BOMBAY HIGH COURT

Prabhakar Narhar Pawar

Vs

State of Maharashtra

(Chandurkar, C.J. Pendse and Kurdukar, JJ.)

16.08.1983

JUDGMENT

Chandurkar, Actg. C.J.

1. This petition arises out of proceedings for declaration of surplus vacant land under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"). Admittedly, C.T.S. Nos. 977/B and 1257 originally belonged to one Narhar Pawar, who died sometime in 1960 leaving behind him his widow, two major sons, one widowed daughter-in-law, two married daughters and one unmarried daughter.

2. Before the Competent Authority it was the contention of the petitioners that the property left behind by Pawar was coparcenary property and that the seven heirs left by him should be treated as coparceners and for the purpose of proceedings under the Act, one-seventh share in the total land in question should be taken into account. IN addition, it was contented that the petitioners had submitted a layout to the Pune Municipal Corporation on 2nd July 1975 and that layout was liable to be taken into consideration for ascertaining whether contended that the petitioners have built a commercial building and they were entitled to the benefit of the guidelines of exemption provided for under S. 20 of the Act. All the objections were rejected by the Competent Authority who declared an area of 5070.07 sq. ms as excess vacant land, which was to be acquired by the Government.

3. In appeal, the Collector, who was the Appellate Authority Pune Urban Agglomeration, Pune, took the view that each of the heirs who inherited the property of Pawar ought to be treated as exclusive owner of his one-seventh share. He rejected the other objections but remanded the matter to the competent Authority for determination after ascertaining the share of each of the seven members and to make a fresh calculation of the surplus area. This order is challenged by the owners of the property in six separate petitions,which are being disposed of by this common

judg,ment.

4. When this matter was earlier heard on 5th August 1983 it was contended by the learned counsel appearing on behalf of the petitioners that having regard to the provisions of S. 2(q)(I) of the Act, two-third of the area of the plots in questions was such that no construction was possible to be made upon it and that area could not, therefore, be treated as vacant, land. According to the learned counsel, if the share of each owner of the property is separately considered (I) is given to each one of the petitioners, there is no surplus land which could be declared as such under the Act. reliance was placed on a decision of the Division Bench of this court in Writ Petition NO. 1771 of 1979 decided on 31st January 1983, B.E Billimoria v. State of Maharashtra, in support of the contention that the petitioners were as a matter of right entitled to the exclusion of the two-thirds of the areaof the plots in question for purposes of calculating excess vacant land. It appeared At that time that the decision of the Division Bench relied upon by the learned counsel for the petitioners needed reconsideration. This petition was, therefore, referred to the Full Bench and that is how this petition and the connected petitions are new heard by this Full bench.

5. Since a pure question of law has been argued before us with regard to the nature and scope of S. 2(q)(I) of the Act, it is necessary first to refer to the decision in Billimoria's case, on which reliance was placed by the learned counsel for the petitioners and the correctness of which has been disputed on behalf of the State. In Billimoria's case the land in question belonged separtely to the two petitioners . the land belonging to petitioner No. 1 was to the extent of 3308.61 sq./ m. and the land belonging to petitioner No. 2 was 3172.05 sq. m. Making allowance for 1000 sq. m. of land which was permissible to be retained under the act, an area of 2308.61 sq. m. and 2175.05 sq. m. was declared surplus as belonging to petitioners Nos. 1and 2 respectively. These orders were challeged by the land owners in the petition under Articles 226 and 227 of the constitution of India. Before the Division Bench it was contended on behalf of the petitioners in thast case that according to the building regulations prevailing in pune, one-third of the land held by each of the owners could be used for construction , which necessarily meant that on the remaining two-thirds portion of the land held by each of the petitioners, no construction was permissible. This was not disputedn and the division Bench took the view that having regard to the provisions ofr s. 2(q)(I) if on a particular area of a large piece of land construction of building is not permissible then that area on which construction of such building is not permissible must necessarlly be excluded from the definition of "vacant land" in section 2(q)(I) of the Act. The relevant obserbvations of the Division Bench are as follows:

> "..... While one is interpreting sub-clause (I) of clause (q) of Section 2 one cannot take the land as a whole and then say that this land, on small area of which construction of building is permissible, should be treated as vacant land. If on a particular area of a large

> piece of land construction of building is not permissible then that area on which construction of such building is not permissible must necessarllyu be excluded from the definition of the vacant land as mentioned in section 2(q)(I) . It would be highly artificial and it will lead to absurd results if one treats the land as a whole and holds that if in any part of the land construction of the building is permissible then no part of the land can be excluded from the definition of vacant land. Any rule of construction cannot permit such construction sought to be put on the words contained in section 2(q)(I)."

6. Having so construed the probvision of s. 2(q)(I) the Division bench took the view that two-thirds of 2714 .05 sq. ms. Of land owned by each of the petitioners was liable to be excluded from the consideration of vacant land, building were not liable to be taken into account for the purpose of the Act, the Division Bench took the view that neither of the petitioners held land in excess of the ceiling limit in Pune Agglomeration.

7. Mr. Karnik. Appearing on behalf of the petitioner, has, at the very outset, made it clear that he was not in a position to support the very broad proposition laid down by the Division bench in paragraph 6 of the judgement that in all cases two-thirds area of the plot on which building cannot be constructed in accordance with the building regulations, that area must be necessarily excluded from the definition of "vacant land" in Section 2(q)(I) of the Act. According to the learned counsel, however, he would like to restrict the ratio of the Division bench to such lands on which there could never be constructed a building such as, according to the learned counsel, building specified in Regulations 18 and 19 of the Building rules and Bye-laws of the Pune Municipal Corporation. In Regulation 18, it is provided:

> "Between any building and the boundary of the plot at its sides other than the front and rear thereof an open space of not less than 10 feet shall be left provided however that this regulation shall not apply to bhambarda Gaothan, Pulachi Wadi, Dagdi pool Wadi and the Gaothan area on the Pune city side of the river Mutha."

Regulation 19 provides:

> "Every main building whether residential or otherwise shall have at the rear thereof an open space exclusively belonging thereto and free from nay erection except a well, houd, detached privy or bathroom, covered washinmg places etc. Such open space shall extend to the full width of such building and the distance of such building at any point to the rear boundary of the plot shall not be less than 20 feet."

According to the learned counsel, under Regulation 18 ,m no building was permissible to be constructed within ten feet areabetween the boundary of the plot and the building on its two sides

except the front and the rear. Further, according to the learned counsel, under Regulastion 19 an area of twenty feet between the rear boundary of the plot and the main building is statutorily required to be maintained irrespective of whether a buildingis intended to be constructed thereon or not. And the competent authority must while determining vacant land proceed to determine the extent of the area of the land indicated above on which no building could be built under the said Regulations. In other words, the contention is that the land which will be covered by strips on both sides of a building with a width of the ten feet and the strip at the rear with a width of the ten feet and the strip at the rear with a width of twenty feet could never be treated as vacant land under S. 2(q)(I) , and in the instant case, according to the learned counselk for the petitioners, though admittedly no building has been sanctioned nor was any building contemplated , the Building Rules and Bye-laws of of the pune Municipal corporation. Should have been considereed by the comptent Authority , who should have ascertained as to what is the extent of the area on which no building could be xconstructed and that area should have been excluded for the purpose of computation of vacant land. According to the learned Advocate-General, appearing on behalf of the State, the construction placed by the Division bench on the definition in S. 2(q)(I) of the Act defeats the very purpose of the Act, the purpose being that the Act is intended to achieve the following objectives:

(i)to prevent the concetration of urban lands in the hands of a few persons and sp[eculation and profiteering therein.

to bring about the socialisation of vacant land in urban agglomerations to subserve the common good to ensure its equitable distribution.

to discourage construction of luxury housing leading to conspicuousto subserve the common good to ensure its equitable distribution.

to secure orderly urbanisation.

These objectives were referred to us from the decision of the Supreme Court in *Maharao Sahib Shri Bhim Singhji v. Union of India* . According to the learned Advocate-Genereal , the construction put by the Division Bench has the effect of allowing a large part of the area of vacant land without the owner having ever intended to use it for construction being excluded as non-vacant land with the result that the very purpose of the Act will be defeated.

8. In order top appreciate the contentions raised before us, it is necessary to refer to a few provisions of the Act. Under Section 3 of the Act it is provided that except as otherwise provided in the act, on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under mSun-

sec. (2) of S. 1 The date of commencement of the Act is 17th Rebruary 1976. Section 4 prescribves the ceiling limit with referrecnce to four categories of urban agglomeration. Vacant land" is defined in Section 2(q) of the Act which reads as follows:

> "(q) vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated; but remanded the matter to the Competent Authority for determination after ascertaining the share of each of the seven members and to make a fresh calculation of the surplus area. This order is challenged by the owners of the property in six separate petitions, which are being disposed of by this common judgment.

9. When this matter was earlier heard on 5th August 1983 it was contended by the learned conunsel appearing on behalf of the petitioners that having regard to the provisions of S. 2(q)(I) of the Act, two-third of the area of the plots in question was such that no construction was possible to be made upon it and that area could no, therefore, be treated as vacant land. According to the learned counsel, if the share of each owner of the property is separately considered and benefit of the provisions in s. 2(q)(I) is given to each one of the petitioners, there is no surplus land which could be declared as such under the Act. Reliance was placed on a decision of the Division Bench of this Court in Writ Petitioners, there is no surplus land which could be declared as such under the Act. Reliance was placed on a decision of the Division Bench of this Court in Writ Petition No. 1771 of 1979 decided on 31st January 1983*, B. E. Billimoria v. State of Maharashtra, in support of the contention that the petitioners were as a matter of right entitled to the exclusion of the two-thirds of the area of the plots in questsion for purposes of calculating excess vacan t land. It appeared at that tilme that the decision of thedivision Bench relied upon by th learned consel for the petitioners needed reconsideration. This petition was, therefore, rezerred to the full Bench and that is how this petition and the connected petitions are now heard by this Full Bench.

10. Since a pure question of law has been argued before us with regard to the nature and scipe of s,. w (q) (I) of the Act, it is necessary first to refer to the decisionin Billimoria's case, on which reliance was placed by te learned counse) for the petitioners and the correctness of which has beeen disputed on behalf of the State. In Billilmoria's case the land in questsion beleonged separately to the two petitioners. The land belonging to petitioner No. 1 was to the extent of 3308.61 sq. m. and the land belonging to petitioner No. 2 was 3172.05 sq. km. Making allowance for 100 sq. m. of land which was permissible to be retained under the Act, an area of 2308.61 sq. m. and 2172.05 sq. m. declared surplus as belonging to petitioner s Nos. 1. And 2 respectively, These orders wer challengesd by the land owners in the petition under Articles 226

and 227 of the Constitution of India. Before the Division Bench it was contended on behalf of thepetitioner in that case that according to the buildng regulartions prevailing in Pune, one third of the land held by each of the owners could be usesd for construction, which necessarily meant that on the remaining two-thirds portionof the land held by each of the petitioners, lno construction was permissible. This was not disputed and the Division Bench took the view that having regard to the provisions of S. 2(q)(I) if on a particular area of a large piece of land construction of building is not permissible then that ara on which constructionof such bkuilding is not permissible must necessarily be excluded from thedefinitionof "vacant land" in Section 2(q)(I) of the Act. The relevant observations of the division Bench are as follows:

> ".....While one is interpreting subclause (I) of clause (q) of Section 2 one cannot take the land as a whole and then say that this land, on small area of which construction of buliding is permissible, should be treated as vacant land. If on a particular area of a large piece of land construction of building is knot permissible then that area on which construction of such bulilding isnot permissible must necessarly be excluded from the definition is Section 2(q)(I). It would be highly artificial and it will lead to absurd results if one treats the land as a whole and holds that if in any building is permissible then no part of the land can be excluded from the definition of vacant land. Any rule of construction sought to be put on the words contained in Section 2(q)(I)."

11. Having so construed the provision of S, 2(q) the Division Bench tok the view that Two-third of 2714.05 sq. ms. Of land owned by each of the petitoners was liable to be excluded from the consideration of vancant land, and since the areas of the flats in a were not liable to be taken into account for thepurpose of the Act the Division Bench took the view that neither of the petitioners held land in excess of the ceiling limit in Pune Agglomeration.

12. LMr. Karnik, appearing on bejalf of te petitioner, lhas, at the very otset, lmadle it clear that he was not in a position to support the very broad proposition laid down by the Division Bench in paragraph 6 of the judgment that in all cases two-thirds area of the plot on which building cannot be constructed in accordance with the building regulations, that area must be necessarily excluded from the definition of 'vacant land" in Section 2(q)(I) of the Act. According to the learned counse, however, he would like to restrict the ratio of the Division Bench to such lands on which there could lnever be constructed a building such as, according to the learned counsel, building specified in Regulations 18 and 19 of the Building Rules and Bye-laws of the Pune Municipal Corporatiaon, In Regulation 18, it is provided:

> "Between any building and the lboundary of the plot at its sides other than the front and rear thereof an open space of not less than 10 feet shall be left provided however that this

regulation shall not apply to Bhambarda Gaothan, Pulachi Wadi, Dagdi Pool Wadi and the Gaothan area on the Pune City side of the river Mutha."

"Every main buiding whether residential or otherwise shall have at the rear therof an open space exclusively belonging thereto and free from any erection except a well, houd, detached privy or bathroo, covered washing places etc. Such open space shall extend to the full width of such building and the diistace of such building at any point to the rear boundary of the plot shall not be less than 20 feet."

13. According to the learned counsel, under Regulation 18 no building was permissible to be constructed within ten feet area between the boundary of the plot and the building on its two sides except and front and the rear. Further, according to the learned counse, under Regulation 19 an area of twenty feet between the rear boundary of theplot and the mlain buiding is statutorily required to be lmaintained irrespective of whether a building is intended to be constructed threon or not, an d the competent authority must while determinging vacant jland proceed to determlline the extent of the area of the land indicated above on which no building could llbe built under the said Regulations. In other words, the contention is that the land which will be covered by strips on both sides of a bluilding with a width of the ten width of twenty feet could never be treated as vacant land under S. 2(q)(I), and in the instant case according to the learned counsel for the petitioners, though admittedly no building has been sanetioned nor was any building contelmplated, the Building Rules and Bye-laws of the Pune Municipal Corporation, should have been considered by the Colmpetent authority, who should have ascertained as to what is extent of the area on which no building could be constructed and tha area should have been excluded for the purpose of computationof vacant land. According to the learned Advocate-General, appearing on behalf of the State, the construction placed by the division Bench on the definitionin S. 2(q)(I) of te Act defeats the very purpose of the Act, the purpose bing that the Act is intended to achieve the following objectives:

to prevent the concentrationof urban lands in the hands of a few persons andspeculation and profiteering therein.

to bring about the socialisationof vacant land in urban agglomerations to subserve the colmmon good to ensure its equitable distribution.

(iii)to discourage construction of luxury housing leading to conspicuous consumption of scarce buildig materials, and to secure orderly urbanisation. These objectives were referred to us from the decision of the supreme court from the decision of the supreme Courtin Maharao Sahib Shri bhim Singhiji v. Union of India . According tp the ;earmed Advocate-General, the constructtion

by the Division Bench has the effect of allowing a large part of the area of vacant land wilthout the owner having ever intended to use it for consstruction being excluded as non-vacant land with the ressult that the very purpose of the Act will be defeated.

14. In order to apprectiate the contions sraised before us, it is necessary to refer to a few provisions of the Act Under Section 3 of the Act it is provided that except as otherwise provided in the Act, on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of ceiling limit in the territoriesto which this Act applies under sub-sec. (2) of S. 1. The date of commencement of the Act is 17th February 1976. Section 4 prescribes the ceiling limit with reference to four categories of urban aggiomeration. "Vacant land" is defmed in section 2(q) of the Act which reads as folows:

> "(q) 'vacant land' means land, lnot being land mainly usesd for thepurpose of agriculture, in an urban agglomeraation, but does not ilnclude-
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> land on which construction of a building is not permissible under the buildingis not permissibel under the building regulations in force in the area in which such land is sitated;in an area where there are building regulation, the land occupied by aany building which has been constructed before, or is being constructed on, the appointed day with the approval of the appointed day with the approval of the purtenant to such building:Provided that where any person ordiarily keeps his catttle, other than for thepurpose of ddairy farming or for on any land situated in avillage within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle ilmmediately before the appointed day shall not be deemed to be vacant landfor the purposes of this clause."

15. The definition is in a very wide terms inasmuch as it defines "vacant land" as land not being land lmainly used for the purpose of agaricultre but the three clauses in the definition descrilbe the land which is not lto be treated as vacant land .We shall come to these three clauses a little later. In Section 2(g) the words "land apprutenant" havedefined as follows:

> "(g) 'land apputenant', om relatiion to any building, means-
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> in an area where there are buildign regulations, the minimum extent of land required under such regutiolations to be kept as open space for theenjoyment of such buildign, which in no case shall exceed five hundred square metres; or in an area where there are no buildign regulations, an extent of five hundred square metres congiguous to the land occupled by such building. And includes, ijn the case of any building constructed blefore the appointed day with a dwelling unit therein, an additionalextent not exceeding five

hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (I) or the extent referred to in suln-clause (ii) as the case may be;" The definition of "land appurtent" quoted above deals with two categories of areas; one is an area where there are no building regulations. And the other, an area where there are no building regulations, and the other, an area whether are no building regulations. In anarea where thre is the lmlinilmum extent of land required under the regulations to be kept kas open space for the enjoyment of building , but the land appurtenant cannot inany caseexceed five hulndred square lmetres, In anarea where there are no building . Apart from the five hulndred squre lmetres of land appurtenant which is specified in the lmalin part of the definition, there is an extention of the definition in the inclusive part which provides that in the case of any building . Apart from the five hundred square lmetres of land appurtenant whih is speicfied in the main part of the definition, there is an extention of the definitionin the inclusive part which provides that in the case of any buildignconstructed blefore the appointedday with a swelting unit therin\,an additional area of five hundred square metres of land contiguous to the lmlinimum txtent of land specified in sub-clauses (I) and (ii) of the definition is also to lbe treated as land appurtnatnt. "Swelling Unit" is definedin section 2(e). In relation to a building or a portion of a bulilding it means a unit of accommodation, in such buildign or portion, used solely for the purpose of residence.

16. Now, to ascertain the surplus land which could be so declared under the Act, it is first necessary to decide the total land which is held by a person, which mans the land is either owned by the person conerned or he possesses such land as tenant or as mortagagee or under an irrevocalble power of attorney or under a lire-parchase aggreement or partly inone of the said capacities and partly in any other of the said capacity or capacities. This is clear from thedefinition of the words "to hold" in Section 2(I) of the Act. Now, after the total land held by a person is deterlmined in order to deterlmline vacant land, one has to gotothe definitionin 2(q), which, as already pointedout, is in three parts. Sub-clauses (I) to (ii) and the proviso in the definitiondeclare as to what is not cacant land. The competent Authority has, therefore, to ascertain as to what is not vacant land as contemplated by the Act. Under sub-clauses (I) it is provided that land on which construction of a building isnot permissiabe under the building regulations in force in the area in which such land. It is well -known that buildign regulations made by local authorities ssuch as Municipal Counsils or Municpal Corporations do not permit construction of a buildignl in the entire open land in possession and ownership of the person concerned. The words in "building regulations" have defined in s. 2(b) of the Act to mean the regulations contained in the master plan, or the law in force govering the construction of buildilngs. It isnot is dispute tha so far as the pune Municipal Regualtions is and 19 which require

certain open spacesto be left on the sides of building and at the rear and set-off in the front the Regulaions also require certain open spaces to be left on the sides of building and at the rear and set-off in the front the Regulations also require that the remaining two thirds of the a building is not permissible. Sub-clasue the land which is not vacant is the land occipied by any bulildig which has ben constructed before fore, or is being constructed on, the appoitnedday, that is, 17th February 1976, with the approval of the appropriate authority and the land appurtenant ot such bluilding. So far as sub-clause (ii) is concerned, the effect of it is that in an area where there are building regaulations, theland occupied bby a building along with the land under hundred square lmetres of land under section 2(g)(I) and an additional area of five hundred square lmeltres in case the building was constructed before the appointed day will not be trated as vacant land. In other wprds. The and being land appurtentant andif the buildingl is constructed before the apponted day, then a further area of five hundred square mleltres of land is five hundred square meters of land is not lto be treated as vacant land. Sub-clause (ii) deals with an area where there are no building regulations and in such a case the actual extent of the land appurtenant to such bulilding is not to be treated as vacant vacant land. Subclause (ii) if the buildilng has a dwelling unit and is constructed lbelfore the appointed day anadditional area if fuve gykbdred sqyare netres uks treated as land appurtenatn thereto.

17. We are not concerned wilth the proviso which is really in the nature of special provisions for the purpose of excluding from the computations of the vacant land that portion of the land where a person ordinarily keeps his cattle other than for the purpose of breeding of live-stock in a village within an urban agglomeration.

18. Now, the scheme of the definition of vacant land appears to lbe very clear. Apart from the genral provisions that all land, which is not land mainly used for the purpose of agriculture, is to lbe classified as vacant land, under clauses (I) to (iii) and the proviso, the land of the category specified inthese clauses and the proviso is not to be included when the extent of vacant land is to be included when the extent of vacant land is to be computed for the purpose of making a declaration by way of final statement contemplated by s. 9 of the Act. The common thread which runs through sub-clause (I) to (iii) is that land on which it is impermlissible tocontruct a building or the land on wlhich a building is already cnstructed or is lbeing already constructed on the appointed day and the appurtenant land is not to be ncluded as vacant land havinlg regard to the relevant buildilng regulations, if there are any. Clauses (iL) to (iii) refer to land on which under the lbuildig regulations construction of building is lnot permissible and land which is actually occupied by the build-the appointed day or is being constructed on the appointed day with the approval of the appropriate authority, Suclases (ii) both contemplate that the land on which the bluilding stands or is being constructesd along with theappurtenant land is to lbe excluded from

the concept of 'vacant' . The distinguising feature in the two clauses is thatclause (ii) refers to an ara where there are buildilng regualtions and clause (iii) refers to an area where there are no building regulations. Where building regulations are in force, necessarily approval of the appropriate authority has to be taken if the building is to be constructed. In an area where there are no building regulations the question of the bilding being constructed with the approval of the appropriate authority does not arise, and that is why sub-clause (iii) refers only to a building which has been constructed before or is being constructed on, the appointed day.

19. There is no dispute that the vacant land has to be determined with reference to the date of commencement of the Act and the relevant date is 17th February, 1976. So far as sub-clause (I) is concerned, the question as to whether construction of a building is or is not permissible according to the building regulations has to be determined with reference to 17th Feburary,1976. We have already referred to the definitions of the words "building regulations", which mean regulations contained in the master plan, and the meaning of the expression "master plan" is also given in the Act itself in S. 2(h) and it means, in relation to an area within an urban agglomeration or any part thereof, the plan prepared under agglomeration or any part thereof, 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 are or part thereof and providing for the stages by which such development of such are or part thereof and providing for the stages by which such development shall be carried out. Now, when a question arises as to whether construction of a building is not permissible under the building regulations in force, it is possible that there may be an absolute ban or prohibition under the relevant master plan where under no circumstances construction of building is possible on a given piece of land. Such piece of land may have been reserved for a purpose and on such reservation construction of a building would not at ail be permissible. But, when we come to an instance like the present one in which there is an open plot of land which is admittedly a house site on which a building could be constructed, it is difficult to see how any part of the land can be excluded under sub-clause. (I) of S. 2(q) on hypothetical considerations. Section 3 of the Act and the procedural provisions thereof which are intended to implement the provisions of the said section contemplate the determination of the quantum of vacant land on facts as they exist on the date of commencement of the Act . Therefore, in a given case where the owners of a land claims that certain land which is owned by him should be excluded on the ground that construction of a building is not permissible under the building regulations are attracted in his case. For a person., whi, on the commencement date, never even intended to construct any building on his land or for a person who has not even submitted a plan for construction of any building, the relevant building regulations are while irrelevant and he is not affected by the building regulations. It appears to us that when sub clause (I) refers to land on which construction of a building is not permissible under the building regulations, it was

contemplated that on the date of commencement of the Act. that is, 17th February, 1976, the owner intended to construct a building on the plot in question and the plan of the building was wither already sanctioned or he had submitted the plan for sanction. Where a building plan is already sanctioned and such sanctioned plan is operative on 17th February, 1976 or a plan has already been submitted for sanction, it could be ascertained with certainty as to how much land could be identified as land on which construction of a building is not possible. Sub-clause (I) of S. 2(q) does not, in our view, contemplate a general exclusion of land from the purview of the Act to the extent of two-thirds or one-half or whatever may be the extent of land on which relevant building regulations in force in the area under consideration irrespective or whether a building is proposed to be constructed or not on the date of commencement of the Act. We are, therefore, unable to subscribe to the broad proposition laid down by the Division Bench that in all cases of vacant land, irrespective of whether on the commencement date a building was proposed to be constructed or not, sub-clause (I) has the effect of exclusion from the purview of the Act such land on which construction of a building is not generally permissible, which is two-thirds of the are of the total plot in Pune. Such a construction will defeat the very purpose of the Act. An illustration as to how such a construction will defeat the purpose of the Act may be now given Let us take the case of a person who owns six thousand square meters of land, then on the ratio of the decision of the division Bench, four thousand square meters of land will have to be totally excluded on the footing that theron no construction impossible. Assuming that this is so, out of the remaining two thousand square meters of land one thousand square meters of land is allowed to be retained being the ceiling limit. If at some future date the owner proposes to construct a building, it is not necessary that he should restrict his construction only to the one-third area of the one was allowed to retain in addition to four thousand square meters as stated above, because for the purposes of the building regulations the area on which he can build will be determined having regard to the area of five thousand square meters of land which is in actual possession of the owner. Thus he will be entitled to construct on the one-third area out of the five thousand square meters. This could necessarily include a part of the land which has been assumed to be incapable of being constructed upon according to the division Bench judgement with the inevitable result that the land one-third of the area of the whole plot, which is excluded for the computation of vacant land again becomes available for construction which evidently is not contemplated placed by the legislature. The construction placed by the division Bench of the scope of sub-clause (I) and s. 2(q) is in our view, clearly likely to defeat the purpose of the Act and such a construction must, therefore, be avoided. So far as sub-clause (I) of S. 2(q) of the Act is concerned, we must therefore hold htat the decision of the Division Bench in Billimoria's case (supra), which holds that if on a particular area of a plece of land construction of a building is not permissible, then that area must necessary be excluded from the definition in s. 2(q)(I) of the Act, requires to be overruled.

20. When the extent of the vacant land is to be determined, it is clear that what is sought to be excluded under each one of the heads must be separately determined by the Competent Authority. The owner of the land will be entitled to the benefit of each one of the sub-clauses as well as the proviso if they are clauses as well as the proviso if they are relevant on the facts of a given case. There may be cases where the land which is sought to be excluded by sub-clause (ii) can be included by in the land which is sought to be excluded by sub-clause (I). when , for example, on a given piece of land the area of two-third of the land is not to be construction upon but this area of two-third is more than the land occupied by the building, then the owner will not be entitled toa separate exclusion both under sub-clauses (I) and (ii), because the area under sub-clause (I) will obviously include the land appurtenant which is referred to in sub-clauses (I) and (ii). Indeed , this position was not disputed by Mr. Kanrnik, . But, since vacant land has to be determined on the basis of totality of the land owned by our in possession of the owner as contemplated Authority will have to determine separately the land which falls under sub-clauses (I), (ii), (iii) and the proviso of s. 2(q) of the Act subject to some land falling in clauses (ii) being covered have and said eariler, we cannot accept the contention advanced before us on behalf decision of Billimoria's case , that two-thirds of the total area of the land in the instant case will be straightway liable to be excluded for the purpose of computation of vacant l land and ceiling area.

21. We may refer to certain decision on which reliance was placed by the learned counsel for the petitioners, though on consideration of those decision we find that they are hardly of nay assistance to the petitioners for the proposition that the learned counsel has advanced before us. Reliance was placed on the decision of the Delhi High Court in Shanti Devi v. Competent Authority . In that decision, the learned Judges of the Delhi High Court took the view that S. 2(q)(I) of the Act contemplated that the activity of building is not permissible on the date when the land is sought to be dealt with land not at any future time and the possibility that such activity or could come to be permitted in future or that there are buildings constructed in the a there is no permanent prohibition to construct would not be sufficient to that the land as "vacant land" within the meaning of the provision. So far as the decision holds that the relevant date for determination for the purpose of s. 2(q)(I) of the Act is the date on which the land is sought to e date dealt with, that is, the commencement date referred to in S. 3 there can be no dispute. In a part of the decision, the Division Bench seems to have taken the view that land notified for acquisition under the Land Acquisition Act must be held to be one on which construction of buildings was not which permitted. We are really not concerned with that view, so far as the present petitions are concerned , but it is sufficient to point out that the correctness of a that view has not been accepted by this Court in Dattatraya v, State of Maharastra and in an unreported decision of this Court in D.P. Dani v. State of Maharashtra (Writ Petition No. 1650 of 1979 decided on 31st

January , 1983). In Dattatraya's case the contention was that certain plots of land which were reserved for varous public activities, such as buildings of primary school high school, civil hospital, bus terminus ets. Underthe Town Planing Scheme should be excluded for the purpose of computation of vacant for land because, according to the petitioners in that case no building activity was permitted on those lands so far as the petitioners were concerned. The division Bench after referring to the primary object of the Act as set out in the case of Union of India v. Valluri Basavaiah Choudhary rejected the contention that merely because the petitioners are prohibited from constructing any building any under the building regulations containedin the Town Planning Scheme the land should not be treated as vacant land. The Division Bench found that if the regulations allowed the building activity not to a person who holds that land but by public bodies or the State Government then certainly construction of building was permissible, and once it is found that construction of building is permitted either by an individual or even by public authority then certainly it is "vacant land" and cannot be taken out of the definition. This decision does not suppot the petitioners that even if no building is contemplated and no plan has been sanctioned, merely because there are some building regulations which prohibit generally construction over two-thirds of the total area of the plot that area of two-thirds of the plots that area of two-thirds of the plot should be excluded fro the purpose of vacant land. In Dani's case a notification sanctioning the development plan of Pune was isseud on 7th July, 1966, but no further steps were taken by the Government for acquiring the petitioners land. On 28th July, 1971 the government confirmed the purchase notice issued by the petitioners under s. 49 of the Town Planning Act but excluded a part of the area from the acquisition. On 23rd June, 1972 a declaration was made under s. 126 of the Town Plannig Act read with s. 6 of the Land Acquisition Act. The land was duly demarcated and proceedings under s. 9 of the Land Acquisition Act for determination of compensation were also going on . It was the claim of the petitioners, relying on the decision of the Delhi High court , that since the building activity would not be permitted in further on the land held by the holders the land should a be regarded as non-vacant land. The argument was, as far as the petitioners were concerned , no building activity was permissible. This argument was rejected was by the division Bench in the following words.

"We are unable to accept the meaning that is sought to be read in the definition of vacant land' by the Delhi High court on which reliance is placed by Mr. Andhyarujina . Merely because as a result of acquisition proceedings intialed in respect of a land a prudent person will not contemplate construction on the same, it does not mean that the construction of a building is not permissible under the building regulations in force in the area in which the land is situated, It is only where construction of a building regulation that he land is taken out of the purview of the Urban Ceiling Act. What is necessary is the legal impermissibility and not prudently refraining from construction on the land . Those are the clear words to be found in s. 2(q)(I) of the Ceiling

Act".

22. While these observations have our respectful concurrence, we have already pointed out that so far as Section 2(q)(I) of the Act is concerned, there must either of be complete prohibition for construction activity by development plan or master plan or there must already be a sanctioned plan or a plan submitted for approval on the date of commencement of the Act on the basis of which and land on which a building cannot be constructed under s. 2(q)(I) could be definitely ascertained. In the absence of any of the above conditions in the case of open land which falls in clause (I) of s. 2(q), all land in excess of the ceiling limit specified in s. 4 will be taken over by the Government.

23. the learned counsel of the petitioners then contended that the matter has already been remanded to the Competent Authority by the Appellate Authority for determination of separate one-seventh share of each of separate tenants in common is entitled to the ceiling area, a separate final statement must also be made by the appropriate authority in respect of each of the co-owners. We do not see what objection there could be to such a course. Section 9 of the Act provides that after the disposal of the objections under s. 8(4), the competent authority shall make the necessary alterations under in the draft statement in according with the order passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit. It is obvious; therefore, that on a plan reading in of s. 9 of the Act, vacant land is to be determined with reference to each person in a case like this and therefore, in respect of each of the seven persons the Competent Authority will have to determine whether it exceeds the ceiling limit and make a final statement as contemplated by s. 9 of the Act.

24. Since the matter is being remanded back the petitioner will also be entitled to raise fresh contentions as are permissible to him for computation of vacant land also in respect of survey No. 1257. The petitioner will, however, not be entitled to reopen the question which have already been decided so far as rejection of his claim of the footing that he had already submitted an application for exemption under s. 20 of the Act.

25. Besides the petitioner, five other co-owners have also filed . Writ Petitioner Nos. 1036 to 1040 of 1980. With the consent of the counsel we have taken up all these five petitions , because the same order has been challenged in all these five petitions . All these petitions fall the competent Authority will now deal with the matters in the light of this judgement. Rule issued in these petitions are discharged. However, there will be no order as to costs of these petitions.

26. Order accordingly.