

(1989) 08 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1534 of 1981

Dr. Sathyanarayan Ramjilal Mehadia

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Constitution of India, 1950 — Article 252(1), 39

Land Acquisition Act, 1894 — Section 4, 4(1)

Maharashtra Land Revenue Code, 1966 — Section 336

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 2(1), 2(b), 2(h), 2(n)

Citation : (1989) 08 BOM CK 0008

Hon'ble Judges : M.S. Ratnaparkhi, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : P.G. Palshikar, for the Appellant; S.Z. Deshbhratar, Asstt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—This writ petition challenges the orders of the Competent Authority and of the Collector in appeal against the same, passed under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short the "Urban Land Ceiling Act").

2. Briefly the facts are that the petitioner owns S. No. 37, area 5.50 acres of Mouza Kachhimet P. C. No. 7, taluq and district Nagpur. The said land is situated near the National Highway No. 6 i.e. Nagpur-Bombay Road. The father of the petitioner had made an application u/s 156 of the M, P. Land Revenue Code, 1954 (for short the M.P.L.R. Code), and the relevant rules framed thereunder for conversion of his aforesaid agricultural, land into non-agricultural land. The Sub-Divisional Officer, Nagpur, in Revenue Case No. 9/A-2/62-63 by his order dated 18-7-1963 granted permission for conversion the suit land into non-agricultural land upon the condition's laid down in the said order. The said conditions principally relate to the non-construction of buildings within certain area from the highway as per the provisions of the Ribbon Development Rules published under

the circular of the Maharashtra Government dated 8-10-1958 and also as per the provisions of the resolution of the Government No. BDR/W dated 10-3-1963, referred to in the aforesaid order of the Sub-Divisional Officer. According to the petitioner, however, pursuant to the said permission, the suit land was not actually put to the non-agricultural use by the petitioner. In the meanwhile, the Maharashtra Regional and Town Planning Act, 1966 (for short the Town Planning Act") came into force. The Development Plan for the city of Nagpur was prepared and sanctioned thereunder by the Government of Maharashtra on 30-7-1976, according to which, the suit land was included in the green zone for the purposes of agriculture.

2-A. The Urban Land Ceiling Act was enacted by the Parliament pursuant to the resolutions passed by the 11 States, including the State of Maharashtra under Article 252(1) of the Constitution of India, and the said Act came into force with effect from 17-2-1976, on which date it received the assent of the President. After the Urban Land Ceiling Act came into force, proceedings were initiated against the petitioner for determination of surplus vacant land belonging to him. The petitioner filed his statement in the prescribed form in regard to the vacant land owned by him. He claimed that the suit land was not covered by the definition of the expression "vacant land" because being near the Highway, the construction of the buildings was not permissible under the Ribbon Development Rules. The Competent Authority however was not satisfied with the statement filed by the petitioner. Hence it issued him a notice u/s 8(3) of the Urban Land Ceiling Act, in pursuance of which the petitioner raised objections to the draft statement prepared by the Competent Authority. The Competent Authority rejected the objections raised by the petitioner and published the final statement determining the vacant land held by the petitioner. According to it, the petitioner held 20758.00 sq. mtrs. as surplus vacant land in accordance with the provisions of the Urban Land Ceiling Act. The petitioner preferred an appeal before the Collector, Nagpur, who rejected the same. Feeling aggrieved, the petitioner has preferred the instant writ petition in this Court

3. The learned counsel appearing for the petitioner has raised two contentions before us. The first contention is that the suit land is an agricultural land and hence it is not included within the definition of the expression "vacant land" given in section 2(o) and in section 2(q) of the Urban Land Ceiling Act. His second contention is that even assuming that the said land is not mainly used for the purpose of agriculture, it is still not the "vacant land" within the meaning of the said expression "urban land" because it falls in the category (i) of the definition of the expression "vacant land" given in section 2(1) of the Act. In substance, the submission is that since in the Master Plan i.e. the Development Plan for the city of Nagpur under the Town Planning Act, the suit land is shown in the green zone for the agricultural purposes, no building can be constructed upon the said land under the relevant building regulations and hence it is covered by the, aforesaid category (i) in the definition of the expression "vacant land".

4. For proper appreciation of the above contention raised on behalf of the petitioner, it would be appropriate to reproduce some of the relevant definitions under the Act:

2(b) "building regulations" means the regulations contained in the master plan, or the law in force governing the construction of buildings:

2(h) "master plan" in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out;

2(n) "urban agglomeration",-

(A) in relation to any State or Union territory specified in column (1) of Schedule I, means -

(i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefore shall be one kilometer;

(B) in relation to any other State or Union territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and (any agglomeration so declared shall be deemed to belong to category D in Schedule I and the peripheral area therefore shall be one kilometer;

2fo)f "Urban land" means, -

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

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a Panchayat, does not include any such land which is mainly used for

the purpose of agriculture,

Explanation. - For the purpose of this clause and clause (q),-

(A) "agriculture" includes horticulture but does not include-

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of livestock, and -

(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture, and

2(q) "vacant land" means land, not being land mainly used for the purposes of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a village in the

revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

5. It is not in dispute that the suit land is within the municipal limits of the Nagpur Corporation and that it falls within the Nagpur Urban agglomeration, as envisaged by the definition of the expression "urban agglomeration" given in section 2(n) of the Urban Land Ceiling Act. It is also not in dispute that the suit land was converted into the non-agricultural land in the year 1963 as referred to above but was not put to any non-agricultural use by the petitioner pursuant to the permission obtained by him. However, since the land was converted into non-agricultural land, in the revenue or land records, after its conversion, it was not recorded as agricultural land. It is also pertinent to see that after its conversion for non-agricultural use, although it is not put to such non-agricultural use, it is also not used for agricultural purposes by the petitioner. It is in the light of the above facts that we have to consider the contentions raised on behalf of the petitioner in the instant writ petition.

6. In considering the first contention raised on behalf of the petitioner, it is necessary to consider the definition of the expression "urban land" given in section 2 of the Urban Land Ceiling Act. According to the said definition, the urban land means any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included, within the local limits of a municipality or any other local authority.

6-A. However, the land which is mainly used for the purposes of agriculture is excluded from the definition of the expression "urban land". What is meant by "agricultural land" is given in the Explanation in the definition of the expression "urban land", which connotation is also applicable to the definition of the expression "vacant land" given in section 2(q) of the Urban Land Ceiling Act. Perusal of the Explanation in section 2(J) of the said Act shows that clauses (A) and (B) of the said definition make it an artificial definition in the sense that various restrictions are placed before the land can be said to be used mainly for the purposes of agriculture. As per clause (C) of the Explanation it is not enough that the land should be used for the purposes of agriculture as given in clause (A) of the said explanation. Clause (C) provides that the land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture.

7. As pointed out earlier, the suit land was converted into non-agricultural land by the order of the learned Sub-Divisional Officer dated 18-7-1963, referred to above. Naturally, therefore, it is not recorded in the revenue or the land records as an agricultural land. The requirement of clause (B) of the Explanation that the land must be entered in the revenue or land records before the appointed day for the purpose of agriculture is not thus satisfied in the instant case. It is, however,

submitted on behalf of the petitioner that after the permission was granted by the Sub-Divisional Officer the land was not actually put to the non-agricultural use thereafter and the said permission had thereafter lapsed in view of rule 4(c) of the Maharashtra Land Revenue (Conversion of Use of land and Non-Agricultural Assessment) Rules, 1969, which came into force with effect from 25-7-1969. It may be seen that the M. P. Land Revenue Code was repealed when the Maharashtra Land Revenue Code, 1966 (for short the M.L.R. Code) came into force with effect from 15-8-1967 under which the aforesaid Rules about conversion of agricultural lands for non-agricultural purposes were framed. According to the learned counsel for the petitioner clause (c) of rule 4 of the aforesaid Rules requires that the agricultural land which is allowed to be converted for the non-agricultural use, must be put to such non-agricultural use within one year from the date of the order made by the Collector granting such permission, failing which, unless the said period is extended by the Collector from time to time, the permission granted shall be deemed to have lapsed. The submission thus is that since the suit land was not put to non-agricultural use, even within one year after the said rules came into force, the permission for non-agricultural use must be deemed to have lapsed.

8. We do not think that the above contention raised on behalf of the petitioner is well-founded. Perusal of section 336 of the M.L.R. Code which repeals the M.P.L.R. Code shows that as per clause (a) of its proviso anything duly done under the Act repealed is not affected by such repeal. When the permission was granted to the petitioner as per the relevant rules under the M.P.L.R. Code, which did not prescribe any such restriction, the action taken under the Rules was complete and it could not, therefore, be affected by the conversion of use of the land rules framed under the M.L.R. Code. What we have further to see is that according to rule 4 of the above referred conversion of the use of the land rules all the conditions referred to therein are required to be incorporated in the permission granted by the authority. Since no such condition is incorporated in the permission granted in the Order of the learned Sub-Divisional Officer dated 18-7-1983, the provisions of rule 4(c) of the aforesaid conversion rules cannot be attracted in the instant case. Moreover, even assuming that the permission has lapsed as urged on behalf of the petitioner, still the suit lands cannot be said to be used mainly for the purpose of agriculture, because as required by clause (b) of the Explanation in the definition of the expression "urban land" the said land is not recorded in the revenue or the land records as an agricultural land.

9. It is next urged that at any rate, after the Development Plan was sanctioned by the State Government under the Town Planning Act in which the suit land was included in the green zone for the purposes of agriculture, the said permission must be deemed to have lapsed and the said land must be held to be an agricultural land. In our view, although the effect of the inclusion of the suit land for the purposes of agriculture in the Development Plan would not permit the petitioner to carry out any non-agricultural activity upon the said land, it cannot be said that the said land stands converted into non-agricultural land. In any

view of the matter, it cannot be held that the suit land is used mainly for the purpose of agriculture within the meaning of the said expression given in the said section 2(o) of the Act. The above contention raised on behalf of the petitioner thus deserves to be rejected.

10. Turning now to the second contention raised on behalf of the petitioner, what has to be seen is what the first clause in the definition relating to "vacant land" means, in particular the expression "construction of a building" used therein. As already stated in the Development Plan sanctioned by the State Government under the Town Planning Act, the suit land is included in the green zone for the purposes of agriculture. The question which has, therefore, to be considered is whether it is permissible under the building regulations to have construction of a building in the land which is shown for the purposes of agriculture. The expression "master plan", which is defined in section 2(h) of the Act means in relation to an area within an urban agglomeration or any part thereof the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out. In our State, we have already the Town Planning Act referred to by us above, whose purpose is to plan development and use of the land in the regions established for that purpose and to prepare Development Plans for the said purpose. It is in accordance with the elaborate procedure laid down under the Town Planning Act that the Development Plan in the urban area of the city of Nagpur i.e. the municipal limits of the city of Nagpur is prepared and sanctioned by the Government on 30-7-1976, as referred to above. The said Development Plan is thus the master plan within the definition of the expression "master plan" given in section 2(h) of the Urban Land Ceiling Act.

11. It is pertinent to see that the expression "building" as such is not defined under the Urban Land Ceiling Act. However, the expression "building, regulations" is defined in section 2(b) of the said Act, which means the regulations contained in the master plan, or the law in force governing the construction of buildings. It may be seen that the Master Plan, prepared for the urban area i.e. the municipal limits of the city of Nagpur, contains the Building-Regulations and the Development Control Rules sanctioned by the State Government vide Government Resolution dated 3-6-1976. The expression "building" is defined in rule 1(D) (iii) of the said Rules and the expression "zoning regulation" is defined in rule 1 (b)(v) of the said Rules. The expression "building" therein is no doubt very wide. However, what we are concerned with is the definition of the expression "zoning regulation". It is a regulation other than one contained in the above rules or the regulations, made under clause (h) of section 90 of the Nagpur Improvement Trust Act, 1936.

12. The Nagpur Improvement Trust has in accordance with the provisions of section 90(h) of the Nagpur Improvement trust Act, 1936, framed building bye-laws called the Building Bye-laws and Development Control Rules. Bye-law No.

14.1 of the above Bye-laws of the Nagpur Improvement Trust shows the classification of the lands for various purposes. The said classification is as under:

- 1) Residential Zone - Purely residential (R1): - Residential with shop Lines at Ground Floor (R2);
- 2) Commercial Zone - Local Commercial Area (C1) - District Commercial Area (C2)
- 3) Industrial Zone - Service Industries (II) - General Industries (12) - Special Industries (13)
- 4) tireen Zone:
- 5) Special Reservations.

Bye Law No. 6 and in particular relevant for our purpose is bye-law No. 6.7 which gives the uses which are permitted in the "Green Zone" asunder:

"GREEN ZONE"

The following uses shall be permitted in Green, Zone:-

- i. All agricultural uses except stabling of buffaloes on a commercial scale subject to a limit of 10 cattle per hector, providing the accessory building, tents, pigsties and stables
- ii. Garden and Poultry Farms not more than 500 sq. mt. per hector.
- iii. Forestry
- iv. Golf Clubs and links
- v. Public parks, private play fields, summer camps for recreation of all types.
- vi. Race tracks and shooting ranges.

13. Perusal of the above bye-law No. 6.7 permitting uses in the Green Zone would show that for the purpose of agricultural uses, certain accessory building, tents, pigsties and stables are permissible construction in the green zone. What is material to be seen from the above bye-laws is the bye-law No. 14.4.1 which provides that "where use of a site is specifically designated on the Development Plan, it shall be used only for the purpose so designated. It is this provision of the bye-law No. 14.4.1 read with the master plan which shows the reservation of the suit lands for the agricultural purposes which is pressed into service on behalf of the petitioner in the submission that no construction of building is permissible under the Building Regulations upon the land shown for agricultural purposes in the Green Zone. Apart from it, the provisions of the Town Planning Act also are relied upon to show that if the land is reserved for any particular purpose, it cannot be used for any other purpose unless in accordance with the procedure laid down under the Town Planning Act, the Development Plan is modified and such purpose is changed.

14. It is clear that the construction of a building as such upon the land covered by the green zone area which is reserved for the purposes of agriculture is not permissible. However, for the purpose of agriculture some construction is permissible as laid down in the bye-law No. 6.7 of the bye-laws of the Nagpur Improvement Trust, Nagpur, referred to above. It is in this context that we have to determine what the expression "building" used in clause (i) of the definition of the expression "vacant land" u/s 2(q) of the Urban Land Ceiling Act means. As we have pointed out, the said expression is not defined in the above Act.

15. In construing a statute or statutory provision, it is necessary to bear in mind the rule of construction that "the key to the opening of every law is the reason and the spirit of the law it is the animus impotents, the intention of the law-maker expressed in the law itself, taken as a whole and hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context meaning by this as well the title and the preamble as the purview or enacting part of the statute", as laid down by Lord Somervilla, J. in AG. vs. HRH Prince Ernest Augustus, (1957) 1 All ER 49 (HL)p. 61, which is itself based upon the above observations of Sir John Nicholl, J. in Brett vs. Brett, (4) (1826) 3, Add. 210 at P. 216. It is pertinent to see that Sir John Nicholl, J. has attached special importance to the preamble in the above case. Similarly, Chief Justice Dyer, J. has also observed in the case of Stowel vs. Lord Zough, (1569) 1 Plowe 353 at P. 369 that the preamble is a key to open the minds of the makers of the Act, and the mischief which they intended to redress. It is thus well settled that the preamble being a part of an enactment is an admissible aid to construction.

16. As regards the use of the statement of objects and reasons in the construction of statutes, it is held by S. R. Das, J. in the case of The State of West Bengal Vs. Subodh Gopal Bose and Others, that although the statement of objects and reasons is not admissible as an aid to construction, it is admissible for ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. Similar view is expressed by the Supreme Court in the case of the State of West Bengal Vs. Union of India, and Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa, . However, in Chern Taong Shang and Others Vs. Commander S.D. Baijal and Others, , it is observed by the Supreme Court in para 24 of its judgment that the objects and reasons of the Act are to be taken into consideration and not the debates in Parliament on the Bill. Be that as it may, bearing the above principles of construction in mind, we proceed to consider the question of interpretation of the word "building" in clause (1) of the definition of the expression "vacant land", given in section 2(q) of the Urban Land Ceiling Act.

17. The statement of objects and reasons as well as the preamble of the Urban Land Ceiling Act would show that it is enacted with a view to preventing the concentration of urban land in the hands of a few persons and profiteering

therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. It is with this view in mind that according to the objects and reasons of the Urban Land Ceiling Act as well as its preamble, the said Act provides for imposition of a ceiling limit upon the vacant land in urban agglomeration, for the acquisition of land above the ceiling limit, to regulate the construction of buildings on such land, and the matters connected therewith.

18. It is clear from the above statement of objects and reasons and the preamble of the Urban Land Ceiling Act that the construction of the buildings upon the vacant land is sought to be regulated thereunder with a view to subserve the common good which object is reinforced by section 23(4) of the Urban Land Ceiling Act, which deals with the question of disposal of surplus vacant land acquired by the State under the above Act. It may be seen that sections 23 and 24 of the above Act deal with the question of disposal of the surplus vacant land acquired by the State. Although sub-sections (1),(2) and (3) of section 23 deal with the industrial purpose, in the case of *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, in which the validity of section 23 was inter alia challenged, it is held that sub-Sections (1),(2) and (3) of section 23 are enabling and not compulsive and the disposal of the excess vacant land must, therefore, be strictly governed by the mandate of sub-section (4) of section 23, subject to this, that in a given case such land may be allotted to any person for any purpose relating to, or in connection with, any "industry" or for the other purposes mentioned in sub-section (1) of section 23. The object of disposal of the surplus land is thus to subserve the common good which object is in consonance with the Directive Principles of State Policy enshrined in Article 39(b) and (c) of the Constitution of India. Although not as any aid to construction, it can incidentally be seen that the above purpose of utilisation of surplus land is reflected in the guidelines, issued by the Central Government on 23-12-1976 (see paras 3 and 4 thereof and the guidelines issued by the State Government in its G. R. dated 20-2-1984).

19. All the above discussion shows that the intention of the Urban Land Ceiling Act is to acquire such lands which could be used for the construction of buildings for the above purposes. If the land is reserved for an agricultural purpose or say for parks and playgrounds under the master plan i.e. the Development Plan sanctioned under the Town Planning Act, it is clear that such land cannot be used for the above purposes. It is, therefore, clear that such land is not intended to be acquired as surplus land by bringing it within the definition of the expression "vacant land" given in section 2(q) of the Act for which purpose clause (i) is inserted in the said definition.

20. Looking to the above scheme of the Urban Land Ceiling Act, when the major part of any urban land which is reserved for agricultural purposes in green zone is not available for the above purpose of construction of buildings thereon to subserve the common good, in our view, only because under the Building

Regulations some construction is permissible of a structure ancillary to the main purpose of agriculture, it would not mean that such land in the green zone is not mainly used for the purpose of agriculture, as required by the exclusive clause in section 2(o) of the Urban Land Ceiling Act and is thus not outside the purview of the definition of the expression "Urban Land" given therein. What is required by the exclusion clause in section 2(o) is that the land should be mainly used for the purpose of agriculture. For the above view, we also draw assistance from the first- proviso to clause (B) in the Explanation to the definition of the expression "Urban Land" given in section 2(o) of the Urban Land Ceiling Act. Perusal of the said proviso would show that farm house on agricultural land is not included within the meaning of the expression "building" in regard to which the land upon which any building is standing is not said to be mainly used for the purpose of agriculture even though such land is entered in the land or the revenue records for the purpose of agriculture.

21. In our view, the construction of some structure incidental to the purpose such as agriculture, playgrounds, parks etc. are not such constructions which would show that upon such land construction of building as envisaged by clause (i) of the definition of the expression "vacant land" given in section 2(q) of the Urban Land Ceiling Act, is permissible. What has to be seen is the main purpose. If the main purpose does not permit construction of a building, then such a land is excluded under" clause (i) of section 2(q) of the aforesaid Act. It may incidentally be seen that as per guidelines issued by the Central Government vide its letter No. 1/243/76 U.C.U. dated 19 November 1976, it has been clarified in para 4 that u/s 2(q)(i), what is really excluded from the definition of the term "vacant land" relates to areas which are to be maintained as open space like green zone, park playgrounds etc. In other words, the clarification, refers to lands where no construction is permissible under any regulations contained in the master plan or the law in force governing the construction of building. It is thus clear that the areas in the green zone are to be excluded from the definition of the expression "vacant land", u/s 2(q)(i) of the Urban Land Ceiling Act.

22. We may now refer to some of the relevant decisions upon the construction of clause (i) of section 2(q) of the Urban Land Ceiling Act. We first refer to the recent decision of the" Supreme Court in State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others, . The Supreme Court has held in the said case that in order to exclude land from the definition of "vacant land" it should be shown that it is land on which construction of a building is not permissible under the building regulations applicable to the area in which such land is situated. It has further held that the question whether a piece of land is a vacant land or not does not depend upon the fact whether a prudent man would put up a building on that land or not after the issue of a notification u/s 4(1) of the Land Acquisition Act, 1894. In the facts of the said case, the Supreme Court has held that that it cannot be said that the construction of a building was not permissible upon the land in question in the said case. The Supreme Court has overruled the decision of the Delhi High Court in the case of Shanti Devi Vs. Delhi

Administration and Others, in which it was held that the land which was sought to be acquired by issuance of a notification u/s 4 of the Land Acquisition Act, and upon which thereafter the construction was not permissible stood excluded from the definition of the expression "vacant land" as such land fell under clause (i) of the said definition in section 2(q).

23. The Supreme Court has approved the view taken by the Full Bench of this Court in the case of Prabhakar Narhar Pawar Vs. State of Maharashtra and Another, , and the relevant passage from the said judgment is reproduced in para II of the judgment of the Supreme Court. The Full Bench of this Court has held in the above case that for application of clause (i) in section 2(q) of the Urban Land Ceiling Act, there must either be complete prohibition for construction activity by development plan or master plan or there must already be a sanctioned plan or a plan submitted for approval on the date of commencement of the Act on the basis of which land on which a building cannot be constructed u/s 2(q)(i) could be definitely ascertained. In the said case exemption was claimed in respect of the 2/3rd of the land upon which construction was not permissible according to regulations of the Local Authority which permitted construction only upon 1/3rd of the land. The Full Bench of this Court had negated the contention that the said 2/3rd land stood excluded by virtue of clause (i) of section 2(q) of the Urban Land Ceiling Act. The view is that unless the construction is impermissible under the laws in force about construction of buildings, clause (i) of section 2(q) would not be attracted.

24. In the decision of the Supreme Court cited supra, the view of the Full Bench of the Allahabad High Court in the case of State of U.P. and Another Vs. Radha Raman Agarwal and Another, is also upheld by the Supreme Court. The Full Bench of the Allahabad High Court in para 11 of its judgment has held that clause (i) of section 2(q) refers to the land on which construction of a building is not permissible at all either under the building regulations or under the master plan which prohibition is absolute as in the case of the land covered by green belt area or the plot reserved for green park or playground. The Full Bench has in para 18 of the judgment referred to the classification referred to above by us given by the Central Government u/s 2(q)(i) of the Urban Land Ceiling Act about (the open space like green park, playground etc. being excluded from the purview of the definition of the expression "vacant land" given in section 2(q) of the Urban Land Ceiling Act. It is thus clear to us that the land which is reserved for agricultural purposes in green zone under the master plan i.e. the Development Plan is excluded under clause (i) of section 2(q) of the Urban Land Ceiling Act.

25. Lastly, we may also refer to the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, , in which after referring to the objects of the Urban Land Ceiling Act in para 7 of its judgment, the Supreme Court has observed in para 8 that the Act governs only urban vacant lands or lands which contain buildings or dwelling units or Hut-houses and

the areas set apart in compliance with the respective bye-laws computing the ceiling area applicable to the towns. and territories concerned. In referring to the scheme of the Urban Land Ceiling Act it has observed in para 17 that any land situated in an urban area where the entire area is covered by land on which it is not permissible to raise a building will not be deemed to be vacant land within the meaning of section 2(q) because, according to the Supreme Court such land in an urban area cannot be used for building purposes but being vacant falls beyond the purview of the aforesaid Act.

26. In the light of the object of enactment of the Urban Land Ceiling Act, the above decisions and the relevant provisions referred to by us, the contention raised on behalf of the petitioner that the suit land which is included in the green zone for agricultural purposes is excluded under clause (i) of the definition of the expression "vacant land" in section 2(q) of the Urban Land Ceiling Act has to be upheld. The suit land being not vacant land within the meaning of section 2(q) of the Urban Land Ceiling Act, has to be excluded in determining the surplus land of the petitioner. The impugned orders are. therefore, illegal and without jurisdiction and are liable to be set aside.

27. In the result, the instant writ petition is allowed. The impugned orders are set aside. Rule made absolute in the above terms. No orders as to costs.