

(1978) 08 BOM CK 0041

In the Bombay High Court

Case No : Special Civil Application No. 2184 of 1977 with Special Civil Application No. 2 of 1978, with Original Side Appeal No. 11 of 1977 in Miscellaneous Petition No. 623 of 1976, Original Side Appeal No. 12 of 1977 in Miscellaneous Petition No. 624 of 1976. Ori

Ganesh Rangnath Dhadphale

APPELLANT

Vs

The Special Land Acquisition Officer (I)

RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 31B
Land Acquisition Act, 1894 — Section 11, 12, 16, 23, 31

Citation : (1979) 81 BOMLR 417 : (1979) MhLj 786

Hon'ble Judges : Pendse, J;Deshpande, J

Bench : Division Bench

Judgement

Deshpande, J.—[His Lordship narrated the facts of the various petitions and Proceeded.] Now, after Notifications are issued under Sections 4 and 6, the land acquisition officer is under a statutory obligation to proceed with the inquiry as to the compensation on the date indicated in the notice u/s 9 of the L.A. Act (Land Acquisition Act, 1894) "or on any other day to which the inquiry has been adjourned" and he has to "make an award under his hand" thereafter u/s 12 and take possession of the land u/s 16 on which the title in the land "vests absolutely in the Government free from all encumbrances". Mr. A. H. Desai, Mr. Agarwal, Mr. Mehta and Mr. Shah and Mr. Setalvad, the learned advocates appearing for the petitioners, appear to us to be right in contending that suspending of such proceedings indefinitely, awaiting the sanction of the department concerned for the amount required, or awaiting its acquisition under the U.L.C. Act (Urban Land Ceiling and Regulation) Act, 1976 at a cheaper price, is not legal. Such delay, after conclusion of the enquiry u/s 11 of the Act is liable to be treated as inordinate and unjustified, and this Court, on being approached under Article 226 of the Constitution, has to direct the land acquisition officer to discharge his statutory duties in terms of the ratio of the Supreme Court case of Ambalal

Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, .

2. The only defence, set up on behalf of the Government to this statutory obligation in all the above cases, is that with the enforcement of the U.L.C. Act with effect from February 17, 1976, the proceedings under the L.A. Act stand automatically suspended till the contemplated acquisition proceedings in respect of the available land under the U.L.C. Act are finalised in view of its overriding effect u/s 42 thereof. According to Mr. C. J. Sawant, the learned Additional Government Pleader, and Mr. Rele and Mr. Kotwal and Mr. A. V. Savant, the learned advocates for the State and the Union Governments, and the Poona Municipal Corporation, supporting him, any possible conflict between the provisions of the two enactments or orders passed thereunder, can be avoided only by suspending the LA. Act proceedings and enabling the competent authority under the U.L.C. Act to work out its provisions unfettered by any other consideration. Mr. Savant contends that out right withdrawal of proceedings u/s 48 of the L.A. Act is, also not possible till the entire land, required for this public purpose already notified, is not found to have been acquired under the U.L.C. Act. The proceedings shall have to be revived, so contends Mr. Sawant, if the land or any portion thereof is found to have remained untouched by the acquisition under the U.L.C. Act.

3. It is not in dispute that the land sought to be acquired under the L.A. Act in all these proceedings are the "vacant lands" within the meaning of Section 2(g) of the U.L.C. Act and are situated within the Urban agglomeration as defined u/s 2(n) of the said Act. It is also not disputed that the petitioners in each one of these cases have submitted their statements to the competent Authority u/s 6 of the U.L.C. Act and, in fact, such statements do include the lands covered by the land acquisition proceedings. It is therefore necessary to examine the provisions of the U.L.C. Act relied on before us.

4. Section 42 of the U.L.C. Act reads as follows:

Act to override other laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority.

There is no doubt that the Legislature intends to give overriding effect to the provisions of this Act. Finding of inconsistency, however, is the condition precedent for attracting the overriding effect of the U.L.C. Act. Inconsistency can exist between any provision of one Act and that of any other Act such as the L.A. Act or between the orders under one Act and the orders under the other Act. The section must be deemed to cover inconsistency of both the kinds. It declares the provisions of the U.L.C. Act and order passed thereunder to have overriding effect. Omission to expressly give overriding effect to such orders will not make them any the less overriding. Any provision of L.A. Act or an order thereunder thus would be ineffective and inoperative, if it is shown to be inconsistent with

any corresponding provision of the U.L.C. Act or any order passed thereunder. The provisions of any Act after all are given effect to only through the order passed thereunder. We are not concerned in this case with any question of inconsistency with any custom, decree or order of any Court.

5. The real question is : Is there any such inconsistency at all between the provisions of these two enactments ? Mr. Sawant, Mr. Rele and Mr. Kotwal, could not put their finger on any section of the L.A. Act and claim, the same to be inconsistent with any section of the U.L.C. Act directly, excepting in the matter of compensation for the land acquired. The two enactments have quite different objects, scopes and areas of operations. As indicated by the preamble of the U.L.C. Act, it is aimed at providing for the imposition of a ceiling on "vacant land" in "urban agglomeration" and for the acquisition of such land in excess of the ceiling limit, with a view to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein and also with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. In other words, the Act is only confined to lands situated in "urban agglomerations" as specified in Schedule I of the Act. Secondly, it is confined only to the vacant lands. Thirdly, buildings and agricultural lands are totally excluded therefrom. Fourthly, the contemplated acquisition of holding in excess of the ceiling limit is not the main aim but merely a consequence of such excess holding. Fifthly, though the State Government also is competent to reserve any such vacant land for the benefit of the public u/s 23 (5) of the U.L.C. Act, the acquisition under this Act is mainly intended for the equitable distribution thereof in the urban agglomerations. Sixthly, once the land is found to be in excess of the ceiling limit, the same is liable to be acquired leaving no option to the holder or the officer.

6. The L.A. Act, on the other hand, deals with the acquisition of land for public purposes and covers lands and buildings situated in any part of the country, land acquisition officer can withdraw the proceedings at any time even after passing award but before taking possession u/s 48. The possibility of there being any inconsistency between the provisions of these two enactments or the orders passed thereunder thus cannot be taken for granted, without something more. In fact, no order under the L.A. Act can be assumed to be ineffective merely on account of some remote possible inconsistency with any order under the U.L.C. Act.

7. It is true, the provision in the two Acts as to the quantum and mode of compensation for the lands acquired are irreconcilable. While L.A. Act contemplates assessing compensation at the market rate on the date of notification u/s 4 read with Section 23 thereof, such market rate is irrelevant in terms of Section 11 of the U.L.C. Act and its quantum so assessed cannot exceed the ceiling limit of rupees two lacs and is also not payable in cash in its entirety. Such an inconsistency cannot, however, have its impact till the same land is sought to be acquired under both the enactments, and in that case such an

overriding effect shall have to be restricted to the area covered by the acquisition under the U.L.C. Act. The proceedings under the L.A. Act would still continue and remain unaffected by any such inconsistency in respect of land or any portion thereof not covered by such acquisition proceedings under the U.L.C. Act.

8. Mr. C. J. Sawant however contends that with the inclusion of any land in the statement u/s 6 of the U.L.C. Act by the holder, the operation of the provisions of the L.A. Act with respect to such land becomes inconsistent with the provisions of the U.L.C. Act rendering the powers under the former ineffective.

9. Now, Section 6 does require every person "holding vacant land in excess of the ceiling limit at the commencement of this Act" to file a statement, in the prescribed form, before the competent authority concerned, of all the vacant lands held by him on that date. The rules framed u/s 6(7) of the Act and Form 1 prescribed for the same, requires the holder to furnish particulars of any litigation pending in respect of any such land. Section 8 then requires the competent officer to prepare a draft statement in respect of all such holdings in terms of the details enumerated in Sub-section (2) after making inquiry and prepare a final statement after hearing every person concerned and serve a copy thereof on such person including mortgagees and lessees. This statement is to include all the vacant lands held by the holder. In this final statement he has to "determine the vacant land held by the person concerned in excess of the ceiling limit". Then follows Section 10(1) as to "acquisition of vacant land in excess of ceiling limit". Section 10(1) reads as follows :

10. (7) As soon as may be after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

- (i) such vacant land is to be acquired by the concerned State Government; and
- (ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land,

to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

10. Sub-section (3) reads as follows :

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

11. It will thus be seen that the possibility of the acquisition of any vacant land situated in urban agglomeration u/s 10(1) and its consequential vesting in the State u/s 10(3) is not crystallised and does not become a certainty till (1) the statement u/s 9 is finalised after enquiry u/s 8 of the Act and (2) a notification u/s 10(7) indicating such consequential acquisition with particulars is published, and (3) claims of the interested persons are invited. Liability of any land of being included in the statement u/s 6 of the Act cannot be equated with the liability of its being included in the final statement u/s 9 and consequential acquisition u/s 10. Mere inclusion of any land in the statement u/s 6 may not necessarily result in its inclusion in the statement u/s 9 and acquisition u/s 10(1) of the U.L.C. Act. The possibilities of some addition and detraction as a result of two summary inquiries contemplated u/s 8 can never be ruled out. The statement prepared by the competent authority u/s 9, preceding the notification u/s 10, alone, can indicate if the land included in Section 6 statement also is liable to be acquired under the U.L.C. Act. The very provision of enquiry assumes the possibility of deletion of any land included in the statement u/s 6. When any land being acquired under the L.A. Act also gets included in such final statement intended for acquisition u/s 10(7) of the U.L.C. Act, actual inconsistency can be said to have arisen and it is at this point of time that the U.L.C. Act would alone apply and L.A. Act would cease to apply to the land or any portion thereof so included in the final statement u/s 9. This finds support in the following two passages from Crawford on Statutory Construction :

"As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable"" (p. 633) "and, as we have already suggested, it is essential that the new statute cover the entire subject matter of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one(p. 634).

12. It is true that adequate precautions have been taken by the Legislature by preventing the holders from transferring these lands during the period from February 17, 1975 to the date of declaration as to acquisition thereof under the U.L.C. Act to ensure that holders do not of their own seek to defeat the provisions of the U.L.C. Act by indulging in transfers thereof in anticipation, either of the enforcement of the Act or of the acquisition of their land u/s 10(1) of the Act. Sections 4(4), (5) and 10(4) are aimed at achieving this purpose. This, no doubt, eliminates the possibility of deleting any land on account of such voluntary transfers.

13. The Act, however, does not seek to prevent the transfer of land by operation of law. At any rate, there is no express provision to that effect. It is not difficult to conceive of variety of instances of such bonafide genuine transfers. A land's

being a subject of a litigation at different stages at the commencement of the Act, or it being subject of sale proceedings in execution of a decree or award or order of any Court, or its liability to partition, or its standing in the name of any benami, are ordinarily incidents of properties, including the vacant lands. Their transfer without the volition, between February 17, 1975 and the date of declaration u/s 10 (3) of the U.L.C. Act when title stands vested in the State, can never be ruled out. Prohibition against transfer inter vivos cannot be effective against such sheer transfer by operation of law. Effective transfers in all such instances before the date of such declaration cannot be legally ignored and effectively resisted in the absence of any express provision.

14. Mr. Kotwal, appearing for the Union, contends that the word "transfer" in Sections 4(4), 5 and 10(4) includes statutory transfer or transfer by operation of law. In support, he relied on the judgment in *The Mangalore Electric Supply Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal*, . The ratio of this case can have no relevance here. Firstly it is difficult to eliminate the element of volition ingrained in the words "has made any transfer" or "has been transferred" or "shall transfer" occurring in these sections, as against the mere word "effected" in Section 12B of the T.T. Act, 1922, which was required to be interpreted by the Supreme Court in this case. Secondly, the ratio of the Supreme Court is based on the legislative history of said Section 12B. The ratio cannot be of any assistance. Looked at from any point of view, transfer by operation of law cannot be said to have been prohibited or inconsistent with the U.L.C. Act.

15. It is true that Section 3 prevents holding of vacant land in excess of the ceiling limit, and Section 6 requires holder to submit statement of all his holdings to the competent authority to enable him to verify to what extent his holding is in excess of the ceiling limit. Prima facie holding of every holder on the commencement day is material for this purpose. But this by itself cannot prevent the operation of the process of other laws against such land.

16. Mr. Sawant could not draw our attention to any provision in the U.L.C. Act seeking to freeze the entire excess land so held by the holder required to make a statement u/s 6 till the final statement is prepared by the competent officer u/s 9 or notification with regard to its acquisition is made by him u/s 10(1) of the Act. Mr. Sawant could also not draw our attention to any provision, indicating even such constructive seizure or restraining the land acquisition officer under the L.A. Act from proceeding with the land acquisition proceedings initiated by him long before the enforcement of this Act on February 17, 1976.

17. Omission of such a prohibitive proviso is reflective of legislative intent to allow the process of all other laws, against the land covered by the statement u/s 6 of the under the U.L.C Act. In other words, continuance of such process against the land covered by Section 6 statement, including the one under L.A. Act, is not rendered inconsistent. There are several factors which support this conclusion.

18. Firstly, absence of any express prohibition against such transfer by operation of law in spite of such positive prohibition against transfer inter vivos itself is an important factor leading to this conclusion.

19. Secondly, Rule 8 of the rules framed under the Act and the form "A" and its annexures prescribed thereunder require the holder to give particulars of the pending litigation about lands covered by such statements u/s 6 of the U.L.C. Act. The enquiries contemplated u/s 8, preceding the draft and final statements, are to be initiated on the basis of the data so furnished, and are obviously aimed at ensuring that only the land of the holder and nobody else is acquired on the very hypothesis of being his. The competent authority shall have to verify the true position about such litigation and proceedings which indeed is implicit in the contemplated enquiry u/s 8. It should be difficult for any authority to include any land in the final statement for acquisition which was held by any holder but went out of his holding thereafter during the pendency of his enquiry, in execution of any decree or on account of Court or revenue or any other statutory sale. Such inclusion and consequential acquisition u/s 10(1) and (3) would be destructive of the rights of the third parties earned by them by sheer operation of law independently of the holders' volition. It will be arbitrary and irrational on his part to do so in the absence of any positive legal authority of the U.L.C. Act to support, and may expose it to the interference by any Court of superior jurisdiction. He will also have to stay his hands in matters pending litigation in Courts and tribunals holding out threat to the holders' title, as till then it will not be possible for him to decide, if the land is held or not, by the holder. The same would be true of the effect of loss of such land to the holder by operation of any law, including the Land Acquisition Act. He has no jurisdiction to acquire the land, which stood in the name of the holder on February 17, 1976 but really belonged to somebody else or ceased to be in his holding due to operation of any law. Implications of this contemplated enquiry also is indicative of the same legislative intent.

20. Thirdly, even the provisions prohibiting contractual transfers between February 17, 1975 and declaration u/s 10 (3) of the Act display legislative anxiety to "protect the transferees as far as possible. Thus u/s 4(4) the lands transferred to bona fide transferees for value are not liable to be counted at all and of other transfers are to be calculated without prejudice to their interest. Lands transferred between January 28, 1976 and February 17, 1976 are to be included in the holders' total holding only if the other land held is found insufficient for acquisition. Only transfers after February 27, 1976 are declared to be void. The Act thus ensures as little adverse effect on third parties' interests, as is possible.

21. Fourthly, though the Legislature is always competent to destroy the vested rights, it does not do so, unless it becomes indispensable to the achievement of the object for which the Act is enforced. It is all the more so when innocent third person or persons happen to be its victims. The land under the scheme of the Act

is liable to be acquired only if the holder is found to be having land in excess of the ceiling limit. The acquisition is thus not the aim of the Act. It is a consequence of its holder having land in excess of ceiling limit. The destruction of rights accrued to third persons in the ordinary course by operation of law is beyond the scope of the object and wholly unnecessary. Thus the omission to prevent transfers by operation of law appears to be deliberate and not accidental.

22. Fifthly in interpreting the provisions of any Act, the Court has to proceed with assumption that the Legislature acts reasonably and justly. The following passage from the judgment of the Supreme Court in the case of Bhudan Singh and Another Vs. Nabi Bux and Another, is illuminating (p. 1883):

...The object of every legislation is to advance public welfare. In other words, as observed by Crawford in his book on Statutory Constructions that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers.

23. Mr. Sawant then contends that the language of Section 42 of the U.L.C. Act is wide enough to include within its sweep, such transfers by operation of law. Any such law, so contends Mr. Sawant, resulting in the extinction of the title of the holder in the land included, or liable to be so included, in the statement u/s 6, contrary to its contemplated disposal under Sections 9 and 10 of the Act, shall have to be held as overridden by Sections 6 to 11 of the U.L.C. Act and so made ineffective. Now, there cannot be any doubt that such transfers of land by operation of law after the commencement day may affect not only the choice or selection of competent authority but also his acquisition power in the event of no, or lesser area of land, being left with the holder consequent to transfers. This contention though attractively plausible cannot stand scrutiny in the light of the factors discussed above. Now, there is no dispute that the provisions of this Act and the order passed, do have overriding effect so as to nullify the orders passed under other enactments. Before however any section of any other law or order thereunder is sought to be over borne and consequently rendered ineffective, inconsistency of the said section with some section of the U.L.C. Act must be established. Without the existence of such inconsistency the contemplated overriding and nullifying effect u/s 42 cannot be attracted. It is not suggested that operation of other laws giving rise to such decrees or orders, discussed earlier would be in any manner inconsistent and ineffective till the commencement day. It is difficult to see how enforcement of the U.L.C. Act or mere inclusion of any land in the statement u/s 6 or its liability of such inclusion by itself can create such inconsistency as to attract Section 42 and prevent the operation of such laws to wit, Transfer of Property Act, Contract Act, Land Revenue Code, Co-operative Societies Act or the Civil Procedure Code, in the

absence of any positive inconsistent provision to that effect. Section 42 itself does not create inconsistency. It only gives overriding effect to every provision of the U.L.C. Act on such other law being found to be inconsistent therewith. Mr. Sawant, Mr. Rele and Mr. Kotwal could not demonstrate any such inconsistency. Absence of such inconsistent provisions in the U.L.G. Act only shows, as discussed earlier, how preventing operation of other laws on the land is not within the legislative intendment and scope of the Act. Without the existence of such inconsistency in the U.L.C. Act and other laws operating on the land giving rise to decrees, orders and proceedings, Section 42 cannot be assumed to have any operation. The competent authority is as such bound by such decrees, orders and proceedings as the holder himself. He will have to eliminate the lands from statement u/s 9 if it becomes necessary to give effect to such other laws as a result of his enquiries.

24. Section 6, no doubt, makes holder of the land liable to give account of his holding. Every land held by the holder on the commencement day is thus liable to be accounted. Such liability of the land to be accounted by itself does not create any immunity from the operation of other laws thereon till the title of the holder therein becomes extinct u/s 10(3) of the U.L.C. Act. There is nothing in Section 6 to prevent it being extinguished earlier by operation of other laws. Reliance by Mr. Sawant on Section 42 read with Section 6 of the Act in this behalf is thus misconceived.

25. Mr. Sawant relied on the judgement of the Supreme Court in the case of Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others, . It cannot be of any help to him. The question before the Supreme Court was whether, addition in the strength of the family after the appointed day can enable the holder of the agricultural lands to retain larger ceiling area so permissible u/s 6 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The Supreme Court examined the scope of Sections 6, 8, 10, 18 and 21 of the said Act and answered the question in the negative holding that ceiling area under the scheme of the Act has to be determined by reference to "state of affairs" as on the appointed day. It is true that provisions of Sections 3, 3 (4), 5 (3) and 6 of the U.L.C. Act are substantially analogous and the ratio of the case would equally apply to the identical situation in the U.L.C. Act corresponding to Section 6 of the said Act to justify application of this ratio to any case under the U.L.C. Act. However, firstly there is no section in the U.L.C. Act corresponding to Section 6 of the said Act to justify application of this ratio to any case under the U.L.C. Act. Secondly, the Supreme Court had no occasion to consider the effect of transfers by operation of law in that case. The case cannot be said to be an authority for the point that arises before us. The words "state of affairs" in the judgment cannot be torn out of context, and construed as if to cover cessation of the operation of all the valid laws on the land. It is pertinent to note that Section 8 of the said Act is now amended in 1975 to include statutory transfer also. Absence of any identical provision in the U.L.C. Act should militate against the contention of Mr. Sawant. Reference in this context can usefully be made to the Supreme

Court judgment in *Gurdit Singh and Others Vs. State of Punjab and Others*, . Section 32DD(b) of the Pepsu Tenancy Act of 1955 as amended in 1962 required ignoring of the past decrees diminishing area of the holding of the person liable to be declared as surplus. The Supreme Court, however, held that it cannot apply to the decrees which merely indicate who the real owner or holder of the land was.

26. Raghunath's case, at the most, may be an authority for the proposition that, every piece of land held by the holder on the commencement day is liable to be accounted for determination of the area held by him) in excess of the ceiling limit. This is no authority on the question of the effect of other laws and pending legal valid proceedings on his such holding of that day. Section 4 (4), 5 (3) and 10 (4) prevent transfer inter vivos from having any effect on his such holdings of the said day. But to the extent to which the Act does not prevent the operation of the other laws on such land, ratio of this case cannot empower the competent authority to ignore their effect. Further question whether excess area is to be determined by reference to the actual holdings on the commencement day or the date of final statement u/s 9, does not arise in the present case.

27. Mr. Sawant relied on certain authorities to support his contention. None of these cases appear to us to have any bearing on the point that really arises for consideration. The case of *State of Orissa Vs. M.A. Tulloch and Co.*, , was dealing with the question of repugnancy between a State enactment on Minerals, etc. covered by Entry 23 List II and the Central Act on the same topic under Entry 54, List I, on its being withdrawn by Parliament for such legislation. The following observations from para. 15 were relied on by Mr. Sawant (p. 1292) :

...The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for, if a competent, legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation.

28. This case and the cases cited by Mr. Setalvad in reply, including the latest one *State of Haryana and Another Vs. Chanan Mal and Others*, , dealing with competency of the State Legislatures as "to the topic of mines" and its repugnancy with the Central Act, appear to us to be wholly irrelevant. Secondly, even if the word "field" is to be equated with "the topic of acquisition", the same cannot be said to have been "occupied" by the U.L.C. Act till occasion to make recourse to Sections 9 and 10 of the U.L.C. Act for acquisition naturally arises.

29. Reference to para. 24 of the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , at p. 376 relied on by Mr. Sawant is equally irrelevant as there can be no dispute that the non obstante clause of Section 42

of the U.L.C. Act, would have the effect of nullifying whatever contrary is indicated in any other Act or in the order of any other authority. Before, however, the question of giving effect to any such overriding provision arises, one has to find out where exactly the inconsistency exists.

30. The judgment of the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, , relied on by Mr. Sawant enumerates the contingencies in which repeal by implication can be inferred. Section 42 contemplates overriding of the inconsistent provisions, and not repeal thereof. The ratio of this case has no relevance.

31. Reliance then by Mr. Sawant on the case of Kanubhai Sankalchand Patel Vs. Nayankunj Co-operative Housing Society Ltd., Ahmedabad and Others, , is also misconceived. The division Bench refused to confirm a decree in appeal for specific performance of the contract of pre-1963 period with regard to a land, in view of such transfers being prohibited by Section 5(5) of the U.L.C. Act. Actual transfer takes place in such a case not on the date of agreement, or the suit or decree, but on the date of execution of the sale deed in execution of the decree. A direction to the defendant to execute the sale deed is indispensable ingredient of such a decree. The defendant cannot carry it out without committing breach of Section 5 or 10 (4) of the U.L.C. Act, The Court cannot pass such a decree. This is the basis of the ratio of this case, which can have no application hers.

32. Mr. Sawant then relies on the judgment of the Supreme Court in Kumaon Motor Owners' Union Ltd. and Another Vs. The State of Uttar Pradesh, . The order passed under Rule 131(2) under the Defence of India Rules, preventing the plying of the vehicles on a certain road, is held to have overriding effect on chap. IVA of the Motor Vehicles Act so as to disentitle any owner of the vehicles from claiming any compensation which he could have claimed under the latter for such closure of the road. This judgment can support the view that inconsistency attracting overriding effect can arise on passing order u/s 9 of the U.L.C. Act and not before such an order.

33. To sum up, transfer of land by operation of laws, is not prohibited under the U.L.C. Act, till the title of the holder in the land becomes extinct u/s 10(5) thereof. The competent authority is bound to take notice of the same in his enquiries u/s 8 before he passes the final statement.

34. This is true in regard to the proceedings under the L.A. Act initiated prior to the date of the enforcement of the U.L.C. Act. Mere commencement of the U.L.C. Act, or inclusion of the very same land in the statement u/s 6, cannot affect the proceedings under the L.A. Act. Thus the enquiry u/s 11, declaration of award u/s 12, and taking possession thereunder cannot be said to have been prevented by any section of the U.L.C. Act till the final statement u/s 9 is prepared and the same land is included therein. It is difficult to conceive of any inconsistency between any provision of the L.A. Act and U.L.C. Act till then. Nothing can prevent the land acquisition officer from taking possession and consequently

getting the title in the land vested in the State under the said Act. Result of such title vesting in the State u/s 16 of the L.A. Act will be that the said land will not be available for inclusion in the final statement contemplated to be prepared u/s 9 of the U.L.C. Act. If the lands covered by the statement u/s 6 of the U.L.C. Act are liable to be lost to the competent authority because of the operation of other laws before its inclusion u/s 9, the land proceeded under the L.A. Act should also be subject to the same result. In the event of the holder losing the title in the land in favour of the Government u/s 16 thereof before the statement u/s 9 of the U.L.C. Act is finalised, the competent authority will be statutorily bound to take notice of the same, and exclude such land from; such final statement consequentially from acquisition u/s 10 of the Act.

35. Mr. Kotwal relied on Section 31(2) of the L.A. Act in an attempt to show how continuation of proceedings under the L.A. Act becomes inconsistent with the U.L.C. Act immediately after its enforcement. Section 31 deals with the liability of the Collector to render the amount of compensation, for the acquired land, to the persons interested and entitled thereto. Sub-section (2), however, authorises him to deposit the said amount in the Court, where there is "no person entitled to alienate the land". Mr. Kotwal contends that prohibition against transfers of lands under Sections 4 (4), 5(1), 5 (3) and 10 (4) of the U.L.C. Act makes the owner thereof, such person not "entitled to alienate the land" within the meaning of Sub-section (2) of Section 31. This Collector's disability to pay, according to Mr. Kotwal, must result in the consequential disability to proceed with the acquisition proceedings. The contention, to our mind, is devoid of any substance. The section obviously has reference to minors and other persons under disabilities, and widows under the uncodified Hindu law, whose competency to alienate was subjected to certain limitation. It can have no reference to the provisions restraining any person from transferring his land. The volition or consent of the owner is never relevant for the compulsory acquisition of any property under the L.A. Act. It is pertinent to note that vesting of title of land acquired, takes place as soon as the possession of the land is taken u/s 16, after award is declared u/s 12. It is not made dependant on payment of the amount to the owner or acceptance thereof by him. Section 31(2) of the L.A. Act thus does not give rise to any inconsistency.

36. When, however, the very land actually finds place in the final statement prepared by the competent officer u/s 9 of the Act, acquisition proceedings under the L.A. Act would become inoperative and ineffective to that extent, in view of the overriding effect of Sections 9 and 10 of the U.L.C. Act. As seen earlier, the inclusion of any land of the holder in the final statement u/s 9 of the Act is a positive preliminary step towards the acquisition thereof in terms of Sections 10 and 11 of the Act. The competent authority is left with no choice of not acquiring the land once it is included in final statement u/s 9. As the opening words of Section 10(1) itself indicate that the competent officer is under a statutory obligation to issue notification for its acquisition as soon as possible, after the service of final statement u/s 9, on the holder or concerned person. Notification

of acquisition u/s 10(1) of the Act thereafter is merely a matter of formality. The proceedings under the U.L.C. Act can be said to have commenced in respect of such land at this stage itself. Acquisition under L.A Act then will become obviously inconsistent. The same land cannot be subject-matter of acquisition proceedings under both the Acts. We have already seen how, provisions of the U.L.C. Act as to compensation are materially inconsistent with those of the L.A. Act. The L.A. Act would cease to be operative on the land to that extent from that stage.

37. Mr. Setalvad, Mr. Mehta, Mr. Desai and Mr. Shah contend that preparing final statement u/s 9 of the Act by itself cannot result in any such inconsistency as to warrant discontinuation of the land acquisition proceedings initiated long before the Act. This contention is untenable in view of what we have so far discussed. None of the cases cited by Mr. Setalvad support such a contention. We have already indicated how cases cited by Mr. Setalvad dealing with the overriding provision under the Central Act on mines, over State enactments on that topic, can have no relevance. The ratio of the judgment in the case of *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, , relied on by Mr. Setalvad dealing with the principles of repugnancy between the Central and State legislation on the topics covered by the concurrent List III by reference to Article 254 of the Constitution is also not relevant.

38. The ratio of the Supreme Court judgment in the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, relied on by Mr. Setalvad is relevant to a limited extent. The Cotton Textile (Control of Movement) Order of 1948 was made in exercise of the Essential Supplies (Temporary Powers) Act of 1946. The Order authorised the Textile Commissioner to impose certain restrictions on the transport of the textile goods. The Order on that count was claimed to be inconsistent with Sections 27, 28 and 41 of the Indian Railways Act. The Supreme Court held that the Railway Act does not exclude imposing such restrictions and it did not give rise to any inconsistency. This supports our conclusion that provisions of the L.A. do not conflict with the provisions of the U.L.C. Act till final statement u/s 9. The judgment, however, does not support Mr. Setalvad in his contention that the scheme of Sections 9 and 10 of the U.L.C. Act is not inconsistent with the provisions of L.A. Act. The discussion in para. 12 of the judgment at p. 469 also indicates how Section 6 of the Order, identically worded as Section 42 of the U.L.C. Act, could not have the effect of repealing of the same provisions of the Railway Act by implication but of merely by passing any such inconsistent provisions to allow its operations in other areas to remain unaffected. This indicates how Mr. Sawant's contention to that effect is untenable.

39. Mr. Setalvad also relied on the judgment of the Supreme Court in the case of *Municipal Council Palai Vs. T.J. Joseph and Others*, In exercise of powers under Sections 286 and 287 of the Travancore District Municipalities Act of 1941, the Municipal Council constructed a bus stand and called upon all the vehicles to use

it by paying certain fees. Vehicle owners challenged the validity of this order on the ground that the said sections must be deemed to have been impliedly repealed by Section 72 of the Travancore Cochin Motor Vehicles Act of 1950, which authorised the State Government to regulate installation of vehicles" stops. High Court overruled the same, holding that provisions of the enactment were not irreconcilably inconsistent. The ratio is not directly relevant. The Supreme Court has, however, approved the two passages from Crawford on Statutory Construction quoted by us earlier.

40. Mr. Setalvad then contends that overriding effect contemplated u/s 42 of the Act is intended only to the provisions of the Act and not to any order passed thereunder. He, therefore, contends that final statement u/s 9 cannot have such overriding effect. He relied on the recent judgment of the Supreme Court in the case of *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, , to support his attempt to draw a distinction between an order and the section of the Act under which it is framed. It is difficult to see how the provisions of any Act can be effectuated, excepting through the orders so passed by the officers acting thereunder. It is difficult to conceive of overriding effect of any of the provisions of the Act, excepting through the order passed thereunder. The order dealt with by the Supreme Court namely Mustard Oil (Price Control) Order of 1977 made under the Essential Commodities Act "is a Legislature Order" and was claimed to be immune from the attack of being violative of fundamental rights by virtue of the parent Essential Commodities Act being included in the ninth schedule. That the provisions of this Act were so immune from such attack by virtue of Article 31B of the Constitution was not disputed. The Supreme Court negated such a claim of immunity. Now, this decision dealing with a legislative order can have no bearing whatsoever on the executive or quasi-judicial orders passed by any competent authority under the provisions of this Act.

41. Mr. Setalvad contends that the proceedings under the L.A. Act were dragged on for years by the land acquisition officer for no fault of the petitioners. The petitioners would have received the full compensation had the proceedings concluded before February 17, 1976. The land acquisition officer or the Government should not be allowed to take advantage of their own wrong. The U.L.C. Act should be so interpreted, so contends Mr. Setalvad, that the guilty does not stand to benefit from his own wrong. Reliance was placed by Mr. Setalvad in support of this contention on the passage from p. 212 in *Maxwell on Interpretation of Statutes* (twelfth edn.). There is no quarrel with the proposition. It has, however, no application to the situation before us. Mr. Setalvad did not refer to any particular words of any particular section as such, to indicate the application of this doctrine which is too well known. It is not possible to mix, identity of the guilty officer or the Government with the identity of the legislature. The competent authority who has to carry out the central legislation mandate cannot be allowed to be influenced by what the land acquisition officer did or omitted to do in the matter.

42. Mr. Agarwal, the learned advocate appearing for the petitioner in special civil application No. 2 of 1978 contends that even though the competent officer has issued notification u/s 10(7) of the U.L.C. Act, the proceedings under the L.A. Act having been initiated earlier, owners get a vested right of, the land being acquired under the LA. Act and they being paid compensation according to the provisions thereunder. The competent authority, according to Mr. Agarwal, has no jurisdiction either to include the land so subjected to proceedings in the L.A. Act earlier, in the final statement u/s 9 or to acquire the same u/s 10 of the Act. The entire foundation for this argument is the assumption that the award becomes effective in all its implications not from the date on which it is made or on the date when the possession of the land is taken by the Government u/s 16 of the Act but on the date when Section 4 notification is issued by the Government. This assumption is again based on Section 23 of the Act which requires determination of compensation at the rate prevalent on the date of the notification u/s 4 of the Act. The contention is liable to be rejected as misconceived. Now, this mere circumstance of the obligation to pay compensation at the rate prevalent on the date of Section 4 notification cannot make the the Government owner of the land from that date nor extinguish the title of the owner on that date. Any such interpretation will be contrary to the plain wording of Section 16 of the Land Acquisition Act under which title of the owner is not extinguished and the same does not get vested in the Government till the possession of the land is not taken, after the declaration of the award. In fact, till that date it is open for the Government to drop the proceedings without anything if no notice u/s 9 is issued or to withdraw the proceedings thereafter at any time in terms of Section 48 of the Act. There is no basis for contending that owner acquires any vested right in the acquisition by the State as soon as Section 4 notification is issued.

43. [The rest of the judgment is not material to the purposes of the report.]