

(1994) 04 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 4311 of 1991 (J)

Pushpak Grah Nirman Sahkari Samiti

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 9
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50(4)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : (1995) 1 MPJR 197

Hon'ble Judges : P.P. Naolekar, J; A.K. Mathur, J

Bench : Division Bench

Advocate : S.K. Dixit, for the Appellant; S.L. Saxena, Add. A.G., for the Respondent

Judgement

A.K. Mathur, J.

All these petitions Viz. M.P. No. 1466/91 (Nand Kishore Sharma v. R.D. Richariya & Others); M.P. No. 2220/91 (R.R. Dubey v. State of M.P. & Others), M.P. No. 2409/91 (Jai Prakash Sahakari Griha Nirman Samiti v. State of M.P. & Others); Misc. Petition No. 2682/91 (Janta Griha Nirman Sahkari Samiti v. State of M.P. & Others); Misc. Petition No. 2700/91 (Jagdish Prasad Sabu v. State of M.P. and Others); Misc. Petition No. 3319/91 (Vidyut Shramik Griha Nirman Sahkari Samiti v. State of M.P. and Others); M.P. No. 3337/91 (Mahakoshal Griha Nirman Sahkari Samiti v. State & Others); M.P. No. 4554/91 (Amrapali Griha Nirman Sahkari Samiti v. State of M.P. & Others); M.P. 2272/93 (Vasundhara Griha Nirman Sahkari Samiti v. State of M.P. & Others); M.P. 3878/93 (Army Personal Resettlements v. State & Others); M.P. No. 4688/93 (Mansoor Ahmad v. State of M.P. & Others), and M.P. No. 3068/87 (Purushottamdas Tandon and Other v. States of M.P. & Others), involved a common question of law and therefore, they are disposed of by a common order. For convenient disposal of all these petitions, facts given in the case of Pushpak Grah Nirman Sahakari Samiti are taken into consideration.

The petitioners by this petition have challenged the validity of the Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Vidheyak, 1982 and the rules framed thereunder and have also prayed that all the proceedings taken in pursuance of that Act may be quashed including the first information report, investigation and prosecution launched against the petitioners.

The petitioner No. 1 is a Society registered u/s 9 of the M.P. Co-operative Societies, Act, 1960 and petitioner No. 2. in its President. The petitioners purchased certain pieces of land by a registered sale deeds within the urban Agglomeration. These lands have been diverted and necessary certificates of diversion have been obtained from the Revenue Authorities, i.e. Jabalpur Development Authority, Town & Country Planning Authority and obtained a sanction for construction of the houses thereof. It is also submitted that a Competent Authority granted exemption under sub-section (1) of Section 20 of the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as "1976 Act"). It is alleged that Scheme No. 15 of the village Bethla was to be published under sub- section (4) of Section 50 of the MP. Nagar Tatha Gram Nivash Adhiniyam, 1973. It is alleged that there was no necessity to obtain licenses from the Collector, Jabalpur, before establishment of the colony. However out of abundant caution, licenses were obtained from the Collector for establishment of colony.

The respondent No. 2 on 14/11/1991 issued notices to the petitioners asking them that why the prosecution may not be launched against them under the provisions of M.P. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 (hereinafter referred as "" Act 1982."). The petitioners submitted their reply, and they have filed this petition challenging the validity of Act. No. 36 of 1982.

The aforesaid Act came into force with effect from 30-10-1982. The State Government framed Rules under this Act known as M.P. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam (Registration & Development of Colonies) Rules (hereinafter referred to Rules). It is submitted that the Parliament enacted a law known as Urban Land (Ceiling & Regulations) Act 33, 1976 (hereinafter referred to Act of 1976) and it is alleged that this Act was enacted to put ceiling on land in urban agglomeration. It is contended that in pursuance of clause (I) of Article 252 of the Constitution of India, eleven Houses of Legislature, namely. State of Andhra Pradesh, State of Gujrat, State of Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal resolved that the Parliament may make law on urban land ceiling. Therefore, Parliament enacted this Act, though it was within competence of State legislature to make the law on this subject. This Act came into force w.e.f. 17-12-1976, in those States except in the State of Rajasthan. Manipur. Assam. Bihar and Meghalaya where it came into force w.e.f. 17-3-1976, 12/3/1976 and 25/4/1977 respectively. The State of Madhya Pradesh also adopted this Act on 9/9/1976. It is alleged that the State of M.P. after having adopted the central Act No. 33/76, has further enacted the Act No. 36/82. Therefore, the submission is that this Act

cannot be enacted when the State of M.P. has adopted the Act 1976 and by virtue of Article 252 of the Constitution of India where field has been already occupied by the parliamentary legislation then this Act cannot be framed and, therefore, it should be declared as ultra vires. Likewise, it is contended in alternative that the Rules framed thereunder should also be declared ultra vires and there is no provision for appeal etc. In order to appreciate the rival contention of the parties, it would be proper to first refer to the legislative history of the enactment and the relevant provisions bearing on subject.

Article 246 of the Constitution of India provides that the Parliament is competent to legislate on the subject mentioned in list I of VIIth Schedule and State legislature is competent to legislate on the subject mentioned in List-II of 7th Schedule and List III concurrent list the Parliament and State Legislature both are competent to legislate. Article 252 of the Constitution of India lays down if two or more States desire that any of the matter in respect of which the Parliament has no power to make laws for the states resolves that the Parliament may make the law on the subject in that event it will be lawful for Parliament to legislate on that subject. It also provides that once the law has been framed by the Parliament on that subject of State list on the resolution of the House of Legislature then the amendment or repealed of the Act of Parliament shall be in the same manner as the Act was passed meaning thereby repealed or the amendment of that Act shall also be made by the Parliament. Article 252 of the Constitution reads as under: -

Art. 252 : POWER OF PARLIAMENT TO LEGISLATE FOR TWO OR MORE STATES BY CONSENT AND ADOPTION OF SUCH LEGISLATION BY ANY OTHER STATE : -

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Arts. 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respect any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

In pursuance of this, the Act 33/76 was framed by the Parliament and the State of MP. also adopted the same on 9/9/1976 by passing resolution of the House to that effect. The Act. 33 of 1976 deals with regard to imposing of ceiling on vacant land in the Urban agglomerations for acquisition of such land in excess of ceiling limit to regulate the construction of building on such land and matters

connected therewith a view to prevent the concentration of urban land in the hands of a few persons and prevention of speculation and profiteering there in and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, sections 2(g) of Act 1976. defines "land appurtenant" which reads as under:

S. 2(g): Land Appurtenant", irreligion to any building, means-(i) in any area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square meters: or (ii) in any area where there are no building regulations, an extent of live hundred square meters contiguous to the land occupied by such building, and includes in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square meters of land, if any. contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii). as the case may be" Section 2(n) defines urban agglomeration " which reads as under :-

S. 2(n) : Urban agglomeration-

(A) in relation to any State or Union territory specified in column (I) of Sch. 1 means : -

(i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and

(ii) any other area which the State Government may. with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefore shall be one kilometer;

(B) in relation to any other State of Union territory, means any area which the State Govt. may. with the previous approval of the Central Government, having regard to its location, population (population being more that one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Sch. I and the peripheral area therefore shall be one kilometer.

Section 2(o) defines "Urban Land" which reads as under: -

S. 2(o). Urban Land means -

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, and land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality by whatever name called) a notified area committee, a small town committee, a Cantonment Board or a Panchayat. but does not include any such land which is mainly used for the purpose of apiculture.

S. 2(p) * * * *

S. 2(q) vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include --(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated: and (ii) ill an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on the appointed day with the approval of the appropriate authority, and the land appurtenant to such building and (iii) in an area where there arc no building regulations, the land occupied by any building which has been constructed before, or is being constructed on the appointed day and the land appurtenant to such building Provided that where any person, ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live - stock, on any land situated in a village within an urban agglomeration the (sic) so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall hot he demand to he vacant land for the purposes of this clauses.

Section 2) of Act .13 1976, deals with the persons not entitled to hold vacant land in excess on the ceiling limit and section 4 defines the ceiling limit". Section 5 deals with transfer of vacant land and then how the incumbent shall file the return and the authority shall decide whether in company holds excess land or not after hearing parties and the excess land will thereof he resumed to the State. Section 20 deals power to exempt. Power has been given u/s 20 ol the Act to the State Government to satisfy that having regard to the location of such land, the purpose for which such land is being or is proposed to he used and such other relevant factors as the circumstances of the case may require and if it thinks in public interest to do so. the Government may by an order exempt on such conditions as may be specified or in the alternative to retain the land excess of the ceiling. Section 38 of the Act, 1976 laid down that breach of the provisions of this Act shall be punishable.

The State of Madhya Pradesh also framed the Act known as The Madhya Pradesh Vinirdistha Bhrashta Acharan Nivaran Adhiniyam, 1982.This is a composite Act and the aim of this Act is mentioned in the objective and reasons which reads as under:

A Bill to provide for punishment of specific corrupt practices resorted to by the persons serving in connection with the affairs of the State or of public

undertakings or local authorities, co-operative societies or other institutions or organisations aided by "State Government and by some other persons in their dealings with the State Government and aforesaid bodies, with a view to eradicate and effectively prevent such practices and for other miscellaneous matters connected therewith.

From the aim and object of the Bill it is apparent that this seek to provide the prevention of corrupt practices resorted to by the persons serving in connection with the affairs of the State or public undertakings or local holders. co-operative societies and other institutions or organisations aided by the Government and other persons in dealing with the State Government and the aforesaid bodies. Idea is that whoever is a member of these organisation indulge in corrupt motives then such parsons can be dead with under this Act. This is a composite Act comprising practically all areas of corruption and its prevention. We are not concerned herewith the whole of the Act but chapter VIII of this Act which is relevant for our purpose.

It Chapter VIII deals with the offences relating to Illegal Colonization. It appears that this Chapter VIII has been specifically introduced under his Act with a view to stop the illegal activities of the land sharks who grab the land and the areas or places in the State from the poor agriculturists for a song and then develop it and sale the same with a high premium by making plots. It is litis illegal activity is being sought to be checked by this Chapter. Section 24 appears in Chapter VIII defines the Colonizer which reads as under:

S. 24 Definitions - In this Chapter, the expressions -(a) "a colonizer" means a person who. in a local area, after taking no objection certificate or prior permission in writing, its the case may be -(i) under Sec. 172 of the M.P. Land Revenue Code, 1959 (No. 20 of 1959): (ii) under the Urban Land (Ceiling and Regulation) Act. 1976 (No. 33/76): (Hi) under the M.P. Municipalities Act, 1981 (No. 37 or 1961): (iv) under the M.P. Municipal Corporation Act. 1961(1 (No. 23 of 1956): (v) under the M.P. Nagar Tatha Gram Nivash Adhiniyam. 1973 (No. 23 of 1973); From the respective authority competent to grant the same or from a Nazul authority in case the land is situate in a Nazul area, divides the land into plots, with or without developing the area, transfers or agrees to transfer them gradually or all at a time, to reasons desirous of settling down on those plots by constructing (residential of non-residential or composite accommodation and the expression "establishment or colony", colonization illegal colonizer" and "illegal colonization shall be construed accordingly. Provided that no parson shall undertake the establishment of colony unless he on payment of such fee as may he prescribed for registration of colonizers obtain a. licence of colonization from the Collector of revenue district in which the land is situate : " Provided further that, notwithstanding anything contained in Section 172 of the M.P. Land Revenue Code, 1959 mere omission to grant sanction for diversion of land within the period specified therein shall not amount to grant of sanction for diversion for the purpose of this Chapter.

(b) "local area means an area comprised within the limits of a Municipal Corporation a Municipality Class. I urban agglomeration or Nazul area comprised in such limits and shall include a planning area notified u/s 13 of the M.P. Nagar Tatfia Gram Nivesh Adhiniyam, 1973, within or appurtenant to such limits:

(c) "plot holder" means a person who in a local area holds a plot under added of transfer or agreement of transfer form a colonizer:

(d) "urban agglomeration" shall have the same meaning as is assigned to it in clause (a) of Section 2 of the Urban Land (Ceiling and Regulation) Act. 1976 (No. 33 of 1976).

Section 25 deals with the illegal diversion of land. It says that if any land has been diverted in contravention, of Section 172 of the M.P. Land Revenue Code then that will be illegal diversion. Section 26 deals that if any colonizer has divided his land into plots with the object of establishing the colony in breach of Section 24 then such person is said to have committed an offence of illegal colonization. Section 27 deals with punishment for illegal diversion or illegal colonization which may extend to three years imprisonment or with fine or both. Section 28 deals with the illegal construction. Section 29 deals with punishment for illegal construction for imprisonment of either description which may extend to one year or with fine or both. Section 3(1) deals with punishment for abetment of the offence of illegal colonization. Section 31 deals with the transfer of plots in an area of illegal diversion or illegal colonization to be void. Section 32 lays down that the land which is illegally colonised, shall be forfeited from the date of conviction of colonizer u/s 27 and vest in the State free from all the Commissioner and (he direction of the Commissioner is subject to review by the Stale Govt. Certain Rules have also been [ranted thereunder which are known as "M.P. Vinndishta Bhrashla Acharan Nivaran (Registration and Development of Colonies) Rules. 1982. These Rules have been framed u/s 44 of the Act. Part II of those Rules deal with licence and permission by the Collector and it also lays down that the Collector may revoke such licence. Rule empowers the Collector to revoke (he licence alter hearing the affected party by a reasoned order. This provides a inbuilt safeguard against arbitrary act. Part III deals with which we are heroic concerned as (he agreements were addressed on this aspect in greater detail. Rule 13 say that a notice can be given by the Collector when it finds that such transfer or agreement to transfer a plot has been made by a colonizer in the area of illegal diversion or illegal colonization and it desirable to take over the management of such land under Clause (hi of sub section (I) of Sec. 31. (hen lie will issue a public notice and which must be in Hindi language calling upon all the persons to show cause within such period as may be specified therein why the management of such land should not he taken over by him. Rule 14 deals with reply to show a notice and then Sec. 15 deals with taking over the management of the land of dropping the proceedings. The Collector can lake over the in argument of land which is subject to illegal diversion or illegal colonization or he may drop the proceedings. Rule 16 provides that aid of Police

can he called for such a matter. Rule 17 lays down he can take assistance of certain persons for management of this land. The Collector can take the services of any person for management of land. Rule IX lays down that if any land has been taken over by the Collector for its management, he may direct the local authority or the Development Authority, if there is any, for the local area in which the land is situate to draw up a scheme for the development and allotment of land to individual plot holders. if any. It is further says that the scheme submitted by the local authority will be subject to review by Collector and then such scheme shall be published under Rule 19. Rule 20 lays down the expenditure incurred by the Collector including the development charges and the same shall be recovered on "pro rata" basis or other reasonable and fair basis from persons to whom the plots have been allotted. Part IV deals with the grant of sanction for prosecution. It says that no authority or officer who is interested to act on behalf of the State for issuing direction for grant of prosecution if he is interested directly or indirectly then he should not issue such instructions and the matter should be brought to the notice of the State Government. Likewise for grant of sanction of prosecution u/s 197 of the Code of Criminal Procedure, 1973, such persons shall not deal and the matter should be referred to the State Government. In this framework of the necessary provisions of the Act and Rules, we have to examine the validity of the Act of 1962 and Rules framed thereunder.

The first and foremost question which has been addressed by the Learned Counsel for the petitioner is rejecting validity of the Act. As pointed out above, the whole of the Act is not challenged but the Chapter VIII of the Act which is being sought to be challenged to the anvil of Article 252 of the Constitution. So far as Article 252 is concerned, it is true that the State Government if they want Parliament to legislate on any subject can authorise the Parliament by passing necessary resolution to that effect. Though such resolution was not passed by M.P. State Legislature as was done by other State Legislature for enacting the Act 33/1971. But M.P. State legislature has adopted the Act 1976 w.e.f. 9/9/1976 by passing a resolution of house. Therefore, the submission of the Learned Counsel is that the effect of adoption is same as if the resolution has been passed by the State Legislature authorising the Parliament to enact the law on the subject of urban agglomeration. Shri S.L. Saxena, learned Addl. Advocate General, has not disputed that the effect of adoption by passing of resolution by the State Legislature, is the same as if the State legislature has resolved that the Parliament may legislate on the subject. It is true that the land falls in entry IS of List II of 7th Schedule of Constitution and the State Government is competent to legislate on this entry. But by virtue of adoption the Act of Parliament on a subject has been adopted by the State, therefore, the Urban Land Ceiling & Regulation Act, 1976 is equally applicable to the State of M.P.

Now the question is that after having adopted Act of 1976 whether Chapter VIII of the Act of 1982 is ultra vires of provisions of Act 1976 and Article 252 of the Constitution of India. In order to find out that whether there is any such conflict between Act of 1976 and 1982, we have reproduced the necessary provisions of

both the Act above. We find that there are no conflict between the two and the Act of 1982 does not run counter to the provisions of Act 1976 and there is no violation of Article 252 of the Constitution of India. As mentioned above, the Act of 1982 only provides to prosecute the persons who are illegal colonizer or illegal diversion of land without obtaining the necessary permission under the law hearing on subject. In Section 24 of the Act, it is clearly laid down that for colonization or for purpose of diversion or conversion of the land, certain permission has to be obtained under the various enactment existing under the State as well as u/s 20 of the Act, 1976. If any person has not taken any permission under the various Act i.e. M.P. Land Revenue Code or under Urban Land Ceiling & Regulation Act or under the M.P. Municipalities Act, 1961 or under the M.P. Corporation Act, 1956; or under the M.P. Nagar Tatba Gram Nivesh Adhiniyam 1973, then such persons will be treated as an illegal colonizer. If such person is illegal colonizer then he can be prosecuted under the provisions of Section 25, 26 and onwards. He can be punished under sections 27, 28 and 29 and even abettor of offence is also punishable u/s 30. Section 31 says that if certain land is to be diverted or illegally colonized then such act shall be void and the Collector can take over such land and the matter shall be dealt with in accordance with the Rules. But a safeguard has been provided u/s 38 of the Act that Police Officer on their own cannot take the cognizance though it is cognizable offence and a power has been conferred on the Commissioner of the Division to direct the Police to take investigation and launch the prosecution. In this Scheme of the Act, it is absolutely futile to say that it runs counter to the Act of 1976, The purpose of Act 1976 was to put a ceiling in the urban land so that the area excess of ceiling could be acquired by the State for distribution to the other persons. It is a well known fact that with the increase of population, there is explosion of urbanization of area and people who have urban land beyond ceiling fixed on urban area has to be taken over by the State, to be distributed to those who are without better over their head so that those people who are without any dwelling house in the urban area, they can be provided a land in an urban area for their shelter. The purpose of both these Acts do not run counter to each other rather the Act 1982 is a complementary provision advancing the cause of Act 1976. The section 38 of Act, Wo. only lays down punishment for not filing the returns, but there is no punishment is provided for illegal colonization or conversion. It is only this Act of 1982 which punishes a person who has illegally colonized or diverted the land for colonization. Thus the area of operation of both these Acts does not in any manner conflict to each other. Rather by reading both these Acts together, it will advance the cause of common man and conducive to the public good. Since we have found that both the Acts are not conflicting with each other, therefore, there is no violation of Article 252 of the Constitution of India. R.M.D.C. (Mysore) Private Ltd. Vs. The State of Mysore, was a case in which it is alleged that there was repugnancy between the prize competitions in Act No. 27 of 1951 and Amendment Act No. 26 of 1957. The matter was examined by the Supreme Court in order to find out that if there is any inconsistency or not so as to declare the same as violative of Article 252 of the

Constitution. But in the present case, as we have examined in detailed the provisions of both the Acts and we find that there is no repugnancy between the two and, therefore, the case cited by the Learned Counsel for the respondents has no assistance for deciding the issue under hand and we hold that Act of 1982 is not ultra vires of Article 252 of Const, or Act of 1976.

Now the next question which has been agitated by the Learned Counsel for the petitioner is that the rules are also illegal for the reasons that as provision of appeal has been provided under the rules for the management of land by the Collector, therefore it may be declared as ultra vires.

The scheme of Rules have already been pointed out above and especially in this connection, our attention was invited to Rules 13 to 20 of Rules 1982. A close reading of these Rules would show that they should be read subsequent to the provisions of the Act. Under these Rules, if it is found by the competent Criminal Court that an incumbent is illegal colonizer or there is an illegal colonization then and then alone the land will stand forfeited to the State. Section 31 says that the effect of such illegal colonization or illegal diversion. If any person has illegally diverted particular land from the agriculture to non-agriculture purpose or illegally colonized and if it so held by a competent Criminal Court then in that case the land in question will stand forfeited to State and once such land has been forfeited to the State then under Part III of the Rules. the Collector shall manage that land. Part III of the Rules of the management of colony will only came into play after the competent criminal Court has held that there is a case of an illegal diversion or illegal colonization and such transfer shall be void, the land will be forfeited to the State and the Collector will have the management of the same. Rule 13 clearly referred to sub-section I (b) or Section 31 means that after the competent Criminal Court having come to the conclusion that there is illegal diversion or illegal colonization then such transfers or agreement to transfer of those plots by such colonizer will be void and all the land and such plots shall stand forfeited to the State. After such plots are forfeited to the State then alone the Collector will have the management and he can proceed in the manner as prescribed in Part III of the Rules. Therefore, there is no question of appeal against the order of the Collector is required. The management of the plot will only come under the management of the Collector once the Criminal Court decides the matter. If there is no decision of a criminal Court then the Collector on his own. cannot take up management of the property and development of that land or prepare the scheme for allot it to other persons . It should be very clearly understood that Part III of the Rules will only come into play alter a competent Criminal Court having held that the incumbent is guilty of illegal diversion of land or illegal colonization then alone land shall vest in State and transfer shall be void. Thereafter, Collector shall have the right of management of that land. Therefore, the argument that there is no appeal provided is meaningless as a greater check is provided. This check will sufficiently meet the principles of natural justice. Thus, the submission of the Learned Counsel that by not providing the remedy of appeal, the Rule should be struck down has no

meaning because a greater check is already provided.

16. It was submitted by the Learned Counsel that in some of the petitions, the Collector has issued a direction to the Police for investigation and launching the prosecution where as u/s 39 it is only Commissioner of Division who has been authorised to give a direction to the Police Officer to investigate and launch the prosecution. Section 39 of the Act, 1982 as referred above, confers this power on the Commissioner of the Division to give a direction to the Police for investigation and launching the prosecution and not to the Collector. Therefore, wherever, Collector has given a direction to the Police for registering the case for investigating and launching the prosecution then such act by the Collector shall be deemed to be illegal and unauthorised. We have no hesitation in saying that such prosecution wherever it has been launched will be illegal. Some of the petitions before us, the only argument has been raised that the Collector has directed the Police to investigate and launch the prosecution. Such action is bad and it is declared so and is set aside.

Upshot of above discussion is that Act of 1982 is not ultra vires of the provisions of Urban Land Ceiling Regulation Act nor under Article 252 of the Constitution of India. However, we hold that wherever any Collector has issued a direction for launching prosecution, that action is without jurisdiction and same is set aside. All the writ petitions mentioned in para I of this Order are disposed of accordingly. The amount of security deposited, if any, shall be refunded to the petitioners.