mentioned hereinbefore and with the aforementioned observations and directions.

80. However, in the facts and circumstances of this case, there will be no order as costs.

R.N. Sahay, J.

81. I agree.