

(1975) 01 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1236, 1887, 2529, 2577, 2578, 2646, 2647, 2654, 2656, 3140 and 3144 of 1974

Group Industries Private Ltd. and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-01-1975

Acts Referred:

Constitution of India, 1950 — Article 14
Securities Contracts (Regulation) Act, 1956 — Section 30
Securities Contracts (Regulation) Rules, 1957 — Rule 19
Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Act, 1972 — Section 3, 3(3), 3(4), 3(5)

Citation : AIR 1975 All 434

Hon'ble Judges : Yashoda Nandan, J

Bench : Single Bench

Advocate : Sitla Prasad and R. Prasad, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Yashoda Nandan, J.—These are eleven connected writ petitions under Article 226 of the Constitution challenging primarily the constitutional validity of the Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Act, 1972 (U.P. Act 36 of 1972)-- hereinafter referred to as the Act.

2. The petitioners in Civil Misc. Writ No. 1236 of 1974 are M/s. Group Industries Private Ltd. which is a private limited company manufacturing cycle parts and its Managing Director. The petitioners allege that because of coercive tax recovery proceeding against the Company, they decided in February 1972 to dispose of their surplus land not in immediate use of the industry. The Company had certain other liabilities and it therefore sold its surplus land and paid up most of its Income Tax and sales tax dues. In order to meet its other liabilities, it was negotiating with parties for sale of remaining surplus land not immediately needed by the company. While the negotiations were going- on, the Act came

into force. The petitioners applied u/s 3 (4) of the Act for exemption of their surplus land from the provisions of the Act and for permission to sell the same. By a letter dated 23rd February, 1973, a Deputy Secretary of the State Government communicated to the Managing Director of the Company that its application for exemption had been rejected by the State Government by an order dated 28th August, 1972. The order of the State Government rejecting the petitioners' application for exemption has not been filed. Faced with the problem of meeting its tax liabilities, the petitioners filed Civil Misc. Writ No. 1482 of 1973 in this Court against the State of Uttar Pradesh, the Additional Revising Authority, Sales Tax, Varanasi the Assistant Commissioner (Judicial) IV, Sales Tax, Varanasi, and the Sales Tax Officer, II Varanasi. The petitioners prayed for a writ of certiorari quashing the orders of the Sales Tax Authorities dated 30th September, 1970. 2nd March, 1972 and 7th October, 1972 and further proceedings before Additional Revising Authority, Sales Tax, Varanasi. There was a further prayer for a mandamus directing the State of U.P. to grant necessary permission to the petitioners to sell their land situate within the "urban" areas. By a judgment and order dated 8th November, 1973 a Bench of this Court allowed the writ petition and quashed the ex parte assessment orders passed against the Company dated 30th September, 1970 in respect of the assessment year 1966 along with subsequent orders passed in that connection on the 2nd March 1972 and 7th October, 1972. The Assessing Authority was directed to proceed afresh to assess the petitioners for the assessment years 1966-67 also in accordance with law. No relief was granted against the State Government. Subsequently the present petition has been filed mainly for a direction to the State Government to grant necessary permission to the petitioners for transfer of their land situate within "urban" areas.

3. Civil Misc. Writ No. 2529 of 1974 has been filed by a registered partnership firm carrying on business as "colonisers" as defined in the U.P. Regulation of Building Operations Act, 1958. The petitioner is a member of the U.P. Colonisers' Association. The Association presented an application to the State Government for exempting the "colonisers" from the operation of the Act. According to the petitioner of this writ petition, keeping in view the acute housing problem in Varanasi, it purchased large tracts of land in pieces from individuals and developed the same by levelling, Laying out roads, sewer line and electric poles. These developments, according to the petitioner firm, are done free of charge. The petitioner then divided the land into plots for sale and provided free of charge sites for a park, school, roads, lanes, community centre and market etc. Thereafter it sold the various plots in the colonies to private individuals on a small margin of profit for residential or business purposes. The application made by the U.P. Colonisers' Association for exempting the "Colonisers" was rejected by the State Government. By means of an Office Memorandum dated 30th September, 1972, a Deputy Secretary of the State Government communicated to the President of the U.P. Colonisers' Association that the representation made by the Association had been rejected by the Government. The actual order passed

by the State Government is not on record.

4. The petitioner in Civil Misc. Writ No. 1887 of 1974 is a public limited company and carries on business as a "Coloniser". The petitioner-Company made two representations to the State Government seeking exemption u/s 3 (4) of the Act in respect of two colonies planned by it. By his letter dated 16th November, 1973, a Section Officer of the "Rajaswa Anubhag" of the U.P. Government communicated to the petitioner that its representations had been rejected by the State Government. In this petition also the actual order passed by the State Government has not been filed. Since the subject-matter of the letter dated 16th November, 1973 was in the following terms:

"Private Colonisers द्वारा ग़रित तेन लाख से अधिक मूल्या की शहरी सम्पत्ति का अन्तर्ग",

the petitioner on the 7th December, 1973 wrote to Sri Chandra Kumar Varma, Deputy Secretary of the "Rajaswa Anubhag" of the. State Government, that its representations were made u/s 3 (4) of the Act and not u/s 3 (5) thereof.

5. The petitioners in Civil Misc. Writ Nos. 2646, 2647, 2656, 2654, 3140, 2578. 2577 and 3144 of 1974 are registered partnership firms which carry on business as "colonisers". They are all members of the U.P. Colonisers" Association. The U.P. Colonisers" Association made a representation to the State Government for exempting the ""colonisers"" from the operation of the Act. The State Government rejected the representation. A Deputy Secretary of the State Government communicated to the President of the Association that he had been directed to inform him that the representation made by the Association has been rejected by the State Government. In none of these cases the actual order passed by the State Government has been filed.

6. Before dealing with the question of the constitutional validity of the Act which has been raised in all these connected petitions, a preliminary objection raised on behalf of the respondent-State in Civil Misc. Writ No. 1236 of 1974 with regard to its maintainability may be disposed of. The contention is that in Civil Misc. Writ No. 1482 of 1973 a mandamus had been prayed for against the State Government for orders to it to grant necessary permission to the petitioners to sell their land situate within the "urban" areas Though the writ petition was substantially allowed and the orders passed by the Sales Tax Authorities were quashed, the prayer for mandamus to the State Government was not granted and consequently it must be held to have been impliedly rejected. On principles of res judicata consequently the present petition substantially for a similar relief is not maintainable. The submission has no force and must be rejected. The only four relevant paragraphs in Civil Misc. Writ No. 1482 of 1973, as far as the prayer for mandamus to the State Government is concerned, were as follows:--

"21. That petitioners are keen to pay off the legal liabilities of the company but due to financial crises and restrictions imposed by the State Government on transfer of lands they are not able to collect the funds at present therefore it is

beyond their control to comply with the condition imposed by the opposite party No. 2 in the stay order.

22. That prior to the restriction imposed, the petitioners sold their surplus land and paid off all the Income Tax amounting to Rs. 23,000 approximately but as the State Government has imposed restrictions on transfer of land in the urban area therefore the hands of the petitioners are tight unless they are granted permission to sell the lands.

23. That since the month of July, 1972, petitioners moved applications before the Revenue Minister of the U. P. and State Government requesting them to grant the permission to the petitioners for selling the lands. The true copies of the applications dated are annexures to this petition.

24. That the petitioners are not avoiding the payment of legal dues against the company but due to the facts and circumstances stated in the preceding paragraphs of the petition at present it is impossible to comply with the condition imposed by the opposite party No. 2 in the stay order and if further stay is not granted the valuable properties of the company shall be sold in recovery proceeding which will cause great loss to the petitioners."

These averments were made in the petition in the background of the fact that when the petitioners applied, for stay in the revision filed by them before the Additional Revising Authority, Sales Tax, he stayed the realisation of 2/3rd of the amount only with the condition that the petitioners should file security for 2/3rd amount and deposit the balance of 1/3rd which amounted to Rs. 8,000. The conditional stay order was granted only upto the 28th February, 1973. The petitioners expressed their helplessness to comply with the conditional order because on account of the Act they found themselves unable to raise funds, Since this Court quashed the assessment orders on the basis of which the tax recovery proceedings were taken against them, no necessity arose evidently for the petitioners to press for a mandamus to the State Government to exempt them from the operation of the Act so that they may be in a position to sell their surplus land for raising money to meet their tax liabilities. A copy of the grounds taken in Civil Misc. Writ No. 1482 of 1973 has been filed as an annexure to this petition and it clearly indicates that the only reason why the petitioners wanted to sell their land was to meet their tax liabilities so that coercive proceedings may not be taken against them. The assessment orders having been quashed, no necessity remained for the petitioners to sell their surplus lands or to press for permission to sell them under the provisions of the Act. In these circumstances, it cannot be held that there was any decision specific or implied refusing to grant a relief to the petitioners against the State of Uttar Pradesh.

7. Before dealing with the other contentions raised by counsel in support of different petitions I propose to consider the submission made with regard to the validity of the Act on the basis of Article 14 of the Constitution which is one that is common to all the connected petitions. To appreciate the submission made, it

is necessary to make a brief survey of the relevant provisions of the Act and the Uttar Pradesh Urban Property (Ceiling) Bill 1972-- hereinafter referred to as the Ceiling Bill--which was introduced in the Uttar Pradesh Legislative Assembly on the 9th May, 1972 but has not yet become law and to which the Act under consideration evidently meant to be ancillary. While enacting the Act, the legislature obviously had in mind the provisions of the Ceiling Bill. The object and reason for the Ceiling Bill is stated as follows:--

"In accordance with the provisions contained in Clauses (b) and (c) of Article 39 of the Constitution of India, for reducing social and economic inequalities, the State Government considers it necessary to impose a ceiling on the ownership of urban properties, so that the ownership of property in the urban areas may not remain concentrated in a few hands and the surplus property may be utilised for public purposes."

The preamble of the Ceiling Bill as set out is,

"to provide for the imposition of a ceiling on urban property and for the acquisition of urban property in excess of the ceiling limit with a view to securing that the ownership and control of urban property are so distributed as best to subserve the common good and also securing reduction in the concentration of wealth, and for matters connected therewith."

Section 3 (1) of the Ceiling Bill defines "ceiling limit" as meaning "the ceiling limit specified in Section 4." Section 4 (1) of the Ceiling Bill provided that,

"(1) Subject to the provisions of this section, the ceiling limit for an individual shall be so much urban property in the whole of Uttar Pradesh, the market value whereof on the date of commencement of this Act, does not exceed three lacs of rupees."

Section 4 (2) to (9) deal with the manner in which the valuation of properties was to be determined in cases where they are owned by companies or other corporations or joint Hindu families etc. Section 5 of the Ceiling Bill makes it unlawful for any individual so to acquire or build any "urban property" that the value of any "urban property" already owned by him together with that of the property so acquired or built would exceed the "ceiling limit". Section 6 of the Ceiling Bill requires every individual owning urban property in excess of the ceiling limit at the commencement of that Act to file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the urban properties owned by him in the State and also specifying the urban properties within the "ceiling limit" which he desires to retain. Section 12 of the Ceiling Bill provides that urban properties declared to be in excess of the ceiling limit shall stand acquired by and transferred to the State Government. Section 22 places restriction on registration of transfers of urban properties subject to the limits provided therein. Section 31 of the Ceiling Bill provides that,

"Nothing in this Act shall apply to-

(a) any urban property owned by :

(i) the Central Government or the State Government; or

(ii) any local authority: or

(iii) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government or State Government or a subsidiary of such company; or

(iv) any University established by law, the Uttar Pradesh Electricity Board or any other corporation owned or controlled by the Central Government or the State Government; or

(v) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules and regulations of the society wholly of public officers or nominees of the Central Government or the State Government; or

(vi) a banking company as defined in the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972, or

(vii) any co-operative society to the share capital of which the State Government has subscribed directly or in the formation or augmentation of the share capital of which it has assisted indirectly as provided in Chapter VI of the Uttar Pradesh Co-operative Societies Act, 1965 or any apex society within the meaning of that Act;

(viii) any "widely held company", or

(ix) any club formed by an association of individuals on a mutual non-profit basis;

(b) any urban property being exclusively used as a place of public worship or as a public park or as a playground, library or museum, dharamshala or sarai, which is open to the public, or any other urban property owned by a public trust or institution, whether charitable or religious, which, or the whole of the income derived from which is utilised for public charitable or religious purposes; or

(c) any urban property, being a building built for the accommodation of the weaker sections of the society in accordance with any scheme approved by the Central Government or the State Government or a corporation owned or controlled by the Central Government or the State Government.

Explanation.-- For the purposes of this section, "public charity" means relief of poverty, advancement of education or provision of medical relief on a non-profit basis:

(d) such classes of industrial undertakings has defined in Section 2 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972), cinemas and theatres as

may be prescribed."

The object of the Act as stated in the Bill was set out in the following words:--

"With a view to giving effect to the policy of the State towards securing the directive principles specified in Clauses (b) and (c) of Article 39 of the Constitution, the U.P. Urban Property (Ceiling) Bill, 1972 and the U.P. Imposition of Ceiling on Land Holdings (Amendment) Bill, 1972 were introduced in the Legislative Assembly on May 9, 1972. The passage of the two Bills and their enactment as law was likely to take some time, it was apprehended that in the meantime some persons might transfer their land and urban property in order to defeat the purpose of the Bills. It was accordingly considered necessary to have an enactment made immediately to prevent such transfers. As both Houses of the Legislature were not in Session, the Uttar Pradesh Ceiling on Property (Temporary Restriction on Transfer) Ordinance, 1972 was promulgated."

The U.P. Ceiling on Property (Temporary Restrictions on Transfer) Ordinance, 1972 has been replaced by the impugned Act and since then the U.P. Imposition of Ceiling on Land Holdings Act, 1960 which deals with a ceiling on the ownership of agricultural land has been amended by U.P. Act 18 of 1973. The Act under consideration is now concerned only with "urban property" as denned in Section 2 (a) of the Act. In the object of the Bill which ultimately became the Act reference was made to the Ceiling Bill and consequently I have stated earlier that the Act is ancillary to the Ceiling Bill.

8. Section 2 (b) of the Act defines "urban property" as meaning all lands and buildings situated in any area which is comprised within the jurisdiction of a Nagar Mahapalika, Municipal Board, Notified Area Committee, Town Area Committee or a Cantonment Board, but does not include any plant, machinery or other fixture affixed to the land or contained in a building for the purpose of trade, commerce, business, industry or such other similar activities. Section 2 (c) of the Act defines a "widely held company" as meaning a company (not being a private company) as defined in Companies Act, 1956, the shares of which are listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder. Section 3 of the Act is as follows :

"(1) During the period from July 12, 1972 to September 30, 1974, no person shall, save as expressly provided in Sub-sections (3), (4) and (5) transfer any urban property.

(2) Every transfer made in contravention of Sub-section (1) shall be void and shall accordingly be ignored for purposes of determining any ceiling limit that may hereafter be imposed under any law.

(3) Nothing in Sub-section (1) shall be deemed to apply to-

(a) a lease of urban property for a term not exceeding one year:

(b) omitted;

(c) any transfer by or in favour of-

(i) the Central Government, the State Government or any local authority;

(ii) any corporate body (including a company as defined in Section 3 of the Companies Act, 1956), in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government, or the State Government, or partly by the Central Government and partly by the State Government;

(iii) any University established by law, the Uttar Pradesh State Electricity Board or any other corporation established by law or owned or controlled by the Central Government or the State Government;

(iv) a co-operative society to the share capital of which the State Government has subscribed directly or in the formation or augmentation of the share capital of which it has assisted indirectly as provided in Chapter VI of the Uttar Pradesh Co-operative Societies Act, 1965, or any apex society within the meaning of that Act or any co-operative land development bank;

(v) any widely held company: (vi) a banking company as defined in Clause (f) of Section 2 of Uttar Pradesh Public Moneys (Recovery of Dues) Act 1972, a Co-operative Bank;

(d) any transfer of any urban property made in execution of any decree of a competent court passed in a suit instituted before July 11, 1972, or of any decree passed u/s 14 of the U.P. Encumbered Estates Act, 1934;

(e) any mortgage of urban property in favour of a co-operative housing society, where such property is a building built or proposed to be built, or is the site of such building or proposed building, and is purchased or proposed to be purchased, wholly or partly out of a loan or advance given by that society out of funds provided by a co-operative society referred to in Sub-clause (iv) of Clause (c);

(4) The State Government may, by general or special order and for reasons to be recorded exempt any urban property or agricultural land from the provisions of this Act; and may allow sale or other transfer of such property or land, in case it is to be used for educational, scientific, industrial or commercial purposes or for similar other purposes.

(5) Notwithstanding anything in this section, the District Officer/Collector on being satisfied that the present market value of urban property held by any person along with members of his family on April 1, 1969, as well as on the date of commencement of this Act does not exceed three lacs of rupees, may permit him to transfer the whole or part of such property.

Explanation.-- In this sub-section "family" in relation to a person, means his or her spouse and minor sons and daughters (other than married daughters)."

Section 4 of the Act places a restriction on the registration by any Registering Officer appointed under the Indian Registration Act, 1908 of any document relating to any transfer prohibited by Section 3.

Section 5 provides that,

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in any contract or other instrument."

Sub-section (1) of Section 6 repeals the Ordinance which preceded it. Section 6 (2) is saving clause which saves anything done or action taken under the Ordinance and provides that such action shall be deemed to have been done or taken under the Act as if it had come into force on July 12, 1972. The Act which is a temporary one and has been extended from time to time is still operative.

9. Learned counsel for the petitioners in the various writ petitions which are being disposed of by means of this judgment have challenged the vires of Section 3 on the basis of Article 14 of the Constitution. Sri S. C. Khare, who appeared in some of the writ petitions, contended that the purpose of the Act was to preserve land which would be rendered surplus when the Act or legislation for ceiling of urban property is given effect to so that the area of surplus land may not be minimized by transfer of such property by owners who at present own them pending the enforcement of the ceiling of ownership of urban properties. Section 3 Sub-section (3) (c) (ii) exempts transfer by or in favour of "any corporate body in which not less than 51% of the paid-up share capital is held by the Central Government or the State Government or partly by the Central Government and partly by the State Government. This exemption, it was urged, permits the holders of property, which would be rendered surplus on the coming into force of the ceiling, to evade ceiling by transfer of land to such a corporate body and also the transfer by such a corporate body of the land held by it. A corporate body under this category may be of any kind organised for any purpose. It may also be a company carrying on the work of colonisation like the petitioners in some of the writ petitions. The mere fact that 51% share of such a corporate body is held by the State Government does not provide any reasonable basis of its classification or differentiation from the category to which the petitioners belong. The purpose of such a corporation, it was submitted, would be exactly the same as the purpose for which the petitioners in some of the writ petitions are carrying on their business and if any Government takes 51% share in such a corporation, it is only to further the object of that corporation, i.e. to provide developed building-sites to the public. The share of the Government cannot be a basis of any classification for exemption. The nature of such corporation remains-indefinite and such corporation may be organised for any purpose. As far as Section 3, Sub-section (3) (c) (iii) is concerned, it was urged that the exemption contained in that provision permits any landholder whose land may ultimately become surplus to transfer his land to such institutions and thereby reduce his land holding within the ceiling limit. It was submitted that the Act does not provide that only the land held by such institutions for the purpose

of the University or the U.P. State Electricity Board or for the purpose for which the corporation is established by law is exempted. According to Sri Khare, land held by these institutions as their personal asset in the same manner as any other individual or corporation may hold, is also exempted. It was contended that there is thus no basis of classification on which Land held as assets by any University or the Uttar Pradesh State Electricity Board or such Corporations can be differentiated from land held as assets by other persons or corporations. Similarly, it was urged that Section 3, Sub-section (3) (c) (iv) provides for exemption of transfer to or transfer by

"a Co-operative Society to the share capital of which the State Government has subscribed directly or in the formation or augmentation of the share capital of which it has assisted indirectly as provided in Chapter VI of the Uttar Pradesh Co-operative Societies Act, 1965."

It was submitted that such Co-operative Societies may hold Large areas of land as their assets, quite apart from those held for their co-operative purpose. Mr. Khare urged that there is no tangible basis for land held as assets by such Co-operative Societies" being differentiated from land held by a Co-operative Society which has not been given any loan by the State Government or has not taken any financial assistance from the State Government The most serious objection was taken to the exemption from the operation of the Act of ""widely held companies". It was submitted that any person could by transferring his land to such a company evade ceiling and thus avoid declaration of his surplus land as available to the Government. A "widely held company" whose shares are quoted on a stock exchange, it was urged, is in no way different from any other public limited company as far as the object of the Act goes since the purpose of either is profit for its shareholders. It was submitted that any person can escape the clutches of the contemplated law by persuading any "widely he"d company" to accept the transfer of his land before the coming into force of an urban property ceiling law. A company having 200 shares may be listed in a recognised stock exchange while a company having 500 shares may not be listed A "widely held company" is in no wise distinguishable from the Rashtriya Vikas Limited which is a public limited company and is the petitioner in one of the petitions as far as the object of the Act is concerned. It was submitted that the Rashtriya Vikas Limited is a public limited company whose shares are held by as many as 185 people but as its paid up share capital was at the time of the filing of the writ petition less than Rs. five lacs, it was not acceptable by stock exchanges for quotation of its shares. It was further urged that the provisions of the Securities Contracts (Regulation) Act does not vest any power of control in the Government over public limited companies but merely regulates the working of the Stock Exchange Associations and prevents speculation in shares and exploitation of share holders. The Companies Act itself provides for control of public limited companies irrespective of the question as to whether they are "widely held companies" or not.

10. On the same lines exemption contemplated by Section 3 (3) (c) (vi) of the Act was challenged. The submission broadly was that in all the categories mentioned above, if exemptions had been provided for only in respect of land held by the concerned authorities, corporations or societies for their respective purposes, they would not have been objectionable but the Act provides for exemptions even in respect of land held by such corporations etc. beyond the need of the purpose for which they exist. The contention was that the provisions for transfer in favour of or by the exempted categories are not at all justifiable either on the basis of the purpose of the Act or on the basis underlying the said exemptions. As far as the exemption contemplated by Section 3 (3) (e) is concerned, it was submitted that cooperative housing societies which are exempted under this clause are in no way different with regard to their purpose from various "colonisers" who are petitioners in some of the writ petitions. The purpose of the co-operative housing societies like that of the petitioners is to provide housing sites after developing them.

11. Sub-section (4) of Section 3 was challenged on the ground that it was wide enough to take away the entire substance of the Act. In exercise of this power, it was contended, the State Government may permit practically every kind of trade activity in land. The word "educational" would embrace even provision of housing sites for persons teaching in educational institutions. Similarly, the State Government is free to exempt transfer of land for provision of housing sites for persons engaged in scientific education. The State Government also is at liberty to make use of the power for granting exemptions for provision of housing sites for persons engaged in industrial undertakings. The structure of Section 3 (1) of the Act, Shri Khare went on to urge, shows that the exemptions as well as the main provision are integral parts and inseparable from each other, and if any of the exemptions are ultra vires, the whole Act as an integrated scheme would fall and consequently Section 3 itself must be struck down as offending Article 14.

12. The vires of Section 3 of the Act was challenged by Shri Shanti Bhushan who appeared for some of the petitioners on similar lines. Shri N.B. Singh, who represented the petitioners in many of the writ petitions, also contended that Section 3 of the Act is violative of Article 14 of the Constitution. His contentions mainly were the same as those advanced by Sri S. C. Khare and Sri Shanti Bhushan.

13. The scope of Article 14 of the Constitution has been considered by the Supreme Court in numerous decisions and

"it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Statute in question. The

classification may be founded on different bases, namely geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

(See *Budhan Choudhry and Others Vs. The State of Bihar*, . The Supreme Court has further laid down:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself:

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f)"

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The above principles must be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection requirement. In *Ram Krishna Dalmia v. Justice Tendolkar* (supra), 5 R Das, C. J. classified five categories of cases in which a statute may come up for consideration on a question of its validity under Article 14 of the Constitution. The first one of the five categories is described in the following words:--

"A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes, such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the

statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law, as it did in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, *State of Bombay v. F. N. Balsara* AIR 1951 SC 318 *Kedar Nath Bajoria Vs. The State of West Bengal*, *V.M. Syed Mohammad and Company Vs. The State of Andhra*, and *Budhan Choudhry and Others Vs. The State of Bihar*,

Since the decision in *Ram Krishna Dalmia v. Justice Tendolkar* (supra), the Supreme Court has rendered numerous decisions in which the vires of an enactment as violative of Article 14 of the Constitution came up for consideration but the law as Laid down with regard to the scope of Article 14 in *Budhan Choudhary V. The State of Bihar* (supra) and *Ram Krishna Dalmia v Justice Tendolkar* has remained unaltered.

14. The learned Advocate General controverted the arguments advanced with regard to the validity of Sections 3 and 4 of the Act and contended that there is a rational basis for classifying those exempted from the operation of the Act separately from others who are subject to the restrictions created by the Act, and the basis of the classification of those exempted has a rational nexus with the object sought to be secured by the Act. He further contended that the object of the Act itself provides sufficient guidelines to the State Government for exercising the power conferred by Section 4 of the Act and its validity is consequently not open to be impugned.

15. Many of the clauses of Section 3 of the Act and Section 4 thereof are no longer open to attack on the basis of Article 14 of the Constitution in view of the recent unreported decision of the Supreme Court in *Thakorbbhai Kewelbbhai Patel v. State of Guj.ar.at* (Writ Petn. No. 467 of 1972 decided on 7-11-1974 = (Reported in *Thakorebbhai Kevelbbhai Patel Vs. State of Gujarat*, by a Bench consisting of A. N. Ray, C. J. and K. K. Mathew and N. L. Untwalia, JJ.). An uncertified copy of the judgment was made available to me by the learned Advocate General and its veracity has not been controverted by counsel representing the petitioners. In *Thakorabbai Kewelbbhai Patel* (supra) the constitutional validity of the *Gajarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act 1972* (Gujarat Act No. 12 of 1972) -- hereinafter referred to as the Gujarat Act -- was challenged on the ground that it violated the fundamental rights of the petitioner granted under Article 14 of the Constitution. The impugned Gujarat Act like the Act under consideration was also a temporary one and its life was extended from time to time to enable the State Legislature to pass the Urban Property Ceiling Act. It embodied a declaration that the Act is for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution. Section 4 of the Gujarat Act provided for prohibition of alienation etc. in these terms:--

"(1) No person who owns any vacant land shall, on or after the appointed day, alienate such land by way of sale, gift, exchange, (mortgage other then simple

mortgage), lease or otherwise or effect a partition or create a trust of such land; and any alienation made, or partition effected, or trust created in contravention of this section shall be null and void:

Provided.....

(2)"

Restrictions on registration of documents had been put in Section 5. Section 6 (1) of the Gujarat Act was in the following words:--

"Nothing in this Act shall apply to any transfer of vacant land by or in favour of-

(a) A State Government or the Central Government or a local authority;

(b) A Government Company as defined in Section 617 of the Companies Act, 1956;

(c) a corporation established by or under a Central, provincial or State Act, which is controlled or managed by a State Government or the Central Government;

(d) such co-operative house building societies established for the purpose of providing housing accommodation to weaker sections of people, as may be approved by the State Government in this behalf."

Under Sub-section (1) of Section 7

"the State Government, may, by a general or special order in writing and for reasons to be recorded therein, exempt any area or any alienation or other transfer of any vacant land from all or any of the provisions of this Act."

Under Sub-section (2), to avoid any hardship also,

"the State Government may if it considers it necessary so to do, exempt, by an order in writing, any alienation or other transfer of any vacant land from all or any of the provisions of this Act."

Subject to any rules that might be made in that behalf or to any general or special orders of the State Government the Collector had been authorised under Sub-section (3) of Section 7 to exempt by order in writing, any alienation or other transfer of any vacant land to be used for any educational, scientific, industrial or commercial purpose or for such other purpose as may be prescribed by rules made under the Act. The Act was to override other laws in view of Section 13. The vires of the Gujarat Act was challenged before the Supreme Court, inter alia, on the grounds that there was no rational basis for not applying the Act in respect of the alienation of vacant lands in favour of the State Government, the Central Government, local authorities. Government Companies, Government Corporations or the co-operative house building societies and that there was no guideline provided in Section 7 of the Gujarat Act for exercise of the power of exemption. The first of the two grounds on which the validity of the Gujarat Act was challenged was repelled by the Supreme Court in the following

words:--

"It is plain that the main object of the Act being ultimately to distribute the ownership and control of the material resources of the community as best to subserve the common good and to prevent concentration of wealth, a transfer in favour of the Government, local authorities, Government Companies, or corporations had to be excluded as such transfer could not possibly defeat the object of the Act, rather it would give a fillip to it. Permitting transfers of vacant lands in favour of Co-operative House Building Societies is obviously a step for the fulfilment of the object of the Act. The Act cannot be held to be discriminatory on such grounds."

The challenge to the" constitutional validity of Section 7 of the Gujarat Act was dealt with by the Supreme Court in the following terms:

"The power of the State Government under Sub-section (1) of Section 7 to exempt any area or any alienation or other transfer of vacant land from all or any of the provisions of the Act is a power which is to be exercised for the reasons to be recorded in the general or the special order and in furtherance of the object of the Act. The guideline is to be found in the object of the Act itself. The power under Sub-section (2) has to be exercised by the State Government for avoiding any hardship. There is sufficient guideline for exemption in case of hardship which will depend upon the facts and circumstances of each case. The order of exemption to be made by the Collector can only be in a case where the land is to be used for any educational, scientific, industrial or commercial purposes. It has not been left open to the Collector to decide for what other purpose he can grant the exemption. Such other purpose can be only that as may be prescribed by the State Government by rules made u/s 12 of the Act....."

The writ petition failed and was dismissed.

16. It will be noticed that Sub-clauses (i), (ii), (iii) and (iv) of Clause (c) of Section 3 (3) of the Act bear a close resemblance, if they are not identical, with the various clauses of Sub-section (1) of Section 6 of the Gujarat Act which was in challenge in *Thakorebhai Kevelbhai Patel Vs. State of Gujarat*, . Clause (e) of Section 3 (3) of the Act also belongs to the same class of organisations as were contemplated by Section 6 (1) of the Gujarat Act. The constitutionality of Section 3 (3), Clause (c) Sub-clauses (i), (ii), (iii) and (iv) and that of Section 3 (3) (e) consequently cannot be assailed in view of the abovementioned decision.

17. Sections 4 and 5 of the Act are more restricted in scope than the provisions of Section 7 of the Gujarat Act, the validity of which was sustained by the Supreme Court. These provisions are also no longer open to challenge.

18. It must be borne in mind that for every transfer there must be two parties. The organizations contemplated by Section 3 (3) (c) (i), (ii), (iii), (iv) and (vi) and Section 3 (3) (e) are either the Central or the State Governments themselves or Corporations and statutory authorities subject to Governmental or

public control. There is no reasonable ground to suspect that they would be parties to transactions whose purpose is to defeat the objective which the legislature had in mind while enacting the Act. While cooperative societies exempt from the operation of the Act may be carrying on the same type of activity as carried on by the "colonisers", a clear distinction lies between them. Co-operative societies exempt are subject to Governmental control. The object of co-operative societies envisaged by Clause (e) of Section 3 (3) is not merely profit making and concentration of wealth unlike colonisers who are petitioners in some of the petitions before me. A co-operative society registered under the U.P. Co-operative Societies Act is the one which has as its object promotion of the economic interests of its members in accordance with co-operative principles. According to Section 4 of the U.P. Co-operative Societies Act,

"Co-operative principles shall include-

(a) advancement of economic interest of the members in accordance with public morals, decency and the relevant directive principles of State policy enunciated in the Constitution of India;

(b) regulation and restriction of profit motive;

(c) promotion of thrift, mutual aid and self-help;

(d) voluntary membership; and

(e) democratic constitution of the society.""

U.P. Act No. XI of 1966 places a restriction on the amount of shares which members can hold in co-operative societies and thus provides a safeguard against concentration of wealth. It is futile to contend that co-operative societies belong to the same class as the "colonisers.""

19. The only question surviving for consideration consequently is as to whether Section 3 of the Act is violative of Article 14 of the Constitution because Section 3 (3) (c) (v) exempts from the operation of the Act "any widely held company"". The Act under challenge is a temporary one and has been enacted since the Legislature apprehended that before the Ceiling Bill became law some persons might transfer their urban property to defeat its purpose. Section 31 of the Ceiling Bill which has been extracted earlier provides that nothing in it would apply to any "urban property" owned amongst others enumerated in that provision by any "widely held company". "Widely held company"" was defined in Section 3 (f) of the Ceiling Bill in terms identical with Section 2 (c) of the Act. Since the Ceiling Bill did not envisage restrictions on the valuation of "urban property" owned by "widely held companies"" and certain others mentioned in Section 31 thereof, the legislature advisedly exempted "widely held companies" from the operation of the Act. If the Ceiling Bill had been passed by the State Legislature and Section 31 (a) (viii) could not have been struck down as being violative of Article 14 of the Constitution, it is apparent that the constitutional validity of Section 3 (3) (c) (v) of the Act is not open to attack on the basis of

Article 14. The object of the Ceiling Bill was furtherance of the directive principles of the State policy as set out in Article 39(b) and (c) of the Constitution and consequently to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and further to secure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Placing restrictions on the valuation of urban property which one could legally hold is one of the methods by which concentration of wealth and means of production in private hands can be curtailed and avoided. By providing for a ceiling on the ownership of "urban property" and for acquisition by the State of "surplus land" with power to redistribute such land, the legislature sought to secure that the material resources of the community are so distributed as best to subserve the common good. A complete achievement of the objective would be impracticable because it would retard activities essential for advancement of educational, scientific, industrial, commercial and other similar purposes, A compromise thus is inevitable and a balance has to be struck. By the very nature of their composition and needs certain authorities and corporations had to be exempted so that activities of the nature mentioned above did not stagnate. Reasonable care, however, was necessary to be taken so that concentration of wealth and material resources did not result as far as possible. The legislature while passing an Act placing restrictions on the ownership of "urban property" is free to recognise the degree of common detriment that could occur as a result of concentration of wealth and means of production and confine its restrictions to cases where it deemed the need to be clearest *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . "Widely held companies", it must be conceded, are in many respects similar to other public limited companies registered under the Indian Companies Act and yet there is a distinction between the two classes of companies which to a certain degree provides assurance against concentration of wealth and of the material resources of the community in a few hands. It is well known that in most of the public limited companies, the share holdings are cornered by a few individuals or families to secure a more or less permanent control over them and their activities ultimately lead to concentration of wealth in a few hands. This contingency is to an extent avoided by statutory provisions as far as "widely held companies" are concerned. A public limited company desirous of setting its securities listed on a recognised stock exchange has to comply with Rule 19 of the Rules framed in exercise of powers u/s 30 of the Securities Contracts (Regulation) Act, 1956, Rule 19 (2) (b) requires that-

"At least forty nine per cent, of each class or kind of securities issued by the company was offered to the public for subscription through advertisement in newspapers for a period not less than three days and that applications received in pursuance of such offer were allotted fairly and unconditionally:

Provided that a recognised stock exchange may relax this requirement with the previous approval of the Central Government on satisfactory evidence being

produced by the company concerned that the securities sought to be listed are not unduly concentrated in a few hands.

Explanation.-- Where any part of the securities sought to be listed have been or are agreed to be taken up by the Central Government, a State Government or a Government Company or any other organization-- that may be notified in this respect by the Central Government in the Official Gazette, the reference to forty-nine per cent, of the securities to be offered to the public shall be construed to mean forty nine per cent, of the issue available after setting aside any securities so taken up or agreed to be taken up."

The restriction extracted above in considerable measure secures that the shareholdings of a "widely held company" are not concentrated in a few hands. This feature of "widely held companies" clearly distinguishes them from other public limited companies registered under the Indian Companies Act and provides security against the concentration of wealth in a few hands which is the ultimate objective of the Ceiling Bill. All the organisations which have been grouped for exemption u/s 31 of the Ceiling Bill by their very nature would need urban land in excess of the ceiling area that might be ultimately determined upon by the legislature. The Governments or Government or public controlled authorities or other corporations exempted from the operation of the Ceiling Bill are such that their very composition provides a measure of insurance against concentration of wealth and material resources of the community in a few hands. This common characteristic of the exempted categories of organizations distinguishes them from those sought to be subjected to restrictions envisaged by the Ceiling Bill and this distinctive feature of theirs has a rational nexus with its objective. In this view of the matter, exemption in the Ceiling Bill to ownership of "urban property" by "widely held companies" cannot be considered to be unrealistic or discriminatory. Exemptions of "widely held companies" from the operation of the Act also cannot in consequence be assailed. The challenge to the various provisions of the Act as contravening Article 14 of the Constitution consequently fails.

20. Mr. Shanti Bhushan, who represented the petitioners in Writ Petition No. 2529 of 1974 and some other connected petitions, further contended that as the petitioners, who are "colonisers" had purchased land for development of a planned colony and the sale of small building plots in favour of a large number of persons, the State Government should have granted an exemption u/s 3 (4) of the Act and in not doing so the Government had acted contrary to the guiding principles on the basis of which the State Government's discretion in regard to grant of exemption has to be exercised. The submission to my mind is devoid of substance and must be rejected. The State Government u/s 3 (4) has power to allow sale or other transfer of urban property "in case it is to be used for educational, scientific, industrial or commercial purposes or for similar other purposes". While granting permission for sale and other transfer of urban property in exercise of its power u/s 3 (4) of the Act, the State Government has

to bear in mind that it does not lead to concentration of wealth in a few hands. The colonisers' basic objective is profit making and thus concentration of wealth. In refusing to grant permission to them, the State Government cannot be said to have acted in disregard of the guidelines provided by the Act. An identical submission was made by Sri N. B. Singh who represented the colonisers in some of the writ petitions and it must be rejected for the reasons already given.

21. Sri S.C. Khare, who represented the petitioners in Writ Petition No. 1887 of 1974 further contended that his clients had made representations to the State Government u/s 3 (4) of the Act but they had been dealt with as if they had been made u/s 3 (5) of the Act. This contention was based on the letter of a Section Officer of the "Raiaswa Anubhag" of the U.P. Government by which it was communicated to the petitioners that their representations have been rejected by the State Government. The subject-matter of this communication is described in the followings:--

"Private Colonisers द्वारा गृहित तेन लाख से अधिक मूल्या की शहरी सम्पत्ति का अन्तर्गत्."

Power to permit sale or transfer of urban property of which the value does not exceed Rs. 3 lacs vests not in the State Government but in the District Officer or the Collector concerned. While rejecting the representations made by the petitioners, it is inconceivable that the State Government treated them as representations made u/s 3 (5) of the Act. The subject-matter of the communication as quoted above itself shows that the representations were treated as having been concerned with urban properties valued at more than Rs. 3 lacs.

22. For the reasons given, all the writ petitions fail and are hereby dismissed with costs to the opposite parties. Interim orders, if any, are hereby vacated.