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T.R. THANDUR

v.

UNION OF INDIA AND ORS.

APRIL 8, 1996

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[J.S. VERMA, S.P. BHARUCHA AND
K.S. PARIPOORNAN, JJ.]

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Urban Land (Ceiling and Regulation) Act 1976—Ss. 20(1)(a) and (b)—Exemption of land from applicability of the Act—Supreme Court in S. Vasudeva v. State of Karnataka, [1993] 3 SCC 467 holding that state government cannot give exemption to vacant land in excess of ceiling limit for the purpose of transfer—State action based on the decision challenged—Whether transfer of any part of vacant excess land exempted under s.20(1)(b) could be prohibited irrespective of the conditions of grant of exemption—Held, no; D such a construction would rewrite the provision and was impermissible; S. Vasudeva not based on correct construction of s.20—Constitution of India, Article 141—Interpretation of Statutes.

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Administrative Law—Urban Land (Celing and Regulation) Act 1976—Ss.20(1)(a) and (b)—Power to exempt land in excess of ceiling limit—Held, valid exercise of power of the state to exempt land must satisfy the rule of non-arbitrariness and requires recording of reasons in writing—Constitution of India—Article 14.

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The petitioner booked a flat in a building constructed on the excess vacant land belonging to the third respondent and exempted under s.20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976 ('Act') in Bangalore. Under the agreement the petitioner was to purchase the flat together with 1/48 share in the land on which the building was to be constructed by the fourth respondent. Despite taking necessary steps, G the petitioner was informed by the fourth respondent that in view of the order of the Karnataka High Court, based on the decision of this court in *S. Vasudeva v. State of Karnataka*, [1993] 3 SCC 467, transfer of any part of the excess vacant land in respect of which exemption was granted under S. 20(1)(b) of the Act was prohibited. The petitioner then filed a H Writ Petition in this court under Article 32 of the Constitution challeng-

ing the action and questioning the correctness of the decision in *S. Vasudeva*. A

Disposing of the Writ Petition, this Court

HELD : 1.1. The effect of the *non-obstante* clause at the beginning of sub-section (i) and the concluding words in clauses (a) and (b) undoubtedly was that on exemption being granted subject to the conditions specified in the order granting the exemption, such vacant land was exempted from the provisions of Chapter III which contained Ss.3 to 24, in spite of the provisions in Ss. 3 to 19. There was no ambiguity in this behalf in sub-section (1). The plain language of the provision left no room for any ambiguity. Thus, if the logical outcome of the exemption granted subject to the specified conditions was to lift the restriction on transfer of the exempted land, then it had to be accepted. [44-A-C] B C

1.2. To hold that any land exempted under clause (b) cannot be transferred irrespective of the conditions of the exemption is to rewrite the provision which enacted that, subject to the conditions specified in the order of exemption, such vacant land would be exempt from the provisions of Chapter III, which meant the exemption was also from provisions prohibiting transfer enacted in Chapter III. [48-G-H] D E

1.3. The conclusion reached in *S. Vasudeva* which directly relates to s.20(1)(b) of the Act, was not based on a correct construction of s.20 of the Act. The application of that conclusion in relation to clause (a) of sub-section 20 by the Government of Karnataka is not justified even by that decision. [49-E-F] F

S. Vasudeva v. State of Karnataka, [1993] 3 SCC 467, overruled.

2.1. State action must satisfy the rule of non-arbitrariness and recording of reasons in writing for granting exemption under clause (a) of s. 20(1) of the Act indicating that it is necessary or expedient in the public interest so to do, is an essential requirement of valid exercise of power under clause (a). [46-C-D] G

2.2. The enactment of the proviso in clause (b) was to emphasise the requirement that there must be strong reasons recorded in writing H

A to justify the satisfaction of the State Government that the hardship caused by the application of the provisions of Chapter III to such person amounts to "undue hardship" so that the grant of exemption is judicious, and in case of a challenge can be judicially tested. [48-B-C]

B **CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 546 of 1993.**

Under Article 32 of the Constitution of India.

C M.K. Banerjee, Attorney General, A.N. Jayaram, Additional Solicitor General, Shanti Bhushan, K.N. Shukla, F.S. Nariman, Ashok Desai, (Shri Narain, Navkesh Batra, Sandeep Narain, Yashwant Mathur) for Shri Narain & Co, Naveen Prakash, Hemant Sharma, Ms. Sushma Suri, T.C. Sharma, (S.B. Vakil), P.H. Perekh, Ms. Shefali S. Fazl, (Sunil Dogra) for S.A. Shroff & Co., E.A.K. Faizullahbai, Ms. Rajni Iyer, S.R. **D** Arun, Manoj Wad, Ms. J.S. Wad and K.R. Nagaraja for the appearing parties.

The Judgment of the Court was delivered by

E **J.S. VERMA, J.** The petitioner booked a small flat with an area of 950 sq. ft. in a multi-storeyed building containing several flats on the excess vacant land belonging to respondent No. 3, exempted under Section 20(1)(b) of the Urban Land (Ceiling & Regulation) Act, 1976 to be constructed by respondent No. 4 in survey No. 44, Marenahalli Uttarahalli Hobli, Bangalore South taluk. Under the agreement, the **F** petitioner was to purchase the flat together with 1/48 share in the land on which the building was to be constructed. Under the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 the promoter, namely respondent No. 4, is required to convey title and execute documents for the share in **G** land of the flat/apartment. The petitioner took necessary steps for purchase of the flat together with his share of the land on which the multi-storeyed building is constructed. However, the respondent No. 4 regretted its inability vide letter dated 20.6.1993 to either execute the conveyance for transfer of the petitioner's share of land or to handover **H** possession of the said flat to him because of the order dated 16.6.1993

of the Karnataka High Court. The petitioner was informed that the Karnataka High Court, by the said order, had restrained the State Government from issuing any orders permitting transfer of the excess vacant land and therefore, the respondents were not in a position to comply with the petitioner's demand. This order of the Karnataka High Court is based on the decision of this Court in *S. Vasudeva/D.P. Sharma v. State of Karnataka and Ors.*, [1993] 3 SCC 467, which prohibits transfer of any part of the excess vacant land in respect of which exemption is granted under Section 20(1)(b) of Urban Land (Ceiling & Regulation) Act, 1976. The decision in *S. Vasudeva* being the basis of the impugned action, this writ petition has been filed under Article 32 of the Constitution challenging this action; and for that reason, correctness of the decision in *S. Vasudeva* arises for consideration. No other facts are material for deciding the question raised in this writ petition.

In *S. Vasudeva*, a Division Bench comprised of two learned Judges of this Court (P.B. Sawant and N.P. Singh, JJ.) have held "that the provisions of Section 20(1)(b) of the Act do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purpose of transferring the same". This is the common conclusion reached by the two learned Judges in their separate opinions. The State Government is applying this decision to all cases of exemption under Section 20 of the Act. The question, therefore, is : Whether this conclusion of restriction on transfer must apply invariably in all cases of exemption granted under Section 20 of the Act ?

The relevant provisions in the Urban Land (Ceiling & Regulation) Act, 1976 may now be referred. Chapter II contains the definitions in Section 2. Chapter III contains Section 3 to 24 with the heading 'Ceiling on vacant land'. Chapter IV contains Sections 25 to 30 under the heading 'Regulation of Transfer and Use of Urban Property' and Chapter V contains the miscellaneous provisions in Sections 31 to 47. The relevant definitions are as under :

"Chapter II.

Definitions

A 2. Definitions : In this Act, unless the context otherwise requires, -

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B (c) "ceiling limit" means the ceiling limit specified in Sec. 4 ;

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C (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;

D (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; and

E (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building :

F Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

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Chapter III

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Ceiling on Vacant Land

3. Persons not entitled to hold vacant land in excess of the ceiling limit - Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of Sec. 1.

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4. Ceiling limit - (1) Subject to the other provisions of this section, in the case of every person, the ceiling limit shall be, -

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(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;

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

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Provided further, that the 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

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(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.

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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 of one or

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

5. Transfer of vacant land :

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under Cl. (1) of Art. 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift lease or otherwise until he has furnished a statement under Sec. 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Sec. 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

10. Acquisition of Vacant land in excess of ceiling limit. -

F (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), -

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

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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 the order, such vacant land from the provisions of this Chapter :

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(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;

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

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under Cl.(a) or Cl.(b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.

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21. Excess vacant land not to be treated as excess in certain cases -

(1) Notwithstanding anything contained in any of the foregoing

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- A provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling unit (each such dwelling unit having a
- B plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it
- C deems fit, declare such land not to be excess land for the purposes of this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be constructed.
- D (2) Where any person contravenes any of the conditions subject to which the permission has been granted under sub-section (1), the competent authority shall, by order and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this chapter shall
- E apply accordingly."

The main question is the meaning of the expression "undue hardship" in clause (b) of sub-section (1) of Section 20 and the effect of the exemption granted under Section 20 of the Act.

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The Urban Land (Ceiling & Regulation) Act, 1976 is specified in the Ninth Schedule at Item No. 132. The question of its constitutional validity does not, therefore arise. The decision in *S. Vasudeva* is, therefore, related only to the construction of Section 20(1)(b) to ascertain

G its meaning. Both the learned Judges of the Division Bench have reached the same conclusion in their separate opinions. Reference may be made at this stage to that decision. In that case, the State Government granted exemption under Section 20 of the Act for industrial use of a granite factory subject to certain conditions which included a condition that the

H land shall not be transferred in any manner without prior permission of

the Government. Later, the State Government permitted sale of the exempted land subject to certain conditions. Thereafter another application was made by the owner of the remaining excess land for permission to transfer the remaining vacant land on the ground of undue hardship, which too was granted subject to certain conditions. The transaction benefited a close relative of the Chief Minister of the State. On these undisputed facts, writ petitions were filed, inter alia, for quashing the orders granting exemption under Section 20 of the Act and certain consequential reliefs. The questions which arose for decision in that case related to the validity of the permissions granted by the State Government for transfer of the exempted land. The challenge to validity of the permissions was also on the ground of *malafides* because of the resulting benefit to a close relative of the Chief Minister of the State. A B C

The main judgment in *S. Vasudeva* is by P.B. Swant, J. and N.P. Singh, J. in his concurring opinion agreed with the conclusion reached by P.B. Sawant, J. The question of *malafides* was not considered and the State Government's orders were struck down as invalid on the ground that Section 20(1)(b) does not permit the State Government to exempt vacant land in excess of the ceiling limit for the purpose of its transfer. Sawant, J. held as under : D E

"It would be apparent from clause (a) of sub-section (1) of the Section that under it, the State Government is given power to exempt the excess vacant land from the operation of Chapter III only if the State Government is satisfied that having regard to (i) the location of the land and (ii) the purpose for which it is being or is proposed to be used, it is necessary or expedient in the public interest to exempt it. The paramount consideration is the public interest. The exemption granted under this provision may be subject to certain conditions. *But, it does not appear that it is obligatory to impose such conditions. Nor is it necessary to record reasons when exemption is granted under this clause*". F G

"The power to exempt such land under clause (b) of sub-section (1) can be exercised by the State Government, if it is satisfied that the application of Chapter III would cause undue hardship to the H

A land-holder. The exemption may be granted under this clause subject to such conditions, if any, as may be specified in the order. *But, unlike under clause (a), there is no obligation to prescribe the conditions. The permission given under this clause, however, has to be supported by reasons to be recorded in writing".*

B "Sub-section (2) of the section enables the Government to withdraw the exemption granted either under clause (a) or (b), if is satisfied that any of the conditions subject to which the exemption is given, is not complied with. *Clauses (a) and (b) of sub-section (1) read with sub-section (2) make it clear that the exemption may either be conditional or absolute. Where it is conditional, it may be withdrawn, if any of the conditions are not complied with. The very fact, however, that the legislature has contemplated imposition of conditions on exemptions granted under both the clauses, shows that the purpose of the exemption under either of the clauses cannot be the transfer of the land. The exemption under clause (a) is obviously for the land being put to a particular use which use is also necessary or expedient in the public interest, while exemption under clause (b) is for relieving the person concerned from any undue hardship which may be caused to him personally, by the withdrawal of the excess land from his possession probably such as when the person may require the land for the expansion of the use to which he has already put it, such as his growing business or activities or to accommodate his growing family. The clause unfortunately is completely silent on what it intends to convey by the expression "undue hardship".*

(paras 31, 32 and 33)

G "The examination of the aforesaid relevant provisions of the Act shows a clear intention of the legislature and reveals a definite scheme. It has to be admitted that the provisions of the Act as are drafted have not succeeded in translating into words the clear intention of the legislature and to that extent the Act is an inelegant and confused piece of drafting. However, since the intention is clear, a harmonious reading of all the provisions consistent with

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that intention is necessary to interpret and understand each of the said provisions. The intention of the legislature is to acquire all vacant land in excess of the ceiling limit prescribed by the Act and the main purpose of the Act, as stated earlier, is three-fold, viz., (i) to prevent concentration of the urban land in the hands of a few persons and to prevent speculation and profiteering therein; (ii) to distribute the urban land equitably and (iii) to regulate the construction of buildings on the urban lands. *Consistent with these objectives, the Act provides for acquisition of all urban vacant land in excess of the ceiling limit and prohibits its transfer in any form absolutely. All that the Act permits in the case of such excess vacant land is either express exemption from the operation of Sections 3 to 19 of Chapter III of the Act by the State Government under Section 20 or non-declaration of such land as an excess vacant land by the competent authority under Section 21 or the retention of such land with the landholder to be permitted by the competent authority under Section 22 of the Act.*

"The effect of exemption of the land from the provisions of Sections 3 to 19 or of the non-declaration of the land as excess land or of the retention of the land with the landholder under Sections 20, 21 and 22 re-spectively, is not to permit the landholder to deal with it as he likes including to transfer it. In fact, the exemption, the non-declaration and the retention permitted, is on certain conditions which are required to be prescribed by the State Government or the competent authority as the case may be. If those conditions are not complied with or are contravened, the State Government or the competent authority is given power to withdraw the exemption or to declare the land as excess. This power given to the State Government and the competent authority itself negatives either power to permit the transfer or the right to transfer. What is more, Chapter IV which alone makes provisions for transfer and use of urban property, makes provision for transfer of vacant land within the ceiling limit subject to certain conditions. It also makes provisions for the transfer of land in excess of the ceiling limit with a building thereon or with a portion of such building. It makes, however, no provision for transfer of land in excess of the ceiling limit without a building

A *or a portion of a building thereon. That is consistent with the object of the Act since the Act does not contemplate transfer of the vacant land in excess of the ceiling limit. It only provides for exemption of such land from being acquired and vested in the State Government or for non-declaration of it as an excess land or for the retention of the same with the holder and that too subject to certain conditions which may be prescribed, as stated earlier.*

(paras 46 and 47)

C *"The first question that arises is whether the provisions of Section 20(1)(b) permit the State Government to permit the sale of the excess vacant land to a third party. According to us, the answer has to be in the negative for reasons more than one.*

D *"In the first instance, the central object of the Act, as is evident both from the preamble as well as the statement of objects and reasons, is to acquire vacant land in excess of the ceiling area and to prevent speculation and profiteering in the same and also to distribute the land equitably to subserve the common good. It is, therefore, per se against the said object to permit the sale of the excess vacant land for whatever reasons, including the undue hardship of the landholder. To construe the provision of Section 20(1)(b) so as to read in them the conferment of such power on the State Government for whatever reasons, is to distort and defeat the whole purpose of the legislation. Further neither the plain language of the clause nor its context and intendment merit such construction. Section 20 itself is titled "Power to exempt". The power given to the State Governments under the section is only to exempt certain excess vacant lands from the operation of the provisions of Sections 3 to 19 of Chapter III, none of which refers to the subject of transfer or restrictions on transfer. Those provisions relate to the calculation, declaration, acquisition and vesting of the excess vacant land. It is Chapter IV relates to the transfers of vacant lands and the restrictions thereon. Further, from the scheme of the Act, it is evident that the transfers of the vacant land were to be regulated by the specific provisions made in it. They were not to be left to be governed by*

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the unguided discretion of any authority including the State Government. The specific provisions for regulating the transfer have been incorporated in Sections 26 to 28 of the Act. Those provisions permit transfer of only vacant lands within the ceiling limit but without buildings, and of vacant lands in excess of the ceiling limit but with buildings thereon and subject to the conditions laid down there. *It cannot be suggested that in defiance of the said provisions, Section 20(1)(b) vests power in the State Government to sanction sales of excess vacant lands with or without building thereon.* Under Section 20(1)(b), the State Government can only exempt such excess vacant land from being acquired by it. *The Government cannot permit its transfer when the Act does not even by implication authorise it to do so but permits the transfer subject only to the conditions prescribed by Section 27.* The legislature cannot be presumed to have prescribed different conditions for transfer of the same or similar lands.

(paras 55 and 56)

"Fourthly, the exemption which is granted under Section 20(1)(b) has to be supported by reasons to be recorded in writing. This requirement also contemplates an exemption which is related to and prompted by the use or better use of the land. If it is the financial hardship which was under the contemplation of the legislature, there was nothing easier then to make a reference to the same in clause (b) itself and to lay down guidelines for the inquiry into such hardship".

(para 59)

"Lastly, if the power to exempt the land for sale is read in Section 20(1)(b) with such conditions as the State Government may choose to place and if either the State Government chooses not to place any conditions or to place such conditions as are inconsistent with the provisions of Sections 29 and 30, it would create two sets of lands - one where no restrictions are applicable to the construction thereon or only such restrictions as the State Government may choose to impose, and the other where the restrictions on constructions

A as provided by Sections 29 and 30 would be applicable".

"It is, therefore, more than clear that the provisions of Section 20(1)(b) do not permit the State Government to exempt vacant land in excess of the ceiling limit for the purposes of transfer".

B (paras 64 and 65)

In his concurring opinion, Singh, J. held as under :

C "I agree with brother Sawant, J. that it is not possible to hold that State Government can grant exemption under Section 20(1)(b) of the Act, to the holder of the excess vacant land, so that he may transfer the same in the manner he desires. The object of the Act being imposition of ceiling on vacant land in urban agglomerations and for acquisition of such land in excess of ceiling limit, with a view to prevent the concentration of urban land in the hands of a few persons, speculations and profiteering therein, will that object be not defeated if it held that power under Section 20(1) of the Act can be exercised by the State Government to exempt the excess vacant lands from the application of Chapter III of the Act, so that the holder thereof can transfer such lands ? Sub-section (1) of Section 20 is in two parts. The exemption under clause (a) of the said sub-section is to be granted in the public interest whereas under clause (b) the exemption is to be granted taking into consideration the "undue hardship" of the holder of the land in excess of the ceiling limit. Both the expressions "public interest" and "undue hardship" are comprehensive in nature. But at the same time, it is not easy even for courts to say as to whether under different circumstances the exemption was in the "public interest" or was necessary in the interest of the holder of the land because of his "undue hardship".

G Under Indian conditions expression "undue hardship" is normally related to economic hardship. That is why from time to time many holders of lands in excess of the ceiling limit, while claiming exemption under clause (b) put forth their bad economic condition and indebtedness to claim exemption along with permission to sell

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such excess lands. In the modern set-up many holders of such excess lands having undertaken commercial or industrial ventures with the help of the loans from the Banks and other financial institutions put the plea of repayment of such loans as undue hardship for claiming exemption under clause (b) of Section 20(1) aforesaid. How the holders of excess lands having incurred losses or having failed to discharge their debts can claim exemption on the ground of "undue hardship" in such a situation ? Section 4 while fixing the ceiling limit, under sub-section (3) takes notes of the fact that "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." But at the same time under sub-section (4) of Section 4 it has been specified that "if on or after the 17th day of February, 1975, but before the appointed day, any person has made any transfer by way of sale, mortgage, gift, lease or otherwise (other than a *bona fide* sale under a registered deed for valuable consideration) of any vacant land held by him and situated in such State to any other person, whether or not for consideration, then, for the purposes of calculating the extent of vacant land held by such person the land so transferred shall be taken into account without prejudice to the rights or interests of the transferee in the land so transferred". Similarly in Section 5 it has been provided that "where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person". When different provisions take into consideration the lands already transferred by the holder, (i) between the period February 17, 1975 and the appointed day; (ii) as well as between the period commencing from the appointed day and ending with the commencement of the Act, it should not be easily inferred that

A the framers of the Act desired that after that commencement of the Act while exercising the power of exemption under Section 20(1)(b) permission should be granted to holders of such excess lands to transfer such lands to third parties in order to meet their financial liabilities."

B (paras 66 and 67)

C "If the vacant lands which have vested in the State are also to be disposed of strictly keeping in view the spirit and object of the Act, how under Section 20(1)(b) exemption can be granted to holders of such lands to dispose of such lands in the manner they like, the persons they prefer, the price they dictate, for clearing their debts ? If it is conceded that indebtedness amounts to an undue hardship, then it may cover the debts incurred even after the commencement of the Act. The ceiling limit has been fixed by D Section 3 with reference to the date of the commencement of the Act, but exception can be granted till such excess lands vest in the State Government under sub-section (3) of Section 10, after publication of the notification, in terms of the said sub-section. Although it was not possible even for the framers of the Act to E exhaustively indicate as to what shall be deemed to be "undue hardship" within the meaning of Section 20(1)(b) but it would have been better, if it had been illustratively indicated, leaving the rest for the courts to decide."

F (Para 70)

The common conclusion of the two learned Judges of the Division Bench is as under :

G "For the reasons given by us above, we are of the view that the provisions of Section 20(1)(b) of the Act do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purposes of transferring the same.

H In view of our conclusion as above, it is not necessary to go into the further question, viz., if the State Government has such power, in which circumstances it can be exercised and whether

financial hardship such as the indebtedness of the landholder is sufficient to warrant such exemption or not and with respect to which date such indebtedness is to be assessed and in what manner, and whether in the present case, the said aspects of the indebtedness were investigated or properly investigated or not. For this very reason, we also do not propose to go into the other question regarding the *malafides* on the part of the authorities while granting permission to the firm to sell the land to the builders in question."

(paras 72 and 73)

It is the reconsideration of the decision in *S. Vasudeva* which is involved in this case. Every learned counsel appearing in the case including the learned Attorney General contended that the view taken in *S. Vasudeva* is incorrect and requires reconsideration. For this reason, we requested Shri A.N. Jayaram, learned Additional Solicitor General to appear as *amicus curiae* to support the decision so that every aspect involved could be raised for consideration by us. We are thankful to all the learned counsel including the *amicus curiae* for the invaluable assistance rendered by each of them.

We would first construe Section 20 of the Act to ascertain its meaning. It is obvious that there being no question of the constitutional validity of the provision, an attempt has to be made to ascertain the true meaning of every part of Section 20. Section 20 contains the power to exempt. It has two sub-sections. Sub-section (1) begins with the non-obstante clause "Notwithstanding anything contained in any of the foregoing provisions of this Chapter", after which occur clauses (a) and (b) therein which provide for exemption, "subject to such conditions, if any, as may be specified in the order", of "such vacant land from the provisions of this Chapter". The non-obstante clause clearly indicates that Section 20 overrides the foregoing provisions of Chapter III, that is, Section 3 to 19 of the Act. This is reaffirmed in clauses (a) and (b) wherein the concluding part in each is "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". The effect of the non-obstante

- A clause at the beginning of sub-section (1) and the concluding words in clauses (a) and (b) undoubtedly is that on exemption being granted subject to the conditions specified in the order granting the exemption, such vacant land is exempted from the provisions of Chapter III which contains Sections 3 to 24, in spite of the provisions in Sections 3 to 19.
- B There is no ambiguity in this behalf in sub-section (1). The plain language of the provision leaves no room for any ambiguity. Thus, if the logical outcome of the exemption granted subject to the specified conditions, is to lift the restriction on transfer of the exempted land, then it has to be accepted. However, the imposition of conditions attached to the exemption and the power of withdrawal of the exemption under Sub-section (2)
- C is intended to control the transfer in such cases. It has to be seen whether this plain construction of Section 20 must be abandoned on any settled rule of construction.

- D The condition precedent for granting exemption under clause (a) or clause (b) must, however, exist but on the exemption being granted thereunder, the logical consequence of the exemption as indicated must follow. It must follow that if the restriction on transfer of the vacant land in excess of the ceiling limit is only because of any provision contained
- E in Chapter III in Section 3 to 21, then the effect of the exemption under Section 20 is to lift even that embargo. Sub-section (2) gives in the State Government power to withdraw the exemption under clause (a) or clause (b) of sub-section (1) if it is satisfied in the manner indicated that any of the conditions subject to which the exemption has been granted is not complied with. The power of withdrawal of exemption in sub-section (2)
- F is to ensure full compliance of the conditions subject to which the exemption is granted. The restriction on transfer may be imposed by such a condition. In that event, the restriction is by virtue of the condition imposed and not because of any statutory prohibition in Chapter III of the Act.

- G Section 3 contains the restriction against holding any land in excess of the ceiling limit prescribed in Section 4, "except as otherwise provided in this Act". Section 20 is a provision in the Act which provides otherwise. It also begins with a non-obstante clause and, therefore, the restriction
- H in Section 3 is subject to Section 20. Section 5 relates to transfer of vacant

land in excess of the ceiling limit. Sub-section (3) of Section 5 contains the prohibition against transfer of the excess vacant land indicating that any such transfer made in contravention of the provision shall be deemed to be null and void. For the reason stated, because of the provision made in Section 20, an order of exemption made under Section 20 exempts the vacant land in excess of the ceiling limit from this restriction of transfer because the order of exemption exempts the excess vacant land from the provisions of Chapter III. Chapter IV containing Sections 25 to 30 relates to "Regulation of Transfer and Use of Urban Property" and is not attracted to determine the meaning of Section 20 and the consequence of the exemption granted thereunder to the excess vacant land. Section 10 relates to acquisition of vacant land in excess of ceiling limit. Sub-section (4) therein prohibits transfer of any excess vacant land during the period specified therein. Section 5(3) and Section 10(4) are to be read together as they relate to restrictions on transfer of vacant land in excess of the ceiling limit. However, both these provisions cease to apply on exemption being granted to vacant land in excess of the ceiling limit under Section 20 of the Act. The restriction, if any, on transfer of the exempted excess vacant land has now to be examined with reference to Section 20 itself.

Clause (a) of sub-section (1) of Section 20 empowers the State Government to grant the exemption if it is satisfied having regard to the relevant factors specified in the clause that it is necessary or expedient to the grant the exemption in the "public interest", subject to the conditions specified in the order. Clause (a) specifies certain relevant factors for the purpose of grant of exemption, namely, "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. Apart from the location of the excess vacant land and the purpose of its use, regard must be had to the other relevant factors, which is a question of fact in each case. However, these factors must indicate that the grant of exemption under clause (a) is necessary or expedient in the "public interest". The expression "public interest" has a legal connotation. The broad guidelines for grant of exemption under clause (a) are enacted in the provision. A safeguard is provided by requiring conditions

- A to be specified in the order subject to which the exemption is granted under clause (a). Even though there is no provision in clause (a) of the kind enacted thereafter in clause (b), yet the absence of such a proviso is inconsequential since the requirement of the expressly enacted proviso in clause (b) is implicit in the manner of exercise of the power under
- B clause (a). The requirement in clause (a) of making an order having regard to the specified relevant circumstances and specifying the conditions attached to the exemption, ensures that the decision is reached for cogent reasons which are placed on record in writing culminating in the making of the written order. There is no scope for the view that
- C exemption can be granted under clause (a) by an order specifying the conditions having regard to the specified relevant factors without recording the reasons for doing so in writing. Every State action must satisfy the rule of non-arbitrariness and, therefore, recording of reasons in writing for granting the exemption under clause (a) indicating that it is
- D necessary or expedient in the public interest so to do, is an essential requirement of valid exercise of power under clause (a). This is how clause (a) must be construed and understood.

We now come to clause (b) of sub-section (1) of Section 20 to which the decision in *S. Vasudeva* directly relates. The State

E Government's power to grant exemption under clause (b) depends on its satisfaction "that the application of the provisions of this Chapter would case *undue hardship* to such person". The manner of making the order specifying conditions to which it is subject, is the same as in clause (a). In clause (b), a proviso is also enacted as under :

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

- The requirement of this proviso in clause (b) is implicit in clause (a), as earlier indicated. Since the expression used in the proviso is "this
- G clause", the express application of the proviso has to be confined only to clause (b). However, this difference in the two clauses is merely of form and not of substance, as already indicated.

- The question is whether the expression "undue hardship" to such
- H person, that is, the person who holds vacant land in excess of the ceiling

limit is a nebulous phrase which permits an *uncharted course* for the exercise of the power under clause (b), or it requires invariably the imposition of restriction on transfer of the exempted land in spite of the clear meaning of Section 20 ? In *S. Vasudeva*, in substance, it has been held that economic hardship of the owner cannot fall within clause (b) to permit grant of exemption thereunder to relieve the owner from that hardship by granting exemption and permitting transfer of the exempted land in any case. The question is whether such a construction of the provision is warranted.

In clause (b), the power of the State Government to grant the exemption depends on its satisfaction "that the application of the provisions of this Chapter would cause undue hardship to such person". It is obvious that the undue hardship must be a direct consequence of the application of the provisions in Chapter III which provides for the restriction on the entitlement to hold any vacant land in excess of the ceiling limit prescribed and further prohibits the transfer of the excess vacant land which vests in the State Government in the manner provided in Section 10 and the owner is entitled only to the amount specified in Section 11 of the Act. It is clear that the "undue hardship" caused to the owner must be the direct consequence of the provisions contained in Chapter III of the Act which disentitles the owner to hold any vacant land in excess of the prescribed ceiling limit and entitles him only to the amount payable under Section 11 of the Act. It is also clear that the expression "undue hardship" indicates that the extent of hardship must be "undue" and not merely any hardship which is bound to result from the application of the provisions of Chapter III of the Act. The direct consequence of the application of the provisions of Chapter III is economic in nature because of the compulsory acquisition of the excess vacant land in lieu of the amount payable under Section 11, apart from deprivation of the benefit of the use of the acquired land. In such a situation, even though mere economic loss could not be intended to fall within the expression "undue hardship", yet the expression cannot be construed to exclude every adverse economic impact even if it be so great on that person as to amount to "undue hardship" to him. This would, however, be a question of fact in each case and unless the impact of

- A economic hardship caused to the owner is so great as to amount to "undue hardship" resulting from the application of the provisions of Chapter III of the Act, it would not fall within the ambit of clause (b). It appears that the enactment of the proviso in clause (b) is to emphasise the requirement that there must be strong reasons re-corded in writing to
- B justify the satisfaction of the State Government that the hardship caused by the application of the provisions of Chapter III to such person amounts to "undue hardship" so that the grant of exemption is judicious, and in case of a challenge can be judicially tested. Suppose the owner has to repay *bonafide* outstanding dues under earlier decrees of competent
- C courts and admittedly he has no other means of satisfying those decrees out of the amount payable under Section 11. It may be possible to grant exemption under clause (b) on the ground of undue hardship to enable him to satisfy the decree. This is only illustrative. In cases of exemption granted under clause (b), the possible misuse of the exemption can be
- D checked by imposition of suitable conditions attached to the exemption and the State Government's power under sub-section (2) to withdraw the exemption in case of breach of any condition is a further safeguard in this behalf.
- E Cases falling under clause (b) for grant of exemption may be rare, but it cannot be said that the enactment of clause (b) is an exercise in futility which does not permit grant of exemption in any case of undue hardship with permission also to transfer. Whether there is undue hardship of the kind envisaged therein, is a question of fact in each case.
- F The entire provision in clause (b) has to be given full effect and in a case falling within the ambit of clause (b), the effect of the order of exemption is to exempt such vacant land from the provisions of Chapter III and, therefore, also from the restriction on transfer of such land. To hold that any land exempted under clause (b) cannot be transferred irrespective of
- G the conditions of the exemption is to rewrite the provision which enacts that, subject to the conditions specified in the order of exemption, such vacant land would be exempt from the provisions of Chapter III, which means the exemption is also from provisions prohibiting transfer enacted in Chapter III. It is clear that any case which can legitimately fall within
- H clause (b) would be outside the ambit of clause (a), and clause (b) is

restricted in its application. Whether a case falls within the ambit of clause (b) is again a question of fact and if any dispute arises it will have to be tested judicially on the facts of that case. Similarly, the validity of the exercise of power of exemption under clause (b) would also depend on the facts of each case as it would in respect of clause (a). But that is different from saying that a case of undue economic hardship to the owner resulting from the application of the provisions of Chapter III can in no case fall under clause (b) to empower the State Government to grant exemption thereunder subject to appropriate conditions attached to the order of exemption.

The facts of the present case have also some relevance. In the present case, the restriction against transfer would operate to the extent of restraining transfer to the individual flat owners of their corresponding share in the land where a multi-storeyed building for group housing has been constructed. One of the objects of the enactment is to promote group housing with a view to provide housing accommodation to more people by promoting group housing schemes instead of the same area of land being utilised to house lesser number of people. A restriction on transfer of the exempted land operating in this manner, depriving the benefit in a group housing scheme to flat owners, does not promote the object of the legislation. This too is a relevant factor.

It follows from the above discussion that the conclusion reached in *S. Vasudeva (supra)*, which directly relates to Section 20(1)(b) of the Act, is not based on a correct construction of Section 20 of the Act. The application of that conclusion in relation to clause (a) of sub-section (1) of Section 20 by the Government of Karnataka is not justified even by that decision. The provisions of Section 20 of the Act and the effect of an exemption granted under clause (a) or clause (b) of sub-section (1) of Section 20, including the incidence of transfer, have to be understood in the manner indicated by us herein. For the reasons given by us, we regret our inability to concur with the contrary conclusion reached by the two learned judges in *S. Vasudeva*. The impugned order to the extent it is contrary to the view taken by us in this decision, cannot be upheld.

We may, however, add that in a case where a dispute arises the

- A validity of an exemption granted under Section 20 of the Act would depend on the existence of justifiable reasons recorded in writing for granting the exemption with the conditions attached to it. This decision is not to be construed as pronouncing on the validity of exemption and the permission to transfer, if any, even in this case, which, if disputed,
- B would have to be examined and adjudicated separately.

Consequently, the writ petition is decided in the above manner. No costs.

S.M.

Petn. disposed of.