
(1992) 03 GUJ CK 0036
In the Gujarat High Court

Puriben Manilal Patel (Decd.) through her Heirs Pramilaben
Madhubhai Patel and Others APPELLANT

Vs

Competent Authority and Addl. Collector, (U.L.C.) and Others RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21, 21, 21(1)

Citation : (1992) 1 GLR 751

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—Rule. Mr. Mangukia learned A.G.P. waives service of rule. With the consent of parties matter is heard finally today.

The petitioners in these petitions are heirs and Legal Representatives of one deceased Puriben, wife of Manilal Somabhai Patel who expired on 14-4-1984 and who by duly executed registered will bequeathed her properties to the present petitioners. They are challenging in these three petitions the order passed by the competent authority dated 6th November, 1989 on application/declaration made by deceased Puriben on 30-3-1979 u/s 21 of the Urban Land (Ceiling & Regulation) Act, 1976 and also against the common judgment and order rendered by the Urban Land Ceiling Tribunal. Ahmedabad, in Appeal Nos. Ahd/460, Ahd/461 and Ahd/462 of 1989, dated 31st January, 1991 rejecting the said Appeals.

2. In order to appreciate the questions of law raised in these petitions by the learned Counsel appearing for the petitioners, it is necessary to set out the relevant facts hereunder.

(i) Deceased Puriben, wife of Manilal Somabhai Patel was the holder of three parcels of land bearing S. No. 256, 257 and 273. With respect to said parcels of land, exemption u/s 20 of the said Act was granted as the said parcels of land were being used for the purpose of agricultural operations. The said exemption

granted u/s 20 of the Act was admittedly not cancelled and was operative when the competent authority passed impugned order and the Urban Land Tribunal decided the Appeals.

(ii) Deceased Puriben filed declaration with respect to S. No. 256 admeasuring 5159.67 Sq. Mts. of Chandlodia before the competent authority declaring that the said parcel of land held by her was to be utilised for the construction of dwelling units for the accommodation of weaker sections of the society. It was filed on 30-3-1979 in prescribed Form No. V. Deceased Puriben has also submitted the scheme to the Superintending, Engineer, Roads & Buildings for his approval on technical aspects, and it appears that on 22nd May, 1979 the Superintending Engineer approved the said scheme and forwarded the same to the competent authority for its formal approval. The competent authority however did not grant its approval to the said scheme and the file was kept pending till 14-4-1984 on which day Puriben expired.

(iii) She left behind a duly executed will, dated 4-4-1984 in favour of the present petitioners who thereupon applied to the competent authority for being impleaded as party in the proceeding which was pending before it. The present petitioners intended to prosecute the scheme application originally filed by deceased Puriben and accordingly they applied to the competent authority for being impleaded as heirs and Legal Representatives of deceased Puriben and they also complied with certain other requirements as Legal Representatives. The legal evidence which they were required to produce was produced before the competent authority.

(iv) Subsequently, on 14-9-1989 the petitioners submitted an application to the effect that the other two survey numbers, being S. No. 257 and 273 were situated just adjacent to S. No. 256 with respect to which declaration was made for the scheme u/s 21 of the said Act and that they should be permitted to construct the dwelling units for the weaker sections of the society. It is required to be noted that with respect to these two survey numbers no declaration u/s 21 of the said Act was made by deceased Puriben.

(v) The competent authority has, thereafter passed the impugned order, dated 6th November, 1989. By the said order, the competent authority came to the conclusion that the original declaration in the prescribed Form No. V u/s 21(1) with respect to S. No. 256 was made by the deceased Puriben Manilal Patel on 30-3-1979 and that thereafter she has expired on 14-4-1984. The competent authority found that since the present petitioners have acquired right, title and interest with respect to said parcels of land under a will they cannot get the benefit of declaration made by deceased Puriben on 31-3-1979 and that they were required to make such declaration u/s 15(1) of the said Act read with Rule 11(1) of the said Rules within a period of 1139 days from 14-4-1984 and since no such declaration was made by them within the stipulated period they were not entitled to prosecute the scheme filed by deceased Puriben u/s 21 of the said Act any further and that the scheme u/s 21 was not required to be sanctioned based

on the declaration made by deceased Puriben on 30-3-1979. The competent authority also came to conclusion that so long as the exemption u/s 20 of the Act which was operative was not cancelled, the land in question was not the "vacant land" and so the scheme u/s 21 of the Act for constructing the dwelling units for weaker sections of the society cannot be granted. On the aforesaid twin reasons the competent authority rejected the request of the petitioners for sanctioning the scheme u/s 21 of the Act with respect to S. No. 256. It may be noted that with respect to S.Nos. 257 & 273 there was no scheme u/s 21 of the Act excepting the fact that the present petitioners have, for the first time, on 14-9-1989 applied for permission to float the scheme for dwelling units for economically weaker sections of the society. It appears that said request of the petitioners with respect to other parcels of land is also rejected.

(vi) Being aggrieved by the order of the competent authority the petitioners preferred three separate appeals being Appeal No. 460, 461 and 462 of 1989 before the Urban Land Ceiling Tribunal at Ahmedabad and the Urban Land Ceiling Tribunal has, by common judgment and order, dated 31st January, 1991 dismissed the aforesaid three appeals, inter alia, on the ground that the petitioners did not file any declaration under Sub-section (1) of Section 21 read with Rule 11 of the Urban Land (Ceiling & Regulation) Rules, 1976 within stipulated time and in the prescribed form. It is thus clear that the Tribunal by reference to the proviso to Rule 11 found that any person who acquires any vacant land in the manner provided under Sub-section (1) of Section 15 has to file declaration referred to under Sub-section (1) of Section 21 within 1139 days from the date on which he acquired said land and since the present petitioners who have acquired the disputed land under will have not made any declaration u/s 21(1) read with Rule 11, they were not entitled to prosecute further the proceedings u/s 21 and the declaration made u/s 21(1) by deceased Puriben cannot enure for their benefit and it was liable to be rejected. The Tribunal, therefore, dismissed all the three appeals.

(vii) Being aggrieved by the said judgment and order of the Tribunal In all the three appeals present three petitions are filed.

3. Mr. P.M. Bhatt, learned Advocate for the petitioner has raised following submissions:

I. The judgment and order of the competent authority as well as the Urban Land Ceiling Tribunal are vitiated because the petitioners had not filed any fresh declaration u/s 21 as contemplated by Section 15(1) read with Rule 11 of the said Rules, but they have only applied for permission to participate in the proceedings initiated by deceased Puriben and therefore as heirs and Legal Representatives of deceased Puriben they were entitled to prosecute the said proceedings.

II. The competent authority as well as the Appellate Tribunal were not legally right in holding that unless the exemption granted to said parcels of land u/s 20

of the said Act was got cancelled no declaration with respect to said land u/s 21 can be made because the parcels of land cannot be said to be "vacant land".

4. In the submission of the learned Advocate for petitioners the declaration which was made by deceased Puriben in From No. V can be used by the present petitioners-heirs and legal representatives of deceased Puriben in view of the decision of Supreme Court in the case of Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, . He in the alternative submitted that the land involved in scheme u/s 21 cannot be categorised as "Vacant Land" unless exemption u/s 20 is withdrawn or cancelled and in this connection he has referred to and relied upon the judgment and order of this Court, dated 4-9-1991 in Special Civil Application No. 5836 of 1991.

5. In order to appreciate the aforesaid submissions made by the learned Counsel of the petitioners, it is necessary to refer to the relevant provisions of the Act.

6. On coming into force the Urban Land (Ceiling and Regulation) Act, no person shall be entitled to hold any vacant land in excess of ceiling limit except as otherwise provided under the said Act. Section 4 of the said Act prescribes ceiling limit by reference to location of land in different urban agglomeration. Section 6 of the said Act, inter alia, requires every person holding vacant land in excess of ceiling limit at the commencement of the said Act to file statement before the competent authority specifying the location, the extent, value and other particulars of the land as may be prescribed. Section 19 provides that the said chapter prescribing ceiling limit on the urban land shall not apply to certain vacant lands. Section 20 grants power to exempt to the State Government if it is satisfied either on its own motion or otherwise that having regard to the location of such land, the purpose for which the said land is being or is proposed to be used and for such other relevant factors to exempt the vacant land from the provisions of said Chapter. Section 21 being material for the purpose of these petitions is reproduced herein:

Section 21. Excess vacant land not to be treated as excess in certain cases:

(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling "nits (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may after making such inquiry as it deems fit, declare such land, not to be excess land for the purpose of this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be

constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under Sub-section (1), the competent authority shall, by order, and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this Chapter shall apply accordingly.

From the aforesaid provisions of Section 21 it becomes clear that it starts with a non obstante clause. It gives an over-riding power of exemption, The conditions for exercise of such power are:

- (i) a person holds any vacant land in excess, of the ceiling limit;
- (ii) such person declares in the prescribed form and in the prescribed time before the competent authority that such land. i.e., excess vacant land is to be utilised for the construction of dwelling units for the accommodation of weaker sections of the society in accordance with any scheme approved by such an authority as the State Government may specify;
- (iii) the competent authority, after making necessary enquiry, declares such land not to be the excess land for the purpose of Chapter II and permits such person to continue to hold such land for the purpose of constructing dwelling units for the accommodation of the society.

In exercise of power conferred by Sub-section (1) of Section 46 of the said Act the Central Government has framed rules which are known as "The Urban Land (Ceiling & Regulation) Rules, 1976". Rule 11 of the said Rule prescribes the time within which and the form in which the declaration: under Sub-section (1) of Section 21 is to be made. Said Rule, being relevant, is reproduced herein:

Rule 11. The time within which, and form in which, declaration under Sub-section (1) of Section 21 shall be made: Every declaration under Sub section (1) of Section 21 by a person holding vacant land shall be made within (one thousand one hundred and thirty nine days) from the commencement of the Act and shall be in Form V;

Provided that-

(a) Where, on or after the commencement of the Act, any person acquires any vacant land in the manner provided in Sub-section (1) of Section 15 and on such acquisition, the extent of the land so acquired together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then, the time within which such person may file the declaration referred to under Sub-section (1) of Section 21 shall be (one thousand one hundred and thirty-nine days) from the date on which he acquires such vacant land in the manner aforesaid;

(b) Where any vacant land held by any person and exempted by Clause (iv) of Sub-section (iv) of Sub-section (1) of Section 19 or Sub-section (1) of Section 20

ceases to be so exempted and as a consequence thereof the extent of such land, together with the extent of vacant land if any, already held by him, exceeds in the aggregate the ceiling limit, then the time within which such person may file the declaration referred to under Sub-section (I) of Section 21 shall be (one thousand one hundred and thirty-nine days) from the date on which such vacant land ceases to be so exempted.

From the perusal of the said provision also it becomes clear that the declaration under Sub-section (1) of Section 21 is required to be made by a person holding vacant land within 1139 days from the commencement of the Act. Such declaration is to be made in Form No. V. The proviso to Rule 11, in fact, deals with the situation when a person acquires any vacant land in the manner provided in Sub-section (1) of Section 15, i.e., acquisition on the death of the holder of the land or acquisition by inheritance, bequest or by sale in execution of decrees. When on such acquisition the land held by the person exceeds the aggregate of the ceiling limit, then the time within which such person may file the declaration referred to u/s 21(1) shall be 1139 days from the date on which he acquires said vacant land. It is, thus, clear that the legislature intended that when there is death of the holder of land who has made declaration u/s 21(1) such person shall also make declaration within 1139 days from the date on which he acquires vacant land. The question is as to whether in the absence of such declaration by the heirs or Legal Representatives, the declaration made by the deceased would enure for their benefit so as to entitle them to continue to hold the land for the purpose of constructing dwelling units for weaker section of the society. In my opinion, in order to get the benefit of Section 15(1) read with Rule 11 of the said Rules the persons acquiring interest in the land by inheritance, bequest or the other modes stipulated in Section 15(1) shall have to follow the procedure prescribed by the proviso to Rule 11 and unless such procedure is followed he cannot get the benefit accruing from Section 15 read with Rule 11. In the present case it is admitted position that with respect to two parcels of land bearing Section Nos. 257 & 273 at no point of time any declaration in Form No. V u/s 21 is made by the original landlord, i.e., deceased Puriben or even by the present petitioners. Since no declaration under Form No. V was made by deceased Puriben with respect to said parcels of land the authority could not have taken into consideration any scheme for construction of dwelling units for economically weaker section of the society so as to exempt the said two parcels of land from the operation of provisions of the said Act. The two petitions, i.e., Special Civil Application Nos. 5267 and 5276 of 1991 refer to land bearing S. No. 257 and S. No. 273 respectively, and in my opinion, the competent authority as well as the Urban Land Tribunal were wholly within their power and jurisdiction in dismissing in the claim of the petitioners for exemption u/s 21. It is, therefore, required to be noted that with respect to the said two parcels of land application is made by the petitioners for the first time on 14-9-1989 for the purpose of permitting them to float the scheme for construction of dwelling units for economically weaker section of the society on the ground that the said parcels of

land are situated just adjacent to S. No. 256. Such an application could not have been made by the petitioners because the original holder of the land has never made any declaration u/s 21 in prescribed Form No. V with respect to said two parcels of land. The petitioners, therefore, could not have made any declaration with respect to said two parcels of land and even otherwise on the day the application was made it was beyond the stipulated period of 1139 days and the said two petitions are, therefore, misconceived, and shall have to be dismissed.

7. As regards the claim of the petitioners with respect to S. No. 256 it is required to be noted that the original holder of the land has made declaration in prescribed Form No. V with respect to S. No. 256. Said declaration is made well within time. The scheme for constructing of dwelling units for economically weaker section of the society is, thereafter, approved by the Superintending Engineer and the competent authority was required to pass order thereon. It is, thus, clear that everything that was required to be done by holder of the land was done by deceased-Puriben during her life time. However, before the competent authority could approve the scheme u/s 21, the holder of the land, namely, Puriben expired on 14-4-1984. Immediately thereafter, the petitioners who have acquired interest under the bequest from deceased Puriben have applied to the competent authority for being impleaded as parties, and thereafter, the competent authority has heard them at every stage and has called upon them to produce various documents and has addressed number of communications to them. The petitioners were not aware of the fact that they were also required to make a declaration in Form No. V u/s 21 within 1139 days from the date of acquisition of interest in the property by them. Therefore, except the requirements of making declaration, the petitioners have done everything to declare that they were ready and willing to continue with the declaration made by deceased Puriben and they have, in fact, at every stage, complied with the requests of the competent authority for grant of approval to the scheme u/s 21.

8. However, in view of the clear provision made in Rule 11 and more particularly, proviso (a) it is crystal clear that the declaration made under Sub-section (1) of Section 21 by the holder of vacant land shall not enure for the benefits of heirs and legal representatives. In fact, proviso (a) of the said Rule makes the position clear by providing that any person who acquires any vacant land in the manner provided in Section 15(1) of the said Act, the time within which such person may file the declaration u/s 21(1) shall be 1139 days from the date on which he acquires such vacant land. It is, therefore, clear that such a person is also required to file a declaration in Form No. V within 1139 days from the date on which he acquires such vacant land. The legislature never wanted the benefit of declaration made by the original land-holder to enure for the benefits of heirs and legal representatives. In fact, after acquisition of interest under the bequest made by deceased Puriben the present petitioners were in law required to file a declaration in Form No. V u/s 21(1) of the said Act. They having not filed a Form u/s 21(1) within 1139 days from the date of their acquiring interest in the

property they cannot be permitted to proceed further with the declaration made by the original holder of the land.

9. Mr. P.M. Bhatt has invited my attention to the decision in the case of Bhikoba Shankar Dhumal (*supra*). In that case the Court was called upon to decide the question as to whether the proceedings commenced with the filing written reply by person holding on the appointed day land in excess of ceiling area prescribed by the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 would not become infructuous and would not have to be dropped if such person dies before the notification containing declaration regarding surplus lands held by him is published in the official gazette u/s 21 of the Act and possession of such surplus land is taken over by the authorities. It may be noted that it was the case of holder of surplus land. The proceedings for determination of excess land in excess of the ceiling unit are., was initiated on filing of a return by the holder of the land. The land was accordingly not declared surplus. Such a holder of the land died during proceedings and his heirs and legal representatives wanted to continue the proceedings. Such is not the case before me. In the present case declaration is made u/s 21(1) of the said Act by deceased Puriben and it is an admitted fact that she was the holder of excess vacant land and with respect to such lands she wanted to construct dwelling units for economically weaker section of the society. She therefore, wanted said excess land to be exempted from the provisions of the said Act by constructing dwelling units for economically weaker section of the society. Exemption can be earned by the holder of the land if the holder of the land complies with the requirements of Section 21(1) read with Rule 11. Before the Supreme Court there was no provision identical to proviso (a) to Rule 11 of the said Rules. Because of the said proviso under Urban Land (Ceiling & Regulation) Rules on death of a person who has made declaration under Sub-section (1) of Section 21 the proceedings do not continue and fresh declaration is required to be made under proviso (a) to Rule 11. It is by this statutory provision the legislature intended that on death of the holder of excess vacant land who made declaration u/s 21(1) of the said Act the proceedings will lapse or will become infructuous and separate declaration shall have to be made by the persons acquiring interest in such lands in any modes prescribed by Section 15 of the said Act within 1139 days from the date of acquisition of interest. The scheme of Urban Land Ceiling Act, 1976 is thus quite different from the scheme of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Under scheme of the present Act the legislature itself intended that the declaration made by the holder of the excess vacant land u/s 21(1) of the said Act would lapse or would become infructuous on his/her death. In view of the aforesaid legal provision and more particularly the proviso (1) of Rule 11 of the said Rules I am of the opinion that the principle of law laid down in the case of Bhikoba Shankar Dhumal (*supra*) shall not apply to the facts of the present case. I am therefore of the opinion that the declaration made by deceased-Puriben u/s 21(1) in Form No. V has lapsed on her death and it shall not enure for the benefits of the petitioners. I am also of the opinion that in view

of specific provision made in proviso (a) to Rule 11 read with Section 15 of the said Act on death of the person who made declaration u/s 21(1) of the said Act, fresh declaration shall have to be made by the person acquiring interest in such land in any of the modes stipulated by Section 15 of the said Act within 1139 days from the date of acquisition of the land and if declaration is not made there is no competent proceedings u/s 21(1) of the said Act before the competent authority on which action can be taken by the competent authority u/s 21(1) of the said Act. The order of the competent authority confirmed by the appellate Tribunal is therefore right and shall have to be accepted and I do not find any substance in the first submission of Mr. Bhatt, learned Advocate for petitioners and the same is therefore rejected.

10. The second reason which has weighed with the competent authority for rejecting the claim of the petitioners is that when deceased Puriben made a declaration u/s 21(1) in Form No. V the land in question was not the "vacant land" and therefore she could not have made a declaration u/s 21(1) of the said Act. It is required to be noted that with respect to these very parcels of land, i.e., S. No. 256 exemption is granted by the competent authority u/s 20 of the said Act on the ground that the land in question was being used for the purpose of agriculture. The said exemption is not cancelled and/or withdrawn at any time by the competent authority. Therefore, once the exemption u/s 20 of the said Act was operative, according to competent authority, no declaration u/s 21(1) of the said Act can be made because the land in question was not "vacant land" with respect to which declaration u/s 21(1) can be made. The competent authority found that till the date of decision the exemption granted u/s 20 with respect to said parcel of land was not cancelled or withdrawn and therefore land was not liable to be treated as vacant land. In Spl. C.A. No. 5836 of 1991 decided by me on 4-9-1991 it was the stand taken by the respondent authorities through Mr. B.M. Mangukia, learned A.G.P. that the requirement of Section 21 is that a person must hold the vacant land in excess of ceiling limit and such requirement cannot be said to have been satisfied when the exemption granted u/s 20 is operative. The application or declaration u/s 21 therefore, cannot be entertained at all inasmuch as the condition precedent for exercise of power u/s 21 cannot be said to be existing. Therefore, I am of the opinion that so long as the exemption granted u/s 20 is not got cancelled the petitioners cannot apply for exemption u/s 21. The competent authority, therefore, appears to be right in its second finding also and I do not see any flaw in the said finding of the competent authority.

11. Mr. P.M. Bhatt, learned Advocate for petitioners has further submitted that on the date on which deceased. Puriben made declaration u/s 21 on 31-3-1979 the lands in question were not only vacant land but were vacant lands of such nature on which construction of dwelling units only would be permissible and would be in conformity with the "prescribed use" as provided in the master plan. The prescribed use of land was residential on 31-3-1979, and therefore, according to Mr. Bhatt, the petitioners as well as deceased Puriben were justified in making

declaration u/s 21(1) of the said Act. He has further referred to the guidelines issued by the Government of India vide its order, dated 29th December, 1976, and more particularly para 4 of the guidelines which is as under:

However, there is no provision in the Act under which a land which is vacant land on the date of commencement of the Act shall become non-vacant land for the purpose of Sees 6 to 10. Therefore, the scheme of the Act appears to be that for the part of the provisions contained in Sections 6 to 10, the position as existing on the date of commencement of the Act is to be taken into consideration. If on any alteration of the Master plan any land earlier shown as agriculture land is given different land use it would become vacant land as provided in explanation (ii) of Sub-section (1) of Section 6 but the reverse does not appear to be possible since the Act neither expressly nor by necessary implication appears to permit the same.

He has also referred to and relied upon some quotations from the judgment of Allahabad High Court as extracted in the book on Urban Lani Celling Act published by M/S. Shukla, Gupta & Motha, and more particularly, he has referred to the observations from the judgment of Allahabad High Court to the effect that once under the master plan the land was declared as non-agricultural land then from the date of master plan becomes final, the land would be vacant land within Urban agglomeration. In my opinion, in view of the express provision of Section 21 and the definition of "vacant land" and in view of the fact that exemption granted with respect to the parcels of land u/s 20 is operative, the lands in question cannot be said to be vacant land and it would not be just and proper to extend the operation of Section 21 by reference to the guidelines issued by the Central Govt. so as to make the two inconsistent exemptions operative at a time There was already in existence the exemption u/s 20 with respect to these very parcels of land. The said exemption was for agricultural use of the said lands. So long as the said exemption operates, the lands are to be used for agricultural purposes only and the said parcels of land cannot be described as "vacant lands" as defined by Section 2 Clause (q) of the Act. During pendency of said exemption to permit the petitioner to make declaration notifying his/her intention to use that very parcel of land for making construction of dwelling units for economically weaker sections of the society would be to permit the landlord to apply for exemption for a purpose inconsistent with the purpose for which exemption is operative. This cannot be done and should not be permitted to be done in view of the clear language of Section 21 of the said Act. I, therefore, do not see any substance in this other facet of submission made by Mr. Bhatt so as to overcome the finding already reached by the competent authority. In my opinion, the competent authority was absolutely justified in holding that so long as the exemption u/s 20, vis-a-vis, these parcels of land continue there cannot be any declaration u/s 21 of the said Act. The said finding is also consistent with the view already taken by this Court in Spl. C.A. No. 5836 of 1991 decided on 4-9-1991.

12. Mr. Bhatt has further submitted that the nature of the land is to be determined by reference to master plan, and if, in the master plan the land is reserved for residential purpose declaration u/s 21 should be treated as consistent with the use of the land and said declaration should be permitted to be made. The use of the land in the master plan should be taken as a decisive factor and since the prescribed use of the land was residential use, exemption for agricultural use granted u/s 20 becomes automatically inoperative. He, therefore, submits that the petitioners were under no obligation to approach the State Government for cancellation of the exemption granted u/s 20 of the Act. In the alternative he submitted that withdrawal/cancellation of exemption u/s 20 does not decide the nature or category of land in question but it is master plan which is determinative since the master plan has statutory force. In his submission, once the land is notified in the master plan for residential purpose it shall have to be regarded as "vacant land" so as to attract the provision of Section 21 of the said Act and irrespective of the fact that the land was agricultural land prior thereto. "Prescribed use" of the land in the master plan stands altered from "agriculture" to "residence", and therefore, there was no need for the petitioner to apply for cancellation of exemption which was granted u/s 20. The aforesaid submission cannot be accepted. The notification of master plan is not under the provisions of the said Act. The prescribed use of the land in question under the master plan may be a factor which shall have to be taken into account while the nature of the land is required to be determined. However, when on the date the Act came into force the land was admittedly used for the agricultural purpose and exemption u/s 20 with respect to said land was granted, it shall have to be accepted as a matter of fact that the land is actually used for agricultural purposes and it is that use which has made it eligible for exemption. As against, the actual use of land and the stipulation in the order of exemption to use the land for agricultural purpose no importance could be given to the stipulation in the master plan that the "prescribed use of land is residential". That stipulation in the master plan is about expected use and it does not mean that the land is actually being used for residence. In future development the land can be put to residential use provided the exemption u/s 20 is got cancelled. So long as exemption u/s 20 operates it is not possible to regard the said land as "vacant land" and I do not accept this submission of Mr. Bhatt.

13. Mr. Bhatt, learned Advocate for petitioners has further submitted that whenever land is essentially used for agricultural purposes at the commencement of the Act and when it is statutorily brought over in the residential zone by operation of the Gujarat Town Planning Act, 1976 the right is immediately treated in favour of person to opt for exercising the right to put scheme for construction of dwelling units for economically weaker sections of the society u/s 21 of the said Act. In his submission, the "prescribed use" of the land in master plan would govern the application u/s 21 and not only the nature of the land. This submission of Mr. Bhatt is required to be stated for being rejected for the simple reason that it is the only nature of land on the date on which the Act came into

force which is determinative and not the expected use of land under master plan. When the land is actually used for agricultural operations and is exempted u/s 20 for agricultural purposes it is not permissible to regard the said land as "vacant land" on the ground that its prescribed use in the master plan is that of residence. The exemption already granted u/s 20 of the Act cannot be rendered nugatory or otiose. Such exemption cannot be even otherwise voided. For all purposes the land is treated as agricultural land while granting exemption and subsequent notification of master plan cannot render the exemption null and void or meaningless. Exemption once granted shall operate so long as it is not withdrawn or cancelled. I do not find any substance in this submission of Mr. Bhatt.

14. Mr. Bhatt further submitted that deceased Puriben has determined to avail of benefits of Section 21 by making declaration of her intention to construct dwelling units for weaker sections of the society. Exemption granted u/s 20 of the Act in 1980 cannot be imposed upon her against her will and desire because Pariben has inherent right to decide which of the two rights she would desire to avail of. The submission is thoroughly misconceived and shall have to be rejected. The land in question was excess vacant land and was otherwise liable to be declared excess but for the exemption granted u/s 20 of the said Act. In order to avail herself of benefits flowing from such exemption deceased Puriben has initially enjoyed the benefits flowing from such exemption and the land is not declared as surplus land. It is not question of two independent rights available to a person. It is a question of benefit available to a person from the grant of exemption. Exemption can only be granted if the conditions mentioned in Section 20 are satisfied. In this case on assertion of Puriben that the land was solely used for agricultural use, exemption u/s 20 of the Act was granted. Subsequently, deceased Puriben cannot be permitted to declare her intention to use the land for a totally inconsistent purpose, i.e., construction of dwelling units for economically weaker section of the society on the said land. The condition precedent for making declaration u/s 21 is that the land in question is vacant land. However, that condition did not exist in this case because the land was not vacant land as it was used for agricultural use and enjoyed exemption u/s 20. I, therefore, do not find any substance in this submission also. I hold that Puriben did not have two independent rights of which she was making selection. The benefit of second exemption would have been available to her had there been no exemption u/s 20. The operation of exemption u/s 20 took the land out of the description of "vacant land", and therefore, it is not a case of denying the right to petitioner to make selection out of two choices.

In the result, Spl. C.A. Nos. 5216, 5267 and 5276 all of 1991 are hereby dismissed. Rule in all the petitions is discharged with no order as to costs. However, it is clarified that it will be open to the petitioners to approach the competent authority for cancellation/withdrawal of exemption granted u/s 20, and thereafter, if permissible in law, it will be open to apply for exemption u/s 21.