

(1994) 01 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 32527 of 1993

Survodaya Mills Workers Union

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 32

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20 (1) (a), 20 (1) (b), 20 (2)

Citation : AIR 1994 Kar 256 : (1994) ILR (Kar) 687

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; K. Vishwanatha, S.G. Sundaraswamy and N.K. Patil, for the Respondent

Judgement

1. The petition was listed in the preliminary hearing Group "B". By consent of the counsel appearing for the parties, the petition is heard on merits and disposed of finally.

This petition is presented by the petitioner for quashing the order dated 31-5-1993 passed by the first respondent in Order No. HUD 109 CUP 92 (Annexure-S) on the ground that the same is illegal and without the authority of law having been made in violation of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"), besides being arbitrary and violative of Article 14 of the Constitution.

2. The petitioner has further sought for a writ of mandamus directing the first respondent to take action u/s 20(2) of the Act by taking over the entire land in Sy. Nos. 97/2 and 98 of Yeshwanthpur, Bangalore on the ground that the land in question is in excess of the ceiling limit and for a further direction to 6th respondent to retain the entire land for the company for its expansion and to create or generate employment and economic development.

3. The petitioner is stated to be the recognised Trade Union in the 6th

respondent industry. The 6th respondent is the owner of 9 acres 13 guntas of land in Sy. No. 97/2 and 98 of Yeshwanthpur. Survey No. 97/2 is stated to have been acquired by the 6th respondent under a registered sale deed dated 21-3-1953 and Sy. No. 98 was acquired by means of a grant made by the Government in the year 1962. The 6th respondent has constructed factory building and some residential quarters for the occupation of the employees of their factory in a portion of the said land.

4. That after the Act came into force, the 6th respondent filed a statement before the competent authority specifying the location, the extent of land and such other particulars of the vacant lands held by them as prescribed by Section 6(1) of the Act. It is also stated that an application u/s 20 of the Act was made by the 6th respondent before the first respondent for exemption of the said land from the provisions of Chapter III of the Act. The first respondent after considering the representation of the 6th respondent and having regard to the location of the land in question and the proposed utilisation of the same, in exercise of powers conferred by sub-sec, (1) of Section 20 of the Act, issued an order dated 31-12-1982 in HUD 342 CUP 81 exempting the vacant land to the extent of 9 acres 13 guntas or 37,791 sq. mtrs in Sy. Nos. 97/2 and 98 of Yeshwanthpur from the provisions of Chapter III of the Act subject to certain conditions. The conditions imposed by the first respondent in the aforesaid order of exemption read as follows :

i) The entire land utilisation shall be completed within a period of two years from the date of this order.

ii) That the said lands shall be exclusively used for the purpose for which the lands are allotted and for the purposes related thereto.

iii) The industry mentioned in column 1 of the 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."

Provided that the above conditions shall not apply to any mortgage made in favour of the Karnataka State Financial Corporation established under the State Financial Corporation Act, 1951 or any other Corporation owned or controlled by the Central Government or the State Government or the State Bank of India, constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a banking company as defined in the Banking Regulation Act, 1949, or the Industrial Credit and Investment Corporation Ltd., or the Industrial Finance Corporation of India established under the Industrial Finance Corporation of India Act, 1948, for the purpose of the industry.

The above exemption shall stand revoked if any of the conditions specified above is violated."

5. That in the year 1986, the 6th respondent made an application before the first respondent for permission to sell the vacant land to an extent of 6752 sq. mtrs out of exempted land 37,791 sq. mtrs on the ground that improvement of the factory could not be taken up due to financial difficulties and to take up modernisation and "development programme to improve the factory. The first respondent after considering the said application, in exercise of powers conferred by cl. (b) of sub-sec. (1) of Section 20 of the Act accorded permission to the 6th respondent to sell 6,752 sq. meters of vacant land by its order dated 25-8-1986 in No. HUD 41 CUP 86 subject to the conditions imposed therein.

6. It further appears that in the year 1988, the 6th respondent made another application for permission to sell an extent of 8,528 sq. mtrs. with building out of the exempted industrial land on the ground of undue hardship. The first respondent in exercise of powers conferred u/s 20(1)(b) of the Act has again accorded permission to the 6th respondent to sell the said 8,528 sq. mtrs. of land to revive the unit and to clear all their liability, by its order dated 10-3-1989 in NO. HMD 98 CUP 88. It is stated by the 6th respondent that he failed to complete the transaction within one year from the date of the order since reasonable price could not be obtained from the buyers. During this period the first respondent has accepted the report of the Director of Industries and commerce as to the utilisation of the exempted land pursuant to the order dated 31-12-1982 and treated the matter as closed. It is further stated that the first respondent by its order dated 30-10-1992 in No. VCE 183 MNJ 92 accorded permission to the 6th respondent for change of land use in respect of 5 acres 20 guntas of land in Sy. Nos. 97/2 and 98 of Yeshwanthpur from industrial use to residential use subject to the condition that the 6th respondent shall-

- (i) get the development plan approved by the B.D.A.,
- (ii) leave necessary Buffer Zone for the industry,
- (iii) pay scrutiny and betterment fees; and
- (iv) pay at the rate of Rs. 1,00,000/- per acre towards III Stage Cauvery Water Scheme.

It is further stated that on 29-10-1992 the 6th respondent made a request to the first respondent for permission to demolish the existing structure on the land in question and to take up group-housing scheme thereon and for permission to sell the same for the industrial employees residing in the area. The first respondent after having received the report from the Special Deputy Commissioner, Urban Land Ceiling, sanctioned permission by order dated 31-5-1993 in No. HUD 109 CUP 92 subject to the certain conditions.

7. The petitioner in this petition is calling in question the validity of this order in addition to other reliefs as mentioned in the beginning of this order.

8. Challenging the validity of the impugned order, the petitioner contends that the 6th respondent has obtained the order to demolish the existing construction

and to alienate the land in question with the sole object of defeating the legal rights of the members of the petitioner-union. By impugned order, the objects of the Act, for which it is enacted is defeated. The first respondent has no legal authority to permit the 6th respondent to dismantle the constructions and to permit them to undertake group-housing scheme and to sell such constructions. The order is therefore void as it would defeat the public interest. In this context, Sri K. Subba Rao, the learned counsel appearing for the petitioner, submits that the petitioner is a recognised and registered trade union exposing the cause of the workmen in the 6th respondent industry. That, in the year 1984 immediately after election a charter of demands was submitted to the 6th respondent by the petitioner on behalf of the workers. The reasonable demands of the workmen were unreasonably rejected by the 6th respondent. That, on account of the uncompromising attitude of the 6th respondent, the difference between the petitioner and the 6th respondent became widened. The 6th respondent in order to break the union and stifle the voice of the workmen has adopted unfair labour practices and in this behalf, in spite of no provocation of whatsoever nature from the workmen, the 6th respondent declared lock-out of the factory with effect from 19-10-1985. The said lock-out was declared illegal by the Government by its order dated 5/6-2-1986 and the same has culminated in a Reference in I.D. No. 67/1988 and the same is pending before the Industrial Tribunal, Bangalore. That in the meanwhile, the 6th respondent, in pursuance of their unfair labour practice, encouraged a few workers to sponsor and organise a puppet trade union and entered into a forced settlement with the said union. That, when the petitioner filed an application in the aforesaid reference, for interim relief, the 6th respondent filed an application along with the settlement, requesting the Tribunal to reject the reference on the ground that the dispute between the management and the workmen is settled. The Industrial Tribunal refused to accept the said settlement and rejected the application of the 6th respondent. The order of rejection is challenged in W. P. No. 1953/88 and the same is pending before this Court. Thereafter the puppet union filed a suit in O.S. No. 1413/1988 on the file of the learned City Civil Judge, Bangalore and the said suit came to be dismissed.

9. It is stated by Sri K. Subba Rao that the 6th respondent has two units at Bangalore, one power-loom/auto loom for manufacture of clothe and rexine and another of P.V.C. and cotton which are the raw materials for manufacture of clothe and rexin. The P.V.C. and cotton unit came to be closed by the 6th respondent by ingenious and novel methods after terminating, the services of about 70 workmen. The Government by its order dated 12-9-1987 declared the closure of the unit illegal and referred the said dispute for industrial adjudication and the said Reference I.D. No. 51 of 90 is pending on the file of the Industrial Tribunal, Bangalore. That, in the year 1988, the 6th respondent suspended the manufacturing operations of the other unit, and the same was referred to conciliation. However, that, on 4-3-1988, the 6th respondent published a notice bearing No. 41/87-88 informing that they are ready to revoke the order of suspension of working of manufacturing unit, provided sufficient number of

workers give an undertaking to work according to the directions issued by the management and report for duty with effect from 10-3-1988- Once again to victimise the workers, the 6th respondent suspended the manufacturing process with effect from 31-3-1988 and on 2-4-1988, filed an application before the Government, u/s 25-O of the Industrial Disputes Act for permission to close the undertaking. The petitioner filed their objections to the said application, wherein it is stated that "It is an attempt on the part of the management to get rid of the workers and corner the assets running into crores of rupees". On considering the case of both the parties, the application came to be rejected and the correctness of the same is questioned by the 6th respondent in W.P. No. 9059 of 1988. The Government has also declared the lock-out dated 31-3-1988 as illegal and the said order is also challenged in the aforesaid writ petition. Thus, various proceedings are pending before this Court and also before the Industrial Tribunal.

10. It is for these reasons, Sri K. Subba Rao, the learned counsel appearing for the petitioner, submits that the sixth respondent was bent upon closing the industry in one way or the other detrimental to the interest of the workers, and as the workers through the petitioner-union have successfully resisted the illegal attempts of the 6th respondent and Government has held that the action of the 6th respondent is illegal. The 6th respondent having apprehended- adverse orders in the proceedings pending before this Court as well as Industrial Tribunal, has decided to sell away the real estate to convert the same into liquid cash, so that nothing may be left to members of the petitioner to realise the fruits of the order likely to be made in their favour in the aforesaid proceedings. It is further submitted that some of the workers are still in occupation of the quarters and by the impugned order, they would be thrown out without having any recourse to the process of law.

11. Sri K. Subba Rao, the learned counsel for the petitioner further submits that the impugned order is void for having been made by an authority having no authority of law to make such an order. The impugned order is arbitrary and violative of Art. 14 of the Constitution of India as has been held by the Supreme Court in *S. Vasudeva Vs. State of Karnataka and others*, It is submitted that the Act is intended to subserve the common good by preventing accumulation of urban property in the hands of a few and speculation and profiteering and for equitable distribution of land in urban agglomeration; the State has failed to take the aforesaid objects into consideration in making the impugned order and thus the public interest is defeated. It is therefore contended by the petitioner that they have questioned the legality of the impugned order, as it affects the interest of the workmen and also the public right. The petitioner further says that the petition is also presented as a public interest litigation.

12. Per contra, Sri S.G. Sundaraswamy, learned Senior Counsel appearing for respondent-6, submits that the petitioner has no locus standi to question the validity of the order impugned in this petition as they do not have any right, title and interest in the land in question and therefore the petition is liable to be

rejected at the threshold. He further submits that the petitioner has presented this writ petition in order to vindicate personal grudge and enmity on account of various disputes pending before this Court as well as Industrial Tribunal; and therefore the petitioner shall not be allowed to call in question the validity of the impugned order in the garb of public interest litigation. The petitioner not being a party entitled to sue in respect of the land in question, is not entitled to question the correctness of the impugned order, on the ground it affects the interest of the workmen, as admittedly the workmen cannot have any right, title and interest in the property of the company.

13. Sri S.G. Sundaraswamy, the learned Senior Counsel, submits that the petition is misconceived as the same is filed alleging that the 6th respondent is granted permission to sell the-excess vacant land which is not the purport and intent of the impugned order. By the impugned order, the first respondent has permitted the 6th respondent to demolish the existing buildings on the land and to take up group-housing for the sale of said houses in favour of industrial workers residing in the vicinity. In the absence of any permission to sell the land, in the impugned order, the writ petition is liable to be rejected on the ground of misrepresentation. The impugned order is made in the public interest as the construction of houses under the group-housing scheme being a public purpose, the petition on the ground that the impugned order violates the provisions of the Act and defeats the public right is liable to be rejected. In support of the contention that the construction of group-houses is allowed by the Act, assistance was sought from Rule 11-A of the Rules and Cl. 4(a) of Schedule 1A annexed to the Rules.

14. In view of the aforesaid rival contentions the following points would arise for my consideration:

- (1) Whether, the petition is liable to be rejected on the ground that the petitioner has no locus standi to question the legality of the impugned order; and.
- (2) Whether the permission granted by the first respondent in favour of the 6th respondent by the impugned order is valid under the Act.

As the question in controversy in the petition, namely, the locus standi of the petitioner and the power of the Government to make the impugned order u/s 21(1)(a) of the Act, could be decided on the interpretation and application of the provisions of the Act so far as they relate to the impugned order, I do not propose to consider the facts pleaded by the parties as regards the extent of land, purpose for which permission was sought, the financial position of 6th respondent and the scope of disputes pending between the parties, except to the extent of application of the same relating to locus standi.

15. POINT No. 1: It is true that the petitioner has not stated in the petition that the petition is filed by him as a public interest litigation. However in para 10 of the petition, it is stated as follows:

"10. **** Hence, this writ petition which has been filed as a public interest litigation not only to protect the interests of the workmen employed in the industry but also to protect the interest of the general public. As already stated, the workmen have an interest in the assets of the industry and its proper governance because if the Government were to assist for the enrichment of a few individuals, the interests of the workmen would suffer. In fact, the assets of the industry have been earned not by the investment of capital alone but also because of the sweat and blood of the workmen who have toiled hard to make the assets of the industry what they are. It is not permissible for the management of the industry to get away by getting an order and dispose of the property and sell the property and make an unlawful gain at the expenses of the workmen or the general public by defeating the provisions of the Act. Hence, the petitioner-union has filed this writ petition as a public interest to protect interests of the public and the workmen."

16. It is submitted on behalf of the petitioner that in view of the various disputes pending between the parties, the petitioner's members have a substantial interest in the working of the industry and its expansion and development which will have direct impact on their life and liberty. That the Government has held the actions of the 6th respondent illegal; and they are likely to succeed in the pending proceedings. If the 6th respondent is allowed to implement the impugned order, the petitioner's members would be left with no remedy, as by the time the disputes are adjudicated, the constructions on the land would be dismantled and the group-houses sold and the sale amount realised therefrom would be distributed to few vested interests. The workers, who are staying in the quarters would be rendered houseless. The workmen having responsibility for building up the industry are entitled to question the illegal acts relating to property of the industry. The petitioner in addition to its interest in the well being of its members is also interested in protecting the public right. Where a public law is violated resulting in destroying the public right, the petitioner being a tax payer and a workman can question the act of the State or an authority where such act is violative of the provisions of the Act, opposed to public policy and injurious to public interest.

17. In this context, Sri K. Subba Rao, learned counsel for the petitioner, derives support from the following decisions-

National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others,

In Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, the question whether the trade union has locus standi to file a petition questioning the sale of the plant and equipment of the industry came up for consideration before a Constitution Bench of the Supreme Court. Chandrachud, C.J., speaking for himself and for S.K. Fazal Ali and A.D. Koshal, JJ. has held as follows:

"22. In view of the fact that neither the decision to sell nor the sale proceedings

were unreasonable, unjust or unfair, it cannot be held that the petitioner's rights, if any, under Art. 14 are violated. The learned Attorney General contended that arbitrariness would be actionable under Art. 32, only if it causes injury to the fundamental rights of the petitioner, and that the petitioners in the instant case have no fundamental right in the exercise of which they can challenge the sale. We consider it unnecessary to examine this contention because the sale is not vitiated by any unfairness or arbitrariness. If and when a sale of public property is found to be vitiated by arbitrariness or mala fides, it would be necessary to consider the larger question as to who has the right to complain of it.

23. That disposes of the question as regards the maintainability of the writ petition. But, we feel concerned to point out that the maintainability of a writ petition which is correlated in the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Art. 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in water-tight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take broader view of the question of locus to initiate a proceeding, be it under Art. 226 or under Art. 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the Parliamentary control of public enterprises is "diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or mala fide."

That in the same decision, speaking for himself and for P.N. Bhagawati, J. as he then was, Krishna Iyer, J., has held-

"38. 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 triune facets."

His Lordship has further held-

"39. 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 Art. 226 and even under other jurisdictions. The learned Attorney General almost agreed, under pressure of compelling trends in the contemporary law of procedure, that Art. 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 Art. 32 for a moment and scan the right under Art. 226. There is nothing in the provision (unlike under Art. 32) to define "person aggrieved", "standing" or "interest" that gives access to the court to seek redress.

"40. The argument is, who are you to ask about the wrong committed or illegal act of the Corporation if you have suffered no personal injury to property, body, mind or reputation? An officious busy body picking up a stray dispute or idle peddler of blackmail litigation through abuse of the process of the court cannot be permitted to pollute the court instrumentality, for private objectives Public justice is always and only at the service of public good, never the servant or janitor of private interest or personal motive.

41. 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 pedantry now surrounding locus standi."

In para 48 of the judgment, it is further stated as follows:

"48. If a citizen is no more than a way-farer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gate, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Art. 226. (See Judgments of Krishna Iyer, J. in *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, and *The Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*,

In *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, the question whether the workers have a locus to appear and be heard in the winding up petition, both before the winding up is admitted and a final order is made for winding up of the company, came up for consideration before the Constitution Bench of the Supreme Court. Bhagwati, J. as he then was, speaking for the majority has held-

"** Today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep rooted affiliations with the rest of

the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders being capital, but capital is not enough. It is only one of the factors which contributes to the production of national wealth. There is another equally, if not more important factor of production and that is labour. Then there are the financial institutions and depositors, who provide the additional finance required for production and lastly there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern."

In *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, dealing with the locus of citizens and tax payers to question the action of the State relating to awarding contracts for bottling arrack to the appellants therein, the Supreme Court has held at page 831:--

"*** According to Shri Venugopal while the institution of Public Interest Litigation is a good thing in itself, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others and so the Court must refuse to act at the instance of such pseudo-public spirited citizens. We agree with Mr. Venugopal. But, simulataneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interest, and we are satisfied that in the present case that the High Court had little option but to act as it did and it would have failed in its duty had it acted otherwise and refused to issue a writ on the ground that the allegation of personal bias against the Chief Minister was false. Had that been done the public mischief perpetrated would have been perpetuated. That is not what Courts are for."

By this decision, the Supreme Court has affirmed the decision of this Court pronounced in *Rudraiah Raju Vs. State of Karnataka*, Dealing with the question of locus both the learned Judges, Rama Jois, J. as he then was, and Venkatesh, J. have held as follows:

"11. The submission made for the respondents is misconceived. It is not correct to state that the petitioners are just two persons among the citizens of India and not more. A citizen and a voter has sufficient interest to claim that the elected representatives and officers entrusted with the Governmental power under the Constitution and the Laws should carry on the administration fairly and according to law and bona fide. In other words, Rule of Law being one of the basic structures of the Constitution, if it is breached, a citizen can seek redress in the Courts. The violation of rule of law is per se injurious to public interest. It may be, if the decision of the type concerned in these cases of the Government of Karnataka were to be challenged before this Court by a citizen and resident of

any other State in India, he may be described as just a person among 660 million who has no sufficient interest. Similarly, if a licence for construction of a high rise building in the City of Bangalore is given by the Corporation of the City of Bangalore in violation of Town Planning Act, a resident and Voter of any other City or Town could not be regarded as a person having sufficient interest to maintain a petition. But in such a case as held by a Division Bench of this Court in *M.D. Narayan v. State of Karnataka* 1982 (2) KLJ 35 a resident of the City of Bangalore is a person having sufficient interest. Therefore, we are unable to agree that the petitioners who are voters and rate payers in the State have no sufficient interest to maintain the petitions."

In para 3 of his order, Venkatesh, J. has held as follows:

"3. On Locus Standi: In the present context, as observed in de Smith's Judicial Review of Administrative Action (Fourth Edition) page 416, locus standi is understood to mean legal capacity to challenge an act or decision. Garner and Jones in their Administrative Law (sixth Edition) page 175 are of the view that locus standi is a threshold question in the simplest or clearest cases of lack of standing. The following observations of the learned Authors may be noted:

"Thus, locus standi is a threshold question finally determinable at the "leave to apply" stage, only in the simplest or clearest cases of lack of standing. In most cases the standing of the applicant in relation to the matter in question might better be regarded as constituting a ground upon which the Court while hearing, or having heard, the substance of the case might exercise its discretion to refuse the relief claimed."

The two petitions with which we are concerned cannot be said to be either simplest or clearest cases of lack of standing. The allegations made in the petitions, the nature of the transactions under challenge, the financial implications involved and the attack on the decision of the State Government on the ground that it was injurious to public interest being wholly contrary to law, were factors against the dismissal of the petitions on the ground of locus standi at the very threshold. It is true the petitioners have not been able to prove their case that the bottling charges fixed at Annexure-A, were highly exorbitant and thereby the arrack consuming public had suffered. The question still remains whether the petitioners cannot challenge the decision of the Government in assigning these contracts in favour of respondents 3 to 10 on the ground that that decision was in violation of the law governing the matter in question."

18. Sri S. G. Sundaraswamy, learned Senior Counsel appearing for the 6th respondent, would not dispute the principle laid down by this Court as well as the Supreme Court in the aforesaid decisions. However he contends that the aforesaid decisions are not applicable to the facts of this case, as the petitioner has filed this petition on account of long standing grudge and enmity. He further submits that the petitioner is not a person aggrieved as he had no right, title and interest in the property, and this writ petition is presented to pressurise the 6th

respondent to accede to their illegal demands in this context he derives support from the following decisions of the Supreme Court S.P. Gupta Vs. President of India and Others,

In S.P. Gupta Vs. President of India and Others, the Supreme Court while considering the locus standi of the lawyers to present petitions in respect of the appointment of judges has held as follows:

"23. But we must be careful to see that the 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. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the courts to further their aims". These are some of the dangers in public interest litigation which the court has to be careful to avoid."

In Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others, the Supreme Court while considering the scope of public interest litigation, has held as follows at page 2062:

"8. Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplate by Art. 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of law, that quality of life and living by the people is entitled to be taken recourse of Art. 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Art. 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.

9. Having regard to the ugly rivalry here, we have no doubt that between the contestants, the Court was misled and we must therefore, proceed with caution. There was no fundamental right violation or could be violative if the allegations of the so-called champions on behalf of the society are scrutinised. We must protect the society from the so-called "protectors". This application is legally devoid of any merit or principles of public interest and public protection."

A similar question came up before the Supreme Court in AIR 1991 420 (SC) wherein it is held (at page 424 of AIR)-

"7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the fundamental rights of a citizen. Right to live is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudges and enmity. If such petitions under Art. 32, are entertained it would amount to abuse of process of the Court, Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation."

In the light of the aforesaid pronouncement of the Supreme Court Sri S.G, Sundaraswamy, learned Senior Counsel, submits that the petitioner has no locus standi to present this petition as a public interest litigation as none of his fundamental rights are violated nor he has presented this writ petition on behalf of the persons who are incapable of protecting their rights either on account of their incapacity or ignorance. On the other hand, the petitioner has presented this petition for the purpose of vindication of his personal grudge and enmity on account of various proceedings pending between them before this Court and before the Industrial Tribunal.

19. Contesting the aforesaid contention of Sri S.G. Sundaraswamy, the learned Senior Counsel for respondent 6, Sri K. Subba Rao, learned counsel for the petitioner, submits that in the decisions relief upon by Sri S.G. Sundaraswamy, the question that came up for consideration was whether the jurisdiction of the Supreme Court under Art. 32 of the Constitution could be invoked in the name of public interest litigation in the absence of any violation of the fundamental rights

of the citizens. The Supreme Court in the aforesaid cases after having considered the case of the parties and after having held that they have filed the said petition in order to satisfy their personal grudge and enmity has held that the jurisdiction of the Supreme Court could not be invoked under Art. 32 of the Constitution in the absence of any violation of the fundamental rights. It is further submitted that as the impugned order has been made in violation of the provisions of the Act and per se injuries to public interest, there is no prohibition for this Court to interfere with the impugned order, in exercise of its jurisdiction under Art. 226 of the Constitution.

20. It is admitted that there are disputes between the petitioner-union their workmen and respondent-6 right from 1984. The lockouts declared by respondent 6 were held to be illegal by the Government and they are culminated in industrial disputes pending adjudication before the industrial tribunal. It is also admitted that the closure of the industry was declared illegal by the Government and a writ petition is pending before this Court in that behalf. It is stated that the 6th respondent has entered into a settlement with another trade union, which is also a subject matter in another writ petition. It is also not in dispute that the 6th respondent has constructed certain quarters and in eight of them, the members of the petitioner-union are residing. However it is contended by the 6th respondent that there is a direction by the Criminal Court to these occupants to vacate the premises. It is not known whether they have vacated or not. It is specifically pleaded by the petitioner "that there are eight quarters in the land which have been allotted to the workers. The members of the petitioner-union are residing in these quarters because these quarters were given to them when they joined the industry. By any stretch of imagination their occupation cannot be called unauthorised because their services are neither terminated nor the industry has been closed, in accordance with the provisions of the Industrial Disputes Act, 1947. "They have right to remain in possession until and unless the disputes pending before this Court and Industrial Tribunal are adjudicated and if they are to vacate it would result in personal" injury to the members of the petitioner-union whose interest the petitioner is representing. The question in controversy in this case is whether the impugned order is injurious to public interest and whether it would facilitate the concentration of urban property and encourage speculation and profiteering in contravention of the objects of the Act. It is well settled that under Art. 226 of the Constitution if a person, who is neither an officious busy body picking up a stray dispute nor an idle peddler of black-mail litigation, complaining against the violation of public law by a public authority charged with public duty should not be shut out at the threshold on the ground of locus standi. It is clear from the facts stated above that the case of the petitioner cannot be said to be either simplest or clearest case of lack of standing calling for dismissal of the petition on the ground of locus standi at the very threshold.

21. Sri S.G. Sundaraswamy, the learned Senior Counsel appearing for 6th respondent, further submits that the petitioner has no legally enforceable right in

respect of the property in question nor the same is the subject matter of the dispute pending between the petitioner, its members and 6th respondent, the disputes between the parties are in respect of the employment of the workmen and the closure of the industry and even if the disputes are decided in favour of the petitioner and its members, they cannot have any claim over the property in question and as such the petition is liable to be dismissed as the petitioner is not entitled to sue in respect of the lands. In this context he read to me a discussion on this topic from Wade's Administrative Law, 6th Edition at pp 351-353. The summary of the said discussion is extracted by the Supreme Court in Shivchander Kapoor v. Amar Bose, and it reads as under-

"23. In Wade's Administrative Law at pp 351-353, there is an illuminating discussion of this topic. It has been pointed out that "void" is meaningless in an absolute sense, and "unless the necessary proceedings are taken at law to establish the cause of invalidating and to get it granted or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders". In the words of Lord Diplock "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue."

22. Sri S. G. Sundaraswamy, learned Senior Counsel, placing emphasis on the expression "party entitled to sue" submits that a complaint against the illegality of an order can be made only a person who has a right to question and the petitioner having no legally enforceable right in respect of the property in question, the petition is not maintainable for the petitioner is not a "party entitled to sue".

23. That, after reading the whole judgment of the Supreme Court in S.C. Kapoor's case, I am unable to persuade myself to agree with the contention of the learned counsel. The purport and intent of the said discussion is that so long as the void or voidable orders are not declared invalid in a competent legal proceeding at the instance of right person, the enforceability of the said order cannot be doubted.

24. In this context it is useful to read para 22 of the judgment of the Supreme Court in the case of Kapoor which is as follows:

"22. There is another aspect of the matter. The Controller's permission when granted to create a limited tenancy under S. 21 of the Act is presumed to be valid unless declared otherwise. It is, therefore, for the person assailing its validity to get such a declaration from a proper forum in a proper proceeding. Unless this is done, the order remains enforceable. The duty is clearly on the tenant himself to raise the plea of invalidity and unless the order is declared invalid at his instance, its enforceability cannot be doubted."

Even otherwise, where instances of violation of public law by a public authority charged with public duty, reducing rule of law to a mockery, are brought to the notice of this Court requesting to enforce rule of law in exercise of its jurisdiction

under Art. 226 of the Constitution, this Court cannot remain a mute spectator nor close its eyes on the ground that the person complaining is not a party entitled to sue. This Court is as much interested as any other person in preservation and protection of rule of law and clothed with powers to enforce it.

For the reasons aforesaid, I hold that the petition cannot be rejected on the ground of locus standi. Accordingly I answer Point No. 1 in the negative.

25. POINT NO. 2: The next question that arises for my consideration is whether the impugned order is violative of the provisions of the Act. Before advertng to the question of validity or otherwise of the impugned order, it is useful to note the object of the Act and the provisions framed to achieve the objects.

26. The Urban Land (Ceiling and Regulation) Act, 1976 has been placed on the statute book to provide for imposition of a ceiling on the vacant land in urban agglomerations; to provide for acquisition of such vacant land in excess of the ceiling limits; and to regular the construction of buildings on such land for matters connected therewith with a view to prevent concentration of urban land in the hands of a few persons and speculation and profiteering therein and bringing about an equitable distribution of land in the urban agglomeration to subserve the common good, as has been stated in the preamble of the Act. It provides for various provisions to achieve the aforesaid objects.

27. Section 3 states that except as provided in the Act on and from the commencement of the Act no person shall be entitled to hold any vacant land in excess of the ceiling limit. The ceiling limit is prescribed in Section 4. Section 5(3) prohibits transfer of vacant land in excess of the ceiling limit or any part thereof by way of sale, mortgage, gift, lease or otherwise until the land holder has furnished a statement u/s 6 of the Act and a notification regarding the excess of vacant land held by him has been published under sub-section (1) of Section 10. Any such transfer is deemed to be null and void. Section 6(1) requires every person holding vacant land in excess of the ceiling limit at the commencement of the Act, to file a statement in respect of all the vacant lands held by him before the competent authority under the Act. A combined reading of Sections 6(1) and 7 makes it clear that the statement to be filed u/s 6(1) must include the vacant land not only situated in the same State but in other States to which the Act applies. Section 8 provides for preparation of draft statement by the competent authority as regards the vacant land held by the person concerned and calculated on the basis of the statement filed by him u/s 6 after holding enquiry. The said draft statement is required to be served on the person concerned providing him an opportunity to file his objections, if any. Section 9 provides for final statement with regard to the vacant land in excess of the ceiling limit and for service of the same on the person concerned. After the service of final statement u/s 9 of the Act on the person concerned, the competent authority is required by Section 10(1) to cause a notification to be published in the official gazette giving the particulars of such vacant land stating therein, that such land is to be acquired by the concerned State Government and

the claims of all the person interested in such vacant land be made by them giving particulars of the nature of their interest in the land. u/s 10(2) the competent authority is required to determine the nature and extent of such claim and pass orders as it deems fit. Section 10(3) provides that at any time after the publication of the notification u/s 10(1), the competent authority may by another notification published in the Official Gazette of the State concerned declare that the excess vacant land referred to in the notification published u/s 10(1) of the Act shall with effect from such date, as may be specified in the declaration, be deemed to have been acquired by the State Government. Upon the publication of such declaration the vacant land is deemed to have been vested absolutely in the State Government free from all encumbrances with effect from the date so specified. Section 10(4) prescribes transfer of the excess vacant land and also the alteration of the use of such land between the date of the notification published u/s 10(1) and that of the notification published u/s 10(3). Section 10(5) enables the competent authority to pass an order requiring a person in possession of the excess vacant land to surrender the same to the State Government. Section 11 requires the State Government to pay the compensation. Sections 12, 13, 14, 15, 16, 17 and 18 provide for constitution of tribunals second appeal to the High Court and consequences of future acquisition, power of competent authority to enter upon any vacant land, consequences of concealment, and the application of the Act to certain lands, etc., S. 20 of the Act provides for power to the State Government to exempt the vacant land from the provisions of Chapter III of the Act. Section 21 contemplates exemption of excess vacant land from the operation of Chapter III, for a purpose other than for the use of the holder of the land. Section 22 enables a person to hold vacant land on which there stood a building which came to be demolished either by the holder or on account of natural causes, for re-development in accordance with the master plan, with the permission of the competent authority. Section 23 deals with the disposal of the vacant land by the State Government. Section 24 enables the State Government to assign a part or whole of the acquired land. Chapter IV of the Act deals with the transfer and use of the urban property. I do not think the other provisions of the Act are relevant for the purpose of this case.

27A. The extent of power of the State Government as regards exemption of vacant land from the provisions of Chapter III of the Act and to permit the holder to sell the same in exercise of its power under S. 20(1)(a) or (b) of the Act came up before the Supreme Court in Vasudeva's case. The Supreme Court in S. Vasudeva Vs. State of Karnataka and others, after examining all the relevant provisions of the Act, particularly Ss. 20, 21 and 22 with reference to the extent of power of the Government to grant permission to sell the vacant land, has held as follows :

"44. The examination of the aforesaid relevant provisions of the Act shows a clear intention of the legislature and reveals a definite scheme. It has to be admitted that the provisions of the Act as are drafted have not succeeded in

translating into words the clear intention of the legislature and to that extent the Act is an inelegant and confused piece of drafting. However, since the intention is clear a harmonious reading of all the provisions consistent with that intention is necessary to interpret and understand each of the said provisions. The intention of the legislature is to acquire all vacant land in excess of the ceiling limit prescribed by the Act and the main purpose of the Act, as stated earlier, is three-fold, viz., (i) to prevent concentration of the urban land in the hands of a few persons and to prevent speculation and profiteering therein; (ii) to distribute the urban land equitably; and (iii) to regulate the construction of buildings on the urban lands. Consistent with these objectives, the Act provides for acquisition of all urban vacant land in excess of the ceiling limit and prohibits its transfer in any form absolutely. All that the Act permits in the case of such excess vacant land is either express exemption from the operation of Section 3 to 19 of Chapter III of the Act by the State Government under S. 20 or non-declaration of such land as an excess vacant land by the competent authority under S. 21 or the retention of such land with the land-holder to be permitted by the competent authority under S. 22 of the Act.

45. The effect of exemption of the land from the provisions of Ss. 3 to 19 or of the non-declaration of the land in excess land or of the retention of the land with the land holder under Ss. 20, 21 and 22 respectively, is not to permit the land-holder to deal with it as he likes including to transfer it. In fact, the exemption, the non-declaration and the retention permitted, is on certain conditions which are required to be prescribed by the State Government or the competent authority as the case may be. If those conditions are not complied with or are contravened, the State Government or the competent authority is given power to withdraw the exemption or to declare the land as excess. This power given to the State Government and the competent authority itself negatives either power to permit the transfer or the right to transfer. What is more, Chapter IV which alone makes provision for transfer of vacant land within the ceiling limit subject to certain conditions. It also makes provisions for the transfer of land in excess of the ceiling limit with a building thereon or with a portion of such building. It makes, however, no provision for transfer of land in excess of the ceiling limit without a building or a portion of a building thereon. That is consistent with the object of the Act since the Act does not contemplate transfer of the vacant land in excess of the ceiling limit. It only provides for exemption of such land from being acquired and vested in the State Government or for non-declaration of it as an excess land or for the retention of the same with the holder and that too subject to certain conditions which may be prescribed, as stated earlier."

In the light of the aforesaid pronouncement of the Supreme Court and against the background of the provisions of the Act, the validity or otherwise of the impugned order is to be examined. In this context, it is useful to extract S. 20 of the Act and the impugned order which read as follows :

"20. (1) Notwithstanding anything contained in any of the foregoing provisions of

this Chapter:

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

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

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

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

Annexure--S reads thus :

(Vernacular matter omitted)

From the reading of the order, it is clear that the State Government in exercise of its powers conferred under S. 20(1)(a) of the Act has permitted the 6th respondent to demolish the buildings standing in 5 acres of land in Sy. No. 97/2 and 20 guntas of land in Sy. No. 98 of Yeshwanthpur village, and to undertake group housing project and thereafter to sell the same in favour of industrial workers of the area subject to certain conditions.

28. Under S. 20(1)(a) of the Act, the State Government is given power to exempt the excess vacant land from the provisions of Ss.3 to 19 of the Act only if the State Government is satisfied that having regard to (i) the location of the land; and (ii) the purpose for which it is being or proposed to be used, it is necessary or expedient in the public interest to exempt it. The paramount consideration is the public interest. The exemption granted by this provision may be subject to certain conditions. The exemption under clause (a) of S. 20(1) is obvious for the land being put to a particular use which use is also necessary or expedient in the public interest and the exemption under clause (b) is for relieving the person concerned from any undue hardship which may be caused to

him personally. Considering the question whether the Government is empowered to permit the holder to sell the vacant land, the Supreme Court in Vasudeva's case has held as follows :

"The very fact, however, that the legislation has contemplated impositions of conditions on exemptions granted under both the clauses shows that the purpose of exemption under either of the clauses cannot be the transfer of land."

It is obvious from the decision of the Supreme Court in Vasudeva's case that the State Government in exercise of its power conferred under S. 20(1)(a) of the Act has no authority to sanction permission to sell the vacant land, either with or without building.

29. Sri K. Subba Rao, learned counsel appearing for the petitioner submits that in view of the law laid down by the Supreme Court in Vasudeva's case, the sanction accorded by the Government to the 6th respondent permitting him to sell after constructing the houses is without the authority of law and therefore the order is void and liable to be quashed. It is his further submission that the first respondent in making the impugned order has violated the rule of law which is per se injurious to the public interest. The impugned order has rendered the purport and intent of the Act otiose.

30. Sri S. G. Sundaraswamy, the learned senior counsel, submits that the State Government has not passed any order permitting the 6th respondent to sell the vacant land as contended by the petitioner. The petition is therefore misconceived. The State Government is the competent authority to exempt the land in question from the provisions of Chapter III of the Act in the public interest. The construction of group houses for the benefit of the industrial employees residing in the area being a public purpose, it cannot be said that the impugned order is invalid in law. It is further submitted that the law laid down by the Supreme Court in Vasudeva's case is not applicable, as the question in controversy in the said case was with respect to the power of the Government to permit the holder to sell the excess land in exercise of powers conferred by S. 20(1)(b) of the Act.

31. It is seen from the impugned order that the Government in exercise of its powers conferred by S. 20(1)(a) of the Act has accorded permission to the 6th respondent, to dismantle the existing buildings in Sy. Nos. 97/2 and 98 of Yeshwanthpur; to personally take up group housing project and to sell the same for residential purpose in favour of industrial workers of the area. It is true that there is no permission to sell vacant land. The provision is only to sell the houses after construction, and to construct group houses after demolishing the existing constructions. As has been held by the Supreme Court in Vasudeva's case under S. 20(1)(a) of the Act "the State Government is given power to exempt the excess vacant land from the operation of Chapter III only if the State Government is satisfied that having regard to (i) the location of the land; and (ii) the purpose for which it is being or proposed to be used, it is necessary or

expedient in the public interest to exempt it" and "the effect of exemption of the land from the provisions of Ss. 3 to 19 under S. 20 of the Act is not to permit the land holder to deal with it as he likes including to transfer it." In order to overcome aforesaid legal impediment, an ingenious and novel method has been adopted by the Government, granting permission to the 6th respondent to demolish the existing constructions; to personally undertake group housing scheme and to sell the same for the residential purposes of industrial workers of the area. No conditions are imposed in the impugned order as regards the dimension of the houses in the proposed group housing project, the cost of construction, the price of each house and the class of workers to whom the houses are to be sold. In the absence of any conditions, as prescribed by R. 11A of the Urban Land (Ceiling and Regulations) Rules (for short "the Rules") as regards the dimension and maximum cost of construction and sale price, there is every possibility that the purpose for which the permission is granted is likely to be defeated for want of financial capacity of the industrial workers to purchase the houses at the rate fixed by the 6th respondent. In case the industrial workers are unable to pay the price demanded by the 6th respondent, there is no prohibition for the 6th respondent to sell the same "to whomsoever he likes. From these facts it is clear that what could not have been achieved directly has been made possible indirectly.

32. From the impugned order, it is clear that the State Government in exercise of its powers under S. 20(1)(a) of the Act, has granted permission to the 6th respondent to deal with the property in a manner not permissible by law. Section 20(1)(a) of the Act, as stated above deals with the power of the Government to exempt vacant lands from the provisions of Ss. 3 to 19 of the Act, and it does not give any power to the Government, to deal with the land which becomes vacant land consequent upon the demolition or destruction of building on such land in the urban agglomeration area.

33. It is seen from the scheme of the Act that as soon as the building on any land is demolished or destroyed either by the holder of the land or solely due to natural causes and beyond control of human agency, the land on which the building has been constructed becomes vacant land and gets attracted by the provisions of S. 22 of the Act. Section 22 of the Act reads as follows :

"22. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where any person demolishes any building on any land held by him or any such building is destroyed or demolished solely due to natural causes and beyond the control of human agency and as a consequence thereof, in either case, the land on which such building has been constructed becomes vacant land and the aggregate of the extent of such land and the extent of any other vacant land held by him exceeds the ceiling limit, he shall, within three months from the date of such demolition or destruction file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed, of all the vacant lands held by him.

(2) Where, on receipt of a statement under sub-sec.(1) and after such inquiry as the competent authority may deem fit to make the competent authority is satisfied that the land which has become vacant land is required by the holder for the purpose of re-development in accordance with the master plan, such authority may, subject to such conditions and restrictions as it may deem fit to impose, permit the holder to retain such land in excess of the ceiling limit for such purpose and where the competent authority is not so satisfied and does not so permit, the provisions of Ss. 6 to 14 (both inclusive) shall, so far as may be, apply to the statement filed under sub-sec. (1) and to the vacant land held by such person in excess of the ceiling limit."

Section 22 enables a person to hold the vacant land on which there stood a building which he demolished or destroyed or which was demolished or destroyed on account of natural causes. The holder of such land is required to file a statement in that behalf within three months from the date of demolition or destruction and if the competent authority is satisfied that such a land is required by the holder for the purpose of re-development in accordance with the master plan, the authority may subject to such conditions and restrictions, permit the holder to retain such land for such purpose. However, if the competent authority is not satisfied and does not therefore give permission for re-development, the provisions of Ss. 6 to 14 of the Act become applicable, even to such land. S. 22 of the Act gives no power to the Government to grant permission to the holder, to construct houses or group-houses on the land which has become vacant land on account of demolition or destruction of buildings which stood thereon as on the date of commencement of the Act. It gives power to the competent authority to permit the holder of the land to retain such vacant land on being satisfied that the holder requires the said vacant land for re-development in accordance with master plan. It is also open to the competent authority to refuse to give permission to the holder to retain the vacant land, if he is not satisfied of the requirement of the holder, in which case Ss. 6 to 14 of the Act become applicable, even to such land. It is also open to the competent authority to impose conditions and restriction at the time of granting permission to the holder to retain the vacant land and such order shall be only after such enquiry as the competent authority may deem fit to make.

34. It is also useful to refer to S. 27 of the Act which prescribes the procedure for transfer of urban or urbanisable land in excess of the ceiling limits, with building or portion of a building, as the provision to the extent it operates on the vacant lands with the ceiling limit has been struck down, by the Supreme Court, in the case of *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, It prohibits transfer of urban or urbanisable land by way of sale, mortgage, gift, lease for a period exceeding 10 years or otherwise except with the previous permission of the competent authority. The competent authority is empowered to grant or refuse permission to transfer, after holding an enquiry. The power conferred in the Government by S. 20(1)(a) and (b) of the Act is entirely different from the power conferred in the competent authority under S.

22 of the Act. From the scheme of the Act, it is clear that the different authorities are given different powers. Where specific powers are conferred in specified authority under the statute, it is those authorities alone that should exercise such powers, in the absence of any provision to relax such powers, in favour of such other authority. It is also to be seen that the Act does not provide for any provision for permission to demolish the construction, for there is no need to obtain such permission to demolish construction. The intention to file an application by the 6th respondent to obtain permission for demolition to undertake group-housing scheme is obvious. This application appears to have been made only with the intention to obviate the provisions of the Act.

35. Sri K. Subba Rao, learned counsel appearing for the petitioners would submit that, where a land on which there stood a building becomes a vacant land on account of the said building being demolished by the holder or destroyed on account of natural causes, it is only the competent authority which is empowered to permit the holder to retain such land for the purpose of re-development in accordance with the master plan, with such conditions and restrictions as may appear proper and the State Government is not given any authority by statute to permit the holder to utilise such vacant land in any manner as is otherwise provided. The power conferred in the competent authority cannot be encroached upon by the State Government in the absence of any statutory provision. The impugned order is therefore violative of S. 22 of the Act, and hence void.

36. Sri S. G. Sundaraswamy, learned senior counsel, submits that the impugned order has been made by the Government only after receiving the report from the competent authority, who has also recommended for according the permission, and hence there is no illegality in the order. This Court in *K. B. Hanumanthappa v. B. H. Hanumanthappa* 1963 (1) Mys LJ 17 dealing with the powers of the Tahsildar and the Government relating to grant of land under Land Revenue Rules has held as follows :

"*** The power to make a grant which should reside in the Tahsildar under R.42 could not be unless by the adoption of a process known to law, acquired by the Government and the fact that the Government may have general powers of superintendence or control under the Land Revenue Code, cannot, in my opinion, confer on it the power to do an act which by the rule is conferred only on a Tahsildar."

In the case of *Muddaiah v. State of Mysore* 1965 (2) Mys LJ 666 this question again came up for consideration and this Court has held as follows :

"It is true, as observed by Balakrishna Iyyar, J. speaking for the Full Bench of the Madras High Court in *K. Nagarathnammal Vs. S. Ibrahim Saheb and Another*, where the statute has made provision in respect of particular mailers, it is to the statute that we have to look for the determination of the rights of the individuals and not in the vague and indefinite background of the overall powers of the Government. That is also the view expressed by the Supreme Court in *K.N.*

Guruswamy Vs. The State of Mysore and Others, of the judgment. That is what the Court observed therein :

"This Court had occasion to observe in The State of Assam Vs. Keeshab Prasad Singh and Another, a fisheries case -- that the sale of these licences forms such a lucrative source of revenue that State Legislatures have deemed it wise not to leave the matter to unfettered executive discretion; accordingly legislation has been enacted in most parts of India to regulate and control the licensing of these trades; Acts are passed and elaborate Rules are drawn up under them. It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

The Act and the Rules make it plain that liquor licensing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by Statute and Rules.

Govinda Menon, J. (as he then was), in The State of Madras Vs. Nadimpalli Subbaraju, laid down that the Government had no power to revise the order validly and duly made by the Revenue Officer in accordance with the rules."

37. It is thus clear that Section 22 of the Act, gives power only to the competent authority to permit the holder of the vacant land which becomes vacant land on account of the building stood thereon, being demolished or destroyed either by the holder or on account of natural causes, to retain the said vacant land for the purpose of re-development in accordance with the master plan and the Government gets on jurisdiction to permit the holder of the vacant land which has become vacant land on account of demolition or destruction to retain for any purpose, even though the competent authority recommends. The jurisdiction not conferred by the statute cannot be conferred by any authority under the statute.

38. From re-reading of S. 22 of the Act, it is clear that where any person demolishes any building on any land held by him or any such building is destroyed or demolished solely due to natural causes and beyond the control of human agency, the land on which such building has been constructed becomes vacant land, and if the aggregate of such vacant land and the extent of any other vacant land held by him exceeds the ceiling limit, he shall within three months from the date of such demolition or destruction, file a statement before the competent authority specifying the location, value and such other particulars as may be prescribed of all the vacant lands held by him. The competent authority after receipt of the statement and after holding such enquiry as may be necessary, if satisfied, that the land which has become vacant land is required by the holder for the purpose of re-development in accordance with the master plan, permit such holder to retain such land in excess of the ceiling limit for such purpose subject to conditions and restrictions that may be imposed. Where the competent authority does not permit, the provisions of Ss. 6 to 14 shall, so far as may be, apply to the statement filed and the vacant land. That, in case, the

holder is permitted to retain such land for the purpose of redevelopment, the competent authority is empowered to impose such conditions and restrictions as it deem fit in order to achieve the object of the Act. In case the competent authority does not permit the holder to retain the vacant land for such redevelopment, the provisions of Ss. 6 to 14 shall apply to the said vacant land, which provides for determination of vacant land in excess of the ceiling limit; for publication of notification declaring such excess vacant land deemed to have been acquired by the Government; and deemed vesting of such vacant land in the State Government free from all encumbrances and prohibition of transfer of the excess vacant land and also the alteration of the use of such land between the date of publication of notification under S. 10(1) and that of the notification published under S. 10(3) of the Act. Once the vacant land is vested in the Government, the question of permitting the holder to deal with such vacant land in the manner he likes does not arise. These statutory consequences which follow from the demolition or destruction of building or buildings stood on an urban land have been done away with, by the impugned order. That is not what Section 20(1)(a) of the Act is meant for.

The impugned order is therefore violative of the provisions of the Act. Hence, Point No. 2 is answered in the negative.

39. For the reasons aforesaid, the impugned order is liable to be quashed. However, the petition is liable to be rejected so far it relates to prayer for a writ of mandamus directing the first respondent to take action u/s 20(2) of the Act in respect of the lands in question and for a direction to the 6th respondent to retain the land for the company for its expansion, for the 6th respondent has not violated any of the conditions imposed by the Government in its order dated 31-12-1982.

40. In the result, I make the following order-

- (i) The writ petition is partly allowed.
- (ii) The order dated 31-5-1993 made by the first respondent in Order No. HUD 109 CUP 92 vide Annexure-S is hereby quashed.
- (iii) The writ petition is rejected as against other reliefs.
- (iv) In the circumstances of the case, the parties are directed to bear their own costs.

Sri K.Vishwantha, learned High Court Government Pleader is permitted to file memo of appearance within four weeks.

41. Petition partly allowed.