
(2010) 08 BOM CK 0176
In the Bombay High Court
Case No : Writ Petition No. 2260 of 2009

Baliram Ghatе

APPELLANT

Vs

State of Maharashtra and Urban Land Ceiling Authority

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Contract Act, 1872 — Section 23, 28

Land Acquisition Act, 1894 — Section 10, 10(1), 11, 18, 23(1)

Urban Land (Ceiling and Regulation) Act, 1976 — Section 1(2), 10(1), 10(3), 11(6), 3

Citation : AIR 2011 Bom 1 : (2010) 4 APLJ 46 : (2010) 5 BomCR 486 : (2010) 112 BOMLR 3722

Hon'ble Judges : V.A. Naik, J;S.A. Bobde, J;B.P. Dharmadhikari, J

Bench : Full Bench

Advocate : P.V. Vaidya, for the Appellant; B.H. Dangre, Additional Government Pleader, for the Respondent

Judgement

S.A. Bobde, J.—The Question referred to this Full Bench for consideration is :

Whether the State can, in respect of the land though covered at the relevant time under the provisions of the ULC Act, but acquired subsequently under the provisions of the Land Acquisition Act, call upon the expropriated land- holder to furnish an undertaking as contained in the communication dated 31.3.2006 that he will not seek enhanced compensation under the Land Acquisition Act ?

2. The issue arose in a Writ Petition filed by the expropriated land-holder challenging the condition sought to be imposed by the Government that compensation would be released and remitted to him under the award only if he gave an undertaking to the effect that he would not seek its enhancement u/s 18 of the Land Acquisition Act.

3. The facts which give rise to the question are as follows:

The land-holder holds land which was liable to be declared surplus under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter

referred to as "the Ceiling Act"). He filed statements and returns under Sections 6 & 7 of the Ceiling Act. A notification u/s 10(1) giving the particulars of the vacant land held by the land-holder in excess of the ceiling limit was published by the Government on 31.12.1981. However, and it is undisputed, that the requisite notification u/s 10(3) declaring that the excess land referred to in the earlier notification is deemed to have been acquired by the State Government was not published and, therefore, the land has not vested absolutely in the State Government free from all encumbrances. In the meanwhile, due to mounting public pressure from farmers, who were deprived of their lands for the MIHAN Project, the Government decided to abandon proceedings under the Ceiling Act and instead chose to initiate proceedings for acquisition of the land under the provisions of the Land Acquisition Act. Accordingly, the Government issued a notification u/s 4 of the Land Acquisition Act on 18.11.2002. This was followed by a notification u/s 6 of that Act on 21.1.2003. An award was passed on 20.1.2005. Under the award, the Government acquired both kinds of lands : i.e. retainable by the land-holder as well as the surplus land under the provisions of the Land Ceiling Act. Under the award, compensation became payable to the land-holder in respect of retainable land as per market value. As regards the surplus land, the compensation was made payable taking market value as the basis; however, this compensation was termed in the award as ex-gratia payment. The Government released the compensation in the sum of Rs. 18,95,373/- for retainable land on 24.9.2008. However, the Government refused to release compensation in the sum of Rs. 14,09,613/- for surplus land acquired under the same award, without an undertaking by the land- holder that he would not seek enhancement of compensation under the provisions of the Land Acquisition Act. The land-holder having surrendered possession of the retainable land and being in possession of the surplus land, has approached this Court by way of Writ Petition challenging the aforesaid condition sought to be imposed by the Government that he should give an undertaking. It appears that earlier, Writ Petition No. 5555 of 2006 filed by a similarly circumstanced land-holder challenging the imposition of the same condition was dismissed by a Division Bench of this Court on 28.8.2007, thus rejecting the challenge to the demand for the undertaking. Another Division Bench disagreeing with the former view, has formulated the aforesaid question for answer by a Larger Bench. Thus, the aforesaid question has been referred by the Hon"ble the Chief Justice to this Bench.

4. The main contention of Shri P.V. Vaidya, the learned Counsel for the expropriated land-holder, is that the Government having decided to acquire the surplus land (hereinafter referred to as "the land") under the provisions of the Land Acquisition Act instead of the Land Ceiling Act is not entitled to demand an undertaking that he would not seek enhancement in the compensation. According to the learned Counsel for the land-holder, such a demand which imposes a condition for release of compensation deprives the land-holder of the right vested in him by Section 18 of the Land Acquisition Act to apply for a

Reference to the Civil Court for enhancement of the compensation.

5. According to Mrs. B.H. Dangre, the learned Additional Government Pleader for respondent Nos. 1 to 4, the Government is justified in seeking the undertaking in question since the land-holder had lost his entitlement to hold the land by virtue of the enactment of the Urban Land Ceiling Act, 1976. Having thus lost his entitlement to hold land, he was entitled to receive the compensation at the low rates prescribed by that Act alone. However, the Government decided to resort to the provisions of the Land Acquisition Act and thus decided to give the land-holder higher rate of compensation calculated according to the higher rates prescribed under the Land Acquisition Act and given ex-gratia and, therefore, such a land-holder who would have got a much lesser compensation under the provisions of the Land Ceiling Act is not entitled to make any grievance regarding the inadequacy of compensation or seek its enhancement under the provisions of the Land Ceiling Act. According to Mrs. B.H. Dangre, the learned Additional Government Pleader for respondent Nos. 1 to 4, the Government is thus perfectly justified in seeking such an undertaking before releasing the compensation to the expropriated land owner under the award. It is also a contention of Mrs. B.H. Dangre, the learned Additional Government Pleader for respondent Nos. 1 to 4, that Section 42 of the Urban Land Ceiling Act has an overriding effect over anything inconsistent therewith in any other law for the time being in force and therefore, since the land was covered by the provisions of the Land Ceiling Act, the compensation granted to the land-holder under the provisions of the Land Acquisition Act is inconsistent with the provisions of the Land Ceiling Act and, therefore, the land-holder at least cannot be said to have a right to have it enhanced.

6. In support of the first contention, Mrs. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 to 4, relied on a decision of the Supreme Court in Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, in which the Supreme Court held with regard to the acquisition of land in that case that it was not necessary for the State to proceed with the determination of compensation u/s 23(1) of the Land Acquisition Act to the extent of excess land found under the Ceiling Act. It was also not necessary for withdrawing notification u/s 48(1) of the Land Acquisition Act for the reason that compensation for the land within the ceiling limit is liable to be determined under the Land Acquisition Act and that it is not necessary for the Government to acquire surplus land and pay compensation therefore under the provisions of the Land Acquisition Act. We are, however, unable to apply the ratio of the said decision to the case in hand since the observations made in Ratan Kumar's case (supra) were in the context of the surplus land having vested in the State Government under the provisions of the Ceiling Act; whereas, we find that in the present case, the surplus lands have not vested in the State Government under the provisions of the Ceiling Act since no notification has admittedly been issued u/s 10(3) of that Act and it is not Government's case that the provisions of the Land Acquisition Act had wrongly been applied to the land in question.

7. Mrs. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 to 4, however, submitted that the Land Ceiling Act applied to the petitioner's land because the petitioner had filed Returns under that Act and a notification u/s 10(1) had also been issued. This was, therefore, a fit case for applying the ratio in Ratan Kumar's case (supra). According to the learned Counsel, a surplus land holder becomes disentitled u/s 3 of the Ceiling Act to hold any vacant land in excess of the ceiling limit by virtue of Section 3 which reads as follows:

3. Persons not entitled to hold vacant land in excess of the ceiling limit.-- Except as otherwise provided in this 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.

Therefore, according to Mrs. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 to 4, it was not necessary for the Government to issue a notification u/s 10(3) of the Urban Land Ceiling Act in order for the vesting of the land in the State Government. It is not possible for us to accept this submission in view of the plain language of Sub-section (3) of Section 10 which reads as follows:

Section 10(1) ...

(2). ...

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

(4)

Section 10 contemplates vide Sub-section (1) that there shall be a notification stating the particulars of the vacant land held by a land- holder in excess of the ceiling limit. Such a notification by itself does not result in the vesting of the land in the State Government. Such vesting takes place by the mandate of Sub-section (3) with effect from the date specified in the notification issued under this Sub-section containing a declaration that the excess vacant land referred to in the notification under Sub-section (1) be deemed to have been acquired by the State Government. It is only upon the publication of such declaration that such land can be deemed to have vested absolutely in the State Government free from all encumbrances. Section 3 which disentitles the land-holder to hold land in excess of ceiling limit cannot be said to have the effect of divesting a land-holder of his title in the land and vesting of the same in the State Government. It is true that, by reason of Section 3, after the commencement of the Land Ceiling Act a

person does not remain an absolute owner and is deprived of some of his rights in respect of excess land, such as right to transfer such excess land vide Section 5. However, Section 3 can neither be said to divest a land-holder of the ownership of such land or invest such ownership in the State Government. The State Government becomes absolute owner of the land only upon vesting of such land consequent upon a declaration u/s 10(3) of the Ceiling Act.

8. In the Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad, , excess land had already vested in the Government u/s 10(3) free from all encumbrances. However, the Government had on its own denied to itself the benefit of such vesting of land under the provisions of the Ceiling Act by permitting the Hyderabad Urban Development Authority to acquire surplus lands under the provisions of the Land Acquisition Act after exempting the excess lands from the purview of the Ceiling Act. In these circumstances, the Supreme Court held that the Government would be required to determine the compensation under the Land Acquisition Act. We find that the judgment in H.E.H., The Nizam, Hyderabad's case is apposite to the present case to the extent that even in the present case, the Government has chosen to abandon the proceedings under the Land Ceiling Act and instead acquired the land under the provisions of the Land Acquisition Act. In the circumstances, we are of the view that the Government having applied the provisions of the Land Acquisition Act is bound by the rights and obligations imposed by that Act and cannot deny to the expropriated land-holder any one such right, namely, that of seeking enhancement of compensation by way of a Reference u/s 18 of the Act. The present case appears to be on a stronger footing since at no point of time did the land vest in the Government under the provisions of the Land Ceiling Act.

9. This takes us to the second submission on behalf of the State Government. According to Mrs. B.H. Dangre, the learned Additional Government Pleader for respondent Nos. 1 to 4, once a land is covered by the provisions of the Ceiling Act by virtue of Section 42 of that Act, every provision inconsistent therewith, such as right to compensation at market value and the right to seek enhancement of such compensation must be held inconsistent and ineffective. It is not possible to accept this submission, particularly from the Government which has itself chosen to apply the provisions of the Land Acquisition Act after abandoning the proceedings under the Urban Land Ceiling Act. It is the Government which chose to acquire both the retainable and the surplus land of the land-holder under the provisions of the Land Acquisition Act. The Government has issued all the relevant notifications starting from Section 4 and has taken all the necessary steps under the Land Acquisition Act for the acquisition of such land. This is not a case of the same land being acquired under the provisions of two Acts which are inconsistent with each other.

10. Mrs. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 to 4, however, relied on a decision of a Division Bench of this Court in Ganesh Rangnath Dhadphale .vs. Special Land Acquisition Officer (I), Pune, and

others reported in 1979 Mh.L.J. 786 since in that case the Division Bench observed that an inconsistency between the Ceiling Act and the Land Acquisition Act may arise only on a final statement u/s 9. Therefore, according to Mrs. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 to 4, since a final statement u/s 9 has been issued in the present case, an inconsistency has arisen. In paragraph 41 the Division Bench observed as follows:

41. When, however, the very land actually finds place in the final statement prepared by the competent officer u/s 9 of the Act, acquisition proceedings under the Land Acquisition Act would become inoperative and ineffective to that extent, in view of the overriding effect of sections 9 and 10 of the Urban Land Ceiling Act. As seen earlier, the inclusion of any land of the holder in the final statement u/s 9 of the Act is a positive preliminary step towards the acquisition thereof in terms of Sections 10 and 11 of the Act. The competent authority is left with no choice of not acquiring the land once it is included in final statement u/s 9. As the opening words of Section 10(1) itself indicate that the competent officer is under a statutory obligation to issue notification for its acquisition as soon as possible, after the service of final statement u/s 9, on the holder or concerned person. Notification of acquisition u/s 10(1) of the Act thereafter is merely a matter of formality. The proceedings under the Urban Land Ceiling Act can be said to have commenced in respect of such land at this stage itself. Acquisition under Land Acquisition Act then will become obviously inconsistent. The same land cannot be subject matter of acquisition proceedings under both the Acts. We have already seen how, provisions of the Urban Land Ceiling Act as to compensation are materially inconsistent with those of the Land Acquisition Act. The Land Acquisition Act would cease to be operative on the land to that extent from that stage.

The Division Bench clearly held that once lands are included in the final statement u/s 9, the Competent Officer is under a statutory obligation to issue notification of its acquisition as soon as possible on the holder or a concerned person and that the notification of acquisition u/s 10(1) of the Act thereafter is a mere matter of formality. It is in these circumstances that the Division Bench observed that the acquisition under Land Acquisition Act then will become obviously inconsistent. We find no reason to disagree with the observations of the Division Bench since the observations are intended to state that once the stage of Section 10 is reached, there is a statutory obligation to issue notification for the acquisition of lands which are mentioned in the statement u/s 9 of that Act and that an inconsistency with acquisition under the Land Acquisition Act can arise thereby. It is clear that the situation as has arisen in the present case was not in the contemplation of the Division Bench, namely, that after the statement is filed u/s 9 and a notification is issued u/s 10, the Government itself chooses to drop the proceedings under the Urban Land Ceiling Act and resort to an acquisition under the Land Ceiling Act. Merely because there is an obligation to issue a notification for acquisition of the land, the Court would not take the notification as issued even if none is issued and then on the basis of such a

fiction, hold that there is an inconsistency. We do not find any observation of the learned Division Bench in Ganesh's case that merely because Section 9 statements are filed, the lands must be taken to have been vested in the State Government. We find that the situation in the present case is quite different from that before the Division Bench in that case, particularly since it is not the contention of the Government here that they have wrongly applied the provisions of the Land Acquisition Act after abandoning the provisions of the Urban Land Ceiling Act.

11. At this juncture, it would be appropriate to mention that some related contentions were advanced on behalf of other interested parties in pursuance of a general notice of hearing of this matter. Since the contentions such as whether the award is a consent award or the effect of repeal of the Land Ceiling Act do not have a direct bearing on the question before us, we have not considered them. We make it clear that we are dealing only with the legality of the demands made by the State for an undertaking from the expropriated landholder that he would not seek enhancement of the compensation by way of reference u/s 18 of the Land Acquisition Act. All questions which may be validly raised by the parties in the course of reference including the tenability of the reference on any other ground are left open.

12. In the result, we find that the Government having chosen to acquire the land under the provisions of Land Acquisition Act and having applied the said law for the said purpose, it is not open for them to immunize themselves from a claim for enhanced compensation by imposing a condition on the expropriated landholder that he will not seek enhancement of the compensation. The compensation has been awarded to the expropriated landholder in respect of his lands under the provisions of the Land Acquisition Act by passing an award there under. Notwithstanding the fact that the award describes payment of such compensation as ex-gratia, the landholder has a right to seek its enhancement by following the procedure u/s 18 of the Land Acquisition Act. By Section 18, the Parliament has conferred a right on an expropriated landholder to seek an enhancement of compensation. It is not within the power of the Government to defeat or attempt to defeat the exercise of such right conferred on the landholder by that Section, by demanding an undertaking that he will not seek such enhancement.

13. In the result, we hold that the State cannot call upon an expropriated landholder to furnish an undertaking as contained in the communication dated 31.3.2006 that he will not seek enhanced compensation under the Land Acquisition Act in respect of land acquired under the provisions of the Land Acquisition Act even though the lands were initially covered under the provisions of the Urban Land Ceiling Act. Order accordingly.

B.P. Dharmadhikari, J.

14. In the Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad, ,

the excess land had already vested in the Government u/s 10(3) free from all encumbrances. Hon"ble Supreme Court in Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, held with regard to the acquisition of land in that case that it was not necessary for the State to proceed with the determination of compensation u/s 23(1) of the Land Acquisition Act to the extent of excess land found under the Ceiling Act. Facts show that possession of lands to be acquired was taken in later matter and in both cases, the title had vested in respective state governments. The Division Bench of this Court which decided WP 5555/2006 was not called upon to consider these judgments or such law and has not laid down any legal proposition in this regard. Not only this when Hon. Apex Court delivered these judgments or when Division Bench decided WP 5555/2006, the Ceiling Act was in force. The aspect of its repeal is being commented upon little later by me.

15. Division Bench judgment of this Court in Ganesh Rangnath Dhadphale .vs. Special Land Acquisition Officer (I), Pune, and others reported in 1979 Mh.L.J. 786 is also not relevant before us because here the stage of identification of lands required by State Government does not arise as entire land with landholder is needed for MIHAN project. Identification of retainable portion and surplus portion would have been necessary only for working out rate or manner of computation of compensation. After repeal of Ceiling Act, need for & the legality of such an exercise may again be a debatable issue. In Ratan Kumar Tandon and others .vs. State of U.P. as lands were already taken in possession under Land Acquisition Act , High Court had directed completion of surplus land determination proceedings under Ceiling Act and Hon. Apex Court (same Hon. Judges who decided H.E.H., The Nizam, Hyderabad"s case) approved it while holding that Government decision & direction to the contrary could not override legal provisions. The appeal was dismissed & the State was directed to pay the compensation in respect of the excess vacant land as found by the District Judge u/s 11(6) of the Ceiling Act and the Land within ceiling limit in the proportion upheld by it. This judgment therefore shows that vacant land found surplus under Ceiling Act can not be acquired under Land Acquisition Act. Hon. Apex Court has clarified that as in H.E.H., The Nizam, Hyderabad"s case state government had exempted the lands from clutches of Ceiling Act, determination of compensation under Land Acquisition Act was legal. This view and clarification in Ratan Kumar Tandon"s case shows the overriding effect given to scheme of Ceiling Act & absence of power in State to dilute it.

16. Shri M.G. Bhangde, the learned Senior Advocate, who appears for the acquiring body in a similar case, submitted that the land-holder is not entitled to seek enhancement of compensation since the award is a consent award. Prima facie, I also do not find any merit in this submission since the award in question is not a consent award. Merely because a land-holder did not object to the applicability of the Land Acquisition Act for computing compensation, it may not be said that he consented to his lands being acquired upon payment of certain amount as compensation. The amount of compensation has been quantified long

thereafter and there is nothing on record at least now to show that said determination is with consent of the landholder. But then Division Bench in WP 5555/2006 can not be said to have laid down any law on this issue. It decided the matter only on facts with limited assistance it could then get. Hence any such dispute also can be looked into by the Division Bench of this Court and no finding by Full Bench is warranted on it.

17. Shri S.P. Bhandarkar, learned Advocate who supported the case of the petitioner submitted that the Urban Land (Ceiling and Regulation) Act, 1976 has been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. According to the learned Counsel, the repeal wipes out the applicability of the Land Ceiling Act to the lands in question completely as possession of lands determined as surplus in S. 9 proceedings under Ceiling Act was never taken by State & no notification under its Section 10(3) was ever published. Therefore, it cannot be said that there was any land in excess of the ceiling limit- a concept which itself has been wiped off since its inception due to repeal. According to him after repeal the acquisition in instant matter has to be only under Land Acquisition Act. I find that other Division Bench of this Court in Vithabai Bama Bhandari Indian Inhabitant Vs. State of Maharashtra and Deputy Collector and Competent Authority Ulhasnagar Urban Agglomeration, . has considered the legal implications arising out of such repeal. However the earlier Division Bench which rejected Writ Petition No. 5555 of 2006, decided on 28.8.2007 had no occasion to consider this aspect as the Repealing Act had then not come into force. If arguments of Adv. Bhandarkar are to be accepted, question whether present reference is rendered only academic in facts before us also arises. My respected colleagues on Bench have not considered the impact of Repealing Act rightly as there is no view to the contrary in that regard. I am of the view that this submission of Adv. Bhandarkar does not call for any answer in the present reference and it needs to be evaluated by the Division Bench itself.

18. Shri Bhandarkar also submitted that the State Government does not have a power to issue any direction in exercise of its executive power and call upon an expropriated land holder to give an undertaking that he will forgo a statutory right vested in it by Section 18 of the Land Acquisition Act. The ratio and clarification in Ratan KumarTandon"s case may require closer scrutiny if this aspect is to be gone into. The earlier Division Bench has no reason to consider even this contingency and as such it has not laid down any law about it. In Meher Rusi Dalal Vs. Union of India (UOI) and Others, (From : Bombay) , Hon"ble Supreme Court has expressed as under:

17. ".Mr. Goswami also relied upon the case of Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, . In this case, by virtue of the Urban Land (Ceiling and Regulation) Act excess land stood vested in the State. In the reference u/s 18 the State pointed out that no compensation could be paid in respect of the excess land as it already stood vested in the State. This Court held that the claimants would only be entitled to compensation for the land which remained

with them after the application of the Urban Land (Ceiling and Regulation) Act. This authority is of no assistance to the respondents. If anything this authority is against the respondents inasmuch as it also recognises that the Government does not acquire its own land and that when compensation is being fixed it is only in respect of the interest of the third party claimants.

Hence, I find that this contention also needs to be addressed to by the regular Division Bench and this Full Bench should not record any finding on it.

19. Relevance of Section 23 or Section 28 of the Contract Act in the present matter also raises the important question not gone into in Writ Petition No. 5555 of 2006, decided on 28.8.2007. It is to be noted that Government has not made any effort to demonstrate any agreement between parties about the quantum of compensation. It appears to be the stand of Government that as it is offering more payment than legally due and hence, as ex-gratia; the obliged landowner has to give the undertaking as sought. Effort to persuade us on these lines has also been made by learned Sr. Advocate and Shri Deopujari who represent the acquiring body MIHAN in similar other matters but is not a party before us. Obviously the attempt is to justify the demand for undertaking by pointing out the law then prevailing. Again Division Bench of this Court has not answered even this question in WP 5555/2006. Hence the issue can be answered by the Division Bench dealing with present writ petition itself. Whether the law then prevailing matters now or not is again a moot question to be answered by it only.

20. I may point out that Full Bench of this Court in Emkay Exports and Mrs. Kanchan S. Chaudhary, partner of Emkay Exports Vs. Madhusudan Shrikrishna, has explained in paragraphs 11,25 & 12 to 16 the law on the point of precedent & ratio decidendi. Relevant portions extracted there from read:

(PARA 11:-) Even for a precedent to be binding, it cannot be without judicial decision or arguments that are of no moment. To be a good precedent, it has to be an adjudged case or decision of a court of competent jurisdiction considered as furnishing an example or authority for an identical or similar case or a similar question of law afterward arising. It is the ratio understood in its correct perspective that is made applicable to a subsequent case on the strength of a binding precedent.(PARA 25:-) As is apparent from the discussions of the judgments, the Division Bench judgment of this Court in the case of Bombay Enamel Works (supra) was not cited before the Bench hearing M/s. D. Shanlal's case (supra). The judgment of equibench on the same principle with similar facts, if is a precedent applicable in law, goes unnoticed in a subsequent judgment, the subsequent judgment may not be termed as a good law in face of the doctrine of stare decisis. While interpreting the judgment, the court has to pin point its attention to the ratio of the judgment. Keeping in view the principle of stare decisis a view which has been holding the fort need not be disturbed only because another view would be possible. The judgments which have held the field for a fairly long time ought not to be disturbed unless there is a preordering necessity dictated by the demands of justice to overturn them.

Taking of a different view on a mere thought that it would have been proper that a different view was taken is not healthy tradition to the law of precedents. The doctrine of stare decisis is based upon rule of convenience, expectancy and public policy. It is to be adhered to even if it is not imperative to do so. Applicability of law must be determined in respect of each case to avoid error of fact and law. Controversies must be determined in each case by use of discretion by the court. It may be appropriate not to perpetuate errors but it should also be ensured that consistency of law is not done away with by such discretion. Reference can be made in the cases of (i) *Mishri Lal (Dead) By Lrs. Vs. Dhirendra Nath (Dead) By Lrs. and Others*, , (ii) *Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd.*, , and (iii) *S. Brahmanand and Others Vs. K.R. Muthugopal (D) and Others*, In order to apply a judgment as a precedent, the relevant laws and earlier judgments should be brought to the notice of the court and they should be correctly applied. Mere observations in a previous judgment may not be binding on a subsequent Bench if they are not truly applicable to the facts and controversies in a subsequent case as per settled principle of "ratio decidendi". The rule of precedent, thus, places an obligation upon the Bench considering such judgments that the Court should discuss the facts and the law of both the cases and then come to a conclusion whether the principle enunciated in the previous judgment is actually applicable on facts and law to the subsequent case. This principle would equally apply when the Courts have to consider which of the two views expressed by earlier equi or other Benches is applicable to the subsequent case. The rule of precedent is not without exceptions. It has its own limitations. Besides that, the law changes with the changed circumstances and even good law may be rendered ineffective or unconstitutional because of passage of time, as reflected in the principle "*cessante ratione cessat ipsa lex*". Adopting this Maxim, the Supreme Court in the case of *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, , stated that, with changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalisation where the entire philosophy of society, on the economic front, is undergoing vast changes. Besides this well accepted precept, there are exceptions to the rule of precedent. There are judiciously accepted exceptions to the rule of precedent and they are decisions per incuriam, subsilentio and stare decisis. These principles explain when and where a precedent, which is otherwise a good law, necessarily need not be accepted in subsequent judgments if it fully satisfies essentials of these exceptions. (para 13:-) In the case of *Commnr. of Customs (Port), Chennai Vs. Toyota Kirloskar Motor Pvt. Ltd.*, , the Supreme Court stated the law relating to precedents and held that a decision, as is well known, is an authority for what it decides and not what can logically be deduced there from. The ratio of a decision must be culled out from the facts involved in a given case and need not be an authority in generality without reference to the reasons, discussions and facts of the case. (para 14:-) A Bench of two Judges cannot overturn or disagree with an equi Bench, if the decision is otherwise a good

precedent, their limited option would be to refer the matter to a larger Bench. Such opinion of reference even normally should be supported by reasons and a mechanical process need to be avoided, unless the decision of a coordinate Bench ceases to be good law due to any subsequent event or change in law. It is settled principle that it is not every thing said by a Judge, while giving judgment, that constitutes a precedent. The only thing in a Judge's decision which bind parties is the principle upon which the case is decided and for this reason it is important to analyse the decision and isolate "ratio decidendi" from it. Its three essential features are - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. (para 15:-)

Furthermore, ratio decidendi of a judgment has to be found out only on reading the entire judgment. The ratio of the judgment is what is set out in the judgment itself. Answer to the question necessarily would have to be read in the context what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons or principles, the other part of the judgment must be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment. The reasoning could be deciphered upon reading the judgment in its entirety and then applying these principles to the subsequent cases. (Reference : (i) Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, , (iii) State of Tripura Vs. Tripura Bar Association and Others, and (iv) Islamic Academy of Education and Another Vs. State of Karnataka and Others,).

21. Order of Division Bench dated 28/8/2007 dismisses WP 5555/2006 in motion. Refusal to interfere is due to the disclosure by AGP there that land for which compensation was being offered against an undertaking was already declared surplus under Ceiling Act. It also records that this position was not in dispute and hence it records conclusion as:- " In view of this position, we are not inclined to interfere and quash the impugned communication at the instance of the petitioners." The Bench also notes that communication dated 18/2/2005 & notice dated 31/3/2006 calling upon them to furnish undertaking were challenged by both the petitioners before it on "several grounds" but then because of its reluctance to interfere at the instance of such petitioners, it has not even enumerated those grounds. Thus the Division Bench did not find it necessary to embark upon the merits of those grounds and hence, it has not laid down any law on it. Earlier narration therein shows that on 17/8/2007 counsel for petitioners had taken time till 22/8/2007 to obtain instructions about withdrawal of writ petition itself. On 22/8/2007 further time till 27/8/2007 was given for same purpose as last chance. On 27/8/2007, the learned Counsel pointed out to the Division Bench that Petitioners had removed brief from him for engaging another advocate and request for adjournment came to be rejected. The matter came to be decided on the strength of arguments already heard and

Bench did not state those arguments also because of its disinclination to interfere at the instance of "such petitioners". Division Bench was not required to look into two Apex Court judgments mentioned supra. Thus this refusal to interfere in the matter is in peculiar facts & circumstances. The Division Bench has not laid down any law for general or universal application. As held by the Full Bench of this Court in case of M/s Emkay Exports (supra) the Division Bench which referred the issue here had no reason to deal with changes that occurred on 29/11/2007 due to repeal of Ceiling Act. It is laid down there that in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. Thus various factors which may have bearing upon or relevant for effective adjudication of the question now referred to Full Bench can not be ignored by us & are not adjudicated upon by the Division Bench in WP 5555/2006 and that Bench has not laid down any law on these facets or it had no reason to do so. If repeal of Ceiling Act with effect from 29/11/2007 is to be ignored, question whether law as expounded by Hon. Apex Court in Ratan Kimar Tandon & Meher Rusi Dalal (both supra) can be of any assistance will also need answer. Any other Division Bench of this Court is therefore free to undertake an exercise to find answers to all these questions and to arrive at its own conclusions. Hence, in my humble opinion, the matter needs to be placed before the Division Bench for its adjudication as per law.

22. As per majority judgment, the question referred to is answered in terms of result in paragraph No. 13 above declaring that the State cannot call upon an expropriated land-holder to furnish an undertaking. Order accordingly.