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**(2011) 05 CAL CK 0093**

**Calcutta High Court**

**Case No:** F.M.A. 1738 of 2004

Kewal Court Pvt. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** May 19, 2011

**Acts Referred:**

- Calcutta Municipal Corporation Rules, 1951 - Rule 20(2), 50, 51, 51(4), 55
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10(3), 10(5), 2, 20(1), 4(10)
- Urban Land (Ceiling and Regulation) Rules, 1976 - Rule 3, 9

**Citation:** AIR 2011 Cal 179 : (2011) 3 CALLT 16 : (2011) 2 CHN 940

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Ashoke Kumar Dasadhikari, J

**Bench:** Division Bench

**Advocate:** Saktinath Mukherjee, Bikranjit Banerjee and Tapas Kr. Sil, for the Appellant; Aloke Kr. Ghosh, Jugal Ch. Porel for KMC, Prasenjit Basu and Amrita Sinha for State, Debabrata Banerjee, Koushik Bhattacharyya and Kazi Abrarullah, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Pranab Kumar Chattopadhyay, J.

This appeal has been preferred at the instance of the writ Petitioners assailing the judgment and order dated 25th June, 1987 passed by a learned Judge of this Court whereby the said learned Judge finally disposed of the writ petition on merits and refused to grant any relief to the said writ Petitioners.

2. From the records we find that the writ Petitioners were aggrieved by and dissatisfied with the decision of the Respondent authorities in considering the land owned by the Petitioner company as a vacant land within the meaning of the Urban Land (Ceiling and Regulation) Act, 1976 and also for not allowing the Petitioner to retain the said land for the purpose of group housing under the meaning of Section 4(3) of the said Act of 1976.

3. The relevant facts which are necessary for deciding the issues raised in this appeal are stated herein after.
4. On or about 11th June, 1974 the Appellant Company (hereinafter referred to as "The Company"), purchased a plot of land measuring about 50 (Fifty) Cottahs equivalent to 3429 (Three Thousand Four Hundred Twenty Nine) Sq. Mt. being Premises No. 24/7, Raja Santosh Road, Alipore, Kolkata-700027.
5. On 2nd July, 1974, the company submitted an application under Rules 50 and 51 of Schedule-XVI of the Kolkata Municipal Corporation Act, 1951 before the Corporation of Calcutta and furnished all requisite particulars for sanction of a new building at 24/7, Raja Santosh Road, Alipore, Kolkata- 700027 (hereinafter referred to as " The Said Premises").
6. Since the Municipal Corporation of Calcutta did neither reject nor sanction the plan submitted on 22nd July, 1974 within a period of 30 days, the Appellant company was claiming the benefit of sanction under Rule 55 of Schedule XVI of the Calcutta Municipal Corporation Act of 1951.
7. The Appellant company had also claimed that about 21 persons invested their money in the scheme of a Group Housing and booked their respective flat therein. The said persons invested about seven lacs of rupees for the purpose of implementation of the said Group Housing.
8. During the pendency of forming and implementation of a Group Housing Scheme, the Urban Land (Ceiling and Regulation) Act, 1976 (in short ULCRA) came into force and Appellant company submitted its statement u/s 6(1) of the said Act of 1976 and also made an application u/s 20(1) of the said Act for exemption of the "excess vacant land" if any, without prejudice to the rights and contentions of the Appellant company that there was no excess vacant land in view of the proposed project of Group Housing Scheme.
9. On or about 28th April, 1978, the authority Under ULCRA rejected the said application for exemption.
- 9.1 On 28th April, 1978 i.e. on the very same day, the same authority namely, the Deputy Secretary, Urban Land Ceiling Branch, Government of West Bengal communicated the Government's "No Objection" in respect of the proposed Gift of 10 (Ten) Cottahs of land in favour of Kolkata Municipal Corporation for construction of a public road.
10. Subsequently, the Assistant Secretary, Urban Land Ceiling Branch, Government of West Bengal by the written communication dated 24/25th September, 1979 informed the Appellant/company that there was no valid ground for reconsideration of the decision already taken in the matter and communicated earlier by the letter dated 28th April, 1978.

11. On 2nd November 1979 the Appellant company made a further representation to the Hon"ble Minister-in-Charge claiming the right to hold the said land u/s 4(3) of the Urban Land (Ceiling and Regulation) Act 1976 contending that there was no vacant land held by the Appellant company. The Appellant company made representation for reconsideration of the application for exemption u/s 20(1) of the said Act of 1976.

12. During the pendency of the said representation before the Hon"ble Minister, the Competent Authority in exercise of its power under Sub-section (3) of Section 10 of the said Act, vested the said land in premises No. 24/7, Raja Santosh road, kolkata measuring about 2929 Sq. mt out of 3429 Sq. Mt as " excess vacant land" under the Urban land (Ceiling and Regulation) Act, 1976 by a declaration dated 14th January, 1980 published in the Calcutta Gazette dated 15th January, 1980.

13. By a letter dated 22nd February, 1980 i.e. after issuance and publication of the declaration u/s 10(3) dated 14th January, 1980, the Competent Authority informed the Managing Director of the Appellant company that in the facts and circumstance of the case and in view of the provisions contained in Section 4(3) of the said Act of 1976, the application of the Company dated 2nd November, 1979 was untenable.

14. Therefore, the Appellant company was served with a notice, dated 4th March, 1980 issued by the Competent Authority u/s 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 directing delivery of possession of the "excess vacant land", the details of which were mentioned in the Schedule of the said notice.

15. Challenging the declaration dated 14th January, 1980 which was notified in the Calcutta Gazette dated 15th January, 1980 for vesting 2929 Sq. Mt. of the land of the Appellant company as "excess vacant land" under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the subsequent notice dated 4th march, 1980 issued u/s 10(5) of the Said Act of 1976, and also challenging the order of refusal of exemption dated 28th April, 1978 the Appellant company herein filed the writ petition which was finally dismissed by the Learned Single Judge by the impugned judgment and order under appeal dated 25th June, 1987.

16. Mr. Saktinath Mukherjee, Learned Senior Counsel representing the Appellant company submitted that in view of the order dated 10th April, 1979 passed by the competent authority, the draft statement was not only drawn up and filed but direction was also issued for serving a copy of the same on each of the persons concerned who have or likely to have any claim or interest in ownership or possession of the vacant land in question.

17. Mr. Mukherjee further submitted that on behalf of the Appellant company objection was raised in relation to the aforesaid draft statement but the same was overruled by the competent authority by the order dated 9th August, 1979. The competent authority passed the aforesaid order dated 9th August, 1979 and issued the direction for preparation of the final statement u/s 9 of the Urban Land (Ceiling

and Regulation) Act, 1976. In the said order it was also specifically mentioned that the correction had been made in the draft statement.

18. Mr. Mukherjee submitted that the extent of the correction and the reasons for such correction were however not disclosed by the competent authority. Mr. Mukherjee also submitted that the Appellant company herein was not called upon to show cause on the basis of the aforesaid draft statement at any subsequent stage for the purpose of effecting any correction. Mr. Mukherjee specifically urged before this Court that the aforesaid correction of the draft statement cannot and does not include any revision and/or modification of the draft statement prepared u/s 8 of the aforesaid Act 1976. Mr. Mukherjee submitted that in the original draft statement particulars of the existing structures were specifically mentioned with measurement.

19. Mr. Mukherjee submitted that the total extent of the "vacant land" owned and/or possessed by the Appellant company was specifically recorded in the draft statement as 3814 sq. mt and subsequently all the entries have been struck out by the competent authority behind the back of the Appellant company and 2929 sq. mt has been recorded as excess vacant land under the signature of the competent authority without mentioning any date. Mr. Mukherjee also submitted that the preparation of a draft statement and its finalization are made under the statutory provisions of the Act of 1976. According to Mr. Mukherjee, any correction and modification of the draft statement should have been made upon prior notice to the interested parties and recording specific reasons in support of such modification as the final statement is appealable.

20. Mr. Mukherjee learned Senior Counsel representing the Appellant company submitted that the proceedings were conducted by the competent authority on the basis of wrong interpretation of Section 4(9) of the Act of 1976. Mr. Mukherjee however, admitted that the said Appellant company proceeded on the wrong basis upon treating the entire plot as "vacant land". Mr. Mukherjee also submitted that in the calculation sheet accompanying the draft statement, it was indicated that pursuant to Section 4(11) the "vacant land" would be 3114.50 Sq. mt. However, subsequently alterations were made which according to Mr. Mukherjee could not be done without granting any opportunity of hearing to the Appellant company.

21. It has been submitted that on behalf of Appellant company that at the time of preparation of final statement u/s 9 of the Act of 1976 the representative of the Appellant company was informed that out of 3429 Sq. mt. Out of only 2929 Sq. mt. would be the "excess vacant land". According to Mr. Mukherjee, in view of the wrong interpretation then prevailing, the Appellant company could not question the said calculation and out of the total vacant land only 500 Sq. mt was allowed to the Appellant company for retention u/s 4(9) of the said Act.

22. Mr. Mukherjee further submitted that the benefit available u/s 2(q)(i) of the Act 1976 was not granted to the Appellant company. The provisions of Section 2(q)(i) is set out hereunder:

(q) "Vacant land" means land, not being land mainly used for the purpose of agriculture, is an urban agglomeration, but does not include....

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated....

23. Mr. Mukherjee submitted that Section 2(q)(i) should have an independent operation in accordance with the scheme of 2(q) itself.

24. Mr. Mukherjee referred to and relied on the decision of the Supreme Court in the case of State of Maharastra and Anr. v. B.E. Billimoria and Ors. reported in (2003) 7 SCC 1976 in support of his arguments relating to the determination of the "vacant land". Principles laid down in the Billimoria's case will be applicable to all States wherever Municipal Laws are applicable and the same cannot be applicable only when there is an existing building or a sanctioned plan.

25. Mr. Mukherjee submitted that the determination of the ceiling under the ULCRA Act 1976 is required to be made strictly in accordance with the provision of said Act of 1976 particularly Section 6 and 8 of the said Act. Mr. Mukherjee further submitted that in the present case determination was made before pronouncement of the aforesaid judgment by the Supreme Court in Billimoria's Case (Supra). Mr. Mukherjee submitted that the competent authority had never applied its mind to the question in the light of the judgment delivered by the Supreme Court in the Case of [Smt. Meera Gupta Vs. State of West Bengal and others](#), and the subsequent decision in the Billimoria's case (Supra).

26. Mr. Mukherjee therefore, submitted that the order passed by the competent authority with regard to the determination of the vacant land should be set aside and the matter should be sent back on remand for re-determination in the light of the aforesaid pronouncements of the Supreme Court. It has been submitted on behalf of the Appellant company that the fate of the Appellant company was decided before the law was made certain by the Hon"ble Supreme Court and therefore the decision making process was erroneous. Mr. Mukherjee urged before this Court that the Appellant company is entitled to pray for re-determination of the vacant land by the competent authority following the principles laid down by the Hon"ble Supreme Court in Billimoria's case.

27. It has been urged on behalf of the Appellant company that the present case is not really a challenge on the merits of the pleadings but a challenge in respect of the decision making process in the matter of calculation of "excess vacant land" by excluding the land on which construction of a building is not permissible under the building regulations as required by Section 2(q)(i) and the land occupied by the

structure constructed before the appointed day i.e. before 28th January, 1976 and the land appurtenant to such structure as required by Section 2(q)(ii) read with Section 2(g) of the ULCRA 1976 so as to treat them not to be "vacant land"

28. Mr. Mukherjee submitted that the competent authority cannot shut out the Appellant company on the basis of the statement and return filed on behalf of the said company since according to Mr. Mukherjee Urban Land Ceiling Laws were not in a final shape at that time. Mr. Mukherjee submitted that in the aforesaid circumstances return filed by the Appellant company u/s 6(1) cannot be treated as decisive and therefore fresh computation should be done by the competent authority following the principles of law finally laid down by the Supreme Court in the case of Billimoria's (Supra).

29. The learned Counsel representing the State Respondents raised a preliminary objection that the Appellant company is not entitled to raise any new points for the first time before the Division Bench which was never argued and or even raised in the writ petition before the learned Single Judge.

30. Mr. Prasenjit Basu, learned Counsel representing the State Respondents submitted that the points raised on behalf of the Appellant company before the Division Bench were neither pleaded in the original writ petition nor even argued before the learned Single Judge. Mr. Basu further submitted that the Appellant company cannot be permitted to resile from the stand taken before the authority concerned or before the learned Single Judge and build up a completely new case before the Appeal Court for the first time. Mr. Basu referred to and relied on a decision of the Supreme Court in the case of [Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India \(UOI\) and Others,](#)

31. Mr. Basu strongly opposed the claim of the Appellant company for holding the aforesaid land u/s 4(3) of the Act of 1976 for the purpose of group housing since in respect of the said vacant land no scheme for group housing was sanctioned by the competent authority immediately before the commencement of the aforesaid Act of 1976. On behalf of the Appellant company it has been however, submitted that the group housing scheme was sanctioned by the competent authority under the deeming provisions in terms of Rule 56 of the Kolkata Municipal Corporation Rules 1951. According to the learned Senior Counsel of the Appellant company, building plan was submitted under Rule 50 and 51 of Schedule XVI of CMC Act 1951 and since under Rule 55 of Schedule XVI said plan was neither rejected nor sanctioned within a period of 1 month by the Kolkata Municipal Corporation authorities, the said plan should be deemed to have been sanctioned by the competent authority of the Kolkata Municipal Corporation under Rule 56 thereof. The learned Counsel of the State Respondents however, submitted that the Appellant company very much knew that the provisions of Sub-Section 3 of Section 4 of the said Act of 1976 are applicable in respect of the vacant land where any scheme of group housing had been sanctioned by the competent authority and in the instant case the competent

authority namely the Kolkata Municipal Corporation authorities never sanctioned any scheme for group housing at the instance of the Appellant company in respect of the plot in question.

32. The learned Counsel of the State Respondents further submitted that the Appellant company also did not act or proceed in terms of the aforesaid deeming provisions as otherwise the said Appellant company could have constructed the building on the plot in question long before the ULCRA Act 1976 came into force. The learned Counsel of the State Respondents also submitted that the Appellant company herein further submitted a building plan before the Kolkata Municipal Corporation authorities for construction of building on the plot in question which was rejected on 30th May, 1979.

33. Mr. Basu submitted that by the aforesaid conduct, the Appellant company waived the right to construct a building on the basis of the plan deemed to have been sanctioned by the CMC authorities under Rule 56. Section 4(3) of the ULCRA Act, 1976 clearly provides that in respect of any vacant land where any scheme of group housing has been sanctioned (emphasis supplied) by the competent authority before commencement of the said act then such vacant land even after commencement of the aforesaid Act of 1976 can be held by the owner only for the purpose of group housing. In the instant case no scheme for group housing has been sanctioned by the KMC authority and the deeming provision has no manner of application specially when the Appellant company further submitted a building plan before the KMC authorities and the same was specifically rejected by the competent authority of the KMC.

34. Mr. Basu learned Counsel of the State Respondents submitted that the plot in question was totally vacant and there was no existence of any structure on any part or portion of the said plot before commencement of the aforesaid Act of 1976. Mr. Basu also submitted that the calculation sheet attached with the draft statement and supplied to the Appellant company does not reflect the correct status of the plot in question and the same was corrected at the time of preparation of the final statement. Mr. Basu also submitted that the Appellant company in the declaration filed u/s 6(1) of the Act, 1976 specifically admitted that the plot in question is completely vacant land. Mr. Basu further submitted that the Appellant company, during the pendency of the proceeding under the ULCRA 1976 never mentioned about the existence of any structure on the plot in question.

35. The learned Senior Counsel of the appellant company referred to and relied on a report submitted by the Special Officer appointed by this Court in connection with the proceeding initiated by the said appellant company by filing a writ petition in the year 1980 in order to establish the existence of structure on the plot in question. Mr. Mukherjee, learned Senior Counsel of the appellant company invited our attention to the report submitted by the said Special Officer wherein the learned Special Officer specifically mentioned as hereunder:

That the entire premises is vacant land with a structure standing on the South West Corner of the said premises adjacent to the boundary wall. The said structure is made of pucca brick wall and the roof is covered partly by asbestos and partly in sheds. I have also ascertained that the structure is being occupied by Sri Pannalal who is a darwan employed by the Petitioner. There is a big tree underneath which the structure stands.

The entire vacant land with structure thereon as stated is bounded by a brick wall of about 8 ft. height on portion of the said wall on the North Western side and that there was a hole through which urchins can creep in the said premises. On the eastern side of the premises there is a gate made of cast iron of about 7 ft. x 7 ft. The gate was found to be lying open when we reached there.

36. The learned Counsel of the State Respondents submitted that the illegal structure was raised by the Appellant company on the plot in question after completion of the proceeding under the ULCRA on 15th January, 1980 in order to mislead this Court. Mr. Basu, learned Counsel of the State Respondents submitted that if there was at all any structure on the plot in question then the Appellant company would have disclosed the same in the declaration submitted u/s 6(1).

37. Mr. Basu further submitted that on 20th July, 1977 the Appellant company filed a declaration u/s 6(1) of the ULCRA 1976 being the owner of the land in question and the correctness of the said declaration was never disputed by the Appellant company.... Mr. Basu also submitted that the proceedings initiated under the provisions of ULCRA Act 1976 on the basis of the aforesaid declaration filed by the Appellant company u/s 6(1) were never challenged by the said Appellant company at any stage. The notification u/s 10(3) of the said Act was published on 15th January, 1980 stating that the surplus land would be deemed to have been acquired by and vested in the State free from all encumbrances. Mr. Basu submitted that the said order of vesting land issued on 15th January 1980 became final u/s 10(3) of the ULCRA 1976 since no appeal was filed challenging the notification dated 15th January, 1980.

38. Mr. Basu further submitted that once vesting had taken place u/s 10(3), the State has absolute right, title and ownership over it and the erstwhile owner cannot have any further say in respect of the land in question Mr. Basu referred to and relied on a decision of the Supreme Court in the case of [Omprakash Verma and Others Vs. State of Andhra Pradesh and Others](#), .

39. Mr. Basu also argued before this Court that the provisions of Sections 2(g), 2(q)(i) and (ii) and also 4(9) of ULCRA 1976 have no manner of application in the facts of the present case. Mr. Basu submitted that the land was completely vacant land without any existence of structure at the material time as would appear from the declaration submitted by the Appellant company. Therefore, the question of applicability of Section 2(g) does not arise since the same specifically relates to any "building" and

in the plot in question there was no existence of any building when the declaration was filed by the Appellant company u/s 6(1) of the Act of 1976. Mr. Basu further submitted that 2(q)(ii) has no manner of application in the facts of the present case since there was no existence of building on the plot in question. The provisions of Section 2(q)(i) has also no manner of application according to Mr. Basu as the construction of building is permissible on the land in question under the building regulations in force in the area in which the land is situated.

40. Mr. Alope Kr. Ghosh, learned Counsel representing the Kolkata Municipal Corporation authorities submitted that the Appellant company did not comply with the requisitions and failed to satisfy the Municipal Commissioner with regard to the objections raised on behalf of the Kolkata Municipal Corporation authorities. According to Mr. Ghosh, the requisitions issued by the KMC had not been satisfactorily complied with and therefore, the building plan submitted by the Appellant company cannot be deemed to have been sanctioned under the rules.

41. Mr. Ghosh, specifically submitted that in the instant case the defects were pointed out and/or the requisitions were made for compliance. The Appellant company instead of complying with the requisitions submitted another plan for sanction on 3rd December, 1976 which was rejected under Rule 51(4) of Schedule XVI of the said Act, 1951. Undisputedly, no relief has been claimed against the KMC by the Appellant company herein and therefore, the learned Counsel of the KMC had little scope to advance any further argument. Mr. Ghosh however, specifically denied the claims of the Appellant company and also adopted the arguments advanced on behalf of the State Respondents.

42. The learned Senior Counsel representing the Appellant company very strongly urged before this Court that the Respondent authorities herein did not properly appreciate the provisions of Sections 2(g), (q)(i) and (ii) while deciding the claims of the Appellant company for retention of the vacant land. The aforesaid provision of Section 2(g),(q)(i)(ii) are set out hereunder:

\* \* \* \*

g) "land appurtenant", in relation to any building, means-

(i) In an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square meters; or

(ii) In an area where there are no building regulations, an extent of five hundred square meters contiguous to the land occupied by such building,

And includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square meters of land, if any, contiguous to the minimum extent referred to in Sub-clause (i) or the extent referred to in Sub-clause (ii), as the case may be;

\* \* \* \*

(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) In an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building;

43. Section 2(g), in our opinion, has no manner of application in the facts of the present case as the same is applicable in relation to any building and in the premises in question there was no building at the material time which would appear from the declaration made by the Appellant company u/s 6(1) of the said Act of 1976. The relevant extracts from the declaration submitted by the Appellant company u/s 6(1) of the Act of 1976 are set out hereunder:

True Copy

FORM 1

(To be furnished in triplicate)

(See rules 3 and 9)

Statement under Sub-section (1) of Section 6 of The Urban Land (Ceiling and Regulation)

Act 1976 (Act 33 of 1976)

\* \* \* \*

5. State if the vacant land is ----

(i) Only a vacant land

(ii) Land with a building, or

Only a vacant land.

(iii) Land with a building with a dwelling unit therein.

\* \* \* \*

44. On the identical ground the Appellant company is also not entitled to retain any land u/s 2(q)(ii) since the land is not occupied by any building. The provision of Section 2(q)(ii) is applicable only when the land in question is occupied by any building. In the instant case, since no building is in existence on the land in question, the Appellant company is not entitled to retain any land u/s 2(q)(ii).

45. So far Section 2(q)(i) is concerned, in the present case, it cannot be said that under the Building Regulations under Calcutta Municipal Corporation Act, 1951, then in force, construction of a building was not permissible in the area in question in which the said land is situated.

46. The Appellant company could not get the building plan sanctioned on two occasions on account of non-fulfillment of the requisitions made by the Municipal Authority and therefore, the said Appellant company could not construct any building on the land in question. However, it cannot be said that under the building regulations construction of building was not permissible in the area in question. The building plan could be sanctioned by the K.M.C. authorities for constructing a building on the land in question if the Appellant company could rectify the defects and submitted a building plan upon complying with the building regulations. For the aforementioned reasons, it cannot be said that the construction of a building was not permissible under the building regulations in force in the area in question and therefore, the Appellant company was not entitled to retain any land u/s 2(q)(i) of the ULCRA 1976.

47. The Appellant company also claimed the benefits u/s 4(3) of the ULCRA 1976. Sub-Section 3 of Section 4 is set out hereunder:

(3) Notwithstanding anything contained in Sub-section (1), where in respect of any vacant land any scheme for group housing has been sanctioned by an authority competent in this behalf immediately before the commencement of this Act, then, the person holding such vacant land at such commencement shall be entitled to continue to hold such land for the purpose of group housing:

Provided that not more than one dwelling unit in the group housing shall be owned by one single person:

Provided further, that the<sup>3</sup> extent of vacant land which such person shall be entitled to hold shall, in no case, exceed -

(a) the extent required under any building regulations governing such group housing ; or

(b) the extent calculated by multiplying the number of dwelling units in the group housing and the appropriate ceiling limit referred to in Sub-section (1),

whichever is less.

Explanation-For the purposes of this Sub-section and Sub-section (10),-

(i) "group housing" means a building constructed or to be constructed with one or more floors, each floor consisting one one or more dwelling units and having common service facilities;

(ii) "commons service facility" includes facility like staircase, balcony and verandah.

48. The aforesaid provisions has also no manner of application in the facts of the present case since no scheme for group housing was sanctioned in respect of the vacant land in question of the Appellant company.

49. The aforesaid Sub-Section 3 of Section 4 specifically provides for for a scheme sanctioned by the competent authority for group housing. The aforesaid scheme has to be sanctioned by an expressed order passed by the competent authority. There is no scope for a deemed sanctioned scheme. In any event, in the instant case, the Appellant company subsequently submitted another building plan for construction of building which was specifically rejected for non-complying with the requirements of the building rules framed under the Kolkata Municipal Corporation Act 1951.

50. The learned Senior Counsel representing the Appellant company raised and argued several new points which were not agitated before the learned single Judge in order to substantiate the claims of the Appellant company to retain the vacant land in question. We have serious doubt whether the Appellant company is entitled to raise new issues at this stage before the appeal Court in order to substantiate its claims specially when the aforesaid issues were not raised before the authorities concerned or even before the learned Single Judge for consideration. However, the aforesaid new pleas and/or issues raised for the first time before the Appeal Court also cannot be sustained for the reasons discussed hereinbefore.

51. The Appellant company filed the writ petition in order to hold the land in question for the purpose of group housing in terms of Section 4(3) of ULCRA Act, 1976. The prayers made in the writ petition are also set out hereunder:

a) That a writ of and/or the nature of Mandamus do issue commanding the Respondents 1-4, each one of them their servants, subordinates and agents to act in accordance with law and to withdraw, recall and rescind the purported Notification dated 15th January 1980 for vesting 2929 sq. meter of land of the Petitioners and the impugned Notice dated 4th March, 1980 (Annexure-I) issued u/s 10(5) of the said Act and the purported order of refusal of exemption dated 28th April, 1978 (Annexure-E) and to consider the land of the said premises of the Petitioner as not vacant land within the meaning of the Ceiling Act.

b) A writ of and/or in the nature of landamus de issue commanding the Respondents to consider the land of the Petitioner at 24/7, Raja Santosh Road, Calcutta for the construction of Group Housing Scheme duly sanctioned by the authorities and accordingly issue necessary declaration for releasing the said land from the purview of the said Ceiling Act.

c) A writ of and/or in the nature of Certiorari do issue commanding the Respondents 1-4 to certify and send all records relating to the said land at premises No. 24/7, Raja Santosh Road, to the Hon"ble Court so that conscionable justice may be rendered by setting aside and/or quashing the said purported order of refusal dated 28th April,

1978 (Annexure-E), purported Notification of vesting u/s 10(5) of the said Act dated 4th March, 1980 (Annexure-I).

d) A writ of and/or in the nature of Prohibition do issue calling upon the Respondents 1-4 and their servants and subordinates and agents to forbear from proceeding any further pursuant to the said purported order of refusal of the application for exemption dated 28th April, 1978 (Annexure-E) and the purported Notification of vesting dated 15th January, 1980 and the impugned Notice dated 4th March, 1980 (Annexure I) issued u/s 10(5) of the said Act, and from giving any effect to the said purported Notification dated 15th January, 1980.

e) A rule Nisi in terms of prayer a to d above.

f) Ad-interim order of injunction do issue restraining the Respondents 1-4 their servants subordinates and agents from giving any effect or further effect to the said purported Notification of vesting dated 15th January 1980 and the impugned Notice dated 4th march, 1980 passed u/s 10(5) of the said Act being Annexure "I". Herein issued by the Respondent Nos. 4 and/or not to proceed any further on the basis of the said purported Notification dated 15th January, 1980 of vesting in respect of the land of the Petitioner at 24/7, Raja Santosh Road, Calcutta till the disposal of the Rule.

g) Such further order of orders as to your Lordship deem fit and proper. And your Petitioners, as in duty bound, shall ever pray.

52. The learned Single Judge by the judgment and order under appeal refused to grant any relief to the Appellant company upon holding that the house proposed to be constructed by the Appellant company on the land in question was not a group housing within the meaning of ULCRA 1976 and therefore, is not entitled to any exemption u/s 4(3) of the said Act. The learned Single Judge while rejecting the claims of the Appellant company considered the submissions of the respective parties in details and rightly held that the Appellant company herein is not entitled to enjoy any benefit u/s 4(3) of the said Act. The Appellant company also made an application u/s 20(1) of the ULCRA 1976 for exemption of the excess land which was also not appreciated by the learned Single Judge as the said application was filed in violation of the guidelines provided for granting exemption u/s 20(1) of the said Act. Section 20(1) is set out hereunder:

20 power to exempt-(1) Notwithstanding anything contained in any of the forgoing 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 of which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government

may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) Where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, , that Government may by order exempt, subject top such co0nditions, 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.

53. The competent authority of the State Government refused to grant exemption to the Appellant company to hold vacant land in excess of the ceiling limit on appropriate valid grounds which have been discussed by the learned Single Judge in the judgment and order under appeal. The learned Single Judge elaborately discussed all the issues raised in the writ petition by the Appellant company and decided the same strictly in accordance with law. We find no infirmity or irregularity in the findings of the learned Single Judge.

54. Mr. Mukherjee, learned Senior counsel of the Appellant company heavily relied on the decisions of the Supreme Court in [State of Maharashtra and Another Vs. B.E. Billimoria and Others](#), and [State of Uttar Pradesh and Others Vs. L.J. Johnson and Others](#), The principles decided by the Supreme Court in Billimoria's case (Supra) and also in Johnson's case (Supra) cannot be of any assistance to the Appellant company in view of the facts and circumstances of the present case.

55. The facts involved in Johnson's Case (Supra) are completely different with those of the instant case. There was no building on the vacant land in the instant case although there was no restriction for construction of any building on the said vacant land under the building regulations of Kolkata Municipal Corporation Act. The principles decided in Billimoria's Case (Supra) cannot be of any help to the Appellant company since construction was not prohibited on the land in question under the relevant Building Rules.

56. Mr. Mukherjee learned Senior Counsel further submitted that the Appellant company was proposing to construct a residential unit exceeding 18 meters in height on the land in question and, therefore, the said Appellant was entitled to enjoy the benefits under Rule 20(2) of Schedule XVI of the Calcutta Municipal Corporation Act, 1951 read with Section 2(q)(i) of the ULCRA 1976. The aforesaid Rule 20(2) of the Calcutta Municipal Corporation Act, 1951 is set out hereunder:

Rule 20(2): " For all buildings of more than 18 meters in height the total area covered by all buildings on any site shall not exceed fifty percent area of the site.

57. We are, however, unable to accept the aforesaid claim made on behalf of the Appellant company. The Appellant company had no occasion to propose to

construct any building on the plot in question at the relevant time since no building plan was sanctioned by the competent authority of the Calcutta Municipal Corporation for the purpose of construction of any building on the said plot. Therefore, the Appellant company can not claim any vacant land in relation to such proposed building for which no plan was ever sanctioned by the competent authority of the Calcutta Municipal Corporation. For the aforementioned reasons the Appellant company cannot claim any benefit under Rule 20(2) of Schedule XVI of Calcutta Municipal Corporation Act, 1951 read with Section 2(q)(i) of the ULCRA 1976.

58. For the aforementioned reasons, we find no error and/or legal infirmity on the part of the concerned Respondent in calculating the excess vacant land in the premises in question.

59. Furthermore, it cannot be out of place to mention that the Appellant company took different stands at different stages. The Appellant company initially claimed the ownership in the land in question although at a subsequent stage claimed that the vacant land in question is owned by 21 persons. The Appellant company desperately took various steps in order to retain the vacant land. The said Appellant company filed the statement u/s 6(1) of the ULCRA 1976 specifically declaring the entire land in question as vacant land, but subsequently claimed that a structure was in existence on a portion of the said land. The submission of the learned Advocate representing the State Respondents, that the aforesaid structure was constructed after the ULCRA 1976 came into force, in order to retain the vacant land in an illegal manner, appears to be correct. We do not approve the conduct of the Appellant company in frequently changing its stand and/or taking inconsistent stands.

60. For the reasons discussed hereinabove, we find no reason to interfere with the impugned judgment and order of appeal passed by the learned Single Judge and dismiss this appeal as we do not find any merit in the same.

61. In the facts of the present case, there will be no order as to costs.

62. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Ashoke Kumar Dasadhikari, J.

63. I agree.