

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1468 OF 2009
WITH
NOTICE OF MOTION NO. 336 OF 2010

1. Adi Dara Patel }
having his address at Westmore }
Apartment, Pochkhanawala Road, }
Worli, Mumbai 400 025 (through }
his constituted attorney Vikas }
Walawalkar, partner of petitioner }
no. 3) }

2. Kavas Dara Patel }
having his address at C-22, }
River Nest, 311 North Main Road, }
Lane 'E' Koregaon Park, }
Pune 411 001 (through his }
constituted attorney Vikas }
Walawalkar, partner of }
petitioner no. 3) }

3. Samarth Development }
Corporation }
a partnership firm having its }
address at 11A Suyash Near }
Amar Hind Mandal, Gokhale Road }
(North) Dadar, Mumbai - 400 028 }

versus

1. Mr. S. R. Jondhale }
former Additional Collector }
and competent authority, ULC, }
Greater Mumbai, now Personal }
Secretary to the Hon'ble }
Education Minister }
Mr. Radhakrishna Vikhe Patil }
having his office at Room }
No. 130, Main Building, }
Mantralaya, Mumbai 400 021 }

2. Mr. Mahendra Varbhuvan }
 currently the Additional Collector }
 and Competent Authority, ULC, }
 Greater Mumbai, having his office }
 at 5th floor, Administrative }
 Building, Bandra (East), }
 Mumbai 400 051 }

3. State of Maharashtra }
 Mantralaya, Mumbai 400 032, }
 Service through Government }
 Pleader, High Court Bombay }

4. City Survey Officer (Andheri) }
 having his office at Sardar }
 Vallabhbhai Patel Nagar, }
 Achyutrao Patwardhan Marg, }
 Andheri (West), Mumbai 400 053 }

5. The Court Receiver }
 Bombay High Court, 2nd floor, }
 Bank of India Building, }
 M. G. Road, Fort, }
 Mumbai 400 023 }

6(a) Maria Sofia Jehangir Patel }
 of Mumbai, Indian Inhabitant, }
 residing at Gulestan, }
 Cuffe Parade, Mumbai 400 005 }

6(b) Pesi Shavak Patel }
 of Mumbai Indian Inhabitant, }
 residing at Lyndewoode House, }
 Bomanji Petit Road, }
 Mumbai 400 026 }
 Respondent nos. 6(a) and 6(b) }
 in their capacity as the }
 Executors of the Will of late }
 Jehangir Pestonji Patel }

7(a) Yezdi Hiri Malegam }
 of Mumbai Indian Inhabitant, }
 residing at Gulestan, }
 P. Pethe Marg, Colaba Cuffe }
 Parade, Mumbai - 400 005 }

7(b) Darius Cawasji Shroff }
of Mumbai Indian Inhabitant, }
residing at "Moonlight" Maharshi }
Karve Road, Mumbai - 400 020 }
}

7(c) Pesi Shavak Patel }
of Mumbai Inhabitant, residing at }
Lyndewode House, Bomanji Petit }
Road, Mumbai - 400 026 }
}

7(d) Cyrus Shavak Patel }
of Mumbai Indian Inhabitant, }
residing at Lyndewode House, }
Bomanji Petit Road, }
Mumbai - 400 026 }
Respondent nos. 7(a) to 7(d) }
in their capacity as the Executors }
of the Will of late Shavak }
Pestonji Patel }
}

8. The Reserve Bank of India }
a Corporation constituted by the }
Reserve Bank of India Act, 1934 }
and having its Central Office at }
Shahid Bhagatsingh Road, }
Mumbai }
}

9. Mumbai Municipal Corporation }
a statutory corporation }
constituted under the Mumbai }
Municipal Corporation Act, 1888 }
having its office at Mahapalika }
Bhavan, Mahapalika Marg, }
Mumbai 400 001 }
}

10. Urmila Value Realty }
Private Ltd. }
a company incorporated under }
the Companies Act, 1956 having }
its office at Lotus Tower, 1 Jai }
Hind Society, N. S. Road No. 12A, }
Juhu Scheme, Mumbai 400 049 }

11. Omkara Co-operative Housing }
Society (Proposed), }
a society registered under the }
Maharashtra Co-operative }
Societies Act, having its address }
at Tenement No. 19, Aram Nagar }
Part - 2, J. P. Road, Versova, }
Andheri (W), Mumbai 400 061 }
}
12. Babubhai Kanakia Foundation }
having its address at 349 }
Business Point, 5th floor, Western }
Express Highway, Andheri }
(East), Mumbai 400 069 } Respondents

APPEAL NO. 411 OF 2010
IN
CHAMBER SUMMONS NO. 1898 OF 2009
IN
SUIT NO. 2345 OF 1983

1. State of Maharashtra, }
through the Urban Development }
Department, Mantralaya, Mumbai }

2. The Additional Collector and }
C. A. (ULC), Greater Mumbai, }
having office at Administrative }
Building, bandra (East), }
Mumbai - 400 051 } Appellants

versus

1. Adi Dara Patel, of Bombay, }
Indian Inhabitant, residing at }
Maskati Corner Altamount Road, }
Bombay - 400 026 }

2. Kavas Dara Patel, of Bombay, }
Indian Inhabitant, residing at }
Maskati Corner, Altamount Road, }
Bombay - 400 026 }

3(a) Mrs. Maria Sofia Jehangir }
 Patel of Mumbai, Indian }
 Inhabitant, residing at }
 Gulestahan, Cuff Parade, }
 Mumbai - 400 005 }

3(b) Mr. Pesi Shavak Patel of }
 Mumbai, Indian Inhabitant, }
 residing at Lyndewoode House, }
 Bomanji Petit Road, }
 Mumbai - 400 026 }

3(a) and 3(b) in their capacity }
 as the Executors of the Will of }
 Late Jehangir Pestonji Patel, }
 original Defendant No. 1. }

4(a) Yezdi Hirji Malegam }
 of Bombay, Indian Inhabitant, }
 residing at Gulestan, Pethe Marg, }
 Colaba, Cuff Parade, }
 Bombay - 400 005 }

4(b) Darius Cawasji Shroff, }
 of Bombay Indian Inhabitant, }
 residing at "Moonlight" Maharshi }
 Karve Road, Bombay - 400 020 }

4(c) Pesi Shavak Patel }
 of Bombay, Indian Inhabitant, }
 residing at Lyndewode House, }
 Bomanji Petit Road, }
 Bombay - 400 026 }

4(d) Cyrus Shavak Patel }
 of Bombay, Indian Inhabitant, }
 residing at Lyndewode House, }
 Bomanji Petit Road, }
 Bombay - 400 026 }

4(a) to 4(d) in their capacity as }
 the of the Will of Late Shavak }
 Pestonji Patel, Original }
 Defendant No. 4. }

5. Mrs. Naji Ashworth,	}	
Housewife of Bombay, Indian	}	
Inhabitant residing at	}	
Chemindela Montague 1224,	}	
Chene Bougeries Geneva,	}	
Switzerland	}	
6. Noshir Minoo Patel of Indian	}	
Inhabitant, residing at 643,	}	
Parsi Colony, Dadar,	}	
Mumbai - 400 014	}	
7. Dhunjishaw Ardeshir	}	
Vesawewala, Indian Inhabitant,	}	
residing at "Vasant" Bhulabhai	}	
Desai Road, Bombay - 400 026	}	
8. Mrs. Perin Dhunjishaw	}	
Photographer, Indian Inhabitant,	}	
residing at "Vasant" Bhulabhai	}	
Desai Road, Bombay - 400 026	}	
9. Dhunjishaw Perojshaw	}	
Photographer, Indian Inhabitant,	}	
residing at No. 13, Fern House,	}	
Ormision Road,	}	
Bombay - 400 005	}	
10. The Reserve Bank of India	}	
a Corporation constituted by	}	
the Reserve Bank of India Act,	}	
1934 and having its Central	}	
Office at Shahid Bhagatsingh	}	
Road, Bombay	}	Respondents

WITH
 SHOW CAUSE NOTICE NO. 1762 OF 2011
 IN
 NOTICE OF MOTION NO. 1898 OF 2009
 IN
 SUIT NO. 2345 OF 1983

Adi Dara Patel and Anr.	}	Applicants
versus		
Maria Sofia Jehangir Patel	}	
and Ors.	}	Respondents

Mr. P. Chidambaram – Senior Advocate with Mr. Jatin Zaveri, Mr. Swanand Ganoo, Mr. Aditya Shiralkar, Mr. S. C. Mahimtura and Mr. Amit Mehta i/b. M/s. Mahimturra and Co. for the Petitioners in WP/1468/2009 and for respondent nos. 1 and 2 in APP/411/2010.

Mr. Praveen Samdani – Senior Advocate with Ms. Geeta Shastri – Additional Government Pleader and Mr. Mayank Bagla for respondent nos. 3 and 4 in WP/1468/2009 and for appellants in APP/411/2010.

Mr. F. E. Devitre – Senior Advocate with Mr. Karl Tamboly, Mr. Sonmish Gala and Mr. Atul Kshatriya i/b. Markand Gandhi and Co. for respondent nos. 7(a) to 7(d) in WP/1468/2009 and for respondent nos. 4(a) to 4(d) in APP/411/2010.

Mr. Y. A. Sakhare – Senior Advocate with Mr. Yatin Malvankar and Ms. Sowmya Kakar for respondent no. 9.

Mr. Prateek Seksaria with Ms. Krishna Raja i/b. M/s. L. J. Law for respondent no. 10 in WP/1468/2009.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

**Reserved on :- JANUARY 15, 2016
Pronounced on:- APRIL 22, 2016**

JUDGMENT :- (Per S.C.Dharmadhikari, J.)

PREFACE:-

A) This writ petition is one more in the series of matters where jurisdiction of this court under Articles 226 and 227 of the

Constitution of India is invoked not by rightful owners but builders and developers, to reclaim the vacant lands in excess of ceiling limits, which have already vested in the State. The surplus land holders and owners of these lands very well know that their fate is sealed for they are divested of their right, title and interest in these lands by due process of law. However, they are propped up by builders and developers with ulterior motives to file such petitions by relying on the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 (Principal Act) in the State of Maharashtra with effect from 29th November, 2007. Though physical possession of these lands is with the State and not challenged by the owners and surplus vacant land holders at the relevant time, now they raise such challenge being financed by builders and developers. Builders and developers and particularly those amongst them who have no locus and right in law raise a challenge on the strength of irrevocable power of attorneys from the erstwhile owners. They put forward pleas which their principals have never raised. Such litigants are encouraged sometimes by inaction of the State officials in maintaining and preserving proper records and sometimes the State machinery deliberately assists them by keeping back crucial and important documents. Whatever may be the cause, this court's precious time is wasted in not only scrutinising the

original records, but in considering the prolonged arguments. All this because even one square feet of land is extremely valuable in a city like Mumbai and commands a huge price in the market. In cases after cases, vacant lands and which have not been fenced and protected are subject matter of such litigations and since the State is unaware about the extent of the land it owns, there is a tendency of filing them. This is one more case where builders and developers are before the court after the surplus land holders and owners have accepted the correctness and validity of the State's action. As Judges we hardly have any choice particularly when such petitions are admitted.

1) This Writ Petition and Appeal involve common questions of law and facts. They were heard together and are being disposed of by this common judgment.

2) For the purpose of complete enumeration of facts, we will refer to Writ Petition No. 1468 of 2009.

3) This petition prays for issuance of a writ of certiorari or any other writ, order of direction under Article 226 of the Constitution of India, calling for the records, papers and proceedings pertaining to :-

(i) The order dated 30th November, 2006 under section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act").

- (ii) The final statement dated 19th December, 2006 under section 9 of the ULC Act.
- (iii) The notification dated 19th December, 2006 under section 10(1) of the ULC Act.
- (iv) The notification dated 5th February, 2007 under section 10(3) of the ULC Act.
- (v) The notice dated 27th February, 2007 under section 10(5) of the ULC Act.
- (vi) The order dated 27th April, 2007 under section 11(7) read with section 14 of the ULC Act.
- (vii) The entry dated 27th July, 2007 in the Property Register Card inserting the name of the Government of Maharashtra/Respondent No. 3 as holder of CTS No.864A admeasuring 50,364 square meters forming part of the said property.

4) All these are styled as impugned orders. Then, a declaration in terms of prayer clause (c) is sought, by which, it is prayed that this Court should declare that the interest of petitioner nos. 1 and 2 are not affected by any of the impugned orders. This prayer is inserted after terming all the above orders as impugned orders.

5) Some brief facts from the long list of dates and events would be necessary to appreciate the rival contentions.

6) The parties to the writ petition are urging that a large portion of land, namely, 50,364 square meters forms part of the impugned orders. It is stated that much prior to the orders impugned in this writ petition and as far back as 1983, petitioner nos. 1 and 2, along with certain other beneficiaries have agreed to transfer the respective interest in the land to petitioner no. 3. Petitioner no. 3, on account of these arrangements/agreements has agreed to acquire approximately 72% of the beneficial interest in the land. Petitioner No. 3 has been incurring expenses for erecting boundary wall and for security charges, since October, 1984 and continues to incur till date.

7) Petitioner nos. 1 and 2 are stated to be the surviving plaintiffs in a suit being Suit No. 2345 of 1983 covering a piece of land bearing Survey No. 141B, equivalent CTS No. 864 of village Ambivali, Taluka Andheri, District Mumbai Suburban. This land is situate at Andheri (West), Greater Mumbai and admeasures 73,200.40 square meters as indicated on a plan, copy of which is annexed as Annexure 'A' and in the schedule at Annexure 'B'.

8) It is not necessary to trace the history relating to this suit, save and except stating that one Rustomji Dhunjibhoy Patel (for short "R. D. Patel") was the owner of the land. By his Will, he appointed his nephews as executors and made specific bequests

of his various assets. However, the suit land formed part of his residuary estate as per clause 11 of the said Will. R. D. Patel died on 13th February, 1939. We are not concerned with any legal proceedings as between the executors and others. However, it would be pertinent to note that one of the executors, namely, Jehangir Patel was director of Reserve Bank of India (for short "RBI"). He offered to sell the suit land to RBI at Rs.35/- per square yard. RBI accepted this offer made by Jehangir Patel on 9th October, 1974. The ULC Act came into force as far as the State of Maharashtra on 17th February, 1976. On 14th July, 1976, Jehangir Patel and the surviving two executors made an application to the Government of Maharashtra for exempting this land under section 20(1)(a) of the ULC Act so as to enable them to convey it to RBI. On 13th August, 1976, Jehangir Patel and other executors filed return in Form no. 1 under section 6 of the ULC Act. The competent authority passed orders dated 25th May, 1977 and 30th May, 1977 under section 8(4), 9 and 10(1) of the ULC Act and held that 66,432 square meters out of the suit land is surplus vacant land. On 1st November, 1977, the Government of Maharashtra rejected the application dated 14th July, 1976 made by the three executors for exemption of the surplus vacant land under section 20 of the ULC Act. Jehangir Patel and Minocher Patel (two of the three executors) filed Miscellaneous Petition No.

1168 of 1978 challenging this order of 1st November, 1977 and the other orders holding that the land was surplus vacant land. It is claimed that petitioner Nos. 1 and 2 in the present Petition were not the applicants or the petitioners to any miscellaneous petition. On 12th November, 1981, a common order was passed in these two petitions quashing the three orders dated 25th May, 1977, 30th May, 1977 and 1st November, 1977 impugned therein and remanding the matter back for fresh consideration. This order was passed on 12th November, 1981. Thereafter, the competent authority addressed a letter to Jehangir Patel stating that all beneficiaries to the assets of R. D. Patel also ought to make an application under section 20 of the ULC Act. Jehangir Patel as executor and on behalf of only surviving co-executors made a fresh application to the State Government for exemption under section 20 of the ULC Act for executing conveyance of the land in RBI's favour. To this application, other co-owners, including petitioner nos. 1 and 2 to the present petition were not joined as parties.

9) On 9th June, 1982, the co-owners called upon executor Jehangir Patel not to pursue this application for exemption in respect of sale of the suit land to RBI, as better offers than that of the RBI were available in the open market.

10) On 10th September, 1982, the Government of Maharashtra granted exemption under section 20 of the ULC Act to convey 59,407.10 square meters out of suit land in favour of RBI within a period of six months. On 28th February, 1983, a meeting was held in the office of the competent authority to tentatively calculate the portion of the suit land which was within ceiling limit and one which was surplus land to be conveyed to RBI in terms of the exemption order. Thus, out of 59407.10 square meters, which was treated as surplus vacant land, an area of 9043 square meters was reduced as land being within ceiling limit and by a corrigendum dated 19th March, 1983, the exemption order of 10th September, 1982 was modified. The area exempted was reduced to 50364.10 square meters and the time for execution of the conveyance of this property to RBI was extended for further six months till September, 1983. That is how Jehangir Patel, Merwanji Patel, surviving executors executed conveyance in favour of RBI in respect of 50364.10 square meters on 15th September, 1983, but the Petitioners claim that other co-owners, including petitioner nos. 1 and 2 were not parties to this conveyance. The petitioners objected to this conveyance on 21st September, 1983 and 25th October, 1983. In the meanwhile, petitioner nos. 1 and 2 and some other co-owners agreed to sell their respective shares in the land aggregating to

68% in favour of petitioner no. 3. Thereafter, petitioner no. 3 agreed to acquire 4% more share and thus, he agreed to acquire 72% share in the suit land. That is how the suit which we referred above, namely Suit No. 2345 of 1983 was filed by the petitioner nos. 1 and 2 along with their late mother, praying, *inter alia* for a declaration that the conveyance dated 15th September, 1983 in favour of RBI was invalid and be declared as void and duly cancelled. We will refer to this suit and its outcome in further details.

11) This suit was filed on 21st November, 1983 and later on was transferred to the Bombay City Civil Court. A decree has been passed therein on 18th March, 2013.

12) Prior thereto, Notice of Motion No. 1890 of 1983 was moved in the above suit and this Court passed an order on 4th June, 1984 appointing the Court Receiver, High Court Bombay as a receiver of the suit property.

13) Petitioner nos. 1 and 2 were appointed agents of the Court Receiver on 14th September, 1984 and a report was submitted by the Court Receiver reporting that vacant possession of the suit land admeasuring 73,200 square meters had been taken by the Court Receiver on 17th September, 1984 and he has placed/affixed 10 boards displaying and showing his possession of

the property. He has appointed a security agency as well. A letter was addressed on 19th September, 1984 by the Court Receiver to the Collector of Bombay and Tahsildar, Andheri inviting their attention to the order passed by this Court and pointing out that he has taken possession of the land on 17th September, 1984. An area of 7325 square meters having been acquired for Bus Depot, possession thereof was given by the Court Receiver to the Special Land Acquisition Officer sometime in 1986. On 18th October, 1991 and 26th December, 1991, petitioner nos. 1 and 2 executed an irrevocable power of attorney in favour of partner of petitioner no. 3 for a consideration.

14) Then, we find that the petitioners have made reference to a letter addressed by the Court Receiver to respondent no. 4 on 17th October, 1996 requesting cancellation of an entry in the revenue record dated 27th July, 1989. That entry recorded the name of one Harendra Singh. Pursuant to that letter, on 7th November, 1996, the entry dated 27th July, 1989 was deleted.

15) It is stated then that nothing transpired till the year 2006, there were no steps taken under the ULC Act till 10th August, 2006 when the first respondent issued a notice, copy of which is at page 137 of the paper book, to the estate of Dhun Patel

and 14 others. This notice purports to act on the order of remand dated 12th November, 1981 passed by this Court in the above noted two miscellaneous petitions.

16) On the same date, a notice was issued by respondent no. 1 under section 20(2) of the ULC Act to Jehangir Patel, D. D. Patel, Estella Vesugar and RBI alleging that the exempted land had not been transferred to RBI within six months from 10th September, 1982 and requiring them to show cause why the exemption order should not be withdrawn and further steps be not taken under sections 8(4), 10(1) and 10(3) of the ULC Act to acquire the said land. The claim of the petitioners is that these notices were not received by petitioner nos. 1 and 2 and their mother. They were sent to the address of their erstwhile advocate.

17) Then, two further notices identical to the one dated 10th August, 2006 were issued by respondent no. 1 fixing a hearing on 25th September, 2006 in relation to the cancellation of the exemption order. On the same date, another hearing was scheduled for determination of surplus vacant land.

18) These notices, according to the petitioners, bear either the old addresses of petitioner nos. 1 and 2 or address of their

erstwhile advocate and therefore, petitioner nos. 1 and 2 did not receive these notices.

19) On 14th September, 2006, respondent no. 1 addressed a letter to the Tahsildar, Andheri recording that the notices issued earlier had been returned unserved as the land owners were not residing at the addresses available in the office record. The Tahsildar was required to publish the notice at site and forward the publication report. This, according to the petitioners, is not in compliance with the requirement of Rule 5(2)(c) of the ULC Rules, 1976, which contemplated notice to be affixed at the office of the competent authority and at the house of the noticee. However, the petitioners refer to a publication of notice by the Tathsildar at the site as an event occurring on 20th September, 2006.

20) Then, the petitioners refer to a letter to respondent no. 1 addressed by respondent no. 7(d) dated 21st September, 2006 informing him that he had received the notice dated 14th September, 2006, but as there was a pending suit and that the property was in the hands of the Court Receiver since 1984, this respondent requested respondent no. 1 not to pass any order of cancellation of exemption.

21) On 3rd November, 2006, notice was issued by respondent no. 1, which, according to the petitioners, is identical to the notice dated 10th August, 2006 seeking to take steps in pursuance of section 8(4) of the ULC Act and seeking to convene a hearing on 15th November, 2006. The petitioners submit that these notices were addressed at a time when the exemption order was still in force and hence, they are non-est and without jurisdiction.

22) Then, there is a notice of 8th November, 2006 allegedly delivered in office of the estate of Dara Patel. Petitioners, therefore, submit that the order withdrawing the exemption dated 20th November, 2006 on the ground that no steps had been taken to transfer the land to RBI till that date, is also not in accordance with law. The petitioners submit that respondent no. 1 did not notice that the time to execute the conveyance in favour of RBI was extended by a corrigendum dated 19th March, 1983. Then, the petitioners assail the order purportedly passed under section 8(4) of the ULC Act on 30th November, 2006 declaring that 50,364 square meters is surplus vacant land. It is submitted that this order was passed without considering the corrigendum and conveyance dated 15th September, 1983. On 19th December, 2006, respondent no. 6(b) wrote to respondent no. 1 that he had

received the notice of cancellation of exemption, but there was a suit pending, the property is in the hands of Court Receiver since 1984, the RBI is a party to this litigation and, therefore, no order be passed as stated in the notice.

23) Yet, it is submitted, that the first respondent proceeded and issued a statement styled as final statement under section 9 of the ULC Act holding that the above land and to the extent indicated is surplus vacant land.

24) Then, there was a notification issued under section 10(1) of the ULC Act in respect of 50,364 square meters of land on 19th December, 2006. This notification wrongfully records that the final statement under section 9 of the ULC Act was served on the concerned persons through the competent authority. The petitioners submit that the notification under section 10(1) could not have been published until there was proof of the service of statement under section 9 of the ULC Act. There is no such evidence of service on holders/persons in possession. Further, the statement under section 9 of the ULC Act and notification under section 10(1) were issued on the same date. Hence, it is clear that the Acts and Rules were violated. On 5th February, 2007, a notification under section 10(3) of the ULC Act was issued by the 1st respondent, under which, it was declared

that the surplus vacant land of 50,364 square meters vested in the State Government.

25) Then, on 27th February, 2007 respondent no. 1 issued a notice under section 10(5) of the ULC Act to the estate of Dara Patel and Dhun Patel stating that the City Survey Officer, Ambivali had been authorised to take possession of 50,364 square meters land and that possession be handed over to him on 9th March, 2007. According to the petitioners, this notice also stated that the City Survey Officer can take one sided possession of the surplus vacant land if the owner was not present to give possession of the same.

26) Then, on 12th March, 2007, the inspecting surveyor of respondent no. 4 addressed a letter to respondent no. 1 informing him that he visited the site on 9th March, 2007, but the land bearing CTS No. 864 is in possession of the Court Receiver, High Court Bombay appointed in Suit No. 2345 of 1983. Hence, *ex-parte* possession of the land is not taken on that date.

27) On 20th March, 2007, respondent no. 1 visited the site and found that a board of Court Receiver was only on a part thereof bearing Survey No. 141B, Ambivali, which was on the other side of nallah and this area did not fall within the surplus vacant land.

28) Therefore, the City Surveyor addressed a letter to respondent no. 1 on 29th March, 2007 informing him that as per the telephonic message on 28th March, 2007, the inspecting Surveyor has taken *ex-parte* possession on 28th March, 2007 and copy of this letter of possession and panchanama is being submitted herewith.

29) Then, another letter was addressed on 29th March, 2007 by respondent no. 1 to the estate of Dara Patel, Ms. Dhun Dara Patel and 12 others fixing a meeting on 10th April, 2007 to determine the compensation payable in terms of section 11 of the ULC Act. On 27th April, 2007, the 1st respondent passed an order in exercise of the powers under section 11(7) read with section 14 of the ULC Act awarding compensation of Rs.50,364/- for the surplus vacant land. That order is referred to the extent that it records that possession of the land was taken and handed over to the Collector, Mumbai Suburban District on 9th March, 2007. On 27th July, 2007, respondent no. 4 made an entry in the Property Register Card pertaining to the said land that Government was a holder in respect of a portion admeasuring 50,364 square meters.

30) On 29th November, 2007, the ULC Act was repealed in the State of Maharashtra in terms of the Urban Land (Ceiling and Regulation) Act, 1999 (for short "the Repeal Act"). There is

another letter referred, namely, dated 20th February, 2008, whereby, the City Survey Officer informed the Principal Secretary in the Urban Development Department of the State that this land was vacant and possession thereof was taken on 28th March, 2007.

31) On 29th December, 2008, respondent no. 1 addressed a letter to respondent no. 10 asking it to deposit Rs.16.67 crores for allotment of 5670 square meters of land out of the surplus vacant land, but respondent no. 10 wrote that on inquiries, it was learnt that a part of the land was affected by Coastal Regulation Zone (CRZ-1).

32) The petitioners state that they did not learn of any of these events till petitioner no. 3, in routine course, obtained the property card and the extract thereof revealed the entries and the name of the Government of Maharashtra as holder of the alleged surplus vacant land. It is thereafter, in the month of August, 2009 that the petitioners made inquiries and learnt about aforesaid events.

33) There was also a wrongful act of causing damage to the compound wall covering the land which is subject matter of the suit and since it was in possession of the Court Receiver, he,

by a letter dated 19th March, 2009, directed the petitioners to call upon that entity, namely, SEW Infrastructure to pay damages for repairs. However, even the Court Receiver was not aware of all the events.

34) It is in these circumstances that the present writ petition containing the above noted prayers has been filed. If one has to note the events that took place during the pendency of the petition, they could be noted as under:-

(a) On 16th November, 2009, in view of the destruction of eastern side of the compound wall of the suit land, the Court Receiver applied to this Court vide Report No. 324 of 2009 filed in Suit No. 2345 of 1983 to seek direction against M/s. SEW Infrastructure Limited to construct the destroyed compound wall.

(b) On 30th November, 2009, this Court passed order taking on record the Court Receiver's Report No. 324 of 2009 in Suit No. 2345 of 1983.

(c) On 5th December, 2009, 3rd April, 2010, 8th April, 2010 and 27th April, 2010, the Court Receiver filed his reports in Suit No. 2345 of 1983 for recording the extent of damages done on the eastern side of the compound wall and various

measures caused by the Court Receiver to be taken to rebuild the destroyed compound wall.

(d) On 7th December, 2009, 14th December, 2009, 23rd March, 2010, 20th April, 2010 and 27th April, 2010, this Court passed various orders in Suit No. 2345 of 1983 on the Court Receiver's reports, whereby, the Court had directed joint inspection of the suit land by Court Receiver, the petitioners (as agents) and M/s. SEW Infrastructure Limited to assess the extent of damages.

(e) On 14th December, 2009 constituted attorney of petitioner nos. 1 and 2 filed affidavit in response to Court Receiver's Report No. 324 of 2009.

(f) On 27th October, 2009, respondent no. 2 filed reply to Writ Petition No. 1468 of 2009.

(g) On 30th October, 2009, petitioners filed rejoinder affidavit to reply affidavit of respondent no. 2 in the above writ petition.

(h) On 24th November, 2009, M/s. Urmila Value Realty Pvt.Ltd. (respondent no. 10) filed reply to the writ petition and *inter alia* contended that exempted land was

transferred to RBI and therefore petitioners have no title to the suit land and that suit filed by them is fraudulent. Respondent no. 10 also contended that the order withdrawing exemption dated 20th November, 2006 has not been challenged.

(i) On 26th November, 2009, respondent no. 1 (former competent authority) filed reply to the writ petition and tendered an apology.

(j) On 26th November, 2009, Chamber Summons No. 1898 of 2009 was taken out in Suit No. 2345 of 1983 by respondent no. 2 (present competent authority) and respondent no. 3 (State) seeking leave of the Court to take further steps in respect of that portion of the subject property which was declared as surplus vacant land admeasuring 50,364 square meters in respect of which Court Receiver is appointed by order dated 4th July, 1984 passed in Notice of Motion No. 1890 of 1983 in Suit No. 2345 of 1983. Further, respondent nos. 2 and 3 also sought an order that they be joined as party defendants to Suit No. 2345 of 1983.

(k) On 6th January, 2010, a Division Bench of this Court passed order admitting the writ petition and directing the parties to maintain status quo.

(l) On 27th April, 2010 order passed by this Court recording that at the time of the hearing of Chamber Summons No. 1898 of 2009 which was taken out in Suit No. 2345 of 1983, respondent nos. 2 and 3 withdrew prayer (b) of Chamber Summons No. 1898 of 2009, whereby they had sought to be joined as party defendants to Suit No. 2345 of 1983.

(m) On 5th May, 2010, this Court dismissed Chamber Summons No. 1898 of 2009 and directed that notices be issued to respondent nos. 1, 2 and 3 to show cause why proceedings under the Contempt of Courts Act, 1971 should not be initiated against each of them for interfering in the administration of justice by dispossessing or attempting to dispossess the Court Receiver appointed by this Court on the suit land without leave of the Court and even without notice to the Court Receiver.

(n) On 13th August, 2010, a Division Bench of this Court admitted Appeal No. 411 of 2010 challenging the order dated 5th May, 2010 and stayed the order dated 5th May, 2010. The Division Bench also directed that Appeal No. 411 of 2010, Show Cause Notice No. 3115 of 2010 and the captioned writ petition be clubbed together.

(o) In September, 2012, Suit No. 2345 of 1983 was transferred to the Bombay City Civil Court (the same was numbered as BCCC Suit No. 7480 of 1983).

(p) On 18th March, 2013, Suit No. 2345 of 1983 was decreed and an order and judgment was made holding that:-

(i) The agreement and conveyance dated 15th September, 1983 executed in favour of RBI are to be cancelled and set aside.

(ii) The Court Receiver, Bombay High Court is directed to deliver possession of the subject property to the petitioners and their co-owners being the plaintiffs and defendant nos. 1 to 14 in Suit No. 2345 of 1983.

This judgment and decree has not been appealed against and has become final.

35) It is in the backdrop of the above subsequent events that it was directed that both, the writ petition and the appeal be heard together.

36) Mr. P. Chidambaram learned Senior Counsel appearing for the petitioners in the writ petition would submit that the present writ petition is filed to challenge the purported

acquisition of land of the petitioners under the ULC Act, which stood repealed in the State of Maharashtra with effect from 29th November, 2007.

37) Since the ULC Act has been repealed, the writ petition ought to be disposed of considering the provisions of the Repeal Act.

38) Section 3 of the Repeal Act provides that if any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the ULC Act, possession of which has not been taken over by the State Government, then, such land shall be restored to the land holder.

39) The Division Bench of this Court in the case of *Voltas Ltd. and Anr. vs. Additional Collector and Competent Authority, Thane*¹ has held that the Repeal Act, as passed by the Parliament, protected only those lands of which possession had been taken and it was the clear intention of the parliament not to save vesting of the land in the State Government in which possession had not been taken.

40) It is the petitioner's case that the land admeasuring 73,200 square meters, inclusive of vacant surplus land

¹ Bom C. R. 746 (para 14)

admeasuring 50,364 square meters, has been in the possession of the Court Receiver appointed by this Court in Suit No. 2345 of 1983 since 17th September, 1984 and respondent nos. 1 to 4 have not taken actual physical possession of the land or any part thereof. Indeed, it is an admitted case that the Court Receiver has not been dispossessed from the land in question.

41) It is further submitted that respondent nos. 1 to 4 rely upon panchanama and receipt of possession to contend that they had taken possession in accordance with the law laid down in *Prahlad Singh vs. Union of India*², *Sitaram Bhandar Society*³, *P. K. Kalburqi*⁴ and *Tamil Nadu Housing Board*⁵.

42) The aforesaid judgments are in the context of the Land Acquisition Act, 1894 and the manner of taking symbolic possession of large open and vacant land. They have no application to a case under the ULC Act. In the case of ULC Act, possession can be taken under section 10 of that Act only in one of the three methods as spelt out in the case of *State of U. P. vs. Hari Ram*⁶.

2 (2011) 5 SCC 386

3 (2009) 10 SCC 501

4 (2005) 12 SCC 489

5 (1996) 8 SCC 259

6 (2013) 4 SCC 280

43) Without prejudice to the above and assuming without conceding that the respondent nos. 1 to 4 had taken some kind of symbolic possession as claimed, it is submitted that even the taking of so called symbolic possession is illegal because:-

(a) The notice under section 10(5) of the ULC Act for taking possession was not given to the person in possession, viz., the Court Receiver, High Court Bombay.

(b) The so called one sided possession was purported to be taken before the expiry of 30 days as prescribed by sub-section (5) of section 10 of the ULC Act (in the present case 30 days period expired on 29th March, 2007 and the one sided possession was allegedly taken on 9th March, 2007 or 28th March, 2007).

(c) The panchanama (Pg.226/WP Part II) recording the alleged taking of ex-parte possession is wholly unreliable and is defective inasmuch as:

(i) the panchanama does not record the names of panchas/independent witnesses;

(ii) the panchanama does not bear the residential addresses of the panchas/independent witnesses;

(iii) the panchanama is not signed by the panchas/independent witnesses; instead records a remark "one sided possession taken".

(d) The possession receipt (Pg.225/WP Part II, which relies solely on the panchanama, is equally bad for the aforesaid reasons.

(e) The panchanama thus is contrary to the decision in *Prahlad Singh's case* (supra), which holds that:-

“19. (iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document. (emphasis supplied)”

(f) There is material inconsistency and grave contradiction in as far as date of taking the alleged one sided possession is concerned. The following documents mention the date as 28th March, 2007:

- (i) Letter dated 29th March, 2007 (See Pg. 223-226/WP Part II)
- (ii) Panchanama and possession receipt dated 28th March, 2007 (See Pgs. 226 and 225/WP Part II)
- (iii) Tabulated statement dated 20th February, 2008 (See Pg./234/WP Part II)

Whereas, the following documents mention the date as 9th March, 2007:-

- (i) Notice under section 11 dated 29th March, 2007 (See Pg. 227-228/WP Part II)
- (ii) Order under section 11(7) dated 27th April, 2007 (See Pg. 229/WP Part II)

The aforesaid contradictions assume importance because the ULC Act has been held to be an expropriatory legislation and which is required to be

construed strictly. (See *State of Maharashtra vs. B. E. Billimoria and Ors.*⁷)

44) It is further submitted by Mr. Chidambaram that the subject land is encircled by a compound wall having only one entry gate and is guarded by the security personnel round the clock. The possession of such land could be taken only after actually entering the land and not by any symbolic or paper possession. The existence of compound wall and presence of security guards is established from the reports of the Court Receiver reporting damage to the compound wall caused by SEW Infrastructure Ltd. to this Court and directions passed by this Court in the year 2009 for repairs of the damaged wall.

45) Respondent nos. 1 to 4 could not have taken possession of the area of surplus vacant land measuring 50,364 square meters without identifying and demarcating the same, out of the larger piece of land measuring 73,200 square meters (less area of 7525.60 square meters given to Bus Depot) in possession of the Court Receiver. Thus, the case of taking over possession by respondent nos. 1 to 4 is not credible and cannot be accepted.

46) In view of the aforesaid peculiar features of the subject land, the judgments relied on by respondent nos. 1 to 4 have no application.

⁷ (2003) 7 SCC 336 (para 22)

47) Respondent no. 1 has vaguely alleged that maintenance surveyor took possession of the said surplus vacant land on 28th March, 2007. But, there is no affidavit of maintenance surveyor who allegedly took possession.

48) It is further submitted by Mr. Chidambaram that respondent nos. 1 to 4 had knowledge that the subject land is in possession of the Court Receiver, High Court Bombay, which is evidenced from the following documents:-

(i) Letter dated 19th September, 1984 from the Court Receiver to the Collector of Bombay and Tehsildar, Andheri that the Court Receiver had taken possession of the subject land.

(ii) Letter dated 17th October, 1996 sent by Court Receiver to the office of City Surveyor (R-4) for correcting the entries in the property card.

(iii) Letter dated 21st September, 2006 sent by R-7 to respondent no. 1 (competent authority) stating that the subject land is in the hands of the Court Receiver since 1984.

(iv) Letter dated 19th December, 2006 sent by respondent no. 6 to respondent no. 1 (competent authority) stating that the subject land is in the hands of the Court receiver since 1984.

(v) Letter dated 12th March, 2007 sent by City Surveyor (R-4) informing respondent no. 1 (competent authority)

that the subject land was in possession of Court Receiver and possession could not be taken.

(vi) Presence of notice boards at site showing that the subject land was in possession of the Court Receiver, High Court Bombay.

49) It is further submitted that the status of Court Receiver has been spelt out in the case of *Everest Coal Company Pvt. Ltd. vs. State of Bihar and Anr.*⁸ as under:-

“4. When a Court puts a receiver in possession of property, the property comes under Court custody, the receiver being merely an officer or agent of the Court. Any obstruction or interference with the Court's possession sounds in contempt of that Court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings.”

50) Two years after the repeal of the ULC Act, R-2 and R-3 on 26th November, 2009 filed in Suit No. 2345 of 1983 Chamber Summons No. 1898 of 2009 containing two prayers, namely:-

- “(i) To implead R-2 and R-3 as defendants to the suit; and
- (ii) To grant leave to R-2 and R-3 to take further steps in respect of the land in respect of which Court Receiver is appointed.”

51) R-2 and R-3 themselves withdrew the prayer for impleadment. Having withdrawn the prayer for impleadment, the prayer for leave is not maintainable and is totally misconceived. In any event, by order dated 5th May, 2010, the

⁸ (1978) 1 SCC 12

learned Single Judge has rejected the prayer seeking leave. (See page 281 of appeal paper book-II).

52) It is further submitted by Mr. Chidambaram that 25 years after the judgment of the High Court dated 12th November, 1981, respondent no. 1 (competent authority) on 10th August, 2006 allegedly issued notices for reopening of the proceedings under the ULC Act for the reason that the surplus vacant land was not transferred to RBI as per the exemption order. Respondent no. 1 (competent authority) thereafter purported to pass orders under section 20(2) and section 8(4) to issue final statement under section 9 and notifications under section 10(1) and section 10(3) of the ULC Act.

53) Respondent No. 1's contention that at the time of passing the orders, he was not aware of the corrigendum dated 19th March, 1983 is untenable, besides lacking in credibility, because:-

(a) The corrigendum dated 19th March, 1983 was issued in response to respondent no. 1's letter dated 28th January, 1983 and, hence, it must be presumed that respondent no. 1 was aware of the corrigendum.

(b) There is no requirement under the ULC Act that the transferor or transferee should inform respondent no. 1 of the compliance of the terms of the exemption order, i.e.

the execution of the conveyance dated 15th September, 1983.

(c) In any event, now respondent nos. 1 to 4 admit the existence of the corrigendum on the record of office of respondent no. 2.

54) Apart from the gross delay in issuing the notices, actions taken by respondent no. 1 under the provisions of the ULC Act commencing from 10th August, 2006 onwards are illegal and no-est for the following reasons:-

(A) With respect to notices under section 20(2) of the ULC Act dated 10th August, 2006:-

(i) For the issuance of these notices, the existence of the jurisdictional fact, i.e. the non-compliance of the terms of the exemption order dated 10th September, 1982 viz., the non-execution of conveyance in favour of RBI, was necessary. The basis on which respondent no. 1 could have commenced enquiry was not in existence. The conveyance having been executed on 15th September, 1983, there was no breach of the exemption order dated 10th September, 1982. Respondent no. 1 could not have commenced an inquiry as per notices dated 10th August, 2006 and 14th September, 2006.

(ii) These notices were sent to the erstwhile advocates of the petitioner nos. 1 and 2 who were appointed about 25 years ago and they did not receive these notices.

(B) With respect to notices issued for hearing and for passing orders under section 8(4) of the ULC Act dated 10th August, 2006:-

(i) These notices were issued during the subsistence of the exemption order dated 10th September, 1982 read with corrigendum dated 19th March, 1983. When exemption order is in force, no action under Chapter-III of the ULC Act can be taken because there is no surplus vacant land.

(ii) These notices were sent to old addresses of petitioner nos. 1 and 2 where they were not residing in the year 2006 and they did not receive these notices. There is no evidence on record of service of these notices on petitioner nos. 1 and 2.

(iii) On record, there is a communication dated 14th September, 2006 at page 149 of the writ petition paper book recording the admission by respondent no. 1 that the notice dated 10th August, 2006 was returned unserved as the land owners (petitioner nos. 1 and 2 and others) were not staying at the given addresses. This clearly demonstrates that respondent nos. 1 to 4 were aware of the non-service.

(iv) The instructions of respondent no. 1 to Tehsildar to publish the notice under section 8(4) of the ULC Act at site is not in accordance with Rule 5(2)(c) of the ULC Rules. The said Rule requires notice to be affixed at the office of competent authority and at the houses of the noticees. The original record produced before the Court does not have any evidence that the

notices were affixed at the office of the competent authority; nor is there any evidence that the notices were affixed at the houses of the noticee.

(v) These notices were also required to be served upon the person in possession, viz., Court Receiver, High Court Bombay, by registered post as mandated by Rule 5(2)(a)(ii) of the ULC Rules and there is no evidence on record of service by registered post on the Court Receiver.

55) It is further submitted that inasmuch as the aforesaid notices and orders were issued on a fundamentally erroneous factual premise that the land was not transferred to RBI, the said notices and orders are a nullity in the eyes of law. (See *Union of India vs. Tarachand Gupta*⁹).

56) When the law requires that a particular thing to be done in a particular manner, then, it must be done in that manner, other modes of exercise are impliedly barred. Thus, notices ought to have been served as prescribed by the ULC Act and the Rules. (See *A. K. Roy and Anr. vs. State of Punjab and Ors.*¹⁰).

57) In view of the material irregularities in service of aforesaid notices, the order dated 20th November, 2006 under

⁹ (1971) 1 SCC 486 (para 21)

¹⁰ (1986) 4 SCC 326 (para 10)

section 20(2) withdrawing exemption and order dated 30th November, 2006 determining surplus vacant land are bad in law and are a nullity.

58) The final statement under section 9 of the ULC Act dated 19th December, 2006 is also bad in law because it was not served on the land holder nor the person in possession (Court Receiver) as required by section 9 of the ULC Act read with Rule 5(2) of the ULC Rules.

59) Non-service of final statement under section 9 of the ULC Act vitiates notification under section 10(1) of the ULC Act. The notification under section 10(1) is also bad for another reason as it was not published in two newspapers as required by Rule 6 of the ULC Rules.

60) Where any order is passed in violation of the principles of natural justice, such an order is a nullity, which can be challenged whenever and wherever it is sought to be enforced. See *Chiranjilal Goenka vs. Jasjit Singh*¹¹, *Nawabkhan Abbaskhan vs. the State of Gujarat*¹² and *R. B. Shreeram Burga Prasad vs. Settlement Commission*¹³).

¹¹ (1993) 2 SCC 507 (para 18)

¹² (1974) 2 SCC 121 (para 14)

¹³ (1989) 1 SCC 628 (para 7)

61) It is submitted by Mr. Chidambaram that as a consequence of the above illegalities in the action under sections 8, 9 and 10 of the ULC Act, the action under section 10(3) of the ULC Act is illegal, null and void. As a result, there is no deemed vesting under section 10(3) of the Act in favour of the State in the present case and the purported acquisition process is a nullity.

62) It is further submitted by Mr. Chidambaram that the petitioners have averred in para 5(B) at page 21 of the writ petition that they learnt about the events that transpired on and after 10th August, 2006 sometime in June, 2009. There is no pleading on record denying these assertions of the petitioners, which are deemed to have been admitted by the respondents.

63) The petitioners, according to Mr. Chidambaram, cannot be faulted by imputing knowledge of notices and orders issued after 10th August, 2006. Such knowledge is being imputed without any pleading. He elaborated the submissions by pointing out that none of the grounds can be said to be tenable merely because the petitioners have annexed copies of the notices and orders as Annexures to the writ petition. Secondly, there cannot be said to be any indirect knowledge and attributed through respondent nos. 6 and 7. Merely because these respondents have agreed allegedly to transfer their interest to petitioner no. 3 does

not necessarily mean that they would discuss or state anything about it to the petitioners.

64) The petitioners have averred that the security guards at the site prevented respondent no. 1 from taking possession, but these are not security guards reporting to the petitioners. They are not placed at the site by the petitioners.

65) Then, Mr. Chidambaram submits that mere publication of the notification under section 10(1) and 10(3) in the official gazette does not mean that the petitioners are aware of the same, inasmuch as Rule 6 of the Urban Land Ceiling Rules requires that the notification under section 10(1) shall be published in two newspapers. This is in addition to the publication in the official gazette. Thus, mere publication in the official gazette is not a sufficient notice.

66) Finally, Mr. Chidambaram would submit that there is no warrant for questioning the locus of petitioner nos. 1 and 2 simply because petitioner no. 3 is also a party petitioner.

67) The conduct of the petitioners also cannot be questioned. No motive can be imputed to the petitioners. There is no trickery on their part. Mr. Chidambaram, therefore, submits that petitioner nos. 1 and 2 did not take any benefit of the

exemption order. Any benefit that may have been taken by the executors of the Will also came to an end when the exemption order was withdrawn on 20th November, 2006. For all the above reasons, Mr. Chidambaram would submit that this writ petition be allowed.

68) Mr. Chidambaram has relied upon the following additional judgments in support of his contentions:-

(i) Ahinsa Buildtech Private Limited and Anr. vs. The State of Maharashtra and Ors. **Writ petition No. 397 of 2010** order dated 5th October, 2011 (Bombay High Court).

(ii) The Bank of Baroda Employees Arunoday Co.op. Hsg. Soc. Ltd. vs. State of Maharashtra **Writ Petition No. 2119 of 2008** order dated 21st November, 2011 (Bombay High Court).

(iii) M/s. Johnso and Johnson Ltd. and Anr. vs. State of Maharashtra and Anr. **Writ Petition No. 1461 of 2009** order dated 9th November, 2011 (Bombay High Court).

(iv) The National Wire Heald Works Pvt. Ltd. vs. The State of Maharashtra and Ors. **Writ Petition No. 737 of 2009** order dated 17th November, 2011 (Bombay High Court).

(v) Kothuru Babu Surendra Kumar (died) and Ors. vs. Special Officer and Competent Authority, ULC, Vijayawada and Ors. **(2000) 4 ALT 694**.

(vi) State of Uttar Pradesh vs. Hari Ram **(2013) 4 SCC 280**.

(vii) Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority and Ors. **(2012) 4 SCC 718**.

(viii) Union of India vs. Swaran Singh and Ors. **(1996) 5 SCC 501**.

(ix) Ganesh Rangnath Dhadphale vs. Special Land Acquisition Officer (I) **1979 Mh. L. J. 786.**

(x) Ghanshyam Ramcharan Amghe and Ors. vs. State of Maharashtra and Ors. **2006(3) Bom. C. R. 479.**

(xi) Tashi Delek Gaming Solutions Ltd. and Anr. vs. State of Karnataka and Ors. **(2006) 1 SCC 442.**

69) Apart therefrom, Mr. Chidambaram also relied upon certain documents and to which we shall make reference later on.

70) On the other hand, Mr. Samdani learned Senior Counsel appearing for respondent nos. 1 to 4 submits that the petitioners have clearly indulged in an act of trickery with an attempt to present the State with a false story. The conduct of the petitioners is such that they are not entitled to any reliefs under Article 226 of the Constitution of India.

71) Mr. Samdani submits that petitioner nos. 1 and 2 who claimed interest in the subject land have ceased to have one and it is only petitioner no. 3 a developer and a builder who is prosecuting the present proceedings for a commercial gain. Petitioner no. 3 has no cause of action to maintain the petition or seek reliefs therein.

72) Mr. Samdani then submits that the facts have not been placed in the proper perspective, inasmuch as requisite notices were issued before orders under section 20(2) and section 8(4). The notices were also issued for section 9 and section 10

proceedings. The notices were also issued c/o the advocates and solicitors who represented the owners in the proceedings before the competent authority as seen in the roznama.

73) Mr. Samdani submits that the petitioners in the writ petition have stated that petitioner nos. 1 and 2 have 2/7th share in the estate, however, petitioner no. 3 a developer and builder who is associated with the land since 1983, claims interest in the land to the extent of 72%, which obviously includes the respondents who are supporting the petitioners and some of whom, in response to the notices, addressed letters to competent authorities, copies whereof are annexed by the petitioners.

74) Mr. Samdani further submits that the petitioners cannot dispute service of notices inasmuch as all the notices and the orders passed in the proceedings pursuant to the notices are annexed by them in the writ petition. In the writ petition, there is no statement that they got the copies of the notices and orders either under the Right to Information Act, 2005 or from any other source including the supporting respondents. The petitioners have been acting in tandem with the supporting respondents as is apparent from the facts that the petitioners have annexed the copies of the letters addressed by the supporting respondents to the competent authority.

75) It is further submitted by Mr. Samdani that the notifications under section 10(1) and 10(3) have also been published in the Maharashtra Government Gazette. It is thus submitted that the petitioners, at the relevant time, had due knowledge of the notices and the proceedings under section 20(2) and thereafter under sections 8, 9, 10 of the ULC Act. It is submitted that the petitioners are deemed to have the knowledge as the notifications were also published in Government Gazette which were available to all citizens. (See *State of Maharashtra vs. Mayer Hand George*¹⁴).

76) Mr. Samdani further submits that the attempts to raise technical arguments on the alleged deficiencies in notices under section 8, 9 and 10 of the ULC Act ought not to be entertained inasmuch as the petitioners never filed any appeals or raised challenge during the relevant period. Such pleas after two and a half years of possession and one and a half years of repeal ought not to be entertained. In the present writ petition also, there is no challenge to the order dated 20th November, 2006 revoking the exemption order under section 20(2) of the ULC Act with a result that there is no exemption. The belated challenge in 2009 (after the repeal of the ULC Act) to the proceedings under sections 8(4), 9 and 10 ought not to be entertained. The events

14 1965 1 SCR 123

narrated above clearly indicate the designed move of the petitioners to somehow or the other deprive the State of surplus vacant land to which it is legally and legitimately entitled to. If there was challenge before repeal, State would have taken immediate remedial measure with respect to the alleged deficiency in notices.

77) Mr. Samdani further submits that the petitioners attempted to challenge the orders on the grounds of non service, violation of natural justice, invalidity, on the ground of nullity, etc. It is submitted that the notices as indicated hereinabove are served. In any event, the petitioners had clear knowledge at the relevant time of the said notices. It is submitted that the petitioners were afforded opportunity of hearing by notices. However, they failed and neglected to avail the opportunity of hearing and therefore, cannot make grievance of violation of the principles of natural justice. An attempt was made to contend that the notices are not in terms of the rules which the petitioners contend are mandatory. It is submitted that the aim and object of notice is to put the person to notice of an action. Alleged deficiencies in the notice after repeated opportunities and lapse of time cannot invalidate the orders. The attempt to contend that the orders passed by the competent authority are void and/or

nullity is unsustainable inasmuch as there is no dispute that the competent authority has jurisdiction to pass order under section 20(2) of the ULC Act. There cannot be a dispute that once the exemption order under section 20(2) of the ULC Act is revoked, the proceedings under sections 8, 9 and 10 can commence. The competent authority's inherent jurisdiction is not in dispute. Thus, the contention that the orders are void or nullity, it is submitted, is untenable. None of the orders are challenged by filing appeal during the relevant time. There cannot be a challenge in collateral proceedings.

78) Mr. Samdani further submits that a further attempt was made to contend that the competent authority, whilst revoking the exemption under section 20(2), did not notice the corrigendum and therefore, order of revocation under section 20(2) is bad. Firstly, it is submitted that order under section 20(2) is not under challenge and challenge to the same is expressly given up. Secondly, the petitioners expressly dissented from and objected to the exemption order itself. The petitioners challenged the conveyance which was to be executed under the exemption order. The petitioners obtained a decree of cancellation of conveyance. Whether the corrigendum was noticed or not noticed by the competent authority has no bearing

or consequence on the revocation order. Inasmuch as the petitioners at all stages dissented, disputed and asserted non-compliance of the condition under the exemption order.

79) It is submitted by Mr. Samdani that the petitioners contended that the competent authority had knowledge of the suit and the appointment of a receiver and in this regard, reliance was placed on the documents. (Serial numbers 27, 28, 31, 40 and 45 of the chronology of events of the petitioners). It is submitted that none of the aforesaid documents can impute knowledge of the competent authority to the suit or appointment of receiver with respect to the surplus vacant land. The letter addressed to the collector is not to the competent authority. The Collector's office is different from the office of Additional Collector and Competent Authority. The letter addressed to City Survey Officer in 1996 cannot be used against the Additional Collector and Competent Authority to impute knowledge. Similarly, the letters addressed by the supporting respondents do not enclose the copies of the proceedings. Copies of the orders do not indicate as to whether the receiver has been appointed in respect of surplus vacant land. The competent authority learnt about the appointment of receiver only on the service of the writ petition and therefore, made an application in suit for leave to regularise the action of taking possession.

80) It is further submitted by Mr. Samdani that a further attempt was made to contend that since the receiver was in possession, notice ought to have been given to the receiver and in the absence of notice to the receiver, the notice and the action both are bad. As submitted hereinabove, the petitioners have been duly served with the notices and had clear knowledge of the proceedings. The petitioners themselves have stated that they were agents of the Court Receiver. (Serial number 26 of the chronology of events of the petitioners and pages 15 and 32 of the writ petition). A service upon the agent is a good service on the principal.

81) It is further submitted by Mr. Samdani that the possession of the surplus vacant land was taken on 28th March, 2007. The factum of possession is duly reflected in the panchanama and possession receipt and large number of contemporaneous record. The surplus vacant land is open land and the possession is that of open land. It is submitted that the documents like panchanama and possession receipt, even it is *ex-parte*, would constitute sufficient proof of possession.

82) It is further submitted that the land vested under section 10(3) in the State. Thereafter, notices of possession were issued. It is submitted that the land in question was and is a

vacant land and on taking possession, record in normal and ordinary course of business are prepared and maintained like panchanama, *taba pavti* and other records. (See Section 114 of the Evidence Act). It is submitted that in the case of vacant land, there is also a presumption that possession follows title.

83) It is further submitted by Mr. Samdani that it is the 3rd petitioner who has been in control of all these proceedings. It also appears from the averment in paragraph X at page 43 of the writ petition (the correctness whereof the State does not admit) that the petitioners were clearly aware of the orders for possession under section 10(5) and attempts being made for taking possession in the month of March, 2007.

84) It is further submitted by Mr. Samdani that the petitioners contend that the possession could not have been taken in view of the appointment of Court Receiver and that no notice was given to the Court Receiver. This contention, it is submitted, has no merit, inasmuch as the provisions of the said Act (section 42) are given an overriding effect and the State has applied for *ex post facto* leave, which is subject matter of appeal.

85) It is further submitted that an attempt was made to contend that the competent authority in the affidavit in reply has

stated that the possession of the Court Receiver has not been disturbed. By relying in affidavit at page 498 of the writ petition and page 11 of the appeal paper book. The reading of the affidavit of the competent authority by the petitioner is out of context. The entire affidavit is required to be read as a whole. The competent authority clearly asserts that possession of surplus vacant land is taken. The portion in the affidavit which refers to be the possession of the Court Receiver not being disturbed is the legal opinion of the competent authority on the consequence of taking possession. His legal opinion does not detract from the fact that possession of the surplus vacant land was in fact taken to regularize possession, chamber summons was taken out for *ex post facto* leave which is now in appeal.

86) It is further submitted by Mr. Samdani that there was no challenge to the exemption order under section 20(1). The intention of the petitioners was clear not to comply with the condition of exemption order whilst not challenging the order of exemption. This conduct further reflects that the petitioners sought protection from sections 9, 10 and 11 of the said Act by reason of exemption order under section 20(1) whilst continuing the challenge to the deed of conveyance which was later on set aside.

87) It is further submitted by Mr. Samdani that there is a tacit admission by the petitioners about the knowledge of all the notices and proceedings for revocation under section 20 of the ULC Act and possession.

88) It is further submitted that the proceedings for revocation of the order under section 20(2) of the ULC Act commenced in August, 2006 and after the process was completed, the possession was taken on 28th March, 2007. Thereafter, compensation was determined in April, 2007 and the ULC Act was repealed on 29th November, 2007. The above writ petition is filed on 7th August, 2009, nearly after 2 and half years of possession and notifications under section 10(1) and 10(3) and vesting of the property in the State. There is thus clear delay in filing the writ petition and the writ petition is therefore liable to be rejected. (See *Swaika Properties vs. State of Rajasthan*¹⁵)

89) It is submitted that the conduct of the petitioners is not clean and un-blemishable. The petitioners are attempting to approbate and reprobate a clear designed move in an attempt to present the State with fate accompli with respect to a large surplus vacant land in excess of 50,000 square meters and deprive the public purpose.

¹⁵ (2008) 4 SCC 695

90) The 3rd petitioner claims to be involved in the lands since 1983. The writ petition is declared by the partner of 3rd petitioner on his personal knowledge. The 3rd petitioner holds power of attorneys of several of the owners.

91) It is further submitted by Mr. Samdani that the 3rd petitioner claims 72% interest in the land whilst petitioner nos. 1 and 2 only have 2/7th interest in the land. Obviously, the supporting respondents are also with 3rd petitioner and have been arrayed as respondents. Petitioner nos. 1 and 2 have divested themselves of their interest and received full consideration from petitioner no. 3 as is evident from the powers of attorney. The writ petition is thus prosecuted by petitioner no. 3, so was the suit inasmuch as the same petitioner nos. 1 and 2 were plaintiffs in the said suit as was declared by the partner of petitioner no. 3, for the gain and benefit of a developer and a builder who had attempted to protract and gain from a motivated litigation.

92) Similarly, the supporting respondent nos. 7(a) to 7(d) also are represented through a developer.

93) The petitioners, on the one hand sought to take shelter under order under section 20(1) from acquisition and on the other hand disowned, disobeyed and expressed clear intention,

including accomplishment thereof, of not complying with the condition of order under section 20(1). On one hand petitioners contend that no further action could be taken by the State in view of the order of exemption under section 20(1) and that there is no breach of the exemption order, however, on the other hand, the petitioners impugn the conveyance in favour of RBI as void. The petitioners got the said conveyance also set aside from City Civil Court by judgment dated 18th March, 2013. The petitioners expressly gave up the challenge to the order of revocation of exemption order. The above conduct clearly reflects the trickery on the part of the petitioners.

94) It is further submitted by Mr. Samdani that the contention of the writ petitioners that in view of the appointment of the Court Receiver, possession of the surplus vacant land could not be taken, is untenable in law on the ground that; (i) the State, by chamber summons before the learned Single Judge applied for leave which has been erroneously declined. The learned Single Judge fell in error on facts and in law. As soon as the State learnt of the appointment of a receiver, on filing of a writ petition, the State with all the humility applied to the Court which had appointed a receiver for grant of leave in view of the overriding effect given to the provisions of the ULC Act; (ii) the appointment

of Court Receiver does not vest in the receiver the rights or title or interest of the parties to the suit in respect of the property; (iii) an action in respect of the property of which receiver is appointed, does not make the action bad but only makes it voidable and the same can be regularised by seeking retrospective leave of the court which appointed the receiver. Leave can be granted *ex post facto*. The appellants' relief was for regularising the action.

95) Lastly it is submitted by Mr. Samdani that the writ petition be dismissed and the appeal filed by the State be allowed and the chamber summons be made absolute so also the show cause notice on the contempt may be discharged.

96) Mr. Samdani's arguments, therefore, can be summarised broadly as focusing firstly on the conduct of the petitioners. Secondly, it is stated that original order passed on 10th September, 1982 and referable to section 20 of the principal Act has not been challenged by anybody and even in this writ petition. Thirdly, the order revoking the exemption referable to section 20(2) of the principal Act is not challenged in any proceedings. Fourthly, there is no relief sought of restoration of possession of the land in any form. The only declaration that is claimed is that the notice under section 10(5) is bad in law.

Fifthly, there is no question of considering a corrigendum in proceedings under section 20(2) of the ULC Act/Principal Act, as that is of no consequence and having no relevance to the withdrawal of exemption. Sixthly, it is incorrect to assume that the proceedings under section 8(4) were initiated and pursued even during the pendency of the exemption order. That is factually incorrect because the final order under section 8(4) of the principal Act was passed only after the exemption was withdrawn, namely, on 30th November, 2006. That is permissible in law.

97) Mr. Samdani submits that petitioner nos. 1 and 2 cannot maintain the writ petition for, they have already divested themselves of their alleged right and interest in the property in favour of petitioner no. 3. It is petitioner no. 3 in the position of suing as power of attorney holder of petitioner nos. 1 and 2 and partner of petitioner no. 3 who is claiming the reliefs and has affirmed the petition. He could not have attributed knowledge unto himself about the state of affairs in relation to the land which is declared as surplus vacant land under the ULC Act. He is not holder in that sense. Mr. Samdani, therefore, relies upon the agreement dated 26th December, 1991 and prior agreement dated 2nd April, 1983 on the point of locus of petitioner nos. 1 and 2. As

far as respondent nos. 6 and 7 are concerned, they are supporting the petitioners and they together constitute 72% of the share derived from petitioner nos. 1 and 2, but all such shares are now claimed by petitioner no. 3. Lastly, Mr. Samdani submits that it is undisputed that physical possession of the land, which is declared as surplus has been taken by the State and the only dispute is whether possession taken as claimed is not in accordance with law. Mr. Samdani was also critical of the pleadings in both, the appeal and the chamber summons for, he would say that if the possession was not taken as claimed, then, there was no occasion to plead that these respondents are in contempt for allegedly interfering with the possession of the Court Receiver. Mr. Samdani also brought to our notice that the conveyance in favour of RBI (page 263 of the appeal paper book) is challenged in the plaint and that is subject matter of the judgment of the trial court. It is in these circumstances and when the transaction of RBI is not mentioned or referred in the writ petition that all the more we must proceed to dismiss it. Mr. Samdani would submit that all statements in the writ petition with regard to the possession of the State are guarded and not specific or emphatic at all. Apart from relying on number of documents, Mr. Samdani submits that section 114(e) and (f) of the Evidence Act, 1872 would also come into play.

98) Mr. Samdani has sought to buttress his submissions by pointing out that section 42 of the principal Act is a overriding provision. It would override everything, including an order of a court contrary to the provisions of the Act. Therefore, an appointment of Court Receiver does not vest the property in him would enable the State to resist this petition. Further, there is no contempt nor is there any interference or attempt to interfere with the possession of the Court Receiver when the State proceeds against the surplus vacant land in terms of the principal Act. All parties to the litigation had notice of all the events. The Court Receiver need not be served once he comes in only to allegedly protect the subject matter of the litigation. Therefore, the petitioners cannot now make any capital of want of notice to the receiver, defect or irregularity in the proceedings culminating in the possession of the land and its vesting in the State.

99) Mr. Samdani has relied upon the following judgments:-

- (i) P. B. Samant and Ors. vs. The State of Maharashtra and Ors. **Writ Petition No. 4 of 2006** order dated 17th August, 2006 (Bombay High Court).
- (ii) State of Maharashtra vs. Mayer Hans George **AIR 1965 SC 722**.
- (iii) Mumbai International Airport Private Limited vs. Golden Chariot Airport and Anr. **(2010) 10 SCC 422**.
- (iv) Prahlad Singh and Ors. vs. Union of India and Ors. **(2011) 5 SCC 386**.

(v) Sita Ram Bhandar Society, New Delhi vs. Lieutenant Governor, Government of NCT, Delhi and Ors. **(2009) 10 SCC 501.**

(vi) P. K. Kalburqi vs. State of Karnataka and Ors. **(2005) 12 SCC 489.**

(vii) Tamil Nadu Housing Board vs. A. Viswam (dead) by Lrs. **(1996) 8 SCC 259.**

(viii) State of Assam vs. Bhaskar Jyoti Sarma and Ors. **(2015) 5 SCC 321.**

(ix) Shiv Ram Singh vs. State of U. P. and Ors. **Civil Misc. Writ Petition No. 37964 of 2009** order dated 27th July, 2015 (High Court of Allahabad).

(x) Swaika Properties (P) Ltd. and Anr. vs. State of Rajasthan and Ors. **(2008) 4 SCC 695.**

(xi) The State of Bombay vs. Morarji Cooverji **(1958) Vol. LXI B. C. R. 318.**

(xii) M. P. Mittal vs. State of Haryana and Ors. **(1984) 4 SCC 371.**

(xiii) State of Maharashtra and Ors. vs. Prabhu **(1994) 2 SCC 481.**

(xiv) Shantaram Hirachand Danez vs. Narayan Bapusa Fulpagar **AIR 1999 Bombay 16.**

(xv) Anthony C. Leo vs. Nandlal Bal Krishnan and Ors. **(1996) 11 SCC 376.**

(xvi) Smt. Bhadrabati Devi w/o. Dinabandhu Tiwari vs. Jibanmal Babu and Ors. **AIR 1941 Calcutta 163.**

(xvii) Balvant N. Vishwamitra and Ors. vs. Yadav Sadashiv Mule **(2004) 8 SCC 706.**

(xviii) Shiv Ram Singh (D) Thr. Lrs. vs. State of U. P. and Ors. Supreme Court order in **Petition (s) for Special Leave to Appeal @ No. 29550 of 2015** dated 26th October, 2015.

100) Mr. P. Chidambaram has given a brief rejoinder. In rejoinder, he asserts that the question at the root of the case is whether possession is taken of the surplus land as required by

law. Mr. Chidambaram would submit that as far as the *locus standi* of the petitioners is concerned, there are no pleadings in that regard. Such an argument is canvassed by Mr. Samdani without any pleadings. Alternatively and without prejudice, petitioner no. 3 has no *locus standi* is the pleading. (page 289 para 3). Therefore, the State is aware that as far as petitioner nos. 1 and 2 are concerned, they have only agreed to transfer their respective shares to petitioner no. 3. There was only an agreement to sell. There is no conveyance. Hence, the petition is maintainable. Mr. Chidambaram was critical of Mr. Samdani's remarks on the conduct of the petitioners. Mr. Samdani could not have, according to Mr. Chidambaram, accused the petitioners of a trickery. Mr. Chidambaram submits that petitioner nos. 1 and 2 did not apply for exemption and therefore they did not derive any benefit of the exemption order dated 10th September, 1982. They have, throughout, protested about the RBI transaction and in that regard he takes us to the list of dates serial number 16. The agreement with RBI, therefore, does not bind these petitioners and in any event the exemption order is withdrawn.

101) On the aspect of delay, Mr. Chidambaram submits that there is no delay in filing the petition, because the petitioners have, throughout, claimed that they were unaware of the

proceedings under the principal Act. No original documents have been attached or annexed. Annexing true copies does not mean that the petitioners are served with the originals. It is incorrect to assume that the petitioners derived information or knowledge of the proceedings under the Principal Act from respondent nos. 6 and 7 and in that regard, Mr. Chidambaram relies upon the contents at page 48 of the writ petition and reiterates his reliance on Rule 6 of the Rules and submissions in the opening. Mr. Chidambaram submits that the property is *custodia legis*. Mr. Chidambaram submits that the writ petition be allowed.

102) As far as the appeal is concerned, Mr. Chidambaram would submit that the State moved a chamber summons for its joinder as a party defendant in the suit. That prayer was rejected as not pressed. Therefore, the chamber summons for the other reliefs, namely, leave of the court to regularise the act of taking possession of the land, which is *custodia legis*, does not survive. Those reliefs cannot be granted once the chamber summons as a whole is dismissed as not pressed. Hence, no appeal lies against the order and in that regard, Mr. Chidambaram relies upon clause 15 of the Letters Patent. Mr. Chidambaram states that once the State is not party to the lis, namely, the suit, then, it is a stranger. No appeal lies at the instance of a stranger

and therefore, the order of the learned Single Judge is correct. The appeal deserves to be dismissed also because *post facto* leave cannot be sought to regularise the act after repeal of the ULC Act. In that regard, Mr. Chidambaram relies upon section 4 of the Repeal Act. Mr. Chidambaram submits that the argument that respondent nos. 1 to 4 had no knowledge of the appointment of the Court Receiver is a false statement. In that behalf, the list of dates serial number 28 is relied upon to urge that they had full knowledge about the same. Then he relies upon page 117 of the petition paper book to urge that the State and its officials could not have deleted the name of the Court Receiver from the revenue records unless they had such knowledge. Therefore, conflicting and contradictory stand is taken and if physical possession of the Court Receiver is not disturbed, then, how the possession of the surplus vacant land has been taken is not clarified. If that was not taken by disturbing the possession of the Court Receiver, then, there was no need to file a chamber summons. Hence, Mr.Chidambaram would submit that the appeal should be dismissed. Mr. Devitra learned Senior Counsel appearing for non-contesting respondents adopts the arguments of Mr. Chidambaram.

103) With the assistance of Mr. Chidambaram and Mr. Samdani, we have perused the record of both, the writ petition and the appeal. We have perused the statutory provisions and equally the decisions brought to our notice. We have also perused the compilations comprising of documents and case laws.

104) After perusal of the above, we are of the view that the findings and conclusions in the writ petition would govern the appeal as well. Meaning thereby, the fate of the appeal would depend upon that of the writ petition.

105) The basic facts and which we must immediately note are that the petitioners claim to be owners of the land through their grandfather Ardeshir Patel. Ardeshir Patel is brother of R.D. Patel the owner of the land admeasuring 73,200.40 square meters, out of which, portion of 7525.60 square meters was reserved for Bus Depot. That has already been acquired. Another portion admeasuring 6267 square meters is reserved for road and the remaining land is the subject matter, according to them, of these proceedings. There are two survey numbers, namely Survey No. 141B and City Survey No. 864 of village Ambivali, Andheri, Mumbai.

106) On the own showing of the petitioners, R. D. Patel left a Will and appointed his nephews as executors of his Will. R. D. Patel died on 13th February, 1939 and the probate of his Will was granted on 10th August, 1939.

107) The petitioners also do not dispute that Jehangir Patel, one of the Directors of RBI and one of the executors under the Will offered to sell the said land to RBI at Rs.34/- per square yard. RBI accepted the offer made by Jehangir Patel. Since the ULC Act came into force in the State of Maharashtra on 17th February, 1976 an application for exemption was made by Jehangir Patel and other two surviving executors to the Government of Maharashtra for exempting the said land so as to enable them to execute conveyance in favour of RBI. We have perused that application, copy of which is at page 225 of the compilation of documents placed by the petitioners themselves on record. That is an application dated 14th July, 1976. In that application, it is stated that Minocher, Jehangir and Merwanji, the surviving executors of the last Will dated 22nd May, 1935 of R.D. Patel, made application invoking section 20(1)(a) of the ULC/Principal Act and with the description of the land. In para 3 of this application, it is claimed that this is the only remaining un-administered estate of R. D. Patel, which, having regard to the

provisions of Will, goes to several persons, who are claiming through his three sisters and two brothers. We are not referring to this only for repetition but for a specific reason, namely, in para 4 of this application, there is a reference to the prior letter of 6th September, 1974 addressed to the Chief Executive Officer of RBI offering to sell to the RBI the entire land including the said property, a joint survey by the authorities and it is stated that in accordance with the usual practice of RBI, this letter of offer was scrutinized by its various departments, considered by several committees and that offer was accepted on 9th October, 1974 by the RBI. This application then records as to how there are reservations on the land and for several public purposes. Upon this application, which culminates in a request for grant of exemption, the Government passed an order rejecting it. However, in the meanwhile and prior to such rejection, Jehangir Patel and others filed a return under section 6 of the ULC Act and the competent authority passed orders under section 8(4), 9 and 10 of the ULC Act holding that 66,432 square meters out of the larger land was surplus vacant land. The petitioners themselves refer to the rejection being challenged by a Miscellaneous Petition No. 1168 of 1978 and the common order passed thereon on 12th November, 1981.

108) The competent authority's letter dated 27th May, 1982 and a fresh application filed under section 20 dated 4th June, 1982 are the further facts referred and what we have noted from the dates and events and the petition averments is that the petitioners have described respondent nos. 6(a) and (b) as executors of the Will of Jehangir Patel, who himself was executor under the Will of R. D. Patel and respondent nos. 7(a) to (d) as executors of the Will of Shavak Pestonji Patel. They have also, in the writ petition, stated that these parties have been impleaded as party respondents because they represent estate of Jehangir Patel and Shavak Patel. The petitioners have themselves set out the position regarding previous orders passed under the ULC Act up to March, 1983, culminating in an order under section 20 dated 10th September, 1982, copy of which is annexed as Annexure 'F' to the writ petition. They have also set out the events post this order and relied upon the communication from the ULC authorities requiring all the beneficiaries, including petitioner nos. 1 and 2 to attend on 28th February, 1983 the office of the competent authority to identify the portion of the land which each of the beneficiaries intend to retain as his/her land within the ceiling limits. The petitioners state that this was done and an order dated 28th February, 1983 was passed, whereby, out of the area of 59407.10 square meters determined as surplus

vacant land for the purpose of exemption order dated 10th September, 1980, an area of 9043 square meters was reduced as being within the ceiling limits and that is how an order was passed on 28th February, 1983 and a corrigendum was issued modifying the area in the exemption order dated 10th September, 1982. This corrigendum is dated 19th March, 1983 Annexure 'H'. They themselves refer to conveyance deed dated 15th September, 1983.

109) In this backdrop, we must appreciate the contentions of Mr. Chidambaram and which project complete innocence at times and denying any trickery on the part of the petitioners.

110) The argument is that petitioner nos. 1 and 2 did not apply for exemption. It is not possible to accept this contention and for more than one reason. Petitioner nos. 1 and 2 are Adi Dara Patel and Kavas Dara Patel. From what they have described themselves in the writ petition itself, it is apparent that R. D. Patel was the owner of the land. He left his Will. The family tree at page 111 of the paper book indicates that R. D. Patel had four brothers and three sisters. One of his brother was Ardeshir, who died on 15th October, 1940. He left a Will duly probated. Ardeshir had a son called Dara. Petitioner nos. 1 and 2 are the sons of Dara. The petitioners themselves point out as to how R. D. Patel's

another son Pestonji had five sons, one of whom was Jehangir and another was Shavak. He had also two sons, namely Merwanji and Minocher so also Sorabji and a daughter Nagi.

111) Mr. Chidambaram's arguments overlook the scheme of the Indian Succession Act, 1925 and its specific provisions relating to the role and power of executors. That Act consolidates the law applicable to intestate and testamentary succession. Part IX of the Act deals with probate, letters of administration and administration of estate of deceased. Chapter I thereunder deals with the grant of probate and letters of administration. Section 211 appearing in Part VIII defines the character and property of executor or administrator as such. We need not refer to all provisions in further details, simply because it is undisputed that the owner left a Will. There were executors appointed under this Will and it was duly probated. Section 222 of the Succession Act is clear inasmuch as a probate of the Will could be granted only to a executor. The predecessor-in-title is Dara Patel son of Ardeshir. Ardeshir was one of the brothers. Since it is stated that Ardeshir's Will was probated, it is the executors thereof who would be entitled to apply for and obtain a probate of that Will. It is they who would be empowered by law to administer the estate, exercise all powers and perform the functions and duties and

provided Ardeshir's Will granted any part of the estate to Dara and benefits thereof can be derived by the petitioners still we do not see how the executors under the Will of R. D. Patel are denuded of their power and authority in law and under his Will. If they exercise these powers as are vested in them and deal with the subject lands, then, it is doubtful whether the petitioners can complain about their exercise in these proceedings or under the ULC Act before the competent authority. Thus, petitioners nos. 1 and 2 have a limited title in the property and that also is now divested in favour of petitioner no. 3. Thus, the locus of these petitioners is rightly questioned by the State. We are of the opinion that once the executors under the Will of the owner take certain steps and measures in relation to this immovable property, then, the petitioners are bound by the same. In any event, the petitioners 1 and 2 are bound by their own acts and deeds so also the documents executed by them in favour of petitioner no. 3.

112) We do not see how, therefore, the petitioners can proclaim that neither did they apply for exemption nor did they derive any benefit of the exemption order. In that regard, they claim that on 9th June, 1982 and on 8th September, 1982, they called upon the executors not to pursue the application for

exemption. It is pertinent to note that they were aware of the order of exemption dated 10th September, 1982. They have addressed a letter through their advocates to the Chief Officer of RBI, in which, they relied upon the prior correspondence with RBI, the ULC Act coming into force, the probate petition and the order passed therein. It is stated that even a writ petition was filed in this court and the order therein has been referred. Pertinently, therefore, they seek to disown the agreement with RBI. However, we do not find any steps being taken against RBI when it took no cognizance of this letter. The petitioners themselves, in the list of dates and events, have pointed out as to how on 15th September, 1983 the conveyance was executed in favour of RBI. The petitioners are aware of the corrigendum. The petitioners also commenced objecting to the conveyance deed on 21st September, 1983/25th October, 1983. It is only when they agreed to sell their right and title so also interest in the property to petitioner no. 3 that it was decided to file a suit in this court praying *inter alia* for a declaration that the conveyance in favour of RBI was invalid and void and should be cancelled. This is far from suggesting that no benefit was taken or intended to be taken from the order of exemption. We are not concerned with the transaction with RBI, but all that we emphasise is, once the ULC Act came into force and that was to the knowledge of all

concerned, then, at least the petitioners would not have allowed the dealings in relation to the property. However, they allowed the dealings and transaction knowing fully well that a substantial portion of land is going to be declared as surplus vacant land and subject to the ULC/Principal Act. Unless and until the exemption is sought, all consequences under that Act would follow was known to the petitioners. To now say that they never intended to take benefit of the order of exemption and which was specific inasmuch as to complete the transaction in favour of the RBI, is not acceptable. The whole deal with petitioner no. 3 by petitioner nos. 1 and 2 and those supporting them is on the foundation that it is only a builder and developer, who has the tenacity and financial capability to taken on the State. He will take a calculated risk and can afford to take it. If the petitioner no. 3 succeeds in his endeavour to retrieve the lands, naturally some benefit will flow from it else the land is as it is to be conveyed to RBI was known to the co-owners. If the petitioner no. 3 manages to succeed, then, they can call off the deal with RBI, was the strategy devised. Thus, the co-owners are not innocent and were part of the plea and strategy to reclaim the surplus vacant land.

113) Mr. Samdani's arguments must be seen in the backdrop of the above. Further, there is merit in the contention

of Mr. Samdani that it is not just the act of petitioner nos. 1 and 2, but petitioner no. 3 as well, which are termed, by the State, as vitiated by trickery. The third petitioner was aware of all the consequences that would follow and what now the petitioners and particularly third petitioner is claiming is that it has 72% interest in the land. Petitioner nos. 1 and 2 have divested themselves of their interest and received full consideration from petitioner no. 3 as is evident from the power of attorney. Thus, there are two developers both deriving benefits under petitioner nos. 1 and 2 and respondent nos. 7(a) to (d). It is these developers who could not have spoken or complained authoritatively about the proceedings under the ULC Act and formal impleadment of petitioner nos. 1 and 2 and the heirs of Shavak, respondent nos. 7(a) to (d) being of no consequence is termed as an act of trickery. It is in such circumstances that we must appreciate the other contentions of Mr. Chidambaram.

114) We are of the clear view that this petition is really prosecuted by builders and developers. If petitioner nos. 1 and 2 were opposing the exemption, they would have corresponded with the authorities and challenged the same forthwith. We find that the petitioners are aware of the competent authority's orders under section 8(4), 9 and 10 of the ULC Act. Petitioner nos. 1 and

2 do not deny that if statement under section 9 is served on the person concerned, then, the competent authority shall cause a notification to be published for the information of the general public in the official gazette of the concerned State and in such manner as may be prescribed. The petitioners are aware that a notification was published in the official gazette under section 10(1) and this fact is specifically asserted in para 7 at page 291 of the affidavit in reply filed by the state on 27th October, 2009 in this writ petition. Exhibits 2 and 3 to this affidavit are copies of the final statement under section 9 and notification under section 10(1) of the ULC Act. Thus, the sequence disclosed in this para is that the final statement under section 9 was prepared and issued to the declarants and also served on the declarants, whose names are set out in para 5 of the affidavit in reply, on 30th May, 1977. The notification under section 10(1) was issued and the same was published in the Government gazette on 7th July, 1977. Notification under section 10(3) of the ULC Act was issued on 8th September, 1978 and the same was also published in Government gazette on 28th September, 1978 in respect of surplus vacant land admeasuring 66,432 square meters of Survey No. 141B, village Ambivali, Taluka Andheri.

115) In the list of dates and events, we have not seen any assertion nor in the affidavit in rejoinder filed by the petitioners on 30th October, 2009 to the affidavit in reply of the second respondent, they have, in any manner, denied that they were unaware of the notification under section 10(1). Thus, what we have before us in para 7 of the affidavit in reply an uncontroverted factual position.

116) It may be that the petitioners only rely on order dated 12th November, 1981 in Miscellaneous Petition No. 1168 of 1978 and Miscellaneous Petition No. 1250 of 1978, but it is not their case that they were unaware of the consequences in law.

117) Thus, when petitioner nos. 1 and 2 allegedly did not claim any benefit of the exemption order, then, they chose to challenge all these prior steps. Meaning thereby, the petitioners, though not admitting the charge of trickery or their conduct being blameworthy, do not deny that all consequences in law could have been avoided by seeking an exemption order. They are seeking to avoid these consequences by referring to the exemption order. They rely upon the same to urge that order under section 8(4) could not have been passed in view of the conveyance in favour of the RBI.

118) However, we do not wish to take this issue any further, as extensive arguments have been canvassed with regard to the merits of the controversy as well. Though we find some substance in the arguments of the State on the conduct of the petitioners, inasmuch as whenever convenient to them, the petitioners rely on the deal with the RBI. In that process and during such reliance, they put in the forefront even the corrigendum and urge that the competent authority brushed aside the same. However, the petitioners do not possibly remember during the course of such reliance that they have challenged this very conveyance and by way of a suit. Therefore, it is apparent that petitioners cling to whatever they can lay their hands on to avoid the consequences under the law.

119) Having said all this, once the writ petition is admitted and to be disposed of finally by a reasoned order, we cannot only rely on the petitioners' conduct or the delay in filing this writ petition. In the event the petitioners are entitled to any relief, these would be relevant factors.

120) Now, turning to the merits, the petitioners urge that the Principal Act is repealed in the State of Maharashtra with effect from 29th November, 2007. Since that Act is repealed, we must consider the provisions of the Repeal Act. In that regard,

reliance is placed upon section 3 of the Repeal Act, which reads as under:-

“3 Saving. - (1) The repeal of the principal Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

121) A perusal of section 3 of the Repeal Act, which is titled as “savings”, would indicate that the repeal of the Principal Act shall not affect the vesting of any vacant land under section 10(3) of the Principal Act provided possession thereof has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

122) We would go to the decisions relied upon by the petitioners a little later.

123) Factually, the case of the petitioners is that the land admeasuring 73,200 square meters inclusive of vacant surplus land admeasuring 50364.10 square meters has been in the possession of the Court Receiver appointed by this court in Suit No. 2345 of 1983 since 17th September, 1984 and respondent nos. 1 to 4 have not taken actual physical possession of the land or any part thereof.

124) The pleading in that behalf in the writ petition is that the petitioners being beneficial owners of an undivided 1/7th share in the said property had filed Suit No. 2345 of 1983 and applied for interim relief by way of Notice of Motion No. 1890 of 1983 in this suit, which was disposed of vide order dated 4th July, 1984, whereby amongst other reliefs, the Court Receiver, High Court Bombay was appointed as receiver of the said property. The petitioners, after such a pleading in para 2(B) then rely upon para 4(B) regarding the manner in which respondent no. 5 the Court Receiver has taken charge of the property and appointed the petitioners as his agents. The petitioners rely upon the manner in which they are safeguarding the property. They rely upon the Court Receiver's report dated 19th September, 1984 as

also letter dated 19th September, 1984 addressed by the Court Receiver to the Collector, Mumbai Suburban District and the Tahsildar, Andheri so also the Court Receiver's report dated 11th July, 1988 Annexures 'D-1 to 'D-3'. What we find from perusal of Annexure 'D' is that, that is a summary of the proceedings in the civil suit. The petitioners do not dispute that even after appointment of the Court Receiver, certain portions of the land were taken over for the purpose of BEST undertaking and on 17th September, 1986, possession of 7325 square meters was given the Special Land Acquisition Officer.

125) Then, they refer to the proceedings initiated by one Hari Nathu Sindhi and M. P. Shah in 1988 or thereabout and at page 115, the petitioners, in their summary, while asserting that a visit by them on 6th July, 1988 revealed that the whole of the property was in possession of the Court Receiver. At the same time, handing over to the Special Land Acquisition officer as above is noted by the petitioners themselves. Then, an attempt by Hari Nathu Sindhi for converting the small portion of the property to non-agricultural use is referred and the proceedings in relation thereto. Then comes the report Annexure 'D-1' at page 117 and that is a report of the Court Receiver, which states that the land was pointed out to him by a managing clerk of the

advocates for the plaintiffs in that suit and by one Noshir Minoo Patel and Mr.S. N. Nanabhai and representative of the RBI. The Court Receiver states that he has affixed tin possession board on the land indicating the suit and the appointment therein. He states that the land is marshy and at present it is vacant, inasmuch as there is no encroachment thereon. There is a board of RBI. No other board has been found at site. Then, at page 119, in a letter addressed to the Collector of Bombay, it is stated by the Court Receiver that he has taken possession in pursuance of the court's order and the Collector must take a note of the same.

126) Then, there is an inspection report of 11th July, 1988. He, once again, states that on visiting and inspection, he found the painted tin board of the Court Receiver indicating his possession and that there is no structure except that of the security guards.

127) Annexure 'E' is a copy of the board displayed at site and then there are certain photographs. In relation to this pleading in the petition, respondent nos. 1 to 3, in their affidavit in reply, after refering to all the dates and events, states as under:-

"13. By letter dated 14.9.2006 the office of the Competent Authority fixed hearing on 26.9.2006 and also issued show cause notice u/sec. 20(2) of ULC Act

on 10.8.2006 calling upon the addressees to attend the office of the Competent Authority on 17.8.2006. It was further directed by the Competent Authority by letter dated 14.9.2006 to the Tehsildar Andheri the said notice was to be published on the suit land and after publication the Tehsildar was to submit the report.

14. By letter dated 4.10.2006 the Tehsildar Andheri informed the office of the Competent Authority that the notice dated 14.9.2006 has been published on site and also made a panchanama dated 20.9.2006 in respect of the publication of said notice. I say that further reminder dated 3.11.2006 was served upon the declarant with a direction to attend the hearing on 15.11.2006. Hereto annexed and marked as **Exhibit 7** is the copy of acknowledgment of the said notice. One Mr. Cyrus S. Patel on 21.9.2006 informed the office of the Competent Authority that the Court Receiver has been appointed and the said property is in the hand of Court Receiver since 1984, but the Applicant failed to produce the documentary evidence in support of the claim and also failed to give reasons for non compliance of the condition with the exemption order. I say that the said Mr. C. S. Patel further stated that dispute has been settled and they are taking steps to discharge the Receiver under section 6(1) of the ULC Act and is not party in the proceedings under section 6 of the ULC Act. Therefore, the office of the Competent Authority by order dated 20.11.2006 withdrew the exemption order dated 10.9.1982 and directed further proceedings u/sec. 10 of ULC Act in respect of the surplus vacant land.

15. The office of the Competent Authority issued revised order u/sec. 8(4) of the ULC Act on 30.11.2006. As per the revised order dated 30.11.2006 issued under section 8(4) of the ULC Act an area of 50,354.00 sq. mtr. Was declared as Surplus Vacant Land from the total area of 73,200.4 sq. mtr. Bearing S. N. 141B of Village Ambivali. Copy of the said order dated 30.11.2006 is annexed at Exhibit Q at page no. 158 of the petition. Thereafter, the final statement u/sec. 9 was prepared and issued on 19.12.2006 and the same was served on the declarant. Copy of the final statement dated 19.12.2006 issued u/sec. 9 of the ULC Act is annexed at Exhibit S at page no. 96 of the petition.”

128) After the above assertions, it is stated in the affidavit in reply that a notification under section 10(1) of the ULC Act was published in the Government gazette on 4th January, 2007. A copy of the notification is annexed as Annexure 'T-1' at page 174 of the petition. Thereafter, the notification under section 10(3) of the Principal Act was issued on 5th February, 2007 and was published in the Government gazette on 15th February, 2007. Thereafter, a reference is made to an order passed on 17th August, 2006 in PIL Petition No. 4 of 2006, whereunder this court had directed the competent authority to proceed expeditiously in furtherance of all the statements filed under section 6(1) of the ULC Act and to pass an order under section 8(4) as early as possible and not later than 31st December, 2007. That is how a notice was issued on 27th February, 2007 fixing 9th March, 2007 as date of taking possession of the surplus vacant land, but on 9th March, 2007 the possession could not be taken and the maintenance surveyor Mr. H. N. Patil from the office of City Survey Office, Andheri did not take possession of the land on that date but on 28th March, 2007. That is how the reliance is placed on possession receipt and panchanama at page 217 and 219 of the paper book. Thus, the property vests in the State and this vesting is not affected by the repeal of the Principal Act is the submission.

129) It is stated that the proceedings have reached a stage where an order under section 11(7) of the Principal Act read with section 14 thereof was passed on 27th April, 2007 and on 31st July, 2007 the City Survey Office intimated the office of the Additional Collector and Competent Authority that the name of the Government is recorded as holder in respect of the surplus vacant land admeasuring 50,364 square meters bearing Survey No. 141B, CTS No. 864 of village Ambivali. The City Survey Office forwarded a copy of the property card to the office of the competent authority. The further steps of allotment of the land have also been set out and it is urged that after compliance with the legal provisions, the steps have been taken and there is no violation of the same.

130) We have noticed that the petitioners challenge the proceedings leading to taking of possession by the State. However, it is really perplexing that the petitioners have taken several alternative pleas. The argument is that the possession itself was not taken and once it is not taken, then on the repeal of the Principal Act, all proceedings come to an end or lapse. This plea is based on the fact that the property is in possession of the Court Receiver and no notice was served on him prior to taking

possession nor any leave was sought or taken from the court before the possession was taken.

131) The competent authority, in the affidavit in reply, has clarified the factual position that one Mr. Cyrus Patel informed the office of the competent authority that the Court Receiver has been appointed and the property is in his hands. The petitioners claim that the physical possession of the property was with the Court Receiver has not been accepted and in that regard what the record indicates is that the order of appointment of the Court Receiver was not produced by the declarant or any of the addressees to whom notices had been issued in the proceedings initiated by the competent authority. No documents have been produced to show that the Court Receiver was in possession of the land declared to be surplus vacant land. Thus, it is denied that the competent authority was aware that the property was *custodia legis* as alleged or at all and that the Government was not party to the suit and hence, there was no occasion for it to know about the appointment of the Court Receiver and that is the consistent stand. Even while denying the allegations of contempt of court, it is stated by Additional Collector Shivajirao Jondhale in his affidavit filed on 26th November, 2009 that he has passed orders bonafide and in good faith. He has personally found that

the board of the Court Receiver was not on the part of the land which was declared as surplus vacant land, but was on the corner of the BEST bus station on the land on the one side of the Nallah, which is not part of the surplus vacant land. The board also did not mention the survey number and the area of which the receiver was in possession. There is also an affidavit which has been filed by the Additional Collector and Competent Authority under the ULC Act in this petition on 25th September, 2013. In that affidavit as well, it is stated that a chamber summons was moved being Chamber Summons No. 1898 of 2009 in Suit No.2345 of 1983, but while disposing of the same, this court issued a notice as to why contempt proceedings should not be initiated against the competent authority and that order has been challenged.

132) However, all this overlooks the fact that there was a report, which was submitted to the Additional Collector and Competent Authority by the City Survey Office. That report or communication refers to the letter dated 27th February, 2007 of the competent authority. This communication/report only indicates that the date of 9th March, 2007 was decided and determined for taking possession, but when the City Survey Officer, Andheri visited the site, he found that there is a claim

that the property is in possession of the Court Receiver. Therefore, he sought a clarification from the superiors as to whether in the backdrop of such a claim he should proceed and take possession or otherwise. Though there is a reference made to the possession of the Court Receiver, at no stage the competent authority has accepted or admitted the claim that it is unable to take possession of the property since it is *custodia legis*. If that was the position and as urged now, it would not have given a go ahead to the City Survey Officer to proceed and take possession of the surplus vacant land. The assertion of the petitioners that the Court Receiver fixed ten (10) boards at site is not proved by the contents of the documents relied on by them. It is a fanciful and belated claim. Thus, the surplus vacant land and which was determined as such already is its confirmed status. That position had never undergone any change. On the own showing of the petitioners, the property acquired such character on 25th May, 1977 and 30th May, 1977. It may be that an application for exemption under section 20 of the Principal Act dated 14th July, 1976 filed by the three executors was rejected on 1st November, 1977 and a miscellaneous petition was filed in this court by two of the three executors, which resulted in quashing and setting aside of these orders, but what one finds from page 127 of the paper book and which is a copy of the order passed on 10th September,

1982 that Jehangir Patel and brothers of Bombay hold vacant land in excess of the ceiling limit and they have applied for exemption under section 20 of the Principal Act for permission to transfer the excess land admeasuring 59,407.10 square meters by way of sale to RBI for construction of staff quarters. That is how the State satisfies itself that it is in public interest to so exempt the land. The Government then proceeded to exempt the said vacant land under the provisions of Chapter III of the Act and permitted transfer of the said exempted land admeasuring 59407.10 square meters on the conditions set out in the same. The petitioners themselves refer to a meeting held in the office of the competent authority, the tentatively calculated portion of the suit land, which was within ceiling limits and the land that was surplus vacant land. They also admit and rely upon corrigendum dated 19th September, 1983. Thus, the land was already determined as surplus vacant land. The petitioners seek to take advantage of a notice under section 20(2) dated 10th August, 2006 withdrawing the exemption order dated 10th September, 1982 and requiring them to show cause as to why further steps under section 8(4), 10(1) and 10(3) of the Principal/ULC Act should not be taken. Thus, land being surplus vacant land covered by the Principal Act is an undisputed position. The Principal Act was applicable from 17th February, 1976 in the

State of Maharashtra. It is on that date that the land acquired the status and nomenclature as surplus vacant land. Once the holders seek exemption under section 20(2) of the ULC Act, then, it is apparent that they desired that certain proceedings and consequential in nature may be held in abeyance and they be allowed to utilise the surplus vacant land for the stated purpose. Therefore, if the land is surplus vacant land even before the suit was filed in this court, then, it is futile to urge that the physical possession of the land was with the Court Receiver or that the land is *custodia legis*. We have not been shown any statutory provision by which the proceedings and consequent upon the steps taken under section 10(1) and 10(3) of the Principal Act or any prior provisions can be held to be bad in law.

133) We must appreciate the nature of the relief that is sought in the suit. That is a suit filed so as to question a conveyance in favour of RBI and stated to be executed on 15th September, 1983. The suit was filed on 21st November, 1983 and the Court Receiver was appointed on 4th June, 1984. It is in these circumstances that we are of the opinion that there was no embargo or prohibition in continuing with the steps which are required to be taken, particularly on the exemption order coming to an end.

134) The Petitioners also question the withdrawal of the exemption on the ground that the same could not have been withdrawn for the reason that the conveyance in favour of the RBI was not executed within the period specified therein. In that, the petitioners rely upon the corrigendum and submit that unmindful of the same, the competent authority passed the order purporting to withdraw the exemption. The argument is that in seeking to cancel the exemption order, the competent authority failed to notice that time was extended in terms of the corrigendum to execute the conveyance and the conveyance was indeed executed. Mr. Chidambaram's arguments are that the stand of the competent authority that at the time of issuing notices on 10th August, 2006 and thereafter while withdrawing the exemption order, it was not aware of the corrigendum is untenable. He would submit that the corrigendum was issued in response to the respondent no. 1's letter dated 28th January, 1983 and hence, it must be presumed that respondent no. 1 was aware of the corrigendum. Secondly, there is no requirement under the ULC Act that transferor or transferee should inform the competent authority about the compliance with the terms of the exemption order. In any event, now respondent nos. 1 to 4 admit the existence of the corrigendum on its record.

135) Mr. Samdani has submitted that the conveyance was challenged in the suit and it is not open for the petitioners to rely on the execution of the conveyance to show fulfillment of the terms of the exemption order, but at the same time challenge it. It is submitted and with some force that there is no challenge to the order dated 20th November, 2006 withdrawing the exemption. We are also surprised as to how the petitioners can take up convenient and somewhat inconsistent pleas of this nature throughout. If the conveyance itself was not agreed to by the petitioners and they vehemently objected to its execution, then, all the more we do not see how we can accept the contentions of Mr. Chidambaram. In fact the petitioners claiming to be co-owners, did not join in the application seeking exemption, much less the exemption applications dated 27th May, 1982 and 4th June, 1982. They had no intent of conveying the land at least insofar and to the extent of their share in favour of the RBI. Their letter dated 9th June, 1982 would bear this out. They also called upon Jehangir Patel not to pursue the exemption application made in relation to the proposed sale to RBI. They rely upon the minutes of the meeting dated 28th February, 1983 held in the office of the competent authority. Further, if the petitioners objected to the execution of the conveyance repeatedly in September and October, 1983 and eventually filed a suit on 21st

November, 1983, then, we are unable to agree with Mr.Chidambaram that the petitioners can rely upon the corrigendum to assail the withdrawal of the exemption.

136) In that regard, we have carefully seen the order passed on 20th November, 2006. The exemption order to the extent relevant reads as under:-

“.....

In this case land adm. 59,407.10 sq.Mtrs. Bearing S.No.141B pt. Of village Ambivali Taluka Andheri was exempted vide exemption order dt. 10.9.1982 and as per condition No. 2 of the said exemption order the exempted land was to be transferred to the RBI within a period of six months from the date of exemption order i.e. 10/9/1982. However the land holders failed to transfer the exempted land to the RBI since 10/9/1982 till the date. The chief Premises Officer of RBI was requested vide this office letter No. C/ULC/6(i)/SR-XI/853 dt. 8/3/1983 to inform the land holder M/s. J. B. Patel to approach Government in Housing and Special Assistance Department for extension of time limit for completing the sale with reasons justifying the request.

And whereas neither RBI nor the land holders took any step to get the time limit extended for completion of the sale and whereas the exempted land is lying vacant since 10/9/1982 till today i.e. during period of these 24 years no steps are taken by the land holder to transfer the exempted land to RBI. The RBI has also not taken any step during these 24 years period to get the exempted land transfer in their name. This shows that neither the land holder nor RBI are interested in implementation of the exemption order dt. 10.9.1982. And where as their approach is casual and it appears that the exemption order dt. 10.9.1982 was obtained to stall acquisition proceeding of excess vacant land.

And whereas the land holder or RBI are not interested in the matter and case cannot be kept pending for permanently.”

137) Thus, the exemption is withdrawn not just on the failure of the land holder to transfer the exempted land to RBI, but equally the RBI's inaction of not taking any steps during the 24 years' period to get the exempted land transferred in their name. This shows that neither the land holder nor RBI were interested in implementation of the exemption order dated 10th September, 1982 and they are relying upon the exemption order of 10th September, 1982 only to stall the acquisition proceedings of the excess/surplus vacant land. Now, this reasoning cannot be said to be based on no material for, from 21st November, 1983 the pendency of the suit and the appointment of the Court Receiver would indicate as to how the parties were not serious, but disinterested in complying with the terms and conditions of the exemption order. The petitioners also overlook, apart from their conduct, that all the co-owners now supporting them are not interested in concluding the deal in favour of the RBI. Lastly and importantly, the RBI, which evinced interest in buying the property on 10th September, 1974 waited till the execution of the conveyance on 15th September, 1983. The conveyance deed is also executed by Jehangir Patel and Merwanji Patel. Jehangir was on the board of RBI and also had a right, interest in the lands. His position and with the tacit approval of RBI is used to avoid the consequences of the land being covered by the Principal Act. Its

acquisition and vesting was inevitable. The conveyance deed was objected to by petitioner nos. 1 and 2 and thus, was subject matter of prolonged litigation. The RBI has not shown any interest nor taken any steps from the date of execution of conveyance till the withdrawal of the exemption order dated 20th November, 2006 to transfer the land in its name. Hence, the conclusion that the execution of this conveyance deed is utilised for stalling the acquisition proceedings cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. The non reference to the corrigendum is not fatal. It is not just the period within which the conveyance was to be executed, but the inaction of the parties in not concluding the deal and taking it to its logical end, which is relied upon. We do not think, therefore, that mere non reference to the corrigendum would have such an impact on the withdrawal of the exemption order that we must quash and set it aside.

138) Pertinently, the other argument of the petitioners is also relevant for the purpose of our above conclusion. The other argument and which we have noted already is that the notices and action taken by respondent no. 1 under the provisions of the ULC Act commencing from 10th August, 2006 onwards are illegal and nonest. The argument is that the ULC Authority did nothing

for 25 years. From the date of the exemption order, namely, dated 10th September, 1982, for the reasons of the petitioners' inaction and their vacillating stand noted above, this submission must be straight away rejected. Then, it is urged that the notices dated 10th August, 2006 and 14th September, 2006 were sent to their erstwhile advocate and therefore they did not receive them. This argument also need not be considered for the reason that the petitioners themselves, in their petition and written arguments, have raised several alternate pleas. They are themselves not sure as to what is the real factual position. The petitioners' alternate arguments are if the cancellation of the exemption order is a nullity and the said order is valid, then, no proceedings under sections 8 and 9 of the Principal Act can be initiated. In this regard we have already held above that the cancellation of the exemption or withdrawal thereof is not vitiated. We have assigned elaborate reasons for the same. We are satisfied from the record that no proceedings under section 8(4) and section 9 and subsequent thereto were completed until the exemption was withdrawn. From the dates and events, it is apparent that consequent upon the withdrawal of the exemption order that the competent authority took the subsequent steps. The list of dates and events, as supplied by the petitioners themselves, would indicate that the notices were issued on 10th August, 2006 and

14th September, 2006. These notices were published at the site on 20th September, 2006. Then, there is a letter addressed on 21st September, 2006 by respondent no. 7(d). The notice of 3rd November, 2006 was delivered in the office of the estate of Dara Patel. It is only after the cancellation of the exemption order i.e. on 30th November, 2006 that the competent authority acted upon the above notices. We will deal with the argument of Mr. Chidambaram that these notices were not served, separately, as even with regard thereto, there are alternate pleas and submissions. For the present, we find that the stand of the petitioners on this issue is also conflicting and contradictory. If they urge that the notice dated 3rd November, 2006 and the prior notices have been served during the pendency of the exemption and when that exemption order was not withdrawn, then, implicit in that is an admission that the petitioners had knowledge of these notices and their contents. They would not have otherwise urged that the very issuance of these notices is bad in law and when the exemption order is in force, such a notice cannot be issued.

139) We have not been shown any principle of law, leave alone any provision from the concerned statute, which would enable us to hold that the notices cannot be issued during the

pendency of the exemption order. Once the notices have not been acted upon, so long as the exemption was in force, then, this argument of Mr. Chidambaram cannot be accepted.

140) We have already indicated with sufficient reasons that it is fallacious to urge that the exemption order being in force, there is no surplus vacant land. In that regard, a careful perusal of section 20 of the ULC Act would negate this contention completely. Section 20 of the ULC Act reads as under:-

“20. Power to exempt. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, -

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

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

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

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to

withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.”

141) Sub-section (1) of section 20 clarifies that notwithstanding anything contained in any of the foregoing provisions of Chapter-III, it is only in the case of a vacant land excess of the ceiling limit on the satisfaction of the State Government and on other conditions stipulated in clauses (a) and (b) of sub-section (1) being fulfilled that the exemption is granted. Therefore, vacant land in excess of the ceiling limit is exempted from the provisions of the Chapter. However, that does not change the character of that land. It continues to be vacant land in excess of the ceiling limit and subjected to the Act. In a Full Bench decision of this court in the case of *Maharashtra Chamber of Housing Industry, Mumbai and Ors. vs. State of Maharashtra and Anr.*¹⁶ this aspect has been discussed in the following words:-

“.....

50. We are unable to agree with them because the excess vacant land being at one time exempted, but such exemption being withdrawn later would equate such excess vacant lands with those in relation to which the power of exemption was never exercised and the Chapter was throughout applicable. Their status would be on par with those excess vacant lands in relation to which no attempt was made to seek an exemption or such attempt was made, exemption granted, but later on withdrawn and withdrawal never questioned by the affected parties. If in relation to such lands as well the necessary steps and in pursuance of section 10(1) could

¹⁶ 2014 (6) Mh. L. J. 829

have been taken and prior to the repeal had the possession of such lands been taken over, they would have vested in the State and that vesting is saved or survives the repeal of the Principal Act, then, there was absolutely no necessity of saving the exemption order and which has already been acted upon or in relation to which the consequences including those provided by section 20(2) and ensuing the same have been already followed.

.....

56. The fallacy in the above arguments can be demonstrated by perusing section 20 of the Principal Act. The difference in the language in section 19 and section 20 is that section 19 says that Chapter - III will not apply to certain vacant lands whereas what section 20 sets out is the power to exempt the vacant land in excess of ceiling limit and which power can be exercised by the State Government in cases covered by clauses (a) and (b). That the said exemption can be withdrawn provided the Government records a satisfaction that any condition subject to which the exemption order is granted is not complied with by any person. Therefore, a conditional order of exemption can be withdrawn on reaching this satisfaction and conclusion. However, section 20 does not mandate withdrawal, but confers a discretion in the government to withdraw the exemption order after giving a reasonable opportunity to such person of making a representation against the proposed withdrawal. It is only when the power of withdrawal is exercised that the provisions of Chapter-III will apply. The language of section is, therefore, clear inasmuch as it is only when the exemption order is withdrawn that the Chapter-III of the Principal Act applies to the excess vacant land. So long as the exemption order is in force to protect its validity despite a contrary Court order a saving provision in the Repeal Act will have to be inserted. The Legislature was aware that not only the terms and conditions of the exemption order need to be enforced, but if that order is acted upon by parties the validity as a whole must be saved. That needs to be saved so as to enable the State Government to apply the provisions of Chapter-III to the excess vacant land covered by the exemption order and the terms and conditions after it is noticed that the exemption is either misused or mis-utilized or not acted upon so as to subserve the larger public interest. A breach or violation of some of its vital conditions may result in its withdrawal and cancellation. If one way of applying Chapter-III is by withdrawing the exemption order, then, the power to

withdraw the same which is implicit and inherent in the power to grant exemption is also saved and not affected by repeal of the Principal Act. That is because the vacant land held by a person is undisputedly in excess of ceiling limit. The power to exempt is exercised when a person holds the vacant land in excess of ceiling limit. That such power can be exercised even after declaration under section 10(3) of the Principal Act is further undisputed.

57. In this backdrop if section 20 is perused that confers a power to exempt and it opens with a non obstante clause, namely, notwithstanding anything contained in any of the foregoing provisions of this Chapter, namely, Chapter-III. The clause (a) of sub-section (1) of section 20 refers to a person holding the vacant land in excess of ceiling limit. If the State Government is satisfied suo motu or otherwise that having regard to the location of such land, the purpose for which such land is used or is proposed to be used and such other relevant factors as the circumstances of the case may require and it is necessary or expedient in the public interest to do so, then, the Government may, by order, exempt, subject to such conditions as may be specified in the order, such vacant land from the provisions of Chapter-III. Thus, what is required for exemption firstly is that a person holds the vacant land in excess of ceiling limit, satisfaction of the State Government suo motu or otherwise that having regard to the location of such land, purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in public interest so to do. Upon such satisfaction the Government may by order, exempt the vacant land from the provisions of Chapter-III by making an order and which could be conditional. The word "Exemption" means free from an obligation or liability. In Advanced Law Lexicon by P. Ramanatha Iyer, 3rd Reprint 2007, the word "exempt" shows that a person is put beyond the application of law. It means to give freedom from liability, tax or duty like any exception. It is a privilege.

58. The argument of Mr. Naphade overlooks the position that when the power of exemption has to be exercised notwithstanding anything contained in any of the foregoing provisions of this Chapter, namely, Chapter-III, then, even section 10 is included therein. Therefore, the land may have been notified in terms of sub-section (3) of section 10, yet the holder of such

vacant land and which is in excess of ceiling limit can seek the Government's intervention and invoke the powers conferred in the State Government vide section 20(1). Similarly, by clause (b) of sub-section (1) of section 20 where any person holds the vacant land in excess of ceiling limit and the State Government on its own motion or otherwise is satisfied that the application of the provisions of Chapter III would cause undue hardship to such person, that the Government may by an order, exempt, subject to such conditions as may be specified in the order, such vacant land from the provisions of this Chapter. However, the proviso clarifies that no orders under this clause, namely, clause (b) shall be made unless the reasons for the same are recorded in writing.

59. If the argument of Mr. Naphade is accepted, that would mean that the powers to exempt cannot be exercised when the land is already vested in the State in terms of section 10. That the power under section 20(2) for withdrawal of exemption cannot be exercised after repeal of the Principal Act, presupposes that exemption itself cannot be granted after vesting takes place. Mr. Naphade and other counsel contend that effect of withdrawal of exemption is to vest the vacant land in the State in terms of section 10 and after repeal that vesting is not possible or that even if the land is vested the further steps cannot be taken. Thus, the argument is premised on the basis that no application for exemption under section 20 can be filed by a person who holds the vacant land in excess of ceiling limit once it vests in the State. Precisely such an argument was canvassed before the Honourable Supreme Court and rejected in the case of *Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad vs. P. S. Rao* reported in AIR 2000 SC 843 (see paragraphs 6 to 10).

60. Therefore, once the power of exemption can be exercised after the excess vacant land has vested in the State, then, equally the power to withdraw the exemption can also be exercised in case of such vacant land.

.....

63. It is not an absolute right or privilege as is claimed. It may be a conditional exemption. It may allow the person to use the land for the stated purpose, but that is not relieving him or the land from the condition or obligation imposed by Law and equally any liability. It is not an advantage or benefit, if at all, which

could be enjoyed absolutely. It is to fulfil the object or purpose of the user and to act in public interest or to avoid undue hardship. The applicability of Chapter III being expressly admitted, but seeking to avert the consequences of such applicability in exceptional circumstances that the request to exempt is considered and granted. The power in that behalf is to be exercised sparingly and as an exception. It is not a rule. It is a corresponding right of the State and to be exercised to uphold larger Public Interest. Thus, it is not a one sided right or privilege. It is not relieving the person from the legal consequences of the power to exempt and more so, if it is a conditional order. It is to safeguard public interest that such power is exercised and in a given case conditionally. If relieving somebody on account of his hardship or exempting the vacant land for a specific purpose by holding in abeyance the applicability of provisions of Chapter-III is the aim, then, that person cannot claim benefit or advantage in himself much less in absolute terms. It is a relief granted to relieve him from undue hardship caused by applicability of the provisions of Chapter-III. If that power under clause (b) of sub-section (1) of section 20 is exercised subject to such conditions, as can be imposed by the State bearing in mind the object and purpose of the principal Act and if they are specified in the order, then, that can hardly be said to be an absolute right or privilege. That is a relief together with or appended with an obligation and liability. If that is incurred at the time of exercise of power of exemption, then, the Government can very well enforce the power to exempt by withdrawing the said order and equally without withdrawing it enforce the terms and conditions therein despite the repeal. It is for that purpose that clause (b) of sub-section (1) of section 3 is enacted. That is also recognition of the legal position that by exempting something from the provisions of an Act it is always understood that one is subjected to the Act or law. It is applicable but the exemption means one does not suffer the legal consequences so long as the exemption is operative.

64. The Legislature was aware that the excess vacant land may have been exempted bearing in mind its location and the purpose for which it is being used or proposed to be used. Clause (a) of sub-section (1) of section 20 is the power to exempt the excess vacant land from applicability of the provisions of Chapter-III and same is exercised because it is necessary and expedient in public interest to do so. Therefore, it is futile to urge

that a person holding any vacant land in excess of ceiling limit derives advantage or benefit when such power is exercised by the State qua the excess vacant land or vacant land in excess of the ceiling limit, more so conditionally.

65. The order of exemption under section 20(1) remains valid would mean that a person continues to hold the vacant land in excess of ceiling limit and to which none of the provisions in Chapter-III apply. Chapter-III confers some rights in the holder of excess vacant land as well. Those also cannot be exercised because the exemption order is valid and continues to be so despite the repeal. Nothing is gained by such a situation where the excess vacant land being exempted from the provisions of Chapter-III so as to permit the usage of the land by the holder or retain it as an exception, but neither the State being able to enforce the conditions if any subject to which exemption is granted or to withdraw the said exemption. Equally, the effect of the repeal being to save the validity of the order granting exemption under section 20(1) or any action taken thereunder, the person in whose favour such exemption is granted will not be able to do anything in relation to such vacant land which except for the exemption may have vested already in the State by virtue of section 10(3). He then cannot move the State and seek any payment for acquisition and vesting. Hence, when the Legislature had in mind the saving clause as is carved out by section 3(1) (b) and (c), its intent was not to take away any of the powers conferred in the State nor exclude applicability of the provisions of Chapter-III of the ULC Act to such an extent as would make it impossible for the person to seek payment in terms of sections 11 to 14 or to seek enforcement of such conditions which are reciprocal and which are to be performed by both. Just as the State would be unable to enforce the conditions on which exemption is granted, equally the members of the public or person holding the excess vacant land would not be able to enforce the conditions which are incorporated therein so as to protect their interest. Such situation can never be envisaged by the parliament. Such situation being created would render all the provisions of the Repeal Act redundant. The intent as is clear from a harmonious reading of the Repeal Act and in the backdrop of the aims and objects of the Principal Act is to save the applicability of the provisions contained in Chapter-III to the excess vacant lands which are subject-matter of

exemption under section 20(1). Section 3(1)(a) covers a situation where there is no exemption order passed under section 20(1)(a) and (b). That covers the vacant lands which are not subject-matter of any order of exemption or such order being not in force on the date of the Repeal Act and in regard to which the provisions contained in Chapter-III were always applicable. Therefore, if the State does not complete the action in relation to these lands by taking possession thereof, their mere vesting and deemed acquisition by virtue of section 10(3) is not saved. Section 3(1)(b) deals with a separate and distinct situation and that is applicable to the lands which are vacant and in excess of ceiling limit and in relation to which the order of exemption under section 20(1) has been passed. The applicability of Chapter-III in relation to such lands is, thus, ruled out and so long as the exemption order is in force. If the order of exemption is withdrawn the chapter-III becomes applicable and all consequences would follow.

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71. The arguments of the Petitioners' counsel overlook the fundamental aspect that the vacant land in excess of ceiling limit has to be reckoned with effect from the date of commencement of the Act and as far as the State of Maharashtra is concerned that is 17-2-1976. In a Full Bench decision of this Court reported in 1984 Mh. L. J. (F.B.) 63 = AIR 1984 Bombay 122. Prabhakar Narhar Pawar vs. State of Maharashtra, the Full Bench held as under:

“11. There is no dispute that the vacant land has to be determined with reference to the date of commencement of the Act and the relevant date is 17th February, 1976. So far as Sub-clause (I) is concerned, the question as to whether construction of a building is or is not permissible according to the building Regulations has to be determined with reference to 17th February, 1976. We have already referred to the definitions of the words “building Regulations”, which mean Regulations contained in the master plan, and the meaning of the expression “master plan” is also given in the Act itself in section 2(h) and it means, in relation to an area within an urban agglomeration or any part thereof, the plan prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and

providing for the stages by which such development shall be carried out. Now, when a question arises as to whether construction of a building is not permissible under the building Regulations in force, it is possible that there may be an absolute ban or prohibition under the relevant master plan where under no circumstances construction of building is possible on a given piece of land. Such piece of land may have been reserved for a purpose and on such reservation construction of a building would not at all be permissible. But, when we come to an instance like the present one in which there is an open plot of land which is admittedly a house site on which a building could be constructed, it is difficult to see how any part of the land can be excluded under Sub-clause (I) of section 2(q) on hypothetical considerations. Section 3 of the Act and the procedural provisions thereof which are intended to implement the provisions of the said section contemplate the determination of the quantum of vacant land on facts as they exist on the date of commencement of the Act. Therefore, in a given case where the owners of a land claims that certain land which is owned by him should be excluded on the ground that construction of a building is not permissible under the building Regulations in force, it is obvious that he will have to show that the building regulations are attracted in his case. For a person, who, on the commencement date, never even intended to construct any building on his land or for a person who has not even submitted a plan for construction of any building, the relevant building Regulations are wholly irrelevant and he is not affected by the building Regulations. It appears to us that when sub-clause (I) refers to land on which construction of a building is not permissible under the building Regulations, it was contemplated that on the date of commencement of the Act, that is, 17th February, 1976, the owner intended to construct a building on the plot in question and the plan of the building was either already sanctioned or he had submitted that plan for sanction. Where a building plan is

already sanctioned and such sanctioned plan is operative on 17th February, 1976 or a plan has already been submitted for sanction, it could be ascertained with certainty as to how much land could be identified as land on which construction of a building is not possible. Sub-clause (I) of section 2(q) does not, in our view, contemplate a general exclusion of land from the purview of the Act to the extent of two-thirds or one-half or whatever may be the extent of land on which no building can be constructed under the relevant building Regulations in force in the area under consideration irrespective of whether a building is proposed to be constructed or not on the date of commencement of the Act.”

142) In the circumstances, the petitioners cannot urge that the land is not in excess of the ceiling limit. It is a mandate flowing from the Act itself that the person is not entitled to hold vacant land in excess of the ceiling limit and that is except as otherwise provided in the Act. To enable holding of this land for the specific purpose and which is permitted because of the order of exemption that other proceedings are held in abeyance. To urge that the Act itself is inapplicable or the land's character is not that of surplus vacant land or land held in excess to the ceiling limit is thus erroneous. The petitioners' arguments overlook this important aspect of the matter.

143) Then, the argument is that the notices dated 10th August, 2006 and 3rd November, 2006 were not served.

144) With regard to this aspect of the matter, the respondents have clarified that there is a tacit admission by the petitioners about the knowledge of all notices and proceedings and in that regard they rely upon page 43 of the writ petition and page 47 thereof. We have also found from the affidavit in reply that there is no substance in this contention. The show cause notice dated 10th August, 2006 is issued on the footing that Jehangir Patel and other hold the vacant land in excess of the ceiling limit. The notice was addressed to Jehangir Patel and others and Ms. D. D. Patel and others, Ms. Estalle R. J. Yesugar, all through their advocates. Then, on 14th Separately, 2006, a communication was addressed to all the land holders and some of them were served through advocates as throughout they were corresponding with the competent authority. The petitioner nos.1 and 2 after having executed a irrevocable power of attorney and an agreement in favour of petitioner no. 3 can hardly complain. They were not at all interested as no attempt was made by them to personally correspond with the ULC Authority ever. We do not find any merit in the contention that service of the notices on the advocates would not be a permissible mode. That apart, the office of the Additional Collector and Competent Authority, Greater Mumbai addressed a communication to Tehsildar, Andheri directing him that notices were issued to the

land owners of the land mentioned at the address available in the office of the competent authority, but the same are returned unserved as the land owners are not residing at the given address, hence, a publication of the notices at site be made and a report be forwarded in that behalf. Accordingly the notices were published. Thus, service of notice on one of the co-owners and his acknowledgment is substantial compliance with the applicable Rule. The competent authority has also taken care to publish such notice at site.

145) We also have on record a letter dated 21st September, 2006 by Cyrus Patel to the competent authority, in which he stated as under:-

“Cyrus S. Patel

Lyndewode House, Top Floor, Bomanji Petit Road,
Bombay 400 026

21st September, 2006

The Additional Collector & C. A.
5th Floor, Near Chetna College,
Sub Dist. Admin Bldg.
Bandra (East)
Mumbai 400 051

Sub: Your Show cause Notice U/s. 20(2) of the UL
(C&R) Act, 1976.

Ref: Your Letter No. No. C/ULC/D-V/6(i)/SR-XI-853,
VIII-67, XI-863, XV-377/XII-880, XVII-408

Dear Sir,

The property bearing S. No. 141-B, City Survey No. 864
belonged to the late Rustamji Patel who died several

decades ago without a Will. His nephews Jehangir P. Patel and Minocher P. Patel (both deceased) obtained Letters of Administration to his estate.

The property has not been distributed/sub-divided amongst the numerous beneficiaries in their appropriate shares. The beneficiaries had disputes amongst themselves and as a result of litigation, the property is in the hands of the Court Receiver since 1984. The Reserve bank of India is also a party to this litigation.

Now, the disputes amongst the beneficiaries have been settled and it will be necessary to take back the property from the Court receiver and also settle matters with Reserve Bank of India. This procedure is in progress.

To enable the estate of the late Rustomji Patel to be represented in the matter (since both the administrators Jehangir P. Patel and Minocher P. Patel are dead), we have applied to the High Court for Letters of Administration de bonis non to the late Rustomji Patel's estate and our application is pending.

Please therefore do not pass any orders until matters are settled and clarified when the extent of vacant land (if any) can be ascertained.

Yours faithfully,

For self and Pesi S. Patel
Sd/-
CYRUS PATEL”

146) Then and prior to the order passed on 20th November, 2006, another notice was addressed directing the owners to remain present at a hearing scheduled on 15th November, 2006 at 3.30 p.m. It is in these circumstances that we are of the opinion that there is no merit in the contentions of Mr. Chidambaram.

147) In the affidavit in reply, the respondents have pointed out that earlier five statements under section 6(1) of the

Principal Act have been filed by five declarants and on 25th May, 1977 the then competent authority passed an order under section 8(4) of the ULC Act, thereby declaring the area admeasuring 66,432.00 square meters as surplus vacant land. Being aggrieved and dissatisfied by this order passed under section 8(4) of the Principal Act Minocher Patel and two others filed an appeal before the Additional Commissioner under section 33 of the ULC Act. That appeal was dismissed on 3rd June, 1978. A final statement under section 9 of the ULC Act was prepared and issued so also served on the declarants on 30th May, 1977. Thereafter, a notification under section 10(1) of the ULC Act was issued on 30th May, 1977 and was published in the Government gazette on 7th July, 1977. Then, a notification under section 10(3) was issued on 8th September, 1978 and that was published in the Government gazette on 28th September, 1978.

148) The petitioners seek to derive advantage of the order passed by this court on 12th November, 1981 in miscellaneous petition referred as above, but the fact that these are surplus vacant lands and subjected to the Act already cannot be overlooked. That is being conveniently brushed aside. In the Full Bench decision referred above and paras of which have been reproduced by us, this Court has already held that there is no bar

for exercise of the power under section 20(1) of the ULC Act even upon vesting of the lands in the State. In other words, even if the power under section 10(5) is exercised, there is no impediment in considering and granting an exemption under section 20 thereof. The Full Bench follows a decision of the Hon'ble Supreme Court of India in that regard.

149) In the above circumstances, we do not see how it can be argued by the petitioners that the land was out of the purview of the Act or lost its character as a surplus vacant land.

150) On the plea of notice or lack of it, we have already held that the petitioners were served with the notices as admitted by them, through their erstwhile advocates. However, in the affidavit in reply, it has been pointed out as to how for carving out the land to be conveyed to the RBI and segregating and separating it from the balance vacant land in excess of the ceiling limit, the office of the second respondent convened a meeting of all concerned authorities on 28th February, 1983. That was attended and a roznama was prepared thereof. Thus, the legal status of the land was known to the land holders/owners. Further, they do not dispute that a power to grant exemption would also take within its fold a power to withdraw it. That power has been exercised in compliance with law. At this stage, it is

pertinent to note that there is divergence between the factual version set out by the petitioners and that referred by respondent no 7(d) to (e).

151) We have also held above that till the exemption was withdrawn, the steps or measures under the Act, which were held in abeyance were not initiated and concluded. We are also in agreement with Mr. Samdani that the notices as referred in the foregoing paragraphs were not required to be served on the Court Receiver, High Court Bombay. In that regard, we have carefully perused the record and we find that the competent authority had no knowledge of the suit and the appointment of the Court Receiver. It is clear from the documents and which are relied upon, namely, serial numbers 27, 28, 31, 40 and 41 of the chronology of events that none of these can impute knowledge of the court proceedings and the appointment of the Court Receiver to the competent authority. The report of the Court receiver at page 117 of the paper book does not indicate that whether it was submitted or filed in the court proceedings. If at all it was filed and a direction has been issued in pursuance thereof whether at the stage of issuance of such directions, the competent authority or his representatives were ever present. This document does not indicate that copy of the same was supplied or furnished to

competent authority. Then, the letter dated 19th September, 1984 is addressed to the Collector of Bombay and the Tehsildar, Andheri. It is apparent from the record that the designation of the competent authority is Additional Collector and Competent Authority (ULC). It is not a letter addressed to the Additional Collector, Bombay Suburban District either, who is the competent authority. Therefore, addressing a letter to the Collector and Tehsildar does not denote that they had knowledge of the court proceedings and the order.

152) Then, the document at serial number 31, which is a letter addressed by the Court Receiver to respondent no. 4 City Survey Officer, Andheri, informing him about his appointment and an entry in the property card would not mean that the competent authority had knowledge of any suit filed in relation to the subject land, any interim orders, much less appointment of the Court Receiver therein. We do not find such knowledge even from a reading of the further letters and that particularly addressed by respondent no. 7(d). We have reproduced the letter in the foregoing paragraphs. It is apparent that it is in reply to a show cause notice issued under section 20(2) in relation to proposed withdrawal of the exemption. There, in the passing, it is mentioned about disputes amongst the owners and a litigation,

but if this letter is carefully perused, it is apparent that there are absolutely no details of the court, in which the suit or litigation is pending, the reliefs therein, the parties thereto, the details of the appointment of the Court Receiver and in relation to which land or the entire vacant land in excess of the ceiling limits or otherwise. Some passing reference does not mean that the competent authority had knowledge and with all details about the court proceedings.

153) In relation to the document at serial number 46, that is also a letter from respondent no. 6(b). A copy of that letter is at page 146 of the paper book. That is in identical terms as that of the letter addressed by respondent no. 7(d). In such circumstances, we are in agreement with Mr. Samdani that addressing such letters and to distinct authorities and located at distinct offices cannot attribute knowledge of the court proceedings and the appointment of the Court Receiver to the competent authority. At no point of time, from the entire record, it reveals that copies of the plaint, proceedings and orders in the suit were ever forwarded and supplied to the competent authority. At no stage the progress of the suit was informed. Once the Government and the competent authority were not a party to the suit, but could have derived knowledge thereof only

through land owners or their agents, then, we do not see how the petitioners can insist that the proceedings that we have referred above under section 20(2) and the orders passed under section 8(4), the finalisation under section 9 and notification under section 10 with its sub-sections can be termed as illegal or null and void. The position is reverse because all co-owners, advised as they were by competent legal advisors, are aware that the land held by them is in excess of the ceiling limits and is governed by the Principal Act as also subject thereto. It is not to be dealt with except in accordance with that Act.

154) We have not seen any complaint made to any authority regarding the steps taken and there is substance in the grievance of the State that some technical arguments on the alleged deficiency in the notices and proceedings cannot be entertained. The petitioners never filed any objections or raised challenge during the relevant period to these notices. The grievances are raised after 2 and half years of the exemption order being withdrawn and the proceedings under the Principal Act finalised. Once the belated challenge and based on some alleged technical deficiencies cannot be entertained, then, the reliance of Mr. Chidambaram on Rule 5(2)(a)(ii) of the ULC Rules need not detain us.

155) In that regard, we find in the grounds in the petition at page 74 of the paper book a general allegation and averment is made. We have concluded that the petitioners had notice of all the proceedings. The co-owners of the property had addressed letters and specifically to the competent authority. In such circumstances, we do not think that Rule 5 and its language can be of any assistance to the petitioners in this case. We have no hesitation in rejecting the ground and the challenge based thereon.

156) After all the above submissions are noted and covered, now what remains for consideration is the complaint that possession of the land was not taken and in accordance with law. In that regard, section 10 of the ULC Act is relied upon. That section reads as under:-

“10. Acquisition of vacant land in excess of ceiling limit. - (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that -

(i) such vacant land is to be acquired by the concerned State Government, and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) *After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.*

(3) *At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.*

(4) *During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3), -*

(i) *no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and*

(ii) *no person shall alter or cause to be altered the use of such excess vacant land.*

(5) *Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.*

(6) *If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.*

Explanation. - In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to -

(a) any vacant land owned by the central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 (2 of 1924), means the State Government."

157) The submission of Mr. Chidambaram is that assuming everything under the Principal Act is in accordance with law, namely, the character of the land is vacant land in excess of the ceiling limits, still, the possession of the same is not taken, then, post repeal of the ULC/Principal Act, the entire proceedings lapse and the land must be restored back to the petitioners. This is on the footing that the possession of the land is not taken. The argument is that even if the land vests in the State, possession thereof has to be taken, else, the Repeal Act comes into play. That would result in lapsing of all the proceedings.

158) Here again, we find that petitioners' pleas are self defeating and contradictory. They do not project physical possession in themselves, at least from 19th September, 1984 and state that the physical possession of the land is with the Court Receiver, High Court Bombay, who is appointed in the suit instituted and which was pending, firstly in this court and then made over/transferred to the City Civil Court. They submit that

no notice is served on the court receiver. Further, they rely upon the fact that before taking possession of the surplus vacant land, leave of the court was not obtained. An attempt was sought to seek leave after the possession was taken or the Court Receiver's possession is interfered with, but that chamber summons of the State Government is dismissed.

159) Then, there is an alternate argument that the Court Receiver holds possession of the property on behalf of the parties to the suit and so long as there is no notice served on the person in possession, then, the compliance with the statutory provision has not been made. There are alternate arguments, namely, that *de facto* possession must be taken by the State and there is no symbolic possession as far as scheme of the Repeal Act is concerned. For that possession to be obtained, according to the petitioners, there should be voluntary surrender by them or there should be a peaceful or forcible dispossession. Neither has been demonstrated and hence, the Repeal Act applies with full force.

160) We have already held that the consequences under the Principal Act on grant of exemption and subsequent withdrawal are known to the parties. The supporting respondents were aware of the steps that were proposed and they have corresponded with the authorities. The letters addressed by them

are reproduced by us. Once all the steps in pursuance of the withdrawal of the exemption upon publication of the notification under section 10(3) of the Act are initiated and completed much prior to the Repeal Act, then, the only satisfaction that is required to be recorded by us is whether possession of the land was taken or not.

161) In that regard, we must note at once that the Repeal Act had come into force in Maharashtra on 29th November, 2007. True it is that sensing the enactment of the Repeal Act and particularly becoming aware of its consequences, some alert citizens moved this court in a Public Interest Litigation. They impressed upon the State the need and rather urgency to take steps so that the lands vesting in the State do not go back to those land holders who have either violated the terms and conditions of the exemption, if any, or not complied with the same or have never questioned the proceedings under the Act. At the instance of such alert citizens, this court entertained the PIL and issued directions to the State Government. However, what we find in the present case is that a notice under section 10(5) was issued on 27th February, 2007. That intimated that the possession would be taken on 9th March, 2007 at 2.30 p.m. That notice was promptly despatched and from the original file it is revealed that the same was done on 27th February, 2007 or 1st March, 2007. Though in

the notice, 9th March, 2007 is the date determined for taking possession, however, the City Survey Officer, Andheri duly informed the competent authority that the official from his office visited the site, but found that there was a board affixed that the property is in possession of the Court Receiver. That is how possession was not taken on 9th March, 2007 and the official returned without taking the same. A record was made of this event and the competent authority was informed accordingly on 12th March, 2007. However, the competent authority informed the City Survey Office on telephone that possession should be taken and *ex-parte* on 28th March, 2007 and panchanama be drawn accordingly. Thereafter, the possession was taken at site on the given date, namely, 28th March, 2007 and the competent authority was informed about the same in writing on 29th March, 2007 by the City Survey Officer, Andheri. This letter is in the original file and we have perused it. We have also perused the panchanama and it is stated that though this panchanama recites that the possession has been taken in the presence of panchas, but the criticism is that their signatures or identity is not reflected on this document. We called for the original records and we found that there is a possession receipt and the possession receipt records that in pursuance of the notice under section 10(5) the possession of the immovable property has been taken

on behalf of the City Survey Officer by one H. N. Patil, who is the Inspector of Land Records on 28th March, 2007 at 3.30 p.m.

162) There is also another record which would indicate that the possession was taken on 28th March, 2007 and at that time, the land was vacant.

163) Mr. Chidambaram relied upon the wording of sub-section (5) of section 10 and submitted that the possession was not taken after the expiry of the period stipulated in the section, but prior to the same. In that regard we find that the notice dated 27th February, 2007 stipulated the date as 9th March, 2007 for taking possession. However, on that date, possession could not be taken and the reasons why it could not be taken are set out in the letter addressed by the City Survey Officer on 12th March, 2007. However, the City Survey Officer, Andheri was directed to take possession on 28th March, 2007 and he took it accordingly. Thus, it is not as if an attempt was made to take possession abruptly or suddenly. Possession has been taken after the expiry of the stated period and as set out in sub-section (5) of section 10 of the ULC Act. We have found from the original despatch register that the notice was duly despatched by post and there is thus no basis for the complaint that there is a violation or breach of the provisions of law.

164) In the affidavit in reply, the State and the competent authority have pointed out as to how the possession was taken. As far as that aspect is concerned, petitioner no. 3, who files an affidavit in rejoinder, asserts that sub paras (V), (X), (Y), (Z) and (DD) of para 6 of the petition are reiterated. He states that the competent authority has not taken possession of any part of the property either under section 10(5) of the ULC Act or otherwise and the so called possession receipt and panchanama do not evidence taking or giving of actual possession or any part of the property and the same is a mere paper record.

165) As far as the petition goes in paragraph no. 6, which starts from page 21, petitioner no. 3 places reliance on the above sub paras of that paragraph commencing from page 41. In these paragraphs, a very guarded statement is made that respondent no. 1 competent authority sought to issue notice dated 27th February, 2007, but sub para (X) at page 43 of para 6 would denote that indeed a notice dated 27th February, 2007 was issued, it was received or the contents thereof were known to the petitioners. Thus, the averments in para 6(X) of the petition would denote as to how the surveyor from the office of respondent no. 4 came to the site and after inspecting the same found that there were some security guards or that the Court Receiver

claimed to be in possession. If it is the petitioners' case that they are entitled to the notice for they are in possession, then, the averments would have been specific and clear. The petitioners are aware that their version is conflicting. If they rely upon the fact that the suit was filed, the property was *custodia legis* and therefore the Court Receiver's physical possession cannot be interfered with or disturbed, then, how they are entitled to claim notice under section 10(5) of the Principal Act has not been clarified at all. Yet, they pleaded knowledge about the notice and the attempt made by the surveyor to take possession of the vacant land which was in excess of ceiling limit admittedly, but found some board of the Court Receiver and reported the matter to the superiors of the surveyor. Thereafter, he was instructed to go again and that is how possession was taken. Thus, the averments in para 6(X) do not project an entitlement of the petitioners to notice or any attempt by the petitioners to question the existence or contents of the documents. Similar is the position with regard to the averment at page 44 para 6(Y) and para 6(Z). Even the averments in para 6(DD) would not enable us to conclude that the petitioners were unaware of the developments or that their case is that section 10(5) has been violated or breached. Thus, all arguments of Mr. Chidambaram are much beyond the pleadings. The pleadings must project and

emphasise the case that is sought to be orally pleaded. In the present case, we find that one who has been given a power of attorney to deal with the property by the petitioner nos. 1 and 2 way back on 18th October, 1991 is now arguing the case of the land holders. To what extent he can project their case and being deprived of their lawful entitlement must be borne in mind. It is only upon petitioner no. 3 entering the scene and pursuant to the power of attorney executed in its favour that the owners decided to raise a challenge. Petitioner nos. 1 and 2 are not interested at all in claiming the land. Therefore, it is petitioner no. 3 who sometimes pleads the case of petitioner nos. 1 and 2 being entitled to notice under section 10(5), but having realised that there was already a conveyance executed in favour of the RBI, a suit was pending and was not decreed that he shifts the stand and complains that the property is *custodia legis* and therefore, the Court Receiver's physical possession could not have been disturbed. Once the Court Receiver having informed, according to petitioner no. 3, the office of the Collector, Bombay Suburban District and the City Survey Officer, Andheri, then, notice should have gone to him or through the parties to the suit to the office of the Court Receiver, High Court Bombay. Hence, we are of the opinion that at the instance of such parties, it is not necessary to examine the contentions of Mr. Chidambaram.

166) Even otherwise, we do not find any violation of sub-section (5) of section 10 for a notice in writing had indeed been issued. That such a notice in writing was issued on 27th February, 2007 and the possession was taken not within 30 days of the issuance thereof, but on 28th March, 2007 that we do not think that sub-section (5) of section 10 has been breached. We do not see as to how invalidity or illegality of the notice can be pleaded by petitioner no. 3 in the teeth of pendency of the suit in the Bombay City Civil Court and secondly, not being the recorded land holder/owner of the property. It is petitioner no. 3 who is pleading the case of petitioner nos. 1 and 2 who have already divested themselves of their right, title and interest in the property. They had divested themselves, because the conveyance in favour of RBI was not set aside on the date when the land vested in the State and the possession was taken. Secondly, they have already divested themselves of the right, title and interest by executing an agreement in favour of petitioner no. 3 and the power of attorney.

167) As far as sub-section (6) of section 10 is concerned, we do not think that the same can be read to render assistance to the petitioners in any manner. It is the notice in writing under sub-section (5) of section 10 which orders the person who may be in

possession of the vacant land to surrender or deliver possession thereof and when sub-section (6) uses the word “order”, it obviously refers to the notice in writing and containing that order or direction. Therefore, the failure to comply with that and within the time specified from the service of the notice that the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to the authorised person and for that purpose use necessary force as well.

168) We are of the view that arguments of Mr. Chidambaram on the construction and interpretation of sub-section (5) and sub-section (6) of section 10 need not detain us further. In this regard, we find much substance in the contention of Mr. Samdani that the land in question was and is a vacant land and possession thereof has been taken. The documents evidencing taking of possession, namely, panchanama, possession receipt etc. cannot be questioned nor their contents put in issue at the instance of such petitioners whose status and stand is as above. We are in agreement with Mr. Samdani that it is the third petitioner who is in control of all proceedings. Having found that petitioner nos. 1 and 2 are aware of the steps and measures taken under the Principal Act, he does not make any emphatic pleading,

but very guarded and careful statement. We are, therefore, of the opinion that no benefit of the Repeal Act or section 3(1)(a) thereof can be derived by the petitioners in the present facts and circumstances.

169) The conduct of the supporting respondents must also be noticed. We find that Mr. Chidambaram's arguments overlooks an important aspect of the matter and namely that an affidavit has been filed in this petition by one Shivaji Jondhale. He was the Additional Collector and Competent Authority from 16th March, 2004 to 31st March, 2009. It is in his tenure that some important events, based on which the challenge is raised in this petition, have taken place. We have reproduced substantial parts of his affidavit.

170) However, another crucial part or portion of this affidavit needs to be referred. In para 8 of his affidavit, the deponent refers to the PIL Petition No. 4 of 2006 and the direction to the competent authority therein issued by this court on 17th August, 2006 and to finalise all cases not later than 31st December, 2007. That is how in terms of this order passed on 17th August, 2006, the steps were taken. We need not repeat those steps, but what we find is that in this paragraph, he states that after publication of the notification in the Government

gazette, the contents of which are deemed to be known to all parties, he issued the notice under section 10(5) to the declarant on 27th February, 2007. That was to inform the taking of possession on 9th March, 2007. On 9th March, 2007, the Maintenance Surveyor of the City Survey Office went to take possession, but he did not take possession and submitted the report to the competent authority (the deponent) that there was a board of Court Receiver on a part of the land of Survey No. 141B bearing CTS No. 864, village Ambivali. On receiving this letter, the competent authority once again verified the papers pertaining to the proceedings under section 8 of the Principal Act and as no order appointing the Court Receiver was in the file, the competent authority visited the site on 20th March, 2007. He also found that a board was only on the part of the land bearing Survey No. 141B, Ambivali, which was on the other side of the nallah and this area, as per the plan prepared under section 8(4) of the Principal Act, was not within the vacant land in excess of the ceiling limit. Therefore, the City Survey Office was informed that it should move and take possession as the Government had to submit status report in the PIL Petition No. 4 of 2006. Accordingly, the Maintenance Surveyor took possession of the surplus vacant land on 28th March, 2007.

171) The abovenoted developments and facts would find corroboration if one peruses the order passed by the Division Bench of this Court in Appeal No. 740 of 1984 in Suit No. 2345 of 1983. That was an appeal filed by the RBI/original defendant no.15 in the suit against Mrs. Dhun Dara Patel, who is the mother of petitioner nos. 1 and 2 and plaintiffs in the suit and original defendant nos. 1 to 14. That order reads as under:-

“ We fail to see how the order appointing the Court Receiver prejudices any one in the present case. The property in question is vacant land and it is not the case of the appellants herein, the Reserve bank of India, that they want to put it to any use pending the hearing and final disposal of the suit. The appointment of the Court Receiver and his taking possession of the land would ensure that no possible trespasser can claim any title to the land. The learned trial Judge has exercised his discretion in favour of appointing the Receiver and, in the above circumstances, we see no reason why any interference with that decision is called for. The Court Receiver is directed to take all proper steps, including the employment of adequate number of Watchman and other security services, if necessary, to ensure that no trespasser gets into the land in question which, we are happy to learn, has not yet been trespassed upon. For these purposes, it will be such of the respondents who obtained the order appointing the Receiver who will put him in funds in the first instance. In taking these steps the Receiver will, of course, consult the appellants as well as the respondents. We may mention that it was suggested to the appellants that, if they so desired, they could stay on the lands as the agents of the Receiver without security or royalty, but Mr. Kapadia, the learned counsel for the appellants, informs us that it was not possible for the appellants to accept that suggestion.

In view of this, the appeal is dismissed.

On Mr. Kapadia's application, the operation of this order is stayed for a period of three weeks.”

172) Thus, a vacant piece of land was the subject matter of the suit, that no measurements were provided and the extent to which the Court Receiver was in possession thereof also having not been indicated, we do not see how either objections and raised before us, namely, that the petitioners were in physical possession and that is disturbed without valid and legal notice to them or that the property was *custodia legis* and in possession of the Court Receiver, can be accepted. We have found from the order of the learned Single Judge, which was impugned in the Appeal that the same as well does not refer to any survey number or CTS number. That order recites as to how the plaintiffs along with defendant nos. 1 to 15 in the suit are the heirs of R. D. Patel. Defendant nos. 1 and 2 to the suit Jehangir Patel and Merwanji Patel were the surviving executors of the deceased under the Will. This order explains as to how the land admeasuring 73,200 square meters situate at Versova, Andheri was at one time considered to be *kharab* or waste land. Petitioner nos. 1 and 2 before us and their mother claimed that they were entitled to 2/7th share in the suit property. After referring to the plaint averments and specifically that there was an exemption order exempting 59,407.10 square meters and the pleading of the plaintiffs that the order of the Government of Maharashtra dated 10th September, 1982 granting exemption was void and illegal,

what they projected is that the acts of the executors in executing the conveyance dated 15th September, 1983 in favour of RBI were void, invalid and not binding on them. It was specific case of petitioner nos. 1 and 2 and their mother that the administration of the estate of deceased R. D. Patel has been completed by the executors by the year 1960. Since the estate has been completely administered, the executors ceased to be executors as such and became only trustees of the land and as such they had no right to sell the property. Then, reliance was placed upon a revision application filed before the State of Maharashtra on 28th December, 1987 and the averments therein. There is also a reference made to the order passed in the miscellaneous petition and based on such allegations and contentions, the declaration with regard to the validity and legality of the conveyance in favour of RBI was made. All the contentions raised by the petitioners and the position as emerging from the relevant provision of the Indian Succession Act 1925, which has been noted by us above, particularly with regard to the role of executors and their powers, was highlighted by the executors. It is in these circumstances that the learned Single Judge of this court in para 25 of his order observed that the suit property had not been administered as that was considered to be waste land. The *prima facie* view with regard to the conveyance resulted in

the appointment of the Court Receiver. It is in these circumstances that we must see the conduct of the supporting respondents for they have also executed a power of attorney in favour of M/s. BPM Industries Limited on 7th January, 1998. It appears that M/s. Satelite Developers Limited came to be appointed as agent/attorneys in respect of the property, which is subject matter of this petition. Business of both these entities merged and that is how not only on the strength of the power of attorney, but some arrangement recorded therein, these builders claimed the interest of even respondent no. 7(a) to (d). These are grandsons of Pestonji Patel, who was the brother of the owner R. D. Patel/deceased. Pestonji had died during the lifetime of the deceased and was survived by five sons and one daughter. All the children of Pestonji became legal heirs of the deceased. Respondent nos. 6(a) and (b) represented estate of Jehangir Patel, who was one of the sons of Pestonji and respondent nos. 7(a) and (d) are the sons of Shavak another son of Pestonji. The power of attorney dated 6th June, 1998 authorises the deponent of the affidavit in reply filed to the writ petition on 3rd January, 2014, to file it. This affidavit in reply proclaims that entire property is the subject matter of Suit No. 2345 of 1983. The entire property means that which is covered by the conveyance in favour of RBI. This affidavit pertinently makes a statement

that the Court Receiver has been in physical possession of the property in question. This affidavit does not deny the issuance of the notice in later half of 2006 and the response thereto by respondent no. 7(d) vide his letter dated 21st September, 2006. It also refers to a letter of respondent no. 7(c) dated 19th December, 2006. This affidavit, in para 9, specifically says that respondent no. 7(a) to (d) became aware of an order dated 20th November, 2006 withdrawing/cancelling the exemption. It also refers to the steps under section 8(4), 10(1) and 10(3) of the Principal Act as also a statement indicating the extent of the land out of the said property, which, according to the competent authority, was within ceiling limit and the extent of the land beyond ceiling limit. This affidavit also refers to contents of the order dated 20th November, 2006. This affidavit claims that these respondents have put the competent authority to notice that the Court Receiver, High Court Bombay is in possession of the vacant land. This affidavit, in paras 10 and 11 makes alternate contentions and questions the final statement under section 9 and alleges that it was neither served on respondent nos. 7(a) to (d) or their predecessor in title nor on the Court Receiver. However, this affidavit refers to the letter dated 19th December, 2006 addressed by respondent no. 7(c). In para 14 of this affidavit, it refers to the notice under section 10(5) issued on 27th February, 2007, but

asserts that it was not issued to the person in possession of the property. This affidavit, in para 15 states that no notice was given to anybody stating that possession of the land was taken on 28th March, 2007. However, makes a guarded statement thereafter that assuming without admitting that the possession of the land was taken on 28th March, 2007, the same was without notice and contrary to the provisions of the ULC Act.

173) We have perused this entire affidavit carefully also to find out whether it contains any statement which would make out a case of lack of knowledge or notice of the events leading to taking possession of the surplus vacant land, to the petitioners. Quite opposite, we find that this affidavit maintains silence and rather affirms the position that petitioners and respondent nos. 6 and 7 are all co-owners of the land. It claims that actual physical possession of the property is with the Court Receiver. Thirdly, it contains a statement that the notice dated 27th February, 2007 is bad in law for it does not provide 30 days period prior to the appointed date for taking possession. Though it states that no possession was taken on that date, namely, 9th March, 2007 or any other date, it questions the act of one side possession by terming it as impermissible in law. Thus, conflicting and shifting stands of the parties would show that only the builders and

developers have come forward to raise such pleas and not the real owners. That is a prominent feature and continues to be so, in this litigation.

174) In the above backdrop, we do not see how we can accept contentions of the learned Senior Counsel appearing for the petitioners. These contentions and some of which are general, sought to be supported by judgments of this court and the Hon'ble Supreme Court of India, cannot be accepted in the light of the factual position emerging from the records. Petitioner nos. 1 and 2 and the respondents supporting them conveniently forget that they are put forward to raise the challenge in the teeth of their acts of executing power of attorneys and entering into agreements with builders and developers. We, therefore, do not see any reason to accept the contentions of the petitioners as raised in the writ petition as also in opposing the appeal. We are of the view that in the absence of cogent, clear and consistent pleadings, it would not be safe and proper to accept their contentions. The judgments of the Hon'ble Supreme Court of India and this court set out the legal principles, but their application would depend upon the facts and circumstances of each case.

175) On the aspect of applicability of section 3(1)(a) of the Repeal Act, Mr. Chidambaram's reliance on the judgment of this court and that of the Hon'ble Supreme Court of India is entirely misplaced.

176) In the case of *Bank of Baroda Employees Arunoday Co-operative Housing Society Ltd. vs. State of Maharashtra*¹⁷ decided on 21st November, 2011, the State and the competent authority claimed that possession of the land declared as surplus vacant land was taken on 14th November, 2006, whereas, the petitioner asserted otherwise. The facts have been noted in para 2 of the order of the Division Bench and it found that the State/competent authority took possession on the above date pursuant to a notification under section 10(5) of the Principal Act dated 30th June, 2006. The Division Bench noted the case of the petitioner that as on 30th October, 2006, when the notice under section 10(5) was issued, it was the petitioner society who was in possession of the land and the building and therefore, the act of the State in taking possession without issuing notice to it is illegal. Then, they questioned the contents of the possession receipt and which states that the person to whom notice was issued is not willing to handover possession. It is in these circumstances that the Division Bench held that the provisions of

17 Writ Petition No. 2119 of 2008

the Repeal Act would come into play, meaning thereby, the proceedings under the Principal Act lapse. It is in the above factual background and peculiar to the petitioner's case that all findings in para 5 have been rendered. We do not see, therefore, any assistance can be derived from the said observations, findings and conclusions. Notice under section 10(5) may have been held to be mandatory. The notice also must set out the period and in terms of the sub section so as to enable the person in possession to surrender or deliver possession of the vacant land vesting in the State to the State Government or to any person duly authorised by the State. He should be, therefore, put to notice in writing and which should contain the direction to surrender or deliver possession within 30 days of the service of the notice. We do not see as to how this principle and which also has been laid down in the judgment of this court in the case of *M/s. Johnson and Johnson Ltd. and Anr. vs. State of Maharashtra and Anr.*¹⁸ decided on 9th November, 2011 would have any application to the facts of this case.

177) Then comes the reliance on the judgment in the case of *State of Uttar Pradesh vs. Hari Ram*¹⁹. In this case, one should not forget that respondent Hari Ram was holding excess land

¹⁸ Writ Petition No. 1461 of 2009

¹⁹ (2013) 4 SCC 280

admeasuring 52,513.30 square meters. An order under section 8(4) of the Principal Act was passed by the competent authority on 29th June, 1981. The notification under section 10(1) of that Act was issued on 12th June, 1982 and published in the Government gazette. The notification under section 10(3) was published on 22nd November, 1997. On 10th June, 1999, the surplus vacant land stood vested in the State in terms of the entry in the Revenue records. On 19th June, 1999, a notice under section 10(5) directing Hari Ram to handover possession of the land declared surplus was issued. Aggrieved by that, Hari Ram preferred Appeal No. 29 of 1999 before the District Judge, Varanasi under section 33 of the Principal Act, but what he impugned in that appeal was important. He challenged the order under section 8(4) of the Act and urged that before that order was passed, no notice, as contemplated under section 8(3) of that Act, was served on him. That appeal was allowed and the order dated 29th June, 1981 under section 8(4) of the Act was set aside on 14th December, 1999. Aggrieved by that order, the State of Uttar Pradesh filed a writ petition in the High Court of Allahabad and the High Court, after elaborately considering various contentions, took a view that for taking physical possession of the land, proceedings under section 10(5) have to be followed. On facts also the Division Bench found no reason to interfere with the

order of the District Judge.. The State's writ petition was dismissed. That is how the State approached the Hon'ble Supreme Court against the decision of the High Court of Allahabad in Hari Ram's case and following Hari Ram in other cases. The arguments have been noted in paras 6 and 7 and we must not forget that the Hon'ble Supreme Court was concerned with the primary submission that under the Principal Act, though there is a vesting of the land in terms of sub-section (3) of section 10, upon publication of the notification, what one finds is that by virtue of sub-sections (4) and (5) of section 10 so also sub-section (6) thereof, after such vesting, the physical possession has to be taken and obtained by recourse to these provisions. It is in examining the scope of sub-sections (3), (4) as well as sub-sections (5) and (6) of section 10 that all the further conclusions of the Hon'ble Supreme Court are rendered. It is then apparent that by vesting alone, it would not be permissible to hold that possession follows. Possession would follow only upon recourse to these sub sections and that is how all the paragraphs, namely paragraphs 33 to 37 would have to be seen. The requirement of notice is only under sub-sections (5) and (6) and that is held to be mandatory.

178) We do not see how our view in the present case, is in any way contrary to *Hari Ram's* decision (supra). We have not held in the present case that notice need not be issued. The controversy before us was whether notice issued was served on the co-owners. On facts, we have found that not only such a notice was served, but copy thereof was pasted on site. That was after it was endorsed in the register that the noticees were not found at the stated address. That is how the competent authority directed the City Survey Officer to cause a notice to be displayed at site. It was accordingly displayed. Once we find that the notice was issued, though that notice stated that the possession would be taken on 9th March, 2007, the record indicates that it was not taken on that date, meaning thereby within 30 days, but on 28th March, 2007. Therefore, it is not as if before the 30 days period expired from 27th February, 2007 that the possession was taken. Secondly, we find that the distinguishing feature in the present case is that the arguments do not rest on the issuance of notice and its service alone. The legality and validity of the notice and the act of taking possession before 30 days' period is also raised. It is therefore clear that diverse pleas are set out to claim benefit of the Repeal Act. However, that cannot be extended to the petitioners in the present case. We are of the firm opinion view that no assistance can, therefore, be derived from the principles

laid down in the case of *Hari Ram* (supra) in the present facts and circumstances. The legal principles are indeed binding on us, but on facts their application is a matter with which we are really concerned. More so, when the petitioners also challenge the correctness and validity of the possession receipt, panchanama etc. Once there is a record of the physical possession having been taken well before 29th November, 2007 (reckoned as the date of coming into force of the Repeal Act in Maharashtra), then, we do not see how we can apply the Repeal Act to the present facts.

179) There is one more reason because we have already found that the petitioners alone do not claim to be in physical possession, but state that the physical possession of the land would have to be obtained from the Court Receiver. They claim that the property is *custodia legis* and hence notice to receiver ought to be issued. It is only when notice is issued to him or when the court's approval is obtained that the receiver can be dispossessed and not otherwise. Therefore, it is doubtful as to how the judgment in the case of *Hari Ram* (supra) and that in the case of *Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority and Ors.*²⁰ can have any application.

20 (2012) 4 SCC 718

180) We cannot also take assistance as desired by Mr.Chidambaram from other judgments and which are essentially on the point of an order being non compliant with the principles of natural justice and therefore nullity. On facts, we do not see any application of this principle to the present case.

181) We are also supported in our views and conclusions by the reliance placed by Mr. Samdani on the judgment of the Hon'ble Supreme Court of India in the case of *State of Assam vs. Bhaskar Jyoti Sarma and Ors.*²¹. This judgment distinguishes *Hari Ram's* case (supra) and we reproduce the following paragraphs of this judgment:-

"6. We have heard the learned counsel for the parties for a considerable length. The Urban Land (Ceiling and Regulation) Act, 1999 repealed the principal Act w.e.f. The date the State adopted the Repeal Act. In terms of a resolution passed under clause (2) Article 252 of the Constitution, the Repeal Act was adopted by the State of Assam w.e.f. 6-8-2003. We may at this stage usefully extract Sections 2 and 3 of the Repeal Act which have a direct bearing on the questions that arise for our determination:

2. Repeal of Act 33 of 1976. - *The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Principal Act), is hereby repealed.*

3. Saving. - (1) *The repeal of the principal Act shall not affect -*

(a) *the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;*

(b) *the validity of any order granting exemption under sub-section (1) of Section 20 or any*

21 (2015) 5 SCC 321

action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land.

Then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

7. A bare reading of Section 3 (supra) makes it clear that repeal of the principal Act does not affect the vesting of any vacant land under sub-section (3) of Section 10, possession whereof has been taken over by the State Government or any person duly authorised by the State Government in that behalf or by the competent authority. In the case at hand, the appellant claims to have taken over the possession of the surplus land on 7-12-1991. That claim is made entirely on the basis of a certificate of handing over/taking over of possession, relevant portion whereof reads as under:

"Certificate of handing over/taking over possession

Today on this 7th December, 1991, we took over possession of 70.32 ares of acquired land as scheduled below vide order of the Deputy Commissioner, Kamrup's ULC Case No. 343 dated 2-3-1991 and as per Assam Gazette Notification dated 1-1-1987 in Case No. ULC343/76.

Schedule of land

* * *

Received possession

(Taken over possession unilaterally)

sd/-

Illegible

Given

possession

Designation SK (G)

Designation

Dated 7-12-1991

Dated 7-12-1991

Countersigned

sd/-

Illegible
Circle Officer
Guwahati Revenue Circle"

8. Relying upon the above document it was strenuously argued on behalf of the appellant that actual physical possession was taken over from the erstwhile landowner as early as in December 1991, no matter relevant official record does not bear testimony to any notice having been issued to the landowners in terms of Section 10 sub-section (5) of the Act. It was argued that so long as actual physical possession had been taken over by the competent authority title to the land so taken over stood vested absolutely in the State Government under Section 10(3) and could not be claimed back no matter the principal Act stood repealed after such vesting had taken place. In support of the contention that actual physical possession had been taken over by the competent authority, the appellant places heavy reliance upon the fact that challenge to the proceedings under the Act mounted in Writ Petition No. 2568 of 1992 by the purchasers of a part of the disputed land had failed right up to this Court and the allotment of a substantial part of the surplus land in favour of the 8 families affirmed. This, according to the appellant, proves that possession of the surplus land had indeed been taken over from the erstwhile owner in terms of proceedings held on 7-12-1991.

9. It was also contended that Bhabadeb Sarma, the erstwhile owner, had remained aloof even when he was a party to the writ petition filed by the purchasers who had questioned the validity of the order passed by the competent authority including the allotment of the surplus land in favour of third parties. It was argued that the Repeal Act would have no effect whatsoever even when the taking of possession was without notice to the erstwhile owner especially when the owner had failed to question any such takeover at the appropriate stage in appropriate proceedings. The challenge mounted by the legal heirs of the deceased erstwhile owner 13 years later was clearly untenable and an afterthought. Failure of the landowner to seek redressal against non-compliance with the statutory requirement of a notice before possession is taken would constitute abandonment of the right of the owner under Section 10(5) which cannot be resuscitated after lapse of such a long period only to take advantage of the Repeal Act. The question whether actual physical possession of the disputed land had been taken over is in any case a seriously disputed question of fact which could not be adjudicated or determined by the High Court in its writ jurisdiction.

10.

11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10 is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression "possession" used in Section 3 (supra) has been interpreted to mean "actual physical possession" of the surplus land and not just possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.

12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.

13. The case of the appellant is that actual physical possession of the land was taken over on 7-12-1991 no matter unilaterally and without notice to the erstwhile landowner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article 226 of the constitution, what needs examination is whether the failure of the government or the authorised officer or the competent authority to issue a notice to the landowners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of the law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.

14. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorised officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand? Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed

again after issuing a notice to him? It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in *Hari Ram* case ((2013) 4 SCC 280). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in *Hari Ram* case considering whether the word “may” appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.

18.

19. In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr Sanatan Baishya. It was contended that said Mr Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7-12-1991 till the date the land in question was allowed to GMDA in December 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked the learned counsel for the parties whether they can, upon remand on the analogy of the decision in *Gyanaba Dilavarsinh Jadega* (2013) 11 SCC 486, adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously

disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the constitution no matter the High Court may in its discretion in certain situations enter upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

182) We are of the opinion that the controversy before us stands fully covered by this judgment and it binds us.

183) We need not make reference to all the decisions cited by the counsel for we have found that the sheet anchor of the petitioners contentions are the judgments on the point of physical possession and applicability of the Repeal Act. We found that the latest judgment of the Hon'ble Supreme Court would enable us to arrive at the above conclusions and we have no hesitation in observing that reliance on other judgments by the petitioners is entirely misplaced.

184) As a result of the above discussion and having found that the competent authority and the State did not make any deliberate or intentional attempt of disturbing or interfering with the physical possession of the Court Receiver and the version of the petitioners as also the supporting respondents, with regard thereto being highly questionable and doubtful, it would not be proper to uphold the order of the learned Single Judge initiating contempt notice against the then competent authority and officials of the State. We have found from their affidavits filed in

the proceedings before the learned Single Judge and before us that there is no deliberate or intentional act on their part, they were unaware of the pendency of the legal proceedings, in which the Court Receiver was appointed, the land being vacant, the extent of the Court Receiver's physical possession so also the version of the petitioners that 10 boards were affixed on the site by the Court Receiver being not corroborated by the record, we allow the appeal and set aside the order of the Single Judge. These conclusions are in addition to the reasons assigned by us while dismissing the petitioners' writ petition. Hence, the following order:-

(i) Rule in Writ Petition No. 1468 of 2009 is discharged.

(ii) Appeal No. 411 of 2010 is allowed and the order of the learned Single Judge impugned therein is quashed and set aside.

(iii) In the light of the disposal of the writ petition and the appeal, the notice of motion and the show cause notice does not survive and stand disposed of as such.

(iv) The original record shall be returned to the concerned Department of State through the Government Pleader.

185) At this stage, Mr. Sharan Jagtiani learned counsel appearing for the petitioners and the supporting respondents

prays for continuation of the order of status quo and which, according to him, has been passed way back in the year 2010. He prays that the same be continued for a period of two months so as to enable the petitioners to consider their position and challenge this judgment, if necessary, in higher court.

186) The request is opposed by Ms. Shastri learned Additional Government Pleader appearing for the State.

187) We have already held in the foregoing paragraphs that petitioner nos 1 and 2 have no right, title and interest in the property after the same was dealt with by them in favour of petitioner no. 3. Equally, those supporting them have inducted builders and developers on the scene. The petition is really prosecuted by builders and developers, who are not surplus vacant land holders or owners as contemplated by the Principal Act. In the circumstances and finding that the possession of the land has been taken already, it has been dealt with further that we are not inclined to continue the order of status quo. The request of Mr. Jagtiani is refused.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)