Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 6022 of 2019
(Arising out of SLP(C) No 24021 of 2013)

Madhusudan Bhanuprasad Pandya .... Appellant(s)

Versus

State of Gujarat & Ors ....Respondent(s)

WITH
Special Leave Petition (C) No 16944 of 2013

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Leave granted[1].

2 The appeal arises from a judgment and order dated 24 January 2013 of a Division Bench of the High Court of Gujarat, affirming the dismissal of a Writ Petition by the Single Judge. On 7 July 2005, the Single Judge dismissed a Writ Petition filed by the appellant seeking to set aside an order of the State Government rejecting an application for exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act 1976[2].

3 The appellant claims to be engaged in the business of manufacturing

1 SLP(C) No 24021 of 2013
2 "Act of 1976"

cement pipes through M/s General Cement Pipe Company Limited[3] on land bearing Survey No 288/4 admeasuring 5160 sq m situated at village Chandlodia, Taluka City District, Ahmedabad. The appellant claims leasehold rights in the land under a rent note dated 27 March 1975. Upon the enactment of the Act of 1976 on 12 September 1976, Form I under Section 6(1) was submitted on behalf of the Company, declaring that the land was leased from the original owners. Village form No 7/12 contained an entry for the years 1979-80 and 1980-81 to the effect that the land had been put to non-agricultural use without permission. As a result, by virtue of the provisions of Section 2(q), the land upon which construction had been put up was liable to be considered as vacant land. On 26 November 1982, a draft statement under Section 8(1) was issued. On 26 August 1985, the competent authority under Section 8(4) declared land admeasuring 4160 sq m as excess vacant land. On 17 September 1985, a final statement was issued under Section 9. A notification under Section 10(1) was published on 31 January 1986. This was followed by a notification under Section 10(3) on 6 December 1986. A notice under Section 10(5) was issued on 6 March 1987. On 6 July 1990, the competent authority issued a notice under Section 10(6) intimating that possession of the excess land would be taken over.

4 At this stage, on 19 July 1990, the appellant filed an application for exemption under Section 20.

5 According to the appellant, on 23 July 1990, the Company instituted a

3 "Company"

suit[4] before the Civil Judge, Senior Division, Ahmedabad in which an order of *status quo* was granted on the same day. The case of the appellant is that on 24 July 1990, possession of the excess land was purported to be taken over under a valid panchnama, inspite of the order of the Civil Court. On 20 July 1990, the order of the competent authority dated 26 August 1985 declaring the land as excess vacant land was challenged in an appeal under Section 33 before the Urban Land Tribunal[5]. On 31 December 1990, the Tribunal dismissed the appeal on the ground that the delay of over four years had not been satisfactorily explained. On 1 September 1992, an order was passed under Section 11 in the matter of compensation.

6 On 3 March 1998, Special Civil Application[6] No 1584 of 1998 was filed by the appellant under Article 226 of the Constitution before the High Court of Gujarat seeking the following reliefs:

> "(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent authorities to grant appropriate land (at least 3000 sq. mtrs.) or any other appropriate measurement of land which this Hon'ble Court deem fit and proper, to the petitioner firm so that the manufacturing activities may be carried on properly, on merits and in accordance with the provisions of the said Act.
>
> (B) The respondent authorities may be restrained from taking possession of the land bearing Survey No. 288/4 admeasuring 5160 sq. mtrs. situated at village Chandlodiya, Taluka City District Ahmedabad till pending hearing and final disposal of the application under Section 20 of the Act, pending before the Revenue Secretary or the *status-quo* with regard to the possession of the said land may be maintained by the respondent authorities, till the admission, hearing and

4 Regular Civil Suit No 469 of 1990
5 "Tribunal"
6 "SCA"

final disposal of this petition."

7 By an order dated 3 July 1998, the High Court disposed of the above SCA with a direction to the State Government to expeditiously decide the appellant's application under Section 20. On 5 October 1998, the application under Section 20 was rejected in view of the fact that the land had vested in the State. Thereupon, the appellant filed another Writ Petition being SCA No 9057 of 1998 challenging the rejection of the application under Section 20. The reliefs that were sought before the High Court were in the following terms:

> "(A) This Hon'ble Court would be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and be pleased to quash and set aside the order passed by the State Government, dated 5th October, 1998 (Annexure "G") and further be pleased to direct the respondents, their agents and servants to grant the application preferred by the petitioner under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 as prayed for."

8 By an order dated 16 July 1999, a Single Judge allowed the above SCA. However, in a Letters Patent Appeal filed by the State, the Division Bench, by an order dated 3 August 2004, set aside the order dated 16 July 1999 and remitted the writ proceedings back to the Single Judge for fresh disposal. Upon remand, a Single Judge of the High Court dismissed the SCA by a judgment dated 7 July 2005. Insofar as is material to the controversy in the present case, the Single Judge held thus:

> "From the materials on record it is clear that the petitioner himself has averred in the petition that the orders passed by the authorities under the said Act declaring 4160 sq. mtrs. of land of the petitioner, is excess vacant land, had become final and the petitioner had not challenged the same before any authority or Court. In para 10 of the petition, the petitioner has

in fact stated that after declaring the excess land, further procedure was also initiated by the respondent no.2 authority and ultimately the land is vested in the State Government under the provisions of the said Act. This is a clear admission on the part of the petitioner. Nowhere in the petition or in the rejoinder the petitioner has stated that no notice was received by the petitioner from the Government regarding taking the possession of the land in question. Despite a clear averment in the affidavit in reply on behalf of respondent no. 2, in the rejoinder affidavit the petitioner has not controverted this important aspect of the matter. It is thus clear that entire procedure of vesting the land in Government and taking the possession thereof under Section 10 of the said Act was completed way back in the year 1990. The learned advocate for the petitioner could not state whether these facts were brought to the notice of this Court in Special Civil Application No.1584/1998 which came to be disposed of by order dated 03.07.1998. In that view of the matter and in view of the fact that the question of the possession of the petitioner was not directly at issue in the said litigation, I am unable to ignore the overwhelming material on record in the present petition to the effect that indisputably, the possession of the land in question was taken by the Government and after passing through several stages, land had vested in the Government. In that view of the matter, it is not possible to accept the contentions on behalf of the petitioner that upon repeal of the said Act, the proceedings should abate. The impugned order passed by the Government rejecting the application of the petitioner under Section 20 of the said Act also cannot be interfered with. The learned A.G.P. Shri P.R. Abichandani relies on the decision of the Learned Single Judge of this Court in the case of Vipinchandra Vadilal Bavishi & anr. V/s. State of Gujarat & ors. reported in 2002 (3) GLR page-2592, wherein the Learned Judge had relied on the Panchnama of taking over of the possession supported by the affidavit filed by the competent authority as sufficient proof that possession has been taken over. The learned A.G.P. Shri Abichandani pointed out that the said decision of the Learned Single Judge is based on the decision of the Hon'ble Supreme Court in the case of M/s. Larsen and Toubro Ltd. etc. v/s State of Gujarat and ors. reported in AIR 1998 SC 1608 wherein the Hon'ble Supreme Court has upheld the validity of Panchnama of taking possession even when the panchas had subsequently filed an affidavit, with their signatures obtained on blank papers and they had not gone to the site." (Sic)

9 Aggrieved by the order of the Single Judge, the appellant preferred a Letters Patent Appeal before the Division Bench, which has ended in the

impugned order dated 24 January 2013. The submission in support of the appeal is that possession could not have been taken over in breach of the order of injunction passed by the Civil Court and was in fact not taken over. Hence, ceiling proceedings have lapsed upon repeal of the Act of 1976.

10 At this stage, it would also be necessary to note that a companion Special Leave Petition[7] has been filed by the original owners, the landlord from whom the appellant in the main appeal claims his interest under a rent note. The owners got themselves impleaded before the Division Bench in the Letters Patent Appeal. It was urged on their behalf that in view of the order which was passed in the appeal under Section 33 preferred by the land owners, there was no occasion for them to adopt any proceedings of their own under Article 226 of the Constitution and it was only upon the judgment of the Division Bench that it has become necessary for the land owners to assert their grievance before this Court. The land owners have submitted that in the absence of actual taking over of possession, the proceedings under the Act of 1976 would stand abated by the repeal of the legislation. Moreover, it was urged that the possession was purportedly taken over even before the order under Section 10(2) was passed.

11 In dealing with the rival submissions, it is necessary to analyse the correctness of the grievance that possession was purported to have been taken over on 24 July 1990 in spite of a restraining order of *status quo* passed by the Civil Court on 23 July 1990. It was urged that irrespective of

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the maintainability of the suit, so long as the order of *status quo* held the field, the authorities were duty bound to comply with it. In dealing with this submission, it is necessary to note that the order dated 23 July 1990 specifically adverts to the fact that while the first to third defendants had appeared, the fourth defendant had neither appeared nor filed a reply. The defendants who appeared before the Court were the land owners themselves. The fourth defendant was the Deputy Collector and the competent authority under the Act of 1976.

12 Mr Preetesh Kapur, learned Senior Counsel appearing on behalf of the State of Gujarat, submitted that the suit which was instituted before the Civil Court besides being not maintainable, appeared to be clearly collusive. Quite apart from this submission of the State, there is nothing to indicate that a copy of the order of *status quo* was served on the competent authority before possession was taken over on 24 July 1990. In this context, it is necessary to advert to the pleadings of the appellant in SCA No 9057 of 1998 with reference to the suit and passing of the order of *status quo*. In paragraph 9 of the SCA before the High Court, it was stated on behalf of the appellant that:

> "Petitioner submits that the petitioner firm has filed one Regular Civil Suit No.469 of 1990 in the Court of the learned Civil Judge (S.D.), Ahmedabad, at Mirzapur, praying inter alia, injunction restraining the landlords and the respondent no.2 from taking possession of the suit land from the petitioner's firm. **The learned Judge was pleased to grant interim injunction as prayed for against the landlords and not against defendant No.4, i.e. the Competent Officer and Deputy Collector, Ahmedabad. However, due to extra care and caution, the petitioner has submitted one purshis dated 3-3-1998 before the learned Judge, declaring that the present respondent No.2, i.e. the Competent Officer and Deputy Collector, (U.L.C.) Ahmedabad, be deleted as**

defendant No.4 from the said suit No.469 of 1990."
(Emphasis supplied)

13 Hence, the averment of the appellant before the High Court was that an interim injunction was sought in the suit against the landlords and not against the competent authority under the Act of 1976. Moreover, as is stated in the above extract, on 3 March 1998 the competent authority was deleted from the array of parties to the suit. From this course of events, there can be no manner of doubt that the institution of the suit was, as learned Senior Counsel for the State has urged, a collusive attempt to thwart the State from taking possession on the next day. In any event, there is nothing on record to indicate that the order of *status quo* was ever served on the competent authority under the Act of 1976. An attempt has been made to suggest that the panchnama dated 24 July 1990 shows that possession could not be taken. The Division Bench of the High Court has analysed the panchnama and has rejected the claim that a 'tick mark' has been placed on one of the three options in the panchnama to indicate that due to the presence of structures on the land, possession could not be taken over. In view of the provisions of Section 2(q), it was urged on behalf of the State that the land was liable to be treated as vacant land since the structures on the land were not authorised, in the absence of required permission for non-agricultural use. We see no reason to take a view at variance with what has been held by the Division Bench of the High Court since it is evident from the record that possession of the land was taken over on 24 July 1990. The Single Judge of the High Court has also dealt with this aspect of the matter. Above all, the pleadings of the appellant in

SCA No 9057 of 1998 leave no manner of doubt that possession was taken over on behalf of the State. The Single Judge observed that despite a clear averment in the affidavit in reply, the rejoinder which was filed on behalf of the appellant had not controverted this important aspect of the matter. Thus, for the above reasons, we are unable to accept the submission which has been urged on behalf of the appellant.

14 Significantly, the relief that was sought before the High Court in the first SCA (SCA No 1584 of 1998) was for the grant of "appropriate land" to the appellant and an order of injunction restraining the State from taking over possession until the application under Section 20 was disposed of. The Division Bench, in the course of its judgment, has dwelt on the clear suppression in the above SCA, of the fact that possession had already been taken over. That apart, it has been correctly urged on behalf of the State that upon the repeal of the Act of 1976 by the Repealing Act of 1999[8], proceedings under Section 20 would not survive. Moreover, in the absence of a challenge to the order of vesting, to the consequence that followed under Sections 10(5) and 10(6) and in the absence of the question of possession being squarely placed in issue, it was not open to the appellant to canvass that aspect.

15 Section 3(1) which contains the saving provision in the Repealing Act provides as follows:

> "3. Saving.—
> (1) The repeal of the principal Act shall not affect—
> (a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the

8 "Repealing Act"

> State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
> (b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;
> (c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20."

16 In **State of Gujarat** v **Gyanaba Dilavarsinh Jadega**[9], a two judge Bench of this Court held that on the repeal of the Act of 1976 by the Repealing Act, which came into force on 31 March 1999, the only actions which are saved are the ones set out in Sections 3(1)(a), (b) and (c) of the Repealing Act. It has been held that a claim of acquiring a right is not an enforcement of an accrued right.

17 Section 3(1)(b) of the Repealing Act provides that the repeal will not affect the validity of an order granting exemption under Section 20(1) or any action taken thereunder, notwithstanding any judgment of any Court to the contrary. What is saved by Section 3(1)(b) is the validity of an order under which an exemption under Section 20(1) has been granted. In the present case, there was no order for the grant of an exemption under Section 20 on the date on which the repeal was brought into force.

18 The appellant has not placed in issue either the order of vesting or the consequences which followed under the terms of the Act of 1976. Once we have come to the conclusion that possession was taken over prior to the date of repeal i.e. 31 March 1999, we find no reason to interfere with the judgment of the High Court. The appeal is accordingly

9 (2013) 11 SCC 486

dismissed. There shall be no order as to costs.

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19 Though the petitioner in this Special Leave Petition was not a party to the proceedings before the Single Judge, it did not question the correctness of the order of the Single Judge and merely got itself impleaded as a respondent to the Letters Patent Appeal. We have already dealt with the merits of the challenge and have found no substance therein.

20 For the above reasons, we see no merit in the Special Leave Petition. The Special Leave Petition is accordingly dismissed. No costs.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[Indira Banerjee]

New Delhi;
August 01, 2019