
(2011) 09 DEL CK 0002
In the Delhi High Court
Case No : LPA No. 765 of 2003

Ghanshyam Dass Seth and Another APPELLANT
Vs
Union of India (UOI) RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Constitution of India, 1950 — Article 252(1)
Contract Act, 1872 — Section 56
Urban Land (Ceiling and Regulation) Act, 1976 — Section 1, 10, 10(1), 10(3), 10(4)

Citation : (2011) 8 AD 162

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Vikas Singh and Naunidh S. Arora, for the Appellant; Sachin Datta and Gyatri Verma, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—A perpetual lease deed was executed on 28.10.1959 by the President of India in favour of Smt. Raj Karni, Sh. Harbhajan Dass and Mr. Narain Dass in respect of plot No. 32-33, NH-IV, Lajpat Nagar, admeasuring 1450 square yards.

2. The covenant of the lease in para I(ii) inter alia provided that a building would be constructed on the plot within 24 calender months. On violation of any term of the lease, the perpetual lessor was entitled to re-enter upon the property.

3. In respect of the said land, plot No. 32 was sold by the perpetual lessees to Smt. Vimla Rani vide a sale deed executed on 17.10.1960 which was duly registered. However, no construction was carried out nor was apparently even mutation obtained in respect of the property for almost 13 years. This resulted in a show cause notice dated 29.08.1973 being issued by the Land and Development Office/respondent threatening to re-enter the property on account of non construction and consequent violation of clause I(ii) of the lease deed. Since no satisfactory cause is stated to have been shown, re-entry order was

passed on 03.04.1975. It is, however, not clear as to why but the fact is that the re-entry notice was sent to Smt. Shiela Sandhu. Smt. Vimla Rani addressed a letter dated 25.04.1975 to the L&DO stating that she had informed vide a registered AD letter dated 22.11.1960 that she was the perpetual lessee of the plot. Smt. Vimla Rani further volunteered to pay any charges for withdrawal of re-entry. The L&DO in response to this letter on 26.05.1975 communicated the charges for regularization of breaches temporarily payable up to 30.06.1974 with an undertaking to be furnished by Smt. Vimla Rani on a non judicial stamp paper that she would remove the breaches by 30.06.1974 or get them regularized beyond the said date. In para 5 of the said letter, it was stated as under:

5. The present letter offering terms will not act as a waiver for recovery of the said damage charges which may in the discretion of the lessor, be found payable by you beyond the dates mentioned above for breaches existing hereafter at site.

4. The aforesaid charges were paid and subsequently the property was mutated in the name of Smt. Vimla Rani vide a memorandum dated 09.10.1975 on the same terms and conditions as laid down in the perpetual lease deed.

5. The Appellant No. 2, Smt. Vimla Rani, still did not take steps to remove the breaches inasmuch as no construction was raised. With the said factual position, on 17.02.1976, Urban Land (Ceiling and Regulation) Act, 1976 ("the said Act" for short) came into force. The objectives of the said Act as set out in the Preamble show that the vacant land in the urban areas was sought to be brought within a ceiling limit and such excess land was to be acquired. The said Act also provided for regularization of construction of building on such land and for matters connected therewith with a view to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bring about a more egalitarian distribution of urban land. The said Act was, however, made effective from a retrospective date of 17.02.1975. The property in question was thus covered under the said Act being an excess vacant land in the case of Smt. Vimla Rani. The L&DO served a letter dated 12.01.1977 on Smt. Vimla Rani once again in respect of her failure to remove the breaches etc. before exercising the powers of re-entry to cancel the lease deed for non construction in respect of the property in question. Smt. Vimla Rani in terms of the letter dated 24.01.1977 claimed that the ownership title in the premises was restored to her only on 09.10.1975 and she should be allowed the time limit of two years for construction of the plot up to 09.10.1977. She expressed her willingness to proceed with the construction of the plot for which she stated that she had applied to the competent authority under the said Act for release of the plot. It was also stated that the release orders were still awaited.

6. The L&DO vide letter dated 21.05.1977 acceded to the request of Smt. Vimla Rani by extending the date for completion of construction without levy of penalty up to 30.06.1977. She was put to caution that no further extension will be granted beyond this date. Factually, no construction was carried out.

7. The proceedings continued under the said Act and it is the case of Smt. Vimla Rani that a draft statement was prepared u/s 8(1) of the said Act on the basis of the statement filed by her. On disposal of objections, a final statement u/s 9 of the said Act was passed vide order dated 20.06.1980 in terms whereof the competent authority declared the entire plot admeasuring 606.19 square meters as excess vacant land. Smt. Vimla Rani filed an appeal against that order before the appellate authority on 17.07.1980, but the same was dismissed on 01.04.1981.

8. It is the case of the Appellants that thereafter an application was filed for grant of exemption of the aforesaid excess vacant land u/s 20 of the said Act. It is their say that a person was allowed to retain excess vacant land ad measuring more than 600 square mtrs. provided he was prepared to develop the same as a group housing. On such an application being filed, the Delhi Administration is stated to have enquired from DDA and L&DO on 01.08.1981 as to whether group housing was permissible on the excess vacant land. Similar communications in this behalf ensued. The Appellants state that vide letter dated 15.02.1982 of the DDA and 17.01.1983 of the L&DO it was affirmed that group housing is permissible on the plot in view of the notification dated 11.12.1975 in terms whereof the exemption may be granted in respect of a plot where the plot is more than 500 square mtrs. Another application is stated to have been made u/s 20 of the said Act on 09.01.1987 to the Secretary, Land and Building Department for permission to construct a group housing project. However, the request for exemption was declined on 06.07.1987 by the LG though no action was taken u/s 10 of the said Act. It is only on 18.09.1992 that a notification is stated to have been issued u/s 10(1) of the said Act for acquiring the land and interested parties were asked to file their claims within 30 days from the date of the publication of the notification. Objections were filed on behalf of the Appellants to the notification, but on 02.12.1992 another notification u/s 10(3) of the said Act was issued declaring the property in question as excess vacant land which shall be deemed to have been acquired. The Appellants filed WP(C) No. 4529/1992 seeking quashing of the actions of the Respondent. Notice was issued on that petition and status quo orders were passed. The writ petition was admitted and interim orders were made absolute during the pendency of the writ petition. It may be noted that there were a number of similar writ petitions pending.

9. The next development which took place was the repeal of the said Act on 22.03.1999. The effect of the repeal was that all such lands stood released from the applicability of the said Act if the possession had not been taken over under the said Act. Even in the case of deemed vesting of the land u/s 10(3) of the said Act, the land owners were entitled to retain possession provided they paid back to the State any compensation that they may have received in respect of the land. The Appellants had not received any compensation and the possession continued with them. The land thus became free from the rigours of the said Act. The letter dated 09.11.2000 was thus addressed to the L&DO for grant of NOC for sanction of building plans on the plot followed by reminders dated 14.03.2001

and 08.06.2001. The Appellants received a communication dated 16.05.2002 which specified the penalty for belated construction from 01.07.1977 to 31.12.2003 amounting to Rs. 24,42,227/- plus ground rent @ of Rs. 8 per annum from 15.05.1975 to 14.07.2000. The Appellants made various representations against the levy of penalty for a period prior to 22.03.1999 predicated on the plea of inability of the Appellants to construct on the plot in question in view of the land having been declared as excess vacant land under the said Act. These representations dated 28.05.2002, 30.05.2002 and 05.09.2002 were responded to by the Respondent on 03.10.2002 once 9 of 37 again demanding the amount. The Appellants thus filed WP(C) No. 990/2003 challenging levy of penalty. Notice was issued on this petition and interim stay was granted against the impugned order dated 16.05.2002. On final hearing being concluded, the judgment was pronounced on 25.09.2003 dismissing the writ petition.

10. The sole aspect which appears to have been urged and thus considered by the learned Single Judge in the said order is the plea of Appellant No. 2 being prevented from constructing any building on the plot in view of the provisions of Sections 29 & 30 of the said Act. The learned Single Judge concluded that Section 29 did not impose a ban on construction, but merely regulated construction and that the construction proposed to be carried out ought not to have a plinth area in excess of 300 square metres. This was found not to aid the Appellants. The other plea which was examined arose from Section 20 of the said Act as exemption had not been granted to the appellants. Learned single Judge found that from 29.10.1958 the plot had been lying vacant for 28 years till the said Act came into force. Even after Appellant No. 2 purchased it, she did not carry out the construction. She even moved an application for extension of time for construction which was granted and the property was not re-entered because of this reason. The writ petition was dismissed, but the Appellants were permitted to make the payment of the penalty amount within sixty days of the pronouncement of the judgment and upon such payment, the Respondent was to issue a No Objection Certificate. It is the aforesaid order, which has been impugned in the present appeal. Notice was issued on the appeal on 07.11.2003 and the counsel for the Appellants volunteered to deposit the amount as directed by the learned Single Judge subject to the outcome of the appeal. This fact was taken note of while disposing of the interim application. The amount was deposited and the plot stands constructed upon as stated by learned counsel for the Appellants. Appellant No. 2 passed away and her legal heirs have been brought on the record.

11. Learned senior counsel for the Appellants contended before us that the plea advanced on the basis of Section 29 of the said Act was apparently misplaced as that provision would not aid the Appellants in any manner. Learned Counsel, however, submitted that the relevant provision in the present case would be Section 3 r/w Section 2(I) of the said Act. A ground in this behalf has been taken. In order to appreciate this plea, we re-produce the relevant provisions of Section

3 r/w Section 2(I) of the said Act.

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

2 (I) "to hold" with its grammatical variations, in relation to any vacant land, means-

(i) to own such land; or

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

Explanation ? Where the same vacant land is held by one person in one capacity and by another person in another capacity, then, for the purposes of this Act, such land shall be deemed to be held by both such persons;

12. Learned senior counsel submitted that in terms of Section 3 of the said Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit. The meaning of "to hold" is as defined in section 2(i) of the said Act which will include ownership or possession. It was thus submitted that once the Appellants could not hold the said land, there could not be any penalty charge on them for non construction on the plot.

13. It was the say of learned senior counsel for the appellants that a statutory legal impediment came in the way of the Appellants in view of the provisions of the said Act coming into force retrospectively before the extended period, in which the construction was to be made by Appellant No. 2, expired. The said Act came into force on 17.02.1976 with effect from 17.02.1975. The Respondent had condoned the delay in construction and granted extension on 26.05.1975 on payment of charges which were duly paid. The memorandum dated 09.10.1975 mutated the property in the name of the Appellant No. 2 and thus the Appellants were entitled to construct within a period of two years from the said date i.e. up to 09.10.1977. Before expiry of such time, the said Act came into force. It is in view thereof, that the extended period granted by the Respondent vide letter dated 21.05.1977 up to 30.06.1977 could not be availed of.

14. Learned Counsel for the Respondent on the other hand laid emphasis on the fact that for decades no construction has been carried out on the plot contrary to the terms of the lease deed. Appellant No. 2 had become the owner of the plot in 1960 as claimed by her and yet right till 1973 no construction was made when show cause notice was issued by the respondent. Even thereafter, when on payment of charges, the re-entry was withdrawn, no construction was carried out. The property was even mutated in favour of Appellant No. 2, but Appellant No. 2 kept on just sitting on the plot without taking any action for construction.

Learned Counsel emphasized on the fact that even while imposing the charges as per letter dated 26.05.1975, Clause 5 of that letter had made it clear that there would be no waiver for recovery of the damage charges which may be found payable in future for the breaches. The breach being undisputedly present, it was submitted that the Respondent was well within its rights to demand the amount of penalty towards non construction.

15. Learned Counsel for the Respondent has submitted that the Respondent was well within its rights to demand and recover penalty for breaches of the terms of the lease as the Appellants had not constructed on the plot. It was his say that the Respondent cannot continue to enjoy the property and yet claim that they are not bound by the terms of the lease.

16. A further submission advanced was that there was no prohibition from construction under the said Act as observed in the impugned order and learned Counsel No. 765/2003 Page 15 of 37 for the Appellants had admitted before us that the provisions of Section 29 of the said Act would not aid the Appellants. It was submitted that the provisions of Section 3 r/w Section 2(l) of the said Act could not aid the Appellants as they prohibited a person only from holding any vacant land in excess of the ceiling limit but the fact remains that the Appellants continued to hold the land.

17. Learned counsel for the Respondent, in the end, referred to the judgment of the Supreme Court in Her Highness Maharani Shantidevi P. Gaikwad Vs. Savjibai Haribai Patel and Others etc. etc., to emphasize that the State legislature had only surrendered the right to legislate in respect of the laws relating to the imposition of ceiling on the holding of urban immovable property by passing a resolution under Article 252(1) of the Constitution of India and all matters connected therewith or ancillary and incidental thereto in favour of Parliament. It was only a limited surrender in terms of that resolution and the aspect of town planning and development by the State was not surrendered. 18. We may notice that in rejoinder, learned senior counsel for the Appellants pointed out that no construction could be carried out without obtaining the clearance from the competent authority as the municipal authority used to demand a No Objection Certificate under the said Act. He, however, conceded that though this was the position at the relevant stage of time, no pleadings in this behalf have been made.

19. In the aforesaid circumstances the short issue which arises for our consideration is: whether the Appellant can be called upon to pay penal charges for failure to construct a superstructure in accordance with condition No. I(ii) of the lease deed due to the intercession of ULCRA?

20. The formulation of the issue answers for us at least one part of query, which is, that after the date of repeal of ULCRA, the Appellant is not entitled to a waiver of penalty on the stated ground, i.e., for the period 22.03.1999 onwards. However, this still leaves No. 765/2003 Page 17 of 37 unanswered as to what

would be the position for the period 01.07.1977 to 22.03.1999. The learned Counsel for the Appellant has not articulated before us the legal principle on which he would have us peg his submission seeking effacement or waiver of penalty. One of the conditions of the lease, i.e., condition No. I(ii) required the lessee to build a superstructure within 24 months, on the lines prescribed therein. The Appellant says that he stood relieved of this burden and consequences of its breach since ULCRA interceded in the meanwhile.

21. There is admittedly no provision in ULCRA which alters the aforementioned obligation which runs with the land. Therefore, the submission of the learned Counsel for the Appellant to the effect that since Section 3 of ULCRA prohibited a person from holding land in excess of the ceiling limits prescribed therein would be of no assistance. The reason for this is the scheme of ULCRA which operates broadly on the following lines: On the commencement of ULCRA, no doubt, a person is not entitled to hold any vacant land (save and except as provided in ULCRA itself) in excess of the prescribed ceiling limits; the determination of such excess land requires the holder of such vacant land to pass through three stages prescribed under Sections 6, 8 & 9 of ULCRA. The ceiling limits prescribed u/s 4 are categorised based on the location of the land. Therefore, a person holding vacant land in excess of ceiling limits is required to file a statement u/s 6 before the competent authority specifying therein particulars, such as, the location, extent, value and other prescribed aspects of all vacant lands including the nature of his right, title and interest in the land(s) in issue. More particularly he is also required to specify the vacant land(s) within the ceiling limit which, he desires to retain. On such a statement being filed u/s 6, the competent authority after such an inquiry as it deems fit, prepares a draft statement qua the person who has filed a statement u/s 6. The statement would contain the particulars prescribed under Sub-section (2) of Section 8. In terms of Sub-section (3) of Section 8, the draft statement is required to be served, in the manner prescribed, on the concerned persons along with the notice calling upon them to file objections, if any, within the stipulated period of 30 days or within such further period as may be specified. After giving the objector, a reasonable opportunity and, on consideration of the objections filed, the competent authority is required to pass an order qua the objections under Sub-section (4) of Section 8. It is only thereafter, that the competent authority makes out a final statement. The final statement would contain alterations, if any, in the draft statement based on the orders passed on the objections filed. A copy of the draft statement u/s 8(3), is also served on the owner of the land if, the vacant land is held; under lease, mortgage or a hire purchase or an irrevocable power of attorney.

22. It is on completion of the exercise u/s 9, and thereupon, the service of the final statement prepared on the person concerned, that the competent authority issues a notification u/s 10(1) of ULCRA indicating therein the particulars of the vacant land held, by such a person, in excess of the ceiling limit. The notification thus published will state that such vacant land is acquired by the concerned State Government, and that persons interested in such vacant land, should file

their claims either personally or through their agents specifying therein their interest in the land. The determination of the claim (s) is made under Sub-section (2) of Section 10. The aforesaid is followed by a declaration under Sub-Section 10(3) of ULCRA, published in the official gazette, indicating therein the date from which such land is deemed to have been acquired by the concerned state government. It is upon publication of such a declaration that the land in issue, vests in the concerned State Government free from all encumbrance from the date so specified.

23. It is during the period: commencing from the date of publication of notification under Sub-section (1) of Section 10 and ending with the date specified in the declaration made u/s 10(3); that no person is entitled to deal with such excess vacant land by way of transfer, sale, mortgage, gift, lease or otherwise and alter its use or cause its use to be altered. Transfer made in contravention of this provision is deemed to be null and void.

24. The Section 11 provides for compensation to be paid in respect of vacant land acquired by the Government. The power of exempting a person from the acquisition of excess land is conferred on the State Government u/s 20 of ULCRA. This power, the State Government is obliged to exercise, keeping in mind the location of the land, the purpose for which it was used or proposed to be used and other relevant factors having regard to expediency and public interest.

25. We may also notice at this stage certain other provision, which largely pertains to transfer of vacant land and construction thereof. In this regard we may first refer to Section 5 of ULCRA deems transfer made on commencement of ULCRA as void. Section 26 obliges a person holding a vacant land within ceiling limits to give notice to the competent authority before effecting a transfer of such lands. If notice is given, the concerned state government in accordance of Sub-section (2) of Section 26 shall have the first option to purchase such lands. Such option is required to be exercised within a period of 60 days from the receipt of notice, failing which, it is presumed that the competent authority has no intention to purchase the land on behalf of the state government and that it is lawful for the applicant to transfer the land as he likes. Section 27 prohibits transfer of urban or urbanisable land with building or a portion of such building for a period of 10 years of the commencement of ULCRA or from the date of the construction of building whichever is later, except with the permission of the competent authority. If the competent authority were to refuse the grant of permission then it is required to give reasons in writing which, it is further obliged to communicate to the applicant. As in Section 26, there is also a provision of deemed approval and the right to purchase such property by the competent authority (see Sections 4, 5, 27). Section 29 permits construction of building with dwelling units upto the prescribed plinth area depending on category in which the land on which the proposed building is to be constructed, is located. To be noted that the Supreme Court in the case of *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, had declared Sub-section

(1) of Section 27 invalid insofar it imposed a restriction on transfer of any urban or urbanizable land which was well within the ceiling limits.

26. The broad scheme of ULCRA, therefore, seems to indicate that it is not as if on the said statute coming into force the Appellant had lost the right to make use of the land. More specifically, there was no prohibition in carrying out construction on the land in issue, as sought to be contended immediately on ULCRA being enacted.

27. The scheme of ULCRA came up for consideration before the Andhra Pradesh High Court in the case of *Srinivasa Builders Pvt. Ltd. v. Govt. of Andhra Pradesh*, (1978) 1 APLJ 174. Briefly the facts obtaining in the said case were as follows. The Petitioner who had sought permission to construct flats/dwelling units on land owned by it was denied permission by the municipal corporation in view of the provisions of ULCRA being triggered. The Petitioner challenged the denial of permission on various grounds, including the ground that the municipal corporation while granting permission was not fettered by the provisions of the central Act in particular Section 3 of ULCRA. The official Respondents opposed the relief sought for in the writ petition on the ground that on the enactment of ULCRA, the Petitioner by virtue of the provisions of Section 3 of ULCRA Act was not entitled to hold any land in excess of the permissible limits and, therefore, as a necessary consequence was not entitled to carry out any construction on such land. The court repelled the submission of official Respondents and while doing so made the following crucial observation:

(6) It is therefore, necessary to examine whether the proposed construction is prohibited by the said Central Act, or whether, by permitting the Petitioner to carry on the said construction, any of the provisions of the Central Act are violated. This necessitates an examination of the provisions of the said Central Act.

28. His first and main contention is that since Section 3 prohibits any person from holding any vacant land in excess of the ceiling limit, it must be deemed that with effect from the appointed day the owner of such excess land loses his title thereto, and if so, he cannot be allowed to make any construction. It is difficult to accede to this submission, in view of the specific provisions contained in Section 10 which have been referred to by me above in detail. In view of the said provisions, it cannot be said that title of the persons holding excess lands, in respect of such excess lands, is taken away with effect from the date of commencement of the Act, Their title will be extinguished only after the said excess land is acquired in accordance with the provisions of Section 10. In fact, Sub-section (3) of Section 10 says that the said excess land shall vest absolutely in the State Government only with effect from the date specified in the final publication under the said Sub-section. If so, it cannot be said that the holders of excess lands lose their title to such excess lands with effect from the date of commencement of the Act. The question then is whether there is any other provision in the Act which, by necessary implication, prohibits such a

construction? What Mr. Babulu Reddy argues is that there is no such prohibition (either express or by construction has been made will be continued to be treated as vacant land for the purpose of the Act and that, the competent authority may be entitled to ignore the said constructions and treat the said land as excess and acquire the same ignoring the constructions made. In other words, he says that his client is prepared to take the risk involved. He says that his client will make the construction, and if the competent authority or the Government choose to treat the said land, constructed upon, as a vacant land and acquire the same as vacant land, we would meet the same by taking appropriate steps under and according to the Act. But, that would precisely be the effect of the definition, of "vacant land" contained in Section 2(q). According to the said definition, any land upon which construction is made after the appointed day, is liable to be treated as vacant land only. The said definition, however, cannot be construed as prohibiting construction on excess vacant land; by necessary implication. Once that is so, it must be held that there is no provision in the Act which either expressly or by necessary implication prohibits the making of construction upon the excess vacant land.

(emphasis is ours).

29. The principle set forth in the aforesaid judgment was followed in a Division Bench judgment of the Andhra Pradesh High Court in the case of G. Jayamala v. Commissioner, Municipal Corporation of Hyderabad, (1989) 1 APLJ 363.

30. Having regard to the scheme of the Act and the ratio of the judgment in Srinivasa Builders Pvt. Ltd.'s Case (supra), Section 3 of the ULCRA did not prohibit from making use of the land including carrying on construction on the land in issue, at least till the date when notification u/s 10(1) of ULCRA was issued. As discussed hereinafter the events which followed post the issuance of notification u/s 10(1), that is, the act of Appellant filing application for exemption u/s 20, the litigation which ensued there from and the orders of the court which followed ? only persuade us to reaffirm the position that the Appellants ought not be relieved from paying the impugned penal charges.

31. As per the appellant's own averments made in the writ petition, order u/s 9 of the ULCRA was passed on 05.06.1980. An appeal against the said order was dismissed on 01.04.1981. Thereafter, the appellant filed an application u/s 20 of the ULCRA, on 30.03.1981. The ostensible ground for seeking exemption was that the Petitioner had a proposal for implementing a group housing scheme on the land in issue; which as per the prevailing guidelines for exemption was a route available to holders having in their possession land in excess of 600 sq. yards. The application filed u/s 20 was, however, dismissed on 06.07.1987. The notification u/s 10(1) of the ULCRA was issued only on 21.09.1992. Against, the notification issued u/s 10(1), the Appellant filed objections on 12.10.1992. It appears without those objections being decided, the Delhi Administration, Department of Land & Building issued a notification u/s 10(3) of the ULCRA, on 02.12.1992. Since the Appellants became aware of the fact that similarly placed

persons had obtained exemptions, they filed a writ petition bearing No. 4529/1992; laying a challenge to order dated 06.07.1987 whereby, his application for exemption u/s 20 of ULCRA was rejected by the Lt. Governor. As per the Appellants own showing, notice in the application was issued on 06.01.1993. By the very same order, the official Respondents were directed to maintain status quo. As per the Appellants averment made in the writ petition, on 20.01.1994 rule was issued in the aforementioned writ petition, and a direction was made that interim orders passed earlier would continue to operate till the disposal of the writ petition.

32. As indicated above, ULCRA was repealed on 22.03.1999. The Appellant for the first time appears to have written a letter to the L&DO for grant of no objection certificate (in short "NOC") in order to obtain a sanctioned building plan qua the building proposed to be constructed on the land in issue. The Appellant appears to have sent reminders to the L&DO on 14.03.2001 and 08.06.2001. According to the Appellant it was only on 16.05.2002 she received the impugned letter seeking payment of money towards penalty for failure to construct a super-structure, along with a demand for ground rent. In response thereto the Appellant filed representations dated 28.05.2002, 31.05.2002 and 05.09.2002 objecting to the imposition of penalty, noticeably, for a period prior to the date of repeal of ULCRA, i.e., 22.03.1999, on the ground that no construction could have been carried out on the land in issue as it was declared an excess land under ULCRA. Since official Respondents rejected the representations of the Appellant vide their letter dated 03/04.10.2002, the Appellant approached this Court by way of a writ petition.

33. The dates and events referred to above would show that the application for exemption filed by the appellant u/s 20 of the ULCRA, which was rejected on 06.07.1987, was subject matter of challenge in writ petition No. 4529/1992. A protective order was passed in the said writ petition which enured in the Appellants favour till well past the date of repeal. In the interregnum, a notification u/s 10(1) came to be passed on 21.09.1992 followed by a notification u/s 10(3), passed on 02.12.1992. Therefore the appellant's right to make use of the land in issue as per Section 10(4) of ULCRA was, if at all, impeded after 21.09.1992; a rigour which was also diluted by virtue of interim orders of status quo passed in writ petition 4529/92 on 06.01.1993. and 20.01.1994. Appellant's own averments show that even before the coming into force of ULCRA she was in breach of the condition No. I

(ii). As a matter of fact the L&DO's letter of 26.06.1995 which communicated the charges payable for regularization of the breach temporarily up to 30.06.1974, came with the caveat that the said communication could not be construed as waiver of recovery of damages for breaches committed hereinafter.

34. It is important to note (that post mutation of land in appellant's favour in 09.01.1975 Which was bought in 1960) an application was moved for extension of time to construct, on 24.01.1977; well past the date of enactment of ULCRA.

In the letter of 24.01.1977, the appellants had referred to the fact that an application for exemption u/s 20 of ULCRA had been filed with the competent Authority. Noticeably, the L&DO vide 21.05.1977, while granting extension of time for constitution till 30.06.1977 without payment of penalty till such date, did not advert to the factum of the intercession of ULCRA.

35. The Appellant on his own showing approached the L&DO for issuance of a No-Objection Certificate (in short N.O.C.) for the first time on 09.11.2000. There was no attempt by the Appellant to approach the L&DO either before the enactment of ULCRA or even prior to the issuance of notification u/s 10(1) of the ULCRA. In these circumstances, could it be said that the Appellant, who was already in breach of the condition I(ii) of the lease, even prior to the enactment of the ULCRA, was impeded in complying with the said condition because of the enactment. The answer to this would, as is obvious, be in the negative. We started by posing a question as to the legal principle on which such a submission made on behalf of the Appellant could be pegged on. To our minds, no party can get away from a bargain made, which is enforceable in law, whether it be a private party or a statutory authority. A bargain made gives the promisee a right to seek performance. In law, a promisor is obliged to fulfill his part of the obligation unless the performance is excused by law. There is no such mandate of the law, in the present case, as has been examined by us hereinabove. Only other situation in which perhaps a promisor need not fulfill his part of the bargain is when a contract is discharged or it is novated. The Appellant in this case is not claiming novation but is perhaps claiming a partial discharge of his obligation under the lease during the period ULCRA remained on the statute book. The Appellants cannot claim a complete discharge of the lease, as that would perish their rights along with the obligations under the lease. A clue as to whether under the Indian Contract Act, 1872 (in short, Contract Act?) a partial discharge can be claimed is available in illustration (e) of Section 56 of the Contract Act. The same is extracted herein-below for ready reference:

A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

If this stance is taken to be correct, the argument of the Appellant would thus veer around to saying that with the enactment of ULCRA a supervening event interceded making it impossible for the Appellants to fulfill the condition prescribed under the lease and therefore the Appellants ought to be relieved of the burden, and the consequences which ensue from such an obligation.

36. We may notice at this stage that even though not so articulated, the argument invokes in sum and substance the principle of partial discharge. The question then would be if such a defence is available would it help the cause of the Appellants. In our view, it would not as this principle operates only if the person seeking recourse to such a defence is not already in breach, that is, even before the event supposedly creating a supervening impossibility in the

performance of obligations intervenes. In other words, the breach should not precede the event creating a supervening impossibility in performance of obligation under the contract. As is demonstrable in this case, the breach continued all throughout. The L&DO on the other hand did not give up its right to claim damages. Therefore, a fortuitous event of enactment of ULCRA, which equally, though not so fortuitously for the appellants, having been repealed would not, in our view, relieve the Appellant from payment of penal charges, even for the period spanning between 01.07.1997 to 22.03.1999. As indicated above, in any event after 22.03.1999 the Appellant is required to pay the penalty and ground rent so demanded.

37. We have examined the arguments advanced on behalf of Appellant and principle of partial discharge of his obligations to comply with the condition I(ii) of the lease during the period of eclipse, so to say (i.e., during the period when ULCRA was on the statute book) notwithstanding the view taken by the Supreme Court in the case of *Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another*, whereby the Supreme Court has been held that the defence of discharge is not available qua a lease as it is a concluded contract. It is pertinent to note that a lease is a contract creating a demise in praesenti. It is, therefore, in the nature of an executed contract and in that sense different from a contract in which rights are yet to be exercised and obligations fulfilled. The latter is ordinarily referred to as an executory contract. Only to be noted, there is, however, a contra view of the English Courts (See *National Carriers Ltd. v. Panalpina (Northern) Ltd.*, (1981) A.C.675.

38. Therefore, for the aforesaid reasons the appeal is dismissed leaving parties to bear their costs.