

(1999) 03 MAD CK 0034
In the Madras High Court
Case No : O.S.A. No. 93 of 1991

P. Gopirathnam and 4 others

APPELLANT

Vs

Ferrodous Estate (Pvt.) Ltd.

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2), 47
Constitution of India, 1950 — Article 39
Contract Act, 1872 — Section 23(1)
Land Acquisition Act, 1894 — Section 4(1)
Specific Relief Act, 1963 — Section 14
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 23, 4
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10, 11(4), 14, 15(3), 17
Urban Land (Ceiling and Regulation) Act, 1976 — Section 26

Citation : (1999) 2 CTC 181 : (1999) 3 LW 249

Hon'ble Judges : N.K. Jain, Acting C.J.; S.S. Subramani, J; S. Jagadeesan, J

Bench : Full Bench

Advocate : Mr. R. Thiyagarajan, for Mr. P.N. Raman, for the Appellant; Mr. G. Subramanian, for Mr. V. Ramajagadeesan, for the Respondent

Judgement

Judgement pronounced by S.S. Subramani, J.—This case had been placed before Full Bench pursuant to reference order dated 8.12.1997.

2. Respondent herein filed a suit for specific performance of contract as C.S.No.130 of 1981 and a learned Judge of this court passed decree

directing appellants to execute sale deed as per decree dated. 15.3.1991.

3. Aggrieved by the judgment, defendants preferred the appeal and one of the questions that was raised before Division Bench was that whether

the agreement is enforceable ? The contention was that since defendants are holding more than the ceiling limits under Tamil Nadu Urban Land

(Ceiling and Regulation) Act, 1978. Whether an agreement executed by them,

could be enforced and will it not contravene the provisions of Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978 ?

4. In *Mariamamma Varghese v.K.V.Balasubramaniam & 11 others*, 1994 (1) L.W.391 the Division Bench held thus,

Apart from the finding of the court below which non-suited the plaintiff mainly on the ground that the agreement of sale was cancelled by the

original agreement holders, there is another impediment, legal in nature, which comes in the way of enforcing the agreement of sale. The

impediment is that the transaction, assuming it could fructify through the hands of the court, will come within the mischief of Section 6 of Tamil

Nadu Urban Land (Ceiling and Regulation) Act 24 of 1978. That provision inhibits the coming into existence of any such transaction will be null

and void. The court is not supposed to lend its aid for the purpose of arriving at this result, assuming that the plaintiff has got a case on merits

otherwise. The result is a decree for specific performance cannot be obtained at the hands of the court, which will be practically nullifying the

statutory provisions, found in section 6 of the Act.

The same principle was reiterated in the decision reported in *Prabhavathi Jain & 4 others v. The Government of Tamil Nadu Etc. & 8 others*, 1995

(2) L.W.200.

5. Again, the same principle was reiterated in the decision reported in *Government of India Vs. Jagadish A. Sadarangani*, . In that decision, their

Lordships considered the scope of Section 6 of the Urban Land Ceiling Act and its effect on agreement of sale, which reads thus:

We shall now consider the scope and effect of section 6 of the Urban Land Ceiling Act. This section has been interpreted by this Court in more

than one decision. In *Mariamamma Varghese v. K.V.Balasubramaniam*, 1994 (1) L.W. 391 the appeal was filed before this Court against the decree

dismissing a suit for specific performance of an agreement: for sale. The Division Bench interpreted section 6 of the Urban Land Ceiling Act in the

following terms (Page 392):

The impediment is that the transaction, assuming it could fructify through the hands of the court, will come within the mischief of section 6 of the

Tamil Nadu Urban Land (Ceiling and Regulation) Act (24 of 1978) (hereinafter referred to as "the act"). That provision inhibits the coming into

existence of any such transaction as the present one and further says that such transaction will be null and void. The court is not supposed to lend

its hands for the purpose of arriving at this result, assuming that the plaintiff has got a case on merits otherwise.

A similar view was taken in *Samiappan (B.P) v. Arunthavaselvan* , 1994 (1) L.W.399. That decision related to the bar on the sale contained in

section 23 of the Tamil Nadu Reforms (Fixation of Ceiling on Land) Act,1961, which provision is also in pari materia with section 6 of the Urban

Land Ceiling Act. The Division Bench held thus (Page 402):

The plaintiff seeks have the agreement enforced by court of law and get a sale deed in pursuance thereof. If the court grants a decree in favour of

the plaintiff, either by the party or by the court, that sale is automatically void and it is deemed to be void always as per the provisions of the Act.

The court cannot be a party to a transaction which would be void in law. Hence, there is no substance in the contention that the agreements are not

affected by the provisions of the Act."(Italics Supplied)

We may point out here that in the instant case also, we are concerned with an agreement of sale. Section 6 of the Urban Land Ceiling Act prohibits

transfer of any land by way of sale, mortgage, gift, lease or otherwise made in contravention of the provisions contained therein and, any such

transaction shall be deemed to be null and void.. Again in *Prabhavathi Jain v. Government of Tamil Nadu*, 1995 (2) L.W.200 the same view has

been reiterated. In addition to that, section 43 the Urban Land Ceiling Act has been referred to and it has been held with reference to that section

as follows (Page207):

It is a settled position of law that a decree for specific performance cannot be granted in contravention of the provisions of section 6 of the Act.

Section 6 inhibits the coming into existence of any transaction as the present one, and further says that such transaction will be null and void.

Further, in view of section 43 of the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith in any

agreement or decree or order of the court.

Section 43 of the Urban Land Ceiling Act: specifically provides that the provisions of the Urban Land Ceiling Act shall have effect notwithstanding

anything inconsistent therewith in any other law for the time being in force or

any custom, usage of agreement or decree or order of a court, tribunal or other authority. Thus, section 43 gives overriding effect to the provisions contained in the Urban Land Ceiling Act over any other, law, agreement, decree or order, etc., as stated in that section.

Therefore, it is clear that the agreement of sale which was entered into during the pendency of the return filed under the Urban Land Ceiling Act cannot be considered to be a valid and enforceable agreement. In the eye of law, it is a void agreement. The appropriate authority is a statutory authority. It exercises the power under chapter XX-C of the Act, "Invalidity of an agreement of sale makes the whole transaction" unenforceable.

As such, it introduces a serious defect in the statement filed under sub-section (2) of section 269 UC of the Act, on the basis of such invalid and unenforceable agreement of sale and thereby attracts sub-section (4) of section 269 UC of the Act. It is one of the cardinal principles of interpretation should advance and subserve the object of the statute and should not result in defeating the very object of the statute. We have already referred to the objects and reasons for introducing sub-section (4) of section 269 UC of the Act. A statutory authority exercising statutory power cannot be compelled to ignore the basic defect in the agreement, which also disables the appropriate authority to make its decision as to pre-emptive purchase, on determining the real market value, which will be the basis for taking a decision regarding pre-emptive purchase. As in the instant case, until the proceeding is completed as per section 11 of the Urban Land Ceiling Act, no transaction of sale or purchase can take place. The appropriate authority cannot be expected or compelled to act in contravention of section 6 of the Urban Land Ceiling Act and to make a decision as to pre-emptive purchase. Such an interpretation would not only defeat the very object of sub-section (4) of section 269 UC of the Act, and it would also result in compelling the appropriate authority to act in contravention of the provisions of the Urban Land Ceiling Act, or not to make any decision as to pre-emptive purchase of the immovable property concerned in the agreement. The very introduction of sub-section (4) of section 269 UC of the Act is to take out the appropriate authority from such a situation and to enable it to have the third alternative to make an appropriate decision in accordance with law." (Italics Supplied)

6. In all these cases Division Bench of this Court held that the agreement cannot be enforced and if court grants a decree that will be against Public

Policy and will be offending section 23 of the Indian Contract Act.

7. Before the Division Bench, learned counsel for respondent placed two decisions; Jambu Rao Satappa Kocheri Vs. Neminath Appayya

Hanammannaver, and also a full Bench decision reported in Shah Jitendra Nanlal Vs. Patel Lallubhai Ishverbhai, . When these two decisions

were placed before the Division Bench, it expressed a doubt about the correctness of Bench decisions of this Court. Paragraph 15 of the reference

order read thus:

Section 4 of the Act states that no person shall be entitled to hold vacant land in excess of the ceiling limit, except as otherwise provided in the

Act. Section 7 of the Act makes it obligatory on the person holding excess land to file statement. u/s 11 of the Act, excess land could be acquired.

Section 17 of the Act places ceiling limit on future acquisition by inheritance, bequest or by the sale in execution of decrees etc. Section 19 of the

Act provides for penalty for concealment etc., of particulars of vacant land. Even u/s 6 of the Act, there is a prohibition to transfer the excess

vacant land unless such person has filed a statement and notification regarding the excess vacant land held by him, has been published under sub-

section (1) of section 11 of the Act. The said section further declares that any transfer made in contravention of the provisions of the Act, shall be

deemed to be null and void. As can be seen from the various provisions contained in the Act, section 21 deals with power of exemption. A plain

reading of section 6 goes to show that what is prohibited is a transfer of excess vacant land and the consequence of such transfer in contravention

of the provision contained in the said section viz., such transfer shall be deemed to be null and void. In other words, it speaks of a completed

transaction of transfer. It does not refer to the agreements at all. We are not able to read any prohibition in the said provision prohibiting the parties

from entering into agreement of sale. In the decision of the Division Bench of this Court aforementioned, a view is taken that courts in passing a

decree for specific performance, cannot lend support to the parties to enforce the agreement so as to defeat the provisions of the Act, in particular

section 6 of the Act. We are unable to agree with this view. There may be a

decree for specific performance subject to certain conditions, to be complied with provisions of section 6 itself or subject to grant of exemption and in the light of the judgment of the Supreme Court in the case of

Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanammannaver, , it cannot be said that such an agreement is hit by section 23 of the Act.

Under the circumstances, we are of the view that this question is required to be decided by a larger Bench. Hence we refer this case for hearing

and disposal by a larger Bench including the question as we have stated above.

Consequently, the matter was placed before the full Bench for consideration.

8. Before going to section 23 of Contract Act, it is only proper to consider relevant provisions of Tamil Nadu Urban Land (Ceiling and Regulation)

Act, 1978 (Act 24 of 1978). Except sections 14, 15, sub-section (3) of section 20, 27 and section 43, remaining provisions in that Act are

deemed to have come into force on 3.8.1976. The preamble of the Act read thus :

An Act 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 therewith with a view to preventing the concentration of

Urban Land in the hand 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."(Italics Supplied)

9. Under the Act, ceiling limit has been fixed u/s 5. Section 6 provides that 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 u/s 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 11;

and any such transfer made in contravention of this provision shall be deemed to be void and null. Section 7 directs persons holding vacant land in

excess of ceiling limit to file statement. Section 8 deals with filing statement in cases where vacant land held by a person is situated within the

jurisdiction of two or more competent authorities. Section 9 provide for preparation of draft statement as regards vacant land held in excess of

ceiling limit. Section 10 provides that after disposal of objections received under sub-section (5) of section 9, the competent authority shall make

necessary alterations in the draft statement and will pass orders determining excess lands. Section 11 provides for acquisition of vacant land in

excess of ceiling limit. Remaining provisions are not relevant for our purpose, except sections 21 and 43 which provides the Government the

power to exempt certain vacant land under purview of the Act under certain circumstances.

10. Section 23 of the Indian Contract Act read thus ;

Section 23 -What considerations and objects are lawful, and what not: The consideration or object of an agreement is lawful, unless-

- it is forbidden by law, or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is

unlawful, is void.

11. In the decision reported in Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others, of the judgment, their lordships

considered the primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976, which read thus:

The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976, "the Act, as the long title and the preamble show, is

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 therewith, 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, in furtherance of the directive principles of Art. 39(b) and (c)."" (Italics Supplied)

12. Section 5 (3) of the Central Act is corresponding to section 6 of Tamil Nadu State Act.

13. Now, we will come to the other decisions of our High Court, which held that a decree for specific performance cannot be granted in violation

of Urban Land Ceiling Act. First of the decisions is reported in *Singaram T.K. v. The Urban Land Ceiling Tribunal, Chepauk*, 1992 W.L.R 389.

In that decision, a Division Bench consisting of Justice Dr.A.S.Anand, J (as he then was) and Justice Raju (as he then was) had occasion to

consider the scope of Urban Land Ceiling Act. In that case the question that came for consideration was, what is the effect of land acquisition

proceedings that was initiated and pending when Urban Land Ceiling act came into force on persons having excess area. Their Lordships said that

the pendency of proceedings under the Land Acquisition Act could not in any way affect the proceedings taken under the Urban Land Ceiling Act.

The action of the state in not pursuing the acquisition proceedings at any point of time in view of the provisions of the "Urban Land Ceiling Act is

not open to question nor could the authorities under the Urban Land Ceiling Act be denied of their power to proceed against those covered under

the Act. Their Lordships took into consideration section 43 of Urban Land Ceiling Act, which had overriding effect. Section 43 of the Act read

thus:

Section 43 - Act to override other laws: The provisions of this act shall have effect notwithstanding anything inconsistent therewith in any other law

for the time being in force or any custom, usage or agreement or decree or other of a court, tribunal or other authority.

In paragraph 5 of the Judgment, their Lordships held thus,

... As would be seen from a plain reading of the section, the Urban Land Ceiling Act overrides the other laws for the time being in force or any

custom, usage or agreement or decree or order of a court, tribunal or other authority. In view of section 43 of the Urban Land Ceiling Act, the

Urban Land Ceiling Act has to be given a full play and any proceeding which are pending on the date " when the Urban Land Ceiling Act comes

into force would have to cease in case the Urban Land Ceiling Act applies to those proceedings, to the extent of such application and declaration

of the excess land. A provision similar to S.43 of the Urban Land Ceiling Act is available in S.4 of the Tamil Nadu Land Reforms (Fixation of

Ceiling on Land) Act, 1961. The Division Bench in *State v. Narendra Dairy Farms*

(P) Ltd., however, did not advert to the effect of S.4 on the proceedings under the Land Acquisition Act. It appears that the provisions of S.4 were not brought to the notice of the learned Division Bench, for, had the same been brought to the notice of the learned Division Bench, for, had the same been brought to its notice, the overriding effect of S.4 could not have been ignored and the judgment would then perhaps have been different. We, therefore, do not find it possible to apply the ratio laid down in State v. Narendra Dairy Farms (P) Ltd., to the present case in view of S.43 of the Urban Land Ceiling Act. The learned single Judge therefore, while deciding Writ Petition No. 2553 of 1981 rightly arrived at the conclusion that the pendency of the proceedings under the Land Acquisition Act could not in any way affect the proceedings taken under the Urban Land Ceiling Act. Thus, for the additional ground that we have referred to above based on the interpretation of S.43 of the Urban Land Ceiling Act, we are of the view that the judgment of the learned single judge in Writ Petition No, 2553 of 1981 calls for no interference and we hold that the action of the State in not pursuing the acquisition proceedings at any point of time in view of the provisions of the Urban Land Ceiling Act is not open to question nor could the authorities under the Urban Land Ceiling Act be denied of their powers to proceed against those covered under the Act. Writ Appeal No. 591 of 1988 consequently must fail and is hereby dismissed.

14. In Mariamma Varghese v. K.V.Balasubramaniam and 11 others, 1994 (1) LW 391 this High Court held that a decree for specific

performance cannot be obtained at the hands of the court, which will be practically nullifying the statutory provision, found in Section 6 of the Act.

We have already extracted the relevant portion of the Judgment in the earlier portion of this order.

15. Justice M. Srinivasan (as he then was) has also considered same question and the same is reported in Hamsaraj Bokaria, Etc. & 5 others v.

The Government of Tamil Nadu etc. and 3 others, 1994(1) LW 392. An argument was taken before the learned Judge that if the Sale deed is

executed through Court, Sec. 6 has no application since only voluntary transactions that are prohibited under the Act. Learned Judge rejected the

said contention and finally in paragraphs 21 to 26 held thus,

21. A division Bench of this Com refused to grant specific performance in Mariamma Varghese v. K.V. Balasubramanian and others, (A.S.No.

862 of 1981 - Judgment date 11.1.1990). The appellant in that case was the plaintiff who prayed for a specific performance. The trial court

dismissed the suit and She preferred the appeal. But, the agreement of sale was dated 19.6.1978. The division bench held that there was a legal

impediment to the grant of specific performance in the provisions of the Act and consequently dismissed the appeal. On the same day, i.e.,

11.1.1990, the Division Bench also dismissed a writ petition (W.P.No. 1963 of 1984) preferred by the same person, reported in Mariamma

Varghese v. The Commissioner of Land Reforms and two others, 1990 W.L.R. 279. Claiming right under the agreement dated 29.6.1978, the

petitioner in the writ petition wanted exclusion of the lands which were subject matter of the agreement in her favour from the proceedings under

the Act and filed the writ petition against the authorities under the Act. Taking note of the rigour of the language of S.6 of the Act, the Bench

dismissed the writ petition.

22. In T.K. Singaran v. The Urban Land Ceiling Tribunal, Chepauk, Madras - 5 and others, 1992 WLR 389, another Division Bench of this

Court had occasion to consider the provisions of S.43 of the Act. The Bench after extracting the Section, observed as follows:

As would be seen from a plain reading of the Section, the Urban Land Ceiling Act overrides the other laws for the time being in force of any

custom, usage or agreement or decree or order of a court, tribunal or other authority. In view of S.43 of Urban Land Ceiling Act, the Urban Land

Ceiling has to be given a full play and any proceedings which are pending on the date when the Urban Land Ceiling Act comes into force would

have to cease in case of Urban Land Ceiling Act applied to those proceedings to the extent of such application and declaration of the excess land.

A provision similar to S.43 of the Urban Land Ceiling Act is available in S.4 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act,

1961.

23. Learned counsel for the petitioner wants to distinguish the above judgments by placing reliance on the following rulings:- He refers to the

judgment of the Supreme Court in Maharao Sahib Shri Bhim Singhji Ors. Vs.

Union of India (UOI) and Others, . The Apex Court had to consider the provisions of S.27 of the Central enactment. It was held that a person whose vacant land fell within the ceiling limit in an urban agglomeration was outside the purview of S.23 of the said Act. It was observed that the provision of S.27 (1) of the Act was invalid in so far as it sought to affect the specific right to dispose of any urban or urbanisable land with a building or of a portion of such building within the ceiling area. The ruling has no bearing on the present case as on the admitted facts, the third respondent had lands in excess of the ceiling limit.

24. Reference was made to the Judgment of the Karnataka High Court in Samuel Thyagaraja Kumars Vs. K. Sitarama Achar, . that case related to an execution sale and it was held that a sale in execution was not a transfer coming within the scope of S.27(1) of the Urban Land (Ceiling and Regulation) Act, 1976. That case will have no application to the facts of the present case as this is not a sale in execution of a decree for money.

25. The principle laid down by the Karnataka High Court was relied on by Allahabad High Court in Pratap Narain Agrawal v. Bam Narain, 1981

All. L. J.591. On the facts of the case, it was held that there was no transfer as there was only a relinquishment of the interest of the partners in a partnership firm on dissolution and on taking of accounts. It was held that there was only a distribution of the assets of the partnership and there was no "transfer" within the meaning of the Section in Urban Land Ceiling Act. Hence, that ruling will not help the petitioner herein.

26. Reliance is also placed on the judgment of another Division Bench of Allahabad High Court in State v. Philip Mehrotra, 1980 A LJ.1034. That was a case in which an application was made for permission to sell under S.27 of the Urban Land (Ceiling and Regulation) Act. The Court held that the land sought to be sold was within the ceiling limit and permission could be granted. That judgment has no application to the facts of this case.

16. Another Division Bench consisting of Justice M. Srinivasan (as he then was) and Justice Thangamani, also had occasion to consider similar question in the decision reported in B.P. Samiappan and 4 others v. Arunthavaselvan and 3 others 1994(1) LW 399. In that case, the agreement of sale was violating the provisions of Tamil Nadu Land Reforms (Fixation of

Ceiling on Lands) Act (58 of 1961). In that case, Section 23 of Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act was interpreted by Learned Judges, where also there is prohibition of alienation and it was also declared that if any alienation has been effected contravening the provisions, it shall be deemed as null and void. That was consequent to amendment in 1974. Considering the same, their Lordships, in paragraph 7 of the Judgment, held thus,

The only ground on which the Court below has dismissed the suit is that the agreement is void inasmuch as it is against the provisions of the Tamil

Nadu Land Reforms Act (58 of 1961). S.23 of the Act, as it stood prior to the amendment in 1974, provided that the Authorised Officer shall not

take into consideration any transfer, whether by sale or by gift, Exchange, surrender, settlement or otherwise effected on or after the notified date

and before the date of the publication of the final statement under S.12 or 14. By Tamil Nadu Act 32 of 1974 the Section was amended and after

amendment it reads, in so far as it is relevant in this case, thus:-

(1) Subject to the provisions of S.20 for the purpose of fixing, for the first time after the properties Act. The area of the date of the commencement

of this Act, the ceiling area of any person holding land on the date of the commencement of this Act in excess of 30 standard acres (a) any transfer,

whether by sale (including sale in execution of a decree or order of a civil court of an award or order of any other lawful authority) or by gift (other

than gift made in contemplation of death), exchange; surrender, settlement or otherwise; or (b) any sub-division (including Sub-Division by a

decree or order of a civil court or any other lawful authority) whether by partition or otherwise; effected on or after the notified date and before the

publication of a Notification under sub-S.(1) of S.18 shall be, and shall be deemed always to have been, void and accordingly the authorised

officer shall calculate the ceiling area of such person as if no such transfer of sub-division had taken place.

Explanation: - This sub-Section shall, on and from the 15th day of February, 1970 have effect as if for the figures and words 30 standard acres,

the figures and words 15 standard acres had been substituted.

(2) It shall be the duty of the authorised officer to include the land so transferred or sub-divided, within the ceiling area of the transferor the person

who held the land immediately before such sub-division, as the case may be, as if no such transfer or sub-division had taken place.

An argument was also put forward before the Division Bench that there is a difference between transfer and it will not affect the agreement for sale.

It is argued before the Bench that an agreement for sale do not create interest on the property as it is not a transfer and there is no bar under the provisions of Land Ceiling Act. This contention was also repelled in paragraph 8 of the judgment, which read thus,

Learned counsel for the appellant contends that the provisions of the Act will invalidate only a transfer and will not affect an agreement of sale.

According to him an agreement is not a transfer and, therefore, the Section does not come into play. We are unable to accept this argument. The

plaintiff seeks to have the agreement enforced by a Court of law and get a sale deed in pursuance thereof. If the Court grants a decree in favour of

the plaintiff and it leads to a sale deed in favour of the plaintiff, either by the party or by the Court that sale is automatically void and it is deemed to

be void always as per the provisions of the Act. The Court cannot be a party to a transaction which would be void in law. Hence, there is no

substance in the contention that the agreements are not affected by the provisions of the Act." (Italics supplied)

Another argument was also put forward before the Division Bench in that case that the agreement is valid between parties and even if it is invalid, it

is invalid only as against Government or against authorised Officer. Division Bench held, that if the transaction is deemed to be void, it cannot be

treated as valid for one purpose and void for another purpose. In paragraph 9, Division Bench held thus,

It is next argued that the agreement is valid as between the parties and it is only the Authorised Officer who is not bound by the transaction and

who is entitled to ignore the same. In this connection reliance is placed upon the Judgment of the Supreme Court in *Mrs. Chandinee Widya Vati*

Maddan v. Dr. C.L. Katial, AIR 1964 SC 1978. In that case a contract of sale was entered with reference to a house belonging to the defendant

on the plot granted by the Government. One of the terms of the contract was that the vendor shall obtain necessary permission of the Government

for the same within two months of the agreement and if the permission was not forthcoming, it was open to the vendees to extend the date or to

treat the agreement as cancelled. The vendor made an application for permission but, for the reasons of her own, withdrew the same. The vendees filed a suit for specific performance of the contract or in the alternative for damages. The court found that the vendor had willfully refused to perform her part of the contract and the vendees were entitled to get specific performance. The contention that unless the Government granted permission the contract was unenforceable was negatived. The court pointed out that the stipulation in the agreement was not a condition precedent and that the contract was not a contingent one. Hence, the court held that the contract was binding as between the parties and enforceable as such. The ruling has nothing to do with the present case. Hence a provision in a statute declaring a transaction to be void, it is declaration in rem. The transaction is void for all purpose. It cannot be said that it is void only as against the Authorised Officer and valid as between the parties. The very purpose of the amendment is to declare the entire transaction as a nullity from the inception. The difference in the language between the Section as it stood before the amendment and the Section as it stands after the amendment is very significant. Before the amendment the authorised officer shall not take into consideration certain transactions, but after the amendment, the statute itself declares the transaction to be void from the inception and a fiction is introduced that it is deemed to be always void".

17. In *Prabhavathi Jain & 4 others v. The Government of Tamil Nadu etc., & 8 others*, 1995 (2) LW 200, all the above decisions were

considered and the Division Bench approved the decision reported in *Mariamamma Varghese v. The Commissioner of Land Reforms and Two*

others, 1990 W.L.R. 279. The Division Bench held thus,

When we look into the rigour of the language of S.6 of the Act, we find that the said reason is perfectly in order and has got to be upheld. S. 6 of

the Act inhibits a person holding vacant land in excess of the ceiling limit immediately before the commencement of the Act, from transferring any

land or part thereof until he has furnished a statement under S. 7 and a notification regarding the excess vacant land held by him has been published

under sub-S(1) of S. 11 and the section further says that any such transfer, made in contravention of the same, shall be deemed to be null and void.

The transaction admittedly comes within the mischief of S.6 of the Act. Certainly it would not lie in the mouth of the petitioner to put forth a plea for

exclusion of the land from subject matter of agreement of sale in her favour. That would be giving sanction validating a transaction which is

declared invalid by the Act. We do not propose to permit the petitioner to achieve that result.

18. In *T. Periasamy Nadar and Others Vs. T.D. Ramasubramaniam*, , a Division Bench consisting of Justice K.A.Swami, C.J. and Justice

Kanagaraj held thus,

...However, in the instant case, cancellation of the agreements cannot be held to be illegal because as the law stood on the date of agreements

were cancelled, the agreements could not have been performed, without the permission to sell as per Section 26 of the 1976 Act...

As per the present Act 1978, the power of exemption is granted u/s 21 of the Act.

19. In all these decisions, this Court has held that specific performance of agreement for sale cannot be enforced by Court since that will be

defeating the Law and against Public Policy.

20. Now, we consider what is meant by Public Policy and how Honourable Supreme Court has interpreted the same?

21. In *Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others*, , their Lordships considered what is meant by Public Policy.

In paragraph 18 and 19 of the Judgment, their Lordships held thus,

18. It is true that as observed by But-rough, J. in *Richardson v. Melish*, (1824 2 Bing 229, 252: 130 ER 294), public policy is ""an unruly horse

and dangerous to ride"" and as observed by Cave, J. in *Re Mirams*. it is ""a branch of the law, however, which certainly should not be extended, as

judges are more to be trusted as interpreters of the law than as expounders of what is called public Policy"". But as observed by Prof. Winfield in

his article ""Public Policy in the English Common Law"" (1928) 42 Harv L Rev 76,:

Some judges appear to have thought it (the unruly horse of public policy more like a tiger, and refused to mount it at all, perhaps because they

feared the fate of the young lady of Riga. Others have regarded it like Balaam's ass which would cany its rider nowhere. But none, at any rate at

the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community."" All courts have at one time or

the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances; shirk from their duty

and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing

values, and do what is expected of them.

The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a

document or of an individual which is certain to subvert the societal goals and endanger the public good.

19. The contract such as the present one which is found by the city civil court as well as the High Court to have been entered into with the obvious

purpose of influencing the authorities to procure a verdict in favour of the late Nawab was obviously a "carrier" contract. To enforce such a

contract although its tendencies to injure public weal is manifest is not only to abdicate one's public duty but to assist in the promotion of a

pernicious practice of procuring decisions by influencing authorities when they should abide by the law.

To strike down such contracts is not to invent a new head of public policy but to give effect to its true implications.

A democratic society is founded on the rule of law and any practice which seeks to subvert or circumvent the law strikes at its very root. When the

court discountenances such practice, it only safeguards the foundation of the society. Even assuming, therefore, that the court finds a new head of

public policy to strike down such practice, its activism is not only warranted but desired". (Italics supplied)

In the concurring judgment, Justice Fathima Beevi in paragraph 23 of the judgment held thus,

... Every agreement of which the object or consideration is unlawful when the court regards it as opposed to public policy. If anything is done

against the public law or public policy that would be illegal in as much as the interest of the public would suffer in case a contract against public

policy is permitted to stand. Public policy is a principle of judicial interpretation founded on the current needs of the community. The law relating to

public policy cannot remain immutable. It must change with passage of time ..." (Italics supplied)

22. In *P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another*, their Lordships held thus.

92. The concept of public policy is, however, illusive, varying and uncertain, It has also been described as "Untrust-worthy guide", "unruly horse

etc. The leading judgment describing the doctrine of public policy has been accepted to be that of Parke, B. in *Egerton v. Brownlow*, 1853 (4)

HLC 121 in which it was stated as below at p. 123, as quoted in paragraph 22 of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, :

Public Policy" is a vague and unsatisfactory term, and calculated to lead to uncertainty and error, when applied to the decision of legal rights; it is

capable of being understood in different senses; it may, and does, in its ordinary sense, mean "political expedience" or that which is best for the

common good of the community; and in that sense there may be every variety of opinion, according to education habits, talents and dispositions of

each person, who is to decide whether an act is against public policy or not. To allow this to be a ground of judicial decision, would lead to the

greatest uncertainty and confusion. It is the province of the statesman and not the lawyer, to discuss, and of the Legislature to determine what is

best for the public good and to provide for it by proper enactments. It is the province of the judge to expound the law only; the written from the

statutes; the unwritten or common law from the decisions of our predecessors and of our existing courts, from text writers of acknowledged

authority, and upon the principles to be clearly deduced from them by sound reason and just inference; not to speculate upon what is the best, in

his opinion, for the advantage of the community. Some of these decisions may have no doubt been founded upon the prevailing and just opinions of

the public good; for instance, the illegality of covenants in restraint of marriage or trade.

They have become a part of the recognised law, and we are therefore bound by them, but we are not thereby authorised to establish as law

everything which we may think for the public good, and prohibit everything which we think otherwise.

93. In the aforesaid case a three-Judge Bench of this Court summarised the doctrine of public policy by stating at p. 795 that public policy or

policy of law is an illusive concept; it has been described as "untrustworthy guide", "variable quality", "uncertain one", "unruly horse" etc.

94. Different High Courts of the country have had also occasion to express their views on this concept" in their judgments in Bhagwant Genuji

Girme Vs. Gangabisan Ramgopal, ; 42 BLR 750; 191 IC 806; Mafizuddin Khan Choudhury Vs. Habibuddin Sheikh and Another, ; Kolaparti

Venkatareddi Vs. Kolaparti Peda Venkatachalam, ; and Ratanchand Hirachand Vs. Askar Nawaz Jung and Others, . In Kolaparti case it was

stated that the term public policy is not capable of a precise definition and whatever tends to injustice of operation, restraint of liberty, commerce

and natural or legal rights; whatever tends to the obstruction of justice or to the violation of a statute and whatever is against good morals can be

said to be against public policy. These decisions have also pointed out that the concept of public policy is capable of expansion and modification.

In Ratanchand case, a Bench of Andhra Pradesh High Court speaking through Chinnappa Reddy. J. as he then was, quoted at p. 117 a significant

passage from professor Winfield, ""Essay on Public Policy in the English Common Law"" (42 Harvard Law Review 76). The same is as below:

Public policy is necessarily variable. It may be variable not only from one century to another, not only from one generation to another but even in

the same generation. Further it may vary not merely with respect to the particular topics which may be included in it, but also with respect to the

rules relating to any one particular topic... This variability of public policy is a stone in the edifice of the doctrine and not a missile to be flung at it.

Public policy would be almost useless without it.

23. In another decision reported in Shoba Viswanathan v. D.P. Kinggley, 1996 (1) LW 721, the scope of "Public Policy" was considered]. In

paragraph 43 of the Judgment, it is held thus.

The position of law is clear that when the enforcement of the contract is against any provision of law, that will amount to enforcement of an illegal

contract. The contract per se may not be illegal. But its enforcement requires compliance of statutory conditions, failure of which will amount to

statutory violation. A court which is expected to enforce the law, cannot be a party to such a decree.

24. From these decisions, it is clear that even if the contract by itself may not be illegal but its enforcement if violates any law that will be a ground

to hold that the agreement cannot be enforced. We have already extracted

preamble of state Act and also the decision reported in Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others, , why the Act was enacted. It is to prevent concentration of Urban Land in the hands of few persons and speculation in profiteering therein. It is to implement this provision of the Act, this provision u/s 6 and 11(4) of the Act are enacted. If the seller is having land in excess than the ceiling limits and if it is ultimately found that the Act also applies permitting such persons to execute sale deed pursuant to the agreement of sale, it will be defeating or circumventing the provisions of the Act. Equitable distribution of land, which is contemplated under the provisions may not be possible if the sale is allowed to take place. The intention is also very clear that third party right should not be created, which is likely to affect him also. If by enforcement of contract, if it amounts to subvert or circumvent law, court cannot be party to such enforcement, Court will have to discountenance the practice and it will have to safeguard the foundation of Society.

25. The question whether only completed transactions are contemplated u/s 6 of the Act and therefore enforcement of agreement for sale is not a bar is also an argument without any merit. It is true that under the Act, no person is entitled to hold more than the ceiling limit as prescribed u/s 4 of the Act. Argument is that purchaser is not holding any land on the basis of an agreement unless he gets some title. It still continues only with vendor.

Therefore, there is no prohibition in enforcement of contract. Section 6 prohibits transfer by a person holding land in excess of ceiling limits. The matter will have to be considered taking into consideration the rights of seller and if that person holds more land than prescribed u/s 5, such transfer shall be deemed to be null and void. The prohibition u/s 6 is for transferring the land and consequently declares that any violation of law shall be deemed to be null and void. Section 6 contemplate both proposed transfer and completed transfer. An agreement of sale is also affected by Section 6 of the Act.

26. While considering Public Policy. We have to consider that the bar contained in section 6 of the Urban land Ceiling Act operates from the date of commencement of the ACT in the case of persons holding urban vacant land in excess of the ceiling limits till that excess is determined and the order of such determination is published in the Gazette. The effect of publication

of the excess vacant land is to vest the land in the State

Government, thereby leaving the owner of the excess land out of title and thereafter he will not have any right to transfer it. Hence, the bar is limited

to the period from the date of commencement of the Urban Land Ceiling Act till the date of publication in the Gazette of the order u/s 11 of the

Urban Land Ceiling Act determining the excess land. The effect of the same will be asking a person to execute sale deed, who is having no title.

27. It is in this connection, we have to refer three decisions of our Honourable Supreme court, wherein, though the question came for consideration

was under Land Acquisition Act. In *Gian Chand Vs. Gopala and Others*, the question was, what is the right of an Agreement Holder agreeing to

purchase land, which provide for return of earnest money, in the event of land being acquired by the State, which has already been notified u/s 4(1)

of Land Acquisition Act, 1894). In Paragraph 2 of the Judgment, their Lordships held thus,

... Admittedly, since the notification u/s 4(1) of the Land Acquisition Act was already published, the question arises whether the appellant could

get a sale deed executed and in its absence whether he is entitled to obtain refund of earnest money paid under the agreement. On publication of

notification u/s 4(1) of the Act, though it is not conclusive till declaration u/s 6 was published, the owner of the land is interdicted to deal with the

land as a free agent and to create encumbrances thereon or to deal with the land in any manner detrimental for public purpose. Therefore, though

notification under-Section 4(1) is not conclusive, the owner of the land is prevented from encumbering the land in that such encumbrance does not

bind the Government. If ultimately, declaration u/s 6 is published and acquisition is proceeded with, it would be conclusive evidence of public

purpose and the Government is entitled to have the land acquired and take possession free from all encumbrances. Any sale transaction or

encumbrances, created by the owner after the publication of notification u/s 4(1) would therefore be void and does not bind the State. In this

perspective, when the necessary conclusion is that the agreement of sale stands frustrated, the question of readiness and willingness on the part of

the vendor or vendee does not arise. The appellate court wrongly held that the appellant was not ready and willing to perform his part of the

contract. In the face of the notification how could the appellant get a valid title? Any attempt on his part would be futile exercise and avoidable

expenditure ... (Italics supplied)

In the above case, their Lordships held that the contract is not enforceable and the decision for refund of earnest money was upheld.

28. In *Yadu Nandan Garg Vs. State of Rajasthan and Others*, , their Lordships again considered the question as to what is the right of agreement

holder after notification u/s 4(1) of Land Acquisition Act]. In paragraph 3 of the Judgment, it is held thus,

... It is seen that long after the notification u/s 4(1) was published in the Gazette, the appellant had purchased the property and constructed the

house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to clothe it with a colour of

title as against the State. It is an encumbrance on the State and when the acquisition is finalised and the possession is taken, the State u/s 16 is

entitled to have the possession with absolute title free from all encumbrances. The appellant cannot get any title much less valid title to the

property"".

29. Both the above decisions were considered in a subsequent decision reported in *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat*

Mal Jain and Others, , their Lordships held thus,

... It is an admitted position that they purchased the lands from Chhote Lal, the erstwhile owner, pursuant to the sale deeds executed by him in

1970 or an agreement of sale etc. Their source of title, therefore, is Chhote Lal, had no right, title and interest in the land acquired pursuant to

notification u/s 4(1) issued on 29.6.1960 and possession taken u/s 16 of the Central Act and equivalent to Section 16 of the State Act. The pre-

existing rights, title and interest had by Chhote Lal stood ceased and the same were vested in the appellant free from all encumbrances.

Thenomenclature or sub-awardees or nominees does not get elevated above the source and they had no rights, title or interest under void sale

except, if at all, only to claim compensation u/s 23(1) of the Act. In *Gian Chand Vs. Gopala and Others*, this Court had held that after the

notification u/s 4(1) is published, any encumbrances created by the owner of the land does not bind the Government. The agreement of sale, if any,

was frustrated by the publication of the notification u/s 4(1) and the declaration u/s 6. In *Yadu Nandan Garg Vs. State of Rajasthan and Others*, ,

and a catena of other decisions, this court has held that the purchase after notification u/s 4(1) published in the Gazette was not lawful which did

not clothe the sale with any colour of title as against the State. All emcurnbrances stand extinguished by operation of Section 16 of the Act.

Therefore, the purchaser gets no title to the acquired land. The sale (being opposed to the public policy) was void u/s 23 of the Contract Act,

1872. Consequently, the respondents acquired no right, title or interest either under the sale deeds, or agreement entered into by them with Chhote

Lal, the erstwhile owner". (Italics supplied)

30. Though the above cases are on Land Acquisition Act, we feel the same principle applies to this case also. Both relate to compulsory

acquisition of property; one for public purpose and the other under the provisions of Urban Land Ceiling Act for the purpose of equitable

distribution.

31. If the principles in these cases are applied, it follows that various decisions of this Court are rightly decided and do not require reconsideration.

32. Now, we will come to the two decisions relied on by learned Senior Counsel for respondent reported in *Jambu Rao Satappa Kocheri Vs.*

Neminath Appayya Hanammannaver, and Shah Jitendra Nanalal Vs. Patel Lallubhai Ishverbhai, .

33. On going by the facts in the first decision reported in *Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanammannaver*, and also

provisions of Bombay Tenancy and Agricultural Lands Act, I do not think that the decision has any application to the facts of this case. Under

Bombay Act, there is no prohibition for transferring land]. It is clear from paragraph 6 of the Judgment, wherein it is held thus,

.....The Act has imposed no restriction upon the transfer of agricultural lands from one agriculturist to another. It is true that by S. 35 a person

who comes to hold, after the appointed day, agricultural land in excess of the ceiling, the lands having been acquired either by purchase,

assignment, lease, surrender or by request, the acquisition in excess of the ceiling is invalid. The expression "acquisition of such excess land shall be

invalid" may appear somewhat ambiguous. But when the scheme of the Act is

examined, it is clear that the Legislature has not declared the transfer or bequest invalid for S.84-C provides that the land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is therefore only to the extent to which the holding exceeds the ceiling prescribed by S.5, and involves the consequence that the land will vest in the Government.

Paragraph 8 also answers the question, wherein their Lordships said thus, ... It was open to the respondent to transfer or dispose of the land held by him to another agriculturist. The Act contains no general restrictions upon such transferee holds land in excess of the ceiling, the acquisition to extent of the excess over the ceiling will not be invalid... ...

It is clear from these provisions that their Lordships of Supreme Court were considering the enactment in which there was no prohibition for transfer and by virtue of Section 84(c) of that Act, transaction is invalid only to the extent to which the holdings exceeds the ceiling prescribed under the Act by section 5. We have already extracted Section 6 of our Act, which is differently worded.

34. In that case, facts are also different. In that case, it was purchaser, who alleged to have held land more than the ceiling limits and an argument was put forward that if he is allowed to acquire the land, which is subject matter of the agreement, that will be defeating the provisions of the Act.

It was in that context their Lordships said that purchaser can even transfer the land which he acquires, so long as there is no general restriction for alienation. If on the date of acquisition of fresh land he has already sold all properties or is holding only far less ceiling limits, he can further acquire property and transfer is permitted.

35. At this juncture, learned Senior Counsel for respondent submitted the following sentences in paragraphs 8 and 9 of the Judgment. At the end of paragraph 8, their Lordship said thus,

.... The inability of the transferee to hold land in excess of the ceiling prescribed by the statute has no effect upon the contract or the operation of the transfer.

The statutory forfeiture incurred in the event of the transferee coming to hold land in excess of the ceiling does not invalidate the transfer between

the parties.

In paragraph 9. Their Lordships said,

We hold that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void,

and the seller cannot resist enforcement thereof on the ground that if permitted, it will result in transgression of the law.

On the basis of these sentences and finding by Honourable Supreme Court, an argument was taken that the agreement is not void and seller cannot

resist enforcement thereafter nor it amounts to transgression of law. Answer to this has already been met by us in view of the provisions of that Act

which do not prohibit transfer of lands.]

36. In this connection, it is safe to rely on the decision reported in Sardar Singh Vs. Smt. Krishna Devi and another, of the Judgment, their

Lordships held thus,

...The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive.

The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract.

(Italics supplied)

Why I am referring to this decision is, learned counsel for plaintiff argued that u/s 20(4) of Specific Relief Act which says that the Court shall not

refuse to any party specific performance of contract merely on the ground that contract is not enforceable at the instance of party. Section 20 deals

with discretionary powers of the Court. It is while exercising discretion, the Act says that vendor cannot contend that the Contract cannot be

enforceable. When there is no question of exercising discretion and when the transaction is prohibited, Section 20(4) cannot apply. Even if such

argument is accepted, in the decision cited, "interest of the party" also can be taken into consideration, while exercising discretion.

37. A further argument was also put forward on the basis of paragraph 10 of the Judgment, wherein it was held that it is the duty of authorities of

Urban Land Ceiling Act to consider the question of validity of transfer and while passing decree for specific performance of contract and executing

a sale deed, this question are not to be considered. The further argument is that the Act itself is a self-contained Code to consider the validity or

invalidity of the transaction and the Court need not anticipate that any sale consequent to agreement will be invalid.

38. It is true that the Act is a self-contained Code with regard to urban lands and ceiling provisions. It is also true that there are authorities to

decide as to whether transaction is valid or invalid. Question of valid or invalid transaction will apply only regarding completed transaction. When

Section 6 prohibits even proposed transfer, question of considering validity or invalidity does not arise and the consequences are also already

declared by the Act as null and void. It takes as if there is no transaction at all in the eye of law.

39. In the decision reported in *Shah Jitendra Nanalal Vs. Patel Lallubhai Ishverbhai*, , one of the questions that was raised before the Full Bench

was whether a decree for specific performance could be given condition. What is the effect of Section 5(3) read with Section 20 of the Central

Act in the agreement of transfer was the matter in issue. Once it is held that Section 6 is an absolute bar, question of granting conditional decree

also will not arise. The said argument pre-supposes that agreement and sale are valid and is invalid only as against Government.

40. We do not think that the decision therein could be applied so far as Tamil Nadu Act is concerned. Exemption u/s 21 can be applied only by

vendor and it is for him exemption is granted. While considering suit for specific performance, Court is only concerned whether purchaser has

come to Court for enforcing the agreement in terms thereof. Asking vendor to get exemption and then to execute the agreement will be deviating

from the terms of contract and the Court will not enforce such a contract. That will mean that purchaser is not willing to purchase the land as per

agreement, but only with deviation, i.e., Vendor must get exemption and execute the sale deed.

41. In paragraph 11 of the Full Bench judgment, it is said that,

So long as provision declaring the transfer under S.5 (3) as void is subject to the right to move for exemption, obtain exemption and transfer the

property, the power of an owner is vacant land in excess of the ceiling limit to ""alienate"" such land is dormant in him and such power could be

exercised by him in case he seeks exemption, satisfies the Government that the grounds for exemption exist and obtains such exemption. That

being the case, a decree cannot be defeated on the ground that ""transfer"" inter parties would not be possible...

We cannot subscribe the said view, for, granting decree for specific performance of contract itself being discretionary. Apart from the sale, when a

transaction is only after obtaining exemption or permission from another authority, over which Court has no control, the relief of specific

performance usually is not granted. While giving such direction, it will be going beyond contract and if ultimately exemption is refused, in effect, the

decree will become waste paper. While exercising discretion, the Court will have to see whether it could pass executable decree and while

exercising discretion, these factors are also considered for granting relief. The decision reported in Shoba Viswanathan v. D.P. Kinggley, 1996(1)

LW 721 of the judgment supports the view, which we have taken.

42. Therefore, we answer the reference as follows:

Since provisions of Bombay Tenancy and Agricultural Lands Act are entirely different from that of Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978, various Bench decisions of this Court, wherein it was held that a decree for specific performance of contract cannot be

granted, if it violates Section 6 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 do not require reconsideration.

We also hold that Section 6 of the Act not only prohibits a completed transfer but also a proposed transfer.

We also hold that a decree for specific performance of contract cannot be granted conditionally upon vendor satisfying certain conditions, if it is

not part of the agreement.

43. We have only declared the law and, we have not gone into the facts of the case. The appeal will not be placed before the Division Bench

considering other questions.

44. The reference is ordered accordingly.