

(2022) 09 GUJ CK 0115

In the Gujarat High Court

Case No : R/Special Civil Application No. 4736 Of 1986

Bapbhai Hathiabhai Khachar

APPELLANT

Vs

State Of Gujarat & 3 Other(S)

RESPONDENT

Date of Decision : 20-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 213, 226, 227, 252, 252(1), 252(2), 291, 366
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2, 2(n), 2(o), 2(q), 2(1), 2(1)(iv), 2(3), 2(5), 2(6), 2(6)(iv), 2(1)(a), 2(1)(b), 2(1)(c), 2(6)(e), 2(6)(I)(f), 2(11), 2(12), 2(17), 2(17)(ii), 2(17)(ii)(c), 2(17)(i)(ii)(a), 2(17)(i)(ii)(b), 2(17)(i)(ii)(c), 2(17)(i)(ii)(d), 2(27A), 6, 6(3B), 6(3)(B), 6(3C), 6(3)(C), 21, 35, 38
Saurashtra Estate Acquisition Act, 1952 — Section 2(ii), 2(a), 2(b), 2(e), 2(f), 2(6), 2(15), 2(18), 3, 4, 5, 5(1), 5(2), 27A
Government Of India Act, 1935 — Section 103
Code Of Civil Procedure, 1908 — Section 11
Urban Land (Ceiling And Regulation) Act, 1976 — Section 2(o), 33, 42

Citation : (2022) 09 GUJ CK 0115

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : SP Majmudar, Nishit P Gandhi, Meet Thakkar

Final Decision : Dismissed

Judgement

Sandeep N. Bhatt, J

1. This petition is filed for the following reliefs :

"9(A) to allow this petition with costs;

(B) to quash and set aside the orders passed by the Mamlatdar and A.L.T., Chotila (Annex. `A'), the Deputy Collector, Limbdi (Annexure `B') and the Gujarat Revenue Tribunal (Annexure `C');

(C) to stay the execution and implementation of the order passed by the respondent no.2 (Annexure `A') as confirmed by the Deputy Collector, Limbdi in appeal, and by the Gujarat Revenue Tribunal in revision (Annex. `B' and `C'

respectively), pending the hearing and final disposal of this petition;

(D) xxxx”

2. The brief facts leading to filing of this petition, as mentioned in the memo of the petition are, as under:

2.1 It is the case of the petitioner that he was holding land in excess of the ceiling area prescribed for the District of Surendranagar and, therefore, on coming into force of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as ‘the Ceiling Act’) as amended in 1972, submitted Form No.2 on 29.6.1976 to the Mamlatdar and A.L.T.Chotila stating that he held 29 acres 8 gunthas of agricultural land and the rest of the lands were bid lands comprising of hilly tracks and stony terrain totally unfit for cultivation or agriculture. In spite of that, the Mamlatdar initiated an inquiry and by order dated 24.11.1980, held that the petitioner was holding excess land to the extent of 699 acres 18 gunthas. Against the said order, petitioner preferred appeal to the Deputy Collector, Limbdi who remanded the matter back to the Mamlatdar as proper notices were not issued. On remand, again the Mamlatdar, vide order dated 19.9.1981 held that the petitioner was holding 645 acres 18 gunthas of excess land, against the same, the appeal was filed which failed. However, the Gujarat Revenue Tribunal (‘GRT’ for short), by its order dated 1.3.1983, allowed the revision application and again remanded the matter back to the Mamlatdar for fresh inquiry. The Mamlatdar took further evidence and again, by order dated 1.3.1984, held that the petitioner is holding 645 acres 18 gunthas as excess land.

2.2 It is the case of the petitioner that the petitioner preferred appeal under Section 35 of the Ceiling Act to the Deputy Collector, Limbdi, which was dismissed vide order dated 16.7.1984. The petitioner, thereafter, preferred revision application under Section 38 of the Ceiling Act, which came to be dismissed vide order dated 24.4.1986, against which this petition is filed.

2.3 It is pertinent to note here that this petition was disposed off by this Court (Coram: K.J.Thaker, J (as His Lordship then was) with some directions vide order dated 5.8.2015, against which the petitioner preferred SLP (C) No.29321 of 2015 before the Hon’ble Apex Court. The Hon’ble Apex Court, vide order dated 26.10.2015, issued notice and the matter was ordered to be tagged with SLP (C) Nos.4545-4546 of 2015 (main SLP(C) Nos.4543-4544 of 2015). Thereafter, vide common order dated 22.7.2019, the Hon’ble Apex Court quashed and set aside the order impugned in all these petitions and remanded this matter back to this Court for fresh consideration. Accordingly, this matter is being placed for hearing.

3. Heard learned advocate Mr.S.P.Majmudar for learned advocate Mr.Nishith Gandhi for the petitioner and learned AGP Mr.Meet Thakkar for the respondent state authorities.

4. Learned advocate Mr.Majmudar for the petitioner submitted that the present petition is filed against the impugned judgment dated 24.4.1986 passed by the

learned GRT as well as the order of the Deputy Collector dated 16.7.1984 as well as the order passed by the learned Mamlatdar dated 1.3.1984, by which the authorities have declared the land admeasuring acres 645-18 gunthas as surplus land without appreciating the proper facts of the case as well as the statutory provisions.

4.1 Learned advocate Mr.Majmudar has further submitted that this Court, while disposing off this petition vide order dated 5.8.2015, issued the following direction:

"4. In that view of the matter, the petition is dismissed as far as bid land is concerned. However, if the petitioner moves to the concerned Mamlatdar and ALT on the point of 6(3B) or 6(3C), the authority concerned shall decide the claim of the petitioner in accordance with law in light of the decision of this Court in the above cited case. Rule is discharged. Interim relief, if any, stands vacated.

Copy of the order dated 5.8.2015 is annexed herewith."

4.2 At this stage, learned advocate Mr.Majmudar has drawn the attention of this Court to the copy of the orders dated 26.10.2015 and 22.7.2019 passed by the Hon'ble Apex Court in SLP (C) No.29321 of 2015, which was filed against the aforesaid order.

4.3 He has further submitted that therefore, in view of that development, three orders passed by authorities below are completely arbitrary, illegal and without jurisdiction. He has further submitted that in addition to the grounds raised in the petition, the authorities below have failed to consider the provisions of Sections 6(3)(B) and 6(3)(C) of the Act. He has further submitted that the mother of the petitioner was alive on 1.4.1976 which is relevant date for the purpose of calculating the units under the Act and she has expired on 21.3.1985. He has further submitted that therefore the petitioner will be entitled to get additional unit. He has further submitted that the family is entitled to hold land in excess of ceiling area to the extent of 1/5th of the ceiling area for each member in excess of five. He has further submitted that as mentioned in further affidavit dated 11.3.2014, the family of the petitioner as on 1.4.1976 consisted of six members. He has further submitted that therefore the provisions of Sections 6(3)(B) and 6(3)(C) are in support of his submission. He has further submitted that these aspects have not been considered by the authorities below at the time of passing the impugned orders and therefore the impugned orders are required to be quashed and set aside.

4.4 He has submitted that the important aspect is with regard to the effect of Repeal Act of 2004 (Gujarat Act No.19 of 2004). He has submitted that this aspect has not been considered by the authorities below at the time of passing the impugned orders and therefore, impugned orders are required to be quashed and set aside.

He has further submitted that by Amendment Act of 1972, certain provisions

were amended of the Ceiling Act which would have effect of including the 'bid land'. He has further submitted that however, the said Amendment Act of 1972 has been repealed by Gujarat Act 19 of 2004 and therefore the land in question which is a bid land ought to have been excluded from the provisions of the ceiling Act. It ought to have been appreciated that in the facts of the present case, since the petition is pending and legality of the orders are being tested and question whether the declaration of surplus land is proper or not, the benefit of the Repeal Act has to be extended to the petitioner. He has further submitted that the present petition is continuation of the proceedings initiated under the Ceiling Act and therefore also the benefit of Repeal Act would be available to the petitioner. He has further submitted that in any of the previous litigations, even in the case of similarly situated persons, the applicability of Repeal Act of 2004, (Gujarat Act no.19 of 2004) has not been considered. He has further submitted that the impugned orders passed by the authorities below, therefore, requires to be quashed and set aside with further direction to the Mamlatdar to give the benefit of provisions of Repeal Act to the petitioner.

4.5 He has further submitted that the Hon'ble Apex Court has issued notice in the matter of similarly situated person in SLP (C) no.11839 of 2022 vide order dated 22.7.2022 and stayed the judgment of the Division Bench which is passed in Letters Patent Appeal No.1301 of 2013, which was rejected by the Division Bench of this Court vide order dated 13.5.2022 and therefore also, on that count, he prayed that the present petition be allowed, by quashing and setting aside the order passed by the authorities below.

5. Per contra, learned AGP Mr.Meet Thakkar appearing for the State of Gujarat has submitted that the present petition deserves to be dismissed as earlier also, this Court, vide order dated 5.8.2015, has dismissed the petition which is carried further by the petitioner to the Hon'ble Apex Court and the Hon'ble Apex Court has allowed the appeal in view of the judgment in the cases of Jogendrasinhji Vijaysinhghji V/s State of Gujarat and others, reported in (2015)9 SCC 1 and M.S.Kazi V.s Muslim Education Society and Others reported in (2016)9 SCC 263 and remitted back the petition to this Court for fresh consideration.

5.1 Learned AGP Mr.Thakkar has submitted that the learned Tribunal has, by order dated 24.4.1986, has dismissed the revision application filed under Section 38 of the Ceiling Act and confirmed the order dated 18.7.1984 passed by the learned Deputy Collector, Limbdi. He has submitted that it is rightly observed by the learned Tribunal that the Collector has, in its order, dated 18.7.1984 stated that according to Section 2(17) of the Act where the definition of 'land' is given, 'bid lands' is also included under the definition of the 'land' and therefore 'bid lands' should also be taken into account while computing the surplus land. He has further submitted that the learned Tribunal has rightly observed that the 'bid lands' are dry crop lands as per the provisions under Section 2(6)(e) of the Act and bid lands have already been defined as stated under the Saurashtra Estates Acquisition Act (hereinafter referred to as 'Estates Acquisition Act' for short).

5.2 He has further submitted that it is rightly observed by the learned Tribunal that as per Section 2(17)(ii)(c), bid lands held by the Girasdars etc. are to be treated as 'land' and also the definition of 'bid lands' under the Estates Acquisition Act. The restriction are not put regarding the extent of growth of grass or about any nature of lands i.e. plain, rocky etc.

5.3 The total idea of the bid lands, as it exists in Saurashtra area is that these are large areas where grass grows naturally. These areas in part may be rocky but that does not mean that grass does not grow on these areas and, therefore, the statement recorded of talaties does not mean that such lands where grass does not grow in abundance or where such lands were rocky cannot be treated as bid land. He has also submitted that the Tribunal has rightly observed that as per Section 4 of the Estates Acquisition Act, the state government is empowered to acquire all bid lands under the Act. He has further submitted that Section 5 bid lands which are also uncultivable waste shall not vest in the state government and the bid lands of 'b' and 'c' class Girasdars are also not to vest in the state government and in case bid lands which are cultivable waste are not to be acquired unless it is in excess of the requirements of Girasdars and therefore he submitted that the interpretation of the word 'land' under Section 2(17) of the Gujarat Agricultural Lands Ceiling Act will mean that these bid lands which have escaped acquisition under the Estates Acquisition Act. Thus, the true interpretation of the word held by the Girasdars under the Estate Acquisition Act will mean bid lands which are not acquired under the Estate Acquisition Act.

5.4 He has further submitted that it is observed by the Mamlatdar and ALT, in his order dated 1.3.1984, that Bapbhai Kacharbhai Hathiabhai stated that in his family, he himself, his wife and two sons amongst which age of one son as on 1.4.1976 is major for which earlier certificate of doctor is produced and written reply was also submitted.

5.5 Therefore, the contention raised by the petitioner about the family is of more than four persons cannot be accepted. He has further submitted that the submission of the petitioner that as per Section 6(3)(B) and 6(3)(C), the petitioner is entitled to additional unit on the basis that the mother of the petitioner was alive on 1.7.1976 and expired on 21.3.1985 was never raised before the authorities below and before the learned Tribunal also at the time of adjudication and therefore the same cannot be permitted to be raised after passage of almost forty years.

5.6 In support of his submission, he has relied on the judgments in the case of Nagbhai Najbhai Khachar V/s State of Gujarat reported in (2010)10 SCC 594, more particularly, paragraphs 9 to 11, in the case of State of Gujarat V/s Manoharsinhji Pradyumansinhji Jadeja, reported in (2013) 2 SCC 300, more particularly, paragraphs 25 to 84, on the judgment of the Division Bench of this Court in the case of Narendrabhai Amarabhai Khachar V/s State of Gujarat in Letters Patent Appeal No.1165 of 2013, more particularly, on paragraphs 7 and 8 of the judgment.

5.7 Learned AGP Mr.Thakkar prays that in view of the above, as the submission regarding Section 6(3)(B) and 6(3)(C) is not taken in any of the proceeding before the authorities below and cannot be considered at this belated stage, this petition be dismissed as no prayer as prayed for can be granted and the petition is devoid of any merits.

6. I have heard learned advocates for the parties and also perused the material placed on record.

6.1 Prima facie, it transpires from the record that the present petition is earlier disposed off by this Hon'ble Court by order dated 5.8.2015 which was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court has quashed and set aside the order and remitted the matter back for fresh consideration.

6.2 It further transpires from the record that he was holding land in excess of the ceiling area prescribed for the District of Surendranagar and, therefore, on coming into force of the Ceiling Act as amended in 1972, submitted Form No.2 on 29.6.1976 to the Mamlatdar and A.L.T.Chotila stating that he held 29 acres 8 gunthas of agricultural land and the rest of the lands were bid lands comprising of hilly tracks and stony terrain totally unfit for cultivation or agriculture. It is also found from the record that on coming into force of the Gujarat Agricultural Lands Ceiling Act, 1966, fixing the ceiling limits on the holding of agricultural land (54 acres for Chotila taluka), the petitioner filled in the prescribed form under the said Act stating that he was not holding surplus land in view of the fact that most of the land held by him was waste land (bid land) which could not have been taken into consideration as his agricultural holding. The Mamlatdar and ALT, Chotila who was entrusted with the department of holding inquiry under Section 21 of the Act registered the said case as Ceiling Case No.116 of 1976-77 and by his order dated 24.11.1980 held that the petitioner was holding excess land to the extent of 699 acres 18 gunthas. It is also transpired from the record that thereafter the petitioner filed appeal before the Deputy Collector, Limbdi, who remitted the matter back to the Mamlatdar as proper notice was not issued in the case. Thereafter, the said officer Mamlatdar again by his order dated 19.9.1981 held that the petitioner was holding 645 acres 18 gunthas as excess land. Therefore, the appeal was preferred before the Deputy Collector failed. However, GRT by its order dated 1.3.1983 allowed the revision application and remitted the matter to the Mamlatdar for fresh inquiry after issuing notice to the authorized officers of the state. The Mamlatdar took further evidence and by his order dated 1.3.1984 again recorded a finding against the petitioner holding that he held 645 acres 18 gunthas as excess land. It also transpires that against the said order, the petitioner preferred the appeal before the Deputy Collector, Limbdi since the order of Mamlatdar was not legal and proper. However, the Deputy Collector, by his order dated 16.7.1984, dismissed the appeal and confirmed the order of the Mamlatdar. Thereafter, the petitioner preferred the Revision Application No.TENBA/1163/1984 under Section 38 of the Act raising several contentions and contended that inter alia the lands which are not agricultural

lands could not have been taken into account for finding out surplus land and/or excess land and the lands which are rocky and not cultivable cannot form part of the agricultural land in view of the object and aim of Ceiling Act. The said revision application was heard by the learned Tribunal and vide judgment and order dated 24.4.1986, dismissed the revision application holding that the lands which are treated as surplus lands by lower authorities are bid lands and these lands are included in the definition of 'land' in clause

(17) of Section 2 of the Act and that there was no intention on the part of the legislature to exclude the bid lands which are rocky which may not be growing sufficient grass as no such restrictive words are used in the definition of the word 'land' and therefore, even if such lands are rocky and may not produce sufficient grass, the lands being bid lands can be acquired under the Ceiling Act.

6.3 The submission made by the petitioner about the applicability of Section 6(3) (B) and 6(3)(C), whereby it is the say of the petitioner that he is entitled for additional unit on the basis of the fact that his mother was alive on 1.7.1976 but such plea was never taken before the Mamlatdar nor before the Deputy Collector nor before GRT in several round of proceedings and therefore it can be said that it is taken at belated stage.

6.4 Now, in view of that, this Court has observed in the earlier order dated 5.8.2015, which reads as under:

"3. The petitioner has stated that as far as the question of bid land is concerned, the same is decided against him, however, he relied upon the judgment of this Court in the case of Pithubhai A Ckhachar vs. State of Gujarat & Ors., in Special Civil Application No. 5113 of 1985 and stated that on the point that additional unit is available or not, the same is required to be considered by the Authority afresh as observed by this Court in the aforesaid matter in para 8 to 11, which read as under:

"8. Therefore, it would be open to the petitioners to approach the concerned authority in respective Taluka with appropriate proof and evidences within 30 days from the date of receipt of certified copy of this judgment and authority in such a situation, will have to look into it and render its decision in accordance with law.

9. Learned counsel appearing for the petitioners could not controvert or bring about any submission that even if assuming for the sake of arguments without bringing upon it that there is scope of invocation of Section 6(3B) and 6(3C) in some of the cases or only Section 6(3B) or Section 6(3C), then also, the entire excess land cannot be given to the State. As the effect of this judgment is to lift the interim orders and entire injunction in any manner, which has in turn further effect of pronouncing the order of vesting of land in the State, however, there is some exception is carved out only to the extent that State will be taking possession of the land in question and in case if concerned authority under the Act is in receipt of any claim from any other petitioners within period of 30 days

from the date of receipt of certified copy of this judgment, then, the State will be at liberty to allot the land, which is said to be vested in the State as per original order. However, in case, once the claim is made based upon the submission qua applicability of Section 6(3B) or 6(3C), as proposed preference to hold back the land, then, irrespective of possession, the State shall not alienate that land in light of preference.

10. This Court is of the view that as if such an order is not made, then, despite their being order of Supreme Court and factum of excess land, the object, motive and purpose of Land Ceiling Act is unfortunately defeated and no Court much less this Court can not be thwarted indirectly or directly the object of the statute.

11. It goes without saying that if the petitioners moved to the concerned authority as submitted hereinabove, the authority concerned shall decide the claim of petitioners in accordance with law in light of the decisions of this Court as well as Supreme Court cited hereinabove without being influence by this judgment."

4. In that view of the matter, the petition is dismissed as far as bid land is concerned. However, if the petitioner moves to the concerned Mamlatdar and ALT on the point of 6(3B)) or 6(3C), the authority concerned shall decide the claim of the petitioner in accordance with law in light of the decision of this Court in the above cited case. Rule is discharged. Interim relief, if any, stands vacated."

6.5 At this stage, it is relevant to refer Section 2(17) of the Ceiling Act which was applicable at the relevant point of time which reads as under:

"2(17) "land" means-

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

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

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

(b) the lands on which grass grows naturally;

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

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

(e) trees and standing crops on such land;

(f) canals, channels, wells, pipes or reservoirs and other works constructed or maintained on such land for the supply or storage of water for the purpose of agriculture;

(g) drainage works, embankments, bandharas or any other works appurtenant to such land, or constructed or maintained thereon for the purpose of agriculture, and all structures and permanent fixtures on such land;

Explanation.- In clause (d), the expressions "Ruler" and "Indian State" shall have the same meanings as are assigned to them in clauses (22) and (15) respectively of Article 366 of the Constitution and the expression "covenant" shall have reference to the covenant which was referred to in Articles 291, of the Constitution before the repeal of that article by the Constitution (Twenty-Sixth Amendment) Act, 1971;]"

6.6 Now, keeping this in mind, if we consider the judgment reported in the case of Nagbhai Najbhai Khackar, more particularly, paragraphs 9 to 11 which read as under:

"9. The short question which is inborn in this batch of cases concerns applicability of the Gujarat Agricultural Lands Ceiling Amendment Act, 1972 which came into force w.e.f. 1.4.1976 to the "bid lands". It is the case of the appellants before us that the "bid lands" of the appellants do not fall within the definition of "dry crop land" under Explanation I(e) to Section 2(6) of the 1960 Act principally because the said definition under the unamended Act included grass lands, that is to say, lands which "abounds in grass grown naturally and which is capable of being used for agricultural purposes". According to the appellants, in the amended Act, through over-sight, the word "includes" in Explanation I(e), which defines "dry crop land" stood omitted and, therefore, this Court could always fill in the omission by reading the word "includes" in the said clause. According to the appellants, the legislative intent behind enacting clause (e) of Explanation I was to include only cultivable lands in the definition of "dry crop lands" as the ultimate object of the 1960 Act is to fix a ceiling on lands held for agricultural purpose and consequently "bid lands" which are uncultivable waste lands cannot be included in Explanation I(e). We find no merit in this argument. The definition of "land" is specifically amended by the Amendment Act 2 of 1974 to include "bid lands" of Girasdars or Barkhalidars in Section 2(17)(ii) (c). The Statement of Objects and Reasons of the Amending Act also makes it clear that there was a specific legislative intent of including "bid lands" of Girasdars or Barkhalidars within the definition of "land". This inclusion does not make any distinction between cultivable and uncultivable bid lands. The insertion of bid lands in Section

2(17) is without any such qualification. Therefore, this specific intent of the Legislature must be given its full meaning. If the argument of the appellants is to be accepted, it would defeat the very purpose of the 1960 Act because in that event a holder could hold lands to an unlimited extent by including waste lands

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

10. Now, coming to the question of interpretation of the definition of the words "dry crop land" in Explanation I(e), one finds that the definition has two parts, namely,

(i) "land other than the land specified in paragraphs (a) to (c)" and

(ii) "grass land". Thus, the first part includes all lands other than those specified in paragraphs (a) to (c). Therefore, once the subject land falls in the first part of definition of the word "dry crop land" which land comes under Section 2(17) and which falls outside paragraphs (a) to (c) then such lands would fall within the definition of the words "dry crop land". Further, there are two reasons why "grass land" stood separately defined in Explanation I(e). Firstly, under the proviso to Section 5, which is also inserted by the Amending Act, a distinction is made between "grass lands" included within "dry crop land" and "grass lands" falling in the desert or hill areas of drought-prone areas for fixing the ceiling of dry crop land in those areas. Secondly, under clause (f) to Explanation I, "grass land" and not all "dry crop land" is deemed to be rice land in certain situations. The proviso to Section 5 itself makes it clear that by the Amending Act of 1974 the Legislature was placing a ceiling even on desert and hill areas. The proviso inter alia states that the ceiling limit with reference to "dry crop land" shall be 12 = per cent more than that specified in the Schedule which makes it clear that the Legislature intended to include even desert and hills in drought-prone areas within the definition of "dry crop land". Once such lands are used for grazing of cattle, Section 2(1) of the Ceiling Act would kick in and consequently the "bid lands" would stand covered by the Ceiling Act. The definition of "dry crop land" under Section 2(6) is relevant for the purpose of ascertaining the extent of ceiling limit under Schedule I. It is important to note that the subject lands got saved from acquisition under the 1952 Act only because the appellants were the

holders of "bid lands" which were put to use for grazing of cattle or cutting of grass. It is these very lands which are now sought to be covered by the 1960 Act, as amended.

11. We also do not find any merit in the argument advanced on behalf of the appellants that the Legislature unwittingly through over-sight left out the word "includes" in the definition of "dry crop land" in Explanation I(e). If one looks at the Pre-1974 Act under Section 2(6) which defined "class of land", it covered four items, namely, perennially irrigated land, seasonally irrigated land, dry crop land and rice land, whereas under the Post-1974 Act, rice land has been deleted from the "class of land". Under the Pre-1974 Act, "dry crop land" was defined by clause (e) of Explanation to mean "land other than perennially or seasonally irrigated or dry crop land or rice land" and it included "grass land", whereas under Post-1974 Act, not only the word "includes" but even the words "rice land" do not find place in the definition of "dry crop land" in clause (e) of Explanation I. One of the reasons for this structural change is indicated by the judgment of the Gujarat High Court in the case of *Krishnadas Vithaldas Sanjanwala v. The State of Gujarat and Ors.* [(1966) 7 GLR 244] in which it has been laid down that ordinarily "grass lands" would be "dry crop lands" within the meaning of clause (e) of Explanation to Section 2(6) of Pre-1974 Act as the definition of "dry crop land" included "grass land", however, in a given case the Tribunal could promote the grass land by declaring it to be a rice land falling under Section 2(6)(iv) (see Explanation I(f) to Section 2(6) of the Pre-1974 Act). According to the said decision, which has been consistently followed thereafter, "grass land" of the kind mentioned in clause (e) could be promoted to the category of rice land if the Tribunal found that such grass land was situated in a local area referred to in clause (d) and if in the opinion of the State Government such land was found fit for cultivation of rice. Therefore, the promotion of the grass land to the category of rice land, according to the said decision of the High Court, was dependent upon an objective fact which was justiciable and the determination of a subjective fact by the State Government. Consequently, clause (d) and clause (e) of the Post-1974 Act are drastically different from the structure of the said clauses in the Pre-1974 Act. There is no merit, therefore, in the contention advanced on behalf of the appellants that the Legislature had through over-sight omitted the word "includes" from Explanation I(e)."

6.7 At this stage, it is relevant to refer Section 2(a) of the Saurashtra Estates Acquisition Act, 1952 (bid land) which is reads as under:

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

6.8 Sections 4 and 5 of the Saurashtra Estates Acquisition Act read as under:

"4. When a notification is issued by the Government in respect of an estate or any part thereof under section 3, then, with effect from the date specified in the

notification, the following consequences shall, in respect of that estate or part thereof, ensue, namely:-

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

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

(iii) all bid lands.

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

(v) all schools, Dharmashalas, village choras, public temples and such other public buildings or structures as may be specified in the notification together with the sites on which such, buildings and structures stand;

which are comprised in the estates so notified shall, except in so far as any rights of any person other than the Girasdar or the Barkhalidar may be established in and over the same, and except as may otherwise be provided by any law for the time being in force, vest in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of [[State of Gujarat]] and all rights held by a Girasdar or the Barkhalidar in such property shall be deemed to have been extinguished, and it shall be lawful for the Collector, subject to the general or special orders of the [Collector], to dispose of them as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

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

5. (1) Notwithstanding anything contained to section 3, or section 4-

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

[(b) no bid land comprised in the estate of a Girasdar who is considered to be of 13 and C class for the purpose of making rehabilitation grant under the Saurashtra Land Reforms Act, 1951, or of a Barkhalidar, the total area of agricultural land comprised in whole estate does not exceed eight hundred acres, shall vest in, and be the property of the [[State of Gujarat]]; and]

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

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

(2) If any bid land or village site land is not acquired under the provisions of subsection (1) and such bid land or village site land is used by the Girasdar or Barkhalidar for a different purpose, it shall be liable to be acquired under the provisions of section 4.”

The provisions contained in the Urban Land (Ceiling and Regulation) Act, 1976 (Act of 1976 for short) are referred hereto, more particularly, the Act was applied to all State of Gujarat, under Section 2(a), the ‘appointed day’ was defined to mean in relation to any state to which the Act has applied for the first instance, the date of introduction of Act of 1976 in the Parliament which was admittedly 17.2.1976, under Section 2(n), what is ‘urban agglomeration’ has been defined and it is not in dispute that district Surendranagar, where the lands in question fall within the definition agglomeration mentioned in schedule 2 of the Act, under Section 2(o) ‘urban land’ has been defined to mean any land situated within the limits of urban agglomeration referred to as such in the master plan.

6.9 Considering these facts, now, it is appropriate to refer to the judgment of the Hon’ble Apex Court in the case of Manoharsinhji Pradyumansinhji Jadeja (supra), and relevant paragraphs being paragraphs 25 to 84, by which the Hon’ble Apex court has considered the scope of ‘bid land’s, which read as under:

“25. Having heard the eloquent submissions of Shri Soli J. Sorabjee, learned senior counsel for the appellant and the enlightening submissions of Shri Naphade, learned senior counsel for the respondent, we find that while the simple case of the appellant, namely, the State of Gujarat is that the respondents’ lands being ‘Bid lands’ are agricultural lands and thereby governed by the provisions of Act of 1960, the whole endeavour of the respondent was that the lands were never classified as “agricultural lands”, that they were indisputably “urban lands” governed by the provisions of the Act, 1976 and consequently the application of the Act of 1960 stood excluded. The enlightening submissions of the respective counsel oblige us to set out various legal principles highlighted before us in order to appreciate the respective submissions and thereby arrive at a just conclusion.

26. In the forefront, we want to make a detailed reference to certain relevant provisions of the Act of 1960 prior to its amendment and after its amendment, Saurashtra Act No.III of 1952, Saurashtra Act No.XXV of 1951, Saurashtra Act No. XXVI of 1951, Section 103 of The Government of India Act, 1935 and Article 252 of the Constitution. The relevant provisions under the unamended Act of 1960 are Section 2(1), Section 2(3), Section 2(11), Section 2 (12), Section 2(17) and Section 6. Under the amended Act of 1960, the relevant provisions are Section 2(1) (a) (b), (c), Section 2(17) (i) (ii) (a), (b), (c), (d) and Section (27A). Under Saurashtra Act No.III of 1952, the relevant provisions are Section 2(a), (b), (e), (f), Section 4 and Section 5(1), (2) . Under Saurashtra Act XXV of 1951, the relevant provision are Sections 2(6), 2 (15) and 2(18). Under the Saurashtra Act No.XXVI of 1951, the relevant provision is Section 2 (ii).

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

The Gujarat Agricultural Lands Ceiling Act, 1960 Section 2. Definitions-In this Act, unless the context requires otherwise-

1) "agriculture" includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or part thereof for grazing but does not include-

i) the use of any land, whether or not an appenage to rice or paddy land, for the purpose of rab-mannure;

ii) the cutting of wood, only;

iii) dairy farming;

iv) poultry farming;

v) breeding of live-stock; and

vi) such other pursuits as may be prescribed.

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

(3) "agriculturist" means a person who cultivates land personally" (11) "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery or to carry on any agricultural operation thereon;

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

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

(i) by one's own labour, or

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

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

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

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

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

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

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

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

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

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

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

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

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

1) "agriculture" includes-a) horticulture,

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

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

17. "land" means-

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

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

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

b) the lands on which grass grows naturally;

c) the bid lands held by the Girasdars or Barkhalidars under the Saurashtra Land

Reforms Act, 1951, the Saurashtra Barkhali Abolition Act, 1951 or the Saurashtra Estates Acquisition Act, 1952, as the case may be;

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

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

Under Saurashtra Act No.III of 1952 the relevant provisions are Section

2(a), (b), (e), (f), Section 4 and Section 5(1), (2):

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

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

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

(c) xxx xxx xxx

(d) xxx xxx xxx

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

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

3. xxx xxx xxx

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

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

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

iii) all bid lands,

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

v) all schools, Dharmashalas, village choras, public temples and such other public buildings or structures as may be specified in the notification together with the sites on which such buildings and structures stand, Which are comprised in the estates so notified shall, except in so far as any rights of any person other than the Girasdar or the Barkhalidar may be established in and over the same, and except as may otherwise be provided by any law, for the time being in force, vest in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State of Gujarat and all rights held by a Girasdar or a Barkahalidar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Collector, to dispose of them as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

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

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

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

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

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

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

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

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

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

(15) “Girasdar” means any talukdar, bhagdar, bhayat, cadet or mulgirasia and includes any person whom the Government may, by notification in the Official

Gazette, declare to be a Girasdar for the purposes of this Act.

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

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

(i) xxx xxx xxx

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

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

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

30. A careful consideration of the above provisions under the Act of 1960 gives a clear idea that lands which are used as well as which are capable of being used for the purpose of agriculture including lands used for raising grass or either full or part of it used for grazing purposes would come within the ambit of the Act,

which in turn would be subject to the restrictions imposed for the purpose of ascertaining the ceiling limit. Consequently, the excess or surplus land in the holding of a person who is an agriculturist is to be ascertained in order to initiate and ultimately acquire such surplus land. Such acquisition as expressed in the Preamble to the Act would be for the purpose of equal distribution of land to other landless persons.

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

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

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

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

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

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

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

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

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

33. Mr. Soli Sorabjee, learned senior counsel, to support the submission made on behalf of the appellant, would draw succor to the definition of the very same expression 'Bid land' under Act No.XXV of 1951 as well as Act No.XXVI of 1951 and Act No.III of 1952. Under Act XXV of 1951 in Section 2(6) definition of 'Bid land' has been defined to mean such land raised by Girasdar for grazing his cattle or for cutting grass for the use of his cattle. Under Section 2(18) of Act No.XXV of 1951, the definition of 'land' under said Act included 'Bid land'. The purport of the said enactment was to end Girasdar system and while doing so regulate the relationship between the Girasdars and their tenants and to enable the latter to become occupants of the 'land' held by them as tenants and simultaneously to provide for the amount of compensation payable to Girasdars for the extinguishment of their rights. Whatever be the purport of the enactment, the definition of 'land' as defined under Section 2(18) and 'Bid land' as defined under Section 2(6) discloses that 'Bid land' would be a land which was treated on par with agricultural land and such land is none other than the land which is used for grazing by cattle as well as for cutting grass for the use of cattle.

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

35. Keeping the above statutory prescription relating to the description of 'Bid land' in the above enactments which were all prior to coming into force of Act,

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

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

37. Having regard to the reference to the specified date, namely, the date of notification (i.e.) 01.04.1976, the expanded definition of 'land' under Section 2(17) was brought to our notice wherein specific reference to the 'Bid lands' held by Girasdars and Barkhalidars under Act Nos.XXV of 1951, XXVI of 1951 and III of 1952 and also such 'Bid lands' held by a person prior to the commencement of the Constitution 26th Amendment Act 1971 as a 'ruler' of an Indian State comprised in the Saurashtra Area of State of Gujarat. The endeavour of learned

counsel for the respondent while drawing our attention to the new Section 2(17), in particular, the reference to 'Bid lands' in clause (c) and (d) of Section 2 (17) (ii) was to stress upon the point that a clear distinction was drawn as regards the land falling within the said definition held by a person prior to the specified date and after the specified date. Under Section 2(17) (i) after the amendment the provision relating to the definition of 'land' was sought to be distinguished as was existing prior to the specified date while under Section 2(17)(ii) a wider scope of such definition of 'land' was introduced. Having regard to such distinction shown in respect of a 'land' one prior to the specified date and the one in relation to any other period, learned counsel contended that the specific reference to 'Bid lands' held by Girasdar and Barkhalidar under sub clause (c) and (d) in Section 2 (17) (ii) makes a world of difference, as the scope of inclusion of the 'Bid lands' within the ambit of the expression 'land' under Section 2(17) was introduced on and after 01.04.1976 namely the specified date which was not the position prior to the said date.

38. The submission of leaned counsel was two fold, namely, that the specific reference to 'Bid lands' under Section 2(17) sub clause (ii) (c) and (d) came to be introduced for the first time on and after 01.04.1976 and hence the said situation requires a different consideration in the light of the Central enactment namely the Act, 1976 which had already come into force from 17.02.1976 by the State Legislature surrendering its legislative competence to the Union Government by invoking Article 252 (1) of the Constitution. The further submission is that in the light of the field being occupied by the Central Act, having regard to the restriction contained in Article 252 (2) of the Constitution there could not have been any competence for State Government to bring about an amendment effective from 01.04.1976 in relation to the Act and the subject with reference to which the State Government has surrendered its legislative power that bringing any amendment was exclusively within the competence of the Parliament and thereby the State amendment had no effect and was void as from its inception.

39. Before considering the said submission it is necessary to also refer to the provisions contained in the Act, 1976 for an effective consideration and to reach a just conclusion. Under the Act, 1976 by virtue of Section 1(2) of the Act, the Act was applied to the whole of the State of Gujarat. Under Section 2(a) the appointed day was defined to mean in relation to any State to which the Act applied in the first instance the date of introduction of the Act, 1976 in the Parliament which was admittedly 17.02.1976. Under Section 2(n) what is an 'urban agglomeration' has been defined and it is not in dispute that district Rajkot where the lands in question situate falls within the definition of urban agglomeration mentioned in Schedule 1 of the Act. Under Section 2(o) 'Urban Land' has been defined to mean any land situated within the limits of an urban agglomeration referred to as such in the Master Plan. However, it does not include any such 'land' which is mainly used for the purpose of 'agriculture'. Under Section 2 (q) 'vacant land' has been defined to mean land not being

mainly used for the purpose of agriculture in an urban agglomeration subject to other exclusions contained in the said sub-clause

(q). The expression 'agriculture' has been specifically defined under the Explanation (A) to Section 2(o) by which it is stated that agriculture would include 'Horticulture' but would not include 'raising of grass', 'dairy farming', 'poultry farming', 'breeding of livestock' and such cultivation or growing of such plant as may be prescribed. Under Explanation (B) it is mentioned that lands are not being used mainly for the purpose of 'agriculture' if such land has not entered in the revenue or land records before the appointed day as for the purpose of 'agriculture'. Under Explanation (C) it is further stipulated that notwithstanding anything contained in Explanation (B) 'land' shall not be deemed mainly used for the purpose of agriculture if the land has been specified in the Master Plan for the purpose other than agriculture. Section 6 of the Act, 1976 prescribes the ceiling limit of vacant land which a person can hold in an urban agglomeration of the Act, 1976. If a person holds vacant land in excess of the ceiling limit at the commencement of the Act, he should file the statement before the competent authority of all vacant land to enable the State Government to acquire such vacant land in excess of ceiling limit under the Act.

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

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

(underlining is ours)

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

".....It is not to be supposed that a legislative body will waste its time by discussing a bill which, even if it receives the Governor-General's assent, would obviously be beyond the competence of the Legislature to enact, but if it chooses

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

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

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

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

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

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

amendment under the Amendment Act of 1974.

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

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

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

provide for acquisition of certain estates of Girasdars and Barkhalidars 'Bid Land' was defined under Section 2(a) of the Act.

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

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

52. Here again, it will have to be stated that this Act was also enacted to provide certain measures for the abolition of the Barkhalidars tenure in Saurashtra. Therefore, while the submissions of the learned senior counsel for the respondent that the above enactments were brought into effect with particular reference to the holding of certain estates by Girasdars and Barkhalidars as well as erstwhile Rulers of State, such restricted application of the Act cannot be held to mean that the definition of 'Bid land' should also be read out in a restricted fashion. As stated by us earlier, the operation of extinguishment of the rights of such specific persons viz., Girasdars and Barkhalidars as well as the Rulers does not mean that the definition assigned to 'Bid land' should be restricted in respect of those specific persons alone and cannot be applied in general for any other purpose. After all, the attempt of the appellants in relying upon the definition of 'Bid land' in those enactments was to understand the nature and use for which the 'Bid land' is put to. It cannot be said that merely because those enactments were brought out for the purpose of extinguishment of the rights of certain class of persons viz. Girasdars and Barkhalidars, the definition of 'Bid land' contained in those Legislations should under no circumstances be considered by any other authority functioning under other enactments. We are convinced that though Saurashtra Act Nos.III of 1952, XXV of 1951 and XXVI of 1951 pertain to the estates held by Girasdars and Barkhalidars as well as the Rulers of the erstwhile Saurashtra State, the definition of 'Bid land' contained in those legislations could however be taken into account for the purpose of understanding the meaning of 'Bid land'. Therefore, the arguments of the learned senior counsel for the respondent in seeking to restrict the meaning of 'Bid land' in the Saurashtra Act Nos.XXV of 1951, Act XXVI of 1951 and Act III of 1952 exclusively to those

specified persons viz., Girasdars, Barkhalidars and the Rulers cannot be accepted. In other words once the 'Bid land' can be defined to mean such land used for grazing of cattle or for cutting grass for the use of cattle irrespective of the nature of possession of such lands with whomsoever it may be, a 'Bid land' would be a 'Bid land' for all practical purposes. It is also to be noted that nothing was brought to our notice that a 'Bid land' is capable of being defined differently or that it was being used for different purpose by different persons.

53. We shall deal with the object of the Amendment Act 1974, namely, for removal of doubts a little later. For the present, inasmuch as, we have to a very large extent accepted the submission of learned counsel for the respondent that the invocation of the Amendment Act of 1974 cannot be made having regard to its subsequent emergence, namely, 01.04.1976 i.e. after the coming into force of Act, 1976 as from 17.02.1976, we confine our consideration to the position that prevailed under the unamended Act of 1960. After all our endeavour is only to find out whether the 1960 Act is applicable in respect of the lands held by the respondent for the purpose of its enforcement or otherwise against the respondent.

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

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

56. According to learned senior counsel for the respondent the definition of 'land' under Section 2(17) after the amendment, namely, after 01.04.1976 seeks to differentiate between the nature of land which would be governed by the provisions of the 1960 Act i.e. one prior to the specified date and thereafter. Under sub-clause (i) of Section 2(17) of the 1960 Act while defining the 'land' it is specifically mentioned that the same would mean "in relation to any period prior to the specified date, 'land' which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such "land". For that purpose when we refer to the definition of 'agriculture' under Section 2(1) of the Amended Act a wider definition was brought in by including in the said definition clauses (d) to (h) which, inter alia, covered the use of any land, whether or not an appanage to rice or paddy land for the purpose of rabmanure, dairy farming, poultry farming, breeding of live-stock, and the cutting of wood which class of lands were specifically excluded from the definition of 'agriculture' prior to the amendment. The proviso to the said sub- clause (1) of Section 2 also specifies that such inclusion in the definition of 'agriculture' was not applicable in relation to any period prior to the specified date, namely, 01.04.1976. That apart, under Section 2(17)(ii) in regard to the period subsequent to the specified date, namely, 01.04.1976 the definition of 'land' would include the lands on which grass grown on its own, the 'Bid land' held by Girasdars and Barkhalidars under the Saurashtra Act Nos.XXV of 1951, XXVI of 1951 and III of 1952 as well as such 'Bid lands' which were held by a person who before the commencement of the Constitution was a 'Ruler' of an Indian State comprised in the Saurashtra area of the State of Gujarat. The contention, therefore, was that but for such inclusion of 'Bid lands' in the amended definition of Section 2(17)(ii) there was no scope to proceed against such 'Bid lands' held by Girasdars and Barkhalidars as well as the 'Rulers' of erstwhile State.

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

58. There can be no quarrel about the proposition of law as propounded by the

learned senior counsel for the respondent and as has been stated by the Constitution Bench of this Court in paragraphs 38 and 39 of Pathumma (supra). In paragraph 39 this Court did say:

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

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

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

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

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

"20. There is one more reason for not accepting the argument of the appellants. The subject lands survived acquisition under the 1952 Act only because they were "bid lands" which by definition under those Acts were treated as lands being used by the girasdars for grazing cattle (see Section 2(a) of the 1952 Act). Now, under the present Ceiling Act, Section 2(1) defines the use of land for the purpose of grazing cattle as an agricultural purpose. Thus, "bid lands" fall under Section 2(1) of the Ceiling Act. This is one more reason for coming to the conclusion that the Ceiling Act as amended applies to "bid lands". (underline ours)

21. It is also important to note that under Section 5(1) of the 1952 Act all lands saved from acquisition had to be "bid lands" which by definition under Section 2(a) of the 1952 Act were the lands being used by a Girasdar or a Barkhalidar for grazing cattle or for cutting grass. If the lands in question were put to any other use, they were liable to acquisition under Section 5(2). Because the subject lands were used for grazing cattle, they got saved under the 1952 Act and, therefore, it is now not open to the appellants to contend that the subject lands are not capable of being used for agricultural purpose."

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

63. Having considered the respective submissions, we find force in the submission of the learned senior counsel for the appellants. A close reading of paragraph 20 is clear to the pointer that irrespective of the definition of 'Bid land'

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

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

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

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

65. The proposition of law has thus been so lucidly expressed in the above decisions, it will have to be held that the additional reasons adduced in our

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

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

67. The next submission of learned counsel for the respondent related to the supervening effect of the Act, 1976 in the State of Gujarat on and after 17.02.1976 which according to learned senior counsel has made the Act of 1974 a 'still born child' and also the submission that after the coming into force of the Act, 1976 there was no authority in the respondent to invoke the 1960 Act in order to acquire the lands of the respondent. As we have refrained from relying upon the Amended Act of 1974 while approving the action of the appellant in seeking to proceed against the respondent for acquiring the surplus lands of the respondent under the Act of 1960, we do not find any dire necessity to deal with the said contention in extenso. The formidable submission raised on behalf of the respondent related to the supremacy of the Act, 1976 over the 1960 Act. The learned counsel pointed out that the respondent filed its return under the provisions of the Act, 1976 on 13.08.1976, that the said return was considered by the competent authority by passing its Order dated 21.05.1983 which was thereafter considered by the Tribunal in its order dated 08.09.1989 and that the appellant/State while dealing with the respondent and the Act, 1976 themselves have mentioned in the reply affidavit in paragraph 4.1 that the lands in Survey No.111/2-3 situated in Madhopur village was reserved for site and service project meaning thereby that they were not agricultural lands. The learned counsel would, therefore, contend that while on the one hand when it came to the question of determining the surplus lands under the provisions of the Act, 1976

the appellant would contend that the lands held by the respondent were not classified as agricultural land and thereby not entitled for exclusion under the said Act, when it came to the question of applicability of 1960 Act they contend that such lands are to be treated as agricultural lands.

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

"9. Land admeasuring 30 acres and 30 Gunthas i.e. 1,24,412 sq. mts., of survey No.111/2 of village Madhopur is a vidi land of the Appellant and that has been brought under the recreational zone of RUDA. That should not have been included in the holding of the Appellant. Here also the application under section 20 is pending with the Government for exemption.

10. Survey No.111/3 of village Madhopur admeasuring 579 acres 27 Gunthas is falling in agricultural zone of RUDA. A certificate has been produced before the Competent Authority and this should not be included in the holding of the Appellant. The Competent Authority has shown Appellant's flat in Bombay admeasuring 223 sq. mts. From the records the Bombay flat was shown as 575.06 sq. mts., being built up property it should not be declared as surplus. Of course the flat is situated in Bombay it should be calculated as 1725.18 sq. mts." (underlining is ours)

69. In paragraph 9 respondent has referred to the land admeasuring 30 acres and 30 Gunthas i.e. 1,24,412 sq. mts. in survey No.111/2 of village Madhopur as vidi land which was brought under the recreational zone of RUDA and, therefore, those lands should not have been included in the holding of the appellant. As far as the land admeasuring 579 acres 27 Gunthas in the very same village Madhopur in survey No.111/3 is concerned, it was specifically claimed that those lands fell in the 'AGRICULTURAL ZONE' of RUDA and, therefore, it should not have been brought within the category of excess lands held by the respondent. In fact, the above submission made on behalf of the appellant far from supporting the stand of the respondent fully supports the stand of the appellant. We, therefore, do not find any conflict in the stand of the appellant while dealing with the nature of land held by the respondent which was earlier dealt with under the Act of 1960 which came to be considered by the authorities under the Act, 1976 pursuant to the return submitted by the respondent on 13.08.1976 under Section 6(1) of the Act, 1976.

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

71. On this aspect, the next submission of the learned senior counsel for the respondent was that since the Act, 1976 having been passed by the Parliament, at the instance of the appellant State which came into effect from 17.02.1976, no other law on the said subject viz, 'land' would operate in the field. The sum and substance of the submission was that having regard to the emergence of the Act, 1976 on and from 17.02.1976, the application of the Act of 1960 would automatically cease to operate. To some extent, we appreciate the submission in so far as it related to the implementation of the Act of 1974 by which the amendment was introduced to the Act of 1960. In that respect, we consider the invocation of Article 252 of the Constitution wherein Sub-clause (2) specifically stipulated that in future, amendments could be carried out only by the

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

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

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

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

* * *

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

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

74. Whatever stated in Paragraph 28 can only be understood to mean that when the State Legislature authorizes the Parliament to pass a legislation in respect of the subject matter of Entry 18, List II of the Seventh Schedule, i.e. 'land' it would cover 'land and building' and would necessarily include 'vacant land' and would take in land of every description including 'agriculture land' or any other kind of land. It also went on to hold that the resolution passed by the State Legislature cannot be said to impose any restriction as it would be contrary to the terms of Article 252 (1) of the Constitution. It was further held that the Parliament was empowered to enact the law pursuant to the surrender of the State to enact a law with said subject by formulating its own prescription as to the nature of urban land in different stages. Beyond that, we do not find any other statement of law propounded in the said decision. Applying the said legal principle, it can only be held that the Act, 1976 in having imposed a restriction by way of ceiling on urban land within the urban agglomeration by excluding agricultural land it was a valid piece of legislation. In this respect, the contention of Mr. Soli J. Sorabji that the State Legislature only intended in its authorization to bring about a legislation only on 'urban immovable land' and not on any agriculture land is quite appealing. We can also state that in paragraph 32 of the said decision, this Court consciously decided not to dilate on the question any further in that judgment as it can be better dealt with separately at a later point

of time. We now hold that the situation has now come where the position has to be made loud and clear to state that the Act, 1976 would govern only such of those lands which would fall within its area of operation within urban agglomeration to the specific exclusion of the agriculture lands and consequently the continued application of the un-amended Act of 1960 remain without any restriction.

75. On the other hand Mr. Soli J. Sorabjee, the learned senior counsel for the appellants placed reliance upon a Constitutional Bench decision of this Court in *Thumati Venkaiah* (supra). Almost an identical situation was dealt with by this Court in the said decision. That case also arose from the State of Andhra Pradesh. To briefly refer to the facts, in the State of Andhra Pradesh a ceiling of agricultural holdings was sought to be imposed by enacting an Act called The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act (Act 1 of 1973 (hereinafter referred to as the 'Andhra Pradesh Act'). It was enacted by the Andhra Pradesh Legislature on 01.01.1973. The Act was challenged before the High Court of Andhra Pradesh. However a Full Bench of the High Court negated the challenge by its judgment dated 11.04.1973. The Act was however brought into force on and from 01.01.1975. The amendments were brought to the said Act by Amendment Act of 1977 with retrospective effect from 01.01.1975. After the amendments, again the Act was challenged on the main ground that by reason of enactment of the Act, 1976, the Andhra Pradesh Act has become void and inactive. It can be validly mentioned that the subsequent contention of the respondent herein was the focal point in the said decision. Dealing with the said contention, the Constitutional Bench has held as under in paragraph 5:

"5. Now, as we have already pointed out above, the Andhra Pradesh Legislature had, at the time when the Andhra Pradesh Act was enacted, no power to legislate with respect to ceiling on urban immovable property. That power stood transferred to Parliament and as a first step towards the eventual imposition of ceiling on immovable property of every other description, Parliament enacted the Central Act with a view to imposing ceiling on vacant land, other than land mainly used for the purpose of agriculture, in an urban agglomeration. The argument of the landholders was that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomerations and since the concept of urban agglomeration defined in Section 2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This argument, plausible though it may seem, is in our opinion, unsustainable. It is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immovable property. But the only urban agglomerations in the State of Andhra Pradesh recognized in the Central Act were those referred to in Section 2(n)(A)(i) and

there can be no doubt that, so far as these urban agglomerations are concerned, it was not within the legislative competence of the Andhra Pradesh Legislature to provide for imposition of ceiling on land situate within these urban agglomerations. It is, however, difficult to see how the Andhra Pradesh Act could be said to be outside the legislative competence of the Andhra Pradesh Legislature insofar as land situate in the other areas of the State of Andhra Pradesh is concerned. We agree that any other area in the State of Andhra Pradesh with a population of more than one lakh could be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, but until it is so notified it would not be an urban agglomeration and the Andhra Pradesh Legislature would have legislative competence to provide for imposition of ceiling on land situate within such area. No sooner such area is notified to be an urban agglomeration, the Central Act would apply in relation to land situate within such area, but until that happens, the Andhra Pradesh Act would continue to be applicable to determine the ceiling on holding of land in such area. It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is therefore clear that in an area other than that comprised in the urban agglomerations referred to in Section 2(n)(A)(i), land held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only land within the ceiling area would be allowed to remain with him. It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply, if and when the area in question is notified to be an urban agglomeration under Section 2(n)(a)(ii) of the Central Act. We fail to see how it can at all be contended that merely because an area may possibly in the future be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration at the date of enactment of the Andhra Pradesh Act. Undoubtedly, when an area is notified as an urban agglomeration under Section 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is, therefore, not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature.” (Emphasis added)

76. In the first blush, it appears as though the said decision support the contention of the respondent. But in paragraph 5, we have highlighted certain relevant conclusions which fully support the stand of the appellants. This Court made it clear thereunder that the Parliament enacted the Central Act with a view

to impose ceiling on vacant land other than the land mainly used for the purpose of agriculture in an urban agglomeration. The arguments of the land holders that the concept of urban agglomeration defined in Section 2(n) was an expansive concept and any area which was already notified as urban agglomeration, as well as, which can be notified in future based on the increase in population as urban agglomeration and, therefore, the Andhra Pradesh Act was ultra vires lacking legislative competence was held to be unsustainable. It was also held that the Andhra Pradesh Act seeks to impose ceiling on land falling within the urban agglomeration, it would be outside the area of its legislative competence as it cannot provide for imposition of ceiling on urban immovable property after the emergence of Act, 1976. It was thus made clear that after the coming into force of the Act, 1976 by virtue of Article 252 (1) and (2) of the Constitution, there would have been no scope for the State Legislature to bring about a legislation for imposing a ceiling on an urban immovable property which falls within the urban agglomeration. It was also made clear that other areas which were not declared as urban agglomeration came to be subsequently declared as urban agglomeration and notified as such, the Central Act would automatically apply and in relation to such notified area also, the State Legislature would be incompetent to make any legislation by way of imposition of ceiling on and after such declaration is made. While referring to such a situation, this Court made it clear that the Andhra Pradesh Act continue to be applicable for determining the ceiling of holding of lands in such area, prior to any such subsequent notification under the Act, 1976. It was further made clear that since the Andhra Pradesh Act came into force on and from 01.01.1975, the surplus holding of land in excess of the ceiling area were required to be determined with reference to that date and if there was any surplus, it was to be surrendered to the State Government. It was further reinforced by stating that in an area other than that comprised in the urban agglomeration, the land held by a person in excess of the ceiling area would be liable to be determined as on 01.01.1975 under the Andhra Pradesh Act and the land within the ceiling area alone would be allowed to remain with him.

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

"It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is, therefore, clear that in an area other than that comprised with Urban Agglomeration referred to in Section 2(n) (A) (i), land held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only Land within the ceiling area would be allowed to remain with him. It is only in respect of Land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply...."

"Undoubtedly, when an area is notified as an urban agglomeration under Section

2(n)(A)(ii) , the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is therefore not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature.” (Emphasis added) A close and careful reading of the said statement of law declared by this Court makes it clear that if as on the date when the Andhra Pradesh Act was already in force i.e. as on 01.01.1975, the determination of surplus land as per the provisions of the said Act should have been determined and only thereafter the implication of the Act, 1976 could be applied. The specific statements “It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply.....” “.....but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area.....” makes the above position clear without any ambiguity.

78. Afortiori if the said ratio decided by the Constitution Bench of this Court is applied, there would be no difficulty in holding that as held by us earlier, since as per the un-amended Act of 1960, ‘Bid land’ held by the respondent fell within the definition of ‘agriculture’ under Section 2(1) and consequent definition of ‘land’ as defined in Section 2(17) of the Act of 1960, the determination of holding of such excess agriculture land under the said Act of 1960 prior to the coming into force of the Act, 1976 should be operated upon. Having regard to the said legal position, we hold that the action of the appellants in having passed the orders impugned before the High Court were fully justified and interfering with the same by the learned Single Judge and the Division Bench of the High Court by the impugned order in this Civil Appeal are liable to be set aside.

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

being not part of urban agglomeration the 1960 Act would apply. We find that the said argument was simply brushed aside. The submission was not dealt with in the proper perspective.

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

81. In reply to the said submission Mr. Soli J. Sorabjee, learned senior counsel for the appellants contended that the principle of *res judicata* cannot be applied as the parties were different and the subject lands were different and the respondent had nothing to do with the issue raised in the decision relied upon by the learned senior counsel for the respondent. It was also submitted that since the ingredients to support the principle of *res judicata* as set out under Section 11 of the Code of Civil Procedure not having been fulfilled, the submission of the learned senior counsel for the respondent cannot be considered. The learned senior counsel for the appellants brought to our notice the facts set out in the joint affidavits of the two Deputy Collectors in S.C.A. No.941 of 1980, wherein it was specifically averred to the effect that since long time, to the knowledge of the land holders, the land in question was demonstrated as meant for residential purpose in the Master Plan which was prepared since August, 1976 and that the land in question fell within the definition of 'urban land' under Section 2(o) of the Act, 1976 and therefore the overriding effect of Section 42 of the Act, 1976 excluded the application of the Act of 1960.

82. When we refer to the facts mentioned in the joint affidavit of the two Deputy Collector in S.C.A.No.941 of 1980, we find that the submissions of the learned senior counsel for the appellants were clearly set out therein. The lands which

were originally classified as 'Bid lands' came to be specifically classified as land meant for residential purpose in the Master Plan prepared in the year August, 1976 and thereby came within the definition of 'urban land' under Section 2(o) of the Act, 1976. Whatever decision rendered based on those facts cannot be equated to the facts involved in the case on hand, in order to apply the principle of res judicata and thereby non-suit the appellants. The principle of res judicata is governed by Section 11 of the Code of Civil Procedure. Applying the ingredients set out in the said provision, the respondent is bound to show that the issue which was directly and substantially involved between the same parties in the former suit and was tried in the subsequent suit, in order to fall within the principles of res judicata. Applying the substantive part of Section 11 of C.P.C. we fail to see how any of the ingredients set out therein are fulfilled in order to apply the principle of res judicata. The parties are entirely different, the fact in issue as pointed out by the learned senior counsel for the appellants would disclose that they were based on entirely different set of facts and circumstances and therefore we do not find any substance in the said submission raised on behalf of the respondent. The said submission, therefore, stands rejected.

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

"Section 22 having been unconstitutional when it was enacted and, therefore, void, no proceedings could be taken thereunder on the basis of the Validation Act as the effect of unconstitutionality of the law was to efface it out of the statute book." Dealing with the said contention, the Constitution Bench has held at page 1469 and 1474-75 as under:

".....If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment.

The result of the authorities may thus be summed up: Where an enactment is

unconstitutional in part but valid as to the rest, assuming of course that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground that it is unconstitutional will operate *proprio vigore* when the Constitutional bar is removed, and there is no need for a fresh legislation to give effect thereto. On this view, the contention of the petitioners with reference to the Explanation in s.22 of the Madras Act must fail...." (emphasis added)

In the light of the said proposition of law laid down by the Constitution Bench decision of this Court, it will have to be held that once the Act, 1976 came to be repealed whatever constitutional embargo that was existing as against the Act of 1960 as well as the Amendment Act of 1974 ceased to exist and the Act would operate in full force. In the light of the said settled legal position, we need not dilate much on this issue and we leave it at that.

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

6.10 In view of the above, the case of the present petitioner cannot be considered as 'bid land' which has been observed in the earlier order passed by this Court.

6.11 At this stage, it is relevant to refer to the judgment in the case of Narendrabhai Amarabhai Khachar (supra), about the applicability of Section 6(3) (B) and 6(3)(C), the relevant paragraphs being paragraphs 7 and 8 which read as under:

"7 We have heard learned advocates for the respective parties and perused the record of the case. As far as the contention of learned advocate for the appellant in Letters Patent Appeal No.1165 of 2013 in respect of grant of liberty with regard to Section 6(3-B) and 6(3-C) of the Act is concerned, the learned Single Judge has categorically observed in para 19 as under:

"19. The ratio of the Supreme Court and pronouncement of this Court is unequivocally clear qua reckoning of the bid land, which indicate that member of the family if are exceeding 5 in numbers, irrespective of their gender, then, each additional member is entitled for 1/5th of the allocable area and therefore, the Court has to allow the petition partly as it cannot be said that the submission, is

not found in the proceedings, but the Court at the same time, is not impressive of the submission of the petitioner qua invocation of Section 6(3C), as it could be seen from the proceedings, the arguments qua mother's existence has not been canvassed in any manner nor has the same being argued or attempted to be established that mother was part of family and as it is observed in para-41 of the judgment reported in case of The State of Gujarat and Another Vs. K.S. Patel and others (supra), and in absence of any plea, it cannot be invoked Section 6(3C). This argument qua this submission in respect of Section 6(3C) is required to be rejected and is rejected."

7.1 The only contention raised in Letters Patent Appeal No.1300 of 2013 is in respect of repeal Act and once the Act is repealed in 2004, the benefit of repeal Act should not be given to the appellant. The aforesaid submission is made even in Letters Patent Appeal No.1165 of 2013 also.

7.2 As far as the submission in respect of the repeal Act is concerned, when the entire issue is covered by following the decision of this Court in the case of Khachar Godadbhai Pithubhai (supra) and the decisions rendered by the Hon'ble Apex Court in the cases of Nagbhai Najbhai Khachar (supra) and Manoharsinhji Pradyumansinhji Jadeja (supra), wherein it is categorically held that the bid land would squarely fall within the definition of agricultural land and once the entire issue is covered by the aforesaid three judgments, more particularly, when there is nothing on record to point out as to how the repeal Act would make the aforesaid orders redundant, we do not agree with the contentions raised by learned advocates for the appellants. 8 In view of the above, we are in complete agreement with the view taken by the learned Single Judge in both the judgments. We do not find any reason to interfere with both the judgments dated 19.8.2013 and 30.8.2013 rendered by the learned Single Judge in Special Civil Application Nos.1938 of 1984 and 5113 of 1985, respectively. Accordingly, both the appeals fail and the same are hereby dismissed. Consequently, all the connected civil applications stand disposed of."

6.12 It is also required to be noted that as observed by the Mamlatdar and ALT in his order dated 1.3.1984 that Babbhai Khachar stated that in his family, he himself, his wife and two sons amongst which the age of one son on 1.4.1976 is major for which earlier certificate of doctor is produced and written reply was submitted. Considering that fact available on the record, now it is fruitful to refer to the judgment in the case of State of Gujarat V/s Jat Laxmanji Talasji reported in (1988)2 SCC 341, more particularly, paragraphs 6 to 9 which read as under:

"It is not in dispute that the family of the land-holder consisted of 9 members if the heads of the members of the family are counted. The first condition required to be satisfied in order to attract Section 6(3B) is that the family must consist of more than 5 members. The debate has centred round the question as to how the number of the members constituting the family should be counted. In counting the members of the family the Tribunal has excluded from consideration the mother and the three minor daughters of the land holder. Excluding these four

persons the family consisted of 5 members. In that event Section 6(3B) will not be attracted because one of the conditions precedent for the applicability of the provision is that the family must consist of more than 5 members. The High Court on the other hand has upheld the contention of the land holder that his family in fact consisted of 9 members inasmuch as his mother and his wife as also his minor daughters were members of his family. The Tribunal in terms observed that:

"for the purpose of Section 6(3B) family of the applicant consisted of not more than 5 members eventhough as a matter of fact there are 9 members in his family."

This reasoning is obviously fallacious. The expression 'family' has not been defined in the Act. One has therefore to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression. Collins English Dictionary defines family as:

"a primary social group consisting of parents and their offspring, the principal function of which is provision for its members."

"a group of persons related by blood; a group descended from a common ancestor."

"all the persons living together in one household."

Having regard to this definition it can be safely concluded that the land-holder, his wife and his offspring consisting of three minor sons and three minor daughters would certainly constitute a family even if the mother of the land holder is excluded from consideration. Thus in any view the family of the land holder consisted of 8 members including himself, his wife, three minor sons and three minor daughters. The Tribunal was therefore clearly in error in taking the view that the family consisted of not more than 5 members. Learned counsel for the appellant however contended that in applying the test whether or not the family consisted of 5 members regard must be had only to the members of the family belonging to the specified category namely minor sons in so far as the composition of the family of the land holder in the present case is concerned. In other words the contention is that the land holder, his wife and his three minor sons are the only five persons of the family for the purposes of Section 6(3B). In our opinion there is no warrant for reading Section 6(3B) in this artificial and truncated manner. On a plain reading, Section 6(3B) is attracted where a family consists of more than 5 members "comprising a person and other members belonging to all or any one of the following categories viz. (i) minor son" In the present case the family of the land holder consists of more than 5 members. The family also includes persons of one of the specified categories viz. the minor sons. Thus, all the ingredients of Section 6(3B) are satisfied. In order to claim benefit of Section 6(3B) the test which must be satisfied is a two fold test. First, whether the claimant's family consists of more than five persons. In the present case the answer to this test is in the affirmative.

The second test that is required to be answered in favour of the person who claims the benefit of Section 6(3B) is that such family must also comprise of one individual and other members besides himself who must belong to all or any of the three specified categories. This test is also answered in favour of the respondent inasmuch as the family does comprise of the respondent and other members and from out of the other members, three belong to one of the specified categories viz. 'minor son'. In other words access to Section 6(3B) is barred by two doors. In order to secure entry the family must consist of more than 5 persons. If there are more than 5 persons including the land holder himself, the first door will be opened and the land holder will be entitled to have an access provided the second door does not bar his entry inside the beneficial area. The second door will also be opened provided that some of the other members meaning thereby members other than individual land holder belong to one of the three categories specified in the section. The second door would be opened provided he has got minor sons. Admittedly, the respondent has three minor sons. Therefore both the doors which bar the access of the land holder to the benevolent provisions are opened. It is not possible to accede to the submission that in ascertaining whether or not the pre-condition is satisfied only the members of the specified category should be taken into account. For, to do so would be to kill the letter as well as the spirit of the concerned provision. We are therefore not prepared to uphold the plea of the appellant-state that the High Court has not correctly interpreted the relevant provision in the case giving rise to the present appeal.

Under the circumstances the appeal deserves to fail. But before we conclude we must set aright an inadvertent error made by the High Court in making computation of the extent of the additional land which the respondent was entitled to hold in excess of the prescribed ceiling in the context of section 6(3B). Computation in this behalf must be made by applying the formula embodied in Section 6(3B) viz. that the family shall be entitled to hold land in excess of the ceiling area to the extent of "one fifth of the ceiling area for each member in excess of five" subject to the rider that the total area does not exceed twice the ceiling area. It needs to be clarified that on a true interpretation of the provision "each member in excess of five" must of logical necessity mean each 'such' member of the specified handicapped category. In the present case there were 3 members in the family and it comprised of three members of the specified category viz. 3 minor sons. Under the circumstances for each minor son in excess of the five members the holder was entitled to 1/5th of the ceiling area in excess of the pre-scribed ceiling. That is to say he was entitled to 3/5th of the prescribed ceiling over and above the ceiling area subject to the rider that the total retainable holding of the family did not exceed twice the ceiling area. This aspect was lost sight of by the High Court in making the computation. Of course in the ultimate result in the facts of the present case nothing turns on it as in any view of the matter the extent of the land held by the family computed on this basis would not exceed twice the ceiling area. The holding of the family consisted

of 60 acres and 4 gunthas. And making a computation on the aforesaid basis having regard to the fact that the ceiling area was 45 acres, the family would be entitled to additional 27 acres ($45/5=9 \times 3=27$). Thus he would be entitled to hold 72 acres ($45+27=72$) whereas the holding of respondent consisted of only 60 acres. Therefore the holding of the family was not in excess of the prescribed ceiling as computed in the aforesaid manner. While the High Court in terms followed its earlier decision in Nathekhan's case (supra) it overlooked the ratio of the decision in this behalf. What was overlooked was the ratio reflected in the passage from para 6 of the decision extracted hereinbelow which is in accord with formula indicated by us:

"..... There were two minor sons in the family of Nathekhan and one minor son in the family of Majamkhan. Since the family unit of each brother exceeded five in number so far as Nathekhan is concerned, he was entitled to hold land in excess of the ceiling area to the extent of two-fifth of the ceiling area and Majamkhan with one minor son was entitled to hold land in excess of the ceiling area to the extent of one-fifth thereof. Since the excess land in the case of each brother was of 4 acres and 38.5 gunthas being less than even one-fifth of the ceiling area, it could not be held that their holding exceeded the permissible ceiling."

6.13 Therefore, considering the above position of law, Section 6(3)(B) of the Act is required to be considered and therefore also, the say of the petitioner about the entitlement of the further share is, looking to the facts available on record, found unacceptable.

6.14 Thus, this contention is not available to the present petitioner, more particularly, when the present petitioner has not urged this contention before any authority below.

6.15 In view of the above, the judgment and order passed by the authorities below are well reasoned orders and there is no illegality, arbitrariness or perversity in the findings given by the authorities below and contention raised by the present petition about Section 6(3)(B) and Section 6(3)(C) are also raised at the belated stage and, therefore there is no ground made out to exercise the powers under Articles 226 and 227 of the Constitution of India. This petition is required to be dismissed and accordingly it is dismissed as devoid of any merits. Notice is discharged. No order as to costs.