

(1987) 11 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 980 of 1980 with C.A. No's. 171, 488 and etc. etc. of 1981, 1772, 1709 etc. of 1983, 2993, 3027 of 1984 and 692 of 1987 with Spl. C.A. No. 2804 of 1980 with C.A. No. 412 of 1981

U.K. Acharya and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-11-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat Housing Board Act, 1961 — Section 82

Citation : AIR 1989 Guj 81 : (1988) 1 GLR 209

Hon'ble Judges : S.B. Majmudar, J;I.C. Bhatt, J

Bench : Division Bench

Judgement

Majmudar, J.—Introductory facts: Both these petitions under Art. 226 read with Art. 14. of the Constitution have been filed by large number of occupants of flats situated in colonies known as "H" and "L" colonies at Paldi Locality in this city. These, colonies were constructed by Gujarat Housing Board; respondent 2 in each of these petitions. 1 They were placed at the disposal of State of Gujarat, respondent I in both these petitions for allotting these concerned flats 396 in number,. to Government servants amongst others. Initially, these allotments were made to the concerned Government servants who were to be housed on the formation of the State of Gujarat on 1-5-1980. The petitioners contend that these flats should be allotted to them on hire-purchase basis and they should be made the owners thereof In this, connection, they challenge the resolution dated 18-2-1975 issued by the State of Gujarat in Public Works Department converting all the existing 396 flats in lower income group to hire purchase scheme for allotment on hire purchase basis and laying down certain, terms and conditions on which the scheme is to operate. They also challenged the addendum to the said resolution dated 10-3-1980. In special civil application No. 980 of 1980, there are 76 petitioners. As stated above, they are occupying the flats situated in these H and L colonies. They pray for a writ of mandamus or other appropriate

writ for quashing and setting aside the Government resolution dated 18-2-1975 as modified by later resolution dated 10-3-1980 and have also prayed for suitable permanent injunction against respondents I and 2 - State of Gujarat and Gujarat Housing Board respectively restraining them from allotting flats of "IT and "L" colonies in accordance with the said impugned resolution. They have also prayed for further direction to be issued to respondents I and 2 for allotting flats of "IT and "L" colonies on hire purchase basis to the I occupants of the flats on the date of the modified resolution dated 10-3-1980 irrespective of their income in the lower income group, middle income group and higher income group.

[x x x Paras 2 to 5 x x x]

Historical backdrop:-

6. II The parties have produced before us one circular of the Government of India in the Ministry of Works, Housing and Supply which was issued in the year 1959. By this circular, the Government of India have, sponsored a scheme called Low Income & group housing scheme. The circular consists of 8 paragraphs, all of which are not necessary for our purpose. However, paragraphs 1 and 2 are very important and therefore, they should be referred to in detail. Paragraph I under the scheme introduces the scheme which is essentially for the purpose of disbursement of loans by (a) For building and owning their the Central Government to State Government houses to enable the latter to construct new houses, Individuals with an annual income, not for the persons in low income group. The, exceeding Rs. 6,000/- and co-operative lower income group which is contemplated housing societies of such individuals by it consists of all persons whose Annual income does not exceed Rs. 6,000/-. Paragraph 2 of the "circular provides for eligibility of the persons who would be entitled to take benefit of the scheme and specifically provides that only those whose annual income does not exceed Rs. 6,000/- would be eligible to take the advantage of the scheme., Clause (c) of paragraph 2 permits the construction of houses to be sold or let out , on no-profit-no loss basis to the persons", who are eligible i.e. whose annual income does not exceed Rs. 6,000/- and further enables the State Government and local bodies to (iii) non-allocate not more than 25% of such houses to their own employees who are so eligible. With, this introduction, we would quote both those paragraphs of the circular which are as under:-

"1. Introduction : This scheme deals essentially with the disbursement of loans by the Central government to State government to enable construction of new houses for persons in the low income group. In Union Territories, however, the scheme is administered by the Central Government itself, through the Administrations concerned. As under the scheme is envisaged primarily for the purpose of housing persons whose annual income does not exceed Rs. 6,000/- and who do not already own houses. There will, however, be no objection to a State Government advancing loan to an individual, even if he owned a house already provided that the additional house is needed for his bona fide residential purposes. The State Government can also, if they so desire, advance loans to a

Housing Finance Corporation for the eligible persons belonging to low income groups and institutions, etc. for the construction of houses.

2. Eligibility : The following categories of persons institutions are eligible to take loans under the scheme on the conditions prescribed for each category.

(a) For building and owning their houses:-

Individuals with an annual income not exceeding Rs.6,000/- and co-operative housing societies of such individuals.

(b) For construction of houses which may be sold (either outright or on hire purchase basis, or let out by them, on no profit no loss basis) to their own employees eligible, as per paragraph 1 above, for benefits of the scheme:-

(i) co-operative Tenancy societies working on the principle of collective ownership rather here, it should be mentioned that the Gujarat than of individual ownership; Housing Board is undoubtedly an authority designated by the State Government.

(ii) public institutions run on a no profit no loss basis;

(iii) non-governmental but recognized :

(a) health institutions and hospitals

(b) educational trusts; and

(c) charitable institutions;

(c) for construction of houses which will be If 8. In the meanwhile on 20-2-1969, the disputed flats of "IT and "I: colonies were sold (either outright or on hire purchase basis) or let out on a no profit no loss basis to: persons eligible, as per paragraph 1above, for benefits of the scheme, provided that not more than 25 per cent of such houses will be allocated by them to their own employees:-

(i) local bodies; and

(ii) State Government must earmark at designated agencies.

Note : The State Government must earmark at least 10 per cent of the funds made available to them under the low income group housing scheme for disbursement to the agencies mentioned in paragraph 2(A) above. Co-operative societies should however receive preference in disbursement of loans".

Paragraph 5 of the said circular provides that the houses under the scheme visualized by it could be constructed by either or all of the agencies mentioned below: -

(i) the individual himself;

(ii) the co-Operative society;

- (iii) trusts and institutions;
- (iv) local bodies; and
- (v) the State Government or any authority designated by it.

Here, it should be mentioned that the Gujarat Housing Board is undoubtedly an authority designated by the State Government.

7. It was pursuant to the above referred scheme of the Central Government that the disputed flats of "IT and "L" colonies were built by the housing board at Ahmedabad. The affidavit, filed in the case reveal that construction of new flats was over in 1960 but the construction of all the flats was over some where in 1963. There are in all 396 flats in both the colonies. "12 colony having 256 flats which "L" colony having 140 flats". When this construction started, the concerned Government was the erstwhile Government of Bombay. But as a result of, the bifurcation of the" State of Bombay, the State of Gujarat came into existence on 1-5-60. We are informed that one letter was written by an under Secretary to. the Government of Bombay, Labour and Social Welfare Department on 19-2-1960 to the Chairman of the then existing Housing Board regarding the allotment of these tenements which were admittedly constructed for low income group persons. By this letter, the said Under Secretary informed the Chairman of the Housing Board that the Govt. had decided that the tenements as and when they were I ready for occupation "should be allotted temporarily to Government servants who are to be transferred to Ahmedabad as a result of proposed bifurcation of the present State of Bombay". He thus requested the Chairman to place these tenements as and when they became ready for occupation at the disposal of the Government for housing Government servants. Several months thereafter, the concerned Executive Engineer wrote, one letter to the Accommodation officer. Government of Gujarat on 27-5-1960 in forming him that the possession of 20 tenements at Paldi had been handed over to him (Accommodation officer) on 15-4-60. Several years thereafter i.e. on 18-3-1969, the Joint Secretary to the Government of India, in the Ministry of Work Housing and Supply wrote to Secretary, Labour and Social Welfare Department Government of Bombay agreeing to the diversion of all the 300 tenements which were constructed so far, for housing the State employees from the date of their completion. subject to the conditions that not more than 25% of all the houses built under the scheme were allotted to the State Government employees.

8. In the meanwhile on 20-2-1969, the Deputy Secretary to the Government of Gujarat in Public Works Department wrote to Deputy Secretary, Government of India, in the Ministry of Works, Housing and Supply Department a letter in connection with these 396 flats. Therein, he first referred to the diversion of 300 flats for housing accommodation and had then stated that since then"198 more houses were constructed thus completing the figure of 396 in all which were constructed under low income group housing scheme., He further informed him by this "letter that out of 396 flats, 367 flats were allotted to State Government

servants and 18 flats were given on rental basis to the eligible members of the public and the rest were utilised for accommodating the staff of Gujarat Housing Board. In para 3 of the said letter, he had further admitted that these houses were meant for "eligible" public on rental scheme and then in para 4, he made the following proposal:-

"The occupants of the above 396 houses are mostly falling within the income bracket admissible under the scheme and have requested this government to give them over these houses on hire purchase basis by taking out from the pattern of rental scheme. These persons are occupying the houses for a pretty long period of 8 to 9 years and as such the State Government is inclined to consider their request for allotment of these houses to the existing eligible occupants on hire purchase basis by forming the co-operative society."

In the last paragraph of his letter, he requested the Central Government to accord formal concurrence to the above proposal. A few months thereafter i.e. on 24-5-1969, the Central Government gave the following reply to this letter. As this reply forms the very basis of the two resolutions which are subsequently passed by the State Government, we prefer to quote the whole of it verbatim. The letter is written by an under Secretary to the Government of India and addressed to the Secretary to the Government of Gujarat, Public Works Department. It says: -

"I am directed to refer to your letter, No. LGS-1068/A, dated the 20th Feb. 1969 on the subject mentioned above, and to say that the State Government proposal for sale of 396 houses built at Ahmedabad under the low income group housing scheme, to their present occupants has been considered by the Government of India. It appears that out of these 396 houses, 18 houses have been allotted to eligible members of the public and 378 houses have been allotted to the State Government employees and the staff of the Gujarat Housing Board. The Government of India have no objection to the sale of these 396 houses to the eligible allottees on hire purchase basis subject to the condition that the aforesaid 378 houses occupied by the State Government employees and the staff of the Gujarat Housing Board plus any other houses which might have been allotted to the State Government/ Housing Board etc. employees if any, are not in excess of 25% of the total number of houses so far built by the State Government under the low income group housing scheme, as provided in para 2(c) of the scheme,"

It should be "noted here that reference to para 2(c) of the scheme which is found in the above referred reply is the reference to the circular of Government of India, paragraphs I and 2 whereof have already been" quoted above.

9. After receiving the above referred letter dated 24th May 1969, from the Central Government, the State Government took action as late as on 17th April, 1971 which has been brought on record of special civil, application No. 980 of 1980 at page 35 at annexure "B". So far as this resolution is concerned, it is not necessary to quote the whole of it. would however, be necessary to refer to

certain relevant portions thereof. It says that the Government was inclined to consider the request (the occupants subject to their eligibility for allotment on hire purchase basis. The Government of India was requested to accord formal concurrence; to give over these houses to the existing eligible occupants on hire purchase basis by taking them out from the pattern of rental scheme. It thereafter refers to the above quoted letter of the Govt. of India dated 24-5-1969 and says that the said Govt. have communicated their no objection to the sale of these houses to the eligible allottees on hire purchase basis and then it proceeds to state as under:

"The State Government after careful consideration has decided to give these houses in H and L colonies to the eligible allottees who may be in continuous occupation of the houses in these colonies for five years or longer on 24-5-1969. The income eligibility of the occupant should be what was in force at the time of the first allotment of a house to him in either of the colonies."

The pertinent points to be noted with regard to the above quoted except from the resolution are that according to those who were in continuous occupation of the flats in these colonies for 5 years or longer on 24-5-1969 which was the date on which the Central Government addressed the above referred letter to the State Government and the fact that the income eligibility which was provided therein was what was in force at the time of the first allotment of a flat to an applicant in either of the two colonies. The above portion is mentioned in the resolution as preamble but the main resolution thereafter follows and says that out of the total number of 396 flats belonging to low income group only 200 flats were proposed to be converted for allotment to the occupants on hire purchase basis provided the occupants satisfied the following conditions:

- (1) Continues occupation of flat in either, of the two colonies for a period of 6 years or longer on 24-5-1969.
- (2) Income eligibility for the purpose of allotment should be within the limit laid down in low income group housing scheme as applicable on that date, and
- (3) Those who were retired and vacated the houses should not be considered eligible for allotment.

10. The above resolution seems to have remained in force for about a year and 2 months, but for the reasons best known to the State Government, on 22-6-1972 by a later resolution (which is at Annexure "C" to special civil application No. 960 of 1980), the above resolution was modified and the resolution at Annexure "C" was passed. Since this resolution is the target of the attack of the petitioners, it would be proper to quote it verbatim:

"Resolution:

In modification of Government resolution Public Works Department No. LGS-1068-A dated the 17th April, 1971, referred to above, Government is pleased to convert all the existing 396 low income group houses constructed by

the Gujarat Housing Board Paldi, Ahmedabad from Rental scheme to hire purchase scheme for allotment on hire purchase basis on the following terms:-

(a) For the purpose of eligibility, the income of the applicants for allotment of these houses should be within the limit of low income group housing scheme as on 1-5-60. This shall apply in respect of all the applicants irrespective of whether they are occupying the houses in H and L colonies or not.

(b) Employees of the housing board and other citizens who are already occupying these quarters shall also be considered eligible to apply.

(c) The last date of receipt of application should be 31st July, 1972 and the Gujarat Housing Board shall invite the applications as laid down under the low income group housing scheme.

2. The allotment of houses after receipt of 1, applications shall be made as per criteria mentioned below:

(i) from among the applicants those who are already occupying the houses or who were occupying but for their transfer to Gandhinagar shall have first preference for allotment of these houses. For this purpose, the allotment shall follow in order of preference i.e. those who have been staying for a longer period shall have first preference over those who have stayed for a lesser period shall have next preference and so on. In any case, the applicants should have at his credit a continuous occupation of minimum two years.

(ii) after giving away quarters as per criterion (1) above, if any quarters are left, the employees of the Gujarat Housing Board who are already staying shall then get first preference.

(iii) number of houses that may be left after above two criteria are followed, the same should be given to others,

3. The Housing Commissioner, Gujarat Housing Board shall take necessary action for inviting the applications and making allotments on the lines mentioned above."

A bare perusal of this resolution reveals the Modification which was made by it on the previous resolution. By virtue of the said resolution, all persons who belonged to low income group Were made eligible irrespective of the fact whether they were occupying the houses in both the colonies or not. But the important point to be noted is that the criterion for deciding whether a, person belongs to low income group or not, was with reference to a data, which was about 12 years old. That date was 1-5-1960. In other words, by virtue of this resolution, those persons whose annual income was less than Rs. 6000/- on 1-6-1960 were made eligible to apply for -allotment of disputed flats on hire purchase basis. This is the main classification which, is contemplated by this resolution. Another classification of eligibility covered the employees of the housing board who were already in occupation of the disputed flats. Para 2 of the

resolution thereafter proceeded to fix certain criteria for the purpose of giving priority in allotment from amongst the persons who were found eligible. We will advert to all these classifications at a later stage but the point to be noted at this stage is that the resolution made a serious departure from the previous resolution in so far as it laid down a different standard for income eligibility by giving a retrospective & for the purpose of deciding whether a person falls within that category or not. The resolution further directed the Housing Commissioner of the, Board to take necessary action for inviting applications and making allotment on the lines mentioned therein.

11. Pursuant to this resolution of the Government, the Housing Board issued an advertisement. This advertisement repeated the conditions and directions given in the resolution dated 22-6-1972 of the Government and then stated that the disposal of property regulations" for low income group and-middle income group scheme of the Board were applied even to the present scheme and that the booklet of Regulations would be available from the office of the Estate Manager, of the Board.

12. Some of the occupants of the flats in H and L colonies felt aggrieved by the promulgation of the aforesaid resolution dated 22-6-1972. They, therefore, filed special civil application No. 1175 of 1982 in this Court. The said resolution which was at Annexure "B" to that petition was challenged on diverse grounds. A learned single Judge of this Court (Coram: T. U. Mehra, J.) decided the said petition by his judgment dated 3.4/10-1972 Before T. U. Mehra, J. amongst others, it was contended that the said resolution was contrary to Regulation 33 framed by the Gujarat Housing Board in exercise of its powers under S. 74 of the Gujarat Housing Board. That contention was repelled by taking the view that the regulation was not having any statutory effect and that it could be superseded by the directions issued under S. 82 of the Act by the State Government and that the resolution was issued by the State of Gujarat in exercise of that power. The learned single Judge also repelled the contention raised by the petitioners challenging the priority given to the ex-occupants of H and L colony-flats who were transferred to Gandhinagar on the shifting of the capital from Ahmedabad to Gandhinagar. However, the learned single Judge took the view that the impugned classification based on income eligibility as on 1-5-1960 which the occupants had to satisfy before becoming entitled under the resolution to purchase the concerned flats was not based on any rational principle and was arbitrary and hit by Art 14 of the Constitution. Having taken that view, the learned Judge quashed and set aside the -aid. resolution at Annexure "B" to the said petition and accordingly allowed the petition, by directing the respondents in the petition not to dispose of the disputed flats on-the basis of the said income eligibility as mentioned in that resolution. In short, the entire resolution was quashed and set aside by T. U. Mehra, J. The State of Gujarat feeling aggrieved by the said decision of T. U. Mehra, J. filed Letters Patent Appeal No. 4 of 1973 in this Court. The said Letters Patent Appeal was admitted to final hearing. The developments that took place pending the Letters Patent Appeal have been

brought on record of special civil application No. 980 of 1980 by the State of Gujarat by filing further affidavit- in- reply of Shri H. D. Kayak, Under Secretary, Urban Development and Urban Housing Department, State of Gujarat. It has been pointed out therein that during the course of the hearing of the Letters Patent Appeal, a compromise formula was evolved. The Government worked out high principles for allotment of these tenements on hire purchase basis which were communicated to the Court.

[x] [Para 13. x x x]

14. It is, therefore, submitted that what is stated hereinabove clearly shows that the impugned Govt. resolution dated 18-2-1975 was issued as a result of a compromise formula evolved during the course of hearing of the Letters Patent Appeal, and that it cannot be said to be arbitrary or irrational or capricious or otherwise violative of Art. 14 of the Constitution.

15. It appears that after issuance of the aforesaid Govt. resolution dated 18-2-1975, the implementation thereof could not be effected immediately thereafter as the Housing Board seems to have taken some objection regarding grant of priority No. I to the concerned persons mentioned therein and that the Housing Board insisted that employees of the Housing Board should also be given first preference by placing them in the first category and ultimately, the said suggestion of the Housing Board seems to have been accepted by the State of Gujarat and that is how modification resolution dated 10-3-1980 was issued by the State of Gujarat. Sub-para (i) of para 1 of the Govt. resolution dated 18-2-1975 was accordingly amended by inserting the words and employees of the Gujarat Housing Board after the words members of the public as appearing in the said sub-para, and similarly words of Gujarat Housing Board were added after the words Controller of Accommodation appearing in para 2(a) of the Govt. resolution dated 18-2- 1975. It appears that thereafter, the respective authorities started procedure of implementing the said resolution dated 18-2-1975 as modified and undertook the exercise. of scrutinizing cases of the eligible persons with a view to making final allotments to them of the concerned flats if they satisfied- the requirements and conditions of Govt. resolution dated 18-2-1975. It is at this stage that the present two petitions came to be filed by those petitioners, who are not in a position to get their cases covered by any of the categories mentioned in Govt. resolution dated 18-2-1975, meaning hereby, who are not likely to obtain ownership of flats occupied by, them in H and L colonies as they did not satisfy the terms and conditions as laid down by the said resolution, to become entitled to purchase those flats under the hire purchase scheme. Most of the petitioners in special civil application No. 980 of 1980 do not get preferential coverage of the said resolution on the ground that they were not occupying their respective houses on 22-6-1972. Thus category II of the categories mentioned in para 1 of the resolution does not cover them; while the rest of the petitioners in special civil application No. 980 of 1980 as well as the petitioners in special civil application No. 2804 of 1980 do not get benefit of the

said resolution on the ground that they did not satisfy the eligibility criteria as laid down by para 2 of the resolution inasmuch as they were not within the limits specified for lower income group housing scheme on the dates of their respective initial occupations of the houses. Consequently, these dissatisfied petitioners who did not get coverage of this resolution and who apprehended that if flats are allotted to others in the hire purchase scheme, the petitioners may be likely to be dispossessed ultimately by those successful allottees, have been driven to file these petitions challenging this resolution on diverse grounds.

16. It must be kept in view that no grievance was made before us by the learned Advocate for the petitioners about the decision taken by the State of Gujarat to convert H and L colony-houses into hire purchase scheme flats, meaning thereby, the said decision of the State of Gujarat was not brought in challenge. But their only contention was that the petitioners also should be considered eligible to preferentially get these flats under the hire purchase scheme as after present occupants thereof. However, if such a view was not possible, they put forward an extreme posture that the resolution would be bad and should be liable to be quashed wholehog, or at least partially qua certain categories of persons mentioned therein who, according to the learned Advocate for the petitioners, were being given, arbitrary and irrational preference under the resolution and that the same cannot stand the scrutiny of Art. 14 of the Constitution.

[x x x x x]

[Paras 17 to 23 x x x]

24. [IV. Rival contentions: - Mr.K. G. Vakharia, learned advocate for the petitioners in special civil application No. 980 of 1980 and Mr. N. J. Mehta, learned advocate, for the petitioners in companion petition No. 2804 of 1980 raised various contentions in support of these petitions. They can be broadly divided into two categories:-

25. (A) Main challenges to the legality of the impugned resolutions dated 18-2-1975 and 10-3-1980:

(1) The date of operation of the resolutions with effect from 22-6-1972 is chosen arbitrarily" which has no nexus to the objects sought to be achieved and consequently, the said date of operation is required to be declared null, and void and; hit by Art. 14 of the Constitution.

(2) Clause 2 of the impugned resolution dated 18-2-1975 fixing, for the purpose of eligibility for allotment of houses, income of the person applying to be within limits specified for lower income group housing scheme, is arbitrary, null and void. That the income eligibility criterion has no nexus to the object sought to be achieved and is wholly irrational and violative of Art. 14 of the Constitution.

(3) The impugned resolutions are contrary to the statutory regulations prescribed by the Gujarat Housing Board in exercising of its powers under S. 74 of the, Gujarat Housing Board Act, and, therefore, null and void.

(4) The impugned resolutions are also contrary to the statutory rules framed under the provisions of the said -Act and, therefore, null and void.

(5) The impugned resolutions are issued by the State of Gujarat in exercise of its powers under S. 82 of the Act without following the procedure laid down therein and hence also, the said resolutions are null and void.

We may mention at this stage, that Mr. Vakharia for the petitioners in special civil application No. 980/80 raised all the aforesaid challenges. But so far as Mr. N. J.Mehta for the petitioners in special civil application No. 2804/80 is concerned, he supported his petition on all these main challenges save and except challenges Nos. (3) and (4) which, according to him, were not being pressed by the petitioners whom he represented.

(B) Ancillary challenges:-

26. (1) The priority accorded to category (iii) of Para I of the resolution dated 18-2-1975 where under Govt. servants holding nontransferable post but who have been shifted to Gandhinagar as a result of shifting of capital from Ahmedabad to Gandhinagar were given preferential right to purchase these tenements as compared to persons listed in succeeding categories, is patently bad and has no nexus to the object sought to be achieved by the scheme of hire purchase underlying the impugned resolution and, therefore, this category of -employees should not be treated to be eligible to be allotted flats situated in H and L colonies on priority basis.

(2) As a sequitur to the aforesaid contention, a similar challenge would arise in connection with category (vi) in the scheme of priority envisaged by Para 1 of the resolution dated 18-2-1975 where under Govt. servants who have been transferred outside Ahmedabad but who were continuously residing in any of these houses before transfer are made eligible to purchase these houses. We may mention at this stage that so far as these, ancillary contentions are concerned, the main attack of the learned Advocate for the petitioners centred round persons included in category (iii) in the scheme of priority envisaged by Para I of the resolution dated 18-2-1975. But as a logical sequence of that attack, cases of employees comprised in category (iv) of the scheme of priority also would become vulnerable and that is how the said challenge will have to be examined as a sequitur to the main ancillary challenge centering round category (iv).

27. On the other hand, the learned Advocates for persons covered by category (iii) in the priority list of persons eligible to purchase the houses in H and L colonies as envisaged by the impugned resolution dated 18-2-1985 vide Paras, Shri Mohit S. Shah and B. P. Tanna refuted these contentions. Mr. M. C. Patel, learned Asstt. G. P. appearing for State of Gujarat as well as Mrs. K. A. Mehta for the Housing Board also opposed these challenges and they were joined in their submission by Mr. Y. V. Rathi for some of the respondents who were opposing the petitions.

[x x x x x]

[Para 28. x x x]

29. V. Statutory settings : Before we proceed to analyse and deal with the rival contentions canvassed by the learned Advocates of the respective parties, in support of their cases, it will be profitable to have a quick glance at the statutory settings in the light of which the present controversies between the parties will have to be resolved.

30. The matter is governed by the Act known as Gujarat Housing Board Act, 1961 (Gujarat Act 23 of 1961) (which is hereinafter referred to as "the Act") and the rules and regulations framed there under and, therefore, a brief reference to the relevant provisions thereof at this stage would be necessary to understand properly the contentions raised by the parties.

31. Section 3 of the Act contemplates the establishment of a Board by the name of Gujarat Housing Board. By virtue of the Section, this Board is constituted as a body corporate competent to acquire and hold property both movable and immovable as well -as to construct and to do all things necessary for the purpose of the Act. The Board is deemed to be a local authority for the purpose of that Act as well as the relevant Land Acquisition Act. Here, it should be mentioned that before the Act came into force, there were other Acts in force called "The Bombay Housing Board Act, 1948" and "Saurashtra Housing Board Act, 1954". Both these Acts having been repealed and replaced by the Act. As a consequence the Boards functioning under the repealed Acts were dissolved and on such dissolution all properties movable and immovable, rights, liabilities and obligations of the dissolved Boards became vested in the Board established under S. 3 of the Act as per S. 86 thereof. Section 20 of the Act empowers the Board to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of the purposes of the Act. Section 21 provides that every contract shall be made on behalf of the Board by the Chairman but this power is limited by the proviso which is attached to it. For the present, we are not concerned with this proviso and therefore, we shall proceed to consider the provisions of Chapter III which relates to Housing Schemes. This chapter begins with S. 24 which provides for the duties of the Board to undertake housing scheme subject to the control of the -State Government. Section 25 speaks of the matters to be provided for by the housing scheme. Clause (g) thereof seeks to make provision for the sale, letting or exchange of any property comprised in the scheme and Clause (i) "speaks about the provision for the accommodation for any class of inhabitants. Then Ss. 27 to 30 speak about the annual housing programme, the manner in " which the said programme is required to be sanctioned, the sanction which is required to be obtained for the programme and final publication of the sanctioned programme. These four sections, therefore, show that the Act envisages not only the publication of the programme for housing schemes but also the invitation of suggestions and objections from the members of the public as regards. The various schemes

undertaken by the Board, After the programme is so sanctioned, the execution thereof is contemplated by S. 33 of the Act. Section 34 stipulates the publication of the housing schemes in the official gazette. These are the only relevant provisions of Chapter III for the purpose of determining this writ petitions;and, therefore, it is not necessary to refer to other sections of this Chapter. The relevant chapter which we thereafter find is Chapter IV which is with regard to acquisition and disposal of land belonging to the Board. Section 49 of that chapter says that the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or other property vesting in it and situate in the areas comprised in arty housing scheme sanctioned under the Act. This is the only relevant provision in Chap. IV. Chapter V is with regard to constitution of tribunal under the Act with which we are not concerned. Chapter VI empowers the Board to evict persons from Board premises. Chapter VII is relating to finance, accounts and audit, while Chap. VIII provides for miscellaneous things. There are a few sections of this Chapter, which are relevant for the purpose of these writ petitions. We will, therefore, presently make reference to these sections. Section 73 empowers the State Government to make rules for carrying out the purposes of the Act, and particularly for the subjects, which are mentioned therein. Section 74 empowers the Board to make regulations consistent with the Act and with the rules framed by the State Government, with the previous sanction of the State Government. These regulations are contemplated under four heads, namely: a) for the management and use of buildings constructed under any housing scheme; (b) for the principles to be followed in allotment of tenements and premises; (c) for the remuneration and conditions of service of the Secretary, Housing Commissioner and other officers and servants of the Board and (d) for regulating its own procedure and the disposal of its own business. So far as we are concerned in these writ petitions, the relevant power is the power contained in Clause (b) which authorises the Board to make regulations prescribing the principles to be followed in allotment of tenements, and premises. Then follows S. 75 which empowers the Board to make bye-laws which are not inconsistent with the provisions of the Act, but which may be necessary or expedient for the purpose of carrying out Board's duties and functions under the Act. Section 76 provides for penalty for contravention of bye-laws. At this stage, the pertinent point to be noted is that though with regard to bye-laws there is a penalty clause as provided in S. 76 there is no such corresponding provision for the. regulations framed by the Board under S. 74. We shall advert to this point at a subsequent stage but or the present, we will proceed to the consideration of further provisions contained in Chap. VIII.

32. Section 82, which finds its place in Chap. VIII refers to the State Government's powers to give directions to the Board. It says that the State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purpose of the Act after giving opportunity to the Board to State its objections, if any, to such directions and after considering

said objections. The section further directs that it shall be the duty of the Board to comply with, such directions issued by the State Government. Section 84 empowers the State Government to dissolve a particular Board under certain circumstances and the consequences which would follow such a dissolution. This provision is important only for the purpose of showing the control which the State Government exercises over the Boards established under the provisions of the Act.

33. These are the relevant provisions of the Act which directly or indirectly have some bearing on the questions involved in these petitions. So far as the rules which are framed by the State Government by virtue of the power under S. 73 of the Act are concerned, we find that there is only one rule which is relevant and this rule is R. 10A which is with regard to disposal of property. This R.10A is sub-divided into three sub-rules. Sub-rules (1) and (2) are not relevant for our purpose because they refer to the property which is required to be transferred by the Board in favour of the State Government. But sub rule (3) has some bearing on the facts of the present case and, therefore, it would be proper to quote it as under :

"10A(3). Subject to the provisions of sub rules (1) and (2), the Board shall not lease, sell, exchange or otherwise dispose of any immovable property vesting in it and situate in the areas comprised in any housing scheme sanctioned under the Act, without the prior approval of Government. Such transfer shall be subject to such terms and conditions as Government may determine in each case in that behalf:

Provided that, in the case of a lease, the Board shall communicate to Government the terms and conditions of the proposed agreement and if no approval is received by the Board from Government within thirty days from the date of receipt of such communication by Government, the Board may proceed to settle the proposed agreement as if Government has approved the proposal;

Provided further that no such approval shall be required:

- (a.) for allotment of tenements and premises according to the regulations made by the Board in that behalf; and
- (b) for leasing any vacant land for period not exceeding two years at a time; and
- (c) for sale or demolition of any building or structure, which is in a dangerous condition or beyond repair."

It will thus be seen that by virtue of the proviso (a), the approval of the State Government is not required for allotment of tenements and premises according to the regulations made by the Board in that behalf. This particular proviso is relevant for the purpose of these petitions.

34. Having thus seen the provisions of the Act and the rules we shall now proceed to the relevant provisions contained in the Regulations, which are

framed by the Board by virtue of the power, which it has got under S. 74 of the Act. These regulations have been approved by the State Government on 2nd January, 1964. The regulations bear the title "Disposal of Property". Regulation No. 2 is important. It is in the following terms : -

(2) These regulations shall apply generally to these schemes in which properties created there under are to be disposed of by way of sale or hire purchase and in particular to the following schemes

(a) Low income group housing scheme, and

(b) middle income group housing scheme."

35. The regulation thus makes it clear that the other regulations apply in particular to the two types of schemes which are mentioned in Clause (a) and (b) thereof.

36. Regulation No. 5. gives certain definitions. Out-of these definitions, two definitions contained in clauses (43) and (44) are important. They are as under:

"(43) "Low income group person" means a person whose annual aggregate income does not exceed Rs. 6,000/-.

(44) "Middle income group person" means a person whose annual aggregate income is above Rs. 6,000/- but does not exceed Rs. 15,000/-.

37. We are told that both these definitions have undergone amendments in the year 1968 with the result that instead of the figure of Rs. 6,000/-, the figure of Rs. 7,200/- should be read in both the clauses and instead of the figure of Rs. 1.5,000/- the figure of Rs. 16,000/- should be read in-clause (44).

38. Regulation No.7 is with regard to the disposal of Board's properties and provides that disposal of the property shall be effected by either hire purchase or sale as decided by the Board which shall also decide other criteria for disposal as found necessary or desirable including the criteria of eligibility provided that such criteria shall be in consonance with the schemes.

39. After a particular property of the Board is found ready for disposal the Board has, by regulation No. 27, onwards to regulation No. 56, made provisions as to the manner in which a particular property should be disposed of. Regulation No. 27 says that, the Housing Commissioner shall cause a public announcement to be made regarding the property being ready for disposal. Such announcement shall be sufficiently in advance, so that procedural part between the application and the handing over of then property to the allottee is completed not much later than the completion of the construction of the property and also, so as to enable the property to be, given in possession to the allottee without any undue delay, Regulation N6. 28 further provides that such public announcement shall be made in the local" papers and it shall state the. criteria including that of eligibility as fixed by the Board "as provided herein above, the place and the time for the prospective applicants to get the relevant informations and, the form of

application. The announcement shall also, state the starting date and the closing date. for receiving applications from intending purchasers. The other relevant regulation which is very important so, far as the facts of these cases are concerned, is regulation No. 33. It is in the following terms:-

"33. Properties created under a low income group housing scheme shall be allotted only to low income group persons and those under a middle income group housing scheme only to middle income group persons; provided that the benefit of such schemes shall be available to only that person who does not already own a house or a flat or a plot, for, the construction of residential building and who: shall be eligible for such allotment as a low: income group or middle income group person, as the case may be at the time of the application; provided further that the, Board or the property allotment committee, as the case, may be, may consider the case of any person even if he owns a house or a flat or a plot already, if the Board or the committee, as the case may be, is satisfied that the: additional house or, flat is needed for his bona fide residential purpose; provided further that such consideration shall not be given for any applicant who owns, either in, his own name or in the name of his wife of ,minor children a house or flat for residential purpose within the radius of 5 miles of the city or town where houses or flats are to be given on hire purchase system." (Altered to 8 Kms.)

These are the relevant regulations with which we are concerned in those writ petitions. We shall refer to then ill and when necessity arises during the discussion which follows.

40. VI. Before considering the preliminary. objection raised by the respondents against the feasibility of examining the main challenges mounted by, the petitioners, in order to give completeness to our judgment we have thought it fit to examine the merits of the main challenges canvassed by the learned Advocates for the petitioners for our consideration. For that purpose, we will assume that it is, open to the petitioners to raise these challenges and proceed to decide these challenges on merits.

41. (A), Main challanges: (i) Whether date of operation of the impugned resolution is arbitrary, So far as the contention is concerned, a mere look at the history of this, litigation shows that the State of Gujarat for the first time on 22-6-1972 decided to convert all these flats constructed by the Housing Board at Paldi from rental scheme to hire purchase scheme. Prior thereto, there was correspondence between the State of Gujarat on the one hand and the Central Government on the other about the need to convert H and L colony-tenements from low income group rental scheme to the low income group, hire purchase scheme. It is pursuant to that correspondence that ultimately by two stages, the State of Gujarat decided to make available H and L colonies for being covered by. the low, income group hire purchase scheme. Final decision to convert all 396 tenements comprised in H and L colonies to low income group hire purchase scheme came to be taken by the State of Gujarat for the first time on

22-6-1972. A copy of that resolution, as mentioned earlier, is at Annexure "C" to special Civil Application No. 980/80. By the earlier resolution of 17-4-1971 which is at Annexure "E" to that petition, the State of Gujarat had initially decided to convert 200 houses out of 396 houses constructed by the Housing Board comprised in H and L colonies from rental scheme to hire purchase scheme for allotment to persons on hire purchase basis. No decision was taken for the remaining houses. It is only thereafter that by resolution dated 22-6-1972, the State of Gujarat decided finally to convert all 396 houses comprised in H and L colonies from rental scheme to hire purchase scheme. Thus, comprehensive decision covering all 396 houses comprised in H and L colonies converting them from rental scheme to hire purchase scheme was taken by the State of Gujarat for the first time on 22-6-1972. The historical resume of facts narrated in the earlier part of this judgment shows that it is that resolution which was challenged before this Court in Special Civil Application No. 1176 of 1972 which was allowed by T. U. Mehta, J. on 3-4/10-8-1972 (reported in (1973) 14 Guj. IR 625) and it is thereafter that pending Paten appeal against that judgment on the suggestion of the Division Bench of this Court hearing the said Letters Patent appeal a compromise formula was arrived at between the contesting parties and that gave rise to the impugned resolution dated 18-2-1975. As the developments which took place before the letters patent appeal bench show, the impugned resolution dt. 22-6-72 on the anvil before the Division Bench was to be resurrected on certain terms and conditions as suggested by the Division Bench and which were accepted by the concerned parties. It is, therefore, obvious that the relevant date for bringing into effect the hire purchase scheme, concerning all 396 tenements of H and L colonies was required to be fixed as 22-6-1972 which was the date on which the State of Gujarat had finally decided to convert all these tenements in H and L colonies rental scheme to hire purchase Scheme. This date has, therefore, a historical significance and nexus and is not taken out as if from the hat by the State of Gujarat. It is obvious that if the Letters Patent appeal would have been allowed by the Division Bench of this Court and if certain conditions as suggested by the Court would have been inserted by the State of Gujarat in the impugned resolution before the Division Bench, the date for enforcement of this scheme of hire purchase would have, of necessity, been 22-6-1972, the date of that impugned resolutions before the Division Bench, It is precisely that date which has been taken as the date for operation of the impugned resolution of 18-2-1975. In view of the historical background of the facts and circumstances and the events which ultimately culminated into the impugned resolution of 18-2-1975 it cannot be said that the said date has no reasonable nexus with the scheme underlying conversion of all the tenements of H and L colonies from rental scheme to hire purchase scheme. The date, instead of being arbitrary and irrational, is based on relevant historical data and has direct nexus with the pivotal event viz. the policy decision for the first time taken by the State of Gujarat for converting H and L colonies from rental scheme to hire purchase scheme. As that pivotal event happened on 22-6-1972, it is that date which has

been adopted by the impugned resolution of 18-2-1975 as the date, with reference to which rights and obligations of the concerned parties who claimed entitlement to the benefits of hire purchase scheme concerning all 396 tenements situated in H and L colonies have to be worked out. We are, therefore, not in a position to accept the contention No. I raised by the learned Advocates for the petitioners viz. that selection of date 22-6-1972 for operation of the impugned resolution is arbitrary, irrational or illegal.

42. In this connection, we may, also refer to the stand of the State of Gujarat in the affidavit-in-reply filed by Mr. G. J. Mehta, Under Secretary to the Government of Gujarat, Urban Development and Urban Housing Department, in Special Civil Application No, 980 of 1980. In para 8 thereof, it has been averred that 22-6-1972 i.e. the date of Government resolution which was challenged in the Court of law is the basic date to consider the eligibility as per the "compromise formula. The compromise formula was given effect to in form of Govt. resolution namely Govt. resolution dated 18th February 1975 and therefore, these two dates are weighty factors.

43. Same averments have been made and same facts have been pointed out in the affidavit filed by Mr. P. O. Gupta on behalf of contesting respondents who has filed his affidavit in Special Civil Application No. 980 of 1980. In the, further affidavit-in-reply filed on behalf of State of Gujarat by Mr. B. D. Naik, Under Secretary, Urban Development and Urban Housing Department, additional facts are mentioned how the LPA bench had suggested terms for settlement and how Ultimately this settlement fructified into this resolution. We have made a detailed reference to the correspondence which ensued between the Government on the one hand and its Solicitors on the other pending the LPA. In these circumstances, therefore, it cannot be said that selection of 22-6-1972 for implementation and operation of the hire purchase scheme as envisaged by the Government resolution dated 18-2-1975 is in any way arbitrary or irrational. In this connection, we may refer to the settled legal position in the case of Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others, , the Division]Bench of the Supreme Court consisting of Sabyasachi Mukharji and S. Nataraj art, JJ. made the following. pertinent observations in para 28 of the report :

"Courts are not concerned with the unwisdom of legislation. "In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review". See in this connection the observations of Krishna 1-yer, J. in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, . This court approved the above passage from the American jurisprudence and emphasised that in a classification for governmental purposes there cannot be an exact "elusion or inclusion of persons and things. It is important to bear in mind the constitutional command for a state to afford equal protection of the law sets a goal not attainable by the invention and application of a precise formula. Therefore, a large latitude is allowed to the states for classification upon any reasonable basis. See also in this connection the

observations of this court in the Special Courts Bill In Re: The Special Courts Bill, 1978, , where Chandrachud, C.J. speaking for the Court at page s 534 to 537 (of SCR : (at p. 510 of AIR) laid down the proposition guiding Art. 14 and emphasised that the classification need not be constituted by an exact or scientific exclusion nor insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification. therefore. is justified if it is not palpably arbitrary".

44. In the case of Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, , the question before the Supreme Court was whether the criterion fixed under S. 3 of the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 for absorption of temporary lecturers who were appointed as such on or before 25-6-197 -5 and were continuing as such at the commencement of the Ordinance. was irrational or arbitrary inasmuch as it excluded from the coverage of the said provision any teacher who might have worked continuously from 26-6-1975 i.e. after the date fixed i.e., 6-1975. Upholding this criterion. Sabyasachi MukharjL J. speaking for the Supreme Court held that fixation of the said criterion had no irrationality underlying it and the choice of the date cannot be said to be an arbitrary choice. The Supreme Court Bench heavily relied upon the earlier decision of the Supreme Court in the case In re the Special Courts Bill, 1978 In Re: The Special Courts Bill, 1978, wherein the then learned Chief Justice had laid down the following principles to judge the validity of the impugned provisions under Art. 14 of the Constitution :

1. The first part of Art. 14, which as adopted from Irish Constitution. is a declaration of equality of thee civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based or the last clause of the first section of the Fourteenth Amendment of the American Constitution. enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favoritism. It is a pledge of the protection of equal laws. that is, laws that operate alike on all persons under Eke circumstances.

2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3.The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore. classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Art. 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which has a systematic relation, usually found in common properties and characteristics. It postulates a relational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but these qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act".

It is, therefore, obvious that while judging the State action, whether legislative or executive, in fixing a particular date for the implementation of the policy, the entire background of the facts and circumstances leading to the said decision has to be examined and in that light, it has to be found out whether the classification envisaged pursuant to the said date was in any way arbitrary or irrational. As we have already discussed earlier, on the facts and circumstances of this case, it cannot be said that the fixation of 22-6-1972 for operation of the impugned resolution of 1975 was in anyway irrational or arbitrary. On the contrary, it had direct nexus to the objects sought to be achieved viz. object to convert all 396 H and L tenements from low income group rental scheme to the higher purchase scheme and that object was to be achieved by the State of Gujarat by its comprehensive decision taken on 22-6-1972 and it is that object which is sought to be buttressed and fortified by the impugned resolution of 1975. The first challenge centering round fixation of 22-6-1972 as the date for operation of the

hire purchase scheme, therefore, stands rejected.

45. VI. (A)(ii). This takes us to the criterion of income eligibility as fixed in the impugned resolution dated 18-2-1975 As modified by resolution dated 10-3-1980. The learned counsel for the petitioners vehemently contended that in any case, fixation of income eligibility criterion in the said resolution is whimsical and patently arbitrary and irrational. When we turn to the resolution, we find in para (1) thereof that subject to the eligibility for allotment as provided in paragraph (2) below, the allotment of these houses shall be made amongst the eligible persons in accordance with the priorities listed in the said para. When we come to the criterion of eligibility as mentioned in para 2, we find that it is provided that the income of the persons applying for allotment should, on the date mentioned in Clause (a) or (b) of the said para, whichever is applicable, be within the limit specified for low income group housing scheme. The learned Advocates for the petitioners have taken a strong objection executive, in fixing a particular ate for the -to the said- provisions-. They submitted that implementation of the policy, the entire background of the facts and circumstances leading to the said decision has to be examined and in that light, it has to be found out whether the classification envisaged pursuant to the said date was in any way arbitrary or irrational. As we have already discussed earlier, on the facts and circumstances of this case, it cannot even on 22-6-1972 which was the date with reference to which hire purchase scheme envisaged by the resolution was to be worked out, the concerned applicants would not be fulfilling the criterion of eligibility, as low income group housing scheme defined by the Regulations of the Gujarat Housing Board contemplated that total yearly income of the concerned applicant be not more than Rs. 6,000/- which was subsequently raised to Rs. 7,200/- per year, meaning thereby, he should not be earning more than Rs. 606/per month with reference to the date on which his eligibility for being the applicant for the grant of concerned tenement to him on hire purchase basis was to be worked out. It was vehemently submitted that after the First Pay Commission recommendations viz. D.A..Desai Pay Commission recommendations and subsequently after the second Pay Commission Recommendations viz. D. A. Desai Pay Commission Recommendations, pay scales of the concerned Govt. servants who occupied tenements had undergone substantial upward revisions with the result that none of the occupants of these flats as on 22-6-1972 would have fallen within low income group scheme requirement. It was also submitted that to be occupant in low income group housing scheme, the concerned occupant had to belong to the low income group category of persons as on the actual date of allotment of tenements as under hire purchase scheme and it is obvious that that date -would be even later than 22-6-1972 as the actual allotment would obviously take lot of time after the scheme was actually put into occupants would certainly not be drawing total emoluments of not more than Rs. 600/-per month. It was, therefore, contended that in fact, the scheme of hire purchase envisaged by resolution dated 19-2-1975 would not be workable at all. There is some substance in what is contended by the learned Advocates for the

petitioners. However, the narration of historical facts and events leading to the Campaigned earlier shows that initially" H and E , colonies were constructed by the Housing constructed tenements available for housing needy persons by allotment on rental basis under low income group scheme. It is precisely for that purpose that the Central Government by its circular of 1959 sponsored the scheme. for low income group persons. The loans which were disbursed to the Gujarat Government for that purpose enabled the State Government to construct new houses for persons, belonging to low income group. It has to be kept in view that constructions of houses in H and L colonies was started in the year 1959-60 during the time of bigger bilingual State of Bombay. After bifurcation of the said State and formation of State of Gujarat, the construction was continued by the State of Gujarat though the Gujarat Housing Board and the construction of all these tenements in H and L colonies was over by 1963. Thus, the genesis of these H and L colony houses is traceable to the Central Government circular of 1959 and as per that genesis, these tenement when constructed were to be made available f or occupation of persons belonging to low income group. It, therefore, cannot be said that criterion of low income group initial eligibility as envisaged in para 2 of the impugned resolution is not rational. It has historical basis stretching backwards up to the genesis of these two colonies. However, the learned Advocates f or the petitioners are right when they contend that by passage of years these H and L tenements ceased to remain within the bonds of low income group rental scheme as with passage of time, houses Govt. employees who were shifted to Ahmedabad on the formation of the State of Gujarat on 1-5-1960. To meet their housing requirements, allotments were made of these houses to these persons who were transferred Govt. servants. Many of them might have belonged to the low income group category but some of them were certainly beyond the low income group eligibility and their salaries were definitely more than Rs. 500/- per month or for that matter Rs. 600/- per month. Mr. Mehta for the petitioners invited our attention to Government circular dated I- 111965 at Annexure "C" to Special Civil Application No. 2804 of 1980 issued by the Deputy Secretary , P.W.D. which indicated that categories II and III Govt. flats consisting of two rooms without kitchen were to be allotted to Govt. servants having monthly income of more than Rs. 800/- and less than Rs. 1200/- while category IV and V houses consisting of one room without kitchen were to be allotted to Govt. servants whose monthly income exceeded Rs. 250/- but was not more than 500/- or to class IV servants whose monthly income was not more than Rs. 250.00. It was submitted by Mr. Mehta that L colony houses comprised of houses which fell within categories II and III while H colony houses consisted of categories IV and V as mentioned in the said circular, It was, therefore submitted that at least from 1965 onwards. L colony houses were made available for occupation to Govt. servants having monthly salary of more than Rs. 600/- and up to Rs. 15-00 -. They were certainly not failing within the eligibility laid down by low income group criterion. Our attention was invited to the averments made in this connection in para 5 of Special Civil Application No. 2804 of 1980. It has been averred therein that the State Government had not allotted these flats

only to its employees belonging to low income group. No affidavit in reply has been filed by the State of Gujarat to the averments contained in this para. It was, therefore, submitted that even though initially these H and L houses might have been meant for occupation of persons belonging to low income group category, by passage of time, due to exigency of situation and dictates of time, some of the houses definitely came to be allotted to Government servants who were not falling within low income group category housing scheme and thus by passage of time, these houses in both these colonies ceased to belong to low income group housing scheme.

46. Mrs. Mehta for the Housing Board fairly conceded that though these H and L houses were constructed for low income group persons, by passage of time, they ceased to remain confined to that scheme as strictly understood by the Regulations framed by the Housing Board. Thus, H and L colony houses can be said to be belonging to hybrid housing scheme which not low income group housing scheme at the time when the question of allotment of houses arises. But to the extent of its genesis, these houses can" be treated to have initially fallen at the time of their construction under low income group: housing scheme, firstly rental scheme and subsequently hire purchase, scheme. It is this hybrid scheme with which we are concerned in the present proceedings. It is in the background of these factual data that we have to consider the attack mounted by the learned Advocates for the petitioners on the income eligibility criterion as engrafted in para 2 of the resolution of 1975.

47. Mr. Mohit Shah for the concerned respondents in these two petitions rightly submitted that the low income group criterion was the very heart of the scheme at least at its initial stage because these tenements were constructed for the purpose of being granted to the occupants satisfying the low income group criterion at least initially. We find considerable force in this submission. In view of the aforesaid facts and circumstances" of the case, it cannot be said that the State of Gujarat had arbitrarily imposed in para 2 of the impugned resolution of 1975 low income group eligibility at least at initial stage on occupation of these flats by the concerned occupants to enable them to be the ultimate owners thereof. However, as rightly submitted by Mrs. Mehta for the Housing Board, this scheme was strictly not low income group housing scheme as understood under Reg. 33 of the Regulations. It was a mixed or hybrid scheme which had low income group favour as the concerned occupants who were occupying these tenements had to initially satisfy the low income group eligibility for being ultimately converted into owners of these tenements but at the time of actual allotment, the concerned occupants might have ceased to belong to low income group category of persons. Still allotment to them would not be illegal as the scheme at all, its stages did not remain a low income group housing scheme. With passage of years, it had, ceased to be so as we have already discussed earlier. It can, therefore, rightly be treated as hybrid scheme which can be captioned as-"initial low income group housing scheme, meant for allotment of houses to eligible persons as mentioned in the impugned resolution.

48. In this connection, we have also to keep in view one salient fact that even in a full-fledged low income hire purchase scheme as envisaged by Regn. 33 of the Regulations, once the allottee who satisfies initial requirement of belonging to low income group category of persons is inducted in the allotment as hirer- cum-purchaser, he need not remain in low income group category till he becomes a full-fledged purchaser. Any hire purchase scheme would take quite some time before it is fully worked out and time comes to finally allot the tenement to the hirer as a full-fledged purchaser and to execute sale deed in his favour. Installments which he has to pay spread over years, may ultimately on completion of the period of installments entitle the hirer to become full-fledged owner on the happening of that future contingency. The time which elapses between the initial entry of the hirer in the tenement and the time when he ultimately becomes owner thereof may create a situation where under with passage of time, the hirer who initially belonged to low income group may cease to belong to low income group by the time he is ultimately made the owner of the tenement in future on payment of all the installments of hire purchase. Thus, even in a full-fledged low income group hire purchase scheme, by the time, actual sale deed is executed in favour of the hirer, he may not belong to low income group of persons. If this is not contra indicated by full-fledged low income group hire purchase scheme, it cannot be said that the interrupted resolution in the present case which permits execution of sale deeds in favour of occupants satisfying initial, low income group eligibility who by passage of time might have ceased to belong to that category of persons, is in any way arbitrary or irrational. The attack mounted by the learned Advocates for the petitioners on the main para 2 of the resolution was not on the ground that at the time of actual execution of sale deed in favour of the eligible occupants, they ceased to be eligible on the ground that they would not belong to time of execution of sale ends but the attack was on the prescription of initial low income group eligibility criterion. It was submitted that even that creation is illusory and irrational. In our view, that submission cannot be accepted for the simple reason that looking to the historical background of the facts and circumstances under which these H and L colonies saw the light of the day, the insistence that the concerned eligible occupants must satisfy at the time of their initial entry the low income group eligibility, cannot be said to be irrational from any angle. In fact, it has a historical nexus with the very genesis of these colonies.

49. It may also be kept in view that even earlier when the resolution of 22-6-1972 was challenged before this court. T.U. Mehta, J. who upheld the challenge on the ground that fixation of date 1-5-1960 for operation of the circular was irrational, so far as low income group eligibility criterion based on initial occupation was concerned, the said criterion was upheld by the learned Judge. In para 45 of his judgment, the learned judge made the following pertinent observations in this connection :

"The allotment of all the flats for occupation was completed in 1963, Therefore, if the date of occupation of these flats was found to be a weighty factor the proper

date of income eligibility was the date on which each occupant occupied his flat, and if it was found that some uniform date of income eligibility was more conducive to the object of the scheme, any date after the completion of allotment i.e. after 1963 could have been accepted as proper".

Even that apart, a Division Bench of the court consisting of B. J. Divan, C.J. and B. K. Mehta, J. (as they then were), with a view to taking out obnoxious part thereof suggested that "the eligibility criteria for the sale of property which is laid down in the impugned resolution should be changed. It should be laid down that any person who belongs to low income group on the date of initial occupation should be considered for, allotment. If there is any break and even then if the applicant is in occupation, then also, for the purpose of eligibility, the date of initial occupation should be taken in account". That has been found incorporated in the letter written by the Government Solicitor to the Under Secretary to the Government of Gujarat. Public Works, Department, Sachivalaya, Gandhinagar on 27-9-1983 as annexed to the further affidavit in reply on behalf of respondent No. 1, Mr. B. D. Nayak, under Secretary, Urban Development and Urban Housing department, Sachivalaya, Gandhinagar in special civil application No. 980 of 1980. In addition thereto P. D. Desai J. while passing his interim order for implementing the impugned circular pending these petitions and for making allotment to eligible persons by his order dated 22-10-1980 laid down as one of the criteria for eligibility that on the date of initial occupation, such person must belong to low income group of the concerned occupant is a concept which is accepted by the Government in view of the aforesaid developments which took place centering round the question of legality and propriety of the impugned resolution and its forerunner resolution. It cannot, therefore, be treated to be an irrational or totally arbitrary criterion. It has to be kept in view that the scheme reflected by the impugned resolution is a hybrid scheme in which initial occupation eligibility is low income group eligibility, but the eligibility at the time of actual allotment of the concerned flats on higher purchase basis to the concerned occupant is not necessarily low income group eligibility. For such hybrid scheme, it is perfectly open to the State Government in exercise of its power under S. 82 of the Housing Board Act to lay down criteria for initial eligibility which are not found to be otherwise irrational or illegal. We do not find anything, irrational or arbitrary in fixing of initial eligibility criterion prescribing low income group eligibility at the inception of occupation as sine qua non for entitlement of the concerned occupant to purchase such flat under the impugned scheme. It is also interesting to note that in so far as under the impugned resolution. B and L colony flats are sought to be given over to the concerned Govt. servants with a view to enabling them to purchase them on hire purchase basis, low income group eligibility criterion could not have been fixed as on 22-6-1972, the date from which the resolution operated as by that time, as earlier discussed, the concerned Govt. servants would have gone out of low income group criterion on account of revision of pay scales. But that does not mean that it was not open to the State Government to insist that at least such

Govt. servants who aspired to be made owners of these houses occupied by them should fulfill initial eligibility criterion of belonging to low income group when they first entered these tenements years back after they were constructed between 1959 and 1963. Insistence on such initial eligibility which falls in line with the decision of the Central Government advancing monies for construction of these tenements for the purpose of housing low income group persons cannot be said to be unauthorized or illegal from any viewpoint. Such criterion can legitimately and legally be imposed as one of conditions of eligibility under the impugned resolution. It is not de hors the initial scheme underlying the construction of these houses, during the relevant time, when they were put up by the concerned Government by utilizing finance made- available- by the Central Government and the Central Government as financier of this scheme of construction of these houses insisted in 1959 that those occupants of these flats who satisfied low income group eligibility -should be permitted to occupy the same. It would, therefore, be in the fitness of things that the State Government can legitimately insist that the occupants of these tenements who are to be made owners thereof must at least satisfy initial requirement of belonging to low income group of persons at the time when they first entered into these houses. Under these circumstances, the second main challenge mounted by the learned Advocates for the petitioners is also found to be devoid of any substance and has to be rejected.

50. V1-A(111):- It was next contended by Mr. Vakharia for the petitioners in Special Civil Application No. 980 of 1980 that in any case, the impugned resolution is contrary to regulation No. 33 and would be void on that ground also. So far as that challenge is concerned, Mr. Vakharia placed for our consideration the observations made by T. U. Mehta, J. in Special Civil Application No. 1175 of 1972 while deciding the questions whether the regulations framed by the Housing Board in exercise of its powers under S. 74 of the Act were statutory in character or not. It is obvious that if the regulations are not statutory in character, they can be over ridden by executive directions issued by the State of Gujarat in exercise of its power under S. 82 of the Act, but if on the other hand, the regulations were statutory in character, the executive directions issued by the State of Gujarat under S. 82 cannot cut across the statutory operation of the concerned regulations. It, therefore, becomes necessary for us in the first instance to consider whether T. U. Mehta, J. was right when he held that the Regulations are not statutory in character. So far as this aspect of the matter is concerned, it must be kept in view that we are dealing with the short question whether Disposal of Property Regulations (for persons of middle income and low income groups) framed by the Gujarat Housing Board in exercise of its power under S. 74 of the Act are statutory in character or not. We are not concerned with other regulations framed by the board and hence we do not express any opinion thereon. The preamble of the said regulations lays down that these regulations are for setting out procedures, principles and other details for allotment of buildings and premises and are made by the Gujarat Housing Board

under S. 74 read with R. 10-A of the Disposal of Property Rules, framed under S. 66 of the Bombay Housing Board Act, 1918 corresponding to S. 73 of the Gujarat Housing Board Act read with S. 36(A) of the said Act. It becomes at once clear that these regulations are framed by the Board in exercise of its statutory powers-cum- obligations, as laid down by these statutory provisions.

51. It has to be kept in view that these regulations pertain to housing schemes. As defined by S. 2(9), housing scheme means a housing scheme under this Act. The term ,regulations. is defined by S. 2(18) to mean, regulations made under S. 74. S. 74 provides that the Board may from time to time with the previous sanction of the State Government. make regulations consistent with this Act and with any rule made under this Act (a) for the management and use of buildings constructed under any housing scheme and (b) the principles to be followed in allotment of tenements and premises. S. 25 deals with matters to be provided for by housing scheme and amongst others, provides in Clause (g) thereof the sale, letting or exchange of any property comprised in the scheme". As per S. 49 of the Act, the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or any apartment therein or other property vesting in it and situate in the area comprised in any housing scheme sanctioned under this Act. So far as rule making power is concerned, S. 73 empowers the State Government to make. rules for the purpose of carrying out of the Act and for that purpose notification in the, official gazette has to be issued subject to the previous publication. As per sub-section (3) of S. 73. all rules made under this section shall be laid f or not less than thirty days before the State Legislature as soon as possible after they are made and. shall be subject to such modifications as the Legislature may, make during the session in which the, are so laid, or the session immediately following. So far as power to make bye-law is concerned, it is contained in S. 75. A s per that section, Board may make bye-laws not inconsistent with this Act which may be necessary or expedient f 01the purpose of carrying out its duties and functions under this Act. As per sub-section (2),a bye-law made under this section may provide that a contravention. thereof shall be an offence. In the light of the aforesaid scheme of Housing Board Act, it becomes clear that the Regulations made by the Board in fixing principles to be followed in allotment of flats and tenements. partake the character of statutory regulations as they are made in exercise of the statutory powers under S. 74 of the said Act and not only that, they pertained to discharge of statutory obligations of the Board as per S. 25 read with S. 21a) of the Act. In discharge of its statutory obligations and in exercise of its statutory powers under. 74(b) the Board has framed regulations viz. Disposal of Property Regulations. The short question is whether these regulations are statutory in character or not. In our view, they clearly appear to be statutory in character. It has to be kept in view that these regulations lay down certain binding principles to be followed by the Board in discharge of its statutory obligations in floating and operating housing schemes. It is true that for regulations there are no provisions as are found in connection with the rules for laying them before the State Legislature. But that

would make no difference. So far as regulations framed under S. 74(b) are concerned. as they are directly connect with the obligations of the Board for floating and running housing, schemer and especially when these regulations lay, down certain binding rules of conduct to be followed by the Board in floating and Funneled such schemes and when these schemes are made for the benefit of public at large (a) when public at large has no control over the working of the schemes or for that matter, over the implementation of these regulations, it must be held that these regulations are mandatory in character and they have to be strictly complied with. In this connection. we may, profitably refer to the decision of the, Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . The Constitution bench of the Supreme Court speaking thoroughly. N. Ray, Chief Justice(as he their mass examined the question whether O. N. G. C., L. 1. C. and Industrial Finance Corporation are the authorities within the nearing of Art. 12 of the Constitution and whether rules and regulations framed by these authorities had force of law. Answering this question in the affirmative, majority of the Supreme Court, Allagiri Swami., J. dissenting, took the view that these authorities were statutory authorities covered by Art. 12 of the Constitution and the regulations and rules. framed by them were statutory in character having force of law. It was held in para 12,of, the report that rules, regulations. schemes bye-laws orders made under statutory powers, are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority, making the rules is after the coming into force of the Acting a better position to adapt the act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. In para 14 of the report, it has been observed

"Subordinate legislation is made bye person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the of statutory rule".

The words rule a are used in an Act to limit the power of the Statutory authority. The of are derived, controlled and restricted by the statutes which create them and the rules and regulations framed there under. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party".

Dealing with the question of legal efficacy of the legislation, it has been down in 17 as under:-

"Subordinate has, if the, and of a statute. hat is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing particular thing, the result of a breach thereof is. in the provision contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument or requires the doing of any act, the principles to in determining whether a person injured by the Act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute."

In connection with process of legislation, it has been laid down in para 19 -

The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules regulations is conferred by Parliament and can be taken away by Parliament. The legislative function is the making of rules. Some Acts of Parliament decide particular issues and do not lay down general statutory rules".

Contradistinguishing statutory rules and regulations with administrative instructions, the following pertinent observations are made in paras 2 1 and 22 of the report

"The characteristic of law is the mariner and procedure adopted in many forms of, subordinate legislation. The authority making rules and regulations must specify the source of the rule and regulation making authority; To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.

Another characteristic of law is its content. Law is a rule of general conduct while administrative instruction relates to particular person. This may be illustrated with reference to regulations under the Acts forming the subject matter of these appeals. The Life Insurance Corporation Act as well as the Industrial Finance Corporation Act confers power on the Corporations to make regulations as to the method of recruitment of employees and the terms and conditions of service of such employees or agents. The Oil and Natural Gas Commission Act under S. 12 states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide inter alia the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conducts of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory".

On the aforesaid reasoning, it has been held in para 67 of the report as under:-

"For the foregoing reasons. We hold that rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. By way of abundant caution, we state that these employees are not servants of the Union or the State. These statutory bodies are authorities within the meaning of Art. 12 of the Constitution."

In our view, the aforesaid decision of the majority of the Constitution Bench squarely applies to the facts of the present case. In the present case also, the regulations have been framed in exercise of the statutory power. It is a piece of delegated legislation. It has a binding effect and the manner and mode to be adopted by the Housing Board in discharge of its statutory obligation of floating the housing schemes. The schemes are for the benefit of public at large and they cannot be deviated from arbitrarily and have got to be operated for the benefit of all concerned. Such schemes create mutual rights and obligations. Regulations have, therefore, to be strictly complied with so far as these housing scheme regulations are concerned. It is in view of these reasons that it is not possible for us to agree with the conclusion to which T. U. Mehta, J. reached in Special Civil Application No. 1176 of 1972 (reported in (1973) 14 Guj LR 625) when he took the view that the regulations framed by the Housing Board in exercise of its power under S. 74, they being acts of delegated legislation, are not statutory in character. With respect, the said view runs counter to the statutory settings discussed by us earlier and to the ratio of the decision of the Constitution Bench of the Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . The reference made by the learned Judge to the ratio if the decision of this court in Chhabildas Mehta v. The Legislative Assembly (1970) 11 Guj LR 729, is with respect, not apposite to the facts of the present case. In that case, regulations framed by the Gujarat Legislature were for regulating internal procedure of the House and the question whether the House should have been adjourned on a particular day could not be treated to be one a decision on which had any impact on the alleged statutory infraction of the procedural regulations. The learned Judge taking four factors into consideration (1) nature of rule making power; (2) the authority on which the power is conferred; (3) the purpose for which the power is given and (4) the subject matter of rules and regulations, formulated four guidelines for deciding whether a particular regulation or bye-law is enforceable as a statute. It cannot be gainsaid that these are relevant guidelines for answering the question whether a particular regulation or byelaw is statutory or not. However, in our view, the learned Judge was not right in taking the view that the instant case was not covered by any of the first three categories but fell within fourth

category of guidelines. On the contrary, in our view, the first two categories of guidelines were clearly attracted by the regulation in question. Disposal. of Property Regulations had imposed legal obligation on the Housing Board. It may be that breach thereof may not be punishable at law but breach thereof can certainly be challenged through ordinary process of law. It can equally be said, as a corollary to, that proposition that regulations do create a legal right in any individual or associated body of persons. The schemes which are to be floated and run by the Housing Board in the light of its statutory obligations as regulated by the Disposal of Property Regulations, will necessarily create legal rights in members of the public to become entitled to be considered for getting benefits of the scheme if they fulfill all the requirements of the scheme. Disposal of Property Regulations cannot be said to be merely contractual in character nor can they be said to be framed for merely regulating internal affairs of the statutory body, as, with respect, wrongly assumed by the learned Judge. It has also to be kept in view that members of the, public for whom housing schemes are floated by the Board have no control over the implementation of the regulations by the Board. Hence, these housing regulations have to be considered as mandatory in character, having binding -statutory foresaw, therefore unable to agree with T. U. Mehta, J's conclusion that Disposal of Property Regulations framed by the Housing Board in exercise of its statutory power under S. 74(b) are not statutory in character. We hold that they are, of necessity, to be treated as statutory in character for the reasons aforesaid. However, that does not advance the case of the learned Advocate for the petitioners an inch further. Even though regulation 33 of the Regulations is statutory in character, the directions issued by the State of Gujarat in exercise of its statutory powers under S. 82 cannot be said to be in any way inconsistent with this regulation. The reasons for coming to this conclusion are obvious been rightly contended by the Housing scheme reflected by the impugned resolution is not a pure and simple low income group housing scheme as envisaged by regulation 33. It is a hybrid scheme as already seen earlier. If it were purely low income group housing scheme as regulated by regulation 33, before allotment had to be followed by the Housing Board inviting applications from the prospective and after scrutinizing their red and eligibility, after draw of lots, flats could have been allotted to successful In the present case, the sitting occupants are being permitted to be converted into hire purchase allottees. They are already occupying the concerned flats since years. It is in these circumstances that it must be held that this scheme is a hybrid scheme which partly partakes the character of low income group housing scheme so far as initial eligibility of the concerned allottees is concerned. Then, it ceases to be low income group housing scheme as such and does not require the concerned allottee to satisfy the lower income group eligibility at the time when occupied flats are actually sold to them under the scheme. Such a hybrid scheme has to be implemented by the Housing Board on account of the binding direction issued by the State Government under S. 82 of the Act. The learned counsel for the respondents were, therefore, right when they contended that there is no question of inconsistency between such scheme envisaged by section 82 and the

pure and simple housing scheme as envisaged by Regn. 33. In fact, both operate in separate fields of their own and cater to the requirement of distinct classes of persons for which they are meant. Consequently, no question of any collision or conflict could ever survive between the operating of the two schemes. There would, therefore, remain no question of any alleged inconsistency between the scheme envisaged by the impugned regulation and the scheme as envisaged by Regn. 33. The second reason is that under S. 82 of the Act, the State of Gujarat is entitled to give directions to the Housing Board for the purposes of the Act and if these directions are not found to be arbitrary or illegal, they are binding on the Housing Board and they would supersede any contrary decisions of the Housing Board and special obligation on the Housing Board to comply with such directions. As seen earlier, by 4 of the Act, it is the duty of the Housing Board to incur expenditure and undertake works of such housing schemes as it may consider to be in the interest of the State Government. Thus, control of the State Government is all pervasive in connection with any of the housing schemes undertaken by the Board. It is also interesting to note that as per S. 82 of the Act, before issuing directions to the Housing Board, the State Govt. is enjoined to give an opportunity to the Board to state its objections if any, to such proposed directions and directions may be issued after considering such objections. This itself envisages that directions issued under S. 82 can be such directions which may in given cases be against the existing rules and regulations and policies of the Board governing the concerned scheme. If such directions were simply to run parallel to such regulations, there would have been no occasion for the Legislature to provide for an opportunity of hearing to be given to the Board to state its objections. It is not possible to agree with the contention of the learned Advocates for the petitioners that these objections can be in connection with actual working of the schemes or some procedural objections regarding the same. No such restrictions are found from the phraseology employed by S. 82 inviting all possible objections from the Board against the proposed directions. Even that apart, under S. 83, the State Government is entitled to fix a period for the performance of the duty imposed on the Board by or under the Act. As per S. 83, it is the duty of the Board to comply with the directions issued under S. 82. As per sub-sec; (2) of S. 83, if the Board fails or neglects to perform its duty within the period so fixed for its performance, including the duty to comply with any direction issued by the Govt. under S. 82, it shall be lawful for the State Govt. to supersede and reconstitute the Board in the prescribed manner. These are drastic consequences contemplated by the legislature in case the Board does not carry out the binding directions given by the State Govt. under S. 82. It cannot therefore, be said that any lawful directions issued by the State Government under S. 82 cannot supersede any earlier decisions arrived at by the Board in discharge of its functions under the Act and the Regulations. It is of course true that if, the, directions are ultra vires or illegal of Art. 14, of the Constitution, they would fail on their own. But leaving aside such eventualities, in all other cases, legal, and valid directions have got to be complied with by the Board. In that view of the matter also, it cannot be said that in no case,

statutory regulations framed by the Board under S. 74(b) can be superseded by legal and valid directions given by the State Government in exercise of its statutory power under S. 82 after following the procedure laid down for the same under S. 182. In view of our above discussion it must be held that the impugned resolution is in no way contrary to the Regn. 33 of the Disposal of Property Regulations and it can stand on its own and can operate by itself and its mandate is binding on the Housing Board the light of the aforesaid scheme of the Act. The third challenge therefore also stands repelled, even while we have held, agreeing with the learned Advocates for the petitioners that Disposal of Property Regulations and for that matter, Regn. 33, have statutory force.

52. V1. A (iv) :- SO far as the alleged conflict between the impugned Govt. resolution on the one hand and R. 10A (4) and S. 49 of the Act, on the other, is concerned, the learned Advocates for the petitioners submitted that the impugned Govt. resolution by issuing directions to the Housing Board cuts across the powers of the Housing Board as enshrined in the aforesaid Rule and Section. It is difficult to appreciate this grievance of the petitioners. So far as R. 10A(3) is concerned, it is a rule framed by the State Government in exercise of its statutory power under S. 73 of the Act. All that it provides is that "subject to the provisions of sub-rules (1) and (2), the Board shall not lease, sell, exchange or otherwise dispose of any immovable property vesting in it and situate in the area comprised in any housing scheme sanctioned under the Act, without the prior approval of the Government. Such transfer shall be subject to such terms and conditions as the Government may determine in each case in that behalf. The second provision to the rule provides provided further that no such approval shall be required (a) for allotment of tenements of and premises according to the regulations made by the Board in that behalf". A mere look at the aforesaid provisions of the rule shows that in cases not covered by the scheme governed by the Regulations, if the Board of its own wants to sell, lease or dispose of any immovable property vesting in it. It cannot do so without prior approval of the Government. Such a situation has not arisen in the present case. The Board by its own volition has not thought it fit to dispose of any of the tenements in 11 and L colonies. Even if it wanted to do so, it could have legally done so subject to the previous approval of the Government. But in the present case. the Government itself issued directions under S. 82 of the Act calling upon the Board to dispose of H and L colony tenements as per the conditions laid down in the impugned resolution. This is quite an independent power of the State of Gujarat which stands on its own. There is no question of the said resolution cutting across R. 10A(3). Encroachment, both these provisions operate in different fields. Even otherwise, it has to be kept in view that with the previous approval of the State of Gujarat, the Board could still dispose of immovable properties as laid down by R. IOA(3). In the present case, not only the State of Gujarat has proposed but on the contrary directed the Board to dispose of H and L colony tenements by converting them into low income group hire purchase scheme asset the condition laid down in the impugned resolution. Thus, instead of there

being any conflict between the powers vested in the Government under S. 82 and the procedure laid down by R. 10A(3) it is found that both the provisions can harmoniously coexist and with the approval of the Government, any of the immovable property of the Board can be effectively disposed of. Consequently, there is no substance in the contention canvassed by the learned Advocates for the petitioners in this connection.

53. So far as the contention regarding alleged conflict with S. 49 is concerned, it also stands on a very weak footing. All that S. 49 provides is that the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or any apartment, therein or other property vesting in it, and situate in the area comprised in any housing scheme sanctioned under this Act. It is an enabling provision empowering the Board to dispose of, any land or building situated in the area comprised in any housing scheme sanctioned under the Act. That does not mean that the Board cannot dispose of buildings pursuant to the directions issued by the State Government under S. 82 of the Act. Section 49 can be pressed in service by the Board in cases where in the absence of any -such direction by the State Government and in the absence of concerned buildings being placed in any scheme, the Board wants to dispose of any building which may be situate in the area which might be comprised in any, housing scheme. If the Board wants to do so S. 49 enables it to do so. But that does not necessarily mean that it cannot dispose of its buildings pursuant to the binding directions of the State Government issued under S. 82 of the Act. Consequently, there is no conflict whatsoever between S. 49 of the Act on the one hand and the impugned directions issued by the State Government under S. 82 of the Act on the other, pursuant to the resolution in question. In fact, in the facts and circumstances of the case, S. 49 is not attracted at all. The fourth main contention raised by the learned Advocates for the petitioners therefore, is found to be devoid of any substance and has to be turned down.

V I. A. (v) : So far as the next main challenge is concerned, it was submitted by the learned Advocates for the petitioners that the impugned resolution has been issued contrary to the provisions of section 82 of the Act itself. This contention has been highlighted in para 13 of Special Civil Application No. 980 of 1980. It has been stated therein:-

"Before giving such directions, it was obligatory upon the State Government to give opportunity to the Housing Board to state its objections against the proposed directions and to consider the said objections. The State Government has not given any opportunity to the Gujarat Housing Board to state its objections against the proposed directions. After the Government Resolution, dated 18th February 1975 was passed, it was communicated to the Housing Board for the purpose of approval and implementation and the Housing Board had considered the said resolution only from that, point of view and not from the point of view of lodging objections against the proposed directions. It is submitted that, therefore, the said Government resolutions giving directions are

ultra vires to S. 82 of the Act".

State of Gujarat has tried to repeal these contentions. In the affidavit in reply filed by Mr. G. J. Mehta, Under Secretary to Government of Gujarat, Urban Development and Urban Housing Department, it has been pointed out in para 6 to the effect that the Resolution dated 18-2-1975 was not initially implemented by the Housing Board because the Board had made counter proposals to the Govt. vide its resolution No. 476/76 especially because in the Govt. resolution issued in February 1975, allotment to Gujarat Housing Board's staff was not included. Ultimately, vide addendum dated 10-3-1980, the State Government included the Gujarat Housing Board staff also. I say that Govt. resolution dated 18-2-1975 together with addendum dated 10-3-1980 were implemented and tenements of H and L colonies were allotted as per the criteria laid down by the Government. It has been further averred in para 9 that the Gujarat Housing Board is the implementing agency of the Housing Programme entrusted to it by the Government and Government can issue directions to the Board. However, in this case, the Board has also resolved and decided to implement Government resolution dated 18th February 1975 read with addendum dated 10th March 1980. In the affidavit in reply filed by Mr. C. S. Soni, respondent No. 33 in Special Civil Application No 980 of 1980, it has been pointed out in para 9 to the effect that conveyance deeds have been permitted to be executed by the Gujarat Housing Board in favour of number of allottees under the Govt. resolution dated 18-2-1985. It, therefore, appears clear that after the impugned resolution was passed, negotiations took place between the State of Gujarat on the one hand and the Housing Board on the other and there was exchange of views between those parties and ultimately resolution was given clearance by the Housing Board on being satisfied that its staff members are also included in the scheme of hire purchase. It therefore, cannot be said that the Gujarat Housing Board was not taken into confidence by the State of Gujarat when the impugned resolution was issued or its objections were not considered. Mrs. Mehta for the Housing Board stated that the Housing Board had no grievance about the alleged non-compliance with the procedural provisions of S. 82 and that in fact, the Housing Board's view point was considered by the State of Gujarat while passing the impugned resolution and by the same. It is interesting to note modifying that the petitioners' 7 contention is that the State of Gujarat did not give an opportunity to the Board to file its objections, if any to the proposed resolution. Legitimate grievance in this behalf can be made by the Housing Board itself, but the Housing Board does not make any such grievance in this connection. It is also pertinent to note that it is not compulsory for Board to file objections to the proposed directions. Obligation of the State of Gujarat is to consider the objections filed by the Board if any. It is for the Board to file its objections to the proposed directions. If the Board does not choose to file such objections, it is not obligatory on the part of the State of Gujarat to still insist that it will not pass the resolution containing directions unless the Housing Board objects to the same. In the present case, it appears that the Board had no objection to the

implementation of the Resolution contained in the directions under S. 82 subject to certain modifications which the State of Gujarat accepted. So far as the petitioners are concerned, they have absolutely no locus standi to raise this contention on behalf of the Housing Board when the Housing Board itself does not feel aggrieved at all by the alleged breach of the procedure of S. 82 by the State of Gujarat. It is also further pertinent to note that the Housing Board was also a party to Letters Patent appeal No. 4 of 1973 before this court Patent appeal suggested the formula after hearing, all concerned including the Housing Board and it is only thereafter that the impugned resolution saw the light of the day, as discussed earlier. Thus, the Housing Board was-very much a party to the negotiations which ultimately culminated in the impugned resolution. It, therefore, cannot be said that the Housing Board had no opportunity to put forward its viewpoint in connection with the impugned resolution. In view of these facts, therefore, the contention of the learned Advocates for the petitioners that the impugned resolution is in violation of the procedural provisions of S. 82 of the Act is also devoid of any substance and is, therefore, rejected.

54. VI-B(1). That takes us to the ancillary contention canvassed by the learned Advocates for the petitioners. It was submitted that in any case, the impugned resolution insofar as it provides for selling houses comprised in H. and L. Colonies on priority basis to category III persons viz. Govt. servants holding non-transferable post who have shifted to Gandhinagar as a result of shifting of the capital from Ahmedabad to Gandhinagar but who were in continuous occupation of these houses for at least two years before the date on which they-shifted to Gandhinagar, is null and void. Though, the learned Advocates for the petitioners do not challenge any other category of persons mentioned in the priority list as mentioned in 1 of the impugned resolution, the aforesaid contention of the learned Advocates for the petitioners will necessarily take in its sweep category VI in priority list which deals with Government servants who have been transferred outside Ahmedabad but who were continuously residing in many of these houses. before their transfers. If we uphold the contention of the learned advocates for the petitioners and hold -to category III persons is bad, as a logical corollary of our finding and as a sequitur thereof, priority given to category VI persons must necessarily fall through. We may now examine the aforesaid challenge put forward by the learned Advocates for the petitioners. We shall first indicate the notice of challenge as, highlighted in the petitions and the reply to the said challenge by the other side. At para 18 in Special Civil Application No. 980 of 1980, it has been submitted as under:

"Allotment in favour of Govt. servants holding nontransferable posts and who have shifted to Gandhinagar as a result of shifting of capital from Ahmedabad to Gandhinagar in continuous occupation of these houses for at least two years before the date on which they shifted to Gandhinagar, is also without any rational basis. It is submitted that the capital to Gandhinagar was shifted in the year 1970 and those Govt. servants serving in Sachivalaya were duty bound to shift themselves from Ahmedabad to Gandhinagar. The State Government had

provided them better residential accommodation at Gandhinagar than the residential accommodation they had in H and L colonies. The Government servants who were required to shift to Gandhinagar on account of the shifting of the capital were not only provided with better residential accommodation but they were also given extra allowances such as deduction from rent at 6% instead of 10% for their shifting to Gandhinagar. Apart from the above referred concessions, the State Government has also made many schemes giving the land for the construction of the -houses at the concessional rate to the Govt. servants at Gandhinagar. The petitioners state that those Govt. servants who were occupying flats in H and L colonies and who were required to serve at Gandhinagar after shifting of the capital from Ahmedabad to Gandhinagar were not compelled by the State Govt. to vacate the flats occupied by them on rental basis and they were given option either to continue occupation of flats in H and L colonies as the case may be or to shift to Gandhinagar and avail of residential accommodation there. However, some of the Govt. servants occupying the flats- in H and L colonies on their own decided to shift to Gandhinagar because they were offered better residential accommodation on concessional house rent and other facilities, while some of the Government servants serving in the various offices shifted to Gandhinagar decided to continue to occupy, the flats in H and L colonies. Those Govt. servants who were required to serve at Gandhinagar and continued to reside at H and L colonies were provided with the facilities of transport from H and L colonies, to Sachivalaya, Gandhinagar. The Government servants who have shifted to Gandhinagar on their own are also given benefit under the Govt. resolution Annex. D. Under these circumstances, there is no justification or rational basis to give any priority for allotment of the houses to them".

Reply to these averments on behalf of the State of Gujarat in the form of affidavit in reply filed by Mr. G. J. Mehta., Under Secretary, is in para 12 of the said affidavit. It states- "the Govt. resolution dated 18-2-1975 revolves round the compromise formula arrived among the concerned parties which insists that the person occupying the quarters as on 22-6-1972 and still having possession shall be given first preference". So far as the aforesaid averments made in the petition are concerned, no effort is made to controvert them. Thus the averments made by the petitioners on facts that those Govt. servants who had shifted to Gandhinagar had option to stay at Ahmedabad if they wanted and to continue in H and L colony quarters despite their transfers to Gandhinagar, are not denied at all by the State of Gujarat.

55. So far as the reply filed by Mr. N. K. Vyas, respondent 25, is concerned, in para 4.1 in his reply he has stated that "but for the shifting of the capital from Ahmedabad to Gandhinagar, respondents 20 to 37 would have continued to occupy the flats in H and L colonies as they are holding non-transferable posts and they cannot be transferred outside Secretariat and the Hon"ble Court can take judicial note that the Secretariat is always in the capital of the State and it is never situate in more than one city or town. The Secretariat cadres have

always been and are distinct and separate from other cadres whether they may be all Gujarat cadres or district cadres. Whether they are class 1, class II, class III or class IV Govt. employees belonging to the Secretariat cadres are not transferable outside the Secretariat. Clause 3 of the Govt. resolution dated 18-2-1975 cannot be interpreted in such a manner as to render it redundant or otiose".

56. So far as affidavit in reply filed by Mr. G. S. Soni respondent 33 is concerned, in para 11 thereof, it has been averred that -

"This Hon"ble Court has already upheld in Special Civil Application No. 1176,172 provision for allotment of flats in H and L colonies to Govt. employees holding nontransferable posts who had shifted to Gandhinagar as a result of shifting of the capital from Ahmedabad to Gandhinagar and who had occupied the said flats for at least two years before the date on which they shifted to Gandhinagar. I submit that there are several cases where the concerned Govt. servants holding non-transferable posts had shifted to Gandhinagar on account of shifting of the capital to Gandhinagar and they were even allotted Govt. quarters at Gandhinagar on rental basis."

Certain persons are mentioned in the above affidavit falling in that category of persons. It has been further stated that

"they have also been allotted flats in H and L colonies under the aforesaid Govt. resolution dated 18-2-1975 and the petitioners have given their no objection to allotment of flats to the said persons. The respondents 20 to 37, therefore, submit that it is not open to the petitioners to challenge the provision for allotment of flats in H and L colonies to category No. (iii) persons under the G.R. dt. 18m2-1975 as the said part of the GR also stands partly implemented".

57. When we come to Special Civil Application No. 2804 of 1980, we find that in sub para (3) of para 13, it is averred -

"The Government servants transferred to Gandhinagar have been given third priority in the allotment of houses only if they had occupied these flats for two years before they shifted to Gandhinagar. From the point of view of all relevant considerations these persons are ineligible for allotment of quarters. These persons have been allotted much better and bigger houses by the Government at Gandhinagar and are in occupation of them. Further, these persons have been given the benefit of concessional rent of 6%. Further, the Government is actively considering allotment of quarters occupied by them at Gandhinagar on a hire purchase basis to them pursuant to a demand in that behalf made by the Association of Employees to the government. Further, these employees have absolutely no connection new with Ahmedabad and have moved bag and baggage with their family to Gandhinagar more than a decade back. Their need for houses at Ahmedabad is not at all urgent or pressing. The Government is also considering an alternative proposal of allotment of land at cheaper rate to them. Their length of occupation has also been very little and marginal compared to the

other occupants of these flats. Further, the condition of not owning another house is also not stipulated with regard to them in the impugned Government resolution. These persons are not at all eligible for allotment of houses or to have been placed at the bottom of the priority list having regard to all relevant factors."

In further affidavit filed by Mr. G. A. Shirolkar, petitioner No. 19, a copy of Govt. resolution dated 1641970 is annexed to show that Government servants intending to stay at Ahmedabad whether occupying Govt. quarters, requisitioned premises or private non-requisitioned premises were allowed to do so up to 31st May 1971. By a further resolution dated 3041970, the said concession to stay at Ahmedabad despite transfer to Gandhinagar was extended up to 31-5-1972. At page 155 of the affidavit in sur-sur rejoinder filed by the same deponent-petitioner No. 19, a copy of the Govt. resolution dated 10-6-1987 is brought on record. It provides for permission to stay at Ahmedabad and other places and lays down that employees stationed at Gandhinagar shall be permitted to stay and claim H. R. A./ compensatory local allowance at the rates prevalent at the places of residence meaning thereby, at their places of residence outside Gandhinagar. Placing reliance on this resolution, it is contended that it was not as if that on shifting of capital from Ahmedabad to Gandhinagar, all employees working in Sachivalaya and staying in H and L colonies at Ahmedabad had to compulsorily shift to Gandhinagar. Those who commuted between Ahmedabad and Gandhinagar and who were in occupation of these flats on 22-6-1972 when the impugned resolution came into force and who were placed in category 11 would get benefit of the resolution. But there is no reason to give such benefit to the employees who had shifted to Gandhinagar and vacated H and L colonies of their own sweet-will prior to that date. Inasmuch as such employees are also given benefit of the impugned resolution, the said benefit is patently ultra vires and irrational and has no nexus to the object sought to be achieved by the policy underlying the impugned resolution.

58. So far as these averments are concerned, we may turn to what the other side has to say in this behalf. Mr. N. K. Vyas, respondent 8, in the affidavit- in-reply has stated in para 14 that -

"I emphatically deny the contentions sought to be raised therein. It is emphatically denied that from the point of view of all relevant considerations, category No. (iii) persons are ineligible for allotment of quarters. It is further respectfully submitted that respondents 3 to 20 had shifted to Gandhinagar on account of the shifting of the capital and by staying at Gandhinagar, respondents 3 to 20 could better discharge their duties as Government servants at Gandhinagar. Moreover, respondents 3 to 20 were in the lower income group are not in the economically viable strata, and therefore, they could not either afford to maintain two establishments one at Ahmedabad and another at Gandhinagar or even to afford the charges for commuting from and to Gandhinagar every day. It was on account of such compelling reasons that respondents 3 to 20 had to

bear hardships and inconveniences by staying at Gandhinagar. It is further denied that there is any alternative proposal of allotment of land at cheaper rates to Govt. employees belonging to category No. (iii) in the G. R. dated 18-2-1975. It is also denied that the length of occupation"-of category No. (iii) people has been very little or marginal. It is submitted that it is only on account of the protracted litigation from 1972 onwards that respondents 3 to 20 have not got allotment of the flats in H and L colonies and, therefore, the occupation of the flats in H and L colonies by the petitioners and others cannot from 1972 onwards is fortuitous and not on account of any right of theirs. On the contrary, they have deprived respondents 3 to 20 of their right to get allotment and possession of the flats in H and L colonies. Many of respondents 3 to 28 have already retired by now and find it extremely difficult to accommodate their families in rented premises for which they are required to pay exorbitant rent out of their meager pension. Respondents 3 to 20 do not have any other house of their own where they can go and stay after retirement. On the contrary, the petitioners have acquiesced in allotment of flats in H and L colonies to many persons who have a house of their own directly or indirectly even in or around Ahmedabad or Gandhinagar. Many other persons from respondents 3 to 20 are also going to retire within next 2 to 3 years."

Petitioner 19 Shri G. A. Shirolkar has filed his affidavit in rejoinder wherein he has annexed certain circulars to show the schemes for providing houses to persons residing at Gandhinagar. Along with his affidavit, petitioner 19 has brought on record, the resolution passed by the State of Gujarat deciding to allot housing facilities to employees staying at Gandhinagar. One resolution dated 18-1-1980 issued by the Revenue Department is also produced on record to show that the Government had decided to allot land without auction at marginal price to Govt. servants for building their residential premises. Mr. N. K. Vyas, respondent 8 in his affidavit in reply to this affidavit has submitted in para 3 that -

"The petitioners have been proceeding on the basis as if the petitioners themselves are working as Government employees at Ahmedabad and the contesting respondents are working as Govt. employees at Gandhinagar and are permanently interested in settling down at Gandhinagar. Both the assumptions are incorrect and misleading and the petitioners have deliberately suppressed the fact that most of the petitioners themselves are transferred to Gandhinagar on account of shifting of the offices of the heads of non secretariat departments to Gandhinagar between the date of filing of the petition and till today."

It has been further pointed out in para 3.1 that -

"No scheme for allotment of flats on hire purchase basis for Govt. employees at Gandhinagar evolved between 1970 till the date of filing the petition in 1980. It is respectfully submitted that the contesting respondents being already eligible for allotment of the flats in H and L colonies under the hire purchase scheme as per the impugned resolutions and the contesting respondents being fairly higher

up in the priority provided in the said resolution, it was not necessary for the contesting respondents to look out for any other scheme. I further beg to submit that in view of the figures supplied by the Gujarat Housing Board, the employers of the Gandhinagar category are bound to get the flats in H and L colonies on hire purchase basis as the number of eligible persons under the Govt. resolution dated 18-2-1975 read with the Govt. resolution dated 18-3-1980 (making only a slight modification to the Government resolution dated 18-2-1975) do not exceed the number of inlays in H and L colonies".

59. In the light of the aforesaid rival contentions raised by the contesting parties, we have to consider whether priority given to Govt. servants who have shifted to Gandhinagar on the shifting of its capital in 1970 and who have voluntarily vacated H and L colonies flats much prior to 22-6-1977 is arbitrary and irrational and whether they can legally claim prior right to purchase H and L colony flats which were earlier occupied by them.

60. The learned Advocates- for the petitioners submitted that this type of priority is totally arbitrary and irrational and it has no nexus to the objects sought to be achieved by the impugned resolution. While on the other hand, the learned Advocates for the contesting respondents have submitted that the petitioners themselves are not satisfying the basic eligibility on the date of initial occupation and once they go out of the scheme, they have no right to challenge the impugned resolution of the Government on other grounds. It has been further submitted that the persons who had not occupied the flats in H and L colonies on or before 22-6-1972 had no chance to get the flats in question.

61. In order to appreciate the rival contentions centering round the priority No. (iii) as laid down by para I of the impugned resolution, it will be necessary to have a close look at the resolution itself. Whether employees who have shifted to Gandhinagar have a chance to purchase the houses at Gandhinagar or not is strictly besides the point. We have to see whether on the scheme of the resolution itself, priority given to them to purchase these houses is rational and has reasonable nexus to the object sought to be achieved by the resolution. If it has such nexus, then of course, this priority has to stand, otherwise it would falter on the touchstone of Art. 14 of the Constitution and has to be declared null and void.

62. When we turn to the impugned resolution dated 18-2-1975 Annexure "13" to special civil application No. 980 of 1980 and at annexure "G" to special civil application No. 2804 of 1980, we find that the said resolution mainly seeks to offer H and L colony houses under the scheme of hire purchase to two classes of persons (i) those who occupied these houses on 22-6-1972 which is the date on which the resolution is deemed to have come into force and (ii) persons who were not occupying these houses on that day we have already discussed earlier e legality and propriety of fixing 22-6-1972 as the date on which the scheme of hire purchase envisaged by the impugned resolution was to come into force. We have held that the said date is not arbitrarily chosen and it has historical nexus.

Once that conclusion is kept in view, it becomes obvious that the authors of the resolution seek to give top priority to only those occupants who were occupying these tenements on 22-6-1972 and onwards to enable them to purchase them under the scheme of hire purchase. Those who were not occupying these houses on that relevant date and continuously thereafter till the date of the impugned resolution would obviously fall in residuary category viz. second category of non occupants and they cannot inter se claim any priority nor can they seek any priority qua any one falling under the first category. It has also to be kept in view that under the hire purchase scheme it is the hirer who is to be made owner by passage of time. Thus possession of the concerned tenement as hirer and its occupation as such is a sine qua non for getting benefit under the said scheme to get full-fledged ownership right qua that tenement. Unless a person is in occupation of the tenement as hirer, at the initial stage, he cannot aspire to be the owner thereof with passage of time. Thus, there is direct nexus between occupation of the tenement on the relevant date and its maturity over a period of time into full ownership qua that person. This is the essence of hire purchase scheme. It cannot be disputed that the impugned resolution dated 18-2-1975 does represent a genuine hire purchase scheme. It might have ceased to be a genuine low income group hire purchase scheme over passage of years but nevertheless, it is a genuine hire purchase scheme, meaning thereby, it seeks to make occupants of the flats at a given point of time the full owners thereof with passage of time under the scheme envisaged by the impugned resolution and subject to the conditions engrafted therein. If occupation of the tenements on a particular date viz. 22-6-1972 which was the date on which resolution came into force is the crux and essence of the scheme, then it must be held that only those persons who were occupying these tenements on 22-6-1972 and onwards till the date of coming into force of the resolution can be given first right to purchase such tenements under the hire purchase scheme, and failing them, or after satisfying their needs, if further tenements are left, then only, they can go to the persons falling under the residuary category which may be category comprised of general residue of persons and there cannot be any inter se priority qua persons in such residuary class. If any class of persons falling under residuary category of non-- occupants is artificially sought to be brought on the field of occupants and telescoped into the priority category viz. category (i) of occupants on 22-6-1972, then, such exercise would patently be arbitrary irrational and ultra vires the very scheme envisaged by the said resolution. Keeping these salient features of the scheme in mind, we may turn to the various categories of persons listed in the scheme of priority envisaged by para 1 of the resolution. When we come to the first category it becomes obvious that it covers those members of the public and housing Board employees not being Govt. servants who were allotted these houses by Gujarat Housing Board and who were in occupation on 22-6-1972 and who also continued to be in occupation on the date of the issue of the resolution. This category, therefore, reflects a genuine priority category of persons who were in occupation of these flats on the relevant date viz. 22-6-1972 from which date the resolution operated retrospectively and who continued to occupy the said

flats on the date of actual issuance of the resolution i.e. 18-2-1975. This category has a direct nexus to the object sought to be achieved by the resolution viz. to make such occupants on the relevant date full owners of the tenements occupied by them as on that date. Same is the position with category (ii) which deals with Government servants who were in occupation of these houses on 22-6-1972 and who continued to occupy them on the date of the issue of the resolution. This category also squarely falls within the scope and ambit of the resolution and has direct nexus to the objects sought to be achieved by the resolution viz. to make even Govt. servants occupying the flats in H and L colonies as on 22-6-1972 on which date resolution operated retrospectively and who continued to occupy the flats on the date on which the resolution was issued viz. 18-2-1975 owners of their respective tenements. Thus, category (ii) persons also are legitimately and rightly covered by the resolution and no irrationality is detected there from. In fact, the first two categories of persons reflect genuine and proper categories of persons who can be given benefit of purchasing these flats on hire purchase basis. Their occupation of the concerned houses on 22-6-1972 has direct nexus with the objects sought to be achieved viz. to make them owners of the flats occupied by them on the date on which the resolution retrospectively came into force. It is also pertinent to note that by interim orders passed by P. D. Desai, J. by consent of parties, the impugned resolution was permitted. to be operated by allotting houses to persons falling in these two categories and we are told that qua them, practically the entire resolution has been implemented and all eligible persons falling in these categories have been - allotted flats on ownership basis by consent of parties pursuant to the interim orders passed by this court. Before parting with this second category, we may mention that inter se categories (i) and (ii), category (ii) is placed later in the schemes of priority in comparison to category (i) and for which there is no dispute between the parties. So far as category (ii) is concerned, we may also observe that though Govt. servants who might have retired or might have been transferred from Ahmedabad before the date of resolution viz. 18-2-1975 are excluded from that category, it is to be kept in view that exceptional provision in the second part of category (ii) is to operate as an exception to the main provision of category (ii) as laid down in the opening part of the said clause viz. "Govt. servants who were in occupation of these houses on 22-6-1972 and who continued to occupy them on the date of the issue of this resolution, shall be entitled to fall in category (ii) and would be entitled to purchase on priority basis. It is to this category of persons that an exception is engrafted in the later part of this sub-clause. Consequently, on a conjoint reading of the phraseology used in category (ii), the conclusion is inevitable that cases of Govt. servants who are excepted from the said category are only those Govt. servants who might have been transferred from Ahmedabad of course on or before 18-2-1975 the date on which resolution was issued but not at any time prior to 22-6-1972, meaning thereby, that even though they were Govt. servants who were in occupation of houses on 22-6-1972 and who would have been covered by the general sweep of category (ii) would be excluded from that category, only because at any time

between 22-6-1972 and 18-2-1975, they might have been transferred from Ahmedabad, and therefore, would have ceased to be Govt. servants occupying these tenements as such on 18-2-1975. Similarly, these Govt. servants who were occupying these tenements on 22-6-1972 as such retired after that date at any time prior to 18-2-1975 they obviously would cease to be Govt. servants between these two relevant dates and therefore, it cannot be said that on 18-2-1975, these retired Govt. servants were occupying these tenements as Govt. servants. They can be said to be occupying them, if at all as ex-Govt. servants on 18-2-1975. Even though when that resolution came into force on 22-6-1972, they might be occupying these flats as full-fledged Govt. servants in service. Such persons are also excluded from beneficial provision of category (ii) because of exception engrafted in the later part of that clause. It is, therefore, obvious that Govt. servants who were occupying H and L colony houses on 22-6-1972 and who continued to occupy them as on 18-2-1975 but had earlier been transferred out of Ahmedabad at any time prior to 22-6-1972 and had vacated these houses and who were subsequently retransferred to Ahmedabad had reoccupied these houses on 22-6-1972 the Date as Govt. servants or those of them who might not have actually vacated these houses during the time they were transferred outside Ahmedabad earlier and if thereafter they had been retransferred to Ahmedabad prior to 22-6-1972 and who continued to occupy these houses as Govt. servants on 22-6-1972 and thereafter continuously till 18-2-1975, would obvious be covered by the priority category (ii) any they cannot be excluded from its operation. In other words, category (ii) will cover all these Govt. servants who were in Govt. service on 22-6-1972 and as such were occupying H and L colony houses and who continued to occupy them on 18-2,1975. as Govt. servants and in between who were not transferred out of Ahmedabad or in between who had not retired and ceased to be Govt. servants on 18-2-1975 It has to be kept in view that those Govt. servants who had retired prior to 22-6-1972 but who had continuously occupied these tenements on 22-6-1972 and thereafter would not get benefit of category (ii) as their occupation on 22-6-1972 would not be occupation as Govt. servants but as ex-Govt. servants.

63. Having seen that first two priority categories as mentioned in para 1 of the resolution have a clear nexus to the object sought to be achieved by the resolution, we turn to category (iii) which is the impugned category. It becomes at once clear that so far as Govt. servants holding non-transferable posts who were shifted to Gandhinagar were concerned, they were obviously not in occupation of these tenements on 22-6-1972 when the resolution started operating nor on 18-2-1975 when the resolution was issued. Thus, during the relevant period, these persons had nothing to do with these tenements. They were miles away from them They had shifted from these tenements lock, stock and barrel years back prior to 22-6-1972. It is not in dispute that this category of person were occupying these tenements since years till 1970-71 when they shifted to Gandhinagar on their own accord with the shift of capital and with the

shift of Sachivalaya complex from Ahmedabad to Gandhinagar. It cannot be disputed that they had voluntarily left occupation of these tenements and gone to Gandhinagar for the reasons best known to them. State of Gujarat did not compel them to go there and permitted them to occupy their then existing accommodation at H and L colonies and to commute between Ahmedabad and Gandhinagar if they so desired, as their other colleagues had done. But once when voluntarily these persons walked out of these flats their nexus with the flats came to end, under the scheme of hire purchase envisaged by the impugned resolution, to be in priority category as occupants of the flats on the relevant dates i.e. 22-6-1972 and 18-2-1975. It is during this period, as per the scheme of the resolution, that the concerned occupants desiring to purchase the tenements on priority basis must be in occupation of the concerned tenements as Govt. servants. Thus category (W) persons do not fulfill this requirement. Therefore, strictly speaking, they belong to residuary category of non-occupants on the relevant dates. They can legitimately stand in queue along with others in residuary category. Still, they have been included in priority category at category which has been seriously challenged learned Advocates for the petitioners as irrational and arbitrary. They have heavily leaned on the decision of the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, wherein the following pertinent observations have been made by the Constitution Bench on the aspect of reasonable classification which can stand the test of Arts. 14 and 16 of the Constitution

"The doctrine of reasonable classification recognizes that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those I similarly situated. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another if as regards the subject matter of the legislation their position is substantially the same. The classification must be founded on an intelligible differentia which distinguishes certain persons or things that. are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation. ,The fundamental-guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts. to give a practical content to that guarantee by accommodating it with the practical needs of the society and it, should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master."

In that very case, the court referred to, with approval, a passage found in the earlier decision of the Supreme Court in. The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , wherein Krishna Iyer, J. observed as under:

"Mini-classifications based on micro distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

As we will, presently, show, the impugned category (iii) connected with category (vi) represents a mini-classification based on micro- distinctions and cannot be sustained as rational on the touchstone of Art. 14 of the Constitution. In our view, the hire purchase scheme as reflected by the resolution enjoins that only those occupants who were in possession of these premises on 22-6-1972 onwards up to 18-2-1975 had to, be made occupants thereof under the hire purchase scheme on priority basis. This is the object sought to be achieved by the scheme. If that is so, inclusion of Govt. servants holding nontransferable posts who had shifted to Gandhinagar prior to 22-6-1972 in priority category (iii) appears to be patently arbitrary, uncalled for and it does not fit in with the scheme of priority envisaged by the resolution. It is difficult to appreciate what nexus these non-occupants of H and L colonies have with these tenements years after; they shifted to Gandhinagar, cutting off all their, moorings with these tenements. They had voluntarily left these tenements prior to 1972. May be they may be occupying these tenements earlier for number of years but that has nothing to do with the main requirement of priority category envisaged by, the hire purchase scheme. The main object of the hire purchase scheme is to make occupants of these tenements on 22-6-1972 and who have continued to remain in occupation on 18-2-1975 as owners of these tenements on priority basis. It is the heart of -the scheme. If that is so, giving any priority to non-occupants like persons mentioned in category (iii) would really cut across the prime object of the scheme and would amount to giving undue preference to persons who are. not similarly situated. like the persons mentioned in categories (i) and (ii). Introduction of category (iii) in priority list, therefore, is found to be ex facie arbitrary and irrational. Non occupants are given equal treatment as occupants of these tenements on 22-6-1972 and for that matter till 18-2-1975 and are sought to be brought on par and sought to be covered by the scheme of priority for becoming eligible to purchase these houses under the scheme. Inasmuch as such unequals are being treated, as equals and inasmuch as non-occupants are given similar benefit of priority as occupants, this provision of the resolution must be treated to be arbitrary, irrational and violative of the guarantee of Art. 14 of the Constitution. Save and except having historical connection with these tenements, persons in category (iii) have no valid case to put forward for being placed in priority category and for being taken out of the residuary category of persons. Special treatment given to them by bringing them in priority category (iii), therefore, is patently ,arbitrary, irrational and has no nexus to the, object sought to be achieved by the impugned resolution. The contention canvassed by the learned Advocates for the petitioners, in this connection, has, therefore, got to be accepted.

64. We may, however, at this stage, refer to two contentions seriously canvassed by, the learned Advocates for the concerned respondents. They submitted that

then petitioners themselves are not likely to, gets, any of these houses under the scheme of fare ,purchase enVLb-4gVU they do not satisfy the initial, eligibility criteria. Be that as it may, that does, not mean that as actual occupants of these tenements, they cannot raise the contention, that the scheme of priority envisaged by the impugned resolution is irrational and, !arbitrary. It is obvious that if this scheme is: valid and if any person belonging to category, (iii) is given on ownership basis any of the, tenements in H and L colonies and if these, tenements are actually occupied by the I concerned petitioners, a situation is bound to arise in future when a purchaser of the tenement, the person belonging to category (require the concerned petitioner to vacate. Therefore, it cannot be said that, the petitioners have no direct interest in raising such challenge. Merely because the petitioners might have earlier agreed before P. D. Desai J. to give certain concession to these employees who might have shifted to Gandhinagar and who were permitted to, purchase H and L flats, it cannot be said that the said consent given by the petitioners to the concerned persons would, for all times to come, debar them from raising a constitutional, challenge in connection with rest of the, persons for whom they had never consented: especially when this challenge does not cover the legality and validity of the entire resolution as such but attracts only a part thereof i.e. one or other of the priority, categories, shorn of which the rest of the resolution can still operate. This objection, therefore, as" canvassed by the learned Advocates for the respondents cannot be accepted and has to ,be repelled.

65. The learned Advocates for their respondents then contended that in any case, this challenge is covered against the petitioners by the decision of T. U. Mehta, J.; in special civil application No. 1175 of 19721 (reported in (1973) 14 Guj LR 625). It is true that in para 53 of the judgment, the learned Judge did consider a similar grievance canvassed by Mr. Hathi before him in connection with earlier resolution of 22-6-1972. In this connection, the learned Judge has observed as under:

"Now, in this point, the facts as revealed from the affidavit in reply of respondent 6 are that some of the occupants of the disputed flats were required to go to Gandhinagar because of the shift of the capital of the State to that place. Obviously shifting of the capital of the State from Ahmedabad to Gandhinagar at a particular time was dot of the volition of these occupants and it is an admitted fact that but for this shift, these occupants would have continued to stay at Ahmedabad and in the flats in, question. Under these circumstances, there is nothing wrong if the Govt. preferred to "select this class, of occupants fair the purpose of giving priority. It should be noted that it is not for the court to tell the, Gov. to choose only a ,classification, because after, all it the Government which has to implement its policies and, therefore, the Government is a proper Judge as to what classification would carry out its policy in a better manner. But the question is whether this classification has got any nexus with the object of the scheme. I do not find it difficult to answer this question in the affirmative because it is obvious that the occupants, who are required to go to Gandhinagar

on account of the shift of the capital to that place would have continued to occupy the disputed flats but for this shift and considering the length of their occupation there are -no reasons why they should not be habituated in the flats which they had sub-classification is found to be quite proper.

It must be stated that the aforesaid observations are made by the learned Judge in the light of the record before him and in the light of what was averred in the affidavit of respondent 6 before him. So far as the facts of the present case are concerned, we have already seen that it has been brought on the record of this case that Govt. servants residing in H and L colonies were not compelled to shift to Gandhinagar in view of the shift of capital and transfer of Sachivalaya. They shifted on their own volition. They had been given option to continue to stay in H and L colonies. Some of them stayed, some of them did not. But it was their own choice. Those who stayed behind and commuted between Ahmedabad and Gandhinagar got the benefit of the impugned resolution and their cases were got covered by category (n) I if the conditions mentioned therein were satisfied. But those who voluntarily shifted to Gandhinagar, cannot be said to have been a compelled to go to Gandhinagar as held by T. U. Mehta, J. Perhaps these facts were not brought to his notice, otherwise his decision would not have been what it has been. Even that apart, the aforesaid observations of T. U. Mehta, J. were in connection with priority category as mentioned in resolution dated 22-6-1972 which has already been set aside by him and even after the compromise before the Letters patent bench, that resolution was not resurrected but a fresh decision/resolution was issued on 18-2-1975. Thus, strictly speaking, the observations of T. U. Mehta, J. in connection with priority category about Gandhinagar employees covered by earlier resolution would not be directly applicable to the facts of the present case for upholding priority category in the present resolution. But even that apart, it is impossible to agree with the conclusion of T. U. Mehta, J. on the facts of the present case that those Govt. servants who shifted to Gandhinagar were compelled to so shift as held by T. U. Mehta J. on the facts of the case before him. Even otherwise, if his observations are treated to cover the cases of Govt. servants who might respect, we find it impossible to concur with that part of the reasoning reflected by his observations. In our view occupation of the concerned tenements on the relevant date when the resolution operated is a sine qua non for being given on priority basis the said tenements under the hire purchase scheme. In fact, it is the essence of the scheme, the very heart thereof. If this aspect is given go by and if priority is given to any other classes of persons, not fulfilling this criterion, then in our view, such class of persons not similarly situated will be allowed similar treatment of priority and such preference will have no rational nexus with the object sought to be achieved" by the , priority scheme. Consequently, the observations of T. U. Mehta, J. in special Civil application No. 1176 of 1972 strongly relied upon by the contesting respondents also cannot be of any avail to them. We must therefore, hold that inclusion of persons in category (iii) in the priority category is patently arbitrary, irrational and illegal.

66. Before parting with the discussion of legality of priority category (iii), we may note one submission of the learned Advocates of the respondents. It was urged that priority category (iii) was already included in earlier resolution of 22-6-1972 which was scrutinized in L P.A. No. 4 of 1973 by the Division Bench of this court which recommended that the said category be included in the proposed new resolution. Hence it cannot be treated to be arbitrarily included in the impugned resolution of 1975. It is not possible to agree. It may be that the Division Bench of this court might have so recommended. Still, the question remains whether the result of the said recommendation was vulnerable on the touch-stone of Art. 14 of the Constitution. Such a challenge was not raised before the Division Bench. It had therefore no opportunity to consider the said challenge and so pronounce upon it. What transpired before the Division Bench has a historical significance and in its light the birth of the impugned resolution of 1975 is to be appreciated. But beyond that, nothing more can be read from these historical facts leading to the impugned resolution of 1975. Every part of it has to stand the test of Art. 14 when such test is required to be made. As such when a challenge is made in the present proceedings, we cannot shift it out merely because earlier the Division Bench in course of comprehensive suggestions might have amongst others recommended inclusion of priority category (iii) in the future resolution. Hence this contention fails.

67. Now, the question remains whether this conclusion of ours results invitation of the entire resolution or whether this conclusion requires us to quash only the impugned priority category. In our view, the obnoxious part reflected by category (iii) can easily be severed from the.. rest of the resolution which does not reflect any illegality or irrationality and the remaining part of the resolution can very well stand unaffected and can fully operate devoid of this obnoxious priority category (iii) It is now well settled by a catena of decisions of the Supreme Court that if some part of the order or statute is found vulnerable, if the remaining part can exist independently and without being inhibited by the deletion of the obnoxious part, then only obnoxious part can be taken out as void and on the doctrine of severability, rest of the healthy part can be sustained. If any authority were needed, it is supplied by decision of them Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), , wherein this aspect of the Smaller has been discussed in para 47 of the report. The Supreme Court found that the date from which the liberalised pension scheme was to operate was arbitrary and irrational. Having come to that conclusion, a question arose before the Supreme Court as to whether the entire scheme should be struck down. It was argued that the date was integral part of the whole scheme and the doctrine of severability could not be invoked. The said contention was repelled by holding that the obnoxious words "who were in service on Ernst March 1979 and retiring from service on or after that date" excluding the date for commencement of revision were words of limitation introducing the mischief and were vulnerable as denying equality and introducing an arbitrary fortuitous circumstance but they could be severed without impairing the scheme. It was held that there was

absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it could be easily severed. It was noted that the petitioners did not challenge the liberalised pension scheme and the court found no difficulty in severing and quashing the same on the facts of the case. Similar situation has arisen in the present case. While challenging priority category (iii), the petitioners do not contend that the entire resolution should be struck down. In fact, the petitioners also claim benefit of the said resolution and want to get a chance to purchase the tenements occupied by them. The difficulty in their way is that they do not satisfy the income eligibility criterion or occupation criterion. Consequently, when the scheme of hire purchase is not challenged as a whole for the purpose of the present contention, and when the contention is severed and removed and the resolution can operate free from the fetters and burden of that category. It is not as if that shorn of that category of persons, this resolution cannot function. at all. Far from it. It can function more potently and less arbitrarily. Consequently, we find no difficulty in quashing only obnoxious category (iii) from the resolution while maintaining rest of the resolution by applying the doctrine of severability. We must make it clear that the remaining priority categories (iv) and (v) and (vi) which are also lesser priority categories have not been challenged by anyone before us. In fact, the learned Advocates for the petitioners as well as learned Advocates for the respondent fairly stated that persons mentioned in categories (iv) and (v) viz. Govt. servants who have retired and were residing in these houses immediately before of retirement and who do not have houses of their own, and widows of these Govt. servants who have died while in service and were residing in these houses immediately before their death not having houses, of their own, should be given topmost priority. Thus, priorities given to persons covered by categories (iv) and (v) are not brought, in challenge before us by any one. We, therefore, need not say anything in that behalf.

68. VI.B.(ii). then we "" come to "priority category (vi). We find that it refers to the Govt. servants who have been transferred outside Ahmedabad but who "were continuously residing before their transfers. In a way, this category is, directly linked up with category It can stand or fall with that course, under the scheme of priorities, category (vi) is much lower. But all the same, it represents also a similar type of persons viz. Govt. servants who might have occupied H and L colonies earlier but who had left the premises on their own volition on their transfer outside Ahmedabad. They stand in the same as Govt. servants holding non-transferable posts and who shifted to Gandhinagar on their own volition. Consequently, even though the petitioners have not directly brought in challenge the priority given to persons comprised in category (vi), once their attack on category (iii) is upheld, as a logical corollary and sequitur, category (vi) must also be voided and must be treated as irrational on the same ground on which we have held category (iii) to be irrational and ultra vires the scheme of the resolution". In fact, both these categories are interlinked and intertwined. If one is sustained, the other survives. If one is demolished, the other is destroyed. Therefore, the net result of this discussion is that Govt. Resolution dated 18-2-1975 will Stand,

U. K, Acharya v. State confirmed subject to the deletion of priority categories (iii) and (vi) from it. These two categories will stand quashed and set aside and deleted from this resolution. In the absence of this deleted portion, rest of the resolution can effectively function and can be operated upon, without any difficulty. Then, it leaves out category (VII) which is a residuary category. It is obvious that so far as this category is concerned, any one whether occupant or non-occupant on the relevant dates 22-6-1972 and 18-2-1975 can be legitimately covered by the said residuary category and can stake his luck and chance by standing in queue with the rest of the persons in that residuary category or general category. It cannot be said that provision of this residuary category is irrational or in any way arbitrary. Reason is obvious. The State of Gujarat in its discretion decided to allot 296 low income group houses comprised in H and L colonies on hire purchase basis by its policy decision dated 22-6-1972 and the to have legitimately operated from 22-6-1972. Thus, on that day. all the 396 houses were decided to be allotted under the hire purchase scheme and a firm decision was taken to make the concerned allottees owners. In the scheme, those who were in actual possession on the relevant dates were placed, in the priority categories which we have upheld subject to deletion of categories (iii) and (vi). But that does not mean that if after exhausting this list of priority categories, some houses are left undisposed of, Govt. cannot decide to dispose them by offering them to the public at large. In that would be a legitimate exercise of power and logical consequence of the Govt. decision to dispose of all the 396 houses under the hire purchase scheme. Consequently, provision in residuary category offering undisposed of houses to members of public subject to their satisfying income eligibility -as laid down by CL 2 of the resolution cannot be said to be illegal or irrational. The concerned petitioners or even Govt., servants holding non-transferable posts who might have shifted to Gandhinagar or for that matter. Govt. servants transferred. outside Ahmedabad and who might have earlier continued to occupy H and L colony houses before their transfers can take their chance by falling in this residuary category and can stake their luck, if any, for getting the undisposed of tenements allotted to them by competing for them in the residuary category as envisaged by the resolution. In short, the entire resolution is upheld, subject to deletion of priority categories (iii) and (vi) of para I of the resolution. The petitioners' contention will stand accepted to the aforesaid limited extent. Before parting with this question, we may mention one important concession made by the learned Advocates for the respondents. It was agreed that under the scheme envisaged by the resolution, for allotting houses to persons in diverse categories, requirements of Regn. 33 of the Regulations to the effect that benefit of this scheme shall be available only to that person who does not already own a house or a flat or a plot for the construction of residential building at the time of his application, shall be strictly applied to the present scheme also, subject to the rider that the Board or property allotment committee may consider the case of any person even if he owns a house or a flat or a plot already, if the Board or the committee is satisfied that the additional house or flat is needed for his bona fide residential purpose,

provided further that such consideration shall not be made for any applicant who owns either in his own name or in the name of his wife or minor children a house or a flat for residential purpose in the radius of 8 Kms. of Ahmedabad city where H and L colony houses are situated. It was submitted by the learned Advocate for the respondents that this requirement will be considered to be an additional requirement which will be enforced while working out the scheme of allotment of flats to eligible claimants under the hire purchase scheme as envisaged by the resolution. We take a note of this concession and direct the respondents to implement the impugned resolution of 1975 as upheld by us subject to the deletion of categories (iii) and (vi), and also subject to the aforesaid additional condition which will be also be strictly enforced while operating the said resolution.

69 to 74

75 Rules made absolute.