SUPREME COURT OF INDIA

Ganga Retreat & Towers Ltd.

Vs.

State of Rajasthan

With CA No. 5189 and CA No. 5190 of 2001

(R.C. Lahoti and Ashok Bhan JJ.)

19.12.2003

JUDGEMENT

BHAN, J.

Aggrieved by the judgment and order of the Division Bench of Rajasthan at Jaipur in setting side the order of the Single Judge, thereby, dismissing the writ petition filed by the appellants, the present appeals have been filed. All the three appeals have been filed by the same set of appellants and against the same judgment. As three separate appeals were filed by the respondents before the Division Bench against the order of the Single Judge the appellants have filed three separate appeals. They are taken up for disposal by a common order.

The State of Rajasthan (hereinafter referred to as "the Respondent No. 1") decided to dispose of by public auction two prime properties situated in the heart of Jaipur City. One of the properties was known as Dr. Helligs Bungalow, near Khasa Kothi State Hotel, M.I. Road, Jaipur and the other was a plot of land situated near Khasa Kothi known as the site of Food Craft Institute building on M.I. Road, Jaipur. In the present case we are concerned with the first property only. Respondent No. 1

issued advertisement for auction of Dr. Helligs Bungalow, which was scheduled to be held, according to the auction notification on 21.12.1994. In the advertisement the property was described as free hold, ceiling free, vacant, crest jewel property known as Dr. Helligs Bungalow (10,400 sq. yards). The permitted use of the property was shown as hotel/commercial complex/hotel cum-commercial complex. The terms and conditions for the auction were also provided in the advertisement. Condition Nos. 7,8,9,10,12 and 13 relate to the controversies involved in this litigation and are reproduced hereunder:

"7. Land measuring 1,400 sq. mtr. shall be auctioned with the condition that the successful bidder shall have to surrender a strip of land measuring 6.2 sq. mtr. for the road widening/parking of commercial vehicle free of charges. He will be given the benefit in terms of FAR, which is calculated on the basis of original plot size.

8. Other parameters of this plot size have been approved by JDA and are given as under:

Coverage 62.5% F.A.R. F.A.R. 2.0 No of floors B + G + 4 Maximum permissible 16.76 Mtrs. Height Parking provision IPCU per 200 sq. mtr. of built up area Set backs Front towards 15 mtrs. Station Front towards roads.

Front towards 15 mtrs. Circuit House

7.5 mtr. Atal Ban (After leaving 6.2 Mtrs. for future road widening/ parking commercial vehicle.

Rear 6 Mtrs. as indicated in the plan.

9. The construction work on the plot should be commenced with in one year from the date of handing over of possession of the land and the building. Building construction should be done within 3 years. If the party wants further extension beyond three years that shall be given against the penalty of Rs. 20,000/- (Rupees twenty thousand) p.m. but in no case the period shall be extended more than 2 years.

10. After the full amount due against the plot as deposited by the purchaser the Patta of the plot will be issued in favour of the purchaser which would enable him to start construction on the plot in accordance to the approved plan and under architectural control as per specifications given by JDA.

12. The land shall be used for construction of Hotel/Commercial Complex/Hotel cum commercial complex only. If he uses this property for other than this purpose, he would have to seek prior permission from the Government of Rajasthan against payment of charges as the Government may fix thereof.

13. The purchaser shall have to strictly abide by the parameters and set backs as laid down in condition No. 8. Any violation of these terms and conditions shall lead to the forfeiture of his right on this property and hence the property shall stand reverted to the Government without payment of any compensation for the land and the building thereupon." M/s Ganga Retreat and Towers Ltd., a company registered under the Indian Companies Act, 1956 (formerly known as M/s Lok Hotels and Resorts Limited), the appellants herein were declared as the successful bidder in the auction held. The appellants' bid of Rs. 19,56,76,000/- being the highest was accepted and the property was knocked down in their favour.

The successful bidder, as per term No. 5, was required to pay the sale consideration, as per the following schedule:- "i) 10% of the final bid on the spot in cash or through Demand Draft in favour of Director of Estate, Rajsthan, Jaipur (the amount of Rs. 20.00 lacs deposited as earnest money shall be allowed to be adjusted against this deposit of 10%).

ii) 15% amount of the final bid will have to be deposited within 15 days from the date of acceptance, letter sent to the successful bidder by the Government of Rajathan.

iii) 75% amount of the final bid will have to be deposited by successful bidder within 60 days of the notice for deposition of the full and final amount of the bid amount which the party shall be informed by the Government of Rajasthan.

Failure to deposit it the aforesaid amount at any state, i.e., (I), (ii) and (iii) above will result in forfeiture of the amount already deposited by the successful bidder and hence cancellation of the bid." The payment was not made as per schedule given above. The entire sale consideration amounting to Rs. 19,56,76,000/- was paid on 16.5.1995.

As there was a delay in making the payment as per schedule the appellants accepted their liability to pay interest for the delayed payment. A sum of Rs. 30,01,273/- towards interest for delayed payment was made. Last installment of Rs. 83,562.72 P. towards the amount of interest was paid by demand draft dated 21.08.1995. Total amount paid was Rs. 19,86,77,273/-. The cost and expenses for registration of patta, stamp duty and all other incidental expenses were also to be borne by the

purchaser. Sale deed could not be executed in favour of the appellants as the appellants did not furnish the stamp papers. After repeated letters including the letter dated 21.05.1996 the appellants submitted the requisite stamp duty and registration charges amounting to Rs. 1,19,25,720/- for execution of the sale deed on 18.12.1996.

Thereafter, the sale deed was executed and registered on 7.01.1997 and immediately thereafter possession was delivered to the appellants. Term of the auction notice that Floor Area Ratio (for short "FAR") would be 2.00 was also repeated in the sale deed.

The appellants thereafter applied for sanction of plans for putting up construction on the property and the Planning Cell of the Jaipur Municipal Corporation (for short "the JMC") demanded a deposit of Rs. 1,48,79,887/- towards map approval charges. These charges were deposited under protest by the appellants. According to the appellants the JMC had not framed any Rules in this regard and that the charges were exorbitant and without authority of law. The appellants also handed over 6.2 meters width of strip land to the JMC of old Dr. Helligs bungalow as per their letter dated 2.5.1997 (Annexure IV).

On 11.4.1997, the Additional Director and Competent authority under the Urban Land Ceiling and Regulation Act, 1976 (for short "the Ceiling Act") issued a notice to the appellants under Section 38 of the Ceiling Act, alleging that the appellants were holding land in excess of ceiling limits and had not filed the return as required under Section 6 (1) read with Section 15 of the Act. The appellants replied to the aforesaid notice on 17.4.1997 pointing out that the Respondent No. 1 had sold the property as free from ceiling limit and therefore, there was no need to file a return. As the explanation was not accepted by the competent authority, the appellants applied for exemption under Section 20 of the Act. The appellants also submitted the return in the prescribed form with a covering letter dated 19.4.1997. On 3.5.1997 the Competent Authority issued a notice under Section 8(3) of the Ceiling Act enclosing a draft statement as to vacant land.

Simultaneously, application filed under Section 20 of the Act for exemption was processed. On 11.8.1997, the competent authority granted exemption to the appellants on certain conditions. It was stipulated that the exemption was being granted subject to the terms and conditions stated in the conveyance deed dated 7.1.1997 and that it could be used only for the purposes set out in the conveyance deed. It was also stipulated that for any construction on the land, plans will have to be submitted for sanction to the JMC and all the standards regarding construction shall be applicable as per the norms of the JMC. Another condition put was that the land would not be transferred or conveyed in any manner to any one without prior permission of the State Government except offering it as security to the financial institutions for raising loan. As this clause has given rise to the controversy on which lengthy arguments have been addressed, the same is reproduced below for reference:

"5) That the sale, gift or any transfer of the plot will not be closed without prior approval of the State Government. But mortgaging the property to financial institution for taking loan without parting with the possession the State Government will have objection." On 24.6.1996 the Jaipur Development Authority (for short "the JDA") revised its bye-laws. The revised building Bye-laws came into force w.e.f.

24.6.1996 in which parameters in respect of commercial hotels and commercial plots were amended. Vide Regulation No. 9.3.3 of the 1996 Regulations the FAR was reduced to 1.75 instead of 2.00 as provided by the Bye-laws of 1989.

Appellants submitted their building plans as per FAR 2.00. JMC on 22.2.1997 approved the building plans subject to FAR 1.75 only as per 1996 Bye-laws as against FAR 2.0 permitted by the auction notice and the conveyance deed. On 10.10.97, after getting the land exempted from ceiling, the Company wrote to the JMC to re-examine the case and allow FAR 2.0 on the appellants' re-submitting the plans for approval or in the alternative to advise the General Administration Department to refund the proportionate amount consequent upon the reduction in the FAR.

On 28.10.1997, the appellants wrote a letter to the Minister for Urban Development, Government of Rajasthan, for intervening in the appellants' favour in their dispute with the JMC which was not allowing FAR 2.0 as promised in the terms of auction and the sale deed. Appellants also wrote a letter to the Chief Minister on 17.11.1997 for intervention in the matter and for ordering the Secretary, Urban Development and Housing to clear the plans with FAR 2.0 as a special case urgently. On 18.12.1997 again, a communication was addressed by the appellants to the Chief Secretary giving the following three proposals:

"(A) to instruct Jaipur Nagar Nigam to allow F.A.R. 2 as per Auction conditions. As F.A.R. 2 existed before the new Byelaws came into force in September, 1996. Plus to pay interest at 18% p.a. for delayed period to clear our plans as compensation. The delayed period may be calculated from the day we deposited our plans for approval to the day the plans are approved. We have paid interest on account of delay from our side.

(B) To refund the whole amount with interest, the registration cost, the maps approval charges, the L.B.T. charges etc.

(C) To refund proportionate charges on all above for the reduced F.A.R. from 2 to 1.75 i.e. 12.5% all above charges." It was also stated in this letter that if no response was received to the proposals in writing within fifteen days, the appellants shall go to the court of law for redressal of their grievances. On 22.10.1997 the Chief Secretary wrote to the Urban Development and Housing

Department recommending the case of the appellants for grant of FAR 2.0 instead of FAR 1.75 in compliance with the conditions of the auction. As no decision was taken, the appellants filed S.B.Civil Writ Petition No. 195/98 against the State of Rajasthan, Jaipur Development Authority, Jaipur Municipal Corporation amongst others, who were officers of the State Government, claiming the following reliefs.

"In the premises aforesaid the writ petition of the petitioner may kindly be allowed with costs and by an appropriate writ, order or direction, the Hon'ble Court may be pleased to:

(a) declare that on account of the reasons set out herein and the order dated 9th September, 1997 passed by the Municipal Corporation, referring to approve maps upto 2.0 FAR the contract of sale of the property described in this petition vide sale deed dated 7th Jan., 1997 stands frustrated or has become impossible of performance or invalid rendering the sale deed dated 7th Jan., 1997 void.

(b) declare that the Regulations of 1996 were not applicable to the petitioner and the same cannot be enforced against the petitioner by the Municipal Corporation, Jaipur or JDA in view of the sale deed dated 7th Jan., 1997.

(c) declare that the sale deed being a government grant was not required to be registered and no stamp duty was required to be paid and consequently the petitioner is entitled to the refund of the stamp duty and the registration charges.

(d) direct the respondents jointly and severally to pay to the petitioner a sum of Rs.5102.94 lakhs alongwith future interest @ 18.5% per annum.

Any other appropriate writ order or direction which may be considered just and proper in the facts and circumstances of the case may kindly also be issued in favour of the Petitioners." On issuance of notice the respondents put in appearance and filed their replies. Apart from contesting on merits, preliminary objections were raised regarding maintainability of the petition on the ground that declaratory relief claimed could not be granted in the writ jurisdiction. It was also contended that the reliefs claimed pertained to the concluded contract with regard to the sale of property culminated by execution of the sale deed.

That the relief being claimed was based on breach of contract and the writ petition was not the appropriate remedy for redressal of such grievances. No petition could be entertained for either specifically enforcing the contract or/and for compensation for breach of contract. That the highly

disputed questions of fact were involved which could not be adjudicated without adducing evidence. Such disputed questions of fact could not be adjudicated by the High Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

Learned Single Judge rejected the preliminary objections regarding the maintainability of the petition and declared that the sale deed was statutory in nature. It was a grant as well. The rights and the obligations as incorporated in the sale deed were statutory in character as regards the rights and obligation of the parties. No change could be effected thereafter on any pretext whatsoever in regard to the reducing the FAR from 2.0 to 1.75. In the auction notice property was described as free hold and ceiling free. The action of the State in not acting upon the assurance given amounted to a fraud, which invalidated the sale. Consequently, the learned Single Judge declared that the auction sale held on 21.12.1994 and the consequent sale deed dated 7.1.1997 were null and void having no legal sanctity. The contract was frustrated. All consequent actions taken by either of the parties pursuant to the auction and the sale deed were invalidated and the appellants were declared entitled to be restituted to the original position as it existed prior to the date of auction and execution of the sale deed. Consequently, the respondents were directed to refund to the appellants, the payments received by the respective respondents, pursuant to any term of the auction dated 21.12.1994 which included the entire sale considerations as mentioned in the sale deed dated 7.1.1997 along with all other payments made to the respondents by the appellants towards stamp duty, registration charges, land and building taxes etc. with interest @ 18% per annum calculated from the date of receipt of such amount by the respective respondents till the date of actual refund to the appellants. It was also directed that the JMC shall refund all payments made by the appellants towards building map approval charges, additional constructed area charges, licence fee, inspection charges, etc. along with interest @ 18% per annum from the date of receipt of said payments by the appellants till the date of actual refund to the appellants. As regards the damages claimed by the appellants for the incomplete construction which by that time had been raised upto 9 stories (which was held to be under compulsion), it was directed that it would be advisable that the State of Rajasthan constitutes an expert Committee consisting of the Chief Engineer PWD and Director, Town Planning Department or any other officer having expertise to assess the value at the PWD rates and value the construction on the site and after such valuation made by the Committee, the amount assessed be refunded to the appellants within forty five days of the assessment.

As directed by the learned Single Judge, a Valuation Committee was constituted by the State Government and the value of the construction as per PWD rates was assessed at Rs. 9,97,51,003/-. From this amount, 10% was deducted by the Committee as contractor's profit, which was included in the analysis of BSR rates. After deducting 10% amount, i.e., Rs. 99,75,100/- amount payable to the appellants representing the construction on the land was worked out by the Committee at 8,97,75,903/-.

Aggrieved by the aforesaid order of the learned Single Judge, appeals were preferred before the Division Bench which were accepted. It was held that the sale of land by way of auction was neither statutory nor by way of grant. Consequently, it was held that the rights and obligations incorporated in the sale deed were not statutory in character. That it was a completed contract in which highly

disputed questions of fact were involved which could not be adjudicated upon by the High Court in exercise of its writ jurisdiction. It was left open to the appellants to seek their remedy in the Civil Court, if so advised.

At the outset, we may state that Shri Shanti Bhushan, learned senior counsel appearing for the appellants fairly conceded that he would not be able to support the findings recorded by the Single Judge to the effect that the rights and obligations incorporated in the sale deed were statutory in character or that the sale of land by Respondent No. 1 to the appellants were by way of grant. He accepted the findings to the contrary recorded by the Division Bench in this regard.

Before taking up the contentions raised on the merits by the counsel for the parties we would like to briefly refer to the question regarding the maintainability of the writ petition in contractual matters. Challenging the finding recorded by the Division Bench regarding the maintainability of the writ petition it was contended on behalf of the appellants that there is no absolute bar to the maintainability of the writ petition in contractual matters.

Maintainability or otherwise in contractual matters is but an aspect of the existence of equally efficacious alternative remedy. The power to entertain a writ petition under Article 226 even in contractual matters is plenary but actual exercise of jurisdiction in a particular case would be discretionary and such discretion in turn is exercisable on sound judicial principles. This Court in appropriate cases has entertained the writ petitions in contractual matters and interfered to grant the relief deemed fit keeping in view the facts of the case. No cause can be adjudicated without reference to some facts and mere enquiry into facts, as those emerging from a limited set of admitted facts does not in any manner act as a bar to the exercise of writ jurisdiction. In the present case the entire case centers around roughly 25 undisputed documents. The question of leading oral evidence does not arise and no intricate interpretation of documents or complicated inquiry into facts is warranted. So far as the issue as to assessment of value of the structure standing on the property is concerned the same stands covered by a detailed factual report quantifying the precise valuation. Based on the inferences to be drawn from documents, the questions of what relief, if any, this Court considers fit to grant, and how, if at all, such relief is to be tailored to suit the facts and circumstances of the case, are to be answered.

As against this, Mr. Harish Salve, learned senior counsel appearing for the respondent-State submitted that the contention that contractual disputes can be raised in proceedings under Article 226 is misconceived.

The remedy under Article 226 is a remedy in public law, and, therefore in a remedy by way of judicial review, what is amenable to challenge is the decision making process and not the decision itself. According to him, the actions of the Government in contractual field, in rare cases, may be questioned as being arbitrary or unreasonable being violative of Article 14 of the Constitution but

that does not mean that the Court is required to examine a completed contract of sale of property being void or otherwise. That the points involved in the writ petition are highly disputed questions of fact which cannot be decided without taking evidence and therefore the Division Bench was right in non-suiting the appellants on the ground of non- maintainability of the writ petition and leaving it open to the appellants to work out their remedy in the Civil Court.

Although prima facie we are in agreement with the view taken by the High Court that the petition involves disputed questions of fact in relation to a completed contract of sale of land which cannot be adequately adjudicated upon in exercise of writ jurisdiction, but, despite holding that the disputed questions of fact are not be adjudicated in exercise of writ jurisdiction, yet we are not inclined, in the exercise of power under Article 136 of the Constitution to dismiss the appeal on this account at this stage because that is likely to result in the miscarriage of justice on account of lapse of time which may now result in the foreclosure of all other remedies which could be availed of by the appellants in the ordinary course. At the present stage of the proceedings the alternative remedy of filing the suit would not be efficacious. This Court in a number of cases, even after recording a finding that the writ petition was not maintainable and that the High Court ought not to have entertained it, has declined to interfere on the ground of non- maintainability where it is found, that the matter has been pending for long and/or the High Court has already entertained the writ petition [albeit wrongly] and/or when to send the writ petitioner back would cause grave delay or harassment. In such cases this Court has proceeded to decide the dispute on merits. For this, we may refer to a recent decision of this Court in 2000 (6) SCC 293, in which this Court observed:

"12. Ordinarily, in view of the aforesaid conclusions on the first contention, we would have allowed the appeal and directed dismissal of the writ petition (OP No. 283 of 1995) without examining the second contention. However, despite holding that the disputes in question could not be agitated in a writ petition and thus the High Court wrongly assumed jurisdiction in the facts of the case, yet we are not inclined in the exercise of our power under Article 136 of the Constitution, to dismiss the writ petition of the contractor at this stage because that is likely to result in the miscarriage of justice on account of lapse of time which may now result in the foreclosure of all other remedies which could otherwise be availed of by the contractor in the ordinary course. Those remedies are not efficacious at the present stage and, therefore, in view of the peculiar circumstances of the case, we have examined the second contention and the factors which weighed with the High Court in granting relief. " Keeping in view the peculiar facts of the case and the fact that it will not be a sound exercise of judicial discretion to relegate the petitioners to recourse to the alternate remedy of civil suit belatedly at the present stage, we proceed to examine the dispute on merits .

The case of the appellants are that the conveyance deed is liable to be cancelled and set aside on the ground that it is vitiated by misrepresentations made on behalf of the Respondent, on account of which the appellants were wrongly induced to enter into the contract and that the conveyance was entered into by mistake. The misrepresentation alleged is on account of :

(a) the FAR of the property being 1.75 whereas it was described as 2.00 in the auction notice as well as conveyance deed;

and (b) the property was, in the auction notice, described as "free hold and ceiling free" whereas the appellants were compelled to apply for exemption from land ceiling which procedure involved some delay. While giving exemption from the provisions of Chapter III of the Ceiling Act a condition was put that the plot would not be "sold, gifted or transferred" without prior approval of the State Government which was onerous as well as contrary to the auction notice.

The land in dispute was not ceiling free as was represented in the auction notice and that the condition put in the exemption letter that the property would not be alienated without prior permission of the Government made the property not to be free hold as well.

Elaborating the first point, it was submitted that the appellants purchased the property on a representation made to them, that the FAR was

2.0 and the property was free hold as well as ceiling free. The appellants were persuaded to make the bid as a result of such misrepresentation by the Government in the auction notice. The contract could not be said to have been made by the consent of the parties under Section 10 and became voidable at the option of the appellants under Section 19 of the Indian Contract Act. That the contract was frustrated and incapable of being performed in terms of Section 56 of the Indian Contract Act. That the appellants have almost come to ruination because of the action of the respondents in as much as they have invested huge sums of money after borrowing from the Bank at high rates of interest without any return for the last so many years. As against this the case put forth on behalf of the respondents is that there was no misrepresentation as alleged. On the date on which the contract was entered into, i.e., the date on which auction went in favour of the appellantss there was no misrepresentation even as alleged by the appellants since the FAR on that date was 2.0. The FAR was changed by virtue of change in law, which could not have been envisaged at the time the contract was entered into. The delay in the execution of the conveyance deed was pre-dominantly on account of causes attributable to the appellants. That the appellants having got executed and accepted the conveyance even after the reduction of the FAR voluntarily or without demur and having raised construction clearly declared their intention to proceed with the contract which is inconsistent with the plea that they had the intention to rescind the contract. Having declared their intention to proceed with the contract the appellants were bound by their affirmation.

Having affirmed the contract they cannot go back on their affirmation and seek rescission of the contract. That the contention in relation to frustration is misconceived as Section 56 of the Indian Contract Act does not apply to the cases of completed transfer.

From the pleadings of the parties it is clear that the appellants gave their bid in the auction for sale of the property on the terms and conditions as contained in the auction notice which included the parameters approved by the JDA for construction of building complex set out in Clause (8) providing for FAR 2.0. Appellants paid the price inclusive of interest for the delayed payment amounting to Rs. 19,86,77,273/- and got the sale deed after paying the requisite stamp duty and registration charges, executed on 7.1.1997 and got the physical possession of the auction property vide possession letter dated 7.1.1997. After receiving the possession the appellants submitted the plans for construction of Hotel-cum-Commercial Complex to the JMC on 27.1.1997 for approval. The Building Plans Committee of the JMC on 20.2.1997 approved the plans with the modification of FAR from specified FAR 2.0 in the sale deed to 1.75 only.

It was stated that this modification of FAR by the JMC was because of the Buildings Regulations/Bye Laws of 1996 which came into force w.e.f.

28.6.1996. Even after approval the JMC did not release the plans till charges for approval of plans were paid. The appellants deposited a sum of Rs. 1,48,78,887/- for the approval of the plans with the JMC on 21.4.1997 and after receiving the approved plans the appellants commenced the construction activities which according to the appellants were without prejudice to their rights and the belief that the remaining FAR would be approved.

From these facts what emerges is that on 21.12.1994, the date on which the auction went in favour of the appellants there was no misrepresentation even as alleged by the appellants since the FAR on that date was 2.0. The FAR was changed by virtue of change in the law. As per term No. 5 of the auction notice the successful bidder was required to deposit 10% of the final bid on the spot in cash or through Demand Draft in favour of the Director of Estate, Rajsthan. 15% of the amount of the final bid was required to be deposited within 15 days from the date of acceptance and the remaining 75% of the amount of the final bid was to be deposited by successful bidder within 60 days of the notice for deposit of the said bid amount on being informed by the Respondent. Failure to deposit the amount as per the above stipulation could result in forfeiture of the amount already deposited by the successful bidder and result in cancellation of the bid. The appellants did not deposit the amount as per schedule of payment set out in the auction notice. The entire sale consideration amounting to Rs. 19,56,76,000/- was paid on 16.5.1995. A sum of Rs. 30,01,273/- towards interest for delayed payment (to the payment of which the appellants agreed) was also paid. The last payment of Rs. 83,562.72 P. towards amount of interest was made by demand draft dated 26.09.1995. The cost and expenses for registration of patta, stamp duty and all other incidental expenses were to be borne by the purchaser. The sale deed could not be executed in favour of the appellants as the appellants did not furnish the stamp paper on which the sale deed was to be executed. After repeated letters including the letter dated 21.05.1996 the appellants submitted the requisite stamp duty and registration charges amounting to Rs. 1,19,25,720/- for execution of the sale deed on 18.12.1996. Thereafter, the sale deed was executed and registered on 7.01.1997 and immediately thereafter the possession was delivered.

These facts demonstrate that delay in the execution of the conveyance was principally on account of the reasons attributable to the appellants. In the meantime the FAR was changed by virtue of a change in the law. The 1989 Bye-laws were changed by Bye-laws of 1996 which came into force w.e.f.

28.6.1996. As per these bye-laws FAR was changed from 2.0 to 1.75. Had the appellants made the payments as per schedule of the payment given in the auction notice and submitted the requisite stamp duty the conveyance deed would have been executed prior to the amendment in law. The appellants by their letter dated 18.12.1996, i.e., after the reduction of the FAR requested the respondent to execute the conveyance. This was done despite knowledge of reduction of FAR. Request made to the respondent on 18.12.1996 for execution of the conveyance deed despite having knowledge of the reduction of the FAR clearly shows that the plea of misrepresentation or mistake on account of change of FAR is not made out on the admitted facts.

It was then contended on behalf of the appellants that in the conveyance deed the FAR was again mentioned as 2.0 and at that stage there was a clear misrepresentation by the respondent. To establish misrepresentation on this count the reliance was placed on the provisions of the Indian Contract Act. There is no force in this submission. Statement about the existing state of the law innocently made cannot constitute misrepresentation if it is later found that the statement was erroneous. This would be particularly so where the other party to whom the statement is made is aware of or has the ability to conveniently apprise itself of the correct state of the facts and the law applicable. Assuming (but without holding) that there was some misrepresentation the appellants had a couple of remedies, i.e., to either rescind the contract or seek restitution or to affirm the contract without prejudice to their right to seek damages by way of restitution for the loss caused by the misrepresentation. It is apparent that the appellants did not rescind the contract or seek restitution by way of damages. Instead they affirmed the contract which is clear from the fact that they immediately commenced construction on the land even though the building plans were on FAR 1.75. Affirmation of the contract and proceeding with the construction clearly indicates that the appellants did not rescind the contract nor reserved their right to seek restitution by award of damages; or seek restitution rather they affirmed the contract and went ahead with it.

It was then argued that the appellants had to start construction immediately as a very strict stipulation was contained in the auction notice (Condition No. 9). It was also represented in the sale deed that construction work on the plot should be commenced within one year from the date of handing over the possession of the land and the construction of building should be completed within 3 years. The extension beyond 3 years was to be given subject to payment of a penalty of Rs.20,000/- per month but in no case the period would be extended beyond 2 years. Clause 13 of the terms of the auction also provided that any violation of any terms and conditions would lead to forfeiture of purchase of right of the property and the property would stand reverted to the government without paying any compensation for the property. Because of the condition contained in clauses 9 and 13 of the terms of auction the appellants inspite of having knocked the doors of the court had to start with the construction otherwise they ran the risk of their right to the property being forfeited. We do not find any merit in this submission. At the time of initiating the legal

proceedings in the Court, it was open to the appellants to either affirm the contract without prejudice to their right seeking damages by way of restitution for loss caused by alleged misrepresentation or to rescind the contract by getting the declaration that the contract was not binding on the appellants. The appellants elected the first option. Had the appellants rescinded the contract and prayed for declaration that the contract was not binding on them, then, on its being so declared, terms 9 and 13 of the auction notice would not have bound the appellants in any way. The court while granting the relief could have moulded the relief according to facts and situation prevalent. It would not have in any way affected the appellants. The appellants cannot be permitted to sit on the fence in indecision and take a chance. By putting up the construction of basement and the other floors above the appellants have encumbered the property. The respondent cannot be fastened with the liability to pay for the construction put up by the appellants with full knowledge of true facts.

The appellants have founded their case on the plea of avoidance of contract as vitiated by misrepresentation on the part of respondents or mistake on the part of the appellants or in the alternative, on the ground of frustration. Let us test if the appellants have any legs to stand on, on either of the pleas.

Misrepresentation is defined in Section 18 of the Contract Act.

Effect of mistakes is dealt with by Sections 21 and 22 of the Contract Act.

According to Section 19 of the Contract Act when consent to an agreement is caused by misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. The latter may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true. According to Section 2 clause (i), an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. It is not necessary for us to record a clear finding whether there was a misrepresentation on the part of the respondents or not. Suffice it to observe that a voidable contract confers the right of election on the party affected to exercise its option to avoid the legal relations created by the contract or to stand by the contract and insist on its performance. However, his election to stand by the contract once exercised would have the effect of ratification of the contract with the knowledge of misrepresentation on the part of the other party and that would extinguish its power of avoidance. In the very nature of the right conferred on the party affected, the law expects it to exercise its option promptly and communicate the same to the opposite party; for until the right of avoidance is exercised, the contract is valid, and things done thereunder may not thereafter be undone.

A right to rescind for misrepresentation can be lost in a variety of ways, some depending on the right of election. A representee on discovering the truth loses his right to rescind if once he has elected not to rescind. But he may lose even before he has made any election where by reason of his

conduct or other circumstances it would be unjust or inequitable that he retains the right. For instance where third parties have acquired rights under the contract; again where it would be unjust to the representor because it is impossible to restore him to his original position.

Restitutio in integrum is not only a consequence of rescission, its possibility is indispensable to the right to rescind. Again, delay in election may make it unjust that the right to elect should continue. For this reason the right to rescission for misrepresentation in general must be promptly exercised. (See, Indian Contract and Specific Relief Acts - Pollock and Mulla, Eleventh Edition, Volume I, pp. 269-270).

Chitty on Contracts (Volume I, Twenty-Eighth Edition 1999, para 25-003) states - "Once the innocent party has elected to affirm the contract, and this has been communicated to the other party, then the choice becomes irrevocable. There is no need to establish reliance or detriment by the party in default. Thus the innocent party, having affirmed, cannot subsequently change his mind and rely on the breach to justify treating himself as discharged".

Under Section 20 of the Contract Act, a mistake of fact avoids the agreement when both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. It is necessary that both the parties should be under a mistake. On the appellants' own showing, the respondents were not under mistake; according to the appellants, the respondents knew the correct facts and yet misrepresented. The appellants pleadings of misrepresentation and mistake in the alternative, in the facts and circumstances of the case, are mutually destructive. Under Section 21 a contract is not voidable because it was caused by a mistake as to any law in force in India. The appellants cannot rely on the pleading of mistake of their part or misrepresentation on the part of the respondents as to the applicability of Urban Ceiling Law and FAR as provided by the bye-laws, both being the laws in force in India. Here again, the vitiating effect of alleged mistake shall stand obliterated no sooner it is found that the appellants have, in spite of the so-called mistake being discovered, yet, chosen to stand by the contract, ratifying the same by their conduct and went ahead to exercise the rights which accrued to them under the same contract which they are pleading to be vitiated by the mistake.

The doctrine of frustration, as applicable in India in contracts stands, codified in Section 56 of the Contract Act. It provides :

56. An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes

impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

The doctrine was so enunciated by this Court in Satyabrata "The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility.

The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

(1960) 2 SCR 793, this Court clarified that the courts have no power to absolve a party from liability to perform a contract merely because the performance becomes onerous; the expressed covenants in a contract cannot be ignored only on account of unexpected and uncontemplated turn of events after the contract. However, a consideration of the terms of the contract in the light of circumstances, when it was made, shows that the parties never agreed to be bound in a fundamentally different situation which unexpectedly emerges, the contract ceases to bind at that point, not because the Court in its discretion considers it just and reasonable to qualify the terms of the contract but because on its true construction it does not apply in that situation. Here again, it has to be noted that the doctrine of frustration can only apply to executory contracts and not the transactions which have Singh & Anr., (1968) 3 SCR 339, their Lordships held - "There is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer".

In the auction notice it was represented that the land in question was freehold as well as ceiling free.

The Ceiling Act does not apply to the Government lands. It is admitted before us, that the government was aware (though it may have had the intention right from the beginning to exempt the land from the Ceiling Act) that the land which was being auctioned was not exempted from ceiling and the exemption could only be granted after the transfer of the land to a private person. The appellants received a notice under Section 38 of the Ceiling Act informing that they own excess land in Jaipur City as prescribed under Section 4 of the Urban Land Ceiling Act and had not submitted their return under Section 6 read with Section 15 within the prescribed period. Appellants were directed to appear before the competent authority on 17.04.1997 to explain why action should not be taken against them under Section 38 of the Act. Soon after the receipt of the said letter, the appellants applied for exemption under the Act which was granted promptly on 11.8.1997. Exemption was given subject to various conditions which were imposed by the exemption order. It was stated that para-meters of the Jaipur Municipal Corporation regarding construction would be applicable. According to the appellants this virtually amounted to unilaterally reducing the FAR 2 to FAR 1.75. The second condition was that the plot will not be transferred without prior approval of the State Government even though the property could be mortgaged to financial institutions for taking loan without parting with possession. According to the appellants, imposition of these conditions were contrary to the representation contained in the auction advertisement that the property was freehold. It was argued that it is well known that the transfer of freehold property is freely transferable and does not require any permission. In imposing such condition the government was taking away the freehold character of the property. The representation that the property was ceiling exempted was a very material representation which had induced the appellants to offer a very high bid. That the action of the State in making a representation that the property was ceiling free, although it knew that there was a ceiling limit not only amounted to misrepresentation under Section 18 of the Indian Contract Act but in fact amounted to fraud because any representation with knowledge that the representation was not true would amount to fraud. It was argued that the contract having been induced by misrepresentation, it was open to the appellants to avoid the contract under Section 19 of the Contract Act.

Per contra, it was contended on behalf of the respondents that so far as the order dated 11th August, 1997 under the Ceiling Act, imposing certain conditions, is concerned, the stand of the State has always been that it is not going to enforce any of these conditions. That even today the stand of the State is that it is not going to enforce any of the conditions as imposed in the exemption order.

Other aspects of the plea founded on Section 19 of the Contract Act have already been dealt with hereinbefore.

So far as the Ceiling Act is concerned, the Act itself has been repealed by the Notification dated October 7, 1999 as published in the Rajasthan Gazette dated October 11, 1999. With the repeal of the Ceiling Act, all proceedings under the Ceiling Act have abated. Reference may be made to a decision of this Court in Pandit Madan Swaroop Shrotiya Public Charitable Trust vs, State of U.P. & Others, 2000 (6) SCC 325.

So far as the order dated 11th August, 1997 under the Ceiling Act is concerned, the stand taken by the State through out has been that it is not going to enforce any of those conditions. It was so submitted by the learned Advocate General while appearing for the State of Rajasthan before the High Court. The aforesaid fact is admitted by the appellants themselves in their memo of appeal [Ground (u)]. Even today, the stand of the State is that it is not going to enforce any of those conditions as imposed under the exemption order. This apart the process for obtaining exemption from land ceiling did not in any manner affect the appellants for the reason that their plans were sanctioned even before the question was raised as to the application of the Urban Land Ceiling Act to the property. The appellants as per their letter, couched as representation, dated 10.10.1997 had started digging for the basement in February, 1997 immediately upon the sanction of building plans. The process of construction began immediately. Thus, the condition imposed in the exemption order were not an impediment in any manner It is appellants' own case that they had started construction of a multi-storeyed complex upon the property which clearly implies that the appellants had never the intention of the transferring the land as plots and therefore the condition inhibiting the transfer of plots was irrelevant so far as the appellants are concerned.

It is the appellants who delayed the payment of sale consideration on the dates stipulated for payment. For the period of delay they agreed to pay interest to the State Government voluntarily; they voluntarily paid stamp duty and bore registration charges as stated above in the end of December, 1996 and got the sale deed executed on 7th January, 1997 on which date the possession was delivered to them and thereafter they voluntarily paid the charges for the approval of building plans with FAR 1.75 and proceeded with construction work for establishing Hotel-cum-Commercial Complex by demolition of existing structure of Dr. Hellings Bunglow standing on the land in question, levelling the same, digging deep foundation, constructing basement and thereafter further raising construction of ground floor and other floors. They cannot now be permitted to turn round and claim refund of any amount which they allege to have spent including the claim for the interest. The appellants have voluntarily paid the entire money, entered into possession, raised construction and incurred expenditure voluntarily and as such they are not entitled to any refund or any claim and declaration as such on the ground of frustration or impossibility of performance of the contract.

Every contract including one by auction is subject to provisions of law. Whenever any action is taken in performance of a contract, it must conform to the law in force at the time when action is taken. In the instant case when the appellants applied for approval of building plans it is the law that is in force at that time, which would be applicable. Doctrine of promissory estoppel is not available when any action is desired to be taken in contravention of the provisions of law. The terms and conditions of the sale as announced when the property was put to sale were in accordance with law and no guarantee was given (nor could have been given) that the law would not change, or that the terms and conditions would be enforceable even in violation of law which may be in force. FAR was a matter of law and the FAR was fixed either by the JDA or JMC in exercise of its statutory powers. The contract when entered into, the FAR approved by JDA was 2 and its subsequent reduction in 1996 to 1.75 would not invalidate the contract or by treating as a breach of the contract nor can it be treated by the Government.

In reply to the contention raised on behalf of the State Government that the appellants having failed to rescind the contract immediately on coming to know of the breach or misrepresentation by the government, it could not exercise their right of rescinding the contract under Section 39 or avoiding under Section 19 of the Contract Act later on, it was submitted on behalf of the appellants that this contention of the State Government was devoid of any force. According to the appellants the legal right to avoid a contract or rescind the contract can be waived but there is no principle of law which requires the exercise of the right of repudiation of the contract to be done immediately on coming to know about the misrepresentation or breach of contract. It was open to the aggrieved party to persuade the defaulting party to rectify the situation and to wait till the defaulting party refuses to rectify its default before exercising its right of repudiation of the contract. Reference was made to Sikkin Subba Associates vs. State of Sikkim, 2001 (5) SCC 629, wherein this Court observed as follows:

"Waiver involves a conscious, voluntary and intentional relinguishment or abandonment of a known, existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, the party would have enjoyed. The agreement between the parties in this case is such that its fulfilment depends upon the mutual performance of reciprocal promises constituting the consideration for one another and the reciprocity envisaged and engrafted is such that one party who fails to perform his own reciprocal promise cannot assert a claim for performance of the other party and go to the extent of claiming even damages for non-performance by the other party. He who seeks equity must do equity and when the condonation or acceptance of belated performance was conditional upon the future good conduct and adherence to the promises of the defaulter, the so-called waiver cannot be considered to be forever and complete it itself so as to deprive the State, in this case, of its power to legitimately repudiate and refuse to perform its part on the admitted fact that the default of the appellants continued till even the passing of the award in this case. So far as the defaults and consequent entitlement or right of the State to have had the lotteries either foreclosed or stopped further, the State in order to safeguard its own stakes and reputation has continued the operation of lotteries even undergoing the miseries arising out of the persistent defaults of the appellants. The same cannot be availed of by the appellants or used as a ground by the arbitrator to claim any immunity permanently for being pardoned, condoned and waived of their subsequent recurring and persistent defaults so as to deny or denude forever the power of the State as the other party to the contract to put an end to the agreement and thereby relieve themselves of the misfortunes they were made to suffer due to such defaults. Once the appellants failed to deposit the prize money in advance within the stipulated time, the time being of the essence since the prizes announced after the draw have to be paid from out of only the prize money deposited, the State was well within its rights to repudiate not only due to continuing wrongs or defaults but taking into account the past conduct and violations also despite the fact that those draws have been completed by declaration or disbursement of prize amounts by the State from out of its own funds.

The conclusion to the contrary that the State has committed breach of the contract is nothing but sheer perversity and contradiction in terms." In our view, this decision has no application to the facts of the present case. In the said case the appellants therein was appointed as "organising agent" for lotteries of the Respondent State. Subsequently, disputes arose which led to termination of the agency by the State. Appellants therein got an arbitrator appointed under Section 8 of the Arbitration Act, 1940. Claims and counter-claims were filed and evidence adduced by the parties

before the Arbitrator. Arbitrator made its award determining the amount payable by the State to the appellants at Rs.37,75,00,000/- and the amount payable by the appellants to the State by way of counter-claim at Rs.4,61,35,242/-.

District Judge made the award the rule of the court. This was in challenge in the High Court of Sikkim where there were only two Judges. Chief Justice set aside the award while the other Judge held that the matter required to be remitted to the arbitrator for re-determining the quantum of damages. The court thereafter by its order dated 29th September 1995 directed the matter to be placed before the incoming Chief Justice/Judge. Subsequently both the Chief Justice and the other Judge were, in due course, succeeded by new incumbents to those offices. The new Judge fixed the date of hearing and before him the appellants filed an application opposing the hearing of the appeal in view of section 98(2) CPC. This application was dismissed by the Division Bench as not maintainable in view of the reference made by the Division Bench. This was challenged in this Court. After resolving the controversy on the aforesaid point, the Court proceeded to examine the award made by the arbitrator. It was held that the award under challenge stood vitiated on account of several errors of law, apparent on the face of it and such infirmities go to substantiate the claim of the State that the arbitrator not only acted arbitrarily and irrationally on a perverse understanding or misreading of the materials but was also found to have misdirected himself on the vital issues rendering the award to be bad in law.

The arbitrator and the District Judge had recorded a finding that the State in spite of warnings and threats did not actually stop draws or to other subsequent draws by the appellants and allowed the lotteries to go on without any break. That the State government had condoned or waived the lapses and defaults. In this context, the observations quoted above were made by this court. It would be seen that this contract was an executory contract and not completed contract of sale of property. It was observed that a waiver involves a conscious, voluntary and intentional relinquishment or abandonment in known existing legal right. There were persistent and continuous defaults. Even if the past lapses were taken to have been waived by the State, it was observed by the Court that the State could not be compelled to condone the continues wrong and defaults of the appellants to their disadvantage and detriment. Observations quoted above are of no avail to the appellants as in that case the court found that the appellants were continuing with the defaults in an executory contract. The principle laid down in the said case would not be applicable to the facts of the present case.

Reliance was also placed on M/s Motilal Padampat Sugar Mills Co.Ltd. vs. State of U.P. & Others [1979 (2) SCC 409]. In this case the point which fell for consideration was whether the assurance given by respondent No.4 (Chief Secretary or advisor to the Government) on behalf of the State of U.P. that the appellants would be exempt from payment of sales tax for a period of three years from the date of commencement of production could be enforced against the State government. On behalf of the respondent-State, plea of waiver by the appellants were raised. The Court rejected this plea of waiver. It was held that waiver is essentially a question of fact and it must be properly pleaded and proved which the State had failed to do. It was also held that waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be 'an intentional act with knowledge'. On facts it was found that there was no waiver and the court

observed:

"Now in the present case there is nothing to show that at the date when the appellant addressed the letter dated June 25, 1970, it had full knowledge of its right to exemption under the assurance given by respondent 4 and that it intentionally abandoned such right. It is difficult to speculate what was the reason why the appellant addressed the letter dated June 25, 1970 stating that it would avail of the concessional rates of Sales Tax granted under the letter dated January 20, 1970. It is possible that the appellant might have thought that since no notification exempting the appellant from Sales tax had been issued by the State Government under Section 4-A, the appellant was legally not entitled to exemption and that is why the appellant might have chosen to accept whatever concession was being granted by the State Government. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970. In fact, in the petition as originally filed, the right to claim total exemption from Sales Tax was not based on the plea of promissory estoppel which was introduced only by way of amendment." In the present case, we have found as a fact that the appellants even after acquiring the knowledge of fact regarding reduction of FAR from 2.00 to 1.75 and that the land was not ceiling free elected to affirm the contract by getting their plans approved with FAR 1.75 and started putting up construction. They started digging the foundations and continued to build even after knowing that the land was not ceiling free. Thus, the reliance placed on the ratio of law laid down in M/s Motilal Padampat Sugar Mills Co.Ltd.'s case (supra) is of no avail to the appellants.

Others [1968 (2) SCR 797], it was contended by Shri Shanti Bhushan, learned senior counsel that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the parties defrauded, unless it is avoided, the transaction is valid. Further, drawing a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof it was argued that in the case of former the transaction is void while in the case of latter it is merely voidable. It was also urged that the appellants could avoid the transaction at any time. In our view, this judgment is of no assistance to the appellants as on facts we have found that the default committed by the respondent-State, if any, stood condoned by the appellants.

In either case, we find that the appellants are not entitled to any relief in the realm of the law of contracts. In spite of having acquired knowledge of the true facts assuming that there was any mistake or misrepresentation to begin with and having learnt that the title which was sought to be conferred on them by the respondents was not such full title as they had contemplated it to be, they proceeded to have the sale deed executed and registered in their favour, seeking extensions of time and paying interest for the period of delay in payment. The contract stood accomplished into a demise and the transaction ended. It is writ large that the appellants had elected to stand by the contract by digging the land, sinking the basement and raising about 9 floors above, investing crores of rupees. They have by their own conduct rendered the position irreversible and restitution

impractical. We have not been shown any law or authority based whereon the appellants may annul and avoid a concluded contract and fix liability on respondents for the cost of their construction which they have voluntarily chosen to raise in spite of being aware of all the relevant facts and circumstances.

The learned counsel for the appellants referred to the provisions of Section 90 (1) and (2) of Jaipur Development Authority Act, 1982, which read as under:

"90 Control by State Government - (1) The Authority shall exercise its powers and perform its duties under this Act in accordance with the policy framed and the guidelines laid down, from time to time by the State Government for development of the areas in the Jaipur Region.

(2) The Authority shall be bound to comply with such directions which may be issued, from time to time, by the State Government for efficient administration of this Act." It was contended that the State Government has the complete control over the JDA and therefore could direct the JDA to adhere to the FAR 2.0 as against the FAR 1.75 provided under the 1996 Regulations. We do not find much force in this submission. A reading of this section clearly shows that the Government can direct the authority to exercise its powers and perform its duty in accordance with the policy framed and the guidelines laid down from time to time. Policy and guidelines can be issued for general application or for a class of persons or area or based on some such other criteria as may withstand the test of Article 14 of the Constitution. The power conferred by Section 90 cannot be exercised by the Government to give directions to increase the FAR in one individual or particular case. The appellants cannot claim a right to get exemption from the prevalent law nor heard to say that since the Government had the power to give direction, its failure to exercise the power of issuing direction by reference to Section 90 of the JDA Act, it has perpetuated the breach of contract.

Counsel for the appellants also brought to our notice the provisions of Section 298(1) of the Rajasthan Municipalities Act, 1959 to contend that Government had the power to cancel or modify the Bye-laws framed by the Board and the failure to do so reflects that the government did not intend to stick to the representation made by it in the auction notice or in the sale deed. Section 298 reads as under:

"298 Power of Government to cancel or modify bye-laws and rules of boards-- (1) The State Government may at any time by notification in the Official Gazette repeal wholly or in part or modify any rule or bye- law made by any board.

Provided that before taking any action under this sub-section, the State Government shall communicate to the board the grounds on which it proposes to do so, fix a reasonable period for the

board to show cause against the proposal and consider the explanation and objections, if any of the board." Section 298 provides that the State Government has the power to cancel or modify bye-laws or rules framed by the board. Again this is of no avail to the appellants. Power under Section 298 is in the nature of power of superintendence. It is a general power given to the Government that in case the Government feels that the bye-laws framed or the orders issued are not reasonable or are detrimental to the public interest or there is any other good ground available, then, it can repeal the bye-laws wholly or in part or modify any rule or bye-law made by the Board after inviting objections. The power could not have been exercised to suit the needs of an individual case as has been contended by the learned senior counsel for the appellants.

It may be noted that the learned senior counsel for the respondent pointed out during the course of hearing that the amended bye-laws were more beneficial to the appellants as there was number of exemptions to be taken into account while calculating the FAR, namely, storage on all floors, balcony, guard-door, lobby, terrace garden, service floor, AC plant room, locker, dark room, PBX room, guard room, power house, lift room and the lift well. Under the amended bye-laws of 1996 the appellants would get more covered area thus causing no prejudice to them. This has been strongly refuted by the counsel for the appellants. We need not go into this disputed question as it is of no consequence to the points already decided.

For the reasons stated above, we do not find any merit in these appeals and the same are dismissed with no order as to costs.