STATE OF U.P. A

v.

HARI RAM

(Civil Appeal No. 2326 of 2013 etc.)

MARCH 11, 2013

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[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Urban Land (Ceiling and Regulation) Repeal Act, 1999:

s. 3 – Saving clause – Held: No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and, therefore, the High Court is right in holding that the respondents are entitled to get benefit of s. 3 of the Repeal Act. C D

Urban Land (Ceiling and Regulation) Act, 1976:

s. 10(3) – Acquisition of vacant land in excess of ceiling limit – Expressions "deemed to have been acquired" and "deemed to have vested absolutely – Connotation of – Held: 'vesting' in sub-s. (3) of s.10 means vesting of title absolutely and not possession – Under s. 10(3), what is vested is de jure possession not de facto possession – Mere vesting of the land under sub-s. (3) of s.10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999 – State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-s. (5) of s. 10 or forceful dispossession under sub-s. (6) of s. 10 – On failure to establish any of these situations, the land owner or holder can claim the benefit of s.3 of the Repeal Act – Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983. E F G

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A In the instant appeals filed by the State Government, the question for consideration before the Court was: whether the deemed vesting of surplus land u/s 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 would amount to taking de facto possession depriving the land B holders of the benefit of the saving clause u/s 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

Dismissing the appeals, the Court

HELD: 1.1 Sub-s. (3) of s. 10 of the Urban Land C (Ceiling and Regulation) Act, 1976 states that after the publication of the notification under sub-s. (1), the competent authority has to declare that the excess land referred to in the Notification published under sub-s. (1) of s.10 shall, with effect from such date, as might be D prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect such land shall be deemed to have been vested absolutely in the State Government, free from all encumbrances, with effect from the date so E specified. [para 16] [317-G-H; 318-A-B]

1.2 Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-s. (3) of s.10 contained two deeming provisions, such as, "deemed to have been F acquired" and "deemed to have been vested absolutely". In interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or G inevitable corollaries to the giving effect to the fiction. [para 17] [318-C-E]

Delhi Cloth and General Mills Company Limited v. State of Rajasthan (1996) 2 SCC 449; *Organo Chemical Industries*

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v. Union of India **1980 (1) SCR 61 = (1979) 4 SCC 573** A
Directorate of Enforcement v. Deepak Mahajan **1994 (1) SCR 445 = (1994) 3 SCC 440;** *S. Gopal Reddy v. State of U.P.* **1996 (3) Suppl. SCR 439 = (1996) 4 SCC 596;** *Jugal Kishore Saraf v. M/s Raw Cotton Co. Ltd.* **1955 SCR 1369 = AIR 1955 SC 376 - referred to.** B

Ex-parte, Walton, In re, Levy **(1881) 17 Chance. D. 746;** *Szoma v. Secretary of State for the Department of Work and Pensions* **(2006) 1 All E.R. 1 (at 25);** *DEG Deutsche Institutions and another v. Kosby* **(2001) 3 All E.R. 878 – referred to.** C

1.3 The expression "deemed to have been acquired" used as a deeming fiction under sub-s. (3) of s.10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the D **ownership of the person who held that vacant land or possessed such land as owner or as a tenant or as mortgagee and so on as defined u/s 2(1) of the Act. [para 23] [320-C-D]**

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Customs and Excise Commissioners v. Zielinski Baker and Partners **(2004) 2 All E.R. 141 (at 11) - referred to.**

Legal Glossary, published by Official Language (Legislative) Commission **1970 Edition Page 302;** *Black's Law Dictionary; Webster's Third New International Dictionary,* F **of the English Language unabridged, Volume III S to Z at page 2547 - referred to.**

1.4 What is deemed "vesting absolutely" is that "what is deemed to have acquired". There must be express G **words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owner or holder of the vacant land is pitted against a statutory hypothesis. [para 26] [321-H; 322-A]**

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A *Beedall v. Maitland* (1881) 17 Ch. D. p.183 - referred to.

1.5 Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in hands of few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. Keeping in view the provisions of sub-ss. (5) and (6) of s. 10, the words 'acquired' and 'vested' have different meaning and content. [para 27] [322-D-G]

1.6 Under s. 10(3), what is vested is de jure possession not de facto. The 'vesting' in sub-s. (3) of s.10 means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. Surrendering or transfer of possession under sub-s. (3) of s.10 can be voluntary so that the person may get the compensation as provided u/s 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-s. (5) of s. 10 to surrender or deliver possession. Sub-s. (5) of s.10 visualizes a situation of surrendering and delivering possession, peacefully while sub-s. (6) of s.10 contemplates a situation of forceful dispossession. Requirement of giving notice under sub-ss. (5) and (6) of s. 10 is mandatory. Though the word 'may' has been used therein, the word 'may' in both the

sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-s. (5) or sub-s. (6) of s. 10 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'. [para 27, 28, 32 and 34] [322-G; 323-A-B; 324-F-G; 325-E-F]

Maharaj Singh v. State of UP and Others **1977 (1) SCR 1072 = (1977) 1 SCC 155;** *Rajendra Kumar v. Kalyan (dead) by Lrs.* **2000 (2) Suppl. SCR 114 = (2000) 8 SCC 99 - referred to.**

1.7 Further, the Uttar Pradesh Urban Land Ceiling (Taking of Possession payment of amount and Allied Matters) Directions, 1983 make it clear that sub-s. (3) of s.10 takes in only de jure possession and not de facto possession. Therefore, if the land owner has not surrendered possession voluntarily under sub-s. (3) of s.10, or has not surrendered or delivered possession after notice u/s 10(5), or has not been dispossessed by use of force u/s 10(6), it cannot be said that the State Government has taken possession of the vacant land. [para 35, 36] [325-H; 326-A; 328-G-H; 329-A]

Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. and Others **(2000) 6 SCC 325,** *Ghasitey Lal Sahu and Another v. Competent Authority, Under the Urban (Ceiling and Regulation Act, 1976), U.P. and Another* **(2004) 13 SCC 452,** *Mukarram Ali Khan v. State of Uttar Pradesh and Others* **2007 (8) SCR 340 =(2007) 11 SCC 90 and** *Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and Others* **2012 (2) SCR 219 = (2012) 4 SCC 718 – referred to.**

1.8 The mere vesting of the land under sub-s. (3) of

A s.10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender B and delivery of peaceful possession under sub-s. (5) of s. 10 or forceful dispossession under sub-s. (6) of s. 10. On failure to establish any of these situations, the land owner or holder can claim the benefit of s.3 of the Repeal Act. The State Government could not establish any of C these situations. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and, therefore, the High Court is right in holding that the respondents are entitled to get benefit of s. 3 of the D Repeal Act. There is no infirmity in the judgment of the High Court. [para 39-40] [329-G-H; 330-A-C]

Case Law Reference:

1996 (1) SCR 518	referred to	para 17
E (1881) 17 Chance. D. 746	referred to	para 18
(2006) 1 All E.R. 1 (at 25)	referred to	para 19
(2001) 3 All E.R. 878	referred to	para 19
1980 (1) SCR 61	referred to	para 20
F 1994 (1) SCR 445	referred to	para 20
1996 (3) Suppl. SCR 439	referred to	para 21
1955 SCR 1369	referred to	para 22
G (2004) 2 All E.R. 141 (at 11)	referred to	para 23
(2001) 3 All E.R. 878	referred to	para 23
1977 (1) SCR 1072	referred to	para 28
H 2000 (2) Suppl. SCR 114	referred to	para 37

(2000) 6 SCC 325	**referred to**	**para 37**	A
(2004) 13 SCC 452	**referred to**	**para 37**	
2012 (2) SCR 219	**referred to**	**para 37**	
2007 (8) SCR 340	**referred to**	**para 37**	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2326 of 2013 etc.

From the Judgment & Order dated 27.04.2005 of the High Court of Judicature at Allahabad in Writ Petition No. 47369 of 2000. C

C. A. Nos. 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387-2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510 of 2013. D E F G

M.R. Shamshad, Ahmad S. Azhar, Shashank, Kamlendra Mishra, Abhisth Kumar, Abhishek Chaudhary, Gunnam Venkateswara Rao, Niraj Gupta, Samir Ali Khan, Deepak Goel, Prabnab Kumar Mullick, Soma Mullick, Mohd. Parvez Dabas, H

A Shuaibudding, S.A. Syed, Pankaj Kumar Singh, Pawan Kumar Shukla, Dr. Kailash Chand, Abha Jain, Garima Prashad, Ashok Mathur, Laxmi Arvind, M.P. Shorawala, Praveen Jain, P.K. Jain, Prem Sunder Jha, Ramesh Chandra Mishra, R.D. Upadhyay, S.K. Sabharwal, Shrish Kumar Misra, Ugra Shankar Prasad,
B B. Sunita Rao, Abha R. Sharma, Yash Pal Dhingra, Chander Shekhar Ashri, K.L. Janjani, Asha Gopalan Nair, Himanshu Munshi, Gopal Prasad, Sujata Kurdukar, Rameshwar Prasad Goyal, Vishnu Sharma, Daya Krishan Sharma, Shekhar Kumar, Savita Singh, John Mathew, Gaurav Dhingra, Vishwa Pal Singh,
C Anuradha & Associates, Anoop Kr. Srivastav, Vidhi International, Ashok Kumar Gupta II, Santosh Kumar Tripathi, Pukhrambam Ramesh Kumar, Anupam Lal Das, Praveen Agrawal, Sudhir Kulshreshtha, Manoj K. Mishra, Susmita Lal, Sumit Kumar, Namita Choudhary, Garvesh Kabra for the
D appearing parties.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

E 2. We are, in these batch of cases, called upon to decide the question whether the deemed vesting of surplus land under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 [for short 'the Act'] would amount to taking de facto possession depriving the land holders of the benefit of the saving Clause under Section 3 of the Urban Land (Ceiling and
F Regulation) Repeal Act, 1999 [for short 'the Repeal Act'].

FACTS:

3. Hari Ram, respondent herein, had filed a statement on
G 28.9.1976 giving details of the vacant land he was holding in excess of ceiling limit prescribed under the Act, as provided under Section 6 of the Act. The competent authority under the Act surveyed the land and the respondent was served with a draft statement under Section 8(3) of the Act on 13.5.1981, calling for objection to the draft statement within thirty days. No
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objection was preferred by the respondent and it was found that he was holding excess land measuring 52,513.30 sq. meters and an order to that effect was passed by the competent authority under Section 8(4) of the Act, vide his proceeding dated 29.6.1981. A

4. The competent authority later issued a notification dated 12.6.1982 under Section 10(1) of the Ceiling Act, which was published in the Government Gazette on 12.6.1982 giving the particulars of the vacant land held by the respondent. The competent authority then issued a notification dated 22.11.1997, which was published on the same date, stating the land shall be deemed to have been vested with the Government from 12.6.1982, free from all encumbrances. On 10.6.1999, the competent authority vide its letter dated 10.6.1999 informed the Bandobast Chakbandi Adhikar that the surplus land declared as per the Notification stood vested in the State Government. On 19.6.1999, the prescribed authority issued a notice under Section 10(5) of the Act directing the respondent to hand over possession of the land declared as surplus to a duly authorized person. Aggrieved by the same, the respondent preferred an appeal No.29 of 1999 before the District Judge, Varanasi under Section 33 of the Act, contending that before passing the order under Section 8(4) of the Act, no notice, as contemplated under Section 8(3) of the Act, was served on him. The appeal was allowed and the order dated 29.06.1981 was quashed, vide judgment dated 14.12.1999. B C D E F

5. Aggrieved by the said order, State of U.P., through the competent authority, preferred Civil Misc. Petition No. 47369 of 2000 before the High Court of Allahabad under Article 226 of the Constitution of India, and the High Court, after elaborately considering the various contentions, took the view that sub-section (3) of Section 10 does not envisage, taking physical and de facto possession of the surplus land, for which proceedings under sub-section (5) of Section 10 have to be followed. On facts also, the Division Bench found no reason to G H

A interfere with the order of the District Judge, and the appeal was dismissed, against which this appeal has been preferred. Following the judgment in Writ Petition No.47369 of 2000, several writ petitions were disposed of by the High Court against which appeals are pending before this Court.

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6. We intend to take up the appeal filed against the judgment in Writ Petition No. 47369 of 2000 as the leading case, based on which other appeals can be disposed of.

7. Shri Sunil Gupta, learned senior counsel appearing for C the appellant - State of U.P. submitted that the High Court has committed an error in interpreting sub-section (3) to Section 10 of the Act and submitted that the expressions "deemed acquisition" and "deemed vesting" which find a place in Section 10(3) of the Act would take in not only de jure possession but D also de facto possession. Learned senior counsel submitted that under Section 10(2) of the Act, the competent authority considers the claims of the persons interested in vacant land and then determines the nature and extent of such claims, followed by a declaration under Section 10(3) of the Act by E publication in the Official Gazette which amounts to absolute vesting. Learned senior counsel submitted that Section 10(3) is a self contained provision and does not make vesting dependent on any other or further procedure to be complied with by the competent authority. Learned senior counsel also F submitted that Section 10(5) and Section 10(6) speak of "hostile possession" and only in cases where hostile possession is set up by the owner in respect of the vacant land by growing crops, constructing buildings or other fixtures etc., the competent authority has to take recourse to the procedure G laid down in those provisions. Referring to the provisions of the Repeal Act, learned senior counsel submitted that the wide language used therein envisages various possibilities such as taking over possession under Section 10(3), Section 10(5) or Section 10(6) of the Act. Learned senior counsel submitted that H in cases where possession is seen having been taken over

legally, statutorily and by way of presumption in law, on account of the publication of the notification and the deeming clause and legal fiction provided under Section 10(3) of the Act, the requirement of Section 3(1)(a) of the Repeal Act shall stand satisfied and the land so vested and possessed by the State Government shall remain intact in the ownership and possession of the State Government. Learned senior counsel also submitted that the procedure laid down under U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983 (for short 'Directions 1983') would not apply in view of the plenary character of Section 10(3).

8. Learned counsels appearing for the respondents, on the other hand, fully supported the judgment of the High Court and submitted that on a conjoint reading of Sections 10(3), 10(5), 10(6) and Section 3 of the Repeal Act would show that the expressions "deemed to have been acquired" or "deemed to have vested" would not comprehend "physical possession" under Section 10(3) in view of Sections 10(5) and 10(6) of the Act. Learned counsels urged in such situations, the State has necessarily to follow the procedure laid down under the Directions 1983 issued in exercise of the powers conferred under Section 35 of the Act. Further, it was submitted that the Object and Reasons of the Repealing Act would be defeated, if the interpretation placed by Shri Gupta is accepted, since it being a beneficial enactment.

Judicial evaluation

9. The Parliament, after having felt the need for an orderly development of urban areas in view of the growth of population and increase in urbanization, enacted Act 33 of 1976. The Parliament also felt that it is necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution. To ensure uniformity in approach, the Government of India had also addressed various State Governments in this regard. Eleven

A States had passed resolutions under Article 252(1) of the Constitution empowering the Parliament to undertake legislation in that behalf. Consequently, the Act of 1976 was enacted which came into force on 17.2.1976. The Object of the Act was to provide for imposition of ceiling on vacant land in B urban agglomeration, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such lands and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of few persons and speculation and profiteering therein and with a C view to bringing about an equitable distribution of land in urban agglomerations to sub-serve the common good.

10. The legislature then put a ceiling on vacant land in Chapter III of the Act. Section 6 of the Act placed an obligation on persons holding vacant land in excess of ceiling limit to file D statement before the competent authority. Section 8 of the Act referred to the preparation of draft statement as regards vacant land held in excess of ceiling limit. Draft statement prepared has to be served on the person concerned together with a notice under sub-section (3) of Section 8 calling for objections, if any, E within 30 days to the service of notice. The competent authority, after considering the objections has to pass orders under sub-section (4) to Section 8, after considering the objections filed. The final statement has to be issued under Section 9 of the Act.

F 11. We are, in this case primarily concerned, with the scope of Section 10 of the Act, which reads as follow:

> **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 G 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-
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> (i) such vacant land is to be acquired by the concerned H 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

A (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 B 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.

C (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 D 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-

E (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 F cantonment declared as such under section 3 of the Cantonments Act, 1924, (2 of 1924.) means that State Government."

12. Before examining the scope of sub-section (3) to Section 10 as well as sub-sections (5) and (6) to Section 10, G reference may be made to the Repeal Act 1999 and its Object and Reasons which are as follow:

Statement of Object and Reasons:

H "1. The Urban Land (Ceiling and Regulation) Act, 1976 was

passed when Proclamation of emergency was in operation with a laudable objective in mind. The said Act was passed pursuant to resolution passed by the State Legislature under clause (1) of Article 252. Unfortunately public opinion is nearly unanimous that the Act has failed to achieve what was expected of it. It has on the contrary pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption. There is wide spread clamour for removing this most potent clog on housing.

2. Parliament has no power to repeal or amend the Act unless resolutions are passed by two or more state legislatures as required under clause (2) of Article 252.

3. The Legislature of Haryana and Punjab have passed resolutions empowering Parliament to repel the act in those States. The Act, in the first instance will be repealed in those States and in the Union Territories and subsequently if any State Legislature adopts this Act by resolution, then from the date of its adoption the Act will stand repealed in that State.

4. The proposed repeal, along with some other incentives and simplification of administrative procedures is expected revive the stagnant housing industry and provide affordable living accommodation for those who are in a state of underserved want and are entitled to public assistance. The repeal will not however, affect land on which building activity has already commenced. For that limited purpose exemption granted under Section 20 of the Act will continue to be operative. Amounts paid out by the State Government will become refundable.

5. The bill seeks to achieve the above purpose."

13. The Act 36 of 1976 was repealed by Section 2 of the Repeal Act, 1999 and the Repeal Act was adopted in the State

A of U.P. on March 18, 1999. The Repeal Act contains a saving clause vide Section 3 which reads as follow:

3. **Saving.-**

(I) The repeal of the principal Act shall not affect-

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(a) The vesting of any vacant land under sub-section 10, possession of which has been taken over by the state government or any person duly authorized by the state government in this behalf or by the

C competent authority;

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

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(c) Any payment made to the state government as a condition for granting exemption under sub-section (I) of section 20.

E (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 authorized

F 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,

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then such land shall not be restored unless the amount paid, if any, has been refunded to the state government."

14. We notice even after the coming into force of the Repeal Act, the competent authority under the Act 33 of 1976

H vide its letter dated 10th June, 1999 informed the Bandobast

Chakbandi Adhikar that the surplus land declared as per the notification issued under the Act had vested in the State Government free from all encumbrances and, therefore, in the revenue records the name of State Government be entered and name of the respondent be mutated. The competent authority vide its notice dated 19.6.1999 issued under Section 10(5) of the Act directed the respondent to handover possession of the land declared as surplus to duly authorized persons on behalf of the Collector. A B

15. Before examining the impact of the Repeal Act on Act 33 of 1976, particularly, Section 3 of the Repeal Act on sub-section (3) to Section 10 of the Act, let us examine whether possession could be taken following the procedure laid down in sub-section (3) to Section 10 of the Act. Section 6 casts an obligation on every person holding vacant land in excess of ceiling limit to file a statement before the competent authority and after following all the statutory procedures, the competent authority has to pass the order under Section 8(4) on the draft statement. Following that, a final statement has to be issued under Section 9 on the person concerned. Sub-section (1) to Section 10 states that after the service of statement, the competent authority has to issue a notification giving particulars of the land held by such person in excess of the ceiling limit. Notification has to be published for the information of the general public in the Official Gazette, stating that such vacant land is to be acquired and that the claims of all the persons interested in such vacant land be made by them giving particulars of the nature of their interests in such land. C D E F

16. Sub-section (2) of Section 10 states that after considering the claims of persons interested in the vacant land, the competent authority has to determine the nature and extent of such claims and pass such orders as it might deem fit. Sub-section (3) of Section 10 states that after the publication of the notification under sub-section (1), the competent authority has to declare that the excess land referred to in the Notification G H

A published under sub-section (1) of Section 10 shall, with effect from such date, as might be prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect such land shall be deemed to have been vested absolutely in the State
B Government, free from all encumbrances, with effect from the date so specified.

Legal Fiction

17. Legislature is competent to create a legal fiction, for
C the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a 'deeming provision'. In interpreting
D the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and *General Mills*
E *Company Limited v. State of Rajasthan* (1996) 2 SCC 449 held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

F 18. James Lords Justice in *Ex-parte, Walton, In re, Levy* (1881) 17 Chance. D. 746 speaks on deeming fiction as:

> "When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what
G purposes and between what persons the statutory fiction is to be resorted to".

19. In *Szoma v. Secretary of State for the Department of Work and Pensions* (2006) 1 All E.R. 1 (at 25), court held, it
H would be quite wrong to carry this fiction beyond its originally

intended purpose so as to deem a person in fact lawfully here not to be here at all. The intention of a deeming provision, in laying down a hypothesis is that the hypothesis shall be carried so far as necessary to achieve the legislative purpose but no further. (see also *DEG Deutsche Institutions and another v. Kosby* (2001) 3 All E.R. 878.

20. Let us test the meaning of the expression "deemed to have been acquired" and "deemed to have been vested absolutely" in the above legal settings. The expression "acquired" and "vested" are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in *Organo Chemical Industries v. Union of India* (1979) 4 SCC 573 that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the Judgment of this Court in *Directorate of Enforcement v. Deepak Mahajan* (1994) 3 SCC 440. Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, it is associated on the context but are read together and construed in the light of the purpose and object of the Act.

21. This Court in *S. Gopal Reddy v. State of U.P.* (1996) 4 SCC 596 held:

> "it is well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object, which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary....."

22. In *Jugal Kishore Saraf v. M/s Raw Cotton Co. Ltd.* AIR 1955 SC 376, Justice S.R. Das stated:

A "The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by legislature their ordinary natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may B adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

23. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can C only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been D defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of vesting on the basis of a statutory hypothesis of a deeming E provision which Lord Hoffmann in *Customs and Excise Commissioners v. Zielinski Baker and Partners* (2004) 2 All E.R. 141 (at 11) described as "heroic piece of deeming".

24. The word "vest" or "vesting" has different meaning. F Legal Glossary, published by Official Language (Legislative) Commission 1970 Edition at Page 302:

"**Vest:** 1. To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, G 2. To become legally vested; (T.P. Act.)

"**Vesting order:** An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;

H

Black's Law Dictionary (Sixth Edition) 1990 at page 1563: A

"**Vested:** Fixed; accrued; settled; absolute; complete; Having the character or given the rights of absolute ownership; not contingent, not subject to be defeated by a condition precedent. Rights are "vested" when rights to B enjoyment present or prospective has become property of some particular persons or persons as present interest; mere expectancy or future or contingent interest in property founded on anticipated continuance of existing laws does not continue "vested right" Vaughan v. Nadel; 228 Kan. C 469, 618 p. 2d 778, 783. See also Accrue Vest and specific typed of vested interest infra."

Webster's Third New International Dictionary, of the English Language unabridged, Volume III S to Z at page 2547 defines the word "vest" as follow: D

"**vest**" vest ..... To place or give into the possession or discretion of some person or authority (the regulation of the waterways .... to give to a person a legally fixed immediate right of present or future enjoyment of (as an E estate) (a deed that vests a title estate in the grantee and a remainder in his children), b. to grant endow, or clothe with a particular authority right or property ..... to put (a person) in possession of land by the feudal ceremony of investiture ..... to become legally vested (normally) title to F real property vests in the holder of a property executed deed.)"

25. Vest/vested, therefore, may or may not include "transfer of possession" the meaning of which depends on the context in which it has been placed and the interpretation of various G other related provisions.

26. What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express

H

A words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land is pitted against a statutory hypothesis. Possession, there is an adage "nine points of law" In *Beedall v. Maitland* (1881) 17 Ch. D. p.183 Sir Edward Fry,
B while speaking of a Statute which makes a forcible entry an indictable offence, stated as follows:

> "this statute creates one of the great differences which exist in our law between the being in possession and the being
C out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession, he may use force to keep out a trespasser; but if a trespasser has gained possession, the rightful owner cannot use force
D to put him out, but must appeal to the law for assistance."

27. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is
E trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in hands of
F few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words 'acquired' and 'vested'
G have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

H

Voluntary Surrender A

28. The 'vesting' in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in *Maharaj Singh v. State of UP and Others* (1977) 1 SCC 155, while B interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in *Rajendra Kumar v.* C *Kalyan (dead) by Lrs.* (2000) 8 SCC 99 held as follows:

> "We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. D Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. E To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well."

29. We are of the view that so far as the present case is F concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

30. Before we examine sub-section (5) and sub-section G (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, H

A mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of B publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

C **Peaceful dispossession**

31. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the D competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

32. If de facto possession has already passed on to the E State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person F may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 G visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

H 33. The Act provides for forceful dispossession but only

when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10.

34. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word 'may' has been used therein, the word 'may' in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'.

35. Above reasoning is in consistence with the Directions 1983 which has been issued by the State Government in exercise of powers conferred under Section 35 of the Act. Directions clearly indicate that the procedure for taking possession of the vacant land in excess of the prescribed ceiling limit, which reads as under:

The Uttar Pradesh Urban Land Ceiling (Taking of

A **Possession payment of amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of the Act, 1976):**

"In exercise of the powers under Section 35 of the Urban
B Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976), the governor is pleased to issue the following directions relating to the powers and duties of the Competent Authority in respect of amount referred to in Section 11 of the aforesaid Act to the person or persons
C entitled thereto:

1. Short title, application and Commencement –These directions may be called the Uttar Pradesh Urban Land Ceiling (Taking of Possession Payment of Amount and Allied Matters Directions, 1983)

D

2. The provisions contained in this direction shall be subjected to the provisions of any directions or rules or orders issued by the Central Government with such directions or rules or orders.

E

3. They shall come into force with effect from the date of publication in the Gazette.

2. Definitions:-

F

3. Procedure for taking possession of vacant Land in excess of Ceiling Limit-(1) The Competent Authority will maintain a register in From No.ULC - 1 for each case regarding which notification under sub-section (3) of Section 10 of the Act is published in the Gazette.

G

4. (2) an order in Form No.ULC-II will be sent to each land holder as prescribed under sub-section (5) of Section 109 of the Act and the date of issue and service of the order will be entered in Column 8 of
H Form No.ULC-1.

(3) On possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10 of the Act, entries will be made in a register in Form ULC-III and also in Column 9 of the Form No.ULC-1. The Competent Authority shall in token of verification of the entries, put his signatures in column 11 of Form No.ULC-1 and Column 10 of Form No.ULC-III.

Form No.ULC-1

Register of Notice u/s 10-(3) and 10(5)

1	2	3	4	5	6	7	8	9	10	11
S.No	Serial No. of Register of Receipt Sl. No. of Register of Taking Possession	Case Number	Date of Notification u/s 10(3)	Land to be acquireed village Mohali	Date of taking over possession	Remarks	Signature of Competent Authority			

Form NO. ULC-II

Notice order u/s 10(5)
(See clause (2) of Direction (3)
In the Court of Competent Authority

U.L.C. .....

No..... Date.....

Sri/Smt.....T/o .....

In exercise of the powers vested un/s 10(5) of the Urban Land Ceiling and Regulation Act, 1976 (Act No.33 of 1976, you are hereby informed that vide Notification No..... dated ..... under section 10(1) published in Uttar Pradesh Gazette dated ..... following land has vested absolutely in the State free from all encumbrances as a

A consequence Notification u/s 10(3) published in Uttar Pradesh Gazette dated ..... Notification No..... dated .... With effect from ..... you are hereby ordered to surrender or deliver the possession of the land to the Collector of the District Authorised in this behalf under
B Notification No.324/II-27-U.C.77 dated February 9, 1977, published in the gazette, dated March 12, 1977, within thirty days from the date of receipt of this order otherwise action under sub-section (6) of Section 10 of the Act will follow.

C **Description of Vacant Land**

Location	Khasra number identification	Area	Remarks
1	2	3	4

D

Competent Authority

.....

.....

Dated.....

E No.

Copy forwarded to the Collector ..... with the request that action for immediate taking over of the possession of the above detailed surplus land and its proper
F maintenance may, kindly be taken an intimation be given to the undersigned along with copy of certificate to verify.

Competent Authority

.....

....."

G

36. Above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or
H surrendering or delivering possession after notice, under

Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land. A

37. The scope of Act 33 of 1976 came up for consideration before this Court on few occasions, reference may be made to certain judgments, even though there has been no elaborate discussion of the provision of the Act and its impact on the Repeal Act. Reference may be made to *Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. and Others* (2000) 6 SCC 325, *Ghasitey Lal Sahu and Another v. Competent Authority, Under the Urban (Ceiling and Regulation Act, 1976), U.P. and Another* (2004) 13 SCC 452, *Mukarram Ali Khan v. State of Uttar Pradesh and Others* (2007) 11 SCC 90 and *Vinayak Kashinath, Shilkar v. Deputy Collector and Competent Authority and Others* (2012) 4 SCC 718. B C D

Effect of the Repeal Act

38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case. E F

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any G H

A of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

B

40. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the C respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to costs.

R.P. Appeals dismissed.