
(1979) 05 KAR CK 0001
In the Karnataka High Court
Case No : W.P. 11462/78

I.B.M. World Trade Corpn. and Anr. - Petitioner	APPELLANT
Vs	
Asst, Commr. and Competent Authority and Another	RESPONDENT

Date of Decision : 25-05-1979

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (1979) 2 KarLJ 121

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. In this writ petition, the two petitioners have challenged, the legality and correctness of the order passed by the 1st respondent-Assistant Commissioner and Competent Authority, under the Urban (Land Ceiling and Regulation) Act, 1976, (hereinafter referred to as the Act) under S. 27(2) of the Act which has been confirmed in appeal by the respondent-Urban Land Tribunal. The two respondents will be referred to as the Competent Authority and the Tribunal for convenience and brevity.

2. The Competent Authority is defined under S. 2(d) of the Act and the same is set out below:

"2(a)"competent authority"means any person or authority authorised by the State Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification and different persons or authorities may be authorised to perform different functions."

3. In the instant case the Competent Authority is the one authorised by the State Government for Bangalore Urban Agglomeration. The term "urban agglomeration" is also defined under Sec. 2(n) of the Act. It is not necessary to set out the definition as the land that is the subject matter of this writ petition undisputedly is situated within the Bangalore urban agglomeration and there is no controversy in that behalf.

4. Similarly, "Tribunal" is defined under Sec. 2(m) and it is as follows:

"2(m)"Tribunal"means the Urban Land Tribunal constituted under Sec. 12."

5. Sec. 12 of the Act is as follows.

"12(1) The State Government, may, by notification in the Official Gazette, constitute one or more Urban Land Tribunal or Tribunals."

6. For Bangalore Urban Agglomeration the Chairman of the Karnataka Appellate Tribunal is constituted as the single member Tribunal under the Act.

7. The, facts leading to this writ petition are as follows: The 1st petitioner is IBM World Trade Corporation, New Delhi, (hereinafter referred to as the Corporation). It is stated that the Corporation is duly organised under the Laws of the State of Delaware, U.S.A., having established a place of business in India within the meaning of the Companies Act, its Principal place of business is at New Delhi.

8. The 2nd petitioner Larsen and Toubro Ltd., (hereinafter referred to as the company) is a Company duly incorporated under the Companies branch office at Bangalore.

9. The Corporation purchased agricultural lands comprising several survey numbers in Byatarayanapura Village, Yelhanka Hobli, Bangalore North Taluk, as far back as the years 1969 and 1970. These lands were purchased from different owners and the lands were consolidated into a single block and fenced. The Corporation also applied to the Revenue Authorities under the Karnataka Land Revenue Act, 1964 for diverting the lands to non-agricultural use (in the instant case for "industrial use") and obtained the sanction and have alleged that the conversion fines to the Government have been paid. The Corporation has alleged that the total cost of purchase, development, consolidation and payment of conversion fine was approximately Rs. 15,50,000/- Total area of land involved is 1,72,211.46 sq. Mts. The land was also re-zoned from medium to heavy industry. The purpose was to shift or relocate its manufacturing facilities from Bombay to Bangalore. The Corporation intended to set up factories at Bangalore, to manufacture Electronic Computers and, other Data Processing machines. This project of the Corporation had the full support of the Government of Karnataka. However, the Government of India did not give its consent and in the result the Corporation had to abandon its Bangalore project even though considerable progress had been made towards its establishment.

10. At about the same time when the Corporation had not met with success in relocating its plants at Bangalore, the Company was on the look out for suitable land for setting up an industrial complex at Bangalore to manufacture poelain Hydraulic Excavators and other Engineering products with the aid and support of the Government of Karnataka. In this position, the Corporation entered into an agreement on 11.8.1973 with the Company to sell its land at Rs. 35,000 per acre. According to one of the terms of the agreement, the transaction of sale was required to be completed by 31-3-1975. Pending completion of the sale and

pursuant to the agreement, the Company was put in possession of the land in question on 11-11-74 on payment by the Company to the Corporation, major part of the sale consideration in the sum of Rs. 15,00,000/-. This was to enable the Company to utilise the lands and put, up its factories. In this behalf the Corporation gave the Company two successive powers of attorney to enable it to utilise the land on which, it had entered possession having paid a sum of Rs. 2,00,000/- as earnest money before the agreement of 11-8-73 and a further sum of Rs. 13,00,000/- at the time of the agreement.

11. It is relevant to point out at this stage itself that the Corporation had obtained permission of the Reserve Bank of India under Sec. 31(1) of the Foreign Exchange Regulation Act, 1973 for the sale of the land at the agreed price of Rs. 23,54,188/-. Similarly, the Company had obtained sanction of the State Government for use of the land to set up its factory to manufacture Poclain Hydraulic Excavators and other products, as originally diversion of use of land had been granted for establishing a factory to manufacture Computer Equipments. The Company, it is alleged has since then set up factories and is still setting up an industrial complex after getting the necessary sanction and clearance of the City of Bangalore Improvement Trust Board (Now succeeded by the Bangalore Development Authority). The Company has claimed that it has invested about Rs. 2 crores for its project up to date of this petition.

12. Meanwhile the State of Karnataka promulgated an Ordinance that was followed by the passing of the Karnataka Vacant Land in Urban Areas (Prohibition of Alienations) Act, 1975. This State Act was given retrospective effect from the date of the Ordinance, i.e., 17-6-1975. Both the Corporation and the Company applied under the provisions of the State Legislation for permission to complete the sale transaction pursuant to the agreement of 11-8-1973. While, their application was pending consideration the Act (Central) came to be passed in 1976.

13. Having regard to the fact that the land in question had been diverted for use, of the Company distinct from the use of which it was originally diverted in favour of the Corporation, the Company applied to the State Government under S. 20 of the Act for exemption of the entire land from the ceiling provisions of the Act. This application came to be allowed and the lands in question were exempted; vide Notification dated 2-6-1977 bearing No. HMA 81/CUP 77.

14. Subsequent to the above, the Corporation made an application under S. 27(2) of the Act to the Competent Authority for permission to sell the land in question, in accordance with law. The application was made on 22-9-1977. The 1st respondent-Competent Authority by its order dated 24-11-1977 refused permission. It is significant to note that refusal of permission has been beyond the period prescribed under S. 27(4) of the Act.

15. Aggrieved by the order of the Competent Authority, the Corporation preferred an appeal to the Tribunal under S. 33 of the Act. The, said appeal No. 3 of 1978

before the Tribunal came to be dismissed on merits by the Tribunal by its order dated 22-4-1978.

16. The Corporation and the Company having overlapping rights and common interest in the land in question have jointly challenged the aforesaid orders of the Competent Authority and the Tribunal in this writ petition being aggrieved by the same on a number of grounds to which reference will be made shortly.

17. Before doing so, I have to mention that at the time this petition was taken up for hearing, the respondents were not represented and in that circumstance learned Government Pleader Shri B.B. Mandappa was directed to take notice for the respondent and also ascertain the views of the State Government and submit the same to the Court for there was apparent conflict between the policy of the Government and the impugned orders. He was also directed to file a return if necessary and sufficient time was given for the same. No return has been filed but the learned Government Pleader has submitted that his instructions were to support the impugned orders.

18. I have set out all the facts necessary in some detail. The facts alleged by the petitioners have been supported by numerous annexures to the petition. In the absence of a return or any demonstrable error in the pleadings I have to accept the statement of facts made by the petitioners as correct. Reference will be made in the course of this order to such of the annexures to the petition that have a bearing on the matters in issue in this petition.

19. The petitioners in challenging the correctness and legality of the impugned orders have urged in the petition the following grounds and briefly stated they are as follows:

a) That the order of the Tribunal is without or in excess of the jurisdiction vested in it inasmuch as after recording a finding that permission to transfer stood granted by operation of law in terms of S. 27(4) of the Act, the Tribunal ought to have allowed the appeal of the 1st petitioner instead of rejecting the same;

b) That the Tribunal was in error in holding that the exemption granted on the application of the 2nd petitioner (Company) by the State Government under S. 20(1)(a) of the Act was relatable only to the holder of the land and not to the land itself and thereby it misdirected itself in coming to the conclusion that the exemption granted by the State Government would not enure to the benefit of the 1st petitioner-Corporation who was the holder of the land and as such the "deemed permission" under S. 27(4) of the Act was inoperative having regard to the provisions of S. 27(1) of the Act.

20. The other grounds urged are relatable to the grounds set out above and do not require to be considered separately.

21. From the circumstances of the case and the grounds urged the following questions are required to be considered in this writ petition:

(1) Whether the failure on the part of the Competent Authority to communicate its refusal of permission to transfer the land in question by way of sale within the time prescribed by the Act under Sec. 27(4) has vested in the Corporation (1st petitioner) an absolute right to effect the transfer in favour of the Company (2nd petitioner)?

(2) Whether the exemption granted by the State Government under Sec. 20(1) (a) of the Act is relatable to the land or the holder thereof in the scheme of the Act and whether such exemption enures to the benefit of the 1st petitioner-Corporation?

22. The Act is a Central Act. It was passed by the Union Parliament under Art. 252(1) on the Resolution passed by 11 of the States in their respective Legislatures. Karnataka was one of the 11 States that passed the required Resolution. Preamble to the Act clearly indicates its purpose and object.

The preamble reads as follows:

"Whereas it is expedient to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected there with, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable, distribution of land in urban agglomerations to subserve the common good."

23. From the language of the preamble it is clear that the Act is regulatory and not prohibitory. The Act is divided into V Chapters and consists of 47 sections and two Schedules. Chapter I deals with the application of the Act and the date of coming into force of the Act in various States. In Karnataka it has come into force at once, that is on 17-2-1976. Chapter II deals with definitions of words and them. Sec. 2(1) defines the terms "to hold" and it is as follows:

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

(i) to own such lands; or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hirepurchase 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;"

24. Sec. 2(0) defines Urban land and it is as follows:

"2(o) "urban land" means- (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or (ii) in a case where there is no master plan, or where the master plan does not refer to any land as

urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

25. Sec. 2(q) defines "vacant land and is as follows:

"2(q)"vacant land"means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include- (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

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

Provided that where any person ordinarily keeps, his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records) then so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

26. Chapter III deals with ceiling on vacant land and among other things under Sec.3 of the Act provides for the ceiling limit to hold urban land by persons (also defined under Sec. 2(i) with reference to Schedule I to the Act). S. 5(3) occurring in Chapter III prohibits transfers and as it is relevant to the questions raised in this petition the same is set out below for convenience.

"In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of Art. 252 of the Constitution no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof, by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Sec. 6 and a notification regarding the excess vacant land held by him has been published under sub-sec. (1) of Sec. 10; and any such transfer made in contravention of this provision shall be deemed to be null and void."

27. Sec. 6 calls for declarations to be filed by persons holding land in excess of the ceiling imposed under the Act in the prescribed form and to the prescribed authority. Sec. 10 provides for the manner of acquiring excess land after due notification, and sub-sec. (4) thereof again prohibits transfer in the interregnum

between the notifications under Sec. 10(1) and Sec. 10(3), declaring any such transaction in contravention thereof to be null and void. Sec. 19 in Chapter III exempts statutorily certain local authorities and others mentioned therein including the Central and State Govt. holding vacant land from the application of the Act, Sec. 20 empowers State Governments to exempt urban land in certain cases from the provisions of Chapter III of the Act. As the controversy in this case, is focussed on the interpretation of this section the same is set out in full below.

"20(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,- (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land the purpose for which such land is hieing or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do that Government may by order exempt subject to such conditions if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the, proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

28. Chapter IV deals with the regulation of transfer and use of Urban Property. Sec. 26 provides the mode of transfer in respect of vacant lands held within the ceiling limit, while Sec. 27 provides for transfer in respect of vacant lands held in excess of ceiling limit. Sec. 27(4) provides for deemed permission to transfer and the relevant portions of Sec. 27 is set out below to appreciate the grounds urged by the petitioner.

"27(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-sec. (3) of Sec. 5 and sub-sec. (4) of Sec. 10, no person shall transfer by way of sale mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion

only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority.

(2) Any person desiring to make a transfer referred to in sub-sec. (1), may make an application in writing to the competent authority in such form and in such manner as may be prescribed.

(3) On receipt of an application under sub-sec. (2) the competent authority, may, after making such inquiry as it deems fit, by order in writing, grant or refuse to grant the permission applied for:

Provided that the competent authority shall not refuse to grant the permission applied for unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of sixty days of the date of receipt of an application under this section the competent authority does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the competent authority shall be deemed to have granted the permission applied for."

29. Sec. 28 provides for regulation of registration of certain documents in certain cases. Secs. 29 and 30 provide for regulation of future construction of buildings and dwelling units as well as regulating the buildings the construction of which have commenced before or after the commencement of the Act.

30. Chapter V provides for miscellaneous provisions inter alia providing under Sec. 33 of the Act, an appeal against the order of the Competent Authority not being an order under Sec. 11 of the Art or under sub-sec. (1) of Sec. 30 of the Act. Under Sec. 34 State Government is vested with revisional jurisdiction in certain cases Under Sec. 36 Central Government is empowered to give directions to the State Government in its discretion to give effect to the provisions of the Act and call for returns statistics and other informations from the State Governments Sec. 42 of the Act gives the provisions of the Act over-riding effect over all other laws. S. 46 empowers the Central Government to make Rules for carrying out the provisions of the Act.

31. It is in the light of the scheme of the Act and the policy underlying it that the questions raised in this writ petition have to be answered.

32. Learned Counsel for the petitioners, Shri S.G. Sundarswamy has founded his arguments on the basis of the two grounds summarised and set out earlier.

33. Adverting to the effect of deeming provision contained in Sec. 27(4) of the Act, he has strongly contended that such provision should be given effect to strictly and the vested right under such provision cannot be limited, curtailed or taken away lightly. In support of his arguments he has placed reliance on a number of decisions of the Supreme Court and this Court. I shall presently notice the same.

34. The Supreme Court in the case of *State of Bombay v. Pandurang Vinayak Chaphalkar and others*, AIR 1953 SC. 244, while dealing with Sec. 15 of the Bombay Building (Control on Erection) Act, 1948 read with Sec. 25 of the Bombay General Clauses Act, 1904 had occasion to quote with approval Lord Justice James in *Ex Parte Walton: In re Levy* (17 Ch. D. 746 at page 756):

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion"

and followed the same in arriving at the conclusion that a deeming provision should be given its full effect.

35. In the case of *N. Seetharamiah v. Kotaiah*, AIR 1970 SC. 1354 Hegde, J. speaking for himself and Grover, J. had this to say with reference to Rule, 57(2) of Mineral Concession Rules, 1949:

"This deemed refusal, if read with the mandate given to the State Government under Rule 28(1-A) requiring it to dispose of the applications within 9 months of the receipt of those applications, there can be hardly any doubt that if the State Government does not dispose of the applications within the time prescribed, it is deemed to have refused those applications for the purpose of Rule, 28 as well as Rule 57. The High Court was wrong in thinking that in the absence, of a provision providing for deemed rejection in R. 28(1-A), the contravention of that rule does not take away the jurisdiction of the State Government. That conclusion ignores the words in Rule 57(2) that deemed rejection is "for the purpose of these rules". In view of those words in Rule 57(2), it was unnecessary for the rule making authority to prescribe in Rule 28(1-A) the consequences of the failure on the part of the State Government to implement the mandate of Rule 28(1-A)".

36. Even, Shah, J., (as he then was) in the same case, while dissenting on other questions had this to say in relation to deemed refusal.

"The High Court was in error in holding that in the absence of a provision enacting that even if the application stands-rejected for failure to pass an order within the time prescribed, the State Government has power to issue a licence."

37. The Supreme Court in the case of *Maharashtra State Textile Corporation Ltd. v. The Official Liquidator*, AIR 1978 SC 476, dealing with S. 21(1)(a) of the Sick Textile undertakings (Taking over of Management) Act (72 of 1972) through Fazal Ali, J., had this to say:

"14. In the case of *East End Dwellings Co., Ltd. vs. Finsbury Borough Council* (1952 AC 109) Lord Asquith observed as follows:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and

incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The Statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

These observations were quoted with approval by this Court in the case of Mr. Boucher Pierre Audre vs. Supdt., Central Jail Tihar New Delhi, AIR 1975 SC 164 where Bhagwati. J., speaking for the Court observed as follows) (at p. 166).

"It is now well settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion."

38. In the case of Sureshachandra C. Mehta v. State of Mysore, (1969) 2 Mys.L.J. 112, a Division Bench of this Court had occasion to consider the impact of a deeming provision which is in pari materia with Sec. 27(4) of the Act to a great extent. In the said case Sec. 95(5) of the Karnataka Land Revenue Act was under consideration. The said provision is set out below for comparison.

"Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within a period of four months, from the date of receipt of the application the permission applied for shall be deemed to have been granted."

Somnath Iyer, J., (as he then was) speaking for the Bench ruled as follows:

"August 4, 1965 was the date on which the application presented by the petitioner under Sec. 95(2) was received by the Deputy Commissioner and within a period of four months from that date the Deputy Commissioner failed to inform the petitioner his decision on that application. Although the Deputy Commissioner purported to make his decision on December 4, 1965 which was the date on which the period of four months expired, no information that any such decision had been taken, was imparted to the petitioner until 2 days after the expiry of that period. So the statutory permission which sub-sec. (5) of S. 95 brings into being by its own operation should be deemed to have been granted on December 4, 1965 which is the date on which the period of four months to which it refers expired"

39. From the above rulings of the Supreme Court and this Court it is clear that the deeming provision or the legal fiction created under Sec. 27(4) of the, Act must be given full effect. Admittedly, as is apparent from the impugned orders, the competent authority refused the permission sought for beyond the period of 60 days from the date of receipt of the application of the Corporation under Sec. 27(2) of the Act. Thus it is clear that the Corporation had obtained the requisite permission by operation of law and the competent authority by the same reason had no jurisdiction to pass the order of refusal after the, expiry of 60 days from 22-9-1977 on which date the Corporation made the application under Sec. 27(2) of the Act as per Exhibit-H to the petition. The Tribunal has dealt with this aspect

of the question in the following manner:

"It is not in dispute that there has been no compliance with the mandatory provisions of sub-section (3) of Section 5 and sub-section (4) of Section 10 of the Act. Any transaction that may take place, in violation of these provisions shall be deemed to be null and void and, therefore. I am clearly of the view that inspite of the fact that permission is deemed to have been granted in the instant case it is ineffective in view of the non-compliance of the mandatory provisions of sub-sec. (3) of S. 5 and sub-sec. (4) of S. 10 of the Act. This is my finding on point No. 2" (*italics is mine*).

I do not think such a view is permissible. Nor can an express statutory provision be set at naught by a mode of interpretation which does not conform to the well settled principles and rules of interpretation of Statutes.

40. Every provision of the Statute must be given effect to. If any one provision is repugnant to any other provision, the Court must resort to the Doctrine of harmonious construction and eliminate the repugnancy or conflict so that no part of the statute is rendered otiose, or redundant. The fallacy of the reasoning of the Tribunal is clearly demonstrable.

41. As earlier pointed out Sec. 26 of the Act provides for a similar situation when the competent authority fails to purchase the property in question within sixty days from the date of receipt of an application seeking permission to transfer land which is within the ceiling limit of the holder or owner. Sec. 27(4) of the Act is similar in effect though Sec. 27(1) appears to control transfers, under that section in terms of Sec. 5(3) and Sec. 10(4). Let me assume a case falling under Sec. 27 where the permission is expressly granted to the holder of the vacant land without there being a notification under Sec. 10(4) of the Act. Would the resultant transfer be void in terms of Sec. 5(3) or Sec. 10(4) of the Act? If the answer is in the affirmative then Chapter IV should be construed as holding up all trade. Commercial and Industrial transactions relating to vacant land in the urban agglomerations of the country resulting in the stoppage of growth and development of trade, commerce and industry in the country awaiting the sweet will and pleasures of the various competent authorities to publish the necessary notifications under Sec. 10(4) of the Act. This could not have been the intention of the Parliament. In a developing country it would look absurd. Then how are we to construe Sec. 27 of the Act to avoid this impossible situation? Before venturing to do so it would be proper to notice the contentions of the learned Government Pleader Shri B.B. Mandappa.

42. The learned Government Pleader has drawn my attention to a recent ruling of the Division Bench of Gujarat High Court in the case of Kanubhai Sankalchand Patel v. Nayankunj Co-operative Housing Society Ltd, AIR 1978 Guj. 140. In the said case the Act and some of the provisions came to be considered in the light of the facts of that case. The plaintiff-respondent therein was a Co-operative Housing Society which had acquired by an agreement of sale entered into in the

year 1964 right to purchase certain land which on the findings of the Court, formed part of the Ahmedabad Urban Agglomeration. The Society had acquired the said right from another who had a similar agreement of sale, in respect of a larger extent of the same land, entered into in 1962. The land admittedly belonged to one Sankalchand Manilal Mukhi. He died in 1963. Some of his heirs refused to sell the land to the Society and the Society filed a suit for specific performance of the agreement in its favour. The heirs of the owner and the person who had the agreement of sale of 1962 were all made defendants in the suit. The trial Court decreed the suit. One of the contesting defendants appealed against the decree and Judgment of the trial Court raising before, the High Court several contentions that had not been raised before the trial Court. One of such contentions permitted by the High Court to be raised was the contention that no decree for specific performance could be passed in view of the provisions of Urban Land (Ceiling and Regulation) Act, 1976. In answering the said contention the Gujarat High Court has held:

(1) That the Society was never in possession of the property in question much less having acquired any title to it before the commencement of the Act and as such not being owner or falling within the definition of the term "to hold" under Sec. 2(1) of the Act could not claim the benefit of statutory exemption under Sec. 19 of the Act. (underlining (italics) is mine).

(2) That having regard to the over-riding effect of the provision of the Act as contained in Sec. 42 of the Act the Civil Court was not competent to pass a decree for specific performance contrary to the provisions of the Act;

(3) That Sec. 5(3) of the Act imposes a total ban upon the transfer of vacant land which exceeds the area of 1000 sq. meters.

43. The learned Government Pleader Shri B.B. Mandappa has strongly relied upon the third of the above findings, to support his argument that Sec. 27(1) of the Act, unlike Sec. 95(5) of the Karnataka Land Revenue Act is subject to Sec. 5(3) and Sec. 10(1) of the Act and as such the impugned orders are legally correct and are not liable to be interfered with by this Court.

44. Having regard to the facts of the case decided by the Gujarat High Court, there can be no two opinions in regard to the correctness of the law laid down by that High Court in so far as the first two findings which I have summarised earlier. So far as the third finding summarised above is concerned I am respectfully in disagreement with their Lordships' view.

45. As I have disagreed with the ruling of the Division Bench of another High Court, I feel it my duty to give their own reasoning in their own words for the conclusion they reached in regard to Sec. 5(3) of the Act. The relevant portions occur in para 6 as reported and is as follows:

"We are concerned with sub-sec. (3) of Sec. 5. Sub-sec. (3) of Sec. 5 in our opinion, imposes a complete ban upon the transfer of vacant land which exceeds

the area of 1000 sq. meters. It is not correct to say as has been argued by Miss. V.P. Sana that the transfer of such land is subject to two conditions, namely, furnishing a statement under Sec. 6 and issuance of notification under sub-sec. (1) of Sec. 10. We state so because we have, not been able to find in the Act any provision which lays down what is going to follow if no notification under Sec. 10(1) is issued. If the transfer of such a vacant land was merely subjected to two conditions specified in sub-sec. (3) of Sec. 5, the Parliament would have certainly provided for the consequences of non-issuance of notification under sub-sec. (1) of Sec. 10. One such consequence would have been to permit the person concerned to enter into a transaction of transfer. In this context sub-sec. (3) of Sec. 5 can be usefully read in contrast with sub-secs. (1) and (2) of Sec. 26. Sec. 26 in terms provides that if the land to which that section applies is not acquired by the competent authority within a period of sixty days after he has received the notice in writing of the intended transfer he shall be entitled to transfer it in any manner he likes. There is no such provision in regard to vacant land governed by Sec. 5(3). It is, clear, therefore, that issuance of a notification under sub-sec. (1) of Sec. 10 in respect of the land governed by sub-sec. (3) of Sec. 5 is compulsory or mandatory and that delay in issuance of such a notification does not restore to the person concerned the right of transfer of such land. Consequences of non-issuance of notification under sub-sec. (1) of sec. 10 have not been provided in the case of land to which sub-sec. (3) of Sec. 5 applies because the Parliament has not contemplated any such contingency."

46. Undoubtedly their Lordships have analysed the scheme of the Act and the important provisions therein. But I have earlier expressed a slightly different view of the scheme of the Act and the policy underlying the same. It may not be wholly correct to state that Parliament has failed to provide for the contingency that results in accordance with the reasoning contained in the passage cited above. Gujarat High Court did not notice the scope and effect of Sec. 20 of the Act. Under the said section the State Governments have been given very wide powers to meet any contingency or situation just as Sec. 19 statutorily protects the vacant land held by Central Government, the State Government and other authorities and institutions mentioned therein.

47. In the Gujarat decision neither the scope of Sec. 20 of the Act nor the full implication of Sec. 27 of the Act have been discussed. It was not even argued as can be seen. There the argument was that the Housing Cooperative Society was exempt from the provisions of the Act in terms of Sec. 19(v). But on facts it was held that the Society in question was never the owner of the land in question nor could it be said that it held the land within the meaning of Sec. 2(1) of the Act as it had never entered upon possession of the land in question.

48. Sec. 20 of the Act confers very wide powers on the State Govt. Sec. 20 is already set out and from its language it can be clearly inferred that "either on its own motion or otherwise", State Government on being satisfied, in public interest may exempt any vacant land from the provisions of Ch. III, subject to the

conditions that may be imposed by it. The, scope of the section is suggestive of the fact that the power can be, exercised even before the holder of vacant land files a declaration under Sec. 6 of the Act. If power is so exercised the holder is exempt from filing even a declaration under Sec. 6 of the Act Such holder is governed by only the conditions in the order of exemption made by the State Government and not by the provisions of the Chapter on ceiling. This becomes abundantly clear if regard is had to the provisions contained in sub-sec. (2) of Sec. 20 Of the Act under which the State Government can withdraw the exemption for breach of the conditions and thereafter the provisions of that Chapter, viz., Chapter III will be applicable to the vacant land originally exempted. When the exemption ceases to operate the holder has to file the declaration under Sec. 6 of the Act in the prescribed time. In the instant case that the Corporation had filed its declaration under Sec. 6 of the Act would not and should not make any difference. Thus understood I am of the view that Parliament in its wisdom provided for all contingencies in the scheme of the Act and did not have, in public interest, the intention to hamper the growth and development of industries in the country. In the result, on the facts of this case, the land having been exempted by the State Government in terms of its notification dated 2.6.1977 to which I have already referred to and which has been produced as Exhibit-G to the petition, the question of "deemed permission" obtained by the Corporation being subject to Sec. 5(3) and 10(4) of the Act does not arise at all.

49. This necessarily takes me to the second ground urged by the petitioners. Learned Counsel for the petitioners has pointed out that while Sec. 19 of the Act exempts the Governments, Central and State, and other institutions named therein, Sec. 20 creates exemption in respect of the land. In other words his argument is that it is the land that is exempted from the provisions of Chapter III and not any person. There is some force in this argument regard being had to the language of Sec. 20(1)(a). The expression used is "such vacant land from the provisions of this Chapter".

50. However, the learned Counsel has alternatively argued that the Tribunal was in error in holding that the 2nd petitioner was not a holder of the land within the meaning of the term "to hold" as defined under Sec. 2(1) of the Act. His argument has been that the Company was in lawful possession of the land in question having entered possession of the land under a valid agreement of sale long prior to the passing of the State Act and the Central Act and the said agreement read with the irrevocable power of attorney given by the Corporation in favour of the Company, the Company was holding the land within the meaning of the definition of the term "to hold" under Sec. 2(1) of the Act resulting in the, exemption granted by the State Government as per Exhibit-G an exemption in respect of the land legitimately granted.

51. It is difficult to accept the argument in the way it is put forward having regard to the language of Sec. 2(1). Possession of the Company has been and

continues to be lawful in the general sense of that expression. But it is doubtful whether such possession is in one of the capacities mentioned in Sec. 2(1) or a combination of those capacities. The definition clause must, in a statute, be construed strictly. Possession by agreement of sale is not one of the capacities enumerated in the definition. Nor is the power of attorney held by the Company as per Ext.-B and Ext.-B1 an irrevocable power of attorney as defined by the Karnataka Stamp Act and the Schedule thereto. At entry 41(e) of the Schedule of that Act irrevocable power of attorney is defined as follows:

"41. Powers of Attorney-(as defined by Sec. 2(1)(p), not being a proxy)-

(e) when given for consideration and authorising the attorney to sell any immoveable property; (The same duty as a conveyance (No. 21) for a market value equal to the amount of the consideration)

52. A Full Bench of this Court in a recent decision (1979) 1 Kar.L.J. 269 FB. has ruled in that behalf in the following manner:

"The other contention of Shri Srinivasan that the document does not expressly state anywhere that it is irrevocable and therefore it should not be construed as such is also not tenable. Section 202 of the Indian Contract Act of 1872 clearly spells out in what circumstances a person cannot unilaterally terminate the agency. The Section reads as follows:

202. Termination of agency where agent has an interest in the subject matter.-Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a) A gives authority to B to sell A's land and to pay himself, out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

This illustration given to that Section at (a) is somewhat similar to clause (c) of the power of attorney set out earlier. A case almost similar to the one came up for consideration before the Supreme Court in Seth Loon Karan Sethiya v. John (AIR 1969 SC 73) in which it has been observed:

"5. There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest. This is clear both from the tenor of the document as well as from its terms. Sec. 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure the interest of the agent, the authority cannot be revoked. The document itself says that the power given to the Bank is irrevocable. It must

be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable."

In the instant case also it is clear that an interest in the property is created in favour of the Bank in terms of clause (c) and other clauses. Therefore, the petitioner has no power to revoke the deed unilaterally".

Having regard to the recitals of Exhibit-B and B-1 and the provisions of the Karnataka Stamp Act as to duty one cannot have any hesitation to hold that it is general power of attorney simpliciter and not an irrevocable power of attorney.

53. However that may be, the Tribunal and the Competent Authorities erred in law in not noticing or overlooking, the, fact that when the Company made the application to the Government under S. 20 of the Act, it was not only in lawful possession of land in question by virtue of the agreement of sale but had been empowered to do certain necessary things by the Corporation under the power of attorney on its behalf. To appreciate this aspect it is necessary to set out portions of the 1st of the powers of attorney at Ext.-B. (It may be stated here that Ext.-B1 is no different than Ext.-B except that in view of the change of representative of the Corporation in India, the new representative had to execute a fresh general power of attorney in the same manner).

54. Part of the preamble and the power given reads as follows:

AND Where IBM, as the legal owners of the said lands, at the cost of the purchasers Larsen & Toubro Limited, have under the said treaty of sale agreed to do all such acts, deeds and things as may be found necessary, by Larsen & Toubro Limited, the purchasers above-named, to effectively carry out the said purpose and if necessary to execute and grant a proper power of attorney valid until the execution by IBM of the Conveyance or Sale Deed in favour of Larsen & Toubro Limited upon the completion of sale in favour of such person or persons as may be nominated by the said Larsen & Toubro Limited in that connection.

Now know we all to whom these presents shall come that I, A.L. Taylor of New Delhi, India, as the true and lawful Attorney in fact and at law of IBM World Trade Corporation, in the Union of India by virtue of the powers vested in me by the aforesaid Power of Attorney dated 10th day of July, 1968, at the request of Larsen & Toubro Limited hereby constitute nominate and appoint (1) V.B. Purohit and (2) Anil Kumar Singh of Larsen & Toubro Limited, Bangalore Office, to act jointly or severally in my name or in the name of IBM World Trade Corporation as the legal owners of the said lands admeasuring 67 Acres 10-1/2 guntas viz.,

** ** *

6. Generally to do all other acts, deeds and things as may be found necessary by Larsen & Toubro Limited to effectively carry out the said purpose until the execution of the Deed of Sale or Deed of Conveyance by IBM in their favour upon completion of sale of the said lands under the aforesaid treaty of sale; (Underlining (Italics) is mine).

55. From the above contents of the power of attorney it is clear that the Company had the clear authority to file an application for exemption under Sec. 20 of the Act, in furtherance of the "treaty of sale" on behalf of the Corporation and, in such circumstances when the Company made the application for exemption it made so only as the authorised agent of the Corporation whether it stated so or not in the application of the Company, and could not, on account of the cumulative effect of the agreement of sale and the power of attorney, separate its own identity as the intending vendee and as agent of the vendor.

56. Thus viewed the exemption granted is in respect of the land in question and is for the benefit of the owner thereof who acted through its authorised agent. The respondents were clearly in error in not noticing this legal aspect of the question though the material was before them.

57. Before parting with this case, I should not fail to notice one other contention of Shri S.G. Sundaraswamy to the effect that the Tribunal over stepped its jurisdiction in holding that the exemption granted by the State Government was invalid. This contention has to be upheld and I have no hesitation to do so. Before the respondents nobody had raised the question of the validity or otherwise of the exemption granted under Sec. 20 of the Act in respect of the land in question. The Tribunal had no jurisdiction either under Sec. 12 or under Sec. 33 of the Act to deal with any order passed by the State Government under Sec. 20 of the Act.

58. For the above reasons the, impugned orders are clearly illegal and suffer from manifest errors of law apparent on the face of the, record and are liable to be quashed by a writ of certiorari and they are so quashed.

59. Having regard to my finding on the effect of Sec. 27(4) of the Act, I have to hold that the petitioners are entitled to the benefit of deemed permission under the said sub-section and therefore a direction in the nature of mandamus will issue to the appropriate registering authority that if any deed of sale is presented by either or both of the petitioners in respect of the land in question, the same shall be duly registered in accordance with law governing such registration.

60. The Rule is made absolute. In the circumstances of the case, parties will bear their own costs.