REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6873-6881 OF 2005

SRI S.N. WADIYAR (DEAD) THROUGH LR .....APPELLANT(S)

VERSUS

COMMISSIONER OF WEALTH TAX, KARNATAKA .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 6882 OF 2005

CIVIL APPEAL NO. 1338 OF 2006

CIVIL APPEAL NO. 7251 OF 2015
(ARISING OUT OF SLP (C) NO. 18960 OF 2006)

A N D

CIVIL APPEAL NOS. 7377-7378 OF 2005

J U D G M E N T

A.K. SIKRI, J.

Leave granted in SLP(C) No. 18960 of 2006.

2. The question of law that falls for determination is common to all these appeals, which is the following:

Whether, for the purposes of Wealth Tax Act (hereinafter referred to as the 'Act'), the market value of the vacant land belonging to the assessee should be taken at the price which is the maximum compensation payable to the assessee under the Urban Land Ceiling Act, 1962?

3. For the purposes of understanding the circumstances under which this question has arisen, we are taking note of the facts of Civil Appeal Nos. 6873-6881/2005:

The appellant herein is assessed to wealth tax under the Act. The Assessment Years in these appeals are 1977-1978 to 1986-1987. The valuation of the property which is the subject matter of wealth tax under the Act is the urban land appurtenant to Bangalore Palace (hereinafter referred to as the 'Property'). The total extent of the property is 554 acres or 1837365.36 sq. mtr. It comprises of residential units, non-residential units and land appurtenant thereto, roads and masonary structures along the contour and the vacant land. The vacant land measures 11,66,377.34 sq. mtr. The aforesaid Property was the private

property of late Sri Jaychamarajendra Wodeyar, the former ruler of the princely state of Mysore. He died on 23.09.1974. There were disputes with regard to the wealth tax assessments pertaining to the Assessment Years 1967-1968 to 1976-1977. After the death of Sri Jayachamarajendra Wodeyar, his son Sri Srikantadatta Wodeyar, the assessee applied to Settlement Commission to get the dispute settled with regard to valuation of Property and lands appurtenant thereto for Assessment Years 1967-1968 to 1976-1977. While this application was still pending, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Ceiling Act') came into force w.e.f. 17.02.1976. It was adopted by the State of Karnataka. The property area is within the Bangalore Urban Agglomeration, hence fell within the purview of the Act. The assessee filed statement as required under Section 6(1) of the Ceiling Act on 10.09.1976. On 16.09.1976, he filed an application under Section 20 of the Act for exemption of his lands under the Ceiling Act to the State Government.

4. From the aforesaid, it is clear that the Property in question, namely, the Bangalore Palace came within the purview of the

Ceiling Act.

5. The application of the assessee before the Settlement Commission for the Assessment Years 1967-1968 to 1976-1977 was disposed of on 29.09.1988, laying down norms for valuation of the property. The Wealth Tax Officer adopted the value as per Settlement Commission for Assessment Years 1976-1977, 1977-1978 and 1978-1979 at Rs.13.18 crores (for both land and buildings). For the Assessment Year 1979-1980, since there was no report of the Valuation Officer, the Commissioner of Appeals worked out the value of the Property at Rs.19.96 crores for the Assessment Year 1979-1980, which was adopted by Wealth Tax Officer for Assessment Year 1980-1981 as well. For the Assessment Years 1981-1982, 1982-1983 and 1983-1984, the Wealth Tax Officer fixed the value of land and building at Rs.18.78 crores, Rs.29.85 crores and Rs.29.85 crores respectively. For Assessment Year 1984-1985, the Wealth Tax Officer took the value at Rs.31.22 crores on the basis of the order passed by the Commissioner (Appeals) for earlier years.

6. On the other hand, in the proceedings under the Ceiling Act, the Competent Authority passed an order No.ULC(A)(Z) 440/85-86

dated 27.07.1989 determining vacant land in excess of the ceiling limits, and ordered action be taken to acquire excess land under the Karnataka Town & Country Planning Act, 1961. In accordance with Section 30 of the Ceiling Act, the declaration dated back to 17.02.1976 on which date the Ceiling Act was promulgated in Karnataka. The Bangalore Development Authority prepared a master plan and the planning report for development of District No.1 in which the property area is included. As per this proposal no part of the vacant area could be commercially exploited nor colonised for residential purposes. The vacant land area was also not transferable under the Act. Any sale was null and void. As per Section 11(6) of the Urban Land Ceiling Act, the maximum compensation that could be received by the assessee was Rs.2 lakhs.

7. Before any Notification could be issued under Section 10(1) of the Ceiling Act, the assessee questioned the aforesaid order passed by the Competent Authority under Sections 8 and 9 of the Ceiling Act before the Karnataka Appellate Tribunal.

8. Simultaneously, the orders of the Wealth Tax Officer passed under the Act fixing the value of the land for different Assessment

Years for the purpose of Act was also challenged by the assessee before the Commissioner (Appeals). In these appeals, the contention of the assessee was that the value of the property was covered by the Ceiling Act for which maximum compensation that could be received by the assessee was only Rs.2 lakhs. The appeals filed for the Assessment Years, namely, 1980-1981, 1982-1983 and 1983-1984 were disposed off by the Commissioner of Income Tax (Appeals) by a common order dated 09.01.1990 in which he made slight modifications to value adopted for Assessment Years 1981-1982 and confirmed the valuation of Wealth Tax Officer for Assessment Years 1982-1983 and 1983-1984. However, in respect of appeals relating to Assessment Years 1977-1978 to 1980-1981, the Commissioner (Appeals) passed the orders dated 31.07.1990 accepting that the urban land appurtenant to Property be valued at Rs.2,00,000/-. Similar orders came to be passed by the Commissioner of Income Tax (Appeals) for the Assessment Years 1984-1985 and 1985-1986 also. Against these orders of Commissioner (Appeals) dated 09.06.1990, 31.07.1990 and 14.08.1990, both the assessee as well as the Revenue/Department went up in appeals before the Income Tax Appellate Tribunal, Bangalore

Bench, Bangalore. The appeals filed by the assessee and the Revenue Department were heard together by the Tribunal.

9. The issue before the Income Tax Appellate Tribunal was only with regard to valuation of vacant land attached to the Property, since the assessee had accepted the valuation in regard to residential and non-residential structures within the said property area and appurtenant land thereto.

10. The Income Tax Appellate Tribunal, Bangalore passed the order dated 02.11.1993 directing the vacant land be valued at Rs.2 lakhs for each year from Assessment Years 1977-1978 to 1985-1986. Its reasoning was that the Competent Authority under the Ceiling Act had passed an order determining that the vacant land was in excess of the ceiling limit, and had ordered that action be taken to acquire the excess land under the Karnataka Town and Country Planning Act, 1901. And under the Land Ceiling Act, an embargo was placed on the assessee to sell the subject land and exercise full rights. The assessee was only eligible to maximum compensation of Rs.2 lakhs under the Ceiling Act. Hence given these facts and circumstances the subject land could only be valued at Rs.2 lakhs for wealth tax

purposes on the valuation date for the Assessment Years 1977-1978 to 1985-1986.

11. Against the order of the Tribunal, the Commissioner of Wealth Tax sought reference before the Karnataka High Court in respect of Assessment Years, namely, 1977-1978 to 1985-1986 arising out of the consolidated order of the Tribunal in WTA Nos.315 to 317 and 485 to 490/1990 dated 02.11.1993. The Tribunal made a Statement for reference to the High Court. The question that was raised for adjudication before the High Court was whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the value of the vacant land, appurtenant to the Property, should be taken at Rs.2 lakhs for the purpose of wealth tax assessment for the years in question, as having regard to the provisions of the Urban Land Ceiling Act, the maximum amount of compensation payable to the assessee is only Rs.2 lakhs.

12. When the aforesaid reference was pending adjudication by the High Court, certain important developments took place in relation to the proceedings under the Ceiling Act. The appeal which was filed by the assessee before the Karnataka Appellate Tribunal against the order dated 27.07.1989 passed by the Competent

Authority under the Ceiling Act was dismissed by the Tribunal on 15.07.1998. The assessee took up the matter further before the High Court in the form of a writ petition. In this writ petition, the assessee also challenged the constitutional validity of the provisions of the Ceiling Act and made an interim prayer to the effect that pending disposal of the writ petition notification under Section 10(1) of the Ceiling Act be not issued. Fact of the matter is that such a Notification was not issued by the Government. When this writ petition was still pending, the Ceiling Act was repealed by Legislature with the enactment of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 15 of 1999).

13. The factual position which existed at the time when the reference cases were to be decided by the High Court under the Act is recapitulated below:

(i) The Assessment Years in respect of which question was to be determined were 1977-1978 to 1986-1987.

(ii) Ceiling Act had come into force w.e.f. 17.02.1976 and was in operation during the aforesaid Assessment Years.

(iii) The Competent Authority under the Ceiling Act had passed orders to the effect that as per Section 11(6) of the Ceiling Act, the

maximum compensation that could be received by the assessee was Rs.2 lakhs. In accordance with Section 30 of the Ceiling Act, the declaration dates back to 17.02.1976 on which date the Ceiling Act was promulgated in Karnataka.

(iv) The order of the Competent Authority was challenged by the assessee by filing appeal before the Karnataka Appellate Tribunal. This appeal was, however, dismissed on 15.07.1998. Against that order, writ petition was filed wherein provisions of the Ceiling Act were also challenged. Because of the pendency of these proceedings or due to some other reason, notification under Section 10(1) of the Ceiling Act was not passed.

(v) In the year 1999, Ceiling Act was repealed. At that stage, the writ petition filed by the assessee was still pending. The effect of this Repealing Act was that the Property in question remained with the assessee and was not taken over by the Government.

14. We may remind ourselves that there is no dispute with regard to valuation in respect of residential and non-residential structures within the said Property and appurtenant land thereto. The assessee has paid the wealth tax accepting the valuation. The dispute of valuation has arisen only with regard to valuation of the

vacant land attached to the Property which had come within the mischief of the Ceiling Act.

15. In the aforesaid factual background, the reference was answered by the High Court vide impugned order dated 13.06.2005 holding that although the prohibition and restriction contained in the Ceiling Act had the effect of decreasing the value of the Property still the value of the land cannot be the maximum compensation that is payable under the provisions of the Ceiling Act. Thus, the question referred has been answered against the assessee.

16. The High Court, in its impugned order, took note of the aforesaid facts and accepted the position that the Property in question which is within the Bangalore urban agglomeration was covered by the Ceiling Act and the provisions of the said Act applied to this Property. It also noted that by virtue of Section 4 of the Repeal Act, all legal proceedings pending under the Ceiling Act immediately before the commencement of the Repeal Act stood abated except those proceedings which are relatable to the land possession whereof has been taken over by the State Government or any person authorized by the State Government or by the Competent Authority. Since, in the instant case,

admittedly possession had not been taken, which remained with the assessee for want of notification under Section 10, the proceedings abated and the said vacant land remained with the assessee. Thereafter, the High Court took note of certain relevant provisions of the Act and we may also capture the position contained in those provisions:

Section 2(e) of the Act defines the meaning of the expression 'asset' to include property of every description, both movable and immovable, except the few kinds of property specified therein for the purpose of ascertaining the net wealth of an individual.

Section 2(m) of the Act defines the meaning of the expression 'net wealth' to mean the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date.

Section 2(q) of the Act defines 'valuation date' in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in Section 3 of the Income Tax Act, if an assessment were to be made under that Act for that year.

Section 3 of the Act is the charging Section which imposes a

liability to pay wealth tax on the net wealth as on the valuation date of every individual and Hindu Undivided Family.

Section 7 of the Act is a machinery provision and lays down the method of valuation of an asset for the purpose of computation of net wealth of an assessee. Sub-sections (1) and (2) provide two methods of valuation of assets. To our purpose, provisions of sub-section (1) of Section 7 of the Act is relevant and Section 7(1) of the Act prior to its substitution by the Direct Laws (Amendment) Act, 1989 w.e.f. 01.04.1989 was as under:

> "Section 7: Value of assets how to be determined:-(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purpose of this Act, shall be estimated to be the price which in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date."

Explanation to sub-section (1) was inserted by Finance (No.2) Act, 1980 w.e.f. 01.04.1980. The explanation is as under:

> "Explanation: For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purpose of determining the price such property would fetch if sold in the open market on the valuation date."

17. Section 3 of the Act is the charging Section, whereas Section 7 of

the Act is the machinery provision which provides for procedure for determining the value of assets that are subject to wealth tax. The High Court observed that as per Section 7 of the Act, the value of the asset shall be estimated to the price, which in the opinion of the Wealth Tax Officer, the asset would fetch if sold in the open market on the valuation date. The words "price it would fetch if sold in the open market" do not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in the open market and, on that basis, the value has to be found out. The Court noted that though the rules, namely, Wealth Tax Rules, 1957 were framed, they did not provide for valuation of urban land and, therefore, the asset must be valued in the ordinary way by determining what it would fetch if it were sold in the assumed market and what willing purchaser would pay for it. The Court also accepted that in view of Ceiling Act coming into force, the restrictions and prohibitions contained in the Ceiling Act would have the effect of depressing the value which the lands would fetch if they were free from the said restrictions and prohibitions. Thus, the willing purchaser would definitely take these factors into account, which could affect the price of such an

asset. Therefore, the Wealth Tax Officer cannot ignore such restricted provisions contained in the Ceiling Act and it is for him to find out what price the asset would fetch if it is sold in the open market on the valuation date, keeping in view, certain restrictions in the Ceiling Act which will have depressing effect on the value of the asset.

18. Having said so, which legal position even the assessee accepts, the High Court went on to observe that it would not mean that the valuation has to be the compensation which the assessee would be getting inasmuch as the valuation as per Section 7 has to be the price which the property would fetch if sold in the open market. Significantly, the High Court also noted the effect of Ceiling Act in the context of the present case and the legal proceedings which had been initiated pursuant thereto whereby orders passed by the Competent Authority under Sections 8 and 9 were challenged and no Notification under Section 10 had been issued. In this regard, it observed as under:

> "29. … It is not in dispute, that in the present case, the competent authority has neither issued any notification under Section 10(1) nor under Section 10(3) of the Act. It is relevant at this stage itself to notice that between the period of first notification under Section 10(1) of the Act and the second notification under Section 10(3)

> of the Act, the owner of the land can neither alter the use, nor transfer the land, if any, and if it is done, the same would be void. After the publication of the second notification, the land is deemed to have been acquired by the Government and what the assessee owns is the right to compensation and the right to compensation will be assessed as a movable asset and maximum compensation payable under Section 11(6) of the Ceiling Act is Rs.2,00,000/- only."

19. It also categorically accepted that after coming into force of the Ceiling Act, since the vacant land was covered by the said Act, it was not open to the assessee to sell the land in the open market, and whenever there is any restriction on the transfer of any land, it is common knowledge that the value of the property or the land, as the case may be, would normally be reduced. However, it did not accept that since it is not open to the assessee to sell the land, therefore, the value of the land could not be more than what the Government was to offer to the assessee under the provisions of the Ceiling Act. The High Court concluded its answer in the penultimate para as under:

> "36. Before we conclude, we once again emphasise that it sale of the land or the property is subject to restrictions under Central or State legislation's such as the Urban Land Ceiling Act, Karnataka Land Reforms Act, etc., the property or the land has to be valued only after taking note of the restrictions and prohibitions which will have the effect of depressing the value, which the land would fetch if sold free from any restrictions and

> prohibitions, for the reason, if there are such restrictions, the value of the property or land would be normally be reduced, but at the same time, it cannot be said that it would fetch only the maximum compensation payable under the urban Land Ceiling Act. As stated earlier, Section 7 of the Wealth Tax Act, assumes that there is a hypothetical open market and there are hypothetical purchasers and hypothetical bids and hypothetical sale to a person prepared to give the highest value, subject to all such restrictions and prohibitions contained in the Ceiling Act."

20. Challenging the aforesaid approach of the High Court, it was argued by learned senior counsel appearing for the appellants in these appeals that once it is accepted that the property is covered by the Ceiling Act and it would depress the value of the property, then the value could not be more than Rs.2 lakhs which was the maximum compensation payable under the Ceiling Act. It was also argued that provisions of the Ceiling Act did not impose only 'restrictions' but there was categorical 'prohibition' from selling the land. This land, therefore, had to be treated as not saleable on the 'valuation date' and, therefore, as on that date, the price it could fetch would not be more than Rs.2 lakhs. Learned senior counsel also referred extensively to the orders passed by the Commissioner (Appeals) under the Act giving detailed reasons while accepting the valuation of the property at Rs.2 lakhs and

submitted that there was no reason to take a contrary view by the High Court.

21. Learned counsel for the Revenue, on the other hand, emphasized the reasons which have been given by the High Court in support of its opinion and submitted that no case was made out to interfere with the said proceedings.

22. We have considered the respective submissions by giving our deep thoughts thereto with reference to the record of the case. It is clear that the valuation of the asset in question has to be in the manner provided under Section 7 of the Act. Such a valuation has to be on the valuation date which has reference to the last day of the previous year as defined under Section 3 of the Income Tax Act if an assessment was to be made under that Act for that year. In other words, it is 31st March immediately preceding the assessment year. The valuation arrived at as on that date of the asset is the valuation on which wealth tax is assessable. It is clear from the reading of Section 7 of the Act that the Assessing Officer has to keep hypothetical situation in mind, namely, if the asset in question is to be sold in the open market, what price it would fetch. Assessing Officer has to form

an opinion about the estimation of such a price that is likely to be received if the property were to be sold. There is no actual sale and only a hypothetical situation of a sale is to be contemplated by the Assessing Officer. It is so held by this Court in ***Ahmed G.H. Ariff*** v. ***Commissioner of Wealth Tax***[1] in the following words:

> "...it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. It is a hypothetical case, which is contemplated, and the Tax Officer must assume that there is an open market in which the asset can be sold. It is well settled that where the legislature uses a legal term, which has received judicial interpretation, the Courts must assume that the term has been used in the sense, in which has been judicially interpreted."

23. Following guidelines provided in the case of ***Commissioner of Wealth Tax*** v. ***Prince Muffkham Jah Bahadur Chamlijan***[2] also needs to be noted as it becomes very handy for our purposes:

> "...in the absence of a rule which can apply to the valuation of a particular asset, that asset must be valued in the ordinary way, by determining what it would fetch if it were sold in an assumed market, the value being what an assumed willing purchaser would pay for it."

1 76 ITR 471
2 247 ITR 351

24. Thus, the Tax Officer has to form an opinion about the estimated price if the asset were to be sold in the assumed market and the estimated price would be the one which an assumed willing purchaser would pay for it. On these reckoning, the asset has to be valued in the ordinary way.

25. The High Court has accepted, and rightly so, that since the Property in question came within the mischief of the Ceiling Act it would have depressing effect insofar as the price which the assumed willing purchaser would pay for such property.

26. However, the question is as to what price the willing purchaser would offer in such a scenario?

27. In order to provide an answer to this question, we may take note of certain relevant provisions of the Ceiling Act, which, are even noticed by the High Court. We will reproduce here Sections 3, 5, 10(1) and 10(3) and narrate the scope of the other relevant provisions without reproducing the text thereof.

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

5. Transfer of vacant land.—

(1) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a

notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

10. Acquisition of vacant land in excess of ceiling limit. - (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that—
(i) such vacant land is to be acquired by the concerned State Government; and
(ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land,
to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.
(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified."

28. Section 3 of the Ceiling Act, as is clear from its reading, is the main provision. It categorically provides that the person shall not be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies, except as

otherwise provided under the Act itself, from the date of commencement of the Act. Act came into force on 17.02.1976. The effect of this Section was that on and from 17.02.1976, the assessee was not entitled to hold the vacant land in question, which was in excess of the ceiling limit. Section 4 of the Act provides for the manner in which the ceiling limit of the person is to be ascertained.

Section 5(1) of the Ceiling Act deals with transfer of the vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day i.e. 28th January 1976 and, ending with the commencement of this Act, i.e. 17th February, 1976. Under this sub-section, if any person has transferred such land, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person. Sub-section (3) of Section 5 of the Ceiling Act contains a prohibition to transfer any vacant land held by a person in excess of the ceiling limit immediately before the commencement of the Act till a statement under Section 6 is furnished and a notification regarding excess land has been published under Section 10(1) of the Act. Any transfer made in contravention of this sub-section shall be deemed to be null and void.

Section 6(1) of the Ceiling Act statutorily obligates that every person holding vacant land in excess of the ceiling limit as on or after the 17th day February 1976 is required to file a statement in the prescribed form, specifying the vacant land within the ceiling limit which he desires to retain. The first proviso to Section 6(1) of the Ceiling Act makes the operation of the Act retrospective in fixing 17th February 1975, as the date to determine whether a person holds vacant land in excess of the ceiling limit. If for any reason, the statement is not filed by the person holding vacant land in excess of the ceiling limit, the competent authority may direct him to file such statement within a fixed period.

Under Section 8 of the Ceiling Act, on the basis of the statement filed under Section 6 of the Ceiling Act, a draft statement is prepared by the competent authority and the same is served on the applicant/person, who is given an opportunity to file his objections, if any. After considering the objections that may be filed within the time prescribed, the competent authority shall determine the vacant land held by the person concerned in excess of the ceiling limit and serve the draft statement so altered on the person concerned. The altered draft statement is also known as final statement under the Act.

Section 10 of the Ceiling Act provides for acquisition of vacant land in excess of the ceiling limit. Section 10(1) of the act envisages that the competent authority as soon as possible after the final statement is served on the concerned person, to issue a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit, and further notify that such vacant land is to be acquired by the concerned State Government and invite claims from all persons interested in such land, giving particulars of the nature of their interest in such land. The notification requires to be published in the official gazette of the state concerned and also in such other manner prescribed in the rules. Under sub-section (2), the competent authority is expected to consider any claims that may be filed by the persons interested in the vacant land notified under sub-section (1) and determine the nature and extent of such claims and pass such Order as he deems fit.

Sub-section (3) of Section 10 of the Ceiling Act provides for issuance of notification vesting vacant land in the State Government free from all encumbrances. Under this sub-section, the competent authority after the publication of notification in the official gazette concerned, declare that excess vacant land

referred in sub-section (1) shall with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government. Once notification is published, and declaration is made, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date specified.

Sub-section (4) of Section 10 of the Ceiling Act provides for maintenance of status quo in respect of excess vacant land proposed to be acquired during the period commencing on the date of publication under sub-section (1) and ending with the date specified in the declaration made under sub-section (3).

Sub-section (5) of Section 10 of the Ceiling Act provides that the competent authority shall issue a notice in writing to any person who may be in position to surrender or deliver possession to the State Government or to the person duly authorised in this behalf. The person to whom the notice is issued is given 30 days time to comply with the notice. Under sub-section (6), if a person fails to deliver possession within that period, the competent authority will take necessary steps to take possession itself.

Sections 11 and 14 of the Ceiling Act provide for determination of the amount payable to the person concerned for the vacant land

acquired and for the mode of payment of the amount to such person.

Section 18 of the Ceiling Act lays down the penalty that may be imposed for concealment of particulars in the statement filed under Section 6 of the Act.

Section 20 of the Ceiling Act confers on the State Government the power to exempt any person holding vacant land in excess of the ceiling limit from the provisions of the Act.

Under Section 33 of the Ceiling Act, any person aggrieved by an Order passed by the competent authority under the Act may file an appeal before a forum created under the Act, except against those Orders made under Section 11 or an Order made under sub-section (1) of Section 30.

29. The combined effect of the aforesaid provisions, in the context of instant appeals, is that the vacant land in excess of ceiling limit was not acquired by the State Government as notification under Section 10(1) of the Ceiling Act had not been issued. However, the process had started as the assessee had filed statement in the prescribed form as per the provisions of Section 6(1) of the Ceiling Act and the Competent Authority had also prepared a draft

statement under Section 8 which was duly served upon the assessee. Fact remains that so long as the Act was operative, by virtue of Section 3 the assessee was not entitled to hold any vacant land in excess of the ceiling limit. Order was also passed to the effect that the maximum compensation payable was Rs.2 lakhs. Let us keep these factors in mind and on that basis apply the provisions of Section 7 of the Wealth Tax Act.

30. The Assessing Officer took into consideration the price which the property would have fetched on the valuation date, i.e. the market price, as if it was not under the rigors of Ceiling Act. Such estimation of the price which the asset would have fetched if sold in the open market on the valuation date(s), would clearly be wrong even on the analogy/rationale given by the High Court as it accepted that restrictions and prohibitions under the Ceiling Act would have depressing effect on the value of the asset. Therefore, the valuation as done by the Assessing Officer could not have been accepted.

31. Let us proceed on the same lines as delineated/drawn by the High Court itself, namely, one has to assume that the property in question is saleable in the open market and estimate the price

which the assumed willing purchaser would pay for such a property. When the asset is under the clutches of the Ceiling Act and in respect of the said asset/vacant land, the Competent Authority under the Ceiling Act had already determined the maximum compensation of Rs.2 lakhs, how much price such a property would fetch if sold in the open market? We have to keep in mind what a reasonably assumed buyer would pay for such a property if he were to buy the same. Such a property which is going to be taken over by the Government and is awaiting notification under Section 10 of the Act for this purpose, would not fetch more than Rs.2 lakhs as the assumed buyer knows that the moment this property is taken over by the Government, he will receive the compensation of Rs.2 lakhs only. We are not oblivious of those categories of buyers who may buy "disputed properties" by taking risks with the hope that legal proceedings may ultimately be decided in favour of the assessee and in such a eventuality they are going to get much higher value. However, as stated above, hypothetical presumptions of such sales are to be discarded as we have to keep in mind the conduct of a reasonable person and "ordinary way" of the presumptuous sale. When such a presumed buyer is not going to offer more than

Rs.2 lakhs, obvious answer is that the estimated price which such asset would fetch if sold in the open market on the valuation date(s) would not be more than Rs.2 lakhs. Having said so, one aspect needs to be pointed out, which was missed by the Commissioner (Appeals) and the Tribunal as well while deciding the case in favour of the assessee. The compensation of Rs.2 lakhs is in respect of only the "excess land" which is covered by Sections 3 and 4 of the Ceiling Act. The total vacant land for the purpose of Wealth Tax Act is not only excess land but other part of the land which would have remained with the assessee in any case. Therefore, the valuation of the excess land, which is the subject matter of Ceiling Act, would be Rs.2 lakhs. To that market value of the remaining land will have to be added for the purpose of arriving at the valuation for payment of Wealth Tax. The question formulated is answered in the aforesaid manner.

32. In the result, the appeals succeed and are hereby allowed. There shall, however, be no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI;
SEPTEMBER 21, 2015.