

(1989) 09 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 8546 to 8548 and 15377 of 1988

S. Vasudeva and D.P. Sharma and C. Kannan

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Parks, Play-fields, and Open Space (Reservation and Regulation) Act, 1985
— Section 6

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

Citation : (1989) ILR (Kar) 39

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : S. Vasudeva, in WP Nos. 8546-48 and A.K. Subbaiah, in WP No. 15377, for the Appellant; R.N. Narasimha Murthy, General for R-1 to 3, 6 and 7, S. Vijayashankar, for R-4, Soli Sorabjee, for A.J. Sadasiva, for R-5, N. Santosh Hegde, for K.H. Jagadish, for R-8, D.R. Rajasekharappa, for R-11, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J

1. RELIEFS: .

These petitions are filed under Articles 226 and 227 of the Constitution seeking various reliefs. The reliefs sought for in W.P.Nos. 8546 to 8548/88 also cover the reliefs sought for in W.P.No. 15377/88. Therefore, the reliefs sought for in W.P.No. 15377/88 are not specifically stated. Further in a public interest petition under Article 226 of the Constitution, the reliefs can be moulded according to the findings arrived at. The objection as to absence of a specific prayer in a public interest petition as in a private interest litigation does not assume any importance. The reliefs sought for in W.P.Nos. 8546 to 8548/88 as follows:

"Wherefore, the petitioner prays that this Hon'ble Court be pleased to issue:

- a) A writ of mandamus directing the respondents 1 to 3 to take action for forfeiture of the land for contravention of Section 79 of the Karnataka Land Reforms Act;
- b) A writ of mandamus directing the respondents 1 to 3 to acquire the land for the purpose of weaker section under the provisions of the Urban Land Ceiling and Regulations Act;
- c) By a writ of certiorari to quash the order No. HUD.CE.11/87 dated 6-3-87 and No.HUD.CE.11/87 dated 18-4-1987 granting exemption from the purview of the Urban Land (Ceiling and Regulation) Act, u/s 20(1)(a) and (b) of the Urban Land Ceiling Act, issued by the Under Secretary, Housing and Urban Development Department, Government of Karnataka, Bangalore;
- d) Directing the 9th respondent to initiate proceedings against the 5th respondent and 4th respondent under Chapter XXC of the Income Tax Act which came into force on 1-10-1987 in relation to the sale deed executed by the 4th respondent in favour of the 5th respondent registered on the 30th September 1987 before the Sub-Registrar, Jayanagar, Bangalore, registered as Document No. 1928/87-88 of Book-I, Volume 1116, pages 65 to 83 on 30-9-1987;
- e) Directing the 10th respondent to hold an enquiry into the Benami Transaction entered into between the 5th respondent and others in respect of the purchase of land in question under the registered sale deed dated 30-9-1987 and formation and constitution of Partnership as on 30-9-1987 and initiate action in accordance with law;
- f) To declare the sale deed dated 30-9-1987 executed by M/s Narayanaswamy and sons in favour of the 5th respondent as null and void;
- g) And to grant any other Writ, Order or Direction as deemed fit under the facts and circumstances of the case, in the interest of justice.
- h) an appropriate writ, order or direction to the 7th respondent to initiate action u/s 45(A) of the Karnataka Stamp Act, 1957 against the respondents 4 and 5;
- j) appropriate writ or direction to the first respondent to take action u/s 6 of the Karnataka Parks, Play-fields, and Open Space (Reservation and Regulation) Act, 1985 against the respondents No. 4 and 5 in respect of lands measuring 60" x 156" earmarked for Bull-ward in S.No. 6/1 and 6/2 of Dasarahalli village, Uttarahalli Hobli, Bangalore South, situated on the eastern side of the said survey lands."

2. PARTIES

2.1. The petitioner in W.P.Nos. 8546 to 8548/88 is a practising Advocate of Bangalore. In W.P.No. 15377/ 1988 there are two petitioners - D.P. Sharma and Sri C.P. Kannan. Sri D.P. Sharma has claimed that he is a Transport Operator, Builder and Developer. He has also claimed that he is a social worker and a political activist. Sri C.P. Kannan has claimed that he hails from a depressed class

i.e., Scheduled Caste. He was elected to Karnataka State Legislative Assembly from Shantinagar Assembly Constituency of Bangalore as a candidate of Congress-I Party. Both the petitioners in W.P.No. 15377/ 1988 are members of Congress (I) Political Party. Respondents-1 to 5 in W.P.No. 15377/88 are respondents-1, 4, 5, 8 and 6 respectively in W.P.Nos. 8546 to 8548/1988. Apart from the aforesaid 5 respondents in W.P.No. 15377/ 1988, there are six more respondents in W.P.Nos. 8546 to 8548/88. Therefore, in this Order, the respondents will be referred to with reference to their ranking in W.P.Nos. 8546 to 8548/88.

2.2. At this stage itself, it is relevant to notice the relationship and status of each one of the parties. Respondent-4 is a partnership firm. It is not a joint family firm but it is a partnership consisting of near relations as claimed by respondent-4.

2.3. Respondent-5 is a registered partnership firm. It came into existence on 6-1-1987. However, the Partnership Deed dated 6-1-1987 was registered on 5-6-1987 only. A xerox copy of a registered Partnership Deed is produced by the 5th respondent. It consists of 19 partners. The interest held by each one of the partners is as follows:

1.

Smt. Shobha Makhija

...

50%

2.

Sri T.N. Umesh

...

10%

3.

Sri T.N. Satish

...

10%

4.

Smt. Gayatri Niranjana

...

5%

5.

Sri B.P. Mahabala

...

3%

6.

Sri B. Prakah

...

1%

7.

Sri B.P. Shyam Prasad

...

1%

8.

Sri B.P. Ramesh

...

1%

9.

Sri B.P. Ashok

...

1%

10.

Sri B.P. Srinath

...

1%

11.

Sri V.N. Tallam

...

2 1/2%

12.

Sri V.T. Ashok

...

2 1/2%

13.

Sri M.K. Jayaprakash

...

1%

14.

M.K. Suresh Babu

...

1%

15.

Sri D.A. Prasannakumar

...

1%

16.

D.A. Ramachandra Guptha

...

1%

17.

T.A. Venkatesh

?

1%

18.

T.A. Krishnamurthy Kumar

...

1%

19.

Sri Dhirubhai K. Kapadia

...

6%

Total

...

100%

2.4. From the aforesaid statement, it is clear that Smt. Shobha Makhija alone holds 50% interest in the partnership. Her interest in the partnership is equivalent to the interest held by the remaining 18 partners. According to the relationship of the partners, they can be classified in the following groups:

Sl.Nos. 2 and 3 being the brothers form one group;

Sl.Nos. 5 to 10 being the brothers form one group;

Sl.Nos. 11 and 12 being the father son form one group;

Sl.Nos. 13 and 14 being the brothers, form one group;

Sl.Nos.15 and 16 being the brothers form one group;

Sl.Nos. 17 and 13 being the brothers form one group; and

Sl.Nos. 1, 4 and 19, each forms a separate group.

2.5. It is also not in dispute that Smt. Shobha Makhija, who holds 50% interest in the 5th respondent-partnership firm, is related to the 8th respondent being a sister of the son-in-law of the 8th respondent. At the relevant point of time, respondent-2 was the Minister for Urban Land Development and respondent-8 was the Chief Minister of the State of Karnataka. Respondents 3 and 7 are the officials of the State Government who have dealt with the files relating to the impugned orders and the matters connected thereto at various stages. The role played by them will be adverted to at the relevant stage. Respondent No. 6 has registered the Sale Deed executed by respondent No. 4 in favour of respondent No. 5 pursuant to impugned orders.

3. NATURE AND SUBJECT MATTER OF THE PETITIONS:

3.1. The petitioners have no personal interest in the subject matter of these Writ Petitions. Therefore, they are not seeking to enforce their individual right. These petitions are filed as public-interest litigation, challenging the action of the State Government and its officials. They have challenged the orders passed by the State Government u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act") and further actions taken pursuant thereto.

3.2. Under the two orders dated 6-3-1987 and 18-4-1987 bearing G.No. 11 CEI 87 produced as Annexures-J and K" respectively passed by the State

Government in the purported exercise of its power under Sub-section (1) and 1(a) respectively of Section 20 of the Act, it permitted the 4th respondent to sell the exempted land specified in the schedule to the orders to respondent-5 on various conditions. Under the first order, an extent of 16,194 Sq. Metres vacant land comprised in S.Nos. 6/1 and 6/2 of Dasarahalli, VI Block, Jayanagar, Bangalore, was permitted to be sold. Under the second order, an extent of 3,444 Sq. Metres vacant land comprised in the very same survey numbers was

permitted to be sold to the 5th respondent. Pursuant to these orders, the 4th respondent has sold an extent of 5 acres 24 guntas comprised in S.No. 6/1 and 6/2 of Dasarahalli village, Uttarahalli Hobli, Bangalore South Taluk to the 5th respondent for a sum of Rs. 90 lakhs. The boundaries mentioned in the schedule to the Sale Deed are as follows:

East by: IV Main Road i.e., Nanda Talkies Road, Jayanagar.

West by: Shanti Talkies and Shanthi Talkies Road;

North by: Private Houses and South End Road;

South by: Property belonging to B.M. Narayanaswamy and 19th Cross, IV Block, Jayanagar.

A sketch of the land sold under the aforesaid Sale Deed was also annexed to the sale deed. A true copy of the sketch is produced by the petitioner Sri Vasudeva as Annexure-L. The land sold is specifically marked in the sketch, and it is described in the Sale Deed as well as in the sketch as ABCDEFHIJKLMOP.

4. In the light of the pleadings of the parties and various contentions urged by them, the following points for consideration:

1) Whether the petitioners are entitled to maintain the petitions under Article 226 of the Constitution?

2) What is the extent and nature of the land comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli. Whether an extent of 5 acres 24 guntas sold under the Sale Deed dated 30th September, 1987 by respondent-4 to respondent-5 was available?

3) Whether the impugned orders dated 6-3-1987 and 18-4-1987 (Annexures J and K respectively) passed by the State Government u/s 20 of the Act are legal and whether they fall within the scope and ambit of the Act?

4) Whether respondents 2 and 8 misused their official positions and acted with ulterior motive and caused passing of the impugned orders dated 6-3-1987 and 18-4-1987 (Annexures J and K respectively) with a view to confer benefit on respondent-5. If so, whether the impugned orders Annexures J and K are vitiated by mala fide exercise of the power?

5) What is the effect of the findings on point Nos. 1 to 4 on the Sale Deed dated 30-9-1987 executed by respondent-4 in favour of respondent-5?

6) What order?

5. POINT NO. 1:- It is contended on behalf of the respondents, specially the learned Advocate General appearing for the State, that the petitioners do not have any individual right or interest in the vacant land which is permitted to be sold to respondent-5, they cannot maintain the Writ Petition under the guise of public interest litigation; that the land in question had not vested in the State Government, inasmuch as, it was not declared that the vacant land held by

respondent-4 was in excess of the ceiling limit prescribed under the Act, and was not acquired under the Act, therefore it had not vested in the State Government; that consequently it had not become the Government property; that a member of the public has had no right in the land in question, therefore the petitioners cannot maintain the Writ Petitions; that under the provisions of the Act merely because a person or a party holds vacant land in excess of the ceiling limit it does not vest in the State Government until it is declared as such and acquired under the Act; that the public lost their right in the land in question when it was by the Order dated 17-7-1985 bearing No. HUD.324.CUP.83, the State Government in exercise of the power conferred u/s 20(1)(a) of the Act exempted from the provisions of Chapter III of the Act; that the petitioners in W.P. 15377/88 are active members of Congress (I) political party which is opposed to the party in power in the State at the relevant point of time, therefore they have filed the Writ Petition only to achieve their political ends; that having regard to their association with a political party the petition filed by them is not bona fide and no public interest whatsoever is served by them and that the petitioner Sri S. Vasudeva also has no public interest to serve, as no class interest is involved.

5.1. On the contrary, it is maintained on behalf of the petitioners that undisputedly the vacant land held by respondent-4 was far in excess of the ceiling limit prescribed under the Act; that merely because the vacant land was exempted from the provisions of Chapter III of the Act under the Order dated 17-7-1985, the vacant land did not cease to be the one governed by the provisions of the Act; that the exemption was granted on certain conditions in public interest for the purpose of locating an industry and the land was required to be utilised for industrial purpose within a period of two years and it was required to be used exclusively for that purpose and it was not permissible to transfer by way of sale, mortgage, gift, lease or otherwise without the prior permission of the State Government; that as respondent-4 failed to comply with the terms of the Order dated 17-7-1985 and pleaded their inability to use the land for the purpose for which it was permitted to be used, the only course open to the State Government was to take action under the provisions of the Act to acquire the land; that the impugned orders passed on 6-3-1987 and 13-4-1987 Annexures J and K are neither proper nor legal and are vitiated by mala fides. Therefore, the public have every right to vindicate the same and to ensure that the vacant land held by respondent-4 in excess of the ceiling limit is acquired by the State Government and utilised for public purpose; that as the Act is passed to implement the Directive Principles contained in Article 39(b) and (c) of the Constitution; that as the impugned orders are violative of those principles, the petitioners are entitled to maintain the petitions.

5.3. Under this point, it is not necessary to go into the legality or propriety of the impugned orders-Annexures-J and K. The petitioners also do not claim that any of their individual right, or interest is affected. The claim made by them is that they are espousing the cause of public interest because the vacant land held in excess of the ceiling limit is required to be acquired and utilised for the common

good and it is to enforce the objects and intendment of the Act which embodies the Directive Principles of State Policy as contained in Article 39(b) and (c) of the Constitution, the petitioners have invoked the jurisdiction of this Court under Article 228 of the Constitution to enforce those Directive Principles as embodied in the Act. It cannot be disputed and it is not disputed that on the date the Act came into force respondent-4 held vast extent of vacant land in excess of the Ceiling limit situated at a very important place in the City of Bangalore. The land held in excess to the ceiling limit has to be used for the purposes of the Act. The Act not only provides for imposition of ceiling on vacant land in urban agglomeration, it also provides for the acquisition of such land in excess of ceiling limit and to regulate the construction of buildings on such land and other matters connected therewith. It is also intended to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein with a view to bring about an equitable distribution of land in urban agglomeration to subserve the common good. The Act is intended to give effect to Directive Principles of State Policy as contained in Clauses (b) and (c) of Article 39 of the Constitution. Article 39 of the Constitution provides that the State shall, in particular, direct its policy towards securing -

(a) xxx xxx xxx xxx

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

It is to give effect to these principles, the Act imposes a ceiling limit for possessing a vacant land and provides for acquisition and distribution, or utilisation of the vacant land in excess of the ceiling limit. The Supreme Court while considering the object and intendment of the Act in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, has held thus:

"The disposal of excess vacant lands must therefore be made strictly in accordance with the mandate of Sub-section (4) of Section 23, subject to this, that in a given case such land may be allotted to any person, for any purpose relating to, or in connection with, any "industry" or for the other purposes mentioned in Sub-section (1), provided that by such allotment, common good will be sub-served. The governing test of disposal of excess land being "social good", any disposal in any particular case or cases which does not subserve that purpose will be liable to be struck down as being contrary to the scheme and intendment of the Act. The Preamble to the Act ought to resolve interpretational doubts arising out of the defective drafting of Section 23. It shows that the Act was passed with the object of preventing concentration of urban land in the hands of a few persons and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. "Common good" being the writing on the wall, any disposal which does not serve

that purpose will be outside the scope of the Act and therefore lacking in competence in diverse senses.

5.4. These being the objects and intendments of the Act, every citizen is entitled to see that the State Government does not act contrary to the intendments and the objects of the Act and does not exercise the power under the Act in such a manner so as to defeat or circumvent the intendments and objects of the Act. When the object of the Act is to implement the Directive Principles contained in Clauses (b) and (c) of Article 39 of Constitution, it is not necessary for a citizen to have any individual right or interest to vindicate that the actions of the State Government taken under the Act are opposed to, and are intended to defeat, the very objects and intendments of the Act. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, while dealing with public interest litigation, the Supreme Court observed thus:

"When the Court is called upon to give effect to the Directive Principles and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are matters of policy and it is a matter for the policy making authority. The best that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions."

These observations aptly apply to the case on hand, as the grievance of the petitioners, is that the impugned orders are opposed to the Directive Principles embodied in the Act, Thus the petitioners pray that the Directive Principles of State Policy as contained in Article 39 (b) and (c) should be given effect to.

5.5. In addition to this, there has been a great change in the thinking as to, and approach to, the rule of locus standi. The old conception that in order to invoke the jurisdiction of the Court under Article 226 of the Constitution, the person invoking must have an enforceable personal right or interest in the matter, no more holds good on the advent of public interest litigation. At this stage, it is also relevant to remember that Article 226 of the Constitution can be Invoked not only for enforcement of any of the rights conferred by Part III of the Constitution but also for other purpose. The Supreme Court in *FERTILIZER CORPORATION KAMAGAR UNION (Regd) SINDRI AND ORS. v. UNION OF INDIA AND ORS* AIR 1981 SC 344. considered the question of locus standi and the right of a common man to call in question the validity of an action of a Government Company. It was observed thus:

"We have no doubt that in competition between Courts and streets as dispenser of justice, the Rule of law must win the aggrieved person for the law Court and wean him from the lawless street. In simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi jus ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and

correction of public power so as to promote justice in its doctrine facts."

It was further observed that:

"Lest there should be misapprehension, we wish to keep the distinction clear between the fundamental right to enforce fundamental rights and the interest sufficient to claim relief under Article 226 and even under other jurisdictions. The learned Attorney General almost agreed, under pressure of compelling trends in the contemporary law of procedure, that Article 226 may probably enable the petitioner to seek relief if the facts suggested by the Court hypothetically existed. Shri A.K. Sen also took up a similar position. I will put aside Article 32 for a moment and scan the right under Article 226. There is nothing in the provision (unlike under Article 32) to define "person aggrieved", "standing" or "interest" that gives access to the Court to seek redress."

xxx xxx xxx "Law, as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pendency now surrounding locus standi.

xxx xxx xxx "Public interest litigation is part of the process of participative justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial doorsteps. The floodgates argument has been nailed by the Australian Law Reforms Commission:

"The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the Court room (Prof. K.E. Scott: "Standing in the Supreme Court: A Functional Analysis" (1973) 86),

A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the Courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.

.....Over recent, years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented: (Op Cit, 673)

"When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissenters feared".

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter."

We agree with the conclusion of the Commission:

"The moral, perhaps, applies; if the Courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to self-help, with grave results for other persons and the rule of law. Some may reply that if there is no evidence of a great increase in numbers there is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on behaviour in hundreds of others; that is the whole notion of the legal "test case". Secondly, the mere exposure to possible action is likely to affect the behaviour of persons who presently feel themselves immune from legal control."

5.6. In *S.P. Gupta Vs. President of India and Others*, it was held that the lawyers have interest and locus standi to file the petitions and they could not be told off at the gate. Learned Counsel Sri Santosh Hegde placing reliance on para-17 of the Judgment in *S.P. Gupta*'s case contended that no legal injury or legal wrong is caused by the impugned orders to a determinate class or group of persons and no constitutional or legal right of such determinate class or group of persons is violated, therefore the petitions as public interest litigation cannot be entertained. No doubt the observations made in para 17 of the Judgment support the contention of learned Counsel. But in the very Judgment at para 18, it is further observed that there may be cases where the State or a public authority may act in violation of a constitutional or a statutory obligation or fail to carry out such obligation resulting in injury to public interest or what may be termed as public injury as distinguished from private injury. In such cases it has been held that the Court cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. Therefore, it has been further held that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. In the instant case, the petitioners cannot be termed as having no sufficient interest in the subject matter of the Writ Petitions. According to them, the action of the State Government, is opposed to the very provisions of the Act and tends to defeat the Directive Principles contained in Article 39(b) and (c) of the Constitution which have been given effect to by the Act.

5.7. However, learned Advocate General placed reliance on the observations made in paragraphs 22, 23, and 24 of the Judgment. In para 22, it has been observed that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty

or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. In para 23, it has been observed that "Court must be careful to see that a member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective." In para 24, it has been observed that:

"....cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

5.8. No doubt the petitioners in W.P. 15377/88 are political activists and they belong to Congress (I) political party which is opposed to the party in power in the State at the relevant point of time, therefore, it may be possible that they intend to achieve their political motives. But as far as Sri Vasudeva, the petitioner in other Writ Petitions is concerned, no such criticism can be levelled against him. He is a member of a legal profession practising at Bangalore. He has no political motives or other oblique considerations nor there is anything alleged against him that he has invoked the jurisdiction of this Court with a view to make personal gain or a private profit and he lacks in bona fides. Petitioner Shri Vasudeva only intends to serve public interest and to see that the provisions of the Act are not violated and thereby the objects and intendments of the Act are not defeated. In *India Cable Co. Ltd. Vs. The Government of Andhra Pradesh and Others*, even after holding that the petitioner therein had no legal rights as such and was not affected by the exemption order passed u/s 20 of the Act, yet it was held that the petitioner could maintain the Writ Petition as a person interested as long as it did not come under the category of "busy body". In that case the petitioner was a lessee of the premises which was exempted from the purview of Chapter III of the Act and was permitted to be sold by the State Government in exercise of the power u/s 20 of the Act. The exemption order was challenged by the lessee. It was held that though the legal rights of the lessee were not affected by the exemption order, yet it could maintain the Writ Petition as a person interested and did not come under the category of busy body. It was further held that in view of the broad proposition of law regarding rule of locus standi, the petitioner had locus standi to question the Government Order

granting exemption.

5.9. However in *Kasani Narayana and Others Vs. Government of Andhra Pradesh and Others*, it was held that the extended doctrine of locus standi under the public Interest litigation could not enable a stranger to challenge the validity of a Government Order granting exemption in relation to the vacant land in excess of the ceiling limit under the Act. It is not possible to agree with the view expressed in *K. Narayana's* case having regard to the principles enunciated in *Fertilizer Corporation's* case and *S.P. Gupta's* and *Sri Sachidanand Pandey's* Case.

5.10. No doubt, the petitioners in W.P.15377/88 are members of Congress (I) Political Party. Both of them contested the election as party candidates and one of them was elected to the Legislative Assembly. Thus both of them are active politicians. This background of these petitioners will have to be borne in mind while considering the allegations made by them as to mala fide exercise of power by the State Government at the instance of respondents 2 and 8. Looking to their background, their statements in this regard may not be taken on their face value. But merely because they belong to a political party opposed to the party in power at the State level at the relevant point of time would not be sufficient to hold that they belong to a category of persons who can be termed as "busy-body". Thus, keeping in view the enunciations made by the Supreme Court regarding the rule as to locus standi and the purpose of public interest litigation and that the object of the petitioners is to see that the objects and intendments of the Act are not defeated and the same are enforced, and that the vacant land in excess of the ceiling limit is dealt with in accordance with the provisions of the Act and for the purpose of the Act and thereby to give effect to the Directive Principles of State Policy as embodied in the Act, I have no doubt in holding that the petitioners have locus standi to maintain the petitions under Article 226 of the Constitution. Point No. 1 is answered accordingly.

POINT NO.2 6.

EXTENT AND NATURE OF THE LAND:

6.1. None of the parties has been definite regarding the extent of the land comprised in S.No. 6/1 and 6/2 of Dasarahalli at the time when the Act came into force. The extent mentioned by each one of them varies.

6.2. If we look into the sale deed dated 17-2-1937 found at page 16 of the file of the Special Deputy Commissioner executed by Dyavappa and his sons in favour 3. Munivenkatappa relating to S.No. 6/2 in question, the extent of this land is mentioned as measuring 3 acres 39 guntas and not 4 acres 4 guntas which we find in the subsequent records. Similarly if we look into the sale dated 20-12-1937 executed by Muni Mallappa in favour of B. Munivenkatappa in respect of S.No. 6/1, found in the aforesaid records, the extent is mentioned as 2 acres 5 guntas. Again if we look into the Sale Deed dated 30-9-1953 produced as Annexure-G by the petitioner Sri Vasudeva, the extent of S.Nos. 6/1 and 6/2 is shown as 2.05 acres 3.39 acres respectively. No Kharab portion is mentioned,

This Sale Deed was executed by Rao Saheb son of Narayanaswamy in favour of Narayanaswamy & Sons, alienating the aforesaid two lands and other properties. Therefore, at an undisputed point of time, the total extent of S.Nos. 6/1 and 6/2 of Dasarahalli together measured only 6.04 acres. Thereafter certain portion was acquired which will be referred to at the relevant stage.

6.3. In the register maintained by the B.D.A., the total extent of the land comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli has been mentioned. The extent of the area acquired out of S.No. 6/1 is also mentioned. The entry relating to Sy.No. 6/1 is found at Sl.No. 96 on page 32 of the Register. According to this entry, Sy.No. 6/1 measured 2 acres 8 guntas. Out of this, an extent of 1 acre 2 guntas and 58 square yards was acquired for Kanakanapalya Extension (B-Block) under the G.O. No. L.2090 ML 2848-4 dated 1-9-1948. An award was also passed on 3-3-1955 for a sum of Rs. 4013-9-3. A reference under Sections 18 and 30 of the Land Acquisition Act was also made. Consequently, as per B.D.A. Register, in S.No. 6/1, after deducting 1 acre 2 guntas and 58 square yards what remained was 1 acre 5 guntas 63 square yards. This does not appear to be correct. As already pointed out above, in the Sale Deeds of 1937 and 1953, the extent of the land Sy.No. 6/1 was stated as 2 acres 5 guntas. Therefore, the extent of this land cannot be more than 2 acres 5 guntas. Out of this, an extent of 1 acre 2 guntas 58 square yards was acquired. Thus only one acre two guntas 63 square yards had remained.

6.4. Entry at Sl.No. 97 at page 33 of the very same Register relates to S.No. 6/2. The total extent is mentioned as 4 acres 4 guntas. An extent of 5 guntas is also mentioned as Kharab. The remaining total extent is mentioned in Column No. 10 of the Register as 3 acres 39 guntas. But for our purpose, we can take the extent of the land as 3-39 acres as mentioned in the sale deeds dated 17-2-1937 and 30-9-1953. This land was also proposed to be acquired for the very same purpose under the very same Notification dated 1-9-1948. The B.D.A. has filed the statement of objections. Along with it, it has produced a true copy of the letter dated 24-1-1956 of the Special Land Acquisition Officer of the then C.I.T.B. Bangalore. The said letter relates to the acquisition of a portion of the lands in question. It reads:

"Sub: Withdrawal statement in respect of portions of S.Nos. 6/1 and 6/2 of Dasarahalli village, Bangalore South Taluk belongs to Sri Rao Saheb B. Munivenkatappa.

With reference to the Engineer Officer's report No. C2....89/55 dated 11-10-1955 on the above subject intimating this office to acquire only an extent of 1 acre 2 guntas and 58 square yards out of the above survey numbers notified for acquisition, I am submitting herewith draft copies of withdrawal statements in respect of the remaining area i.e., 5 acres 9 guntas and 63 square yards for favour of taking further action.

The same may kindly be got scrutinised by the Engineer officer of the Board

before submitting the same to Government."

A draft copy of the withdrawal statement is also produced as part of Annexure-R.2. From the particulars mentioned therein it is clear that both the lands put together measured 6 acres 12 guntas. An extent of 5 acres 9 guntas and 63 square yards was withdrawn from the acquisition. As far as acquisition of an extent of 1 acre 2 guntas 58 square yards was concerned, Annexure-R.2 stated that the acquisition was not with-drawn. After the acquisition of one acre two guntas 58 square yards as per the Notification dated 1-9-1948, the total extent of the land comprised in S.No. 6/1 and 6/2 of Dasarahalli was only 5 acres 9 guntas 63 square yards as per Annexure-R.2. In this regard, it is also necessary to mention that in the sale deeds of 1937 and 1953, the extent of this land was stated as measuring 3 acres 39 guntas and not 4 acres 4 guntas. Therefore, the extent of S.No. 6/2 shall have to be taken as 3 acres 39 guntas. It is not the case of respondent No. 4 that after the sale deeds of 1937 and 1953, both the lands were measured and on such measurement the extent of S.No. 6/1 was found to be 2 acres 8 guntas and that of S.No. 6/2 - 4 acres 4 guntas. Therefore, after the acquisition of 1 acre 2 guntas 58 square yards the extent of land comprised in S.No. 6/1 and 6/2 together was 5 acre one gunta 63 square yards only.

6.5. Page 9 of the file of the Special Deputy Commissioner bearing No. B.Dis.ULC(1) 54/85-86 contains a copy of the Agreement dated 8-9-1958 executed between Rao Saheb B. Munivenkatappa, Partner, M/s. Narayanaswamy & Sons and the then Chairman, C.I.T.B. Bangalore. In this Agreement, the lands in question are stated as measuring 6 acres 12 guntas. Acquisition of one acre two guntas 58 square yards for the formation of a road and Boulevard is also confirmed in this Agreement. The extent as mentioned in this Agreement in the light of the extent mentioned in the sale deeds of the year 1937 and 1953 is not correct. It ought to have been only 6 acres 4 guntas. The conditions mentioned in the Agreement are as follows:

- "1. That the triangular bit of land marked ABC in the enclosed sketch measuring 1 acre 2 guntas and 53 square yards in extent belonging to the First Party be acquired by the Second Party for the formation of road and Boulevard.
2. That in exchange to the above bit of land, an equal extent of the land marked ADE in the enclosed sketch be given to the First Party after completion of acquisition proceedings of this alternative bit of land by the Second Party.
3. That the First Party will purchase from the Second Party the area measuring about 1,347-1/9 square yards towards the IX Cross Road (marked HGF in the enclosed sketch) at Rs. 6/- per square yard.
4. The First Party hereby undertakes to use the land indicated against Sl.No. 2 of the unconverted lands in S.No. 6/1 and 6/2 of the said village exclusively for industrial purpose only and in case any part of the above said area is made use of for dwelling purposes, the First Party agrees to pay to the Second Party pro

rata layout charge on the extent of built-up area at Rs. 3/- per square yard. In the event of the first party failing to fulfil any of the said conditions, the second party shall reserve the right to revoke the above concessions and proceed with the acquisition of the entire land belonging to the First Party without further notice."

6.6. As per condition No. 3, possession of an extent of 1347-1/9 square yards was also handed over to M/s. Narayanaswamy & Sons on 14-4-1961. This is evident from the Memo dated 14-4-1961 found at page 3 of the aforesaid records of the Special Deputy Commissioner. The extent of the lands in question as emerging from pages 8 and 9 of the records of the Special Deputy Commissioner can be stated thus:

i)

Original Extent

6-12 acres

ii)

Land acquired

1-02 acres & 58

Square yards

Balance

5-09 acres & 63

Square yards

iii)

Add an extent of 1347-1/9 square yards given to M/s. Narayana Sway & Sons as per condition No. 3 of the aforesaid agreement which on conversion into guntas comes to 11 guntas 16-1/9 square yards.

0-11 & 16-1/9 Sq.Yds.

Total

5-20 & 79-1/9 Sq. Yds.

This measurement also cannot be accepted as correct because originally both the lands together measured only 6 acres 4 guntas and not 6 acres 12 guntas.

6.7. In the application filed by M/s. Narayanaswamy & Sons on 9-6-1983 seeking exemption of the lands in question from the purview of Chapter III of the Act, the extent of the lands in question is mentioned as follows:

6.8. During the year 1937 the lands bearing S.No. 6/1 and 6/2 was measuring 6 acres 4 guntas. Rao Saheb 3. Munivenkatappa, purchased these two lands. An

extent of 5 guntas 25 square yards was obtained from the Government for formation of approach road to the factory premises. Thus the entire extent became 6 acres 9 guntas 25 square yards. In the year 1957, the land was sought to be acquired by the C.I.T.B. for formation of IV Main Road and Boulevard. An extent of 1 acre 2 guntas 58 square yards was acquired by the then C.I.T.B. An equal extent of land in exchange thereof, was given to M/s. Narayanaswamy & Sons. But it was surrendered to C.I.T.B. by M/s. Narayanaswamy & Sons. Para 9 of the application may be referred to in this connection. It reads:

"The petitioners further submit that following the Board's resolution in exchange of the area of 1 acre 2 guntas 58 square yards of land acquired by the Board, an equal extent of land to form sites in 8th and 9th Block, Jayanagar was conveyed to us in the year 1973 but they have surrendered to the C.I.T.B. as they were found excess in view of the advent of the Urban Land (Ceiling and Regulation) Act, 1976."

6.9. In para 7 of the application, it was further averred by M/s. Narayanaswamy & Sons that their request to the Trust Board to hand over an extent of 24 guntas 85 square yards adjoining the lands in question which was in the possession of the C.I.T.B. as part of exchange of land was not heeded to and the C.I.T.B. kept silent in this regard for many years.

6.10. Thus according to the averments made in the aforesaid application made on 9-6-1983, the total extent was 6 acres 4 guntas. To this, an extent of 5 guntas 25 square yards was added as the same was obtained from the Government for the purpose of approach road to the factory. This is evident from the communication of the year 1937-38 found at page 190 of Government file bearing No. HUD.324 CUP 83. Further an extent of one acre two guntas 58 square yards was acquired for the IV Main Road and Boulevard. There was no further addition to the land, until 14-4-61 which will be referred to, a little later. According to averments made in this application, whatever land was given pursuant to condition No. 3 of the Agreement was surrendered to the C.I.T.B. Thus on deducting 1 acre 2 guntas 58 square yards out of 6 acres 9 guntas 25 square yards the balance of the area comprised in S.No. 6/1 and C/2 as per the application dated 9-6-1983 was only 5 acres 6 guntas 67 square yards whereas the Special Deputy Commissioner proceeded on the basis that the area remaining was 5 acres 20 guntas. On a further statement made by respondent No. 4 in the additional statement dated 8-2-1989, an extent of 1402 square yards was acquired in the year 1949 itself for formation of road. Thus after deducting 1402 square yards which comes to 11 guntas 71 square yards out of 5 acres 6 guntas 07 square yards, the balance remaining was only 4 acres 34 guntas 96 square yards. To this, an extent of 1347-1/9 square yards equivalent to 11 guntas 16-1/9 square yards has to be added as this extent of land, as per the Possession Certificate dated 14-4-1961 found at page 8 of the file of the Special Deputy Commissioner was given to respondent No. 4 as per Condition No. 3 of the Agreement. Thus the total extent would be 5 acres 5 guntas 112-1/9

square yards and not 5 acres 20 guntas as presumed by the Special Deputy Commissioner.

6.11. The extent of the land, according to the statement of objections filed on 7-11-1988 by respondent-4 before this Court in W.P.No. 8546 to 8548/88 is as follows:

In para 1.1, the 4th respondent stated thus:

"4th respondent is the owner of approximately 6.25 acres or 26,899.08 square metres including the buildings situated near the South End Circle, Jayanagar, -- part of the property is 2 survey numbers 6/1 and 6/2 of 5-24 acres of land which is equivalent to 22,622 sq. mtrs."

This shows that the extent of the land claimed by the 4th respondent has no basis because, as already pointed out, the balance of the land remaining in S.No. 6/1 and 6/2 could not have been more than 5 acres 5 guntas 112-1/9 square yards, as pointed out in para 6.10.

6.12. Even according to the additional statement dated 8-2-1989 of the 4th respondent, extent of land available in S.No. 6/1 and 6/2 could not be more than 5 acres 10 guntas 92 square yards. This additional statement was specifically filed in view of the controversy raised during the course of hearing regarding the extent of the land remaining in S.No. 6/1 and 6/2. The total extent of both the lands was mentioned in para 2.1 of the statement as 6 acres 25 guntas. Out of this, an extent of 1402 square yards was acquired in the year 1949 for formation of road. 1402 square yards converted into guntas, it comes to 11 guntas 71 square yards. On deducting 11 guntas 71 square yards out of 6 acres 25 guntas, the balance remaining would be 6 acres 13 guntas 50 square yards. Out of this, an extent of one acre 2 guntas 58 square yards was acquired for road and boulevard. Hence the balance remaining was 5 acres 10 guntas 113 square yards. It is claimed in the statement that an equal extent of land was given pursuant to condition No. 3 of the Agreement dated 8-9-1958. But as already pointed out, it was not given at any time. The proposal to reconvey an equal extent of land comprised in S.No. 8/2 of Dasarahalli under the communication dated 3-11-1965 from the Government (Produced as Annexure-9 by Respondent No. 4 along with the additional statement dated 8-2-1989) was given up as per the communication dated 31-7-1976 issued by the B.D.A. (Produced as Annexure-10 by Respondent-4 along with the aforesaid statement). The said communication reads thus:

"In inviting reference to your letter dated 28th June 1975, it is to inform, I write to state that the entire issue of reconveyance may have to be reconsidered in view of the advent of the Urban Land Ceiling Act 1976 which came into force on 17-2-1976. You may please furnish the extent of vacant land held by you within the Urban Agglomeration as per the above said Act.

However, the B.C.A. is not in favour of absolute reconveyance as proposed by

you.

Yours faithfully, Sd/- 3-8-76 for Chairman, Bangalore Development Authority, Bangalore."

Thus there was no reconveyance of equal extent.

6.13. An extent of 1347-1/9 square yards was given as per the possession Memo found at page 8 of the records of the Special Deputy Commissioner. Thus the claim made in the additional statement dated 8-2-1989 that apart from 1402 square yards no other area was acquired and even an extent of one acre two guntas 58 square yards was not acquired and it was given up on the coming into force of the Act is opposed to the records and cannot be accepted. The acquisition of 1 acre 2 guntas 58 square yards for road and boulevard was never dropped. It was acquired and compensation was also paid as per the entry made in the B.D.A. Register to which a reference has already been made. This fact is also further evident from the letter dated 20-1-1987 bearing No. BDA/SLAO/327/86-87 written by the Special Land Acquisition Officer, B.D.A., Bangalore, to the Special Deputy Commissioner, Urban Land Ceiling, Bangalore. A true copy of this letter is found at page 109 of the Government file bearing No. HUD 11 CEI 87 and also at page 264 of the file of the Special Deputy Commissioner, Urban Land Ceiling. The said letter reacts thus:

"Sub: Urban Land (C & R) Act, 1976 - Declaration of Sri M.S. Narayanaswamy & Sons, Bangalore Regarding

Ref: Your letter No. ULC(1) 54/85-86 dated 17-2-1987.

With reference to the above, the land in S.No. 6/1, and 6/2 of Dasarahalli village, Uttarahalli Hobli, Bangalore South Taluk, measuring an extent of 01A - 02 guntas and 58 square yards and 04A-04 guntas respectively was notified for acquisition for the formation of Kanakanapalya Extension "B" Block, vide G.O.No. L-2090-ML 28-48-4 dated 1-4-48.

In respect of Sy.No. 6/1 the acquisition proceedings have been completed as seen from the L.A.C. Register. However in respect of Sy.No. 6/2 there is no information available in this office regarding further proceedings after final notification as seen from the L.A.C Register maintained in this office.

This is for your information."

From this letter it is clear that the acquisition proceedings in respect of one acre two guntas and 58 square yards comprised in S.No. 6/1 of Dasarahalli had been completed as seen from the L.A.C. Register. In spite of this, the attempt of respondent-4 throughout has been to claim that the acquired area i.e., 1 acre 2 guntas 58 square yards still formed part of the land S.No. 6/1 of Dasarahalli. Unfortunately the officers concerned had co-operated with the 4th respondent. The BDA had not cared to see that an extent of 1 acre 2 guntas 58 square yards acquired for the purpose of road, boulevard and Park was utilised for that

purpose and that it should not and could not continue as part of S.No. 6/1 of Dasarahalli.

6.14. Thus, after giving anxious consideration, it has not been possible for this court to accept the plea of the respondents 4 and 5 that the balance of the land remaining in S.No. 6/1 and 6/2 of Dasarahalli was 5 acres 24 guntas on the date of coming into force of the Act. The 4th respondent also filed a Memo dated 14-2-1989 giving particulars of the extent of the lands in question. The said Memo is as follows:

"MEMO FILED BY RESPONDENT-4 REGARDING EXTENT OF LAND:

A.

Land held by Sri Munivenkatappa and transferred to respondent-4 partnership firm under conveyance deed dated 30-9-1953. (Page 24 to 28 Book II).

6 Acr. 29 G.

27169 Sq.M.

B.

Land purchased by respondent-4 from CITB Possession Certificate issued on 14-4-1961. (Page 58, Book II).

1131 Sq. Mts.

or

1347 "

Total:

28,300 Sq. Mts

C.

Area acquired in 1949 for formation of road.

1,181 "

1,402 S. Yds.

27,119 sq. mts

D.

Extent after deducting C from B.

6 Ac. 28.4 Gnts.

27119 sq.mts.

E.

Extent shown in draft statement.

6 Ac. 18 Gnts.

26127.67 "

Extent show in conveyance deed. .

6 Ac. 29 gnts.

or 27169 sq.mts

Extent shown in draft statement.

6 Ac. 18 gnts.

or 26127 "

Area acquired in 1949.

0 Ac. 11 gnts.

or 1402 sq.yds

This is the area acquired in 1949

1402 sq.yds

Extent sold to respondent-5.

5 A.25 G.

22624 Sq.mts."

This Memo also does not give the correct picture as to extent of the land remaining in S.Nos. 6/1 and 6/2 from time to time. The Sale Deed dated 30-9-1953, as pointed out in para 6.2 supra, gives the extent of S.Nos. 6/1 and 6/2 as 2 acres 5 guntas and 3 acres 39 guntas respectively. In spite of this, in the aforesaid Memo dated 14-2-1989, it is stated that in the Sale Deed of 30-9-1953 the total area mentioned was 6 acres 29 guntas. Further, in this memo an extent of 1 acre 2 guntas 58 square yards acquired for road and boulevard is not at all mentioned. Thus the Memo dated 14-2-1989 is liable to be rejected as incorrect. It is accordingly rejected.

6.15. The exact area remaining in S.Nos. 6/1 and 6/2 as on the date the Act came into force was as follows:

"As per the sale deeds of 1937 and 1953 -

Sy.No. 6/1 measured

2 Ac. 5 Gnts.

Sy.No. 6/2 measured

3" 39 "

In the year 1937-38, as per the communication at page 190 of the Govt. File bearing No. HUD 324 CUP 83, an extent of 5 guntas 25 sq. yards was obtained for approach road to the Factory.

5 Gnts 25 Sq. Yds.

Thus the total extent was

6 Ac. 9 Gnts. 25 Sq. Yds

In the aforesaid extent, as per the additional statement dated 8-2-1989 filed by the 4th respondent, an extent of 1402 sq. yards was acquired for road. The equivalent in guntas comes to 11 guntas 71 sq. yards.

Thus after deducting

11 Gnt. 71 Sq. yds.

The balance remaining was In this, an extent of 1 acre 2 guntas 58 sq. yds. was acquired for road and Boulevard under the notification dated 1-4-1948.

5 Ac.

37 Gnts.

54 Sq. Yds.

After deducting

1

2

58

The balance of the extent of land was.

4 A.

34 G.

117 Sq.Yds.

An extent of 1347 $\frac{1}{9}$ sq. yds. was given by the CITB as per the Memo dated 14-4-1981 found at page 8 of the File of Special D.C. as per Condition No. 3 of the Agreement 1347 $\frac{1}{9}$ sq. yds. is equivalent to 11 guntas 16 $\frac{1}{9}$ sq. yds.

11

16 $\frac{1}{9}$

The total extent

5

6

12 1/9"

Thus the balance of the land comprised in the aforesaid survey numbers could not have been more than 5 acres 6 guntas 12-1/9 square yards. Apart from S.Nos. 6/1 and 6/2, no other land adjoining to these lands was owned and possessed by M/s Narayanaswamy & Sons. In their declaration filed u/s 6 of the Act, no such land is mentioned. But surprisingly in the Sale Deed dated 30-9-1987 executed by respondent No. 4 in favour of respondent No. 5, one of the boundaries mentions as "the property belonging to Sri B.M. Narayanaswamy." How any land in S.No. 6/1 and 6/2 has remained with B.M. Narayanaswamy, is not possible to appreciate from the evidence on record. In the circumstances, the case of the petitioners that there has been an attempt to lay claim to the area acquired for road, park and boulevard and to sell the same to the 5th respondent cannot be held to be without substance. The sketch marked as Annexure-L attached to the Sale Deed dated 30-9-1987 covers the area upto the edge of the road. No area for park and Boulevard as acquired is left out.

6.16. During the pendency of the Writ Petition, an order dated 23-7-1988 bearing No. HUD 36 ULC 88 came to be passed by the State Government as per Annexure-N produced by the petitioner Sri Vasudeva. The said order reads thus:

"Sub: To reserve sufficient lands for development of parks and roads in the lands in S.N.6/1 and 6/2 of Dasarahalli, Uttarahalli Hobli, Bangalore South Taluk to which exemption has been granted for Group Housing Scheme by M/s. Revajeetu Builders and Developers, Bangalore.

Ref: Government Orders No. HUD 11 CEI 87 dated 6-3-87 and dated 18-4-87.

With reference to the subject mentioned above, I am directed to state that in Government Orders dated 6-3-1987 and 18-4-1987 (cited above), exemption with permission has been accorded to sell the land to an extent 19,638 square metres in Sy.Nos. 6/1 and 6/2 of Dasarahalli (Jayanagar), Bangalore South Taluk held by M/s. Narayanaswamy and Sons, Bangalore to M/s. Revajeetu Builders and Developers, Bangalore, for the purpose of Group Housing Scheme.

In this connection, I am to request you kindly to reserve sufficient lands for maintaining parks and reads in the said lands while sanctioning the layout plan and building licences for the purpose of Group Housing Scheme in these lands. The Boulevard on either side (Park opposite to Nanda Theatre) should be maintained in this land also for the park purposes."

The underlined portion of the order shows that an area acquired for boulevard was also included in the area permitted to be sold to the 5th respondent. It was because of this that sufficient land was ordered to be reserved for maintaining parks and road and boulevard on either side (park opposite to Nanda Theatre).

6.17. At this stage it is also relevant to notice the sketch prepared on 28-2-1985 by the official of the Urban Land Ceiling Office of the Special Deputy

Commissioner, Bangalore. It is found at page 170 of the Government file No. HUD 324 CUP 83. This sketch was prepared for the purpose of acquiring an extent of 6070 square metres out of the lands in question. This is evident from the letter of the Special Deputy Commissioner dated 28-2-1985 found at page 169 of the same records. According to this sketch, there was an area reserved for boulevard abutting Kanakapura Main Road also described as R.V. Road in the lands in question. Strangely enough, this sketch also was prepared on the basis that the total extent of the land comprised in S.No. 6/1 and 6/2 remaining as on the date the sketch was prepared was 24,826 square metres -equivalent to 6 acres 585.74 square metres. As already pointed out the extent that was remaining in the lands in question was only 5 acres 5 guntas 12-1/9 square yards. Therefore, an area of 5 acres 24 guntas which was sold under the Sale Deed dated 30-9-1987 was not at all available for sale.

7. NATURE OF THE LAND:

7.1. The contention of the petitioners is that the lands In question bearing S.No. 6/1 and 6/2 of Dasarahalli are agricultural lands; no permission had been obtained at any point of time under the Land Revenue Law to convert them for non-agricultural purposes. As such the lands have remained as agricultural lands. Therefore, the same could not have been sold in favour of the 5th respondent having regard to the provisions contained in Chapter V of the Karnataka Land Reforms Act. Therefore, the sale in question is null and void and the land sold under the Sale Deed is liable to be resumed. It is not possible to accept these conditions.

7.2. From the records produced in the case, the following facts are well-established:

At page 190 of the Government file bearing No. HUD 324 CUP 83, there, is a communication dated 29-5-1937 addressed to M/s. Narayanaswamy & Sons. That communication relates to permission sought for construction of a granite factory in S.No. 6/2 of Dasarahalli village. It is stated in the said communication that an extent of half an acre was permitted to be converted for construction of a factory and conversion fine was waived as a special case by the Government in its Order No. 7462-65 I & C 270 dated 6-5-1937. An entry made in the Index of Lands pertaining to the land in question is found at page 189 of the very same records. From this entry, it is clear that in addition to half an acre, in S.No. 6/2 which was permitted to be used for non-agricultural purposes, a further extent of one acre adjoining to it was permitted to be used for non-agricultural purposes on payment of Rs. 600/- per acre along with the assessment for 25 years for using the land for non-agricultural purposes. It is also already pointed out that out of the balance, of the land measuring 5 acres 5 guntas 12-1/9 square yards comprised in S.Nos. 6/1 and 6/2 of Dasarahalli, an extent of 5 guntas 25 square yards obtained from the Government for the purpose of approach road to the factory and and also an extent of 1347-1/9 square yards = 11 guntas 16-1/9 square yards was given to Respondent No. 4 as per the Memo dated 14-4-61

found at page 8 of the Records of the Special Deputy Commissioner. Thus an extent of 1 acre 36 guntas 51-1/9 square yards was proved to be non-agricultural land as it was converted for non-agricultural purpose. In addition to this, it is not the case of either of the parties that the land in question had been used or it is being used for agricultural purposes at any time after 1950. In fact, this land has been reserved in the C.D.P. for residential building purposes. Further by the order dated 17-7-1985 passed u/s 20 of the Act, it has been permitted to be used for industrial purpose viz., for running granite factory.

7.3. A Division Bench of this Court in Mysore Feeds Ltd. Vs. State of Karnataka, considered the question as to when an agricultural land may cease to be used for agricultural purposes and as such cannot be considered as an agricultural land and also the effect of exemption granted u/s 20 of the Act. In the said decision it was held thus:

"12. A reading of Sections 83 and 95(2) of the Revenue Act indicates that levy of land revenue on a land does not necessarily lead to the inference that it is agricultural land. A land not used for any purpose, may still be levied with land revenue and in case such a land is sought to be used for non-agricultural purposes, Section 95(2) operates, requiring permission.

13. A land which is agricultural may cease to be used for agriculture for various reasons. Theoretically, such a land may be capable of being used for agriculture and may fall within the definition of "land" defined in Section 2A(18) of the Karnataka Land Reforms Act. But the definitions are always subject to context and should be read in a practical manner.

14. In the absence of any specific finding that these lands were being used as agricultural lands, the Special Deputy Commissioner erred in assuming them to be agricultural lands by the sole fact that the petitioner sought permission for using the lands for non-agricultural purposes u/s 95(2) of the Land Revenue Act.

15. There is another aspect of the case to be noted. The State Government acted u/s 20 of ULCR Act by an order dated 10-3-1977 which is 15 months prior to the impugned order of the Deputy Commissioner. Exemption u/s 20 of ULCR Act is to enable holding of vacant land as defined under the ULCR Act.

16. Definitions of "vacant land" u/s 2(q) of ULCR Act and the definition of "Urban Land" u/s 2(o) clearly shows that it is a land, other than land mainly used for agriculture. Scheme of ULCR Act is to regulate holding of Urban lands its aim is not to affect agricultural lands. When the State Government grants exemption u/s 20 of ULCR Act, "the vacant land" to which exemption is granted can be only in respect of non-agricultural land. Exemption to hold such a land is given to the person who has title to hold such a land. In this case, admittedly, State Government granted exemption to the petitioner u/s 20 of ULCR Act on 10-3-1977. Inference is irresistible from this fact that as on 10-3-1977: (1) petitioner was holding the lands and this fact was recognised by the State Government and (2) the lands held by the petitioner in respect of which the

exemption was granted were non-agricultural.

17. If the State Government has thus recognised the petitioner's possession of these lands and accepted the lands to be non-agricultural, is it open to the Special Deputy Commissioner to go behind these postulates on which the competence of State Government rests to make the order? Special Deputy Commissioner is a Subordinate Officer of the State Government. He may have an independent statutory executive function to discharge. But while discharging his executive functions, under any statute, he cannot ignore the facts recognised as in existence by the State Government. Otherwise, the very basis of the hierarchical system in which the executives are to discharge their duties will be in jeopardy..."

Under these circumstances, it is not possible to hold that the balance of land in question comprised in S.No. 6/1 and 6/2 of Dasarahalli has continued to be an agricultural land. It has ceased to be an agricultural land in respect of certain portion when it was permitted to be used for non-agricultural purpose as pointed out above and in respect of the remaining portion it came to be exempted from the purview of Chapter III of the Act and was permitted to be used for non-agricultural purpose by the order dated 17-7-1985. Therefore, the provisions of Chapter V of the Karnataka Land Reforms Act were not attracted to the lands in question. Hence the sale in question cannot be held to be null and void on the ground that it related to an agricultural land and it was effected contrary to the provisions contained in Chapter V of the Karnataka Land Reforms Act.

7.4. For the reasons stated above, Point No. 2 is answered as follows:

"Only an extent of 5 acres 6 guntas and 12-1/9 square yards was available in S.No. 6/1 and 6/2 of Dasarahalli village of Bangalore South Taluk. An extent of 5 acres 24 guntas as sold under the sale deed dated 30-9-1987 by respondent-4 to respondent-5 was not available. As far as nature of the land is concerned, it was a non-agricultural land."

Point No. 3:

8. Under this point the contentions of the petitioners relating to misuse of the official position by respondents 2 and 8 with a view to confer undue benefit on respondent-5, the impugned orders are passed, will not be considered as the same would be considered under point No. 4. Under this point only the legality of the impugned orders and also as to whether the impugned orders fall within the scope and ambit of the Act will be considered.

8.1. It is the case of the petitioners that the land in question is situated at a very prime place, as it is situated abutting the South End Circle at the commencement of the Jayanagar Extension, it ought to have been acquired under the Act and utilised for the purposes of the Act as it is a vacant land in excess of the ceiling limit; that the exemption granted u/s 20 of the Act with a further permission to sell the land to respondent-5 even though on imposition of certain conditions as

enumerated in the impugned orders is opposed to the provisions of the Act, inasmuch as, the sale of the land in favour of respondent-5 would be only to benefit respondent-5 as it would enable respondent-5 to make huge profit and use the land contrary to the objects and intendments of the Act; that the requirements of Section 20 of the Act are not complied with; that the hardship required to be established for the purpose of securing exemption u/s 20 of the Act must not be a mere hardship and it must be undue hardship; that the land was permitted to be sold for a meagre sum compared with the market rate and even compared with the rate prescribed by the Bangalore Development Authority to the lands situated very close to the land in question; that the sale proceeds were not applied for repayment of the loans; that the genuineness of the pre-existing debts was not verified; that the debts were not of such a magnitude that they could not have been cleared off except liquidating the excess vacant land; that the debts in question were incurred by the Madras firm and not by respondent-4; that the Madras firm owned at Madras vast extent of land measuring 20,623 square metres, in excess of the ceiling limit, such as Woodlands Hotel at Madras and two Cinema Theatres; that as to whether the debts would have been otherwise cleared off was not at all examined; that the impugned orders Annexures J and K passed by the first respondent are neither in conformity with the provisions of the Act nor the same fall within the scope and ambit of the Act.

8.2. On the contrary, it is contended on behalf of respondents 1 to 8 that the power of exemption while passing the impugned orders, has been exercised in accordance with the provisions of Section 20 of the Act; that the relevant material having a bearing on the question of undue hardship has been taken into consideration and that no extraneous and non-germane factors are taken into consideration. It is specifically contended by the learned Advocate General on behalf of the State that the orders are not passed only on the ground of undue hardship; that undue hardship is one of the grounds taken into consideration while passing the impugned orders; that the State Government on 22-10-1986 decided to encourage group housing; that in pursuance of the Government Policy to encourage group housing scheme the application of respondent-4 was considered; that as group housing is one of the objects of the Act the State Government thought it fit to grant permission to sell the land on certain conditions; that the conditions imposed in the impugned orders make it abundantly clear that power u/s 20 of the Act was exercised in the public interest and to advance the objects and intendments of the Act; that the guidelines issued by the Government of India in their letter No. 9/48/78-UCU dated 2/7-5-1980 have been given effect to, as it is one of the conditions imposed in the order dated 18-4-1987 that the guidelines issued under the aforesaid letter of the Government of India should be followed strictly; that in a petition under Article 226 of the Constitution the examination of the case by this Court in the matter of exercise of power under a statute to subserve public interest should not be a censorious scrutiny and the approach should not be only with a view to

pick-holes. On behalf of respondents 4 and 5 it was also further contended that having regard to the several conditions imposed in the impugned orders granting permission the price of 90 lakhs for the land sold under the Sale Deed dated 30-9-1987 was much more than the market value.

8.3. In order to examine the correctness of the rival contentions, it is necessary to go into the scope and intendment of the Act and the ambit of the power of exemption exercisable u/s 20 of the Act, and the criteria for exercising the power of exemption. While dealing with point No. 1, the intendment and objects of the Act have been referred to in brief. The Act imposes a Ceiling on vacant land in urban agglomeration. It provides for acquisition of vacant land in excess of the Ceiling limit, regulates the construction of buildings on vacant land and provides for matters connected therewith. It also aims at preventing the concentration of urban land in the hands of a few persons and also to prevent speculation and profiteering in dealing with urban land and it also intends to bring about an equitable distribution of land in urban agglomeration to subserve the common good. The intendment and objects of the Act are stated in the statements of objects and reasons for enacting the Act. Those objects are as follows:

- i) to prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;
- ii) to bring about socialisation of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution;
- iii) to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilisation of such materials; and
- iv) to secure orderly urbanisation.

In addition to this, the Act provides for following matters which were also listed in the Statement of Objects and Reasons:

- i) imposition of a ceiling on both ownership and possession of vacant land in urban agglomerations, the ceiling being on a graded basis according to the classification of the urban agglomeration;
- ii) acquisition of the excess vacant land by the State Government with powers to dispose of the vacant land to subserve the common good;
- iii) payment of an amount for the acquisition of the excess vacant land, in cash and in bonds;
- iv) granting exemptions in respect of certain specific categories of vacant land;
- v) regulating the transfer of vacant land within the ceiling limit;
- vi) regulating the transfer of urban or urbanisable land with any building (whether constructed before or after the commencement of the proposed legislation), for a period of 10 years from the commencement of the legislation

or the construction of the building, whichever is later;

vii) restricting the plinth area for the construction of future residential buildings;
and

viii) other procedural and miscellaneous matters.

8.4. The Act came to be applied to the State of Karnataka in the first instance. The ceiling limit for holding land as prescribed u/s 4 read with Schedule I to the Act within the Bangalore Urban Agglomeration area is 1000 square metres. A person holding vacant land in excess of the ceiling limit is required to file a statement u/s 6 of the Act in the prescribed form before the competent Authority having jurisdiction over the concerned vacant land. As per Section 7 of the Act, the Competent Authority is required to prepare a draft statement on the basis of the statement filed u/s 6 of the Act, after holding such enquiry as the Competent Authority may deem fit to make, and serve the same on the person concerned together with a notice stating that any objections to the draft statement may be preferred within 30 days from the date of service of the draft statement. Thereafter the Competent Authority is required to give reasonable opportunity of being heard to the objector and consider the objections and determine the extent of vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the final statement served on the person concerned. Thereafter, u/s 10 of the Act, the Competent Authority has to take steps to acquire the vacant land held in excess of the ceiling limit by the person concerned and publish a notification in the Official Gazette of the State giving particulars of the vacant land and inviting the claims of persons interested in such vacant land, giving particulars of the nature of their interest in such land. The Competent Authority, after considering the claims of the persons interested in the vacant land made pursuant to the notification published, has to determine the nature and extent of the claims and pass orders. Thereafter, the Competent Authority has to publish another notification in the Official Gazette of the State concerned declaring that the excess vacant land referred to in the notification published earlier under Sub-section (1) of Section 10 of the Act be deemed to have been acquired by the State Government with effect from the date specified in the declaration. Upon such publication of the declaration, the land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified in the declaration. At this stage it may also be noticed that Section 5 of the Act, among other things, prohibits transfer of vacant land during the period specified therein by any person who had held vacant land in excess of the ceiling limit prescribed under the Act and the consequences of the transfer made during such period. Sub-section (3) further provides that, in any State to which the Act applies in the first instance and in any State which adopts under Clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of the 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 6

of the Act and a notification regarding the excess vacant land held by him has been published under Sub-section (1) of Section 10 of the Act. It also further provides that any such transfer made in contravention of Section 5 of the Act shall be deemed to be null and void.

8.5. The period subsequent to publication of the notification under Sub-section (1) of Section 10 of the Act till the date specified in the final notification published under Sub-section (3) of Section 10 of the Act is covered by Sub-section (4) of Section 10 of the Act which prohibits transfer of way of sale, mortgage, gift, lease or otherwise any excess vacant land specified in the notification during the period commencing on the date of publication of the notification under Sub-section (1) of Section 10 and ending with the date specified in the declaration made under Sub-section (3) of Section 10 of the Act. Section 11 provides for payment of amount for vacant land acquired. Sections 12 to 18 are not relevant for our purpose. Section 19 of the Act exempts certain vacant lands from the purview of Chapter 111 of the Act held by the Central Government or any State Government, or any local authority or any Corporation established by or under a Central or Provincial or State Act or any Government Company as defined in Section 617 of the Companies Act, any military, naval or air force institution; any bank and other institutions and organisations as specified therein. Neither respondents 4 and 5 nor the land in question falls within the ambit of Section 19 of the Act. Section 20 of the Act empowers the State Government to grant exemption to any person to hold vacant land in excess of ceiling limit from the purview of Chapter III of the Act. The criteria for exercising power u/s 20(1) of the Act are laid down in Clauses (a) and (b) of Sub-section (1) of Section 20 of the Act. In addition to this, the power of exemption has to be exercised in the light of the objects and intendment of the Act and also as far as possible the criteria laid down for disposal of the vacant land acquired under the Act, shall have to be borne in mind. The power of exemption is also required to be exercised by the State government u/s 20 of the Act in conforming with the directions, if any, issued by the Central Government u/s 36 of the Act for carrying into execution in the State any of the provisions of the Act and the Rules made thereunder. Of course it is needless to say that the directions issued by the Central Government must be in conformity with the provisions of the Act and the Rules made thereunder and the relevant provisions of the Constitution.

8.6. The case of the State Government is that it has adopted a policy to encourage group housing and group housing is one of the objects to be achieved by the Act. The State Government has produced the following original files before the Court.

- "1. HUD 478 MNX 86 (3+21+8 sheets)
2. HUD 485 MNX 86 (1 to 7 sheets)
3. B.Dis.ULC (1)54/85-86 (1 to 321 sheets)

4. Annual Report of the Dept. of HUD 1987-88, and

5. Extract of an endorsement /Entry in the Index of Records."

In addition to this, as per the direction Issued by the Court on 8-6-1988 to produce the records, the following records in original were produced on 22-6-1988.

" i) HUD 11 CEI 87 - pages 1 to 154;

ii) HUD 324 CUP 83 - pages 155 to 207; and iii) A.G.'s office file consisting of pages 208 to 211 and a sketch;"

The files bearing No. HUD 11 CEI 87 and HUD 324 CUP 83 were returned after obtaining xerox copies of the entire records contained in these files. Thus, the State Government has produced all the records pertaining to the case. It is not the case of the petitioners that apart from the aforesaid records, there are other records pertaining to the case which are not produced by the State Government. From the records contained in file No. HUD 478 MNX 86 and HUD 486/485 MNX 86, it is noticed that a Meeting of the Committee under the Chairmanship of the Chief Minister was held on 22-10-1986 at 4 P.M. at Kumara Krupa Guest House. The following were the members of the Committee who were present:

- 1) The Minister for Law and Parliament Affairs and Urban Development;
- 2) Chairman, Bangalore Development Authority;
- 3) Revenue Commissioner ;
- 4) Secretary, HUD Department;
- 5) Secretary to Chief Minister;
- 6) Commissioner, Bangalore Development Authority;
- 7) Engineer-Member, Bangalore Development Authority,

The Committee took decisions on several subjects. One of the subjects being subject No. 4 was regarding Group Housing. The Committee resolved thus:

"The Hon"ble Chief Minister was of the opinion that here after wards allotment of sites to individual should be discouraged and those who come forward for taking up group housing should be given encouragement. The Hon"ble Chief Minister suggested that the ground-floor in each of these multi-storied buildings should be earmarked for shops and other services."

Pursuant to the decision taken in the Meeting of the aforesaid Committee held on 22-10-1986, a D.O. letter No. HUD 485 MNX 86 dated 24-11-1986 was issued by the Under Secretary to Government, Housing and Urban Development, to the Commissioner, Bangalore Development Authority, with a copy to the Chairman, Bangalore Development Authority, the Secretary to the Chief Minister and Private Secretary to the Minister for H.U.D. The aforesaid D.O. letter Was to the following

effect:

"Government is of the opinion that here-afterwards allotment of sites to individual by B.D.A. should be discouraged and those who come-forward for taking up group housing should be given encouragement. It is further suggested that the ground floor in each of these multi-storied buildings should be earmarked for shops and other services. Necessary proposals may be sent to the Government immediately."

8.7. In the Annual Report of the Department of Housing and Urban Development of the State Government for the year 1987-88 in Part II at para 9.6, the aforesaid policy of the State Government has been reiterated as follows:

"9.6. Increasing the housing stock in Bangalore. It is estimated that about 75,000 houses are required to be constructed in Bangalore City every year. Apart from the efforts put in by Bangalore Development Authority to acquire lands and distribute sites and also be construct houses under various scheme, it is felt necessary to assist other agencies like House Building Co-operative Societies, Developers, Builders etc., to supplement the efforts of the Bangalore Development Authority in adding to the provision of sites and services and also housing stock in Bangalore City."

It is the contention of the State Government that both the impugned orders are to be read as forming part of one proceeding and both the orders are passed on taking into consideration, not only the ground of undue hardship of respondent-4 but also the public interest served by encouraging group housing scheme. It is also the case of the State Government that group housing scheme falls within the scope and ambit of the Act.

Therefore it becomes necessary to examine whether the policy of the State Government to encourage group housing by an individual or group of individuals falls within the scope and ambit of the Act. One of the objects of the Act is to prevent concentration of urban land in the hands of a few persons and to stop speculation and profiteering connected with the urban land and to bring about an equitable distribution of the land in urban agglomeration to subserve the common good. The purpose of the Act, as observed by the Supreme Court in para 17 of the Judgment in Bhim Singhji's case, generated from the preamble, is to set a ceiling on vacant urban land, to take over the excess and to distribute it on a certain basis of priority. It is also further observed thus:

"The whole story of the legislation, the long gestation of pre-legislative consideration, the brooding presence of Article 39(b) and (c) and the emphasis in Section 23(4) on common good as the guiding factor for distribution point to public purpose, national development and social justice as the cornerstone of the policy of distribution."

The policy of the State Government referred to above is to encourage individuals and also House Building Cooperative Societies to build group houses. In the first

instance, permitting the owner of a vacant land in excess of the ceiling limit to transfer it to an individual or a private partnership firm by private negotiation itself is not in conformity with the provisions of the Act and the objects and intendment sought to be achieved by the Act, as such permission to transfer results only in change of ownership from one individual to another or from one body to another, but concentration of vacant land in excess of the ceiling limit continues in the hands of an individual or body of individuals. Under the provisions of the Act, no individual is entitled to hold vacant land in excess of the ceiling limit.

8.8. Sub-section (3) of Section 4 of the Act deals with group housing. It provides that notwithstanding anything contained in Sub-section (1) of Section 4 of the Act, where in respect of any vacant land any scheme for group housing has been sanctioned by a Competent Authority immediately before the commencement of the Act, the person holding such vacant land at the commencement of the Act shall be entitled to continue to hold such land for the purposes of group housing. The other conditions imposed are that not more than one dwelling unit in the group housing shall be owned by one single person and the extent of vacant land which such person is entitled to hold shall in no case exceed the extent required by any building regulations governing such group housing or the extent calculated by multiplying the number of dwelling units in the group housing and the appropriate ceiling limit prescribed by Sub-section (1) to Section 4 of the Act whichever is less. Sub-section (10) of Section 4 of the Act further provides that where a person owns a part of a building, being a group housing, the proportionate share of such person in the land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of the vacant land held by such person. For the purpose of sub-sections (3) and (10) of Section 4 of the Act, Explanation to Sub-section (3) of Section 4 of the Act defines group housing. According to this Explanation, "group housing" means a building constructed or to be constructed with one or more floors, each floor consisting of one or more dwelling units and having common service facilities which includes facility like staircase, balcony and verandah. Thus it is clear from Sub-section (3) of Section 4 of the Act, that the group housing scheme must have been sanctioned by the Competent Authority immediately before the commencement of the Act. No other type of group housing scheme is contemplated under the Act. Of course Sub-section (1) of Section 19 of the Act, subject to the provisions of Sub-section (2) thereof, takes away from the purview of Chapter III of the Act vacant land held by a Housing Co-operative Society registered or deemed to have been registered under any law relating to Co-operative Societies for the time being in force. It also deals with the vacant land held by several other institutions and the Central Government or any State Government, Local Bodies and Government Companies. In this case, it is not necessary to refer to all those. Sub-section (2) thereof further makes it clear that the exemption contemplated under Sub-section (1) of Section 19 of the Act shall not be construed as granting any exemption in favour of any person, other than

an authority, institution or organisation specified in Sub-section (1), who possess any vacant land which is owned by such authority, institution or organisation or who owns any vacant land which is in the possession of such authority, institution or organisation. The proviso to Sub-section (2) of Section 19 of the Act and the Explanation thereto need not be referred to. It has been already pointed out that neither respondents 4 and 5 nor the vacant land in question falls within Section 19 of the Act.

8.9. The Group Housing Scheme of the type contemplated by the State Government in their policy referred to above to encourage group housing scheme by individuals or a partnership of individuals apart from the fact that it does not fall within the frame-work of the Act, it also tends to defeat the objects and intendments of the Act. It does not prevent concentration of urban property in the hands of a few persons and to stop speculation and profiteering. On the contrary, it enables concentration of urban property in the hands of a few persons and also enables them to enrich themselves. It also enables the person holding vacant land in excess of the ceiling limit to convert it into an asset as it enables him to obtain market price. Clause (a) of Sub-section (1) of Section 20 of the Act does not contemplate such a situation or result and does not enable the State Government to exercise power of exemption for such purpose as it does not serve the public interest in the real sense of the term. Any policy of the State Government in relation to vacant land held by a person in excess of the ceiling limit must be such that it does not contravene any of the provisions of the Act and does not tend to defeat or circumvent the objects and intendments of the Act. Even while exercising the power to exempt the vacant land in excess of the Ceiling limit on the ground of undue hardship, the power can be exercised in such a manner that it only relieves the person from undue hardship and not more than that. Exemption from the provisions of Chapter III of the Act on the ground of undue hardship is not intended to enable the person holding vacant land in excess of the ceiling limit to obtain market value of the vacant land for his personal use and to advance his personal interest. The policy of the State Government to encourage group housing by individuals does not contain the norms. It is also opposed to the directions issued by the Government of India in their letter No. 9/48/78-UCU dated 2/7-5-1980. In para 21 of that letter, it has been specifically stated thus:

"21. Exemption to vacant lands held by persons for transferring them to registered Housing Co-operative Societies:

1. It has been brought to the notice of the Government of India that Housing Cooperative Societies are not able to acquire land after the enactment of the Urban Land (Ceiling & Regulation) Act, 1976, because it contains a prohibition against transfer of vacant land in excess of the ceiling limit or any portion thereof held by a person and that considerable time is taken by the Government to acquire the vacant lands in excess of the ceiling limit and then to disclose of them u/s 23. The Government of India has considered the matter and it is of the

view that having regard to the provisions contained in Section 20 of the Act, purpose

for which land is proposed to be used, and the objectives of the Act, namely, that concentration of urban land in the hands of few persons and profiteering and speculation therein should be prevented and the need for increasing the housing stock utilising the developed urban land to the maximum extent as early as possible, there is no-objection to exempt vacant land held by persons in excess of the ceiling limit u/s 20 in the public interest so that they may transfer them to registered Housing Co-operative Societies or Group Housing Co-operative Societies (both societies hereinafter referred to as housing societies) for the purpose of constructing dwelling-units subject to the following conditions."

The letter also contains other conditions. From the directions contained in the aforesaid letter of the Government of India, exemption can be granted to a person holding vacant land in excess of the ceiling limit u/s 20 of the Act in the public interest so as to enable such person to transfer the vacant land in excess of the ceiling limit to registered Housing Co-operative Societies or Group Housing Co-operative Societies for the purpose of constructing dwelling units. The letter does not permit transferring of vacant land in excess of the Ceiling limit to an individual or a partnership. Having regard to the objects and intendments of the Act and the other provisions of the Act, examined from any point of view, the policy of the State Government to encourage individuals or partnership by granting, exemption and permission u/s 20(1) of the Act to sell vacant land in excess of the ceiling limit to an individual or a partnership coming forward to undertake group housing is impermissible under the Act.

8.10. I will now take up the scope of Section 20 of the Act before examining the legality of the impugned orders.

Section 20 of the Act empowers the State Government to exempt the vacant land held by any person in excess of the ceiling limit from the provisions of Chapter III of the Act on certain conditions. It consists of two parts. First part is comprised in Sub-section (1) and the second part is comprised in Sub-section (2). The second part enables the State Government to withdraw the exemption granted under Sub-section (1) after affording a reasonable opportunity to the person concerned for making a representation against the proposed withdrawal of the order of exemption passed under Sub-section (1) if the Government is satisfied that any of the conditions subject to which exemption was granted under Clause (a) or Clause (b) of Sub-section (1) are not satisfied. The first part consists of two clauses, Clause (a) and Clause (b). Clause (a) enables the State Government to exempt the vacant land held in excess of the ceiling limit from the provisions of Chapter III of the Act, if on taking into consideration the location of the land, the purpose for which it is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, the State Government is satisfied that it is necessary or expedient in the public interest to exempt the land from the purview in the public interest to exempt the

land from the purview of Chapter III of the Act. The power under both the clauses of Section 20(1) can be exercised either suo motu or on the request of the person who holds vacant land in excess of the ceiling limit. It is now well established that the right to seek exemption from the provisions of Chapter III of the Act is a very valuable right of a person holding vacant land in excess of the ceiling limit. The power exercisable either under Clause (a) or Clause (b) of Sub-section (1) of Section 20 of the Act by the State Government is a quasi-judicial power as the decision of the State Government under Sub-section (1) of Section 20 of the Act affects the very right of a person to seek exemption from the provisions of Chapter III of the Act, of the vacant land in excess of the ceiling limit. Therefore, the State Government is required to be satisfied objectively and not subjectively. The power under Sub-section (1) has to be exercised keeping in view the contents of Clauses (a) and (b) of Sub-section (1) of Section 20 of the Act and also the objects and intendments of the Act. The person who seeks exemption is entitled to an opportunity; of being heard. Clauses (a) and (b) of Sub-section (1) of Section 20 of the Act deal with different situations. The satisfaction of the State Government envisaged under both the clauses apart from being objective and not subjective, it has to be founded on the grounds mentioned in each of those clauses. The test laid down in Clause (a) for granting exemption is that it must serve the public interest. In other words, the State Government must be satisfied that it is necessary or expedient in the public interest to exempt the vacant land from the provisions of Chapter III of the Act. The expression "public interest" has a wide connotation. It differs from case to case as it depends upon the facts and circumstances of each case. The satisfaction as to public interest has to be arrived at under Clause (a) having due regard to the location of the vacant land the purpose for which it is being used or is proposed to be used and also on considering as to whether such exemption subserves the common good and advances the objects and intendments of the Act.

8.11. Whereas in the case of Clause (b), it is the "undue hardship" of the person holding vacant land in excess of the ceiling limit, alone, has to be considered. The State Government is required to be satisfied as to whether the application of the provisions of Chapter III of the Act to the vacant land held in excess of the ceiling limit would cause undue hardship and not a mere hardship. Under Clause (b) it is undue hardship which would enable the person holding vacant land in excess of the ceiling limit to seek exemption from the provisions of Chapter III of the Act.

8.12. Undue hardship may arise under several circumstances depending upon the facts and circumstances under which holder of vacant land in excess of the ceiling limit is placed. Indebtedness of a holder of vacant land in excess of the ceiling limit can undoubtedly be a ground for proving undue hardship. But it must be of such magnitude that it cannot otherwise be satisfied except by sale of excess vacant land. In such a situation only, it would be a valid ground to grant exemption from the purview of Chapter III of the Act. But at the same time, the

State Government is required to take care to ensure that the excess vacant land is sold at a fair market rate not by private negotiation but by public auction within the frame of the Act, within the specified period, and the sale proceeds are applied for repayment of the genuine debts incurred prior to the coming into force of the Act. The innocent creditors who had advanced loans prior to the coming into force of the Act to the person holding vacant land, in all probability, they might have taken into consideration the vacant land held by such person as to solvency for advancing loans as at the time of advancing the loans the Act was not in force. Therefore, if the genuine debts exceed the assets of such person, it will be in the interest of the society to enable such person to repay the debts by exempting the vacant and in excess of the ceiling limit from the provisions of Chapter III of the Act and further permitting him to sell within the frame-work of the Act. This would also serve public interest in the sense that the innocent creditors who had advanced loan to such person will be saved from the suffering. The debts which have to be taken into consideration for the purpose of finding out whether a holder of vacant land is put under hardship must be genuine debts incurred prior to the coming into force of the Act and must not have been barred by time. In other words, the debts must be subsisting on the date the application is filed for exemption u/s 20(1) of the Act as otherwise every holder of vacant land in excess of the ceiling limit would incur debts and would plead undue hardship on the ground of indebtedness which would be opposed to the very object of the Act and would enable the holder of the vacant land in excess of the ceiling limit to take fortune out of the excess vacant land. This is not permissible, because, after the coming into force of the Act, no vacant land in excess of the ceiling limit can be dealt with in any manner except in accordance with the provisions of the Act. A Division Bench of Gujarat High Court in *Thakorbhai Dajibhiki Desai Vs. The State of Gujarat*, on considering the question as to whether the holder of vacant land in excess of the ceiling limit whose debts far exceed his total assets can claim exemption u/s 21(1)(b) of the Act on the ground of undue hardship, has held thus:

"In our opinion, it cannot be said that the indebtedness of a holder of an excess vacant land can never amount to undue hardship within the meaning of Section 20(1)(b). Undue hardship has to be judged having regard to the circumstances of the holder of such land, in view of the fact that the provision in question provides that exemption may be granted if the State Government is satisfied that the application of the provisions of Chapter III would cause undue hardship to such holder. What then is the meaning and content of the expression "undue hardship to such person"? It may be realised that a holder of excess vacant land may be possessed of several properties. In modern life such a person may also have debts. Merely because such a person has debts, he cannot say that if the provisions of Chapter III are applied and the excess vacant land in his possession is dealt with under the Act, it would cause undue hardship. The Act makes suitable provisions to enable the holder of such a land to retain some vacant land within the specified limits as prescribed by Section 4 read with Schedule I of the

Act. It also provides for retention of certain vacant land under certain circumstances as envisioned by Section 20 of the Act. If the mere fact that a holder of excess vacant land is indebted to some extent by itself were to be considered to constitute undue hardship to such person within the meaning of Section 20(1)(b), the very object of the Act which has been outlined in the preamble of the Act viz., to prevent the concentration of urban land in the hands of a few persons, and, to prevent speculation and profiteering therein, and to secure an equitable distribution of land in urban agglomerations to subserve the common good, would be defeated for it would be difficult to visualize a holder of excess land who has no debts whatsoever. Some illustrations will make the point clear. A holder of excess vacant land may be possessed of assets worth about Rs. 10 lacs. He may also be indebted to several persons, say to the extent of Rs. 6 lacs, in such a situation can he contend that the application of the provisions of Chapter III of the Act would cause undue hardship on him? No. To hold that he would be entitled to exemption would be to sabotage the Act. It would amount to according a privileged treatment to a land holder who has borrowed from others vis a vis one who has not done so. Why should a land-holder with debts be preferred to a land-holder without debts? It would be irrational and unethical to do so. Besides it would amount to converting the unsecured debts of such land-holder into secured debts realizable from vacant lands which are earmarked for re-distribution in order to achieve equitable redistribution to subserve common good. Instead of subserving common good it will serve the good of the landholder who had concentrated lands into his grabbing hands and of his creditors who can proceed against his other assets. If he can meet his obligations from his other assets (the conclusion is obvious and inevitable) there is no question of any hardship to him much less of undue hardship to him."

xxx xxx xxx When the debts are of such a magnitude that they cannot be cleared except by liquidating the excess vacant lands, the matter assumes a different complexion and a different approach will have to be made. Refusal to grant exemption in such a case would result in the holder of the land being obliged to live and die in a state of indebtedness notwithstanding the fact that the excess vacant land in his possession could have been sold in the open market and the sale proceeds along with the sale proceeds of his other assets could have been applied in repaying the debts if only he was granted exemption from the provisions of Chapter III. In such an event it can certainly be said that refusal to grant exemption would cause "undue hardship" to him. Be it realised that the dominant purpose of the legislation is to prevent concentration of urban land in a few hands and to prevent speculation and profiteering in such lands apart from the object of achieving equitable distribution of land to subserve common good. It would be an anachronism to speak of equitable distribution when a particular holder of excess vacant land possesses the land only notionally in the eye of law in the sense that In his balance sheet it is merely illusory item on the agenda of assets in the context of his overwhelming debts which more than drown the value of the excess land. So also there is no question of preventing concentration

of land in the hands of a few persons or preventing speculation and profiteering therein. Apparently it is in order to meet such peculiar fact situation pertaining to individual land holders that the Legislature has enacted Section 20(1)(b). In the absence of such a provision on the one hand the holder of the land concerned would have to live and die in indebtedness and on the other hand innocent members of the society to whom much person is indebted would have to suffer. It is in this perspective that the Legislature in its wisdom has enacted Section 20(1)(b) and has provided that in case of undue hardship to a holder of an excess land, the State Government upon being so satisfied may grant exemption from the provisions of Chapter III subject to such conditions, if any, as may be specified in the order. And the Legislature has also with a purposeful all-seeing eye has provided that exemption may be granted on such conditions as may be specified so that the exemption is not misused and the object of granting exemption is not frustrated. The State Government can well specify that exemption is granted strictly on condition that (1) the land is sold at fair market rate and (2) within a specified time and (3) that the sale-proceeds are applied immediately for repayment of the genuine pre-existing debts as are specified in the order. No doubt before granting an exemption an enquiry would be required to be made as regards the genuineness of the debts. This precaution must be taken because otherwise in order to escape from the clutches of the aforesaid provision, unscrupulous persons might bring into existence sham transaction. This enquiry would, therefore, have to be made. A case may also arise where having regard to the ratio of other assets to total indebtedness it would be sufficient to grant exemption only partially and not in respect of his total holding. In such an event it may be necessary to grant exemption only in respect of a part of the excess vacant land sufficient to meet with the obligation arising out of genuine indebtedness."

I am in full agreement with the view expressed in the aforesaid Thakorbbhai's case. I would also make it clear that undue hardship contemplated under Clause (b) of Sub-section (1) of Section 20 of the Act is not confined to indebtedness of a holder of vacant land in excess of the ceiling limit, it may also arise on several other circumstances under which the person holding vacant land is placed. But it is not necessary to go into them in this decision because we are not concerned with the other aspects. In this case, it is sufficient to hold that if debts incurred prior to coming into force of the Act by a holder of vacant land in excess of the ceiling limit are of such a magnitude that the same cannot otherwise be satisfied except the sale of excess vacant land, would be sufficient to bring the case under Clause (b) of Sub-section (1) of Section 20 of the Act. Therefore, the State Government while considering the case of holder of vacant land in excess of the ceiling limit under Clause (b) of Sub-section (1) of Section 20 of the Act has to be satisfied regarding the magnitude and genuineness of the debts, the date when they were incurred and whether they were subsisting and enforceable on the date the exemption was sought. The State Government in the event of exempting the vacant land from the purview of Chapter III of the Act under

Clause (b) of Sub-section (1) of Section 20 of the Act is also required to ensure that the excess vacant land is sold through the Competent Authority by way of public auction within the framework of the Act, keeping in view ceiling limit prescribed under the Act and the sale proceeds are applied for repayment of the debts. In case the extent of the vacant land consists of vast area, the State Government must also take care to see that disposal of the same by way of sale does not result in concentration of vacant land in the hands of a few persons and it also does not result in profiteering. Therefore, in order to ensure that such consequences do not ensue or take place, the State Government is also required to issue appropriate directions to the Competent Authority to form the sites and sell them in public auction, to the extent necessary to discharge the debts, and apply the sale proceeds for repayment of the debts.

8.13. I will now take up the question as to whether the impugned orders are valid in law. By the order bearing No. HUD.324.CUP 83 dated 17-7-1985, the State Government granted exemption under Clause (a) of Sub-section (1) of Section 20 of the Act from the provisions of Chapter III of the Act to an extent of 16,194 square metres of vacant land comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli village for the purpose of locating an industry. The Granite Factory was established in the land before the Act came into force. The exemption was granted for the use of granite factory located in the land in question. This exemption was granted on the application filed by the fourth respondent (M/s Narayana Swamy and Sons). The exemption was subject to the following conditions;

- i) the entire land utilisation shall be complete within a period of two years from the date of this Order;
- ii) that the said lands should be exclusively used for the purpose for which the lands are allotted and for the purposes related thereto;
- iii) the persons mentioned in Column No. 1 of the Schedule shall not transfer by way of sale, mortgage, gift, lease or otherwise the lands described in Column Nos. 2 and 3 of the Schedule without prior permission of the Government and such permission shall be subject to such conditions as Government may deem fit to impose."

8.14. Of course respondent-4 was permitted to mortgage the property in favour of KFSC, SFC or any other Corporation owned or controlled by the Central Government or the State Government or the State Bank of India etc; as mentioned in the Order. It was also further stated in the order of exemption that the exemption shall stand revoked if any of the conditions specified in the order is violated. It may be noticed that the recommendation made by the Special Deputy Commissioner, Urban Land Ceiling, Bangalore, in his report dated 26-3-1985, found at page 246 of the records of the Special Deputy Commissioner, was to accord exemption to an extent of 13,568 square metres only and not an extent of 16,194 square metres. However, the State

Government, as referred to above, accorded exemption to the extent of 16,194 square metres. After the aforesaid order, the Competent Authority passed an order on 9-1-1987 u/s 8(4) of the Act. It may again be pointed out, as it has been already pointed out in the earlier portion of this order, that the Special Deputy Commissioner and all other authorities had proceeded on the assumption or on the basis that the extent of the balance of the land remaining in Sy.Nos. 6/1 and 6/2 of Dasarahalli on the date the Act came into force was 24,286 square metres, though actually it was not so. The extent of the balance of the land actually remained has already been pointed out while dealing with point No. 2. On taking into consideration the exemption granted by the State Government to an extent of 16,194 square metres comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli belonging to respondent No. 4, the Competent Authority by the order dated 9-1-87 came to the conclusion that the remaining excess vacant land after the grant of exemption in the Government Order dated 17-7-1985 was 3444 square metres. Accordingly, the Competent Authority confirmed that an extent of 3444 square metres as excess vacant land comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli and further directed publication of notification under Sub-section (1) of Section 10 of the Act in the Official Gazette for acquisition of the same. On the date the aforesaid order was passed (i.e., 9-1-1987), respondent-4 made an application before the second respondent for permission to sell an extent of 5 acres 24 guntas comprised in Sy.Nos. 6/1 and 6/2 of Dasarahalli to respondent-5 to develop the same by building a group housing to the extent of 60% and row-houses for the balance extent of 40% and sell the same to the intending buyers of such houses. The application is found at page 117 of the Government File bearing No. HUD 11 CEI 87. The application was filed on the ground that due to lot of competition and nationalisation of black and pink granite by the southern States including Karnataka, the firm was running under loss; that the Woodlands Hotel at Madras was also not making profits due to the fact that the building had become very old and the Same could not be modernised due to paucity of funds; that the twin theatres constructed therein were also not yielding profits due to unhealthy competition arising out of video piracy and advent of T.V.; that respondent-4 and partners individually and jointly Incurred loans to Banks, namely, Andhra Bank, Bank of India, State Bank of Mysore and Dena Bank; that the debts outstanding and due were more than 1 crore 65 lakhs; that the suits had been filed in the High Court of Madras against the partners; that all the businesses of the partners have been suffering huge losses specially due to continuing heavy interest burden; that the families of the seven partners of the firm have no other source of income and have been overdrawing from the firms for their maintenance; that one of the partners is seriously ill in a hospital at Bangalore and he has to only borrow for meeting medical treatment.

8.15. On 12-1-1987 the second respondent directed this application to be examined. Pursuant to that a communication dated 12-1-1987 was sent by the third respondent to the Special Deputy Commissioner, Urban Land Ceiling, Bangalore, to examine the application and send a report. In the meanwhile, on

13-1-1987, the 4th respondent submitted an application before the Special Deputy Commissioner, Urban Land Ceiling, enclosing a copy of the application made before the 2nd respondent u/s 20 of the Act and also submitted the papers and the statements to substantiate the case that the partners of the 4th respondent-firm are suffering from undue hardship due to huge liabilities. A copy of the said application is found at page 115 of the Government file bearing No. HUD 11 CEI 87. Pursuant to the said application, the Special Deputy Commissioner, Urban Land Ceiling called for information from the Special Land Acquisition Officer, B.D.A. Bangalore by his letter dated 17-1-1987. The Special Land Acquisition Officer, B.D.A. Bangalore, sent a letter dated 20-1-1987 which is found at page 109 of the file bearing No. HUD 11 CEI 87. This letter has already been reproduced while dealing with Point No. 2. In this letter, the Special Land Acquisition Officer, B.D.A. pointed out that the acquisition proceedings in respect of S.No. 6/1 have been completed as seen from the L.A.C. Register. The area acquired was an extent of one acre two guntas and 58 square yards comprised in S.No. 6/1. After the receipt of the aforesaid letter, the Special Deputy Commissioner, Urban Land Ceiling, made a report dated 20-1-1987 which is found at page 100 of the file bearing No. HUD 11 CEI 87. He recommended for according permission to sell the excess vacant land exempted under the Government Order dated 17-7-1985 and also the remaining extent of 3444 square metres of excess vacant land by the 4th respondent to the 5th respondent. He also suggested the following conditions to be imposed while granting permission:

- i) The entire land in S.No. 6/1 and 6/2 of Dasarahalli should be sold in favour M/s Revajeetu Builders and Developers.
- ii) The sale transaction should be completed within 6 months from the date of issue of G.O.
- iii) The proceeds derived from the sale of the above land should be utilised for clearing off debts.
- iv) The purchaser i.e., M/s. Revajeetu Builders and developers should utilise the land as per the C.D.P.
- v) The development plan should be got approved by the Bangalore Development Authority.
- vi) Out of the extent, 60% for group housing, 40% for new (SIC: row) houses as per BDA Rules.
- vii) Out of the area 10% to be sold to the Government employees as per the rate of BDA prevailing on that date.

A sketch was also enclosed along with the report which is found at page 106 of the file bearing No. HUD 11 CEI 87. The report of the Special Deputy Commissioner, Urban Land Ceiling, proceeded on the basis that the balance of the area available in S.No. 6/1 and 6/2 was 24,826 square metres though

actually it was not so. On receipt of the aforesaid report, the 3rd respondent directed the 4th respondent to appear before him with the records regarding the details of the loans incurred by it. Thereafter he put up the following notes, on 25-2-1987:

"Reference page 10 CF. As can be seen from page 43 CF on file No. HUD 324 GUP 83 placed below, exemption was granted in G.O.No. HUD 324 CUP 83 dated 17-7-1985 to M/s. Narayanaswamy & Sons, Bangalore, to an extent of 16,194 square metres for the purpose of locating the industry. The Special Deputy Commissioner (ULC), Bangalore was also requested by the Government vide their letter No. HUD 324 CUP 83 dated 26-7-1985 to take action to acquire the balance lands measuring 6070 square metres in respect of S.Nos. 6/1 and 6/2 of Dasarahalli village, Bangalore, held by M/s. Narayanaswamy & Sons as per the powers vested under the Urban Land (Ceiling and Regulation) Act, 1976.

M/s. Narayanaswamy & Sons vide their representation dated 9-1-87 addressed to the Minister for Urban Development stated that due to lot of competition and the nationalisation of the black and pink granites (which are in great demand in the Western countries) by the Southern States, including Karnataka, the firm has been suffering losses in the aforesaid business. They have also mentioned that the same partners of this firm are partners of a firm at Madras known as "Woodlands" and have not been in a position to pay the interest, leave alone the principal of loans taken from the banks. The details of the liabilities of the firm to the extent of Rs. 213-55 lakhs have been furnished in a certificate given by M/s. N.C. Rajagopal & Co. (Bangalore), Chartered Accountants on 12-2-1987 Pages 90 and 90A CF). The detailed report of the Special Deputy Commissioner (ULC), Bangalore, may be seen at page 88-32 CF. A circular issued by the Housing and Urban Development Department regarding the granting of exemption by the Government u/s 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976 on 25-2-1987 may be seen at page 92 CF.

24. Condition No. (iii) of G.O.No. HUD 324 CUP 83 dated 17-7-1985 granting exemption to the firm states that persons mentioned in Column No. 1 of Schedule shall not transfer by way of sale, mortgage, gift, lease or otherwise, the lands described in Columns 2 and 3 of the schedule without prior permission of Government and such permission shall be subject to such conditions as Government may deem fit to impose. The applicants have requested permission for selling the land of 5 acres 24 guntas to M/s. Revajeetu Builders and Developers, a Partnership firm in Bangalore to develop the same by building group housing to the extent of 60% and a row of houses to the balance extent and 40% and sell the same to the intending buyers of such houses. Government have taken a policy decision to encourage group housing in Bangalore and issue necessary instructions to the Bangalore Development Authority in this regard.

25. In the above circumstances, the recommendations made by the Special Deputy Commissioner (ULC), Bangalore, to accord permission for the applicants to sell the excess vacant land of 16194.00 square metres exempted under

G.O.No. HUD 324 CUP 83 dated 17-7-1985 with permission to sell M/s. Revajeetu Builders and Developers, a Partnership Firm, Bangalore, subject to the conditions mentioned in the report of the Special Deputy Commissioner, on page 83 CF and subject to other usual conditions may be approved. Regarding granting of exemption to the balance excess vacant land determined by the Special Deputy Commissioner (ULC), Bangalore, to the extent of 3444 square metres exclusive of buildings and land appurtenant (out of the area of 6070 square metres ordered to be acquired by the Government barring the exempted land) and permission to sell the same to M/s. Revajeethu Builders and Developers, Bangalore, has to be examined separately in the light of the first portion of the Circular at page 92 CF, as this will amount to a case of fresh exemption u/s 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976 Orders are solicited on para 25 CF."

The 2nd respondent approved para 25 on 4-3-1987. Accordingly, an order was issued on 6-3-1987 bearing No. HUD 11 CEI 87 u/s 20(1) of the Act permitting the 4th respondent to sell an extent of 16194 square metres to the 5th respondent on the following conditions:

- "i) That the sale transactions shall be completed within a period of six months from the date of this order;
- ii) that the sale proceeds shall be utilised to liquidate the loans of decadents only;
- iii) that the purchaser viz., M/s. Revajeetu Builders and Developers should utilised the lands within three years as per C.D.P;
- iv) that the Development Plan should be got approved by the Bangalore Development Authority;
- v) That the building project must consists of 60% of group housing and other 40% for row houses as per the Bangalore Development Authority Rules;
- vi) that the 10% of the total houses under this Housing Project shall be sold to the Government Employees as per the rate of Bangalore Development Authority prevailing on that date;
- vii) that the houses as constructed shall be sold to those who do not own any site/s or residential building/s in the City of Bangalore.
- viii) that the Special Deputy Commissioner, Urban Land Ceiling concerned is authorised to enforce the conditions stipulated herein and any deviation must be brought to the notice of Government; and
- ix) if any violation of conditions from (i) to (viii) above by the purchaser and/or declarant, the Government is at liberty to withdraw the permission so granted."

8.16. On 24-3-1987, the 4th respondent filed another application before the 2nd respondent seeking permission to transfer the remaining extent of 3444 square metres to the 5th respondent on the ground of undue hardship as the 4th

respondent had incurred debts. Along with the said application, the 4th respondent also furnished the details of the debts incurred and the certificates from the persons who advanced the loans. The said application is found at page 33 of the file No. HUD 11 CEI 87. The 2nd respondent directed the 3rd respondent to examine and put. On 27-3-1987, the 3rd respondent called for a report from the Special Deputy Commissioner. Accordingly, a communication dated 28-3-1987 was sent to the Special Deputy Commissioner for Urban Land Ceiling. In his report dated 20-1-1987, the Special Deputy Commissioner had already recommended for the grant of permission to sell the remaining extent of 3444 square metres. In the communication dated 28-3-1987 addressed to the Special Deputy Commissioner, Urban Land Ceiling, found at page 86 of the file No. HUD 11 CEI 87, he was directed to submit his report in the light of the first portion of the Circular bearing No. HUD 273 CEI 85 dated 25-2-1987. That communication reads thus:

Sub: Urban Land (C & R) Act, 76 -Application of M/s. Narayanaswamy & Sons, Bangalore.

Ref: Your office letter No. ULC(1) 54/85-86 dated 20-1-87.

With reference to the above, I am to state that the remaining excess vacant land to an extent of 3,444-00 square metres in S.No. 6/1 and 6/2 of Dasarahalli, Uttarahalli Hobli, Bangalore South, has been recommended for exemption with permission to sell. In this connection, I am to request you to examine the same in the light of the first portion of the Circular No. HUD 273 CEI 85 dated 25-2-1987 and furnish a report to Government at an early date."

8.17. The Circular No. HUD 273 CEI 85 dated 25-2-1987 issued by the State Government relates to granting of exemption by the Government u/s 20(1)(b) of the Act. It is issued for the guidance of all the Competent Authorities and Secretariat staff for processing cases u/s 20(1)(b) of the Act.

It provides that the debts which are to be taken into consideration for the purpose of deciding the question of undue hardship should be debts which are anterior to the material date i.e., anterior to the date of commencement of the Act i.e., 17-2-1976. It also further clarifies that in cases where exemption has already been granted by the Government in exercise of the powers vested in them u/s 20 of the Act, and when the examples approach the Government for permission for sale, mortgage, gift, lease or otherwise, the lands mentioned in the orders of exemption (as per the condition/s imposed in the original exemption orders) the Government will examine granting such permission after duly considering the requests made by the examples. This circular is found at page 94 of the file No. HUD 11 CEI 87 of the Government.

8.18. In the meanwhile, It appears from the report of the Special Deputy Commissioner for Urban Land Ceiling dated 27-3-1987 (found at page 50 of the file No. HUD 11 CEI 87) that the 4th respondent had submitted a copy of the application dated 24-3-1987 before the Special Deputy Commissioner, Urban

Land Ceiling, who made a report even before he received the communication dated 28-3-1987 from the State Government. In his report dated 27-3-1987, the Special Deputy Commissioner, Urban Land Ceiling, at paras 5 and 6 stated thus:

"5. They have produced certificate from the creditors and a certificate from the Auditor in support of the above liabilities. They request to grant permission to sell the excess vacant land of 3444.00 square metres also to M/s. Revajeethu Builders and Developers and clear off the above debts.

6. In the circumstances explained above, the request of the declarant for grant of exemption u/s 20 of the Act with remission to sell the balance excess vacant land of 3,444-00 square metres in S.No. 6/1 and 6/2 of Dasarahalli Village, 6th Block, Jayanagar, Bangalore as detailed below to M/s. Revajeethu Builders and Developers may be considered."

Thereafter a note was made on 31-3-1987 in the file HUD 11 CEI 87 at paras 39 to 42. At para 42, it was stated thus:

"In view of the detailed report of the Special D.C. and also as per decision at paras 22-27 N.F. there may be no objection to accord approval for the proposal of Special D.C. and permit the applicant M/s. Narayanaswamy & Sons, to sell the excess vacant land measuring 3444 square metres to M/s. Revajeethu Builders and Developers, Bangalore, a firm engaged in Group Housing with usual G.O.I. instructions as per G.O.I. guidelines in No. 4/48/78-UCU dated 2/7-5-1980 for orders."

The Joint Secretary, H.U.D. raised an objection at paras 43 and 44 thus:

"43. The Special Deputy Commissioner, and Competent Authority has not specified the Section under which he has recommended for giving exemption and permission to sell. In other words, whether it should be u/s 20(1)(a) or u/s 20(1)(b) of the ULCAR Act, is not clear. Even the purpose for which the sale of land should be permitted is also not indicated in his report. That is whether the land is to be sold for the purpose of Group Housing Scheme or for general purpose.

44. As regards the hardship, the Special Deputy Commissioner has indicated in all 13 items of loans raised by the land-holder. Out of these, 14, the first 13 cannot be accepted at all. It is quite apparent from the documents that he has produced pages 150 to 164 c.f.) but they cannot be accepted. The only item of liability which could be accepted is the amount due to the Dena Bank, K.G. Road, Bangalore, which amounts to Rs. 65,420-44 Ps. One of the conditions subject to which permission to sell the large extent of land (16,194 square metres) was granted by the Government Order No. HUD 11 CEI 87 dated 6-3-1987 was to liquidate the liabilities of the owner. In view of this position, it would be difficult to concede the present request of the land owner to grant him exemption and permission to sell, u/s 20(1)(b)."

Thereafter the 4th respondent filed an affidavit. The 2nd respondent passed an order on 9-4-1987 at para 46 thus:

"Shri B.M. Narayanaswamy has filed an affidavit (as placed in the file below) giving details of his liabilities and urging that the lands in question be also exempted with permission to sell to clear them. He has also produced proof for having borrowed loans from the parties. The Secretary, H.U.D. may please examine this fresh evidence now produced and offer his views for my consideration and orders very early."

It appears from the notes made at para 48 and 49 that the affidavit of the 4th respondent regarding liabilities was recommended to be approved. However, the Joint Secretary, H.U.D. further stated at paras 51 and 52 thus:

"51. Except the affidavit of the party, there is no other evidence to support his contention that he has raised loans during the period prior to February 1976. It would be a bit difficult to hold that the ground of hardship is established on the basis of the present material. It is also likely to create an inconvenient precedent.

52. The party has made a statement in his affidavit that he would sell 1 acre 24 guntas of land to M/s. Revajeetu Builders and Developers. Government may permit sale of this piece of land also u/s 20(1) (a) of the Act for the purpose of Group Housing Scheme subject to Government of India's guidelines in their letter No. 9/48/78-UCU dated 2/7-5-1980 and also other conditions specified in Government Order No. HUD 11 CEI 87 dated 6th March 1987."

The 3rd respondent recommended for approving para 52 of the Note. Accordingly the 2nd respondent on 15-4-1987 accepted para 52 of the note and approved it. The order was issued on 18-4-1987. It was issued under Clause (a) of Sub-section (1) of Section 20 of the Act granting exemption from the purview of Chapter III of the Act and also permitting the 4th respondent to sell an extent of 3444 square metres comprised in S.No. 6/1 and 6/2 of Dasarahalli to the 5th respondent on the following conditions:

"i) The guidelines issued in the Government of India letter No. 9/48/78-UCU dated 7-5-1980 should be strictly followed and the scheme should be for only the Group Housing Scheme.

2) that the sale transactions shall be completed within the period of one year from the date of this order.

3) that the sale proceeds shall be utilised to liquidate the loans of the declarants only.

4) that the purchaser viz., M/s. Revajeetu Builders and Developers should utilise the lands within 3 years as per Comprehensive Development Plan.

5) that the Development plan should be got approved by the Bangalore Development Authority.

6) That the building project must consists of 60% of Group Housing and other 40% for row houses as per the Bangalore Development Authority Rules.

7) that the 10% of the total houses under the Housing Project shall be sold to the Government Employees as per the rate of the Bangalore Development Authority prevailing on that date.

8) that the houses so constructed shall be sold to those who do not own any sites or residential buildings in the City of Bangalore.

9) that the Special Deputy Commissioner, Urban Land Ceiling concerned is authorised to enforce the conditions stipulated herein and any deviation must be brought to the notice of Government; and

10) if any violation of conditions from 1 to 9 above, by the purchaser and/or declarant, the Government is at liberty to withdraw the permission so granted."

8.19. I have already held that Group Housing Scheme as contemplated in the State Government Policy adopted on 22-10-1986 to encourage individuals or a partnership to take up Group Housing and to permit transfer of excess vacant land to such persons for implementing Group Housing Scheme is not permissible under the Act. The impugned orders have been passed on the basis of not only undue hardship of the 4th respondent but also on the ground of public interest, as according to the State Government, Group Housing by individuals or partnership advances the public interest and also falls within the frame of the Act. The State Government has not verified the genuineness of the debts incurred prior to the coming into force of the Act. Certificates from the so-called persons said to have advanced the loan to the 4th respondent prior to 17-2-1976 cannot be of any value. Such certificates do not amount to acknowledgement of debt by the debtor which must take place within the period when the debt is recoverable in law. The affidavit of B.M. Narayanaswamy found at page 28 of the file No. HUD 11 CEI 87 only states thus:

"I hereby confirm that we had the following liabilities even before 1976 (i.e.) before the commencement of the Act."

Thereafter 13 names are stated with the amount against each one of them. Thereafter, it has been further stated thus:

"Apart from the above, we had borrowed a sum of about Rs. 60,000/- from M/s Dena Bank, K.G. Road, Branch, Bangalore on 15-4-1969 itself i.e., before the Act came into force.

The liabilities and loans are so huge and as interest is mounting up every day, even if we sell the entire aforesaid property, we will not be able to fully discharge all our liabilities.

Hence it is humbly prayed and submitted that permission may kindly be granted for the aforesaid 1 acre and 24 guntas to sell the same to the aforesaid M/s. Revajeetu Builders and Developers, Bangalore."

The affidavit does not state as to how the liabilities have been continued or subsisting. There are no records produced to show that the liabilities of the 14

persons mentioned in the affidavit have been continued. It only states that those liabilities were incurred even before 1976. The affidavit does not state that those liabilities still exist and are enforceable. Of course there is Auditor's Report and Balance Sheet. The Auditor's Report regarding assets and liabilities also appears to have been produced. From the records of the Government it is not forthcoming that any verification was made either by the Special Deputy Commissioner for Urban Land Ceiling or by the 3rd respondent from the persons who had advanced the loans prior to the date on which the Act came into force to the 4th respondent, and as to in what manner those loans had remained as enforceable debts, on the date the applications were filed by the 4th respondent u/s 20 of the Act. In addition to this, there is no mode and manner prescribed for repaying the debts. From the contents of the sale deed, it is clear that under the guise of undue hardship, the 4th respondent appears to have made a fortune. Out of the consideration amount of Rs. 90 lakhs, a sum of Rs. 38,25,000/- had been given to the legal heirs of two erstwhile partners of the firm to secure their concurrence. The details of which as stated in the Sale Deed are as follows:

"Whereas the vendors further affirm and state that under the aforesaid circumstances, the vendors for the purposes of strengthening and fully securing to the purchasers full and unimpeachable title to the schedule property which is hereby sold by the vendors to the purchasers have agreed and undertaken to carry out and provide the following legal safeguards:

(1) To include the aforesaid Sri L. Premkishore and Sri L. Sailesh and their mother Smt. B. Lalitha (as one of the heirs of her husband late Sri B.M. Lakshmana Murthy) and their sister Smt. L. Sarala (as one of the heirs of her father, the late Sri B.M. Lakshmana Murthy) as "Confirming parties" - to this document of deed of absolute sale and conveyance unconditionally by affixing their signatures to this deed and it is agreed that the purchasers shall pay directly the following amounts to the aforesaid persons as consideration for their being parties to this document fully releasing all their claims, rights, interest and title to the schedule property whatsoever. The purchasers have this day directly paid the following amounts to the following persons (i.e.) the confirming parties:

1)

Smt. B. Lalitha

Rs. 1,59,375/-

864612

Vysya Bank Chickpet, Bangalore.

2)

Sri L. Premakishore.

7,96,875/-

864613

-

-

3)

Sri L. Sailesh

7,96,875/-

864614

-

-

4)

Smt. L. Sarala

1,59,375/-

864615

-

-

Total

19,12,500/-

B.M. Narayanaswamy

The above persons do hereby acknowledge having received the aforesaid amounts from the purchasers.

(2) As the other expelled partner, the aforesaid Shri B.S. Prakash (who is a bachelor) is a total invalid as mentioned above, his interest is being legally safeguard by the vendors herein by the vendors receiving Vysya Bank, Chickpet, Bangalore-964616 an amount of Rs. 19,12,500/- (Rupees Nineteen lakhs twelve thousand five hundred only) for and on behalf of the aforesaid Sri B.S. Prakasha by investing the said funds in the following manner. It is affirmed by the vendors that a proper legal opinion has been obtained that under the law there is no one at present existing legally competent to act as a guardian for the aforesaid Sri B.S. Prakasha and hence this mode of legal safeguard has been provided (especially) as he is a bachelor and is an invalid being legally incompetent to contract).

(3) The Vendors hereby authorise the purchasers to directly pay the aforesaid amount of Rs. 19,12,500/- (Rupees nineteen lakhs twelve thousand five hundred only) to a Bank nominated by the vendors and the vendors shall execute an

irrevocable General Power of Attorney in favour of the said Bank to carry out the following acts, deeds and things:

(i) To keep the aforesaid amount in the name of the vendors (but in trust for the aforesaid Sri B.S. Prakasha) in a short term deposit for a period of five months from this day and immediately thereafter the said account shall be closed and the said amounts shall be invested by the Bank in the name of the vendors (but in trust for the aforesaid Sri B.S. Prakasha) in the appropriate bonds or units of the Unit Trust of India, the investments of which are eligible for exemption for tax on capital gains for a period of three years, the said amounts and the interest amounts accrued thereon, shall be kept by the Bank in a deposit account in the name of the vendors (but in trust for the said Sri B.S. Prakasha) and the same shall be ultimately handed over to the aforesaid Sri B.S. Prakasha if he gets cured of the aforesaid disease or if he does not get cured throughout his life time, then after his life time, the said amounts with the accruals thereon shall be handed over to such other heirs and successors may be duly determined by competent Courts-of-law having jurisdiction thereof.

(ii) The aforesaid General Power of Attorney given to the said Bank by the vendors shall be irrevocable as it is unconditionally agreed to by the vendors that there is an Agency coupled with interest in the granting of the aforesaid General Power of Attorney by the vendors to the said Bank, which safeguards the interests of the said Sri B.S. Prakasha and the purchasers herein."

In addition to this a sum of Rs. 6,75,000/- being half of the stamp duty and registration charges relating to the document agreed to be borne by the 4th respondent was deducted out of the sum of Rs. 90 lakhs. Thus a huge sum of Rs. 45 lakhs was not utilised for paying the debts out of the total consideration of Rs. 90 lakhs. In addition to this a sum of Rs. 37,02,889/- does not appear to have been paid to the creditors as an application was filed by the 4th respondent on 7-11-1988 seeking a direction to the 5th respondent to pay a sum of Rs. 37,02,889/- to the creditors. In the affidavit filed in support of that application, it was stated thus:

"4. In tune with the terms of the Government order, particulars of the payments made to the creditors are incorporated in the sale deed. One of the payments is payments of Rs. 37,02,889/- by four Bank drafts payable to Andhra Bank, Mount Road, Madras, one of the creditors of the 4th respondent. These drafts were, on the date of the sale deed, given by the 5th respondent to the 4th respondent for being tendered to the creditor viz., the Andhra Bank.

5. When the bank drafts were presented by the 4th respondent to the aforesaid creditors, the creditor refused to receive the same in discharge of the debts due to it on the ground that larger sums are due and a part payment cannot be accepted. All attempts made by the 4th respondent to persuade the creditor to receive the bank drafts proved futile.

6. The 4th respondent therefore wrote to the 5th respondent on 29-2-1988

bringing to its notice that Andhra Bank had refused to receive the four drafts amounting to Rs. 37,02,889/- and requested that the drafts be taken back and fresh drafts be issued for payment to other creditors. A true copy of the said letter is enclosed marked ANNEXURE-3. The 5th respondent did not reply this letter. Another letter was addressed on 11-3-1988 by registered post to Smt. Shobha Makhija, Managing Partner of the 5th respondent firm renewing the request for issue of fresh drafts for payment to other creditors. A true copy of this letter the receipt of which is acknowledged by Smt. Shobha Makhija, is enclosed marked ANNEXURE-4, To this letter too there has been no response."

A grievance was also made with regard to non-payment of Rs. 6,75,000/- being the charges of the Sale Deed in question. Of course this application was opposed to by the 5th respondent. However, the application I.A.No. III was not pressed and as such it was dismissed on 22-3-1989 as not pressed. This shows that the State Government while granting permission u/s 20(1) of the Act did not take care to see that the sale proceeds are applied for repayment of the debt.

8.20. The 4th respondent specifically amended his statement of objections filed in W.P.No. 8546 to 8548/88 by filing I.A.No. 4 which was allowed except refusing permission to delete para 14 of the statement of objections. By way of amendment, it was contended that the sum due to the expelled partners was only Rs. 78,172-40 whereas they were paid Rs. 38,25,000/-. The break-up figures are also given which are as follows:

i.

B.M. Lakshmana Murthy

.. Rs. 13,189-35

(since deceased)

ii.

L. Premkishor

.. Rs. 15,999-57

iii.

L. Shylesh

.. Rs. 21,706-68

iv.

B.S. Prakasha

.. Rs. 27,276-80

(since deceased)

Total

.. Rs. 78,172-40

The actual payment made by the fifth respondent to the expelled partner are given below:

i)

Smt. B. Lalitha

.. Rs. 1,59,375/-

(W/o late B.M. Lakshmana Murthy)

ii)

Smt. Sarala (D/o Sri B.M. Lakshmana Murthy)

.. Rs.1,59,375/-

iii)

L. Premkishor

.. Rs.7,96,875/-

iv)

L. Shylesh

Rs. 7,96,875/-

v)

B.S. Prakasha

.. Rs. 19,12,500/-

Total

.. Rs. 38,25,000/-"

It was also further pleaded that the partners in question had been expelled by a resolution of the Meeting dated 15-5-1985 whereas the date of sale was 30-9-1987. Therefore, there was no question of paying any consideration amount to the persons who had ceased to be the partners long before the date of sale. It was also further contended thus in para 7 thus:

"7. The 4th respondent submits that ever since the 5th respondent's agent offered to buy the property in question, the entire transaction has been Bided, leaning heavily in favour of the 5th respondent. The 5th respondent was, from the very beginning of the transaction, in a position to dominate the will of the 4th respondent and used that position to obtain an unfair advantage over the 4th respondent. The terms and conditions of the sale were coerced and thrust upon the 4th respondent. The sale deed was drafted by the 5th respondent's lawyers and the terms and conditions therein, including payments to the expelled

partners were unilaterally incorporated much against the wish of the 4th respondent. The other condition in the sale deed which refers to a portion of the schedule property being retained by the 4th respondent for a period of six months was also incorporated at the instance of the 5th respondent without the consent of the 4th respondent. In short, the entire sale transaction has been dominated by the 5th respondent and the terms and conditions of the sale are beneficial only to the 5th respondent."

Thus it appears that all was not well with the transaction, between respondents 4 and 5. I have already pointed out that while granting permission under Clause (b) of Sub-section (1) of Section 20 of the Act, on the ground of undue hardship to the holder of the vacant land, the State Government is also required to see that the proper market value to the land is obtained and the sale proceeds are applied for payment of debts. No such measure was taken by the State Government. No doubt one of the conditions imposed in the impugned orders was that the sale proceeds should be utilised to liquidate the loans of the 4th respondent. But there was no effort made to apply the sale proceeds for repayment of the loans. Therefore, it is not possible to hold that the State Government has acted in accordance with the provisions of the Act while granting permission under the impugned orders for selling the vacant land in excess of the ceiling limit to the 5th respondent. The conditions that the building project must consist of 60% for group houses and 40% for row-houses and 10% of the total houses so built should be sold to the Government employees as per the B.D.A. rates prevailing on the date of sale are also vague inasmuch as an extent over which the houses are to be built, the type of apartments, and the probable value are not specified. Therefore, these conditions may very well be defeated by constructing group houses consisting of very big flats which can only be afforded by very very affluent section of the community. Further, the entire extent may not be used by the 5th respondent for constructing group houses because the conditions do not prescribe the extent. As far as the guideline issued by the Government of India letter No. 9/48/78-UCU dated 2/7-5-1980 are concerned, it has already been pointed out that according to these guidelines, group housing by transferring vacant land in excess of the ceiling limit to an individual or a partnership is not permissible. Group housing by Housing Co-operative Society or Group Housing Co-operative Society alone is permissible. There are other conditions contained in the aforesaid guidelines which are not adhered to. Therefore, the condition mentioned in the order dated 18-4-1987 (Annexure-L) is of no consequence. On the contrary, it only defeats the guidelines issued by the Government of India.

8.21. On going through the records of the State Government as contained in HUD 11 CEI 87 and also the records of the Special Deputy Commissioner, Urban Land Ceiling bearing No. ULC.1/54/85-86, it is not possible to hold that the Special Deputy Commissioner for Urban Land Ceiling, Bangalore, had made any sincere efforts in due discharge of his statutory duties under the Act as Competent Authority to verify the extent of the area remaining as on the date

the Act came into force in the lands bearing S.No. 6/1 and 6/2 of Dasarahalli. On the contrary, he has proceeded on the basis that the area remaining in S.No. 6/1 and 6/2 of Dasarahalli was 24,826 square metres inclusive of the factory building and other buildings constructed in S.No. 6/1 and 6/2. While dealing with Point No. 2, it has already been pointed out that the area remaining was only 5 acres 6 guntas and 12-1/9 square yards. He had also not made any effort while making his recommendation dated 20-1-1987 to specify the boundaries of 16,194 square metres exempted under the G.O. dated 17-7-1985 and also the boundaries of the remaining excess vacant land of 3444 square metres. When an excess vacant land is permitted to be sold u/s 20(1) of the Act, it is necessary to specifically identify the area. In spite of the letter dated 20-1-1987 of the Special Land Acquisition Officer, B.D.A. to the Special Deputy Commissioner, Urban Land Ceiling, informing him that the acquisition proceedings have been completed in respect of an extent of 1 acre 2 guntas and 58 square yards comprised in S.No. 6/1 of Dasarahalli, as seen from the L.A.C. Register, the Special Deputy Commissioner, Urban Land Ceiling, did not take care to identify this area and exclude it from the area comprised in S.No. 6/1. This area, as already pointed out was acquired long back for the purpose of formation of road and Boulevard and as such it was required to be reserved for that purpose only. Compensation had already been paid in respect of this extent of land. The way in which the Special Deputy Commissioner for Urban Land Ceiling had acted in sending the reports dated 20-1-1987 and 27-3-1987, I am constrained to observe that he was keen and too eager, to oblige the 4th respondent. I would like to make it clear, lest it be otherwise understood, that this observation cannot be taken as suggesting that the Special Deputy Commissioner for Urban Land Ceiling acted under the pressure of respondents-2 and 8 as the allegations made against them relating to misuse of official position will be considered separately under Point No. 4. It is not possible to infer from the records that respondents 2 and 8 brought any pressure upon the Special Deputy Commissioner for Urban Land Ceiling. It may be possible that respondents 4 and 5 themselves must have wielded sufficient influence upon the Special Deputy Commissioner for Urban Land Ceiling.

8.22. At the Secretariat level, the Secretary was mainly guided by the Government Policy to encourage Group Housing. Of course, the Government should have been careful enough to have their Group Housing Policy examined by the Law Department as to whether the transfer of excess vacant land to an individual or a partnership for the purpose of encouraging Group Housing by individuals or partnerships is permissible under the Act.

8.23. Both the applications of Respondent No. 4 were made on the ground of undue hardship u/s 20(1)(b) of the Act. Therefore, the same should have been considered only u/s 20(1)(b) of the Act. The ground of undue hardship is not considered as required by law. The scope and ambit of Section 20(1)(a) and (b) and the manner of consideration of the applications and exercise of power of exemption have already been considered in the preceding paragraphs. The

applications of the 4th respondent u/s 20(1)(b) are not considered in accordance with the law as propounded in the preceding paragraphs. Hence the same are required to be reconsidered in the light of this decision.

8.24. On taking into consideration all the aspects of the case, I am of the view that the impugned orders are opposed to the provisions of Chapter III of the Act and also the guidelines issued in the Government of India letter No. 9/48-78-UCU dated 2/7-5-1980 as they tend to defeat the very object and intendment of the Act. The consequence of the impugned orders, on permitting the 4th respondent to transfer the excess vacant land to a partnership firm consisting of individuals (respondent-5 herein) enables the 5th respondent to possess it even though the Act does not permit any person to hold vacant land in excess of the ceiling limit. The impugned orders also result in concentration of urban vacant land into the hands of a few persons and speculation and profiteering in connection therewith. There is also non-application of mind with regard to the exact area available in S.No. 6/1 and 6/2 of Dasarahalli on the date of coming into force of the Act.

8.25. For the reasons stated above, point No. 3 is answered as follows:

"The impugned orders dated 6-3-1987 and 18-4-1987 (Annexures-J and K" respectively) passed by the State Government u/s 20(1) of the Act are not legal and the same do not fall within the scope and ambit of the Act; as such the same are null and void and as such the same are liable to be quashed."

POINT NO. 4:-

9. In the light of the finding recorded on point No. 3, it is not necessary to record any finding on this point. However, the decision of mine is not final as it is subject to an appeal. Further if the petitioners are successful in proving this point it is by itself sufficient to vitiate the impugned order. The arguments are also heard on this point. Hence, I consider it necessary to record my finding on this point also.

9.1. It is the case of the petitioners that Smt. Shobha Makhija is related to respondent-8 being the sister of the son-in-law of respondent-8 who was the Chief Minister of the State at the relevant point of time; that she holds 50% interest in the 5th respondent-partnership firm, as such her interest in the firm is equivalent to the interest of the remaining 18 partners; that the 2nd respondent at the relevant point of time was the Minister for Urban Development when the 8th respondent was the Chief Minister; that the State Government adopted the policy to encourage individuals who are prepared to take up group-housing only with a view to benefit respondent-5; that the land in question was identified by Shobha Makhija (partner of respondent-5) and respondent-8 and thereafter a policy decision was taken by the Government to encourage private individuals who come forward to take up group-housing; that it was because of this, in the application dated 9-1-1987 filed by the 4th respondent before the 2nd respondent, the proposal to sell the land in question to the 5th respondent was

mentioned and it was prayed to grant exemption and permission to sell the land in question to the 5th respondent to develop the same by building group housing to the extent of 60% and row of houses in the balance extent of 40% and to sell the same to the intended buyers of such houses; that because of this, the file relating to the application dated 9-1-1987 seeking exemption and permission to sell the land in question moved very swiftly; that the recommendation from the Special Deputy Commissioner was obtained within 20 days and the first order was passed on 6-3-1987; that immediately thereafter, the 4th respondent made an application dated 24-3-1987 before the 2nd respondent seeking permission to sell the remaining portion of the land measuring 3444 square metres to the 5th respondent; that this application was also processed very swiftly and on the basis of the report dated 27-3-1987 made by the Special Deputy Commissioner, Bangalore Urban Land Ceiling, the permission was granted on 15-4-1987 and the order was issued on 18-4-1987; that the 2nd respondent being the Minister for Housing and Urban Development, took undue interest in the matter as the relative of the Chief Minister (respondent-8) was interested and saw to it that the permission sought for by the 4th respondent to sell the land in question to the 5th respondent was granted without much delay; that even before the 5th respondent had come into existence, the 4th respondent was contacted by the agent of the 5th respondent and the deal was settled and in order to facilitate the grant of permission by the State Government, the 5th respondent's name was stated in the application; that the factors as to whether the grant of permission to sell the land in question to the 5th respondent was in the public interest and as to whether there was undue hardship caused to respondent-4 and if there was undue hardship caused to respondent-4 due to indebtedness no safeguards or the modus operandi were directed to be adopted to see that the land fetches a fair market value and the creditors are paid so that respondent-4 is relieved of indebtedness, and all other factors relevant to the issue were not at all examined in a quasi judicial manner as the 8th respondent was interested to see that his relative Smt. Shobha Makhija who holds 50% interest in the 5th respondent-partnership was benefited. It is also contended that even before respondent No. 5 was registered, the deal to sell the vacant land in question to respondent-5 was settled as the agent of the 5th respondent approached the 4th respondent even before the application was filed. In this regard the petitioners relied upon the very averments made by respondent-4 at para 1.8 of the statement of objections filed in W.P.Nos. 8546 to 8548 of 1988. It is also further contended that Sri Tallam N. Nanjunda Shetty, the father of Shri T.N. Umesh and Shri T.N. Sateesh, partners of respondent-5 firm, had business and financial connection with the brother of Smt. Shobha Makhija and he was closely associated with the Chief Minister; that the considerable amount for paying the consideration flowed from his business concerns; that respondent-5 firm came to be constituted mainly to develop the immovable property to be acquired by the firm to an extent of 5 acres 24 guntas in Sy.Nos. 6/1 and 6/2 of Dasarahalli and to carry on business as builders and developers of flats, shops, commercial complex and other types of buildings, dealers in real estate, therefore it is

contended that the deal was settled between respondent-4 and Smt. Shobha Makhija and Tallam N. Nanjunda Shetty with the knowledge of respondent-8 as otherwise it would not have been possible for them to specifically mention the land in question in the partnership deed.

9.2. The 2nd respondent has filed his affidavit denying the allegations of mala fides made against him. The relevant portion of the affidavit is as follows:

"3. I submit that the allegations of mala fides and favouritism are all false. I have passed the orders on the applications filed by the 4th respondent after examining the materials produced and the reports received, by applying ray mind to the facts and circumstances of the case and also to the provisions of law. The orders were passed by me under the bona fide belief that the same were in accordance with law.

4. The allegations that "the Minister for Housing & Urban Land Development took keen interest and personally approved the transaction which enabled the Chief Minister's relative and her partners to obtain possession of the property" is denied as false. It is true that the partner of M/s Narayana Swamy & Sons produced an affidavit. On receiving the same the Secretary was requested to examine the fresh material and give his opinion.

5. The allegations made in para 12 of the Writ Petitions to the effect "the concerned Urban Land Development Minister passed the orders at the instance of the Chief Minister Sri Ramakrishna Hegde, in favour of the buyers" is again denied as false. The other allegation "the building of the said property, one of the relative of the Chief Minister, is for the benefit of the members of the Chief Minister Ramakrishna Hegde's family not for public interest" is denied. I do not know if any of the partners of the 5th respondent is related to Sri Ramakrishna Hegde, the then Chief Minister. I have passed the order after examining the matter with reference to the materials produced and the opinions expressed by the officers concerned.

6. The allegations that "the officials are under the pressure of the 2nd respondent and the 8th respondent" are denied. I have not exerted any pressure on any officer to pass any particular order at any time. The other allegations contained in paragraph-32(g) to the effect "the sixth respondent at the time of the Registration of the document dated 30-9-1987 acting under the pressure of the 2nd and the 8th respondent in not complying with the legal formalities etc." are denied as false. I have not exerted any pressure on the 6th respondent.

7. There are a large number of applications filed u/s 20 of the Act. As and when the Competent Authority under the Act sent reports or recommendations, the papers were processed by the officials in the Secretariat and my attempt has been to pass orders on such applications as early as possible. I submit that I have neither taken any personal interest in passing the orders impugned in the Writ Petitions nor have I passed orders at the instance of the then Chief Minister Sri Ramakrishna Hegde to favour his relative.

8. I submit that the allegations of favouritism and mala fides attributed to me in the Writ Petitions are denied as false and that they are made with ulterior motive."

9.3. The 8th respondent has filed the statement of objections supported by his affidavit in W.P.Nos. 8546 to 8548 of 1988. It reads thus:

"3) It is a fact this respondent was the Chief Minister of the State of Karnataka at the relevant time, but the allegation that either he directly or indirectly brought any official or unofficial pressure or influence on the concerned Minister or any other official to speed up the transaction questioned in the Writ Petition is far from truth, wholly false and the same is denied in toto.

4) Though it is a fact that this respondent's son-in-law's sister Smt. Shobha Makhija is one of the partners of 5th respondent - firm but it is far from truth to say that this respondent had anything to do in the grant of permission or the sale of property to the 5th respondent.

5) The only allegation referable to this respondent in the entire petition is that because of him, the 2nd respondent acted in haste. This allegation is humbly denied as being baseless, untrue, this Respondent asserts and states that at no point of time this respondent has brought any pressure or undue influence on anybody much less on the 2nd respondent. The petitioner has produced no evidence whatsoever to establish his self serving statement.

6) It is submitted that the allegations have been falsely and deliberately made because of political motivation to malign this respondent. The Writ Petition is not pursuing any cause in public interest but is espousing the cause of the political opponents of this respondent to get political mileage, undue publicity and for similar collateral reasons.

7) All other allegations which are not specifically admitted herein are denied as false and baseless."

9.4. Respondent-8 in W.P.Nos. 8546 to 8548/88 is respondent-4 in W.P.No. 15377/88. Therefore, he has filed a separate statement of objections supported by his affidavit in this Writ Petition also. In this statement of objections, he has averred that the first petitioner (D.P. Sharma) is a Member of a Political party nationally known as Congress (I); that he contested for Parliamentary seat from Bangalore South Constituency in the elections held in the year 1980 and in the height of the popularity of Congress-I Party, he lost the said election; that he is known to be a financial supporter of Congress-I Party and he himself has been involved in a large number of litigations pertaining to his illegal activities, more specially in the field of Private Transport and construction; as such it is rather curious that Sri D.P. Sharma should come up before this Court claiming to uphold the public interest; that the 2nd petitioner Sri C. Kannan was a Member of the Karnataka Legislative Assembly having been elected on the Congress (I) ticket from Shantinagar Assembly Constituency of Bangalore; that the petitioners

belong to Congress (I) Party which is opposed to Janata Party which is in power in the State of Karnataka, that it is a well-known fact that this respondent was the Chief Minister of Karnataka between the period from January 1983 and August 1985; that the leaders of Congress (I) Party both in the Centre as well as in the State have been trying their very best to malign this respondent by making wild allegations and giving much publicity to the same. Therefore, it is contended that it will be more appropriate to term the petition (W.P.No. 15377/88) filed under the pseudo name of public interest litigation as politically-interested litigation. He has further denied the allegations of mala fides made against him. He has specifically stated that the allegations made in para 2 of the petition are not within his specific knowledge; that on enquiry he learnt that his Special Officer Sri Ramappa had nothing to do with the transaction; that the alleged involvement of Sri Ramappa is not within his knowledge; that he was not behind the whole transaction and the Sub-Registrar, Jayanagar, being afraid of the consequences of refusing to register, mechanically registered the document without applying his mind; that he has nothing to do with the registration of the property in question. With reference to the allegation contained in para 4 of the petition, he has stated that the petitioners have chosen to name the impugned transaction as "Revajeethu Scandal" only with a view to publicity motive; that it was not he who appointed the Committee. However he has stated that he has come to know that the State of Karnataka was politically coerced to form a Committee to look into the transaction in question because of the political strategy of Congress (I) Party. He has further denied the alienations that as the Chief Minister of the State, he has exercised his authority to benefit his own son-in-law's relatives and has further averred that those allegations are totally false. He has further stated that no doubt Smt. Shobha Makhija is one of the partners of M/s. Revajeethu Builders and she is the sister of Manu Nichani who is his son-in-law. He has further averred that the allegation that "in view of his relationship, favouritism was shown in the impugned transaction by him" is totally false. With reference to para 5(a) of the Writ Petition he specifically denied the allegation that exemption Orders were passed in favour of M/s. Narayanaswamy & Sons under the Act with a view to favour his son-in-law. He has further denied that the registration of the sale deed was actuated by mala fides. He has also further denied the allegations contained in paragraphs 5(b), 5(c) and 5(d) of the petition. In addition to this, he has specifically pleaded thus:

"13. This respondent begs to submit that he has no interest whatsoever in the property and that is the subject matter of the Writ Petition and he had at no stage issued any orders or directions either directly or indirectly with reference to the transaction which is questioned in the above Writ Petition. This respondent denies that he had instructed any officer including the Special Officer Sri Ramappa, to take interest in this transaction. Hence the allegations made against him are false and the same is denied in toto.

14. As a matter of fact, this respondent is not a necessary party for the adjudication of the issue involved in this Writ Petition. He has been made, as

respondent in this Writ Petition as could be seen from the pleadings to solely malign him and to make baseless charges against him by the petitioners who are his political adversaries. The real fact is that this Writ Petition is motivated and got filed by the top-leaders of the Congress (I) Party at a time when this respondent is taking a very important role in the national politics which is likely to affect the Congress (I) Party adversely in their political ambition. It is submitted that the petitioners are deliberately trying to involve this judicial forum to gain political mileage by filing this Writ Petition. Hence it is prayed that this Hon"ble Court be pleased to dismiss this Writ Petition with exemplary costs so far as this respondent is concerned in the interest of justice."

9.5. In the statement of objections filed by respondents 1, 2, 3, 6 and 7, the allegations of mala fides are denied. It is specifically pleaded that the impugned orders are passed in view of the undue hardship caused to M/s. Narayanaswamy & Sons (4th respondent) and also in view of the policy decision taken by the State Government to encourage Group Housing which would serve the public interest, the Government accorded permission to M/s Narayanaswamy & Sons to sell the land to an extent of 16,194 square metres. With regard to the second order also, it had been specifically stated that it was passed with a view to encourage Group-Housing Scheme.

9.6. In addition to this, in the statement of objections filed by respondents 4 and 5 - M/s. Narayanaswamy & Sons and M/s. Revajeethu Builders and Developers - they have denied the allegations Of mala fides and have claimed that the impugned orders are passed in accordance with the provisions of the Act on taking into consideration the germane factors and no non-germane factors are taken into consideration.

9.7. The charge as to misuse of the official position and exercise of the authority with an ulterior motive to confer benefits on the relatives and friends of the persons in authority and on other persons, on extraneous considerations, is undoubtedly a quasi-criminal charge. It has to be proved in the same manner in which the criminal charge is required to be proved. The approach of the Court must also be the same as in the case of a criminal charge. The allegations made by the petitioners in W.P.No. 15377 of 1988 as to mala fide exercise of power and official position by respondents 2 and 8 have to be viewed in their special background that they are political rivals of respondents 2 and 8 and they are active members of Congress (I) Political Party which is opposed to the political party to which respondents 2 and 8 belong and as such these petitioners may intend to achieve their political ends which a Court of Law and especially this Court in exercise of its jurisdiction under Article 226 should not allow to be achieved. In other words, the jurisdiction of this Court under Article 226 should not be allowed to be used to achieve political ends or to wreak political vengeance.

9.8. The burden is upon the person or a party alleging mala fides to establish the allegations of mala fides. A very high degree of proof is required. The allegations

of mala fides cannot also be held as proved on the basis of mere probabilities. Of course, inferences can be drawn from the proved facts. But the Court must be slow in drawing inferences from incomplete facts. The Supreme Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, even after finding that there is some basis for the allegations of mala fides made against the Government that there was arbitrary exercise of power, has held that there is no sufficient material to conclude that there is any manipulation in preparing the gradation list. It is also further observed by the Supreme Court that it is true that large number of students who had secured very high marks in the University examination and whose performance in the earlier classes was very good had secured very low marks at the interview, and this circumstance is undoubtedly disturbing, but the Courts could not uphold plea of mala fides on the basis of mere probabilities. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Supreme Court has laid down the norms for considering the allegations of mala fides made against constitutional functionaries and for recording a finding thereon. In para 92 of the Judgment, the Supreme Court has held thus:

"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafide are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order, of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up - these considerations are wholly irrelevant in judicial approach - but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of malafides made by the petitioners against the second respondent."

Keeping in view these principles enunciated by the Supreme Court, the allegations of mala fides made by the petitioners against respondents 2 and 8 are to be examined.

9.9. The case of the petitioners is that the land in question was first identified and the deal was settled with the knowledge of respondent-8 and thereafter a policy decision was taken on 22-10-1986 to encourage Group Housing Scheme by individuals or partnership of individuals only with a view to favour Smt. Shobha Makhija, the sister of the son-in-law of respondent-8. There is no evidence placed by the petitioners to establish that before the policy decision was taken on 22-10-1986, the land in question was identified and the deal to convey the land in question by respondent-4 to Smt. Shobha Makhija was settled and respondent-C was aware of the same. In the absence of the evidence to connect the policy decision taken on 22-10-1986 with the transaction of sale in question, it is not possible to hold that the policy decision was taken to encourage individuals and partnership of individuals who come forward to undertake group housing scheme, only with a view to favour or enable Smt. Shobha Makhija or respondent No. 5 to purchase the land in question. No necessary facts are proved in this regard even to draw an inference from those facts to connect the policy decision with the transaction of sale in question. No doubt, in this case, it is proved that Smt. Shobha Makhija is a near relation of respondent-2, being the sister of the son-in-law of respondent-8 and she has 50% interest in the partnership and it is also possible to hold that by the time the application was made on 9-1-1987 by respondent-4 seeking permission u/s 20 of the Act to sell the land in question to respondent-5, the transaction of sale might have been settled; therefore, the lands in question were specifically mentioned in the Deed of Partnership dated 6-1-1987. This is further fortified by the averment made by respondent-4 at para 1.8 of his statement of objections that the firm was approached by an agent of respondent-5 with the proposal that if the lands bearing S.Nos. 6/1 and 6/2 were to be sold to respondent-5 forthwith, the buyer would help in obtaining exemption and clearance for the sale. It is also further averred by respondent-4 that the Managing Partner of respondent-4 has been-residing for many years in Madras; that, he has no contacts in the official circles at Bangalore and that there would be a great handicap in having the papers processed for clearance and exemption for sale of land and that pressure from creditors was also mounting causing considerable agony and hardship to the partners, therefore it was decided to sell the land and complete the transaction expeditiously so that the creditors' demands could be met. It is also further averred by respondent-4 that it was in this background the fourth respondent was compelled to sell the land in question. During the course of hearing, pursuant to the order of the Court, Shri . N. Venkatesh son of B.M. Narayanaswamy filed an affidavit on 17-2-1989 with reference to the above averments made in para 1.8 of the statement of objections. In the affidavit it is stated thus:

"The objection statement is to Shri Tallam Nanjunda Shetty, residing at No. 133, Railway Parallel Road, Kumara Part West, Bangalore-20. His house is adjacent to the office of the Special Deputy Commissioner (Urban Land Ceiling). Two of his sons are the the partners in the 5th respondent-firm. Since my father is a permanent resident of Madras and he was keeping indifferent health and could

not be all the time present in Bangalore in following-up the papers and since Sri Tallam Nanjunda Shetty offered to attend the office of the Competent Authority in the absence of my father to ascertain the progress from time to time, the proposal was accepted. This is the only proposal made and no other proposal was made nor any other terms were discussed with the said person."

But the averments made in para 1.8 of the statement of objections referred to above are clear enough to indicate that the deal as to the sale of the land in question must have been settled through the agent of respondent-5 namely, Tallam Nanjunda Shetty before the application was made. As per the Deed of Partnership of respondent-5, partnership came into existence on 6-1-1987. Thus it is possible that the deal must have been settled between 6th and 9th January 1987.

9.10. As long as the deal is not connected with the policy decision taken on 22-10-1986, it is not possible to hold that respondent-2 exercised his power with a view to favour respondent-5 because Smt. Shobha Makhija was one of the partners of respondent-5 firm holding 50% interest. The second respondent being the Minister for Urban Land Development, the application presented by respondent-4 was required to be received by him and he was required to get it examined through the Department. It is a settled legal position that a right to seek exemption from the provisions of Chapter III of the Act by a person holding vacant land in excess of the ceiling limit is a valuable right and the power exercisable u/s 20(1) of the Act is a quasi-judicial power. Therefore, the second respondent was in law bound to consider the application on merits. Therefore in directing the applications to be processed, the second respondent cannot be held to have misused his authority or official position. There is no evidence on record that respondent-8 either directly or indirectly dealt with the application of respondent-4 made on 9-1-1987 and 24-3-1987. There is also no evidence on record that respondents 2 and 8 either directly or indirectly suggested to respondent-3 and also the Special Deputy Commissioner for Urban Land Ceiling that the applications of respondent-4 should be processed in such a manner so as to help them to obtain an exemption order. While dealing with point No. 3, it has been pointed out that the Special Deputy Commissioner for Urban Land Ceiling was too eager to help respondent-4. In this regard, it is also relevant to notice the background of respondent-4.

9.11. From the records produced in the case, it is noticed that respondent-4 has been wielding considerable influence on the concerned officials of the State since a long time. There was a proposal to acquire the entire land comprised in Sy.No. 6/1 and 6/2 for Kankanapalya extension, B-Block, under the Government Notification bearing No.L-2090/ML/28-48-4 dated 1-9-1948. But the acquisition was dropped at the instance of respondent-4 to an extent of 5 acres 9 guntas 63 square yards and it was only finalised to an extent of 1 acre 2 guntas 58 square yards comprised in Sy.No. 6/1. There was also an agreement for conveying same extent of land to Respondent No. 4. This has already been referred to while

dealing with point No. 2. Not only this, a further extent of land was also given to respondent-4 as a part of the same transaction under the possession certificate dated 14-4-1961, found at page 8 of the records of the Special Deputy Commissioner to which a reference has already been made. Further, after the coming into force of the Act, respondent-4 obtained exemption u/s 20 of the Act to an extent of 16,194 square metres comprised in Sy.Nos. 6/1 and 6/2 on 17-7-1985. The fourth respondent in spite of acquisition of 1 acre 2 guntas 58 square yards in Sy.No. 6/1 for road and boulevard was able to persuade the Special Deputy Commissioner for Urban Land Ceiling that the extent of the land comprised in Sy.Nos. 6/1 and 6/2 remained the same. All this shows that respondent-4 itself is capable of getting the things done at the official level. Added to this, one of the partners of respondent-5 firm holding major share was the relations of respondent-8, therefore respondents 4 and 5 and Sri Tallam Nanjunda Shetty were themselves capable of getting the work done as swiftly as possible, at the official level without the knowledge of and notice to and interference by respondents 2 and 8 for which respondents 2 and 8 cannot be held responsible. In the light of the records built up by respondents 4 and 5 and in view of the policy decision taken by the Government on 22-10-1986 to encourage individuals and partnership firms to take up Group Housing Scheme, if respondent-2 has approved the proposals put up by the Secretary, HUD (respondent3), he - respondent-2 - cannot be held to have exercised his authority with a mala fide intention to favour respondent-5 or misused his official position to favour, respondent-5. Of course, certain facts found proved in the case, as indicated above, may give rise to a serious doubt that respondents 2 and 8 might have used their official position to help respondent-5. The doubt, however serious it may be, cannot take the place of proof. Therefore, it is not possible to hold that those facts are sufficient to hold that respondents 2 and 8 have misused their official position to favour respondent-5 in order to confer benefits by permitting the sale of the vacant land in question to respondent-5 of which Smt. Shobha Makhija, a relation of respondent-8, is a partner holding major interest. The charge of mala fide exercise of power or misuse of official position cannot be held to have been proved on the basis of mere probabilities nor it can be held as proved by drawing dubious inferences from incomplete facts. The seriousness of allegations of mala fides and consequences that flow out of such allegations themselves demand proof of high order of credibility as pointed out by the Supreme Court in E.P. Royappa's case. Therefore, on giving my anxious considerations and keeping in view all the proved facts and the evidence on record, I am of the view that it cannot be held that the petitioners have established that respondents 2 and 8 have misused their official position and authority in passing the impugned orders to favour and confer benefits upon respondent-5. Consequently, it cannot be held that the impugned orders Annexure-J and K are vitiated on this ground because it is not proved that there was mala fide exercise of power by respondent-2 and misuse of official position by respondents 2 and 8 to confer benefits on respondent-5. For the reasons stated above, point No. 4 is answered in the negative.

POINT NO.5:

10. In the light of the findings recorded on point Nos. 1 to 3, this point should not detain us any longer. The basis for the Sale Deed dated 30-9-1987 is the impugned orders Annexures-J and K. Without the impugned orders, it was not at all permissible for the 4th respondent to sell the vacant land in excess of the ceiling limit under the Sale Deed dated 30-9-1987 to the 5th respondent. An order u/s 20(1) of the Act granting exemption from the purview of Chapter III of the Act and further permitting him to sell the said vacant land is a condition precedent for execution of the Sale Deed in favour of respondent-5 by respondent-4. In the absence of any such order the transaction of sale pertaining to vacant land in excess of the ceiling limit is null and void. That being the position, when the impugned orders passed u/s 20(1) of the Act are held to be null and void, being beyond the purview of the Act, the Sale Deed dated 30-9-1987 executed by the 4th respondent in favour of the 5th respondent has to lose all its efficacy and must be held to be a void document in so far it relates to the extent of the land covered by the impugned orders Annexures-J and K. Consequently it cannot be allowed to remain to the extent it covers the area permitted to be sold under the impugned orders. Under Annexure-J, an extent of 16,194 square metres and under Annexure-K, an extent of 3444 square metres were permitted to be sold. Thus the total extent comes to 19,638 square metres. As far as the remaining portion is concerned, it was covered by buildings on the date the Act came into force. As such it was not a "vacant land". Therefore, the Sale Deed dated 30-9-1987 in so far it relates to the remaining portion after deducting 19,638 square metres out of the balance of land measuring 5 acres 6 guntas 12-1/9 square yards remaining in the lands bearing S.Nos. 6/1 and 6/2 of Dasarahalli on the date the Act came into force, the Sale Deed cannot be held to have become void. Point No. 5 is answered accordingly.

11. In the light of the findings recorded on Point Nos. 1 to 5, it is not necessary to go into the several contentions raised with regard to the registration of the Sale Deed dated 30-9-1987 by the Sub-Registrar and the under-valuation of the land alleged to have been made by respondents 4 and 5 and the conduct of the Sub-Registrar who registered the document. These aspects can very well be pursued by the relevant authorities under the Karnataka Stamp Act and also on the administrative side. A proceeding under the Karnataka Stamp Act is stated to have been initiated in this regard. The proceedings initiated in this regard may go on in accordance with law.

12. For the reasons stated above, these Writ Petitions are allowed in the following terms:

i) The Group Housing Policy of the State Government as embodied in the decision of the Committee held on 22-10-1986 and as communicated under the D.O. letter No. HUD 485 MNX 86 dated 24-11-86 referred to in para 8.6 of this order in so far it relates to encouraging Group Housing Scheme through individuals and partnership of individuals by transferring vacant land in excess of the ceiling limit

to such persons is quashed. The 1st respondent is restrained from enforcing the same through individuals and partnerships of individuals in respect of the vacant land in excess of the ceiling limit.

ii) The impugned orders bearing Nos. HUD 11 CEI 87 dated 6-3-1987 and HUD 11 CEI 87 dated 18-4-1987, Annexures-J and K" respectively are declared as null and void and are hereby quashed;

iii) The Sale Deed dated 30-9-1987 executed by the 4th respondent in favour of the 5th respondent, registered as Document No. 128/87-88 on 30-9-1987, a certified copy of which is produced as Annexure-A in W.P.Nos. 8546 to 8548/88 by respondent-6 is declared as null and void as having no effect in the eye of law in so far it relates to an extent of land measuring 19,638 square metres covered by the impugned orders Annexure-J dated 6-3-1987 and Annexure-K dated 18-4-1987. It is made clear that this declaration does not affect the validity of the Sale Deed in so far it relates to the remaining area as pointed out in para 10 supra.

iv) Respondents-1, 3, the Special Deputy Commissioner for Urban Land Ceiling, Bangalore, the B.D.A. by its Commissioner and the Commissioner, Corporation of the City of Bangalore, are directed to identify the extent of 1 acre 2 guntas and 58 square yards acquired out of S.No. 6/1 of Dasarahalli under the Notification No. L.2090/ML.28-48-4 dated 1-9-1948 for road and Boulevard and shall set apart the same for that purpose within two months from today and it shall be used for that purpose.

v) The applications dated 9-1-1987 and 24-3-1987 filed by the 4th respondent shall stand remitted to the State Government with a direction to consider them in accordance with law u/s 20(1)(b) of the Act in the light of the findings recorded, observations made, and the interpretation placed on Section 20(1) of the Act in this order. Before granting the application under the ground of undue hardship, the State Government shall ascertain the extent of the debt from the creditors of the 4th respondent who had advanced the loan prior to the Act came into force and in what manner such debts are subsisting and have remained to be enforceable and recoverable on the date of the applications i.e., 9-1-1987 and 24-3-1987. In case the State Government grants permission to the 4th respondent to sell the vacant land in excess of the ceiling limit under the ground of undue hardship, it shall see that in the excess vacant land, sites are formed of various dimensions not exceeding 60" x 90" keeping in view the sites already formed in the locality and each site is sold in public auction by the Competent Authority with a condition that no person is entitled to purchase in public auction more than one site and the sale proceeds are credited in the office of the Competent Authority who shall directly pay the amount to the creditors with notice to respondent No. 4 and obtain due discharge from the creditors. The sale of sites to the extent necessary to discharge the debts only should be held. The remaining portion shall be acquired under the Act.

vi) The petitioner in W.P.Nos. 8546 to 8548/88 is entitled to costs. Taking into consideration the efforts made by him in espousing the cause of public interest and having regard to the magnitude of the case, the money and energy spent by him, he is awarded costs of Rs. 10,000/-which shall be paid by respondent-1 (State Government); respondent-4 (M/s. Harayanaswamy and Sons) and respondent-5 (M/s. Revajeethu Builders and Developers) jointly and severally. Among themselves, they have to share the costs equally.

13. Before parting with the case, I deem it just and appropriate to place on record the appreciation of the efforts made and the service rendered by Sri. S. Vasudeva, Advocate, in espousing the public cause. But for his efforts to get at the several documents and place the matter before the Court, the matter would not have come to the notice of the Court.

14. As far as the petitioners in W.P.No. 15377/88 are concerned, they have only followed Sri. S. Vasudeva.