

(2009) 04 BOM CK 0141

Bombay High Court

Case No: Writ Petition No. 4241 of 2008

Vithabai Bama Bhandari Indian
Inhabitant

APPELLANT

Vs

State of Maharashtra and
Deputy Collector and Competent
Authority Ulhasnagar Urban
Agglomeration

RESPONDENT

Date of Decision: April 16, 2009

Acts Referred:

- Cantonments Act, 1924 - Section 3
- Constitution of India, 1950 - Article 226, 252, 252(1), 252(2)
- General Clauses Act, 1897 - Section 6
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(1), 10(2), 10(3), 10(5)
- Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 2, 3, 3(1), 4, 5

Citation: (2009) 3 BomCR 663 : (2009) 111 BOMLR 2093 : (2009) 4 MhLj 693

Hon'ble Judges: V.C. Daga, J; Mridula Bhatkar, J

Bench: Division Bench

Advocate: Milind Sathe and Chirag Balsara, instructed by Kanga and Co, for the Appellant;
V.A. Sonpal, AGP, for the Respondent

Final Decision: Allowed

Judgement

V.C. Daga, J.

The petitioner, in this petition filed under Article 226 of the Constitution of India, is seeking following declaration;

That it be declared that all proceedings/notifications and notices issued u/s 9 and 10 of the Urban Land (Ceiling and Regulation) Act, 1976 in respect of the land situated at bearing survey No. 34/6 Koliwali, Taluka Kalyan District Thane admeasuring 2008.00 sq.mtrs. stand abated in view of Section 4 of the Urban Land Ceiling

(Repeal) Act, 1999 and the respondents are now not entitled to resort to the provisions of the Urban Land (Ceiling and Regulation) Act 1976 in respect of the petitioners land;

FACTUAL BACKDROPS:

In order to appreciate the grievance of the petitioner, few relevant introductory facts needs to be noticed at the outset.

2. Petitioner herein is a holder of land admeasuring 16490 sq.mtrs. under Plot bearing No. 33, 34(6) and 35/15 at village Koliwali, Taluka Kalyan, District Thane.

3. On 3rd October, 1983, the Deputy Collector & Competent Authority, Ulhasnagar passed an order u/s 8(iv) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the said ULC Act") in Case No. ULC/ULN/SR-19 Koliwali and declared that petitioner is holding surplus land as per the details given below:

4. On 10th July, 1989, petitioner has filed an application for exemption u/s 20 of the said Act offered the said excess land for providing sites and services, construction of core and construction of tenements governed by the Maharashtra Ownership Flats Act, 1963 or by the Maharashtra Cooperative Societies Act, 1960.

5. The Deputy Collector and Competent Authority, Ulhasnagar after having considered the application has passed an order u/s 20 of the ULC in No. ULC/ULN/20-NEW/SR-138 and allowed the application of the applicant with the condition that 31 tenements of 40 sq.mtrs. each i.e. 1,180.04 sq.mtrs. to be sold to Government nominees at fixed rate.

6. The petitioner, thereafter preferred an application proposing to develop the land so as to implement development scheme with the office of Kalyan Dombivli Municipal Corporation (for short "the KDMC"). The KDMC has informed the petitioner about the reservation of Sy. No. 34/6 for development as per the development plan and rejected the proposal of the applicant for development of the land.

7. Being aggrieved by the orders dated 3rd October, 1983 and 31st July, 1989, petitioner has filed an appeal u/s 33 of the ULCR before the Additional Collector, Thane which was allowed on 23rd May, 2001. The Deputy Collector and Competent Authority, Ulhasnagar was directed to hold fresh enquiry u/s 8(iv) of the ULC Act.

8. After fresh enquiry conducted by respondent No. 2 bearing No. ULC/ULN/6(1)SR-19, Koliwali, on 19th September, 2001 it was declared by respondent No. 2 that petitioner is holding 2008 sq.mtrs. surplus land. On 30th September, 2003, the constituted attorney of the petitioner vide letter dated 30th June, 2003 sought for implementation of a scheme u/s 20 of the Act.

9. Pursuant to the application, the Additional Collector and Ex-Officio, Deputy Secretary, Ulhasnagar Urban Agglomeration, Thane issued the order

ULC/ULN/20-NEW/SR-138 dated 31st July, 1989, wherein petitioner was directed to handover 7 tenements of 40 sq.mtrs. each i.e. 266.23 sq.mtrs. to Government nominees at fixed rate. Thereafter on 17th October, 2003 petitioner had filed a proposal for IOD and Commencement Certificate for construction work on the plot of land and started the construction work and also filed a proposal dated 17th October, 2003 for development of scheme with KDMC, which the KDMC has approved the proposed development vide its order No. KDMC/DP/BP/Koliwali/473/194. The said constructions was completed within the time prescribed for the same.

10. On 5th January, 2006, petitioner vide her letter requested respondent No. 2 to take possession of the flats, along with affidavit mentioning description of the lands to be handed over to the said authority. During the submission of the letter dated 5th January, 2006, petitioner was informed by the department through her constituted attorney that there was some exchange of correspondence with regard to the said property such as Show cause notice bearing No. ULC/ULN/T-5/SR-138 dated 11th April, 2005 was issued to the petitioner, which ultimately resulted in an order dated 25th April, 2005 withdrawing the exemption granted u/s 20 of the ULC Act vide order No. ULC/ULN/20-NEW/SR-138 dated 31st July, 1989.

11. The Petitioner, after having received the said order through her constituted attorney vide letter dated 23rd February, 2006 requested respondent No. 2 to carry out the site visit since the work was completed and willingness was shown to hand over the requisite flats but this request did not yield any result.

12. The Petitioner was served with the notice dated 28th June, 2007 by the respondent No. 2 u/s 10(5) of the ULC Act calling upon the petitioner to hand over possession of the surplus vacant land to respondent No. 2 due to non compliance of the condition for exemption u/s 20 of the Act. The said notice is the subject matter of challenge in the present petition filed under Article 226 of the Constitution of India.

RIVAL SUBMISSIONS

13. Mr. Milind Sathe, learned Senior Counsel appearing on behalf of petitioner, in support of his pleadings, contends that in pursuance of the order given by Additional Commissioner vide its order dated 23rd April, 2001, the respondent No. 2 conducted an inquiry bearing No. ULC/ULN/6(1)SR-19 Koliwali and accordingly has passed an order dated 19th September, 2001 wherein it was held that petitioner was holding 2008 sq.mtrs. surplus vacant land.

14. The learned Senior Counsel further contended that the petitioner was surprised to receive a notice dated 20th June, 2007 issued by respondent No. 2 u/s 10(5) of the said Act directing the petitioner to handover possession of the surplus vacant land to respondent No. 2 due to non compliance of the conditions for exemption u/s 20 of the said Act.

15. Mr. Sathe also contends that the possession of the said land has not been taken by respondent No. 2 and the petitioner continues to remain in actual physical possession of the same. In the meanwhile by Notification dated 29th November, 2007 published by respondent No. 1 the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short "the Repeal Act") was brought into force in the State of Maharashtra as such respondent No. 2 is now not entitled to take possession of the said land. The petitioner since continues to be in possession of the said land, the proceedings u/s 9 and the notices and notifications u/s 10 of the said Act stand abated in accordance of Section 4 in the Repeal Act and that the respondent No. 2 cannot resort to the provisions of the said Act with respect to the petitioner's land. In support of his contention, Mr. Sathe relied on the judgment of this Court in the case of [Voltas Ltd. and Another Vs. Additional Collector and Competent Authority and Others](#), .

16. In reply, Mr. Sonpal submits that as per the scheme of the ULC Act, Section 9 is the point upto which all proceedings after filing of the return by the land owner are travelled, a declaration of excess land follows. Once excess land is determined, the land owner has two options. The first option is; the land owner can surrender surplus land which can be taken over by the Government following procedure prescribed u/s 10 of the ULC Act. Another option is; the land owner can apply for exemption u/s 20 of the ULC Act which can be granted subject to the provisions of the ULC Act.

17. According to Mr. Sonpal, these two different options have different consequences. In his submission in the first option, the proceedings are required to go through the gamut of Section 10(1), 10(2), 10(3), 10(5) and 10(6) and the possession of the surplus land is required to be taken over by the Government. Once the possession is taken, the title of the land unequivocally vests in the Government.

18. In the second option, where Section 20 exemption is required to be applied, it can be applied once the stage of Section 9 is crossed and surplus land is determined. The application for exemption u/s 20(1) is required to be considered by the State Government and if allowed, exemption is granted subject to certain terms and conditions. The breach thereof entails consequences provided under sub section (2) of Section 20 of the ULC Act.

19. According to Mr. Sonpal, in case in hand , the petitioner was granted exemption u/s 20(1) of ULC Act vide order dated 31st July, 1989 (Exhibit-"B"). The relevant condition Nos. 16 and 17 there of read as under:

If at any time, the Deputy Collector & Competent Authority is satisfied that there is a breach of any of conditions, the Deputy Collector & Competent Authority has authority to withdraw by an order, the exemption order from the date specified in the case. Provided that before making any such order, the Deputy Collector &

Competent Authority shall give reasonable opportunity to the person whose lands are exempted making representation against the proposed withdrawal.

When any such exemption withdrawn or deemed to be withdrawn under these conditions, the provisions of Chapter-III of the said Act shall apply to the lands as if the lands has been exempted under this order.

20. Mr. Sonpal submits that the above order dated 31st July, 1989 in general and conditions mentioned therein are in the nature of contract between the State Government and the petitioner. The violation of conditions of exemption order constituted breach of contract. In his submission reference to provisions of Chapter-III with regard to the procedure for taking possession constitutes integral part of contract (not integral part of the statute) as such he submits that the provisions of the Repealing Act shall not be applicable so far the subject land is concerned. In other words, the statutory requirement provided in Chapter III of ULC Act to take possession of surplus land is not applicable to the facts of case in hand. In his submission the possession is to be taken consequent upon breach of the terms and conditions of the exemption order without going requiring to follow the statutory provisions engrafted in Section 10 of the ULC Act.

21. Mr. Sonpal relying upon the ULC Repeal Act, 1999 in general and Section 3 Sub Section (1)(b) in particular to urge that the revocation of exemption as well as action for taking possession of the land as per Clause 17 of the exemption order dated 31st July, 1989 is saved and is not at all affected by Repeal Act. He also tried to press into service Section 6 of the General Clauses Act to buttress his submissions.

22. Mr. Sonpal further submits that the petitioner has violated the conditions of exemption as per order dated 31st July, 1989 he thus cannot take advantage of his own wrong. The petitioner is not entitled to retain possession of the land. He, thus, submits that the petition is liable to be dismissed leaving it open for the State to take possession of the subject land.

23. Before proceeding to consider rival submissions, it is necessary to turn to the statutory provisions relevant for deciding the issue involved.

STATUTORY PROVISIONS

24. Before proceeding further with discussion, it may be proper to notice the relevant provisions for breach of statutory limbs:

25. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Repeal Act") came into force on 18th March, 1999. Section 3 of the said Act deals with the provisions of ULC Act which are saved and reads thus:

Section 9 and 10 and 20 of the said Act read as under:

9. Final Settlement:

After the disposal of the objections, if any, received under Sub-section (4) of Section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the persons concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in Sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

10. Acquisition of vacant land in excess of ceiling limit:

(1) As soon as may be after the service of the statement u/s 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 person 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 order 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 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 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 the Union Territory or within the local limits of a cantonment declared as such u/s 3 of the Cantonments Act, 1924, means that State Government."

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 may, by order, exempt, subject to such conditions, if any, as may be specified in 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.

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 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.

CONSIDERATION:

26. Before considering the rival submissions, it would be useful to go into the legislative background of the subject Legislation giving rise to the present legal controversy.

LEGISLATIVE BACKGROUND:

27. There was a demand for imposing a ceiling on urban property, also especially, after the imposition of a ceiling on agricultural lands by the State Governments. With the growth of population and increasing urbanization, a need for orderly development of urban area was also felt. It was, therefore, considered necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections of society and also avoiding speculative transactions relating to land in urban agglomerations.

28. With a view to ensuring uniformity in approach, Government of India addressed to all the State Governments in this regard, eleven States could pass resolutions under Article 252(1) of the Constitution empowering Parliament to undertake legislation in this behalf.

29. The Urban Land (Ceiling and Regulation) Bill was passed by both the Houses of Parliament and the statute came on the statute books as the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) (the ULC Act). In its application, State of Maharashtra was one of the States which had adopted the ULC Act under Clause (1) of Article 252 of the Constitution. On the date of such adoption, the said Act became applicable in the State of Maharashtra. Scheme of the ULC Act

30. Having seen the legislative background now, it is necessary to examine Scheme of the ULC Act. Section 2 of the ULC Act provided for definitions, whereas Section 3 laid down that no person shall be entitled to hold vacant land in excess of the ceiling limit. Section 4 provided for the ceiling limit, whereas Section 5 provided for consequences for transfer of vacant land. Sections 6 and 7 required every person holding vacant land in excess of the ceiling limit at the commencement of the Act to file statement before the competent authority having jurisdiction in prescribed form specifying location, extent, value and such other particulars of every kind of land held by him. Section 8 of the Act provided for preparation of draft statement as regards vacant land held in excess of the ceiling limit so as to serve on the person concerned to enable him to file objections. Section 9 provided for consideration of the objections and preparation of final statement consequent on the decision of objections preferred by the land holder with copy to the person concerned and where such vacant land was held under lease, mortgage, hire-purchase agreement or an irrevocable power of attorney also to the owner of such vacant land.

31. Once the proceeding crosses the stage of Section 9 and the land in excess of the ceiling limit is determined, then the three options were given under the ULC Act to the person holding excess vacant land as enumerated hereinafter.

32. On the above canvas one of such options was to permit the State Government to acquire vacant land in excess of the ceiling limit exercising powers u/s 10 and award compensation u/s 11 of the ULC Act. In other words, a notification acquiring the excess vacant land by the State Government was required to be issued u/s 10(1). All persons interested in such vacant land were required to file their claims at this stage and upon determination of their claims, a declaration vesting the property in the State free from all encumbrances was to follow with effect from a date specified in the declaration as per Section 10(2) and (3) of the ULC Act. Section 11 thereof laid down the principle on which the amount payable for such acquisition was to be determined.

33. The another option open to the person holding vacant land in excess of the ceiling limit was to apply u/s 20(1) for exemption, which the State Government was competent to consider and grant, subject to such conditions as may be specified in the order and exempt the land from the operation of Chapter III of the ULC Act.

34. The third option was to apply to the Competent Authority, u/s 21 to exclude excess land from acquisition in certain cases, where the concerned person undertook to build dwelling units for the accommodation of the weaker section of the society.

35. In the event, the State Government was satisfied that any of the conditions, subject to which any exemption was granted under Clause (a) or Clause (b) of Sub-section (1) of Section 20, was not complied with by any person, it was competent for the State Government to withdraw, by order, such exemption after

giving a reasonable opportunity to the affected person for making a representation against the proposed withdrawal. In the event of withdrawal of exemption u/s 20(2) the provisions of Chapter III were to get attracted. So far as other provisions of the ULC Act are concerned, it is not necessary for us to dwell on those provisions since they are not relevant for determination of the legal controversy involved herein.

36. The Scheme of the ULC Act, unequivocally, demonstrated that once the exemption was granted u/s 20(1) subject to certain terms and conditions and if breach thereof was committed by the person holding order of exemption, then such order was open to withdrawal following principles of natural justice. Once that order of exemption was withdrawn resulting in cancellation of exemption, then the provisions of Chapter III including Section 10 thereof were to get attracted. The proceedings were required to go through the gamut of Section 10 leading to acquisition of vacant land in excess of the ceiling limit and, ultimately, possession thereof was required to be taken u/s 10(5) of the said Act. Repeal Act, 1999

37. The Parliament has passed the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (No. 15 of 1999) which received an assent from the President of India on 22nd March, 1999 and was published in the Gazette of India, Extraordinary Part II - Section 1 dated 22nd March, 1999. Since then this Repeal Act of 1999 is applicable. But that ordinance did not become applicable in the State of Maharashtra since it was not adopted under Article 252(2) of the Constitution of India. Sub Section (3) of Section 1 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 ((hereinafter referred to as "Repeal Act") reads as under:

1.(3) It shall be deemed to have come into force in the States of Haryana and Punjab and in all the Union territories on the 11th day of January, 1999 and in any other State which adopts this Act under Clause (2) of Article 252 of the Constitution on the date of such adoption; and the reference to repeal of the Urban land (Ceiling and Regulation) Act, 1976 shall, in relation to any State or Union territory, mean the date on which this Act comes into force in such State or Union territory.

38. Perusal of the said provision shows that so far as the State of Maharashtra is concerned, the Repeal Act was to come into force on such date as the legislature of State of Maharashtra would pass a resolution adopting the Repeal Act under Clause(2) of Article 252 of the Constitution of India. The Maharashtra Legislative Assembly and the Maharashtra Legislative Council passed a resolution for adopting the Repeal Act in the State of Maharashtra with effect from 29.11.2007.

Effect of Repealing the Urban Land (Ceiling and Regulation) Act, 1976:

39. Where certain land of a person was declared as surplus under the Urban Land Ceiling Act, 1976 but the possession of the said surplus land was not taken over by the prescribed authority under the Act the effect of repeal of the ULCA, 1976 under the urban Land (Ceiling and Regulation) Repeal Act, 1999 u/s 4 would be that the legal proceedings would be abated. However, if the possession was already taken

over by the prescribed authority, the same shall not abate.

40. The Repeal Act, 1999 has two saving clauses in Section 3 and 4. Section 3 of the Act provides that the principal Act i.e., the original act of 1976 shall not affect.

(a) the vesting of any vacant land u/s 10(3), possession of which has been taken, over by the State Government or any person duly authorised by the State Government in this behalf or the competent authority.

(b) the validity of any order granting exemption u/s 20(1) or any action taken thereunder, notwithstanding any judgment of any Court to the contrary; and

(c) any payment made to the State Government, as a condition for granting exemption u/s 20(1) other related and like matters. 41. Section 4, provides for the abatement of all proceedings relating to any order made or deemed to be made under the principal Act pending immediately before the Commencement of the repeal Act, before any Court, tribunal or other authority.

However, as per proviso to Section 4, Section 4 was not to apply in case of proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, 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.

42. The factual matrix of the case in hand reveals that with the withdrawal of the exemption under Sub Section (2) of Section 20 the consequences provided therein became operative and provisions of Chapter III became applicable. The Competent Authority actually acted upon and applied provisions of Chapter III to the facts of this case in hand and followed the procedure laid down u/s 10 as indicated hereinabove. In other words, the consequence of passing of an order u/s 20(1) results in exemption of surplus of vacant land from the provisions of the Act. However, Section 20(2) of the ULC Act does not provide that possession of surplus land would automatically deemed to have been taken by the Competent Authority. In fact, Section 20(2) provides that the provisions of Chapter-III will apply, once, the order is passed u/s 20(2).

In this case the order was passed on 25th April, 2005 and from that date, the provisions of Chapter III of the Act became applicable to the land in question.

The Respondent themselves have resorted to the provisions of Chapter III for taking possession and passed an order and issued notice u/s 10 of the Act. Section 10 does not provide for different procedure to be adopted subsequent to the passing of an order u/s 20(2) of the ULC Act. As seen from the material available on record, the lands owned by the Petitioner are concerned, the Notification u/s 10(1) was published on 21st July, 2005; whereas Notice issued u/s 10(3) was issued on 16th December, 2005; and the same was published in the Government Gazette on 2nd February, 2006 and, therefore, Notice u/s 10(5) was issued on 2th June, 2007

directing petitioner to handover possession of the surplus vacant land. It is, thus, clear that the submission advanced by the learned AGP is just contrary to the action taken by the State.

43. Now so far as those lands which are owned by the petitioner in relation to which a notification under Sub-section 3 of Section 10 of the Principal Act was issued and the order under Sub-section (5) of Section 10 of the Principal Act was made are concerned, it is the provision of Section 3 of the Repeal Act which is relevant. Reading of Section 3 of the Repeal Act shows that it is a saving clause and Sub-section 1(a) of Section 3 of the Repeal Act saves vesting of any vacant land under Sub-section (3) of Section 10 of the Principal Act, possession of which has been taken over by the State Government. In other words, vesting of vacant lands under Sub-section (3) of Section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved.

44. In the case in hand, it is an admitted fact that though declaration under Sub-section (3) of Section 10 of the Principal Act was made and notice u/s 10(5) was issued but actual physical possession of the land was not taken over by the State Government or by the competent authority under the Act. Therefore, on bare reading of the provisions, it can be said that in view of repeal, vesting of the land of the petitioner in the State by virtue of declaration made under Sub-section (3) of Section 10 of the Principal Act, is not saved.

45. The purpose of enacting Section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government from and out of the vacant lands that might have vested in the State Government by virtue of declarations made under Sub-section (3) of Section 10 of the Principal Act, of which possession has been taken. Therefore, by necessary implication it follows that vesting of those lands in the State Government under Sub-section (3) of Section 10 of the Principal Act of which possession has not been taken has been repealed or made ineffective.

46. The above legal position is settled by the Division Bench Judgment of this Court in the case of *Voltas Ltd. and Anr. v. Additional Collector and Competent Authority* in Writ Petition No. 8356 of 2006 decided on 25th July, 2008, to which one of us (Daga,J.) is party and the said judgment found approval of the Hon"ble Apex Court in view of the dismissal of S.L.P.(Civil) No. 25745 of 2008 vide order dated 7th November, 2008 in the matter of *Additional Collector & Competent Authority and Ors. v. Voltas Ltd. and Anr.* (unreported).

47. The submissions made by Mr. Sonpal that by virtue of exemption u/s 20(1) and withdrawal thereof u/s 20(2), the requirement of Section 10 partakes the nature of the terms of the contract cannot be accepted. The said submission is untenable. The reliance placed on the Division Bench Judgment in the case of *Mohan v. Principal Secretary, U.D.D.Govt. of Maharashtra* delivered in W.P. No. 5684 of 2007 dated 14th August, 2008 (unreported) is also misplaced. The reliance placed by Mr. Sonpal on

sub Clause (b) of Section 3 of the Repeal Act is also misconceived as the exemption u/s 20(1) stood nullified in view of withdrawal of exemption u/s 20(2) of the Principal Act. The question of saving thereof did not arise.

48. Having said so, Mr. Sonpal also tried to rely upon Section 6 of the General Clauses Act of 1897 which deals with the effect of repealing a Statute. The said Section reads as under:

6. Effect of repeal : Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

49. Thus, all the provisions of the (repealed) Act would, u/s 6 continue in force for the purpose of enforcing the liability incurred when the Act was in force and any investigation, legal proceeding or remedy may be instituted continued or enforced as if the Act has not expired. At common law, the normal effect of repealing a statute is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6, and there may also be special savings in special Acts dealing with the effect of repeal. Therefore the effect of repeal is qualified by two words "unless a different intention appears", in Section 6 of the General Clauses Act, 1897.

50. Turning to the facts of the case in hand, there is a clear indication that, the above provisions makes it clear that Section 6 of the General Clauses Act applies unless a different intention appears in the Repeal Act. In our view, Section 6 of the General Clauses Act would not apply because Article 252(2) evidences an intention to the contrary.

51. Section 6 of the General Clauses Act is a general provision in relation to saving in case of repeal of Central enactment. But if the Parliament while enacting the repeal enactment chooses to make provision in the repeal enactment in relation to the saving of the thing done and action taken under the repeal enactment, the saving clause in the repeal enactment will be the special provisions and therefore, if the matter is covered by that special provision, the general provision contained in Section 6 of the General Clauses Act will not apply or its application will be excluded to the extent the matter is specifically covered by the specific saving clause enacted in that legislation. In our opinion, therefore, as in the Repeal Act the provision, in relation to the land which vested in the State Government under Sub-section (3) of Section 10 of the Principal Act but of which possession has not been taken, has been specifically made, to that extent application of Section 6 of the General Clauses Act will stand excluded.

52. The above legal position is also considered in detail by us in the case of Voltas Ltd. (cited supra). The submissions advanced by Mr. Sonpal with regard to Section 6 of the General Clauses Act thus holds no water. Reliance placed by him on number of judgments is also misplaced.

53. In the aforesaid view of the matter, the petitioner is liable to succeed and the petition is liable to be allowed.

54. In the result, for the reasons recorded, petition succeeds and is allowed. It is held and declared that as a consequence of the Repeal Act, further proceedings pursuant to the order made by the State Government dated 28th June, 2007 withdrawing exemption and all further actions taken u/s 10(3) shall stand abated and can no longer be proceeded further. That all further proceedings under the provisions of the Principal Act in relation to the land of the petitioner mentioned in declaration made under Sub-section (3) of Section 10 of the Principal Act have lapsed and those lands no longer vests in the State Government. Rule is made absolute accordingly. No order as to costs.

55. At this stage, the learned AGP prayed for stay of the judgment. The said prayer is strongly opposed by the learned Senior Counsel for the petitioner. He, however, makes a statement that, for a period of eight weeks, the petitioner shall not deal with the said property in any manner whatsoever. The statement made in this behalf takes care of the prayer made by the learned AGP. The same is taken on record. Needless to mention that after expiry of the period mentioned herein, the petitioner would automatically stand relieved of his statement made and recorded herein.