SUPREME COURT OF INDIA

Her Highness Maharani Shantidevi P. Gaikwad

Vs.

Savjibhai Haribhai Patel

C.A.No.3530 of 1998

(S.P. Bharucha, N. Santosh Hegde and Y.K. Sabharwal JJ.)

21.03.2001

JUDGMENT

Y.K.SABHARWAL, J.

By judgment under challenge, the High Court modifying the decree passed by the trial court for specific performance in respect of land in question, directed that the plaintiff-respondent No.1 in this appeal, shall be entitled to enforce the said decree subject to the issue of final declaration under Section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (For short, the `ULC Act') by the authorities in accordance with law. In other respects, substantially the judgment and decree of the trial court was upheld.

The defendants are in appeal. In the appeal and other connected counter matters the main question is about the interpretation of certain provisions of the ULC Act. This Act, in the first instance, came into force on the date of its introduction in the Lok Sabha, i.e., 28th January, 1976 and covered the Union Territories and 11 states which had already passed the requisite resolution under Clause (1) of Article 252 of the Constitution. This provision of the Constitution empowers the Parliament to legislate for two or more States on any of the matters with respect to which it has no powers to make laws except as provided in Articles 249 and 250. The effect of passing of a resolution under clause (1) of Article 252 is that the Parliament, which has no power to legislate with respect to the matter which is the subject matter of the resolution, becomes entitled to legislate with respect to it. On the other hand, the State Legislature ceases to have a power to make a law relating to that matter. On 14th August, 1972 the Gujarat Assembly had resolved that the imposition of the ceiling on the holding of urban immovable property and acquisition of such property in excess of the ceiling and matters connected therewith or ancillary and incidental thereto should be regulated in the State of Gujarat by the Parliament by law.

The ULC Act received assent of the President on 17th February, 1976. The primary object and the purpose of the ULC Act is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the directive principles of Article 39(b) and (c).

Section 3 of the ULC Act provides that except as otherwise provided in the Act, on and from the commencement thereof, 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 Section 1. The expression `vacant land' is defined in Section 2(q) to mean land not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include certain categories as stated in the section. The term `urban land' is defined in Section 2(o) of the ULC Act which reads as under : "2.(o) "urban land" means,-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture. Explanation.- For the purpose of this clause and Cl.(q),-

(A) "agriculture" includes horticulture, but does not include,-
(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of live-stock, and

(v) such cultivation or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture : Provided that where on any land which is entered the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture :

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in Cl.(B) of this explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture."

The expression `master plan' is defined in Section 2(h). It reads:

"2.(h) "master plan", in relation to an area within an urban agglomeration or any part thereof, means

the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out."

Section 4 fixes different ceiling limits with respect to vacant land falling in categories A, B, C and D. By Section 4(1)(c), the ceiling limit placed on such land situated in an urban agglomeration falling within category C specified in Schedule I is fixed at 1500 square meters. Section 5 prohibits certain transfers of vacant land. Section 5(3), inter alia, provides that transfer made in contravention of the said provision shall be deemed to be null and void. Section 6 provides for the filing of statements before the competent authority by persons holding vacant land in excess of ceiling limit. Section 8 provides for preparation of draft statement as regards vacant land held in excess of ceiling limit. The particulars of the statement shall contain details as enumerated in sub-section (2). Sub-section (3) provides for service of the draft statement on the person concerned and also for calling from him objections to the draft statement. Sub-section (4) provides that the competent authority shall duly consider any objection received from such person and it shall, after giving such person a reasonable opportunity of being heard, pass such orders as it deems fit. After disposal of the objections, if any, received under sub-section (4) of Section 8, final statement is prepared under Section 9 of the Act. Section 10 provides for acquisition of vacant land in excess of the ceiling limit whereas Section 11 provides for the payment for such acquired land. Section 15 provides that where any person acquires by inheritance etc. any vacant land which, together with the vacant land, if any, already held by him, exceeds in aggregate the ceiling limit, such person will have to file a statement before the competent authority and the provisions of Sections 6 to 14 shall, so far as may be, apply to the statement filed under this section and to the vacant land held by such person in excess of the ceiling limit. Section 20 empowers the Statement Government to exempt any vacant land in public interest and also in cases where such exemption is considered to be necessary to avoid undue hardship to any person.

Section 21 of the ULC Act provides for cases where excess land will not to be treated as excess. The said section reads thus:

"21. Excess vacant land not to be treated as excess in certain cases.-(1) Notwithstanding anything contained in any of the foregoing 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 plinth area not exceeding eighty square meters) 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 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. (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 as opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this chapter shall apply accordingly."

Section 23 provides for disposal of vacant land acquired under the Act.

The land in Vadodara falls in Category C. The ceiling limit is 1500 square meters. On 14th September, 1976 a declaration in Form No.(1) under Section 6(1) was filed by Fatehsinhrao Gaekwad declaring 242 acres as vacant land under the ULC Act.

From facts it is evident that the transaction in question was entered into because of enactment of the ULC Act. An agreement dated 24th March, 1977 was entered into between the Fatehsinhrao P. Gaekwad as the owner and Savjibhai Haribhai Patel as the licensee in respect of a portion of property known an Laxmi Vilas Palace Estate, Vadodara. For sake of convenience hereinafter Fatehsinhrao P. Gaekwad has been referred as `original defendant No.1' and Savjibhai Haribhai Patel as `plaintiff'. The Memorandum of Agreement (for short, `the agreement') recites that the plaintiff has evolved a scheme for constructing dwelling units for the accommodation of the weaker sections of the society as envisaged by Section 21(1) of the ULC Act. The said units are to be constructed on a portion of land of the owner's property - Laxmi Vilas Palace Estate, save and except Laxmi Vilas Palace, Moti Baug Palace and Nazar Baug Palace. The area under these three palaces which is to be excluded is said to be approximately 100 acres - equivalent to about 4,00,000 square meters. The total land of the property is about 707 acres. A Power of Attorney (For short, `the power') was also executed on 24th March, 1977 by original defendant no.1 in favour of the plaintiff. It, inter alia, stipulates that the power is irrevocable.

Five schemes under Section 21 of the ULC Act were filed before the competent authority for the construction of the dwelling units for accommodation of the weaker sections of the society. The first scheme was filed under the signatures of original defendant No.1 on 15th March 1977. It stipulated construction of 64,306 dwelling units at the proposed cost of about 89,00,000,000/-. It is not in dispute that even this scheme was evolved by the plaintiff. The plaintiff as power of attorney holder of original defendant No.1 submitted a second scheme on 5th October, 1977 for construction of 38,375 dwelling units at the estimated cost of about Rs.78,38,00,000/-. On 6th February, 1978 another scheme was submitted by the plaintiff which stipulated construction of 35,660 dwelling units at the proposed cost of Rs.39,59,00,000/-. On 5/8th January, 1979 yet another scheme (4th scheme) for construction of 25,482 dwelling units at the estimated cost of about Rs.48,35,00,000/- was submitted. Finally, a scheme (5th scheme) proposing construction of 4,356 dwelling units at the estimated cost of about Rs.13,37,00,000/- was submitted on 29th January, 1979 by the plaintiff as a power of attorney holder of original defendant No.1.

Soon after the submission of the scheme dated 6th February, 1978, original defendant No.1 executed on 10th February, 1978 an affidavit-cum-declaration. This document, inter alia, declares that all terms and conditions contained in Para 1 to 19 of the agreement were agreed to and approved by original defendant No.1 and that the agreement was executed by him voluntarily while in sound state of mind and consciousness and is in no circumstances liable to be cancelled. It also reiterates the execution of the irrevocable Power dated 24th March, 1977 authorising the plaintiff to administer the property of the declarant and to put the housing scheme for constructing the houses for the weaker sections on the said property and to make necessary additions and alterations in the scheme and to modify the same consistent with the ULC Act and the guidelines issued thereunder:

On 23rd February, 1980, original defendant No.1 through his advocate sent a notice to the plaintiff, inter alia, stating that the agreement and the power dated 24th March, 1977 and affidavit-cum-declaration dated 10th February, 1978 were illegal and inoperative and cancelling the agreement and the power. A letter was also sent to the competent authority requesting the said authority not to proceed with any application in respect of the property under Section 21 of the ULC Act which may

either be pending or may be made in future by the plaintiff.

Under the aforesaid circumstances, a suit was filed by the plaintiff against original defendant no.1 on 7th April, 1980 seeking declaration that cancellation of the agreement and the power was illegal and also praying for decree of specific performance of the agreement besides seeking injunction and other consequential reliefs. The suit was originally filed against Fatehsinhrao Gaekwad as the only defendant. Later, however, the specified authority, the competent authority and the State of Gujarat were impleaded as defendants to the suit. Original defendant No.1 died during the pendency of the suit and his legal representatives were brought on record.

By judgment and decree dated 12th March, 1992 the trial court decreed the suit declaring the agreement and the power and affidavit-cum-declaration as valid and subsisting documents binding on original defendant no.1 and on his legal representatives. A decree for specific performance of the agreement was also granted in favour of the plaintiff. The defendants were ordered to specifically perform the agreement and were restrained from committing breach of the agreement, power of attorney and obstructing the plaintiff from acting as constituted attorney of defendant no.1 and from taking any action regarding the scheme.

In the first appeal filed in the High Court challenging the judgment and decree of the trial court, three main questions considered were; (1) Whether the agreement could be rescinded; power of attorney could be revoked and affidavit-cum-declaration ceased to be operative or not. (2) Whether it is a case for grant of relief of specific performance and; (3) If specific performance was to be ordered, whether any conditions were required to be imposed.

The High Court by impugned judgment dated 15th June, 1998 held that the main purpose for which the agency was created was the execution of the scheme for constructing dwelling units for weaker sections of the society and with that end in view the plaintiff had to prepare the scheme and get sanction from the authority in accordance with law and invoking Section 202 of the Contract Act, the High Court concluded that it is a case of agency coupled with interest. Answering the first question, the High Court held that the agreement could not be rescinded, power of attorney could not be revoked and affidavit-cum-declaration did not cease to be operative. The second question was also answered in favour of the plaintiff holding that the compensation in money was not adequate relief and the plaintiff was entitled to specific performance of the agreement.

In respect of the third question the High Court held that the decree for specific performance could be enforced subject to conditions but for the said purpose it was not necessary to remand or reverse the decree and it could be modified imposing the condition. It, therefore, held that the plaintiff was entitled to enforce the specific performance as granted by the trial court subject to the condition of final declaration under Section 21 of the ULC Act being issued with regard to the land in question by the specified authority, the competent authority and the State of Gujarat in accordance with law. The authorities were directed to take a final decision either way with regard to the issue of the declaration under Section 21 of the ULC Act at the earliest possible opportunity but in no case later than 15th August, 1998. On 20th June, 1998, an order was passed by the Competent Authority under Section 21(1) of the ULC Act approving the fifth scheme dated 29th January, 1979 and declaring that the plaintiff is entitled to hold as a power of attorney holder the land admeasuring 23,91,125 sq.mtrs. (approximately 598 acres) as additional vacant land for the purpose of Chapter III of the ULC Act and has right to make maximum construction as admissible under the rules. The order dated 20th June, 1998 was challenged in a writ petition filed in the High Court of Gujarat. The

said writ petition has been withdrawn to this Court to be heard and disposed of along with this appeal. The ULC Act has since been repealed during the pendency of this appeal by Repealing Act No.15 of 1999. The Repealing Act was passed by the Parliament on 22nd March, 1999 and was adopted by a Resolution passed by the legislature of State of Gujarat under Clause (2) of Article 252 of the Constitution, on 30th March, 1999. Reverting to facts, admittedly possession of the land in question was with original defendant No.1 when the suit was filed. It is not the case of the plaintiff that the possession was delivered to him either when the agreement was entered into or till date. The plaintiff is not in possession of the land. Declaration under Section 21 of the ULC Act had not been made when the suit was filed. It has been made after the passing of the impugned judgment and pursuant to directions contained therein. The said declaration, as already stated, is the subject matter of challenge in the transferred writ petition. One of the questions which falls for our determination is as to what rights the plaintiff is entitled to enforce prior to issue of declaration under Section 21 of the ULC Act and before the plaintiff is put into possession. Is the plaintiff entitled to seek specific performance of the agreement or is he entitled to sue for only damages? Now, with regard to documents executed between the plaintiff and original defendant No.1 the agreement and power of attorney were executed on the same day, i.e., 24th March, 1977. The affidavit-cum- declaration was executed by original defendant No.1 on 10th February, 1978. The plaintiff was to undertake the development of the property in the manner provided in the agreement in conformity with Section 21 read with rules and guidelines issued under the ULC Act. The original defendant No.1, as stipulated in the agreement, agreed that the plaintiff shall construct dwelling units for the accommodation of the weaker sections of the society on his land. The delivery of possession by original defendant No.1 to the plaintiff is contemplated by clause (4). The construction as per scheme is contemplated under clause (13). Clause (17) deals with rescission of the agreement by either party. The said three clauses read as under:

"(4) On the Competent Authority making a declaration that the land of the said property is not in excess of the Ceiling area and on his granting permission to the owner to continue to hold the land of the said property for purpose of the scheme above referred to be prepared by the Licensee of the Second Part, the owner of the First Part shall deliver possession of the said property to the Licensee of the Second Part for the execution of the said scheme and construction of the buildings under the said scheme.

xxx xxx xxx

(13) On the delivery of possession of the said property to him as stated in clause (4) above, the Licensee of the Second Part shall be entitled to construct dwelling units and other building in accordance with the scheme.

(17) This agreement shall not be unilaterally rescinded by either party after the Licensee of the Second Part has been put in possession of the said property."

In S. Chattanatha Karayalar v. The Central Bank of India & Ors. [(1965) 3 SCR 318], the observations of Moulton, L.J. in Manks v. Whitley were quoted and are relevant while dealing with the question of interpretation of several deeds which form part of same transaction. The observations read as follows:

"Where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is

executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole."

The agreement and power contemplate two stages for the parties to take steps required of them. Certain steps are required to be taken by the plaintiff prior to the grant of declaration under Section 21 and before he is put into possession and certain steps after such grant and on being put into possession. The plaintiff is required to prepare a scheme in conformity with Section 21 at his cost and to file on behalf of the owner a declaration in regard to the said property before the competent authority within the prescribed period. The original defendant No.1 is required to sign relevant papers, applications, plans, drawings etc. as and when required by the plaintiff for the purpose of declaration and inquiries contemplated by Section 21(1) of the ULC Act. On making of declaration, as per clause (4), original defendant No.1 is required to deliver possession of the land to the plaintiff for execution of the scheme and construction in terms thereof. The plaintiff is authorised to recover the price of the land as may be determined by the competent authority and/or the State Government from their prospective members in the scheme; and is also entitled to receive deposits from the members and obtain loans from banks and other financial institutions and/or individuals for financing the scheme. Likewise, in the power of attorney also, the plaintiff has been authorised to take certain steps on behalf of the owner before the grant of declaration under Section 21 and being put into possession and certain steps after being put into possession. It is correct, as contended by Mr. Dhanuka, that these documents form part of same transaction. These documents have to be read together with a view to find out the manifest intention of the parties. It may, however, be noticed that affidavit-cum-declaration dated 10th February, 1988 was executed only by original defendant No.1 for the purpose of filing it before the competent authority and it reiterates the agreement and the power. By execution of this document it was neither intended to confer any additional rights in favour of the plaintiff nor to place any restriction on original defendant no.1 which was not envisaged by the agreement.

The disputes between the parties arose before the scheme was sanctioned and the plaintiff was put into possession and the agreement and the power were terminated in terms of notice dated 23rd February, 1980 sent on behalf of original defendant No.1. At this stage the suit was filed. In the plaint, the plaintiff states that it is necessary for protection and preservation of his rights that defendant No.1 be restrained from parting with possession of the property. The first prayer of the plaintiff is that it may be declared that the Memorandum of agreement dated 24th March, 1977, the irrevocable power of attorney dated 24th March, 1977 and the affidavit-cum-declaration dated 10th February, 1978 are valid, subsisting and binding on the Defendant No.1. There is no prayer in the plaint seeking a mandatory injunction against the authorities directing them to sanction the scheme. It has not been and cannot be disputed that in the event of non-grant of the scheme by the authorities the agreement would have fallen through. Agreement does not contemplate that title in the land would pass on to the plaintiff. Further even the title in the superstructure, i.e., dwelling units to be constructed was to remain with the plaintiff only till such time the same is transferred by him in favour of the allottees or their society. It is not disputed that the plaintiff could not retain any dwelling unit for his own benefit.

It is common ground that the main purpose for which the agreement was entered into between the parties was the construction of residential houses for the weaker sections of the society in term of Section 21 of the ULC Act. Mr. Nariman contended on behalf of the appellants that under the applicable master plan the suit land is reserved for `open space' and residential houses cannot be

constructed thereupon and, therefore, the agreement is incapable of specific performance. On the other hand, Mr. Dhanuka contended that the applicable master plan is the one that existed on the date when excess vacant land first acquired the character of such land, i.e., on enforcement of the ULC Act and according to the said master plan the land is reserved for residential houses. Further contention of learned counsel is that assuming modification of the master plan is required to be considered, even then there is no impediment in the implementation of the scheme inasmuch as there does not exist absolute bar for construction of residential houses. It is submitted that as a matter of fact, the declaration dated 20th June, 1998 provides for obtaining of all requisite permissions whatever, if any, which may be required before commencing the actual construction or work. Further, it is contended, in case of inconsistencies, if any, between the provisions of Town Planning laws and the ULC Act, provisions of the ULC Act will prevail in view of overriding provisions as contained in Section 42 of the ULC Act. In the draft development plan dated 29th February, 1963 prepared under the Bombay Town Planning Act, 1954, the entire area of Laxmi Vilas Palace Estate (except the block of land along the river Vishwamitri and on north and sough of the Zoo Road) was left undesignated. This excepted part of block of land was designated for agricultural use. The State Government on 21st September, 1976 issued a notification under Section 10(1) of the aforesaid Act sanctioning the draft development plan subject to the modifications, inter alia, that the part of the area of Laxmi Vilas Palace Compound which had been left undesignated in the development plan shall be designated for residential use under Section 7(a) of the said Act and the block of land situated along the river Vishwamitri and on north and south of the Zoo Road passing through Laxmi Vilas Palace which had been designated for agricultural use shall be released from the said designation and the land so released shall be reserved for recreational purposes under Section 7(b) of the Act. A further notification dated 17th May, 1975 under Section 10A(1) of the Act was issued by the Government of Gujarat proposing to modify the development plan dated 21st September, 1970 providing that the lands of Laxmi Vilas Palace shown as residential zone in the sanctioned development plan Vadodara shall be released from the said use and the lands thus released shall be reserved for open space under Section 7(b) of the Act as shown in the plan. A notification dated 16th January, 1978 issued by the Gujarat Government in exercise of powers conferred under Section 10A of the Bombay Town Planning Act, 1954 sanctioning the variations proposed by the notification dated 17th May, 1975 to Final Development Plan dated 21st September, 1970 notified 15th March, 1978 as the date from which the variations would come into force. By clause (23) of the Schedule appended to the said notification, it was provided that the land of Laxmi Vilas Palace shown as residential zone in the sanctioned development plan of Vadodara shall be released from the said use and the lands thus released shall be reserved for open space under Section 7(b) of the said Act. Mr. Dhanuka is, however, right in contending that the notification dated 16th January, 1978 never became operative for the reason that before the said notification came into force, the Bombay Town Planning Act, 1954 was repealed w.e.f. 1st February, 1978 and the said notification was not saved under Section 124(2) of the Gujarat Town Planning and Urban Development Act, 1976, which came into force w.e.f. 1st February, 1978.

If the position had rested in terms of what has been stated above, the consequences may have been different. It was, however, not so. Under the aforesaid Gujarat Act, on 17th May, 1979, draft development plan under Section 13 was published wherein the suit land was designated as `open space, sport stadium, Bus terminus and court'. During the pendency of the suit, on 25th January, 1984, the final development plan prepared by the Vadodara Urban Development Authority issued under the Gujarat Act came into effect. As per the said final development plan, the land in question is reserved for open space etc. as stated in draft development plan dated 17th May, 1979.

The Government of Gujarat issued a circular dated 1st April, 1978 regarding implementation of guidelines issued under Section 21 of the Act and amended ULC Rules. One of the salient feature of the said circular was that the scheme shall be in consistence with the Master plan. It also provided that the scheme submitted should adhere to the prevailing municipal Regulations, Town Planning requirements and other statutory requirements. If any development is required as per these regulations, then the scheme should include such development. It also provided that permissible density and other regulations like minimum size, common plot, minimum height, specification and construction of stories etc. will also have to be adhered to. It further provided that the permission to undertake the scheme will be given only in residential zones as indicated in the Development Plan.

The Gujarat Government in supersession of the earlier circular dated 1st April, 1978 issued fresh guidelines on 22nd May, 1979 regarding the implementation of schemes under Section 21 of the ULC Act. These guidelines, inter alia, stipulated that the area of 50% of the total house shall not increase 40 square meters and the plinth area and the remaining building plinth area shall not exceed 80 square meters. The construction work under the scheme should be in consonance with the provisions of the Master plan and should be over within 5 years from the date of the sanction under Section 21(1) granted by the competent authority. The units constructed under the scheme shall be allotted to the weaker sections of the society by way of sale or hire-purchase or on hire basis. It also provided that the construction shall be made in accordance with the Town Planning Regulation, Municipal Regulations, Building Regulations etc. The competent officer shall grant the scheme subject to the building regulation, margin of the municipal corporation, panchayat etc. According to the guidelines, the specified officer and the competent officer are required to ensure that the conditions are complied with. The guidelines stipulated the withdrawal of exemption in case of violation of any of the conditions. It is of significance to note that it was specifically provided that at the time of sanctioning the scheme, the competent authority shall ensure that the land in respect of which the scheme is submitted is not placed in reservation. As already stated, the land in question is shown as open space in the draft development plan of Vadodara.

The High Court by impugned judgment, as already noticed, modified the decree of the trial court and directed that the decree for specific performance shall be operative only if declaration is issued under Section 21 of the ULC Act. On the question whether construction of residential units on the suit land was permissible or not, the High Court following the decision of this Court in Atia Mohammadi Begum (Smt.) v. State of U.P. & Ors. [(1993) 2 SCC 546] held that the construction of residential units cannot be said to be forbidden because of subsequent change in the master plan and for considering whether residential units can be constructed or not, the relevant master plan to be considered is the one which was in existence on 17th February, 1976, when the ULC Act was enforced. The High Court has held that:

"...the construction of residential units on such land cannot be said to be forbidden by any law merely because in the subsequent master plan it has been shown to be open space. The rights of the parties were crystallised on the date of the commencement of the Act and such rights have to remain unaffected by the subsequent events."

The High Court has further held:

"Atia Mohammadi begum (supra) cannot be ignored or cannot be held to be inapplicable to the facts of the present case on any of the grounds raised by the learned counsel for the defendant appellant and the matter has to be examined on the basis of the position as it was in existence with reference

to the master plan on the date when the Ceiling Act came into force on 17th February, 1976, the date on which the rights of the parties had become crystallised and, therefore, at that time if the land in question could be utilised for residential purposes, the mere change in the development plans subsequently would not create any legal impediment against the use of the same for the same land purpose, which too is a public purpose and it would not amount to any contravention of law, if such land is permitted to be used for raising the construction of dwelling units for the weaker sections of the society. In the facts and circumstances of this case, therefore, it cannot be said that, the MOA was no more capable of being enforced and that the concerned authorities could not sanction the scheme as such even if they wanted to sanction and the plaintiff respondent could claim to enforce the MOA."

The competent authority in the order dated 20th June, 1998 approving the scheme dated 29th January, 1979 for construction of 4358 dwelling units says that the ULC Act has superior powers over the concerned rules of the State and, therefore, on the date the land was declared as vacant, it was in residential zone and for the purposes of Section 21, it cannot be taken that the land is meant for open space. The competent authority further says that the land would permanently remain in the residential zone. In Atia Begum's case it was held:

"The `master plan' defined in Section 2(h) and referred in the definition of `urban land' in Section 2(o), including Explanation (C) therein, is obviously a master plan prepared and in existence at the time of commencement of the Act when by virtue of Section 3 of the Act, right of the holder of the land under the Act get crystallised and extinguish his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provisions in the Act is merely for quantification, and to effectuate the rights and liabilities which have crystallised at the time of commencement of the Act. The contrary view taken on the construction made of these provisions by the High Court cannot, therefore, be accepted."

The facts of Atia Begum's case show that it is a case which relates to quantification of vacant land. The present case is not of quantification of vacant land. Atia Begum was not concerned with the question of Town Planning Laws and the schemes under Section 21 of the ULC Act which is one of the principle question with which we are concerned here. It was not held in Atia Begum that planning and development which is a state subject would stand frozen on 17th February, 1976. The said decision cannot be read as laying down the law that for all and every purpose, the master plan as in existence on 17th February, 1976 will freeze. We leave open the question whether even for the purpose of quantification of vacant land that has become such after 17th February, 1976, would the position in regard to the master plan as existing on 17th February, 1976 remain unaltered or not. In the present case, on this aspect, it is not necessary to examine the correctness of the decision in Atia Begum's case. It deserves to be emphasised that by passing a resolution under clause (1) of Article 252, the State Legislature only surrendered the right to legislate in respect of laws relating to the imposition of a ceiling on the holding of urban immovable property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto in favour of the Parliament by law. It was only a limited surrender in terms of the said resolution. The aspect of Town Planning and Development by the State has not been surrendered. The imposition of ceiling on urban immovable property is an independent subject. The primary object of the Act, as already noticed, was to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. Basically one uniform policy is fully understandable on such a subject and that is

why on this aspect there was surrender by most of states in favour of the Parliament. The town planning, however, is altogether an independent and different subject. It is a State subject. It differs from State to State. It cannot be said that by surrendering its right to legislate on the aspect of imposition of ceiling on urban immovable property, the State Legislature also surrendered the right of development and town planning. These are essentially the rights within the purview of the State Government. The object of the ULC Act is not to sanction or permit development in the States contrary to their statutory town planning laws. The development and the town planning is an ongoing process. It goes on changing from time to time depending upon the local needs. The definition of `master plan' contemplates the plan prepared under any law `for the time being in force' or `in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out'. The definition does not contemplate a static master plan. For claiming the benefit of Section 21, the construction of the dwelling units for the accommodation of the weaker sections of the society on the land has to be if permissible as per relevant master plan when the scheme is considered by the authorities for sanction. If the land use requires the land to be used for some other purpose, it cannot be said that to grant benefit under Section 21, the land should be permitted to be used for construction of residential units. It was not intended and could never have been intended that Section 21 will take away the State power of town planning or on coming into force of the ULC Act, the Master Plan would freeze. The Rules made under the ULC Act further make the position quite clear. Rule 11-A was introduced and brought into force by amendment of Urban Land (Ceiling and Regulation) Rules on 19th December, 1977. Rule 11-A reads as under : "11-A. Terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Section 21.-The terms and conditions subject to which the competent authority may permit a person to continue to hold vacant land, in excess of the ceiling limit, under sub-section (1) of Section 21, for the construction of dwelling units for the accommodation of the weaker sections of the society in accordance with any scheme shall be the terms and conditions specified in Schedule 1-A."

Schedule 1-A sets out terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Section 21. The said conditions also make it clear that the construction of dwelling units has to be consistent with the master plan. Condition No.1 of Schedule 1-A reads thus:

1. The construction of dwelling units for the accommodation of the weaker sections of the society in the vacant land, in relation to which the declaration of the competent authority is sought or made under sub-section (1) of Section 21 shall be consistent with the Master Plan, if any, for the urban agglomeration or that part of the urban agglomeration wherein such land is situated or, if there is no Master Plan for the urban agglomeration or such part thereof such directions as the State Government may give in relation to land used in the urban agglomeration, or such part have regard to the planned development of the urban agglomeration or any part thereof."

Various guidelines issued from time to time also show that the master plan to be considered is the one in existence at the relevant time when the scheme under Section 21 is considered by the authorities. As already noticed, the circular dated 22nd May, 1979 stipulates that at the time of sanctioning the scheme, the competent authority shall ensure that the land in respect of which the scheme is permitted is not proposed to be acquired for any public purpose or it is not placed in reservation and that the construction under the sanctioned scheme shall be done in accordance with town planning regulations etc.

In view of above position, the High Court erroneously relying on Atia Begum held that the user as provided in the master plan as in existence on 17th February, 1976 alone is to be seen and the subsequent change in the master plan reserving the land for open space is of no consequence. The view of the competent authority in the order dated 20th June, 1998 that the land would permanently remain in residential zone is also erroneous. Further, the competent authority erroneously assumed, it seems, that the High Court directed it to grant sanction under Section 21 of the ULC Act. The High Court only directed the competent authority to decide the matter according to law. Atia Begum's case cannot be held to have laid down a proposition that use as provided in the master Plan as in existence on 17th February, 1976 will remain unchanged. The relevant master plan is the one which is prevalent when the scheme under Section 21 is taken up for consideration by the authorities and for this purpose neither the date of filing the scheme nor the date of enforcement of the ULC Act is relevant. The development will not freeze on the enforcement of the ULC Act or presentation of the scheme.

In the present case, in the draft development plan of 1979 which was finalised during the pendency of the suit, the land in question is reserved for open space etc. It cannot be doubted that the agreement had been entered into between the parties mainly and rather only with the object of construction of residential houses under the scheme under Section 21 of the ULC Act for accommodation of weaker sections of the society. In May 1979, it became evident that it will not be possible to construct residential houses in view of what was provided in the master plan. There is no substance in the contention that assuming the prescribed land use is `open space', still there will be no impediment in the implementation of scheme in as much as there is no absolute bar for construction of residential houses. This is not the basis on which the competent authority had considered the matter. The agreement is clearly incapable of being specifically enforced. Under these circumstances, there is no question of any inconsistency and thus Section 42 of the ULC Act cannot have any applicability. We may also consider another contention urged on behalf of the appellants which is based on repeal of the ULC Act. Section 3 of the repealing Act deals with the saving of certain acts despite the repeal. That section reads as under:

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

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

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

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

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

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

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

A bare reading of the aforesaid provision shows that it is not applicable to Section 21 of the ULC Act. Orders sanctioning schemes under Section 21 have not been saved by Section 3. The contention urged on behalf of the appellants and also the State Government is that the schemes under Section 21 are not saved by Section 3 of the ULC Act. Admittedly, the land has not vested with the Government under Section 10(3). Possession continues to be with the appellants. Mr. Bhatt, learned counsel for the State Government as well for the authorities has argued that the necessary consequence of the repeal, on the facts of the present case, is that the land would be free from any constraints to which it may have been subjected under the ULC Act. Mr. Dhanuka, however, contended that Section 3 of the repealing Act is not exhaustive. Relying upon Section 6 of the General Clauses Act, learned counsel submits that the repeal does not affect rights accrued in favour of the plaintiff under the ULC Act. Section 6 of the General Clauses Act, inter alia, provides that where any Central Act repeals any enactment, unless a different intention appears, the repeal shall not affect anything duly done or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

Reliance has been placed by the learned counsel on decision in the case of Bansidhar & Ors. v. State of Rajasthan & Ors. [(1989) 2 SCR 152] in support of the contention that provision of Section 3 of the Repealing Act is not exhaustive. Para 13 on which reliance has been placed reads as under:

"A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in I.T. Commissioner, U.P. v. Shah Sadiq & Sons, AIR 1987 SC 1217 at 1221:

"..... In other words whatever rights are expressly saved by the `savings' provisions stand saved. But, that does not mean that rights which are not saved by the `savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 10(22).6(c), General Clauses Act, 1897 .....".

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of sec.6(6A) and Chapter III-B of `1955 Act' so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant's contention (a) is, in our opinion, insubstantial."

We have no difficulty in accepting the contention that a repealing statute is not exhaustive and does not automatically extinguish the accrued rights unless taken away expressly. The question in the present case, however, is whether any rights under the ULC Act had accrued in favour of the plaintiff before its repeal. It is only then the question of the saving of the said rights would arise.

To consider the aforesaid contention, it has again to be kept in view that the sanction of the scheme for construction of residential dwelling units was contrary to the prescribed land use in the master plan which had reserved the land for being used as open space. It cannot be held, on the facts of the case, that any rights accrued in favour of the plaintiff only on execution of the agreement. Assuming any rights accrued in favour of the plaintiff on passing of order dated 20th June, 1998, the same would fall on our view that the said order dated 20th June, 1998 was passed erroneously. There is no

substance in the contention that any rights had accrued in favour of the plaintiff which have the protection of Section 6 of the General Clauses Act.

We may consider another argument which is in respect of construction of the clause (17) of the agreement. Mr. Nariman contended that the agreement could be unilaterally determined under that clause. The contention is that clause (17) is to be read with clause (4) of the agreement and thus read, there is clearly an express provision in the agreement giving rights to parties to unilaterally terminate the agreement and that it was terminated by original defendant No.1 by serving notice dated 23rd February, 1980 on the plaintiff. Further contention is that to such an agreement, clause (c) of Section 14(1) of the Specific Relief Act, 1963 applies. A contract which is in its nature determinable cannot be specifically enforced [Section 14(1)(c)]. Mr. Dhanuka, on the other hand, contended that the contract is not determinable and, therefore, Section 14(1) has no relevance and also that to the agreement in question, clause (c) of Section 14(3) is applicable and, therefore, notwithstanding clause (c) of Section 14(1), contract is specifically enforceable. Section 14(3), inter alia, provides that notwithstanding clause (c) of sub-section (1), the court may enforce specific performance where the suit is for the enforcement of a contract for the construction of any building or the execution of any work on land. A bare reading of clause (c) of Section 14(3) shows that it has no applicability. The building contract stipulated by clause (c) of Section 14(3) is not the type of the contract with which we are concerned in the present case. Now, let us examine whether to the agreement in question, clause (c) of sub-section (1) of Section 14 is applicable or not. Clause (17) of the agreement states that the agreement shall not be unilaterally rescinded by either party after the plaintiff has been put in possession of the property. Clause (4) stipulates the stage at which the plaintiff is required to be put in possession. It is undisputed that the plaintiff was never put into possession. In fact, that stage did not arise because the scheme itself was sanctioned only after the judgment under appeal and pursuant to directions contained in the said judgment. In this appeal, an order of stay was passed in favour of the appellant and consequently the possession has remained with the appellants. The High Court in the impugned judgment has, however, held that the agreement could not be terminated as it constitutes a contract of agency coupled with interest to which Section 202 of the Indian Contract Act, 1872 applies. Mr. Nariman, however, relying on clauses (17) and (4) of the agreement and Section 9 of the Indian Contract Act, contended that there is an express provision giving right to the parties to terminate the agreement and that the said right was exercised before delivery of possession to the plaintiff and there is thus no question of applicability of Section 202 of the Indian Contract Act. On the other the hand, the contention of Mr. Dhanuka is that, at best, clause (17) can be said to be silent on the question of termination of agreement before delivery of possession. The contention of learned counsel is that there is no positive term in the agreement stipulating that before delivery of possession, the agreement can be unilaterally terminated by the parties. The agreement [clause (17)] is said to be in negative form. The contention of learned counsel further is that it could never have been intended that the original defendant No.1 can unilaterally terminate the agreement as the plaintiff under the agreement had to take various steps and to spend huge amounts for preparation of scheme and for pursuing the same. Therefore, the plaintiff could have never agreed to a term that such an agreement may be unilaterally terminated. Learned counsel also relies upon Section 202 of the Indian Contract Act and submits that it is a case of an agency in favour of the plaintiff coupled with the subject matter of agency, which in the present case, is the right to work out the scheme and to construct the dwelling units irrespective of the repeal or amendment of the ULC Act which aspect was also duly taken note of in the agreement. The High Court held that it was a case of agency coupled with interest to which Section 202 applied and for its view the High Court also sought support from clause (17) observing that express clause to terminate the agreement was absent.

We are unable to agree with the approach of the High Court and find substance in the contention of Mr. Nariman. Clause (17) is in the nature of express stipulation that before delivery of possession, the contract could be unilaterally terminated. When there is no ambiguity in the clause, the question of intendment is immaterial. The fact that the clause is couched in a negative form is of no consequence. The intention is clear from the plain language of clause (17) of the agreement. In the case in hand, Section 202 has no applicability. It is not a case of agency coupled with interest. No interest can be said to have been created on account of plaintiff being permitted to prepare the scheme and take ancillary steps. Plaintiff could not get possession before declaration under Section 21 of the ULC Act. Mr. Dhanuka also contended that the agreement is not determinable is clear from the conduct of original defendant No.1 and also what he stated in the affidavit-cum-declaration dated 10th February, 1978 about agreement not being terminable. The contention of learned counsel is that what original defendant No.1 has said in the said document is his interpreting statement which is admissible in law and this interpreting statement and also his conduct, clearly shows that agreement was not terminable by original defendant No.1. Strong reliance has been placed on Godhra Electricity Co. Ltd. & Anr. v. The State of Gujarat & Anr. [(1975) 2 SCR 42] in particular to the following passage:

"In the process of interpretation of the terms of a contract, the court can frequently get great assistance from the interpreting statements made by the parties themselves or from their conduct in rendering or in receiving performance under it. Parties can, by mutual agreement, make their own contracts; they can also by mutual agreement, remake them. The process of practical interpretation and application, however, is not regarded by the parties as a remaking of the contract; nor do the courts so regard it. Instead, it is merely a further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the courts should not give great weight to these further expressions by the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American Courts receive subsequent actions as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation in his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidenced by the other party's express assent thereto, performances that indicate it, or by saying nothing when he knows that the first party is acting on reliance upon the interpretation."

There is no merit in the contention of Mr. Dhanuka. The decision relied upon by Mr. Dhanuka is not applicable to unambiguous documents. That is clear from the decision itself. In respect of unambiguous documents, Odgers' Construction of Deeds and Statutes, 5th Edn. By G. Dworkin at pages 118-119, has been quoted in the aforesaid decision as under:

"The question involved is this : Is the fact that the parties to a document, and particularly to a contract, have interpreted its terms in a particular way and have been in the habit of acting on the document in accordance with that interpretation, any admissible guide to the construction of the document? In the case of an unambiguous document, the answer is `No'."

It has been held that "in the case of an ambiguous instrument, there is no reason why subsequent interpreting statement should be inadmissible". In the present case we are concerned with an unambiguous document and, therefore, we have to go by its plain meaning. Further, affidavit-cum-declaration only reiterated what was contained in the agreement. It did not enlarge the agreement. It did not substitute any clause in the agreement. It was not a document executed between the parties.

It was a document executed by original defendant No.1 alone for the purposes of filing it before the competent authority. Clause 17 of the agreement does not call for any other interpretation except that the contract could be unilaterally rescinded before delivery of possession.

Mr. Dhanuka also contended that if clause (17) is construed to mean that power had been conferred on the parties to cancel the contract unilaterally at their wish, then such a power of termination has to be exercised for good and reasonable cause otherwise unilateral power of cancellation would have to be treated as void and ineffective in law. Reliance has been placed by the learned counsel on National Fertilizers v. Puran Chand Nangia [(2000) 8 SCC 343 at 351 paragraph 23] which reads thus:

"23. We may also state that under the general law of contracts, once the contract is entered into, any clause giving absolute power to one party to override or modify the terms of the contract at his sweet will or to cancel the contract - even if the opposite party is not in breach, will amount to interfering with the integrity of the contract (per Rajamanner, C.J. in Maddala Thathiah v. Union of India [(AIR 1957 Mad 82]. On appeal to this Court, in that case, in Union of India v. Maddala Thathaiah [((1964) 3 SCR 774] the conclusion was upheld on other grounds. The said judgment of the Madras High Court was considered again in Central Bank of India Ltd. v. Hartfort Fire Insurance Co. Ltd. [(AIR 1965 SC 1288] but the principle enunciated by Rajamanner C.J. was not differed from (See the discussion on this aspect in Mulla's Contract Act, (10th Edn.) pp 371-72, under Section 31 of the Indian Contract Act.)"

We have perused the decision of Madras High Court referred to in the aforequoted passage as also the two decisions of this Court and Mulla's Contract Act. With utmost respect, we are unable to agree with the broad proposition that the absolute power of termination would be void. Referring to Madras case and two cases of this Court, Mulla says that correctness of Madras case was doubted. We reproduce as to what has been stated in the Contract Act by Mulla at pages 371-372. It reads:

"If two parties stipulate that the contract shall be void upon the happening of an event over which neither party shall have any contract then the contract is void on the happening of that event. But where the contract is that the contract shall be void on the happening of an event which one or either of them can bring about then the blameworthy party cannot take advantage of that stipulation because to do so would be to permit him to take advantage of his own wrong. This principle was accepted in Australia but with this modification that in both cases the contract is voidable and not void in one case and voidable in the other, because the construction cannot differ according to events. Some Indian courts held that a clause in a contract giving one of the parties the option to cancel the contract for any reason whether adequate and valid or not confers an absolute and arbitrary power on one of the parties to a contract and is, therefore, void and unenforceable. Therefore, a clause in a contract of supply of goods to the Railway Administration conferring on the Railway Administration the right to cancel the contract "at any stage during the tenure of the contract without calling upon the outstandings on the unexpired portion of the contract" was held to be a clause under which it was open to one of the parties, without assigning any reason valid or otherwise, to say that it was not enforceable. It conferred an absolute and arbitrary power on one of the parties to cancel the contract.

On appeal against the Madras High Court decision, the Supreme Court upheld the order passed but held that the clause authorising cancellation applied only where a formal order had not been placed for supply of the goods contracted for at which stage no legal contract can be said to have been

made and so the cancellation made in the Railway case could not be said to have been covered by the clause. The Madras & Bombay cases were reviewed by the Supreme Court in a subsequent judgment and distinguished and the correctness of the Madras case also doubted. And the Supreme Court held that where the language of a clause in a contract is clear it must be interpreted according to its language. In that case, a clause in a insurance policy authorising both parties to cancel the policy at will was upheld. It is submitted that the two Supreme Court judgments show that such clauses are valid and enforceable except where, as in the Madras Railway case, the contract is an executed contract in that as formal order of supply had already been made."

In our view, the aforesaid passage has been misread in National Fertilizer's case. Further in The Central Bank of India Ltd., Amritsar v. The Hartford Fire Insurance Co. Ltd. [AIR 1965 SC 1288], decisions of Madras High Court and of this Court {Union of India v. Maddala Thathaiah [((1964) 3 SCR 774]} were considered. The question in that case was whether the insurance policy had been terminated. This Court was concerned with a clause in an insurance policy which, inter alia, provided that the Policy can be terminated at the option of the Insurance Company. The contention of the respondent-Insurance company was that it had power under the said clause to terminate the contract at will and it had duly exercised that power. The appellant's contention was that it was implied in the clause that termination could only be for a reasonable cause which did not exist in that case. It was further contended that if this interpretation of implied term is not accepted, the clause giving such right to terminate at will without reasonable cause must be treated as void and ignored. This Court said:

"The contention of the appellant is based on the interpretation of clause 10. Now it is commonplace that it is the court's duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly. If those words are clear, there is very little that the court has to do. The court must give effect to the plain meaning of the words however it may dislike the result. We have earlier set out clause 10 and we find no difficulty or doubt as to the meaning of the language there used. Indeed the language is the plainest. The clause says "This insurance may be terminated at any time at the request of the Insured", and "The Insurance may also at any time be terminated at the instance of the Company". There are all the words of the clause that matter for the present purpose. The words "at any time" can only mean "at any time the party concerned likes". Shortly put clause 10 says "Either party may at its will terminate the policy". No other meaning of the words used is conceivable."

Regarding validity of the clause which gave power as aforesaid, this Court held : "The next argument was that clause 10 was bad as it gave more option to the insurer than to the assured. We express no opinion as to whether the clause would be bad if it did so, for we are clear in our mind that it did not. The argument that it did was based on the use of the word `request' in the case of a termination by the assured and `option' in the case of a termination by the insurer. It was said that the word `request' implied that the request had to be accepted by the insurer before there was a termination whereas the word `option' indicated that the termination would be by an act of the insurer alone. We are unable to agree that such is the meaning of the word `request'. In our view, the clause means that the intimation by the assured to terminate the policy would bring it to an end without more, for the clause does not say that the termination shall take effect only when the assured's request has been accepted by the insurer.

Lastly, it was said that the termination of the contract by the letter of August 7, 1947 was a

conditional termination and as the condition was impossible of performance in the circumstances prevailing, there was in fact no termination. That condition, it was said, was the removal of the goods from Bakarwana Bazar, Amritsar to a safer locality. We have nothing to show that the condition, if it was such, was impossible of performance. However, that may be, there is no question of any condition. The letter clearly terminated the policy. It gave an option to the assured to keep the policy on its feet if it did something. Further we do not think that it can be said that if a party has a right at will to terminate a contract, the imposition by him of a condition, however hard, on failure to fulfil which the termination was to take effect, would make the termination illegal, for the party affected was not entitled even to the benefit of a difficult condition. The agreement was that the power to terminate could be exercised without more and that is what we think was done in this case."

(Emphasis has been supplied by us)

From the aforesaid, it is clear that this court did not accept the contention that the clause in the insurance policy which gave absolute right to the insurance company was void and had to be ignored. The termination as per the term in the insurance policy was upheld. Under general law of contracts any clause giving absolute power to one party to cancel the contract does not amount to interfering with the integrity of the contract. The acceptance of the argument regarding invalidity of contract on the ground that it gives absolute power to the parties to terminate the agreement would also amount to interfering with the rights of the parties to freely enter into the contracts. A contract cannot be held to be void only on this ground. Such a broad proposition of law that a term in a contract giving absolute right to the parties to cancel the contract, is itself enough to void it cannot be accepted. In view of above discussion, we find force in the contention that the agreement in question was terminable before delivery of possession; it was so determined and to the agreement clause (c) of Section 14(1) of the Specific Relief Act, 1963 applies. Therefore, agreement cannot be specifically be enforced.

It was further contended by Mr. Nariman that the agreement is not specifically enforceable also in view of clause (d) of sub- section (1) of Section 14 of the Specific Relief Act, 1963. This provision provides that a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise, is not specifically enforceable. There is considerable force in the submission of learned counsel. Even the High Court had substantially proceeded on the basis that the implementation of the scheme may require supervision but held that it can be supervised by the competent authority. Having regard to the nature of the scheme and the facts and circumstances of the case, to our mind it is clear that the performance of the contract involves continuous supervision which is not possible for the court. After repeal, such continuous supervision cannot be directed to be undertaken by the competent authority as such an authority is now non-existent.

The grant of decree for specific performance is a matter of discretion under Section 20 of the Specific Relief Act, 1963. The court is not bound to grant such relief merely because it is lawful to do so but the discretion is not required to be exercised arbitrarily. It is to be exercised on sound and settled judicial princples. One of the grounds on which the Court may decline to decree specific performance is where it would be inequitable to enforce specific performance. The present is clearly such a case. It would be wholly inequitable to enforce specific performance for (i) residential houses for weaker sections of the society cannot be constructed in view of the existing master plan and, thus, no benefit can be given to the said section of the society; (ii) In any case, it is extremely difficult, if not impossible, to continuously supervise and monitor the construction and thereafter

allotment of such houses; (iii) the decree is likely to result in uncalled for bonanza to the plaintiff; (iv) patent illegality of order dated 20th June, 1998; (v) absence of law or any authority to determine excess vacant land after construction of 4356 dwelling units; and (vi) agreement does not contemplate the transfer of nearly 600 acres of land in favour of the plaintiff for construction of 4356 units for which land required is about 65 acres. The object of the act was to prevent concentration of urban land in hands of few and also to prevent speculation and profiteering therein. The object of Section 21 is to benefit weaker sections of the society and not the owners. If none of these objects can be achieved, which is the factual position, it would be inequitable to still maintain decree for specific performance.

The contentions urged on behalf of the plaintiff by their learned counsel that in view of clauses (6) and (7) of the agreement, despite repeal of the ULC Act, plaintiff would be entitled to specifically enforce the agreement has also no merit. The acceptance of the contention will mean that original defendant No.1 before delivery of possession had no right to terminate the agreement. This contention placed on behalf of the plaintiff has already been rejected by us. Reading clauses (6) and (7) harmoniously with clauses (4) and (17), the contention of learned counsel cannot be accepted. In view of these conclusions, the contention of Mr. Dhanuka that reputation of the plaintiff as a builder would be adversely affect if houses are not built is hardly of any relevance. In any case, in this regard we may refer to the decision of this Court in K. Narendra v. Riviera Apartments (P) Ltd. [(1999) 5 SCC 77], a case in which this Court examined an agreement which contemplated several sanctions and clearances that were not within the power of the parties. The result was that the feasibility of a multi-storeyed complex as proposed and planned became impracticable. In that case too the seller continued to remain in possession. Under these circumstances, it was held that the contract though valid at the time when it was entered, is engrossed in such circumstances that the performance thereof cannot be secured with precision and that the discretionary jurisdiction to decree the specific performance ought not to be exercised. Dealing with the question of reputation of the purchaser as a builder being at stake, this Court held that `this is hardly a consideration which can weight against the several circumstances.... If a multi- storeyed complex cannot come up on the suit property, the respondent's plans are going to fail in any case'. The position in the present case is quite similar. Under the scheme as postulated by the ULC Act, it is not permissible to construct dwelling units for the residence of the weaker sections of the society.

It also deserves to be noticed that, strictly speaking, it is not a contract for transfer of the property but is a contract to carry out the scheme which is incapable of being carried out at this stage on account of reservation in the Master plan and also repeal of the ULC Act. It was not and cannot be the case of the plaintiff that in case the scheme had been carried out, he would have enjoyed the property. He would have only enjoyed the specified profits. At best the plaintiff could pray for damages. In the plaint, it was asserted that Rs.16,75,000/- were spent on execution and/or implementation of the scheme. The plaintiff, for reasons best known to him, has not sought a decree for any damages, even as an alternate relief.

Before concluding, we may place on record that during the course of hearing, a statement was made by the appellants that in the event of the appeal and the transferred writ petition being allowed, they will unconditionally offer in writing 66 acres of land to the Government of Gujarat. The said statement reads as under:

1. The Appellant through his counsel states : that even in the event of this Hon'ble Court allowing the appeal and Transferred Writ Petition:

(a) the Appellant will unconditionally offer in writing 66 acres of land (unenroached and unencumbered earmarked in the plan attached) to the Government of Gujarat by way of gift or for acquisition (on a compensation of Rs.1) for the specific purpose of constructing residential dwelling units (permissible under VUDA or LIG Schemes of the Gujarat Housing Board) at the cost of Government for low-income groups.

(b) if such offer is not accepted within a period of four months from the date of offer the appellant will undertake the responsibility of utilising the said land (i.e. to say approximately 65.95 acres) of land for constructing thereon dwelling units (if permitted under the relevant Town Planning Laws) for housing persons in the low-income group and letting or selling the same to such persons in low income group on no profit no loss basis : the total cost of such a project will be got certified by a reputed Chartered Accountant."

The appellant would be bound by the aforesaid undertaking which we accept.

Before parting, we wish to express, to put it mildly, our deep anguish on the manner in which the specified authority, competent authority and the State of Gujarat has been conducting itself before the trial Court, High Court and this Court. Different stands at different points of time have been taken sometimes supporting the plaintiff and sometimes the defendants.

For the aforesaid reasons, we allow the appeal, set aside the impugned judgment and dismiss the suit of the plaintiff. Transfer Case (C) No.64 of 1998 and SLP (C) No.1692 of 1999 are also disposed of in terms of this judgment. Parties to bear their own costs.