HIGH COURT OF GUJARAT

DILIPKUMAR MANILAL PATEL
Versus
STATE OF GUJARAT & 7

Date of Decision: 19 December 2011

Citation: 2011 LawSuit(Guj) 1327

Hon'ble Judges: S R Brahmbhatt

Case Type: Civil Application; Special Civil Application

Case No: 4608 of 2010; 4413 of 1992

Subject: Civil, Constitution, Property

Acts Referred:
Constitution Of India Art 227, Art 226
Code Of Civil Procedure, 1908 Or 23R 1(5)
Urban Land (Ceiling And Regulation) Act, 1976 Sec 20, Sec 20(1)
Urban Land (Ceiling And Regulation) Repeal Act, 1999 Sec 3(1)(b), Sec 4
Principal Act, 1963 Sec 14, Sec 13, Sec 11, Sec 12

Advocates: A S Vakil, Jashwant M Shah, Jitendra M Patel, Ketan D Shah, Nanavati Associates, R N Shah, R K Mishra

Cases Referred in (+): 31

S. R. Brahmbhatt, J.

[1] This group of petitions are filed in respect of the Survey Nos. 216, 218, 126, 191, 197, 349, 1139, 1241/2 and 1245/1, of village - Vejalpur, Taluka Daskroi, District Ahmedabad, which have been sold by the original land owner Bai Saraswati by two sale deeds dated 27.10.1964 and the litigation arising there from hence they were heard together and are being disposed of by this common judgment and order.

[2] The details of said petitions are narrated hereunder:

(i) The petitioners, by way Special Civil Application No. 4413 of 1992, filed under Articles 226 and 227 of the Constitution of India, have prayed as under:

(A) The Honourable Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order at Annexure O hereto; and consequently rejecting the application made by respondents Nos.2 and 4 for exemption under Section 20 of the Act to respondent No. 1 in respect of the lands in question;

(B) Pending admission, hearing and final disposal of this petition, the Honourable Court may be pleased to stay operation, implementation and execution of the impugned order at Annexure - O hereto;

(C) Such other and further relief or reliefs as may be deemed just and expedient in view of the facts and circumstances of the case may kindly be granted;

(D) Costs of this petition may kindly be awarded to the petitioners;

In this petition, the petitioners have also filed one Civil Application being Civil Application No. 4608 of 2010 for amending the prayers by adding prayer 20(AA) as under :

20(AA) Your Lordships may be pleased to hold and declare that the respondent No.2- Bai Saraswatiben, wd/o. Ashabhai Revandas, has ceased to be owner of the land in question of Survey Nos. 216, 218, 126, 191, 197, 349, 1139, 1241/2 and 1245/1, which have been sold by two sale deeds dated 27.10.1964, vide Annexure - A & B , therefore, she does not have any right, title and interest to make application under Section 20 of the ULC Act wherein the impugned order has been passed vide Annexure - O to the petition.

(ii) The petitioners of Special Civil Application No. 10884 of 2009 have filed this petition under Articles 226 and 227 of the Constitution of India and prayed following reliefs:

(A) Your Lordships may be pleased to quash and set aside the judgment and order below Exh. 110 in Regular Civil Suit No. 292 /1993 dated 14.8.2008, by holding and declaring the same to be illegal, erroneous, not based on the material on record, misconceived and, therefore, null and void.

(B) Your Lordships may be pleased to pass appropriate orders that the Principal District Judge, Ahmedabad (Rural), to decide all the suits bearing Nos. Civil suit Nos. 445/1991, 66/1992, 198/1992, 681/1992, 711/1991, 721/1992, 292/1993, 607/1993, 783/2004 and 264/1992 as order has been passed of consolidating all suits and hearing together, vide order dated 29.8.2006, which has been challenged before this Hon'ble Court in Special Civil Application No. 21304/2006, 21305/2006

and 21307/2006, which were withdrawn and review applications, being Review Application Nos. 1/2006, 2/2006 and 3/2006 filed before the Hon'ble District Court, Mirzapur, Ahmedabad wherein the order of the learned Principal District Judge, Ahmedabad (Rural) was not modified and was not set aside, therefore, Your Lordships may be pleased to direct the consolidated hearing of the aforesaid suits within the stipulated time bound program.

(C) Your Lordships may kindly be pleased to pass any other further order/s as are deemed fit, just and proper in the facts and circumstances of the case and in the interest of justice.

Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the execution, operation and implementation for all purposes the order dated 14.8.2008 passed below Exh. 110 in Regular Civil Suit No. 292/1993 at Annexure 'A' by H.M. Velani, Principal Senior Civil Judge, Ahmedabad (Rural), Mirzapur.

In this petition a Civil Application being CA NO:4719 of 2011 came to be filed seeking stay upon the construction activities on the land pursuant to development permission granted by the competent authority despite the objections raised by the petitioners on various grounds including pendency of the petition. The civil application also contains prayer seeking leave to file separate petition to challenge the permission. This was resisted on the grounds that as the Regular Civil Suit no. 292 of 1993 came to be withdrawn wherein the order made below exhibit 5 application of temporary injunction also came to an end and challenge to that withdrawal in form of SCA 10884 OF 2009 was pending and no interim order was existing the development permission could not have been denied.

(iii) The petitioners in Special Civil Application No. 11925 of 2009, filed under Articles 226 and 227 of the Constitution of India, prayed the following reliefs in Paras 22 and 23:

Para-22

(A) Your Lordships may be pleased to quash and set aside the order dated 08.09.2009, in Regular Civil Suit No. 681/1992 by holding and declaring the same to be illegal, erroneous and be pleased to hold and declare that the said order has been obtained by committing a fraud with the Hon'ble Court by dishonest approach, as the power of attorney has been cancelled vide notice dated 3.12.2004 and further be pleased to hold and declare that the said order cannot be passed separately being contrary to order below Ex.103 in Civil Misc. Application No. 16/2005 of consolidated hearing dated 29.08.2006 at Annexure 'E'.

(B) Your Lordships may be pleased to pass appropriate order on the Hon'ble Court below for hearing the Civil Suit Nos. 445/1991, 66/1992, 198/1992, 681/1992, 711/1991, 721/1992, 292/1993, 607/1993, 783/2004 and 264/1992 on priority basis within time bound program or within the specified period as may be specified by this Hon'ble Court and to try the same as per the directions and guidance as stipulated in the order dated 29.8.2006 of consolidated hearing passed by the learned Principal District Judge, Ahmedabad (Rural) in Civil Misc. Application No. 16/2005.

(C) Be pleased to hold and declare that the purshis dated 15.09.2008, 17.09.2008 at Annexure 'L' (colly) and 18.09.2008 at Annexure 'A' filed by Shri Chandrakant Atmaram Patel are without power and authority as Power of Attorney has been cancelled on 03.12.2004 at Annexure 'G'. Be pleased to pass the appropriate orders of hearing all the 10 suits together being Civil Suit Nos. 445/1991, 66/1992, 198/1992, 681/1992, 711/1991, 721/1992, 292/1993, 607/1993, 783/2004 and 264/1992 pending before the Civil Court, Ahmedabad (Rural) adjudicate and decide together in conformity and compliance with the order dated 29.08.2006 passed below Ex.103 in Civil Misc. Application No. 16/2005.

(D) Your Lordships may be pleased to hold and declare that the contents of the purshis at Annexure 'A' and 'L' dated 15.09.2008 in RCS 607/1993, 17.09.2008 in RCS 198/1992 and 18.09.2008 in RCS 681/1992 submitted by Shri Chandrakant Atmaram Patel is not binding on the petitioners. Therefore no cognizance to be taken and no effect to be given so as to cause adverse and prejudicial effects to the property rights of the petitioners.

(E) Your Lordships may kindly be pleased to pass any other further order/s as are deemed fit, just and proper in the facts and circumstances of the case and in the interest of justice.

Para-23:

(A) Your Lordships may be pleased to stay the execution, operation and implementation of the order dated 8.9.2009 below Exh. 172 passed by the learned Civil Judge (S.D.), Ahmedabad (Rural) in Regular Civil Suit No. 681/1992.

(B) Your Lordships may be pleased to stay all kinds of proceedings in the Civil Suit Nos. 445/1991, 66/1992, 198/1992, 711/1991, 721/1992, 607/1993, 783/2004 and 264/1992, save the consolidated hearing as per the common order of consolidated hearing passed Exh.103 in Civil Misc. Application No. 16/2005 dated 29.8.2006 at Annexure 'E'.

(iv) The petitioners in Special Civil Application No. 7087 of 2010, filed under Articles 226 and 227 of the Constitution of India, prayed the following reliefs at Paras 15 and 16:-

Para-15:

(A) To quash and set aside the impugned order dated 14.8.2008 passed by learned Principal Civil Judge (SD), Ahmedabad Rural below Exh. 110 in Regular Civil Suit No. 292 of 1993 at Annexure A;

(B) To remand the matter back to decide according to law after affording an opportunity of hearing to present petitioners and other plaintiffs;

(C) To direct the learned Civil Judge to hear and decide all the ten suits together, which were consolidated by order dated 29.8.2006 passed in Civil Misc. Application No. 16 of 2005;

(D) To hear this Special Civil Application along with Special Civil Application No. 4413 of 1992, 10884 of 2009 and 11925 of 2009 as the subject matter of the land and parties are common;

(E) Pass such other and further orders as may deem fit in the interest of justice.

Para-16:

(A) To stay the operation, implementation and execution of the impugned order dated 14.8.2008 passed by learned Principal Civil Judge (SD), Ahmedabad Rural below Exh. 110 in Regular Civil Suit No. 292 of 1993 at Annexure A;

(v) The petitioners in Special Civil Application No. 7088 of 2010, filed under Articles 226 and 227 of the Constitution of India, prayed the following reliefs at Paras 15 and 16:-

Para-15:

(A) To quash and set aside the impugned order dated 8.9.2009 passed by learned Senior Civil Judge (SD), Ahmedabad Rural below Exh. 172 in Regular Civil Suit No. 681 of 1992 at Annexure A;

(B) To remand the matter back to decide according to law after affording an opportunity of hearing to present petitioners and other plaintiffs;

(C) To direct the learned Civil Judge to hear and decide all the ten suits together, which were consolidated by order dated 29.8.2006 passed in Civil Misc. Application

No. 16 of 2005;

(D) To hear this Special Civil Application along with Special Civil Application No. 4413 of 1992, 10884 of 2009 and 11925 of 2009 as the subject matter of the land and parties are common;

(E) Pass such other and further orders as may deem fit in the interest of justice.

Para-16:

(A) To stay the operation, implementation and execution of the impugned order dated 8.9.2009 passed by learned Senior Civil Judge (SD), Ahmedabad Rural below Exh. 172 in Regular Civil Suit No. 681 of 1992 at Annexure A;

(B) To restrain the learned Civil Judge, who is in charge of Regular Civil Suit No. 607 of 1993 and 198 of 2002 pending before the learned Civil Judge, Ahmedabad (Rural) from passing any further order on the basis of purshis dated 15.9.2008 in Regular Civil Suit No. 607 of 1993 at Annexure R and purshis Exh.60 dated 17.9.2008 in Regular Civil Suit No. 198 of 1998.

[3] The entire controversy in all these matters is in respect of nine survey numbers of village - Vejalpur, Taluka Daskroi, District Ahmedabad, dealings of the petitioners and respondents in the matter of land and factual aspects could be summarized as under:-

Special Civil Application No. 4413 of 1992:

1. The original petitioners in S.C.A. No. 4413 of 1992 have purchased the land in question by executing two registered sale deeds dated 27.10.1964 from the respondent no.2 i.e. Bai Saraswati. The petitioners thereafter formed a partnership in the name and style of M/s. Arbuda Corporation as per the deed of partnership dated 04.03.1965 for the purpose of developing the land in question. M/s. Arbuda Corporation executed an Agreement to sell dated 07.12.1972 in favour of one M/s. Ganesh Land Organizers and M/s. Ganesh Land Organizers promoted one Mahalaxmi Adivasi Cooperative Housing Society Ltd. and subsequently the name of Mahalaxmi Adivasi Cooperative Housing Society Ltd. changed as Mahalaxmi Cooperative Housing Society Ltd. (Mahalaxmi Society) which was registered on 18.06.1974. The said M/s. Arbuda Corporation also executed an Agreement to Sell dated 15.09.1975 in favour of Mahalaxmi Society. Thereafter, M/s. Arbuda Corporation and Mahalaxmi Society made and application dated 29.12.1978 under Section 20 of the Ceiling Act. The respondent No.2 Bai Saraswati also executed an Agreement to Sell dated 15.04.1982 in favour of Mahalaxmi Society and Ganesh Land Organizers.

2. The four purchasers under the two sell deeds dated 27.10.1964 executed in favour of the fifth purchaser i.e. Chandrakant Atmaram Patel, in presence of a Notary Public dated 07.01.1989. The said chandrakant Atmaram Patel and Mahalaxmi Society also made an application dated 22.03.1991 under Section 20 of the Ceiling Act. The respondent no.2 i.e. Bai Saraswati executed a registered Agreement to Sell dated 01.05.1991 in favour of Mahalaxmi Society and also a supplementary agreement for possession dated 01.05.1991. The respondent no.2 also made an application dated 17.06.1991 under Section 20 of the Ceiling Act.

3. The competent authority under the Ceiling Act passed the impugned order dated 03.06.1992 under Section 20 (1) of the Ceiling Act granting permission to sell the lands to Mahalaxmi Society. Thereafter the respondent no.2 executed various registered Sell Deeds dated 05/08.06.1992 in favour of Mahalaxmi Society. At this point of time various disputes started inter se between respondent no.2, the five purchasers under the Sell Deed dated 27.10.1964 (original petitioners, Mahalaxmi Society, Ganesh Land Organizers, etc.).

4. In the aforesaid factual background, the present Special Civil Application No. 4413 of 1992 came to be filed on 30.06.1992 before this Court by the five purchasers under the sale deeds dated 27.10.1964. This Court vide order dated 26.08.1992, issued Rule and by way of interim relief directed that further operation and implementation of the impugned order dated 03.06.1992 be stayed. It was further directed that the proceedings in relation to the form filed under Section 6 of the Ceiling Act by the land holder be also stayed.

5. Another Special Civil Application No.4582 of 1992 was also filed by the present respondent nos. 3/1 to 3/7, challenging the impugned order dated 03.06.1992 passed by the competent authority under Section 20 (1) of the Ceiling Act. The Ceiling Act came to be repealed by the Urban Land (Ceiling & Regulation) Repealing Act, 1999 (the Repeal Act). This Court in S.C.A. No. 4582 of 1992, vide order dated 31.08.1999 disposed of the same, as having abated.

6. As it is stated that respondent no.2 Saraswatiben had sold the land in favour of five persons by registered sale deeds, vide Registration Nos. 8927 and 8925. The sale deed vide registration No.8927 was in respect of Survey Nos. 197, 349, 1241/2, 1139, 1245/1, 126 and 191, total 7 survey numbers. Second sale deed under its registration No.8925 was for Survey Nos. 216 and 218. As it is stated that an amount of Rs. 48,884/- was paid and received by Smt. Saraswatiben towards sale deed registration No. 8925 and and amount of Rs. 26,116/- was received by Smt. Saraswatiben towards sale deed registration No.8927. Total land of the said 9 parcel of land admeasures approximately 57,000 sq. yds. In the rights of record,

form No.7/12, the names of the petitioners' father with those of other three persons came to be mutated through various entries, as it is stated at Annexure-D, pages 44 to 52 in the petition. On 20.06.1992, the City Deputy Collector, Ahmedabad has certified Entry No.6337 dated 23.11.1991. As it is stated that legal heir of Shri Somabhai Karsanbhai, had filed Tenancy Proceeding in respect of the land in question. They have been unsuccessful to establish their claim, as a tenant, they lost right from the Mamlatdar till the Supreme Court. It is stated that the said tenant Shri Chandulal Somabhai Patel had challenged the order of the Gujarat Revenue Tribunal by preferring Special Civil Application No. 2766 of 1979 before this Court, as it is stated at Annexure-F, page 54 in the petition. This Court did not interfere with the concurrent findings of three authorities below. This Court dismissed the petition vide order dated 06.03.1981, passed in Special Civil Application No. 2766 of 1989, which came to be assailed by tenant Shri Chandulal Somabhai Patel before the Supreme Court by preferring Special Leave Petition being SLP (Civil) No. 6498 of 1981, which had been dismissed by the Supreme Court on 21.08.1984. The communication of the order of the Apex Court dated 05.12.1984 is annexed at Annexure M, page 197 in Special civil Application No.10884 of 2009. Therefore, it is submitted that said Shri Chandulal Somabhai Patel had filed a petition without authority of law and no rights and title was in his favour ever before. However, he filed Special Civil Application No.4582 of 1992 before this Court and the said petition was disposed of by inviting order dated 31.08.1991. On the basis of which, respondent no.2 has contended that the present petition stands abated.

7. In that contest, emphasis has been supplied by respondent no.2 i.e. Saraswatibe, by preferring to the invited order at page 392 to the present petition. The order under challenge is at Annexure O dated 03.06.1992 was passed by the Government of Gujarat, at page 123. vide the said order, Smt. Saraswatiben, applicant herein, had been granted permission towards the land which she had already alienated by giving possession and ownership of the same vide two sale deeds dated 27.10.1964 for parcel of survey number of land of village Vejalpur, Taluka Daskroi, District Ahmedabad. As it is stated that various objections have been submitted to the said authorities and the said authority has not at all even by whisper, taken into consideration any of the objections nor he has dealt with any of the objections and has passed the orders which are not tenable and do not vest and confer any right for the said authority to pass such orders, namely;

(i) That to grant exemption under Section 20(1) of the ULC Act, 1976,

(ii) To transfer the land in favour of the society, i.e. Mahalaxmi Co-op. Housing Society Ltd.,

(iii) To complete formalities by registering the sale deed.

8. As it is stated that this very order is without authority of law and is in contravention to the provisions of Article 300-A of the Constitution of India. The order was sought to be impugned on the ground that;

(i) two sale deeds for the same parcel of land came to be executed in favour of the petitioners' father with those of the four other persons on 27.10.1964;

(ii) the sale deeds are perpetually and consisting and by all means prevailing as on today, on the name of five buyers;

(iii) two sale deeds have not been cancelled;

(iv) subsequent sale deeds dated 05.06.1992 and 08.06.1992 in favour of Mahalaxmi Co-operative Housing Society for whom Smt. Sarswatiben subsequently moved application for exemption was untenable and without authority of law;

(v) the authority while passing the order, has not taken into consideration that the ownership of the land in question stands transferred by registered sale deed dated 27.10.1964 vide Registration No. 8925 and 8927.

(vi) Therefore, the tenant who was got up, created, despite the fact that he has lost the case right from the Mamlatdar upto the Supreme Court, had filed the said Special Civil Application No.4582 of 1992 and it was requested to the Court that since the said petition came to be abated, therefore, the present petition should also abate.

(8) As it is submitted hereinabove, the heir of Shri Somabhai Karsanbhai Patel has no right to approach this Court by filing Special Civil Application for redressal of some grievances and thereafter withdrawing of the petition on a statement was a calculated effort to see that it may carry and impact of inviting the same order by requesting the Court that this petition being analogous to that of Special Civil Application No.4582 of 1992, therefore, order of abatement to be passed. This clarification has been made to the Court that the order of the authority, wherein he has directed that the sale deeds to be executed, therefore, 8 sale deeds came to be executed by Smt. Saraswatiben in favour of Mahalaxmi Co-operative Housing Society on 05.06.1992 and 08.06.1992 and on 18.10.2000 for one left out lone survey no.216. Under the direction, direction and commands which are absolutely illegal arbitrary, unconstitutional, without authority of law, the rights of the petitioners have been tried to be abrogated under the guise of order dated 03.06.1992 passed by the Revenue Secretary, Government of Gujarat, vide

Annexure -O. It is also stated that said order came to be challenged before this Court by submitting plethora of documents in support of the grievance that those documents have not been taken into consideration by the authority, wherein the claim, right, title and interest was transferred in favour of five persons on 27.10.1964. The said sale deeds by respondent no.2 Smt. Saraswatiben in favour of Mahalaxmi Cooperative Housing Society, dated 05.06.1992 and 08.06.1992 came to be challenged by filing Regular Civil Suit No.292/1993. It is also submitted on behalf of the petitioners that the said sale deeds dated 05.06.1992 and 08.06.1992 came to be challenged by filing Regular Civil Suit No.292 of 1993, wherein Exh.5 application came to be allowed by granting the interim injunction, vide order dated 28.05.1993, which is at Annexure-'III' from page 64 to 84, operative part of which at page 84 which is annexed with Civil No.4719 of 2011 in Special Civil Application No.10884 of 2009. The said suit had been withdrawn. The withdrawal order dated 14.08.2008 is the subject matter of challenge in Special Civil Application No. 10884 of 2009. It is also submitted on behalf of the petitioners that the buyers of the land in question have filed Civil Suit No.445 of 1991, seeking declaration that Saraswatiben does not have power, right and title in respect of the land of survey numbers which have been sold. The order of status quo dated 31.12.1991 came to be passed issuing notice. Thereafter, the same was vacated, against which Appeal from Order came to be preferred before this Court and the said appeal also came to be disposed of on a statement made by the tenant. Shri Chandrakant Atmaram Patel, one of the persons among five buyers of the land in question vide sale deed dated 27.10.1964, had made an application vide Annexure-J, page 112, to the authority before whom the application under Section 20 of the ULC Act was made by Saraswatiben. The said application was objected to. On 31.12.1991, a detailed application came to be made specifying therein that the land in question had been sold by Saraswatiben by executing sale deeds dated 27.10.1964, vide registration nos.8925 and 8927, annexing the Xerox copy of the sale deeds of the parcel of the said survey number. It is also submitted that 7X12 forms are also giving reference with regard to the order dated 06.03.1981 and the application filed by tenant Chandubhai Patel who has lost upto the Supreme Court and it also give reference to the order of the Krushi Panch Mamlatdar. Therefore, it requested that the present application under Section 20 filed by respondent no.2 i.e. Sarswatiben be declared to be without authority. She was not owner and did not have any right, title in her application, therefore, her application to be rejected. It is also submitted that another detailed representation by annexing plethora of documents came to be made to the competent authority on 15.02.1992. Despite quite number of documents annexed with the objections, substantiating and giving reasons as to why the application under Section 20 of the Act should not be rejected, neither she is owner nor she has right, interest and title. She has sold the

parcel of lands on 27.10.1964. No whisper or iota of reference is found of taking into consideration and dealing with the objections. Therefore, the impugned order is subjected to judicial review by this Court. The said order of the authority dated 03.06.1992 has been made the basis of transferring, alienating and selling the land by sale deeds dated 05.06.1992 and 08.06.1992, which those sale deeds have been the subject mater of challenge by filing Regular Civil Suit No.292 of 1993.

9. Learned advocate appearing on behalf of heirs and legal representatives of deceased petitioner no. 4 and respondent Nos. 5/1 and 5/4 heirs and legal representatives of deceased Amrutbhai Aashabhai submitted that in this matter, the order passed by the State Government dated 3.6.1992 under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act for short) is challenged by the petitioners. By the impugned order at Page-123 of the petition at Annexure O, the State Government has permitted Mahalaxmi Cooperative Housing Society, Ahmedabad to get execute the sale deeds in its favour. Learned advocate for the petitioners has submitted that the State Government has only power either to grant exemption or not grant exemption. Under Section 20 of the Act, the State Government has no power to permit transfer the land in favour of the applicant or any other persons. Thus, it is beyond the jurisdiction of the State Government, by which, the State Government has permitted the transfer the land in favour of Mahalaxmi Cooperative Housing Society. Learned advocate for the petitioners has submitted that in the present case, the petitioners are the owners of the suit land in view of two registered sale deeds of the year 1964. The petitioners are the owners and occupants of the suit land and Bai Saraswati has no right, title or interest over the suit property. She has no right to file such application as she was not holding the said land. Therefore also on this ground also, her application is not maintainable.

10. Learned advocate for the petitioners has submitted that in the present case on behalf of the petitioners, objections were raised that they are the owners and occupants of the land. They have never filed any application for exemption under Section 20 of the Act and without hearing them, no order should be passed in the proceedings and Bai Saraswati has no right to maintain such application. Thus, the title of the land was disputed by petitioners, inspite of that, the State Government has not issued any notice of hearing and not given any opportunity of being heard in the matter and therefore, the order passed by State Government is in breach of principles of natural justice and it is required to be quashed and set aside on this ground also. The objections raised by petitioners are at Page Nos. 112 to 118 in the memo of petition. It is submitted that once the title is disputed before the State Government under Section 20 of the Act, it is not open for the State Government to

decide the title between the parties. State Government ought to have directed Bai Saraswati first to get declaration regarding ownership of the land and in absence of such direction and unless the parties prove its title before the State Government regarding ownership, the State Government has no right to grant exemption in favour of said party. It was also contended that as the other petition filed by one Somabhai, who claims to be the tenant, was abated, in which, same order of the State Government passed under Section 20 of the Act was challenged.

11. Learned advocate for the petitioners has submitted that abatement of the petition has nothing to do with this petition on the following grounds:

1. Somabhai s right as a tenant has been terminated upto the Hon ble Supreme Court in 1984 and thereafter, he has no right to claim or challenge the said order in which, he has no right, title or interest.

2. Somabhai was not a party in the matter before the State Government under Section 20 of the Act, therefore, he has no right, title or interest over the land and he was never in possession of the land and abatement order in that matter is obtained by fraud and collusion between Bai Saraswati, tenant and Mahalaxmi Cooperative Housing Society with a view to damage the interest of petitioners. The following judgments were cited to substantiate said fact: 2004(4) GLR 2277: The Hon ble Court has held that power of the High Court under Article 226 of the Constitution of India being a part of basic structure of the constitution. The power of the High Court to examine validity of the order passed under Principal Act would survive. In support of this submission, learned advocate has relied upon the judgment reported in 2004(3) GLR 1983, wherein, the Hon le Court has held that if the matter does not abate, than, the Court has to decide the matter challenging the order under ULC Act on merits of the case. Therefore, right of the High Court to decide this petition under Article 226 of the Constitution of India is not taken away and the High Court has ample jurisdiction to decide the legality and validity of the impugned order passed by State Government dated 3.6.1992 at page: 123 and said power is not taken away by Repealing Act. Learned advocate for the petitioners has also submitted that in this petition, Civil Application No. 14743 of 2010 was filed for bringing the heirs of deceased petitioner no.4 Aasharam Atmaram Patel and petitioner nos.4/1 Shantilal Atmaram Patel and said Civil Application was allowed by this Hon ble Court.

12. Learned advocate appearing for the respondent submitted that present Special Civil Application No. 4413/1992 can be said to have been restored or is being pursued only by the original petitioner no.3/1 & 3/2. The same is evident from the fact that only applicant no.3/1 and 3/2 of MCA 2036/2009 had signed Vakalatnama

in favour of the Advocate. The same is further evident from the fact that Civil Application No. 4608/2010 seeking amendment in Special Civil Application No. 4413/1992 has been filed only by the original petitioner no.3/1 and 3/2 whereas none of the other original petitioner no. 1, 2, 4 and 5 have been joined as applicants in Civil Application No. 4608/2010. It is therefore submitted that the present Special Civil Application remained dismissed for non-prosecution qua original petitioner nos. 1, 2, 4 and 5 or at any rate is being pursued only by original petitioner no.3/1 and 3/2. It is also submitted by advocate for respondent that in view of the Repeal Act, more particularly Section 3, (1)(b) and 4 thereof, the present Special Civil Application No. 4413/1992 (being proceedings relating to an order made or purported to be made under principal act and also pending immediately before the commencement of the Repeal Act) shall abate. In support of this submission, he has placed reliance upon the decision of this Court dated 31.8.1999 passed in Special Civil Application No. 4582/1992, wherein also the same order dated 3.6.1992 impugned in the present Special Civil Application No. 4413/1992 was subject matter of challenged and Court has already taken a view, relying upon the provisions of the Repeal Act, that the Special Civil Application No. 4582/1992 has abated. Learned advocate for the respondent has also submitted that assuming that the Court in exercise of its power of judicial review can examine whether in the facts and circumstances of a given case, such abatement will take place or not, the said question in the present Special Civil Application No. 4413/1992 would be academic. It is also submitted that if the impugned order dated 3.6.1992 passed under Section 20(1) of the Act were to be set aside, no fruitful purpose will be served because the question of deciding 'denovo' the application under section 20(1) of the Act would not arise as the Act is now Repealed. It is also submitted that Special Civil Application No. 4413/1992 is sought to be kept alive in view of purported dispute which appears to have been arisen between the original petitioners inter-se and thereby convert the challenge to the order passed under section 20 (1) of the Act to a title dispute. It is therefore, prayed that not to permit the original petitioner no.3/1 and 3/2 particularly to convert the present Special Civil Application No.4413/1992 into a medium for fighting their inter-se dispute and to hold that Special Civil Application No. 4413/1992 has abated.

13. Learned advocate for respondent submitted that Civil Application No. 4608/2010 for amendment has been filed only by one out of the five petitioners and such Civil Application itself would not be competent. It is also submitted that Special Civil Application No. 4413/1992 itself having abated, the Civil Application No. 4608/2010 would not be competent and would not survive. It is also submitted that Civil Application has been filed more than 18 years after the filing of the

principal matter and therefore, on the ground of delay and/or latches and acquiescence the Civil Application is required to be dismissed. It is also submitted that by filing Civil Application, an effort therefore is to convert Special Civil Application No. 4413/1992 challenging an order passed under Section 20(1) of the Act to a suit for title necessitating investigation into facts, such an amendment ought not to be granted and in support of this submission a reliance is placed on the judgment Sanghvi Reconditioners v. Union of India, 2010 2 SCC 733.

Special Civil Application No. 10884 / 2009:

1. This petition is filed against the order dated 14.08.2008 below Exh.110 in Regular Civil Suit No.292/1993 came to be filed on 04.05.1993 on the ground that legality and validity of the same is under challenge. The Civil Suit No.292/1993 had been filed by five plaintiffs and the said suit had been in respect of Survey Nos.216, 218, 197, 349, 1241/2, 1139, 1245/1, 126 and 191. The Power of attorney dated 07.01.1989 came to be executed in favour of one of the plaintiffs Shri Chandrakant A. Patel, which was for altogether different purposes and objects. The said power of attorney came to be cancelled on 03.12.2004. The petitioners filed objections vide Annexure-W, page 316, Exh-110 dated 07.07.2008, wherein it was objected that the contents of the said purshis are not acceptable. It had been objected with the reasons that deceased Shri Manilal Bechardas Patel had 80% share to the land in question. Remaining plaintiffs i.e. plaintiff nos.1, 2 and 4 have only 20% share. On 3.12.2004, by a public notice in the newspaper, general power of attorney had been cancelled and a personal notice had been given to Shri Chandrakantbhai A. Patel on the same date. On cancellation of the power of attorney one of the plaintiffs Shri Chandrakantbhai A. Patel filed the said purshis, was no more into existence. The said power of attorney does not have legality and propriety and its value, more particularly, the said power of attorney has lost its efficacy on the ground that some of the executors have expired prior to the date of withdrawal purshis dated 07.07.2008. Shri Amrutbhai Ashabhai Patel has expired on 05.10.1990, who was one of the executants of the general power of attorney, therefore, the impugned power of attorney gets obliterated lost its legality and propriety as a whole and for remaining executants of the power of attorney, also, on the death of one of executors of the joint power of attorney. The power of attorney has been cancelled by the petitioners by giving public notice in the newspaper. The learned judge has transgressed the jurisdiction and passed the impugned order dated 14.08.2008, and gave importance to the alleged deed of confirmation. It is submitted that the procedure established under the law vide Order 23 of the Civil Procedure Code, have not been followed. Therefore, the impugned order is not only illegal but also against the settled principles of law. It is

submitted that the author of the purshis Exhibit 110 could not have been legal and proper to allow Shri Chandrakant A. Patel to withdraw himself from the said suit. The whole suit cannot be disposed of as withdrawn by a person who did not have any legal power and authority right from the initial date of filing of the suit under his individual signatures and not under power of attorney. Therefore, the impugned order required to be quashed and set aside.

2. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has submitted that petitioners while invoking writ jurisdiction under Article 226 and 227 of the Constitution of India have not approached this Court with clean hands and not stated the true and complete facts. He submits that petitioners have attempted to mislead the Court and suppressed important documents i.e. Acknowledgment-cum-settlement receipt dated 01.05.2004 executed by Respondent no.6- Chandrakant Atmaram Patel, Declaration-cum-indemnity on title, dated 09.11.2004 executed by respondent no.6 and Registered deed of confirmation dated 10.11.2004 executed by respondent no.6 from this Court. Learned advocate for the following respondents further submitted that the execution of the aforesaid documents is not disputed by the petitioners nor have the petitioners have filed any affidavit in rejoinder and disputed the said documents. It may also be noted that the aforesaid document have been executed prior to the purported cancellation of the Power of Attorney vide public notice dated 05.12.2004. Learned advocate for the following respondents, therefore, submitted that the petitioners who have invoked extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India are not entitled to any discretionary relief as no injustice would be caused to the petitioners in the overall facts of the case. In support of his submissions learned advocate for the respondents has placed reliance upon the following judgments. (i) Dalip Singh v. St ate of U.P, 2010 2 SCC 114 and laid emphasis especially upon the paragraph nos.1, 2, 20, 24, 8, 9, 4 and 7 (ii) paragraph nos.7 and 11.

3. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted on the point of delay and latches that impugned order is dated 14.08.2008 and the present S.C.A. No.10884 of 2009 is affirmed on 03.09.2009 i.e. more than one year after the impugned order dated 14.08.2008. The purported explanation in paragraph no.43 of the petition dies not inspire any confidence much less is satisfactory. In this context it may be noted that the present petitioners had in fact filed objections dated 31.07.2008 to the purshis dated 07.07.2008 seeking disposal of the Suit and were therefore in full knowledge of the proceedings. Learned advocate for the respondents further submitted that it therefore appears that the filing of the Present petition i.e. S.C.A. No. 10884 of 2009 is an

afterthought and the same is liable to be dismissed also on the ground of delay, latches and acquiescence.

4. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted that it is not in dispute that the only act relied upon by the petitioners for the purpose of allegedly terminating the Power of Attorney dated 07.01.1989 in favour of Respondent no.6, is the public notice dated 03.12.2004. Therefore, at least upto 05.12.2004, the power of Attorney was valid and subsisting and not terminated by the petitioners. The present petitioners are themselves donors of the Power of Attorney dated 07.01.1989. He further submits that prior to the alleged termination of the Power of Attorney dated 07.01.1989 by the petitioners, the donee i.e. respondent no.6 had acted under the said Power of Attorney, executed various documents on the basis of the settlement arrived at between the various parties. Such documents are acknowledgment-cum-settlement receipt dated 01.05.2004, declaration-cum-indemnity on title dated 09.11.2004 evidencing settlement, passing of consideration etc. The receipt dated 01.05.2004 evidences and acknowledges receipt of payment of Mahalaxmi Society to the donee respondent no.6. The various registered documents executed by the other donees also confirmed that such other donees have also received their share out of the total consideration of Rs.29, 72, 365/-. However, the petitioners appear not to have enchased their cheques for the sum of Rs. 5,94, 473/-.

5. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted the Power of Attorney, which is produced at pages 389-396 in the petition, was executed by the petitioners, respondent nos. 7.1, 7.2, 7.3, Amitaben Baldevprasad Acharya, Ashabhai Atmaram (predecessor of respondent nos.8.1 and 8.2 and Amrutabhai Ashram (predecessor of respondent nos. 9.1 to 9.4)(the donors) in favour of re3spondent no.6 I.e. Chandrakant Atmaram Patel(donee). He further submits that the said Power of Attorney stated that the respondent no.6 donee, was from the beginning managing the lands, which were purchased by registered sale deeds dated 27.10.1964. The said Power of Attorney authorized the said donee to sign Vakaltnamas, engage Advocates, file affidavits, etc. The said Power of Attorney was executed in the City Civil Court. In this context reliance is placed upon Section 85 of the Evidence Act. He further submitted that in so far as the present S.C.A. No. 10884 of 2009 is concerned, the following executants i.e. Amrutbhai Asharam and Ashabhai Atmaram, have expired after the execution of the said Power of Attorney dated 07.01.1989. The said Power of Attorney would not get terminated as a result of the death of the aforesaid two executants either in respect of the surviving donors or even the heirs of the deceased donors more particularly in the facts and circumstances of the present case. In support of his

submissions, learned advocate has placed reliance upon Section 3 of the Power of Attorney Act, 1882.

6. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted that on the death of the aforesaid two executants, the Power of Attorney got automatically terminated. The act of termination of the Power of Attorney dated 07.01.1989 by the petitioners for the first time took place by public notice dated 05.12.2004. If according to the petitioners, the Power of Attorney got terminated automatically in respect of all the donors as a result of death of any one executants donor, then the petitioners have not explained why did they publish a public notice for terminating the Power of Attorney. Learned advocate further submitted that even though the petitioners and deceased Ashabhai Aatmaram issued a public notice dated 05.12.2004, terminating the Power of Attorney dated 07.01.1989, ever since, they took no consequential steps in any of the Suits/pending litigations. Section 3 of the Powers of Attorney Act, 1882 does no more then to indemnify the holder of a Power of Attorney for actions done by him in good faith if the determination of his power by the death of the person granting it, was unknown to him at that time.

7. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted the in the facts of the present case, the petitioners themselves had executed the Power of Attorney. The said petitioners/donors terminated the said Power of Attorney for the first time by public notice dated 05.12.2004 i.e. after the settlement took place and the donee respondent no.6 had executed the necessary documents in this behalf. On a review of the terms of Power of Attorney and the overwhelming evidence on record leads to only one inevitable conclusion that the Power of Attorney dated 07.01.1989 always continued. It apparent that there was no intention that the Power of Attorney was to last only during the life time of the four donors.

8. Learned advocate for the respondent Nos.6, 7.1, 7.2 and 9.3 has further submitted that the filing of and also the contents of the Plaint of Regular Civil Suit No.42 of 2005 produced at pages 539 to 548, by the present petitioners against the other four purchasers, further confirm the fact that there has been settlement between respondent no.1 i.e. Bai Saraswati, respondent no.2 Mahalaxmi Society and the purchasers of the two sale deed of 27.10.1964. Learned advocate for the said respondents has, therefore, submitted that the Power of Attorney would be appropriate and the petitioners be permitted to pursue their said Regular Civil Suit No.42 of 2005 and the present S.C.A. No. 10884 of 2009 be dismissed.

(3) Special Civil Application No. 11925/2009:

14. Learned advocate for the petitioners has stated that the Civil Suit No. 681 of 1992 came to be filed by the petitioners, legal heirs of plaintiff no.3. The said suit came to be filed under the power of attorney but under the individual signatures and in their individual capacity. In the said Civil Suit, injunction application Ex. 5 came to be filed and the Court was pleased to raise issues and was pleased to allow said exh. 5 application and further pleased to confirm the ex-parte ad-interim relief till final disposal of the suit. In the said suit, withdrawal purshis came to be filed by Shri Chandrakant A. Patel on 18.9.2008 and the petitioners were not aware and order came to be passed on 8.9.2009. The said suit came to be permitted to be withdrawn unconditionally on the basis of the said purshis and the same came to be decided vide order dated 8.9.2009. Learned advocate for the petitioners submitted that a public notice for cancellation of the power of attorney specifying therein the survey numbers of parcel of land, which came to be sold by Saraswatiben, the power of attorney came to be cancelled. Thus, the power of attorney dated 7.1.1989 came to be cancelled by the public notice in news paper 'Sandesh' dated 3.12.2004. It is also contended that the alleged confirmation deed has never been given to the petitioners and no amount of money came to be paid to them. The suit No. 292 of 1993 which came to be withdrawn by withdrawal purshis dated 14.8.2008 no amount ever came to be paid to the petitioners nor the petitioners are signatories of the receipt of the amount by instrument or by cash. It is also submitted that said acknowledgment is also under the signature of the alleged power of attorney holder Chandrakant A. Patel. In the last, order dated 8.9.2009 allowing the purshis Exh. 172, be quashed and set aside, by holding and declaring the same to be illegal, arbitrary, against the settled principle of law, contrary to the provisions of Order 23 Rule 5 of the Civil Procedure Code and further prayed that the deed of confirmation be declared to be illegal, null and void-ab-initio, is against the public policy, it does not have any contractual obligation, it did not assent, which is not confirmed, contents thereof are not corroborated to be true and accordingly, the same does not have any efficacy, propriety in the eye of law.

15. Learned advocate for the respondent Nos. 6, 7.1 and 9.3 submitted that he has filed written submissions in Special Civil Application No. 10884 of 2009 and he adopts the same in this matter and prayed for dismissal of the petition.

16. Learned advocate appearing for Respondent No. 8/1 submitted that only those parties can be the parties in the petition under Article 227 who were parties before the Lower Court and in the present case, present respondent was not the party in the lower court proceedings and therefore, he could not have been joined as a party in the present petition and more particularly, no permission of this Hon'ble

Court was sought by the petitioner before joining him as party respondent and on this count he submitted that the petition deserves to be dismissed on the basic principle of law.

(4) Special Civil Application No. 7087/2010 :-

1. Learned advocate for the petitioners submitted that in this petition, the order passed by learned Civil Judge dated 14.8.2009 below Exh. 110 in Special Civil Suit No. 292 of 1993 is challenged by the petitioners. By the impugned order, on the application of only one plaintiffs i.e Chandrakant Atmaram Patel, who was plaintiff no.1 in the said suit, out of five plaintiffs, the Civil Court has permitted him to withdraw the suit. The said order has been challenged on the following grounds:

That the order XXIII Rule (1)&(5) provide that nothing in this Rule shall deemed to authorize the Court to permit one of the several plaintiffs to abandon a suit or part of the suit under Sub-rule(1) or to withdraw under Sub-rule (3) any suit of part of the plaint without consent of the other plaintiffs.

It is submitted that in the present case, purshis was only filed by plaintiff no.1 out of 5 plaintiffs. Furthermore, his power of attorney was cancelled on 3.12.2004, while the application/purshis Ex.110 was filed on 7.7.2008. Thus, on the date of application, there was no power of attorney existed in favour of Chandrakant A. Patel or other plaintiffs had never given their consent to withdraw the suit.

* The learned Judge has also not issued any notice of hearing of said application or purshis to remaining plaintiffs and order was passed in breach of principles of natural justice and behind the back of other plaintiffs.

Furthermore, defendant no.3 and other plaintiffs have raised objection against the withdrawal of the suit, inspite of that, learned Judge has permitted the plaintiff no.1 to withdraw the suit by impugned order dated 14.8.2008. The said order is illegal, invalid and against the principles of natural justice.

That plaintiff no.1 i.e. Chandrakant A. Patel, out of 5 plaintiffs, has no right to withdraw the suit on behalf of all the plaintiffs.

None of the plaintiffs have given any consent to withdraw the suit.

Furthermore, the defendant no.3 i.e. heirs of Manilal Becharbhai has objected against withdrawal of the suit and furthermore, plaintiff no. 3 has also objected the withdrawal of the suit. In view of the objections filed by plaintiff no.3 and defendant no.3, learned Judge has no right to permit one of the plaintiffs out of five plaintiffs to withdraw the suit. Therefore, impugned order is contrary to law and

dehors the provisions contained in Order XXIII Rule(1) & (5). For the aforesaid purpose, following judgments were cited:

In view of this, the order of learned Civil Judge, which runs contrary to express provisions of Order XXIII Rule (1) & (5), cannot sustain and is required to be quashed and set aside on other ground of it is passed without hearing other plaintiffs and defendants. Learned Judge has no right to pass such order and it is in breach of principles of natural justice.

2. The documents produced by plaintiff no.1 is not proved and not admitted by any of the plaintiffs, therefore, learned Judge erred in relying upon such document i.e. deed of confirmation.

3. In the present case, during the pendency of suit, plaintiff no.4 i.e. Aasharam Atmaram Patel expired on 2.6.2006. His heirs and legal representatives were not brought on the record and therefore, order of learned Judge is against the dead person and in view of settled legal position that any order or judgment or decree passed against or in favour of dead person is nullity. For this purpose, following judgments were cited: (1) 18 GLR 504 (Single Judge). The said judgment of learned Single Judge was confirmed by Division Bench in the judgment reported in 18 GLR 883 (Division Bench). (2) AIR 2005 SC 3711, (3) 2006 2 GLH 519.

In this proceedings, as the deed of confirmation is only produced and original copy is not produced on the record of the case nor the Xerox copy of said deed is produced on the record of the case and it was never marked or exhibited. It is submitted that as held by the Hon ble Supreme Court reported in 1971 SC 1865, mere marking of the document as an exhibit does not dispense that it proves. (Relevant para-15). It is submitted that neither the document is marked nor exhibited nor it has been proved by examining the person concerned. Therefore, said deed of confirmation is no document in eye of law and learned Judge has erred in relying on the same.

It is submitted that said Aashabhai Atmaram Patel expired on 2.6.2006 and heirs of deceased were not aware about the pendency of the suit and of the fact that their father was one of the plaintiffs in the suit. It is submitted that, when the notice of hearing was served to them in Special Civil Application No. 10884 of 2009 and 11925 of 2009, the heirs and legal representatives came to know about the pendency of the suit and as the suit was withdrawn, therefore, there was no occasion for them to approach the learned Civil Judge for bringing them on record of suit. For Rule XXIII Rule (3) and (4) of CPC, following judgment is cited, heirs of deceased can be brought on record at any stage and would enure to the entire

proceedings., inherent jurisdiction the Court possesses the power to do right and undo the wrong.

In the present case, all the plaintiffs were co-owners and joint owners of the property. said Aashabhai Atmaram Patel expired on 2.6.2006 and therefore, power of attorney given by all the plaintiffs in favour of Chandrakant A. Patel lapses movement Aashabhai Atmaram Patel expires. The said power of attorney automatically cancelled and in view of that, any act done by said Chandrakant A. Patel is without any authority of law and he has no right to file such an application in the proceedings for withdrawal of the suit.

Learned advocate for the respondent nos.2, 3/1, 3/2 has submitted that the petitioners have invoked Article 226 of the Constitution of India, is evidenced by the parties who are not parties to the Suit i.e. 292 of 1993 are impleaded in the present petitions. Such parties are respondent nos.7 and 8. As such, even the petitioner nos.1/1 and were not parties to the Suit. The petitioner nos. 1/1 and are the heirs of the deceased plaintiff no.4, who expired on 02.06.2006. The said petitioners have never brought themselves on the record of the Suit upto the passing of the impugned order. The reliefs prayed for, particularly in paragraph 15(D (D) in Special Civil Application No. 7087 of 2010 also make it apparent that the petitioners have invoked Article 226 of the Constitution, because such reliefs are reliefs which go beyond the reliefs prayed for in the Suit.

Learned advocate for the said respondents further submitted that the petitioners while invoking extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India have not approached this Court with clean hands, have not stated the true and complete facts and not made full and frank disclosures and in fact suppressed material facts on the basis of which this Court would refuse to exercise its extraordinary discretionary jurisdiction under Articles 226 and 227 of the Constitution of India. He submits that petitioners have attempted to suppress important documents i.e. Acknowledgment-cum-settlement receipt dated 01.05.2004 executed by Respondent no.2- Chandrakant Atmaram Patel, Declaration-cum-indemnity on title, dated 09.11.2004 executed by respondent no.2 and Registered deed of confirmation dated 10.11.2004 executed by respondent no.2, registered deed of confirmation dated 10.11.2004 executed by respondent nos. 3/1, 3/2, declaration dated 05.01.2005 executed by Ashabhai Atmaram withdrawing his objections addressed to the solicitors of respondent no.5 Mahalaxmi Society as well as his notice published on 05.12.2004 cancelling the power of attorney dated 07.01.1989 and confirming that the execution of the acknowledgment receipt dated 01.05.2004 executed by Chandrakant Atmaram

Patel and confirming receipt of his share of Rs. 5, 94, 473/- out of the amount of Rs. 29, 32, 365/- etc.

Learned advocate for the respondent nos.2, 3/1, 3/2 has further submitted that the petitioners have not only suppressed the aforesaid documents but when the said documents have been produced alongwith the affidavit-in-reply of respondent no.2-Chandrakant Atmaram Patel, the same have not been disputed, controverted, dealt with or denied and much less any affidavit in rejoinder has been filed by the petitioners. Thus, the S.C.A. is liable to be dismissed on the ground of vital and material suppression of facts alone and such vital and material suppression confirms that the petitioners have no right, title or interest of any nature in the lands and/or the sale deeds dated 05.06.1992 and 08.06.1992, which are subject matter of the present Suit. In support of his submissions learned advocate for the respondents has placed reliance upon the following judgments. (i) Dalip Singh v. State of U.P, 2010 2 SCC 114 and laid emphasis especially upon the paragraph nos.1, 2, 20, 24, 8, 9, 4 and 7 (ii) paragraph nos.7 and 11.

Learned advocate for the respondent nos.2, 3/1, 3/2 has further submitted on the point of delay and latches and falsehood that the petitioners claim ignorance of the said order dated 14.08.2008 and claim knowledge of the said order dated 14.08.2008 only after the petitioners were purportedly served with the notice of this Court issued in accompanying S.C.A. No. 10884 of 2009 of present respondent nos. 1/1 and . In so far as petitioner nos. 1/1 and are concerned, it is not known how could they have been served at all with the notice dated 09.10.2009 of this Court in S.C.A. No.10884 of 2009 because as on 09.10.2009 petitioner nos. 1/1 and were not parties to S.C.A. No. 10884 of 2009. The averments made in the Reply to the Civil Application No.13638 of 2010 be considered. In so far as petitioner nos. 2/1, 2/2 and 2/3 are concerned, they were already on record of the Suit. The notice of this Court in S.C.a. No. 10884 of 2009 was issued on 09.10.2009 made returnable on 19.10.2009. There has been inordinate unexplained delay on the part of the petitioners in challenging the impugned order. Thus on the ground of the delay and latches, this Court be pleased not to exercise its extraordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

Learned advocate for the respondent nos.2, 3/1, 3/2 has further submitted the petitioners have indulged in frivolous litigation and thereby, trying the prolonged the litigation. He further submits that the petitioners intend to extort money from the respondents and also try to blackmail them. He further submits that the plaintiff no.4 of the present Suit i.e. Suit no. 292 of 1993 died on 02.06.2006 and the impugned order has been passed on 14.08.2008. Between the period

02.06.2006 and 14.08.2008 the heirs of deceased plaintiff no.4 had not brought themselves on the record of the case. Thus, the present petitioner nos.1/1 and 1/2 were required to make an application within 90 days from 02.06.2006 to bring them on the record of the case, however, the same has not been done. Therefore, the present S.C.A. No. 7087 of 2010 filed by petitioner no.1/1 and is not maintainable. Entertaining the present S.C.As at the instance of petitioner nos. 1/1 and would result into straightway condoning the delay setting aside abatement and bringing themselves on the record of the Suit. Learned advocate for the said respondents has placed reliance upon the following; (i) State of Punjab v. Nathu Ram, 1962 AIR(SC) 89, (ii) Union of India v. Ram Charan, 1964 AIR(SC) 215, (iii) Devineni Tirupathirayudu and Ors. Vs. Surapaneni Suramma (D) by Lrs. And Ors., 2009 5 JT 103 and (iv) Buddhram and Ors. Vs. Bansi and Ors, 2010 11 SCC 476.

Learned advocate for the said respondents further submitted that power of attorney dated 07.01.1989 and one of the executants was Amrutbhai Ashabhai. He died on 05.10.1990. Prior to the said cancellation of Power of Attorney by public notice dated 05.12.2004, the petitioner nos. 2/1, 2/2 and 2/3 and respondent no.6 had themselves/personally executed the registered deed of confirmation dated 10.11.2004 and have thereby confirmed having given up all their rights etc. in the subject lands in favour of respondent no.5 I.e. Mahalaxmi Society. In the said deed of confirmation dated 10.11.2004 the petitioner nos. 2/1, 2/2 and 2/3 and respondent no.6 have also confirmed having received their share of Rs. 5,94,473/- out of Rs. 29,32,365/-. It is further submitted that the executants of the registered deed of confirmation dated 10.11.2004 is also the present respondent no.6, who is also one of the sons of Ashabhai Atmaram and who has been honest enough not to join the present S.C.A as a petitioner. He further submitted the filing of and also the contents of the plaint of Regular Civil Suit no. 42 of 2005 by the present respondent nos.1/1 and further confirm the fact that there has been settlement between respondent no.4 I.e. Bai Saraswati, respondent no.5 Mahalaxmi Society and the purchasers of the two sale deeds of 27.10.1964.

Learned advocate for the said respondents further submitted that on the death of the aforesaid two executants, the Power of Attorney got automatically terminated. It may be noted that even though R.Nos.1/1 and and deceased Ashabhai Aatmaram issued a public notice terminating the power of attorney, on 05.12.2004, ever since, they took no consequential steps in any of the suits/pending litigations.

Learned advocate for the said respondents relied upon the following decisions:

1.Radhabai v. Mangla, 1934 AIR(Nag) 274.

2.Madhusudan v. Rakhalchandra, 1915 43 ILR(Cal) 248.

3.Agarwal Joravarmal and anr. v.Kasam and another, 1937 AIR(Nag) 314.

4.Mohindra Lal Chatterjee v. Hari Pada Ghose and ors., 1936 AIR(Cal) 650.

5.Ponnusami Pillai v. Chidambaram Chheteyar, 1918 AIR(Mad) 279.

6. Re.Sital Prosad and ors. and Badrinarayan Agarwala v. Brijnarayan Roy, 1917 AIR(Cal) 436.

15. Learned advocate for the respondents further submitted that in the facts of the present case and on a review of the terms of Power of Attorney (which also provided that the same would bind the heirs, assigns etc.), and the overwhelming on record leads to only one inevitable conclusion that the Power of Attorney always continued and the donee continued to be the agent of the heirs of the deceased executants viz. (a) Ashabhai Aatmaram and (b) Amrutbhai Ashabhai. It is apparent that there was no intention that the Power of Attorney was to last only during the life time of the four donors. The intention was that the Power of Attorney should continue as long the property was retained. He submitted that in the aforesaid background, the deceased donor (Ashabhai Aatmaram)/heirs of the deceased donor (Amrutbhai Ashabhai) of the Power of Attorney dated 7.01.1989 have executed the registered deed of confirmation dated 10.11.2004 and 5.1.2005. He, therefore, submitted that this petition be dismissed.

16. Learned advocate appearing for Respondent No. 8/1 & 8/2 submitted that only those parties can be the parties in the petition under Article 227 who were parties before the Lower Court and in the present case, present respondent was not the party in the lower court proceedings and therefore, he could not have been joined as a party in the present petition and more particularly, no permission of this Hon'ble Court was sought by the petitioner before joining him as party respondent and on this count he submitted that the petition deserves to be dismissed on the basic principle of law.

(5) Special Civil Application No. 7088/10

17. Learned advocate for the petitioners submitted that in this matter, the order of learned Civil Judge permitting the plaintiff no.1 Chandrakant A. Patel, who is one of the plaintiffs out of five plaintiffs in the suit, to withdraw the suit being Special Civil Suit No. 681 of 1992 without consent of other plaintiffs. Learned advocate for the petitioners submitted that the petitioners are adopting all the submissions made by petitioners in Special Civil Application No. 7087 of 2010 and rely on the same and

therefore, same are not repeated. He submitted that in addition to said submissions, in the present case, Exh. 172 was given by only plaintiff no.1 Chandrakant A. Patel on 18.9.2008. Thereafter, learned Judge has not issued any notice of hearing to remaining four plaintiffs or defendants. Therefore, in this case, without hearing the remaining plaintiffs and defendants, the learned Judge has passed an order permitting the plaintiff no.1 to withdraw the suit after a period of about one year by impugned order i.e. on 8.9.2009 and that too without any consent of other plaintiffs. The learned Judge has not issued any notice on said purshis for withdrawal of the suit to other four plaintiffs or defendants. Even though, said application remained pending for a period of one year and the learned Judge has passed the impugned order on 8.9.2009 and permitted the plaintiff no.1 to withdraw the suit without giving any reason whatsoever and therefore, said order is bad on the ground that learned Judge was bound to give reasons for permitting the plaintiff no.1 to withdraw the suit. Therefore, the impugned order is non-speaking order. Learned Judge ought to give reasons in support of its findings. In the present case, no reasons were given and therefore, the order of learned Judge cannot sustain on that ground only. For this purpose, judgment Assistant Commissional v. Shukla And Brothers, 2010 4 SCC 785 was cited, wherein, the Hon ble Supreme Court has given the importance of giving reasons in support of the order. In the present case, no reasons have been given for passing the impugned order and therefore, impugned order is also required to be quashed and set aside.

18. Learned advocate for the respondent Nos. 2, 3/1 and 3/2 submitted that he has filed written submissions in Special Civil Application No. 7087 of 2010 and he adopts the same in this matter and prayed for dismissal of the petition.

[4] This court is of the view that before dealing with rival submissions of the learned advocates for the parties, it would be most expedient to set out gist of facts and certain indisputable aspects emerging therefrom.

i. The entire subject matter of this group of petitions revolves around parcels of land bearing survey nos. 216, 218, 126, 191, 197, 349, 1139, 1241/2, 1245/1 of village: Vejalpur, Taluka : Dascroi, District : Ahmedabad.

ii. These parcels of lands were originally owned by one lady called Sarasvatibai, who by executing two sale deeds of even dated 27.10.1964 sold these lands to five persons.

iii. These five persons formed partnership firm by executing partnership deed on 4.3.1965 in the name of M/s. Arbuda Corporation.

iv. This Arbuda Corporation on 7.12.1972 executed agreement to sale in favour of M/s. Ganesh Land Developers, who promoted Mahalaxmi Adivasi Cooperative Housing Society.

v. The registration of Mahalaxmi Adivasi Cooperative Society was made on 18.6.1974.

vi. On 15.9.1975, Arbuda Corporation executed an agreement to sale in favour of Mahalaxmi Society, thus, by now, there existed two agreement to sale (i) executed by M/s Arbuda Corporation in favour of Ganesh Land Developers and (ii) between Ms. Arbuda Corporation and the Society called Mahalaxmi Society.

vii. On 29.12.1978, Mahalaxmi Society and M/s. Arbuda Corporation made application under Section 20 of the ULC for obtaining requisite permission.

viii. On 15.4.1982, Bai Sarasvati executed agreement to sale in favour of Mahalaxmi Society and Ganesh Land Developers.

ix. On 7.1.1989, four partners of the agreement dated 7.10.1964 executed power of attorney document in favour of Chandrakant Atmaram Patel in respect of subject lands.

x. The said Chandrakand A. Patel and Mahalaxmi Society also made application under Section 20 of the ULC on 22.3.1991.

xi. On 1.5.1991, Bai Sarasvati executed registered agreement to sale in favour of Mahalaxmi Society and supplementary agreement of transferring possession on the very same day i.e. on 1.5.1991.

xii. On 3.6.1992, the ULC Authority granted permission under Section 20(1) of the ULC Act for selling the sale to Mahalaxmi Society pursuant whereof a sale deed was executed on 5/8/6/1992 by Bai Sarasvati in favour of Mahalaxmi Corporation.

xiii. On 5/8-6-1992 respondent no. 2 sale deeds.

xiv. On 30.6.1992, SCA 4413 of 1992 was filed.

xv. On 26.8.1992, this court issue Rule and granted ad-interim relief. Respondent nos. 3/1 to 3/7 in SCA 4413 of 1992 filed SCA No. 4582 of 1992 which came to be disposed of as having been abated in view of the ULC Repeal Act.

xvi. It is pertinent to note at this stage that legal heir of one Shri Somabhai Patel namely Shri Chandulal Somabhai Patel, claiming tenancy rights in the subject land

filed tenancy proceedings which culminated into order against him by Gujarat Revenue Tribunal.

xvii. Said Chandulal Somabhai Patel challenged the order of GRT in SCA No. 2766 of 1979 which came to be dismissed vide order dated 6.3.1981, which was challenged in Apex Court by way of SLP (Civil) No. 6498 of 1981, which was also dismissed on 21.8.1984.

xviii. The legal heir of Somabhai had filed SCA No. 5482 of 1992, without any locus as after dismissal of SLP by the Apex Court he could not have claimed any right in the land in question. This petition came to be disposed of vide order dated 31.8.1991 recording therein that in view of the ULC Repeal Act, that petition would not survive. Relying upon that order, respondents have taken up contention that even present petition may also be disposed of as having been abated.

xix. Bai Saraswati, pursuant to the order of exemption made by the competent authority under Section 20(1) of the ULC Act, executed as many as 8 sale deeds in favour of Mahalaxmi Cooperative Society on 5.6.1992, 8.6.1992 and 18.10.2000. The last sale deed was in respect of land bearing survey No. 216.

xx. Sale deed dated 5.6.1992 and 8.6.1992 are subject matter of challenge in Regular Civil Suit No. 292 of 1993 wherein, the interim injunction order was granted on 28,.5.1993.

xxi. The withdrawal purshis filed by one of the plaintiffs and the order made thereon on 14.8.2008 is challenged in SCA No. 10884 of 2009.

xxii. One more regular Civil Suit No. 445 of 1991 seeking declaration that Bai Saraswati did not have any right to sale the land on 31.12.1991 and the status-quo order is passed which was subject matter of challenge in this court, by way of Appeal from order, which came to be disposed of on account of statement made therein.

xxiii. The SCA 10884 of 2009 as mentioned hereinabove was filed challenging the order dated 14.8.2008 passed below Exh. 110 in RCS No. 292 of 1993, which was filed on 4.5.1993. A Civil Application no. 4719 of 2011 is also filed in this petition seeking interim relief as development permission at the behest of Ganesh Corporation for developing land for Mahalaxmi society came to be granted despite various objections raised by the petitioners before the authorities.

xxiv. The SCA No. 11925 of 2009 came to be filed challenging the order dated 8.9.2009 passed in RCS 681 of 1992 on the strength of the POA holder whose

power was cancelled on 3.12.2004.

xxv. Chandrakant A Patel, the POA holder appears to have filed purshis as under: purshis dated 15.9.2008 in RSC No. 607 of 1993, purshis dated 17.9.2009 in RCS No. 198 of 1992, purshis dated 18.9.2008 in RCS No. 681 of 1992.

xxvi. Order dated 8.9.2009 below Exh. 172 came to be passed in RCS No. 681 of 1992.

xxvii. There was an order made in Ex. 103 in CMA 16 of 2005, on 29.8.2006, consolidating all the suits in respect of the subject land and this order of consolidating the suit and ordering them to be heard together was subject matter of challenge before this court in SCA No. 21304 of 2006, 21305 of 2006, 21307 of 2006, which came to be withdrawn and the review application filed before the Court being Review Application No. 123 of 2006 filed before the District Court was also not accepted. Thus, the order dated 29.8.2006 consolidating the suit remain on record and it has attained finality.

xxviii. The Details of cases submitted by learned advocate of one of the parties need to be set out here under in tabular form even at the cost of repetition so as to have more clear view of them.

Sr No	Case No.	Parties	Prayer	Particulars
1.	Civil Suit No. 292/1993 withdrawn by Shri Chandrakant Atmaram Patel under the cancelled POA	Chandrakant Atmaram Patel & Ors. (i.e. Petitioners in Special Civil Application No. No. 10884/2010 and Special Civil Application No. 7087/2010) VS 1.Saraswati Ben 2.Mahalaxmi Co. Op. Housing Soc. (Ex.110-	A. Declaration for Cancellation of Sale Deeds dated 05.06.1992 and 08.06.1992 by Saraswati Ben to Mahalaxmi Co. Op. Housing Soc. B. Should not act or do any activity or make any representation before the Govt. or get Sanction Plan from Govt. Authorities for Construction on the said parcels of lands.	Application Under Ex.5 for Interim Injunction Granted on 28.05.1993. (Shall not enforce the Sale Deeds dated 05.06.1992 and 08.06.1992. Shall not deal with the property in question.) Appeal by Respondents against Order of Ex.5 dismissedon 23.07.1993.

		Withdrawal of the Suit is under challenge by SCA No. 10884/2009)		
2.	Civil Suit No. 681/1992 Withdrawn by Shri Chandrakant Atmaram Patel under the Cancelled POA.	Chandrakant Atmaram Patel & Ors.4 Ors (I.e. Petitioners in Special Civil Application No. 11925/2009 and Special Civil Application No. 7088/2010) VS 1. City Deputy Collector. 2. State of Gujarat. 3. Saraswati Ben 4. Mahalaxmi Co. Op. Housing Soc. Withdrawal Order is under challenge in SCA No. 11925/2009.	A. Not to Grant Tenancy Permission U/S 63(g) of the Tenancy Act and others B. Permission dated 31.07.92 under Tenancy Act should not be Acted. C. Permission granted by Defendant No.1 is illegal and false hence to be cancelled.	Ad Interim Relief Grantedon 26.08.1992. CMA 183/1992 preferred by Defendant No.3 Appeal allowed and Ad Interim Relief dated 26.08.1992 quashed.
3.	Civil Suit No. 445/1991	Chandrakant Atmaram Patel & 4 Ors. VS 1. Saraswati Bai. 2. Somabhai Karsandas (Tenants) 3. State of Gujarat. 4. Mahalaxmi Co. Op. Housing Soc. Ltd.	A. Defendant No.1 and 2 had no right, title or interest over the said land. Therefore they cannot transfer the land. B. State has no power/authority to Grant exemption under Section 20 of ULC.	Application of Interim Injunction rejected on 25.05.1992. Appeal by Applicants in High Court: AO 286/1992. Disposed off on 03.06.1992 on a statement by the Tenants that they are in possession of the land and will not deal with the property till the final disposal of the Suit.

4.	Civil Suit No.198/1992. Withdrawal Pursis Submitted by Shri Chandrakant Atmaram Patel on 17.09.2008.	1. Ganesh Land Organizers. 2. Mahalaxmi Co. Op. Housing Society. VS 1. Arbuda Corporation. 2. Chadrakant Atmaram Patel and 4 Ors.	A. To Sought a Specific Performance of Contract (Agreement to Sell) dated 15.09.1975 between Mahalaxmi Co. Op. Housing Soc. And Arbuda Corporation by the Rights Acquired by the 5 Partners on 27.10.1964. B. Also sought Declaration that the Sale Deeds executed by Bai Saraswati in favour of Mahalaxmi Co. Op. Housing Soc. For the same parcel of lands dated05.06.1992 and 08.06.1992 shall also be binding on the Respondents.	Application for Interim Injunction under Ex.5 came to bedismissed on 26.08.1992. Appeal in High Court: AO 482/1992. CA 3966/1992 filed in AO 482/1992. High Court ordered to maintain Status Qua on 06.12.1992. Ad. Interim Injunction Vacated.
5.	Civil Suit No. 607/1993. Withdrawal Pursis submitted by Shri Chandrakant Atmaram Patel on 15.09.2008.	1. Saraswati Bai 2. Mahalaxmi. Co. Op. Housing Soc. VS 1. Chandrakant Atmaram Patel and 4 Ors. 2. State of Gujarat.	A. Order of the Secretary dated 21.08.1993 in SSRD 55/1992 Certifying Revenue Entry No.6337 giving effect to the Sale Deed dated 27.10.1964 – is not binding on the Applicants and is illegal. B. Order of RTS of RTS No. 7/1992 and SSRD 55/1992 order be stayed for making changes in the Revenue Records.	Ex-Parte Ad Interim Injunction allowed on 30.08.1993. Interim Injunctionprayed under Ex.5 dismissedon 03.04.1995 after hearing the parties. CMA 146/1993 dismissed by judgment and order dated 06.10.1994. Revision App. No. 594/1999 in HC dismissed on 06.05.2002.
6.	Civil Suit No. 264/1992	1. Mahalaxmi Co. Op. Housing Soc. VS 1. Saraswati Bai 2. Chandrakant	A. Being granted exemption and permission to transfer the property under Section 20 ULC, the rights with the plaintiffs	Ad Interim Injunction initially granted on 10.09.1992. Ad Interim Injunctionapplication under

		Atmaram Patel and 4 Ors. 3. Somabhai Karsandas (Tenants) 4. Ganesh Housing Corp. 5. Auda 6. TPO and Dy. TPO.	subsequent sale deeds dated 05.06.1992 and 08.06.1992 may not be disturbed and that they be declared as the owners. B. Civil Suit No. 198/1992 filed for Specific Performance of Contract against Arbuda Corp. and Ors for the same parcel of lands may not be prejudiced.	Ex.5 dismissedand vacated the ad interim injunction on 05.04.1995. AO 339/1995filed in HC.Dismissed on 26.02.1998 by Justice R. Balia with detailed observations.
7.	Civil Suit No. 711/1991	1. Somabhai Karsandas (Tenants) VS 1. Sarasvati Bai 2. Chandrakant Atmaram Patel and 4 Ors. 3. Mahalaxmi Co.op. Housing Soc.	A. Seeking order for permanent injunction restraining the defendants from interfering with the possession of the land and from obtaining permission from the Govt.	Ad-interim relief under Ex.5 was granted on 31.12.1998. Miscellaneous Civil Application 26/1999 filed by Mahalaxmi Co. Housing Soc. Against the order dated 31.12.1998. (Status not known)
8.	Civil Suit No. 721/1992	1. Somabhai Karsandas (Tenants) VS 1. State of Gujarat 2. AUDA 3. TPO 4. Chandrakant Atmaram Patel and 4.	A. The Possession of the land shall not be handed over to anybody else but the plaintiffs.	Ad-interim relief initially granted. However, Ex.5 application for Ad Interim Relief came to be dismissed on 02.09.2003. The same was extended up to 03.10.2003. (Further status not known)
9.	Civil Suit No. 66/1992	Jagdishbhai Madhubhai Patel VS Saraswati Ben	A. Prayed that an agreement to sell executed on 15.09.1975 be specifically performed. B. Documents executed by Bai Saraswati on 05.06.1992 and 08.06.1992 shall be	Ex.5 application praying for Interim injunction granted. The ad-interim relief continues subject to confirmation by the other side.

			binding on the respondents.	
10.	Civil Suit No. 783/2004	Jankalyan Co.Op. Housing Society VS Chandrakant Atmaram Patel and 4 Ors.	Contended that the 5 Partners and owners of the land had executed agreement to sell on 15.06.1992 for transfer of the said property.	Ex. 5 prayer for Interim Relief had been granted by an ex-parte order.

[5] Thus, against the backdrop of aforesaid almost indisputable factual aspects, it would becomes clear that in all the petitions only two main challenges are made namely (1) The order dated 3.06.1992 passed by ULC Authority under section 20 of the ULC Act could not have been passed at the instance of Bai Saraswati who has sold away the subject lands by registered Sale deed dated 27.10.1964 in favour of five persons, and the ULC authority could not have issued directions for executing sale deed only in favour of Mahalaxmi Society without considering the objections raised by original purchaser; and (2) The Learned Trial Court could not have passed orders impugned in some of the petitions permitting withdrawal of regular civil suits only at the instance of one plaintiff, without ascertaining or, rather overlooking substantial objections raised by the other plaintiffs against withdrawal of suits. The only one plaintiff in some of the suit relying upon cancelled power of attorney, purported to act on behalf of all, filed purshish for withdrawal on which the trial court could not have passed order permitting withdrawal of suits. The two challenges are sought to be made good by indicating various provisions and procedure which were ignored by the trial court in passing the order permitting withdrawal.

[6] Let us examine the first out of main two challenges, the challenge to order dated 3.06.1992 passed by the Competent Authority under Section 20(1) of ULC Act. Before examining it on it s merits, respondents contention for disposing the petition as having been abetted in view of ULC Repeal Act, is required to be considered. The relevant provisions of ULC and ULC repeal act needs to be set out as under:

> Section 20 of the Urban Land (Ceiling and Regulation) Act 1976 read as under- 20 Power to exempt-(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise ,that having regard to the location of such land the purpose for which such land is being or proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do ,that Government may ,by order, exempt subject to such

conditions, if any as may be specified in the order ,such vacant land from the provisions of this Chapter; (b) where any person holds vacant land in excess of the ceiling limit and the State Government , either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person , that Government may by order, exempt subject to such conditions, if any as may be specified in the order, such vacant land from the provisions of this Chapter;

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing. (2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person , it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereon the provisions of this Chapter shall apply accordingly.

Section 4 of the Urban Land (Ceiling And Regulation) repeal Act 1999 read as under :

Section 4. Abatement of legal proceedings.- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act before any court , tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11,12,13,and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

[7] Thus plain reading of section 4 of the repeal Act may persuade some one to hold that challenge to the order made under Section 20 would also abate as mandated by the repealing Act. But the decisions relied upon by the Counsels arguing for and against the abatement need to be considered in light of the facts of the present controversy. The Counsels favouring abatement relying upon the decision of this Court in SCA 4582 of 1992 dated 31-8-1999 submitted that in that matter also the same order dated 3.06.1992 passed under section 20 was challenged and this Court (Coram: S.K.Keshote J.)(as he than was) passed order disposing it as having abetted in view of the repealing Act. The same very order is under challenge in this petition also and therefore this Court may pass similar order of abatement in the present SCA 4413 of

1992 also. The Learned Counsels without prejudice to their aforesaid submissions contended that present petition cannot be now said to have survived on behalf of all the original petitioners as CA 4608 of 2010 is filed by original petitioners 3/1 and 3/2 and not original petitioners 1,2,4,5. The petition could be said to have remained dismissed for non-prosecution qua petitioner nos. 1,2,4, and 5. The petition deserves to be disposed as having been abetted in view of the provisions of Section 3(1)(b) and Section 4 of the Repeal Act.

[8] The learned Counsels arguing for abatement further submitted that the attempt to seek amendment of the original petition after 18 years would not be of any avail to the petitioners and it is nothing but an attempt to agitate the title dispute in the form of the present petition and amendment. The learned Counsels submitting for the abatement further submitted that after Repeal Act came into force the entire exercise of challenging permission under Section 20 would be futile exercise as it would not materially change status of party any manner, and it would be merely an academic exercise.

[9] This Court is of the view that order dated 31.08.1999 passed in SCA 4582 of 1992 cannot be of any avail to the respondent seeking abatement as that order cannot be treated as binding precedent or an order requiring it s adoption straightway without any discussion, for disposing of this petition also as abetted. That order does not contain any express contentions against abatement as it is taken in the present petition and their express rejection by the Court so as to treat it as binding precedent nor is the order containing any discussion of section 4 and its purport in light of the decision cited herein above by the Counsels arguing against abatement. A question arises as to whether in case of present petition in light of order dated 31.08.1999 passed in SCA 4582 of 1992, this court is required to refer the matter to larger bench if it s taking different view? Especially in light of the decision in case of Sundarjas Kanyalal Bhathija vs. Collector Thane, 1989 3 SCC 396. The answer would be found from the further queries as to whether one can say that the order dated 31.08.1999 passed in SCA 4582 of 1992 is an order rendering decision of learned Single Judge of this court after considering rival submission for and against the abatement? The answer to it is NO . The decision of the Apex Court in case of State of U.P. vs. Synthetics and Chemicals ltd, 1991 4 SCC 139 it is observed that decision not express nor founded on reason nor proceeding on considerations of issues, cannot be deemed to be law declared or precedent in sense of it s binding effect. Therefore this Court is of the view that this petition cannot be disposed of straightway as having abated merely on the strength of the order dated 31.08.1999 passed in SCA 4582 of 1992.

[10] The decision of this Court in case of R.S.Raniga Vs. State, 2000 4 GLR 2777 is applicable in the facts of this case also. The Court held in para 43 as under :

43. We have given our thoughtful consideration to the points urged and carefully examined the ratio of the decision of the learned Single Judge in the case of Maganlal Patel. On a bare reading of the provision and particularly the language used in opening part of Section 4 "all proceedings relating to any order made or purported to be made ..... shall abate" only means that such proceedings pending before any court, tribunal or authority shall not be continued and would come to an end. The language used aforesaid can never mean that the power of the court, tribunal or authority to examine whether the order passed or purported to have been passed under the principal Act, while it was in operation, was valid or not, has been taken away. Any other interpretation on the language of Section 4 would be unconstitutional, because the Legislature by no provision can completely take away the power of judicial review. The learned Single Judge, in the portion of his judgment quoted above, has taken a view that as an effect of Section 4 of the Act of 1999, even writ proceedings before the High Court would abate. We find no ground to take a contrary view and overrule his judgment on the interpretation of Section 4 but we consider it necessary to add a rider or explanation so as to construe the provision in a manner to make it constitutionally valid. In the impugned provision of Section 4, the word "abate" if construed harmoniously in the light of the constitutional provisions, would mean that the proceedings under the Repealed Act would not be continued on the repeal because as a result of repeal of the principal Act, the proceedings thereunder are rendered infructuous. In our considered opinion, provisions of Section 4 cannot be read and construed to infer that the effect of abatement would be that even validity of actions taken under the Repealed Act and examination of its provisions for the purpose of ascertaining whether any rights and liabilities thereunder are saved, would be outside the scrutiny of courts, tribunals or authorities. The inference of such effect of Section 4, as to take away completely power of judicial scrutiny, would be a clear negation of the legal and constitutional powers of the courts, tribunals and authorities under the two enactments. Such interpretation would militate against the theory of basic structure of the Constitution as propounded by the Constitution Bench of the Supreme Court in the case of his His Holiness Kesavananda Bharati Sripadagalvaru and others V. State of Kerala, 1973 AIR(SC) 1461 which is followed and reiterated by recognizing the power of superintendence of the High Court under Article 227 of the Constitution over Administrative Tribunals in case of L. Chandra Kumar Vs.Union of India and others, 1998 AIR(SC) 1125. In the case of Chandra Kumar, the Supreme Court has reiterated that the power of judicial review under Article 226 of the High Court and Article 32 of the Supreme Court is an integral and essential feature of the Constitution, constituting part of its basic structure. The independence of judiciary is also a basic part of the Constitution. The provisions of Section 4 having an effect of abatement of pending proceedings in relation to an

`order made or purported to be made' under the Repealed Act, cannot be construed to completely take away the power of the courts, tribunals and authorities as judicial and quasi-judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of repealing Act on the rights and liabilities of the land owners and the State. An example will make the legal position clear. Under Repealed Act, suppose an agricultural land which is not covered by the definition of `urban land' under Section 2(o) of the Repealed Act of 1976 is clubbed with other urban land of an owner and declared excess to be deemed to have been acquired and vested in the State. Thereafter it is taken possession of. It would be saved and retained by the State as an effect of Section 3(1)(a) of the Repealing Act of 1999. Construction as sought to be put on Section 4 would result in abatement of case of such owner pending before any authority, court or tribunal and would deprive the land owner from contending that he did not hold any excess urban land, such land was not governed by the Repealed Act of 1976, and was wrongly treated to have been acquired and vested in the State and its possession was wrongly taken from him by force and coercive methods. Such unjust result cannot be intended to have been provided in Section 4 of the Act of 1999.

[11] The plea that petition would remain abated qua those petitioner s heir who did not choose to bring application for setting aside abatement is aptly answered by the decisions cite as under. The following authorities and their relevant observations cited by learned advocates seeking setting aside of abatement or submitting that petitions may continue deserves to be set out as under. In case of Perumon Bhagvathy Devaswom Perinadu Village Vs. Bhargavi Amma (Dead) by L. Rs. And Ors.,2009 AIR(SC) 886, held as under:

8. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows:

(i) The words sufficient cause for not making the application within the period of limitation should be understood and applied in a reasonable; pragmatic, practical and liberal manner; depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other case; While the court will have to keep in view that a valuable right accrues to the legal

representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unitended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

9. Let us next also refer to some of the special factors which have a bearing on what constitutes sufficient cause, with reference to delay in applications for setting aside the abatement and bringing the legal representatives on record.

10. The first is whether the appeal is pending in a court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate court and an appeal pending in a High Court. In lower courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. The process is known as 'adjournment of hearing'. In fact, this Court in Ram Charan inferred that the limitation period for bringing the legal representative might have been fixed as 90 days keeping in mind the adjournment procedure :

The legislature might have expected that ordinarily the interval between two successive hearing of a suit will be much within three months and the absence of any defendant within that period at a certain hearing may be accounted by his

counsel or some relation to be due to his death or may make the plaintiff inquisitive about the reasons for the other party's absence.

In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as 10 years or even more). When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years. There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

11. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased.

The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be indication of negligence or want of diligence.

Learned advocate also relied on the judgment in case of Mithailal Dalsangar Singh And Others Vs. Annabai Devram Kini And Others, 2003 10 SCC 691, held as under:

8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of sufficient cause within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

10. In the present case, the learned trial Judge found sufficient cause for condonation of delay in moving the application and such finding having been reasonably arrived at and based on the material available, was not open for interference by the Division Bench. In fact, the Division Bench has not even reversed that finding; rather the Division Bench has proceeded on the reasoning that the suit filed by three plaintiffs having abated in its entirety by reason of the death of one of the plaintiffs, and then the fact that no prayer was made by the two surviving plaintiffs as also by the legal representatives of the deceased plaintiff for setting aside of the abatement in its entirety, the suit could not have been revived.

In our opinion, such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf.

[12] There is yet another aspect of the matter. As we have already noticed, the appeal against the order of ad interim injunction passed by the learned trial Judge was pending before the Division Bench. Therein the defendants had themselves moved an application for bringing on record the legal representatives of the deceased plaintiff, that is, the respondent in their appeal. The legal representatives being brought on record at any stage of the proceedings enures for the benefit of the entire proceedings. The prayer made by the defendants in their appeal for bringing on record the legal representatives of the deceased plaintiff-respondent in appeal was not opposed by the legal representatives or by any of the co-plaintiffs. Rather the prayer was virtually conceded to by the legal representatives themselves moving an application for being brought on record in the suit in place of the deceased plaintiff. In our opinion, the application made by the defendant-appellants in the appeal once allowed would have the effect of bringing the legal representatives on record, not only in the appeal but also in the suit. All that would remain to be done is the ministerial act of correcting the index of the parties by the applicants in appeal and then in the suit. In view of the defendants themselves having sought for impleadment of the legal representatives in the appeal the delay in moving the application in the suit by the legal representatives, being subsequent in point of time, became meaningless.

[13] Thus in view of the aforesaid discussion, this court is of the view that the SCA No.4413 of 1992 challenging the order dated 3.6.1992 cannot be said to have been abated in light of the submissions raised by learned advocate for continuing the petition and deciding it on merits. Therefore, now having held that the writ petition No. 4413 of 1992 is not required to be treated as not surviving in view of the Repealing Act. Let us examine the same on merits. The Civil Application filed for amendment being CA No 4608 of 2010 cannot be allowed as this stage on two counts namely the allowing of the same would amount to deprive the parties to put forward their

respective stand qua prayer made therein. And secondly when there exist litigations in form of various civil suits to be decided on its merits, any declaration made by this court, as sought for in the civil application would seriously prejudice rights and contentions yet to be determined on the strength of the evidence that may be adduced before the trial court. Hence this court while not allowing the civil application like to observe that the prayers made there under would not be treated as rejected on merits and this non-allowing of the civil application may not be held against the civil applicant in any manner in seeking such declaration from the court by resorting to appropriate remedy. Therefore, only on this ground, this Civil Application is not allowed. But not allowing this Civil Application, would not amount to rejecting the prayers made in that Civil Application as if one looks at the prayers made in the CA and substantive prayers made in the petition, one would accept that they are not different in their substance.

[14] The main challenge to the order dated 3.6.1992 is on the ground that the concerned authority while granting permission under Section 20 of ULC Act did not consider the objection raised by others. This contention is absolutely just and proper and this court is of the considered view that the authority while granting permission at the behest of Bai Saraswati did not consider the objections raised by others though the said authority was under obligation to address itself to the objections raised by the opponents thereto. The competent Authority was also well within its power to impose certain conditions for granting permission but as the scheme of the Act of ULC and the scope of Section 20 would indicate the conditions should be germane and for furtherance of the object of ULC and not any condition which may not be of any relevance to the exercise of granting permission or uncorrected with the object for granting permission.

[15] If one looks at the permission that on plain reading thereof it would become clear that the authority not only did not address itself to the objections raised by the opponent but did not take into consideration the fact that the land in question for which the permission was sought under Section 20 had in fact been sold to five persons by Bai Saraswati way back on 27.10.1964, the objectors were those who had purchased the land by sale deed dated 27.10.1964. Therefore, in my view, the authority was under an obligation to consider the objections and act in accordance with law.

[16] After having held this, the court is also considering as to whether the objections against section 20 permission was in any manner based upon or germane to provisions of ULC Act or based thereupon or was it merely an objection qua the locus of applicant applying for permission under Section 20 of ULC Act. The answer appears to be that objection was essentially against the person s right and locus for applying for no objection or permission under Section 20 of the ULC Act. As could be seen from the

facts narrated hereinabove, the five members of Partnership firm called M/s. Arbuda Corporation were the original purchasers under the sale deed dated 27.10.1964 and this Arbuda Corporation on 7.12.1972, executed an agreement to sale in favour of M/s. Ganesh Land Developers, who promoted Mahalaxmi Adivasi Cooperative Housing Society. On 15.9.1975, Arbuda Corporation also executed an agreement to sale in favour of Mahalaxmi Society. Thus, two agreements to sale existed namely (i) agreement to sale executed by Arbuda Corporation in favour of Ganesh Land Developers and (ii) between Arbuda Corporation and Society called Mahalaxmi Society. It is pertinent to note that on 29.12.1978, Mahalaxmi Society and M/s. Arbuda Corporation made application under Section 20 of the ULC for obtaining requisite permission. On 15.4.1982, Bai Saraswati also executed an agreement to sale in favour of Mahalaxmi Society and Ganesh Land Developers. On 7.1.1989, four partners of the agreement of 7.12.1964, executed power of attorney in favour of fifth partner Shri Chandrakant Atmaram Patel. Said Shri Chandrakant A. Patel and Mahalaxmi Society also made application under Section 20 of the ULC on 22.3.1991 and on 1.5.1991, Bai Saraswati executed registered agreement to sale in favour of Mahalaxmi Society and supplementary agreement of transferring possession on the very same day i.e. on 1.5.1991. the ULC Authority granted permission on 3.,6.1992, whereunder it was prescribed that the sale agreement be made in favour of the society. Thus, in fact, it appears from the aforesaid discussion that the real objection was not the objection to grant of permission under section 20 of exempting the land but it was qua locus of person seeking exemption as the resultant effect of various applications was ultimately exemption to the land in question from provisions of ULC Act as envisaged under Section 20 of the Act. A question arises as to whether now at this stage if the said permission is revoked on the ground of it being containing extraneous conditions, would it serve any purpose, the answer is emphatic NO . The Court at this stage would also like to observe that in light of the Repeal Act the revocation of the permission qua the land in question would be merely an academic exercise. The Civil Application for amendment contains specific prayers with regard to declaration which has not been granted by this court, as allowing the same would have amounted to denial of opportunity to others for controverting those prayers but such declaration is not required to be made in this proceedings as, as many as 10 Civil Suits on the title of land were filed and they were awaiting their final outcome. At this stage, it is also required to be noted that on 26.8.1992, this Court (Coram: A.P. Ravani, J.))(as he then was) issued Rule and passed the following order:

> Rule. Mr. D.K. Trivedi, waives service of the rule on behalf of respondent no.1. Mr. S.B. Vakil, waives service of the rule on behalf of respondent no.2. Mr. R.N. Shah, waives service of rule on behalf of respondents no.3(1) to 3(7). Mr. J.N.Shah, waives service of rule on behalf of respondent no.4.

Having regard to the facts and circumstances of the case, by way of interim relief, it is directed that further operation and implementation of the impugned order-Annexure 'O' dated 3-6-1992 passed by Joint Secretary, Revenue Department Respondent No.1 is stayed. It is further directed that the proceedings, in relation to term field under Section 6 of the Act, by the land holder also shall be stayed.

[17] The said order is yet not shown to have been vacated. Therefore, all the parties to the petition were under an obligation to abide by the same. The order made under Section 20 by the competent authority of ULC is, as stated hereinabove, containing conditions which were not germane to the exercise of power under Section 20 without considering the locus of persons applying for exemption under section 20. The court hastened to add here that the land in question if is being put to grater public usage then that ground cannot be said to be an alien ground for granting exemption. But while granting exemption, authority could not have ignored the objections raised by others and also the fact that the persons seeking exemption had already sold the land to someone else. Whether the sale deeds were hit by any provisions of law is not argued by any counsels of parties nor is there any submission with regard to those sales being in consonance with law of ULC as it existed then. But it remains to be noted that the Sale deeds dated 27.10.1964 were registered Sale deeds as could be seen from the registered no. 8925 and 8927 and till date no one has advanced any submissions qua these sales deeds on they being in any manner contrary to the provisions of law. This Court therefore at this stage need not go into that aspect. The court once again is of the view that the entire exercise now would be merely an academic exercise so far as the exemption to the land in question and therefore, that permission qua the land in question need not be quashed and set aside as in light of the Repeal ULC Act, it would lead no where. At the same time, non quashing of the permission, order dated 3.6.1992, may not further be treated as creating indefeasible rights in favour of the parties beneficiary thereunder and this is especially so as the title suits were pending and no party can be permitted to take advantage to justify their title on the sole basis of the order in question as in fact, the interim order, dated 26.8.1992 was having effect of staying further operations of that order. In other words, anything done subsequent to that date, namely 26.8.1992, would be not legal and proper or justified on any count therefore, while holding that the quashing of the order dated 3.6.1992 only on ground of it containing directions which were not very germane is not warranted at this stage. At the same time, the court is of the view that the authorities were not within their right to issue directions with regard to execution of sale by particular person in favour of particular party. To this extent the order cannot be said to be proper, however, as could be seen from the facts narrated above, even, the power of attorney holder of five original purchases who was one of the purchaser has himself applied with Mahalaxmi Society for exemption and therefore, in my view,

the impugned order dated 3.6.1992 so far as its grant exemption to the land in question is not required to be quashed but no parties shall be entitled to justify their subsequent actions only on the strength thereof. With this observation, the court is of the view that SCA No. 4413 of 1992 is required to be disposed of.

This brings the court to consider the second challenge in respect of the withdrawal of some of the suits contrary to the provisions of law and challenge to the order granting withdrawal permission.

The learned advocates representing parties challenging the order granting permission to withdraw suits heavily relied upon provisions of Order XXIII Rule 1, sub-Rule (5) of Civil Procedure Code and contended that the orders impugned are patently bad, perverse and contrary to the provisions of law and therefore, they are required to be quashed and set aside. The Court at this stage, is of the view that the individual orders impugned in set of petitions, need not elaborately be discussed as against all these orders, the rival contentions are based on the principles laid down in law qua withdrawal of suits and courts power to grant such withdrawal. The provisions of order XXIII Rule 1(5) is required to be set out as under:

ORDER XXIII RULE-1 (5) OF CPC

Withdrawal of suit or abandonment of part of claim.-(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2)xxx xxx xxx

(3)xxx xxx xxx

(4)xxx xxx xxx

(5)nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule(1), or to withdraw, under sub-rule(3), any suit or part of a claim, without the consent of the other plaintiffs.]

[18] The learned advocates submitting against the impugned order permitting withdrawal of the suits relying upon decisions of Dangar Bharmal Hadhu Vs. Soni

Devkaran Raghavji,1953 AIR(Kut) 35, submitted that the withdrawal was not proper. Learned advocate invited this court s attention to following paragraphs:

(5) It is quite clear that the trial Court did not appreciate the distinction between withdrawal 'of' a suit provided in O. 23 R. 1(1) and withdrawal 'from' a suit provided in O.23, R. 1(2). When a plaintiff withdraws a suit, it results in its dismissal. But when a plaintiff withdraws from a suit, the suit does not result in dismissal. Order 23, R. 1(3) provides that where a plaintiff withdraws from a suit without permission referred to in sub-r. (2), he shall be precluded from instituting a fresh suit in respect of the same subject-matter. If a plaintiff withdraws from his suit with permission mentioned in O. 23, R. 1(2), the suit is regarded as never brought. If he withdraws from the suit without obtaining permission, he is precluded as stated above.

(6) In the present case, the applicant had applied for withdrawal of the suit. As there were co-plaintiffs who did not consent to the withdrawal of the suit, the trial Court should have dismissed this application in view of the imperative provisions of O. 23, R. 1(4). The trial Court very rightly remarked that in view of the provisions of O. 23, R. 1(4), the applicant could not have been allowed withdrawal of the suit without the consent of his co-plaintiffs. However, the trial Court instead of dismissing the application, mixed up the question of withdrawal of a suit with the question of withdrawal from his suit, and considered the question of withdrawal from a suit by one of the several plaintiffs without consent of others. It is true that for such a withdrawal from a suit, consent of the co-plaintiffs is not necessary. The trial Court, relying on Baidyanath Nandi V. Shyama Sundir Nandi, 1943 AIR(Cal) 427, observed that it had inherent powers apart from the provisions of sub-r. (4) to impose restrictions on the applicant withdrawing from the suit without consent of other co-plaintiffs. Hence, the order made by the trial Court transposing the applicant-plaintiff as a co-defendant was on the face of it erroneous.

(7) The learned pleader for the applicant contended that in this suit, the right of action was not jointly vested on all the plaintiffs and as the co-plaintiffs were not necessary parties to the suit, the applicant should have been allowed to withdraw from the suit. Firstly the applicant had not applied for withdrawal from the suit. Secondly, having agreed to the institution of a suit by him and his co-plaintiffs, in accordance with the provisions of law contained in O. 1, R. 1, C.P.C., it did not lie in applicant's mouth to say that his co-plaintiffs were not necessary parties to the suit. It was pointed out that opponent 1 had contended that the suit was bad for misjoinder as opponents 2 to 4 were not necessary parties to the suit. It was open to opponent 1 to raise that contention and to join an issue on that contention with the plaintiffs. But the applicant himself cannot challenge the constitution of the suit

by him and his co-plaintiff. It follows that the order under revision would have been confirmed if the applicant had applied for withdrawal from the suit. It cannot be confirmed as the applicant's application was for withdrawal of his suit.

(ii) In the judgment in case of Pankajkumar Sarang Vs.Sarangdhar Prasad Signh,1989 AIR(NOC) 107 held that leave to withdraw suit under Order 23 Rule 1 cannot be granted when one is claimed by one of the plaintiff and opposed by others.

(iii) In case of Bangaru Pattabhirmayya and others Vs. Bangaru Gopalakrishnayya and others, 1986 AIR(AP) 270, the court observed that under O. 23 R. 1, when the court granted permission to the plaintiff to withdraw the suit without giving notice to even the defendants, the court is deemed to have acted without jurisdiction. Thus, when the co-plaintffs were objecting and their objections have been not taken into consideration or they have been perfunctorily dealt with then, the order impugned stood vitiated.

[19] In case of Jagdev Singh Grewal Vs. Gurbir Singh and ors., 1999 123 PunLR 714, the Court observed as under :

4. This application was contested by plaintiff No. 2 on the ground that the same was not maintainable without his consent. It was also submitted that for the meeting which is alleged to have been held on 15.5.1998 there was no agenda for the removal of the plaintiff from the presidentship of the Trust and consequently he continues to hold that office. In view of this, it was not open for plaintiff No. 1 to withdraw and abandon the suit qua the Trust and the suit can at best be withdrawn qua the personal capacity of plaintiff No.3. It was also submitted that the agenda which is alleged to have been issued on 8.5.1998 did not conform to the mandatory requirement of 15 days notice that was required to be given and, therefore, neither the matter of election of the President nor any matter regarding the removal of plaintiff Nos. 2 and 3 from the office of President and Secretary could be taken up in the meeting. It was also asserted that the alleged meeting was void and had been held in a mala fide manner in violation of the stay order which had been granted in favour of the plaintiffs. Needless to say that application for withdrawal had been supported by defendant Nos. 1 to 4. After hearing the arguments and perusing the material placed before him, the trial Court was of the view that in view of the provisions of Order 23 Rule 1 (5) no permission could be granted to the petitioner to withdraw the suit on his behalf as well as on behalf of plaintiff No.1 because the application for withdrawal was being contested by the plaintiffs. This order has occasioned the filing of the present petition.

[20] In the present case, as the suit had been filed by the Trust through its President and Secretary and Gurbir Singh and Jagdev Singh Grewal in their individual capacities, the Court could not have allowed the application filed by Jagdev Singh Grewal without the consent of his co-plaintiff Gurbir Singh Grewal who in fact had opposed the withdrawal of the suit. This view of mine finds support from the observations contained in Pankaj Kumar V. Sarangdhar Prasad Singh,1989 AIR(NOC) 108; Dangar Bharmal Hadhu V. Soni Devkaran Raghavji,1953 AIR(Kut) 35 and Banmgaru Pattabhirmayya V. Bangaruj, Gopalkrishnayya, 1986 AIR(AP) 270.

[21] In case of JK Bhatia Vs. Shri A.K. Bhatia and others, the Court has observes as under:

> 5. It is no doubt true that the plaintiff has unqualified right to withdraw or abandon the suit or part thereof, but in case where there are more than one plaintiffs then such a suit or part thereof can be withdrawn only with the consent of the other co-plaintiffs. Sub-Rule 5 of Rule 1 of Order 23 CPC is a non-obstante clause and, therefore, the Courts have to be very careful in permitting withdrawal of the suit filed by several plaintiffs unless all the co-plaintiffs have consented to the same. In the case in hand admittedly the petitioner, who was plaintiff No. 3 before the Trial Court had moved the said application seeking withdrawal of the suit without taking any consent of the other co-plaintiffs and such an act on the part of the petitioner is clearly in violation of mandate of Sub rule 5 of Rule 1 of Order 23 CPC.
>
> 6. I, therefore, do not find any infirmity in the order passed by the learned trial court. I do not find any merit in the present petition and the same is dismissed.

[22] In case of Om Prakash Vs. Sureshta Devi, 1990 1 DMC 127, the Court has observed as under:

> para-9 : Thus, when the suit is filed by two or more plaintiffs, the Court cannot permit one of the several plaintiffs to abandon a suit or part of a claim without the consent of the other plaintiffs.
>
> Judgement reported in AIR 1968 Delhi 181;
>
> Judgment Rapolu Yadagiri v. Rampolu Lakshmama, 2003 AIR(AP) 300.

[23] The following decisions were cited by one of the counsel opposing orders granting permission to withdraw suits and treating suits have been withdrawn, relying upon following decisions, contended that the court, could not have permitted withdrawal without taking into consideration facts that if some of the plaintiff and defendant was dead, then, said withdrawal would be no avail to the heirs of deceased party. In other

words, the decree passed in favour or against the dead man is nullity and order affirming that order or decree is also nullity. The first citation in this behalf is in case of Rahuba Jivuba and others Vs. State of Gujarat, 1995 1 GLR 805, wherein, learned Single Judge of this High Court held that decree passed in favour of or against the dead man is nullity. The second decision in case of Jadavji Devshankar Vs. Jiviben Lavji Rughnathji, 1977 GLR 504 is cited in support of the proposition that the decree passed in favour of dead man is nullity and if it is nullity the executing court is also entitled to examine the said question. A special emphasize made on para-8 and 9 of the judgment. Third decision in case of Jiviben Lavji Raghnath Vs. Jadavji Devshankar and others, 1977 GLR 883, wherein, a sole plaintiff and sole appellant is died, the appeal abates and there exists no proceedings before the court in which the court would be said to be seized of lis between the parties. A special emphasis was made on para-2, 4 and 5. The fourth citation cited by learned advocate is in case of Kishun alias Ram Kishun (dead) through L.Rs. Vs. Bihari (D) by L.Rs., 2005 AIR(SC) 3799, held as under:

> As rightly pointed out by learned counsel for the appellants and fairly agreed to by learned senior counsel for the respondent, the decree passed by the High Court in favour of a party who was dead and against a party, who was dead, is obviously a nullity. It is conceded that the legal representatives of neither of the parties were brought on record in the second appeal and the second appeal stood abated. On this short ground this appeal is liable to be allowed and the decision of the High Court set aside.

[24] Thus, the contention of the learned advocates challenging the order granting permission to withdraw the suits could be summarized as under:

> The order 23 Rule 1 (5) unequivocally restrains the courts from permitting one of the several parties to abundant a suit or a part thereof without express consent of other plaintiffs.
>
> In the instant case, purshis of withdrawal was filed by plaintiff no.1 out of five plaintiffs. The said plaintiff who was having power of attorney could not have filed the withdrawal purshis as the power stood cancel on 3.12.2004 as the withdrawal purshsis was filed on 7.7.2008.
>
> The learned court did not issue any notices of hearing on withdrawal purshis application to remaining plaintiffs and order was passed in patent breach of principles of justice.
>
> The defendant no. 3 and other plaintiffs had raised objection against the withdrawal of the suit, inspite of that, learned Judge permitted the plaintiff no.1 to withdraw

the suit by impugned order dated 14.8.2008.

[25] The plaintiff no.1 i.e. Chandrakant A. Patel, out of five plaintiffs has no right to withdraw the suit on behalf of all the plaintiffs.

None of the plaintiffs had given any consent for withdrawal of the suits.

The defendant no. 3 i.e. heirs of Manilal Bechardas had objected against the withdrawal of the suit and plaintiff no.3 had also objected against the withdrawal purshis, the court not have allowed the withdrawal purshis without considering those objections.

During the pendency of suits, plaintiff no.4 i.e. Aasharam Atmaram Patel expired on 2.6.2006. His heirs and legal representatives were not brought on records and therefore, the order of judge granting withdrawal purshis is an order against the dead person and the reliance is placed upon the aforesaid decisions in support of the submissions.

The learned advocates supporting the order impugned in the petitions permitting withdrawal of the suits, contended that petitioners could not have invoked Article 226 of the Constitution of India as they were not parties to the suit i.e. Civil Suit No. 292 of 1993 and they were impleaded in the present petition only. Such parties are respondent nos. 7 and 8. The petitioner no.1/1 and 1/2 were not parties to the suit. The petitioner no.1/1 and 1/2 are the heirs of deceased plaintiff no.4, who expired on 2.6.2006. The said petitioners have never brought themselves on the record of the suit upto passing of the impugned order. The relief prayed for particular in para-15(d) in SCA No. 7087 of 2010 makes it clear that plaintiffs have invoked Article 226 of the Constitution and those relief would go beyond the reliefs prayed in the suit.

[26] The learned advocate supporting the order permitting withdrawal of the suits contended that the petitioners have not approached this court with clean hands and they have not stated the correct facts before the court. The petitioners have suppressed important documents i.e. acknowledgment-cum- settlement receipts dated 1.5.2004 executed by respondent no. 2 Chandrakant Atmaram Patel, declaration-cum-indemnity on title dated 9.11.2004 executed by respondent no. 2 and registered deed of confirmation dated 10.11.2004 executed by respondent no. 2, registered deed of confirmation dated 10.11.2004 executed by respondent no. 3/1, 3/2, declaration dated 5.1.2005 executed by Aashabhai Atmaram withdrawing his objection addressed to the solicitors of respondent no. 5 Mahalaxmi Society as well as his notice published on 5.12.2004 cancelling power of attorney dated 7.1.1989 and confirming that execution

of acknowledgement receipt dated 1. 5.2004 executed by Chandrakant A. Patel and confirmation receipt of his share of Rs. 5,94,473/- out of amount of Rs.21,32,365/-.

[27] The learned advocates supporting the order permitting withdrawal of the suit further contended that petitioners have not disputed the aforesaid documents as no affidavit in rejoinder is filed though these documents are produced in the present compilation. The counsel relying upon decision Dalip Singh v. St ate of U.P, 2010 2 SCC 114 with special emphasis to para 1, 2, 20, 24 submitted that the order impugned cannot be said to be illegal in any manner. The learned advocate also cited decision with special attention to para- 7 and 11.

[28] The learned advocate for the parties supporting the order of withdrawal contended that there is delay latches and false suit as the petitioners could not have ignored the order dated 14.8.2008 and could have not claimed only after petitioners were served with the notice of this court in accompanying SCA 10884 of 2009 of the present respondent no.1/1 and 1/2.

[29] Learned advocate supporting the order withdrawal of the suit contended that the petitioners opposing such withdrawal has filed frivolous litigation and attempted to extort money from the respondents and it amounts to blackmailing only. In support of this contention it was submitted that plaintiff no. 4 of Civil Suit No. 292 of 1993, died on 2.6.2006 and the impugned order was passed on 14.8.2008. Between the period from 2.6.2006 and 14.8.2008, the heirs of deceased plaintiff no. 4 did not bring themselves on the record of the case. In fact the present petitioners nos. 1/1 and 1/2 were required to make application within 90 days from 2.56.2006 to bring themselves on record of the present case, as it is not done, the SCA No. 7087 of 2010 filed by petitioner no.1/1 and 1/2 is not maintainable. It is further contended that entertaining the present SCAs at the instance of the present petitioners nos. 1./1 and 1/2 would straight way amount to condoning the delay and setting aside the abatement and bringing themselves on the record of the suit. The reliance is placed in the judgment State of Punjab v. Nathu Ram, 1962 AIR(SC) 89, judgment Union of India v. Ram Charan, 1964 AIR(SC) 215, judgment Devineni Tirupathirayudu and Ors. Vs. Surapaneni Suramma (D) by Lrs. And Ors., 2009 5 JT 103, Buddhram and Ors. Vs. Bansi and Ors, 2010 11 SCC 476.

[30] Learned advocate supporting the withdrawal of suit further contended that the power of attorney dated 7.1.1989, was also signed by one of the executants namely Amrutbhai Aashabhai, who died on 5.10.1990 i.e. prior to the said cancellation of power of attorney by public notice dated 5.12.2004. The petitioner no.2/1, 2/2 and 2/3 and respondent no. 6 had themselves executed the registered deed of confirmation dated 10.11.2004 and have thereby confirmed that they give up all the rights in the

subject land in favour of respondent no. 5 i.e. Mahalaxmi Society. In the said deed of confirmation dated 10.11.2004, the petitioner nos. 2/1, 2/2 and 2/3 and respondent no. 6 have also confirmed having received their share of Rs. 5,94,473/- out of Rs. 29,32,365/-. Having received the share, the filing of the petition is dishonest attempt. Learned advocate for the respondent supporting the withdrawal of the suit further contended that on the death of two executants, the heirs after issuing notice on 5.12.2004 did not take any further steps in any of the suits or litigations. The learned advocate relied upon the following authorities in support of his contention : Radhabhai Vs. Mangla, 1934 AIR(Nag) 274, Madhusudan Vs. Rakhalchandra, 1915 43 ILR(Cal) 248, Agrawal Joravalmal and others Vs. Kasam and another, 1937 AIR(Nag) 314, Mohindarnath Chetarji Vs. Haripanda Gosh, 1936 AIR(Cal) 650, Ponnusimalli Pillia Vs. Chindram, 1918 AIR(Mad) 279.

[31] Learned advocates supporting the order of withdrawal further contended that the terms of the power of attorney provides that the same would bind the heirs assigns, etc,. of the executor., which would go to show that the power of attorney continued his authority and as an agent of the heirs of the deceased, i.e. Aashabhai Atmaram and Amrutbhai Aashabhai, he had a power to Act on behalf of heirs of the two deceased.

[32] The aforesaid discussion was in respect of the SCA No. 7087 of 2010 and so far as the rival contentions in respect of Special Civil Application No. 7088 of 2011, they could be summarized as under:

> The petitioners submission against the order of permitting withdrawal is that the plaintiff no. 1 i.e. Chandrakant A. Patel was mere a plaintiff no.1 only of five plaintiffs and had no authority to withdraw Civil Suit No. 681 of 1992 without consent of other plaintiffs and the petitioners have adopted the submission canvassed in respect of SCA No. 7087 of 2010. One more submission in addition to those submissions was that in the instant case, Exh,. 172 was given by only plaintiff no.1 on 18.9.2008 and learned Judge of trial Court did not issue any notice of hearing to remaining four plaintiffs or defendants. The learned judge of the trial court permitted plaintiff no. 1 to withdraw the suit after a period of about one year as the impugned order is passed on 8.9.2009 only. The sufficient time was left but the learned judge of the trial Court think it fit to issue notice. The reliance is placed upon the decisions Assistant Commissional v. Shukla And Brothers, 2010 4 SCC 785, wherein the Supreme Court has laid down importance for giving reasons for passing order and in the instant case, no reasoning are assign for passing the order.

[33] Learned advocates for the respondents no. 2, 3/1 and 3/2 and supporting the withdrawal of the suit submitted that the submissions made in respect of SCA 7087 of

2010 are adopted and be treated as the submission made in this behalf also for dismissal of the petition.

> This court is the considered view that the impugned orders passed by the learned trial Court permitting withdrawal of the suits are not order after affording opportunity to all the concerned before passing the same. The plain reading of orders permitting withdrawal of the suit do not indicate anywhere that those orders were passed after hearing the concerned. Thus, at the first blush one would find it difficult to accept any justification in the order. The learned trial court passed the order ignoring the facts which are very relevant and material and going to the root of the matter which may render the order unsustainable.

[34] The fact remains to be noted that the subject land is subject matter of various litigations and as many as 10 suits and proceedings were pending arising therefrom and hence, an order was made in Ex. 103 in CMA 16 of 2005, on 29.8.2006 consolidating all the suits in respect of the subject land and this order of consolidating the suit and ordering them to be heard together was subject matter of challenge before this court in SCA No. 21304 of 2006, 21305 of 2006, 21307 of 2006, which came to be withdrawn and the review application filed before the Court being Review Application No. 123 of 2006 filed before the District Court was also not accepted. Thus, the order dated 29.8.2006 consolidating the suit remain on record and it has attained finality and therefore, this court is of the view that the learned trial Court was not justified in not taking cognizance of the order dated 29.8.2006 consolidating the suits and therefore, the permission for withdrawal of the suit cannot be said to be a permission granted after due application of mind.

[35] The court is of the view that the provisions of Order 23 Rule 1(5) being unequivocally clear no precedent is required to interpret the same as the plain language makes it incumbent upon the trial court to obey the dictates of the statute. It is undisputed in these cases that the trial Court miserably failed in adhering to and complying with the mandatory statutory provisions in terms of Order 23 Rule 1(5) of C.P.C. The specious contention of the respondents of supporting the order also cannot justify the order permitting withdrawal purshis without their being specific finding recorded by the trial court over ruling the objections against withdrawal placed on record.

[36] The plain language of Order XXIII Rule 1(5) without any further explanation mandatorily restrains trial courts from granting withdrawal permission to a plaintiff without recording express consent of other plaintiffs if the suit is filed by more than one plaintiff. The order permitting withdrawal of the suit contrary to the provisions of

order XXIII Rule 1(5) is in my view, nullity and would not therefore be of any advantage of any party.

[37] The order which is nullity in eye of law cannot be said to be an order which cannot be challenged by aggrieved parties, therefore, the contentions of learned advocates supporting the order granting permission to withdraw suit, that some of the petitioners opposing the withdrawal have not themselves impleaded in the suit, though their father, plaintiff died during pendency of the suit, is of no avail to them as the [petitioners did not have any remedy except approaching this court as the withdrawal of the suit would not permit them to maintain any subsequent application.

[38] The orders permitting withdrawal are otherwise also passed against or in favour of dead persons and therefore on this count also those orders cannot be said to be sustainable in eye of law. The specious plea of learned advocates for the respondents opposing challenge to the withdrawal orders that the petitioners have suppressed the material fact would be of no avail as in my view, it cannot be said that the petitioners have suppressed the fact, as had it been so, nothing prevented the trial court and the person seeking withdrawal from inviting all the affected co-plaintiffs or their heirs for justifying withdrawal. The absence of such attempt rather go to show that there was unholy haste on the part of the plaintiff seeking withdrawal in ignorance of those who could have legitimately been invited for giving their consent or otherwise on his proposal for withdrawal of the suit.

[39] The trial Court was under obligation to address to the objections raised against the withdrawal of the suits. The trial Court could not have accepted the version of the sole plaintiff and other interested parties to hold that the objecting parties were frivolously objecting only on account of some confirmation deeds or receipts without there being an opportunity to all for proving or disproving the same.

[40] This court is of the view that scope of these petitions would not permit this court to undertake exercise of finding veracity and genuineness of the confirmation deeds and other documents relied upon by the advocates arguing in support of order permitting withdrawal.

[41] The court therefore, is of the view that without pronouncing upon the veracity of those documents the trial court could not have straightway accepted them, to be genuine and on that basis, permitted withdrawal.

[42] This court is of the considered view that the power of attorney and its continuation or otherwise is also subject matter to be gone into under Article 226 and 227 of the Constitution of India as that is not the purview of this petitions. But suffice is to see that reasonable opportunity is required to be granted to all the concerned for

submitting their say in favour or against the power of attorney and Chandrakant A. Patel s authority to act thereunder in peculiar facts and circumstances on hand. The trial court has failed din exercising its jurisdiction in not affording an opportunity to all the concerned and has overstepped its jurisdiction on accepting the power of attorney as it is for permitting withdrawal as it is contrary to law and hence orders permitting withdrawal are quashed and set aside.

[43] In the result, the following ensue:

> The Civil Application being Civil Application No. 4608 of 2010 in Special Civil Application No. 4413 of 1992 is not allowed, however, not allowing of this Civil Application would not amount to rejecting prayers made therein on merits. The Civil Application is not allowed only on the ground that as the declaration sought thereunder is made when the civil suits in respect of title are pending adjudication. The rejecting of this application for amendment may not be held against the applicants for seeking such declaration in appropriate forum.

[44] The Special Civil Application No. 4413 of 1992 is disposed of with observation that the directions contained in the order impugned dated 3.6.1992 so far as it pertain to specific direction for executing sale deed qua specific party is said to be not in consonance with the principles of natural justice as the Competent Authority while granting exemption under Section 20 of the then ULC Act did not address itself to the objections raised in respect of the locus of the applicants seeking exemption. At the same time, this court is of the considered view that the exemption qua land in question was also prayed by others including the power of attorney holder around this very time and hence, when the Repeal Act has come into operation revoking the exemption only on this ground would be a futile exercise. Therefore, the exemption permission is not revoked but under that permission, the further relief could not be obtained by parties on the strength of the order dated 3.6.1992 and these observations shall enure hereinafter. The parties seeking any benefit under that order qua title shall have to establish their title independently of that order in question. With this observation, Special Civil Application No. 4413 of 1992 is disposed of. No costs.

> i. Special Civil Application No. 10884 of 2009 is allowed and the order at Exh. 110 in Regular Civil Suit No. 292 of 1993 dated 14.8.2008 is hereby quashed and set aside. The trial Court is further directed to take into consideration all the objections by the concerned parties and those who are willing to join themselves in the suit by way of an application for being joined party, if they are entitled to be joined on account of they being heirs of the deceased parties and after taking into consideration the objections, the Ex. 110 is to be decided. However, while deciding Exh. 110, the trial Court is also under an obligation to take into consideration the

order of consolidation made on 29.8.2006, whereunder, all the suits were ordered to be heard together and therefore, it is hereby ordered that before deciding Exh. 110, all the suits are to be taken for hearing together at whatever stage they are and trial court shall have to address itself to order dated 29.8.2006 for deciding Exh. 110 application. The order dated 14.8.2008 is hereby quashed and set aside and the matter is remanded back. The court has not opined upon the validity of Exh. 110 as it is for the trial Court to decide in light of the submissions that may be made by the parties and those parties, who are willing to be joined or impleaded or if they are impleaded. No costs.

ii. Special Civil Application No. 11925 of 2009, the Court is of the view that order impugned in this petition dated 8.9.1992 deserves to be quashed and set aside for the reasons stated hereinabove. The Court is of the view that matter is remanded back to the court concerned for deciding the purshis dated 15.9.2008 filed in R.C.S. No. 607 of 1993, purshis dated 17.9.2008 filed in R.C.S. No. 198 of 1992 and purshis dated 18.9.2008 filed in R.C.S. No. 681 of 1992. The Court is of the view that competence of person filing the purshis is not required to be decided at this stage as it is left to the trial Court to decide the same after hearing all the objections from all the parties and parties, if are permitted to be joined themselves on account of they being entitled to be joined as heirs in the suit in question. The Court while deciding the same will have take into consideration the Exh. 103 in CMA No. 16 of 2005 and order dated 29.8.2006, which has attained finality. Hence, the Court concerned will have to decide the purshis in light of the order dated 29.8.2006.

iii. Special Civil Application No.7087 of 2010 is required to be partly allowed as the order dated 14.8.2008 Exh. 110 in RCS No. 292 of 1993 has already been quashed and set aside hereinabove while deciding Special Civil Application No. 10884 of 2009.

[45] Similarly, Special Civil Application No. 7088 of 2010 impugning the order dated 8.9.2009 below Exh. 172 in RCS No. 681 of 1992 is also partly allowed in view of the pronouncement of judgment in Special Civil Application No. 11925 of 2009. AS the order is already quashed, same reasoning would be applicable.

[46] Civil Application No. 4719 of 2011 in Special Civil Application No. 10884 of 2009 was filed for seeking appropriate relief by way of interim order during pendency of the main petition as on account of withdrawal of the suit, the concerned respondents sought the development permission, which had been granted despite objections raised. The Court is of the view that challenge to permission of development could be a separate subject matter of challenge and when the authority granted permission rightly

or wrongly, the temporary injunction or interim relief granted in suit, did not exists, therefore, at this stage, this Court need not go into the merits of the development permission. However, rejection of this Civil Application would not amount to pronouncing upon merits of the Civil Application and civil applicants are at liberty to challenge the same in appropriate forum as they have also prayed for the same. The staying of the construction at this stage and prayer made thereunder, would not now require to be considered as the RCS No. 292 of 1993 is already revived as per the order made in the main matter as result whereof all the interim orders passed in the suit and in operation till withdrawal of the suit would stand revived and operative. Civil Application is disposed of.

Registry is directed to keep copy of this order in each matter.

[47] At this stage, learned counsel appearing in support of the order permitting withdrawal of the suit, requested the court for staying the implementation and execution of this order for a period of 6 weeks. The advocates appearing for the petitioners strongly objected to such request and submitted that the construction activities is going on.

[48] This Court is of the view that ordinarily such a request for staying the implementation and operation of the order is not refused and therefore, it is appropriate to ascertain from learned counsel as to whether their clients would voluntarily stay their hands so as to maintain the equity, otherwise, such request cannot be accepted as the order of interim injunction originally granted in the civil suit would enure in Civil suit, which was according to this court wrongly permitted to be withdrawn. The learned counsel for the respondent has shown their inability to respond to such a query as three years have passed. Hence, this court is of the view that the request for staying the order can not be accepted.