

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2017

PRONOUNCED ON : 15.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.1552 of 2017

and CMP.No.20353 of 2017

1.State of Tamil Nadu
rep.by its Secretary to Government,
Revenue Department, Fort St.George, Chennai-9.

2.The Commissioner,
Urban Land Ceiling and Regulation and
Urban Land Tax, Chempauk, Chennai-5.

3.The Assistant Commissioner,
Urban Land Tax, Tambaram,
No.169, Sannadhi Street,
Adambakkam, Chennai-88.

.. Appellants

Vs.

T.V.Antony

.. respondent

PRAYER : Appeals are filed under clause 15 of Letters patent,
to set aside the order dated 23.01.2009 made in WP.No.1863 of
2003.

PRAYER WP.1863 OF 2003:

Petition filed under Article 226 of the Constitution of India
seeking for a WRIT OF CERTIORARIFIED MANDAMUS to call for the
entire records in connection with the Government Order in G.O.
(Per) No.513 Revenue (Na.Ni.U 2(1) Department dt. 28.11.2002 of
the first respondent and quash the same and consequently forbear
the respondents from in any way inter-fering with the rights of
the petitioner's peaceful possession and enjoyment of the lands
in Survey No. 43/2B 1 of Pulikoradu Village Saidapet Taluk
Kancheepuram District to an extent of 3900 sq. meter (1 acre and
2 cents) pursuant to the Repealing Act 20/99 repealing the Tamil
Nadu Urban Land (Ceiling and Regulation) Act.

For appellants : Mrs.A.Srijayanthi, Spl.GP.

For respondents : Mr.A.S.Venkatachalamoorthy, Sr.Counsel
for Mr.M.Sriram.

JUDGMENT

P. VELMURUGAN, J.

This appeal is filed against the order dated 23.01.2009 passed by the learned single judge in W.P.No.1863 of 2003.

2. Originally, larger extent of agricultural land was purchased by the vendor of the respondent by name A.Heera vide sale deed dated 17.01.1962 on the file of the Sub Registrar, Tambaram vide Document No.92 of 1962. The respondent purchased 1acre and 2 cents of land from a larger extent of agricultural lands belonged to A.Heera, by registered sale deed dated 13.12.1980 on the file of the Sub Registrar, Tambaram vide Document No.6010 of 1980.

3. The case of the appellants is that, A.Heera, residing at 20/2, Nellan Ponnappa Mudali Street, Chennai, had filed return in Form-I, under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, [herein after referred to as "Principal Act"] on 21.01.1977, with a request for exemption of the land mentioned in the return, from the operation of the Principal Act. During the enquiry by the competent authority, it was found that the land sought to be exempted was the subject matter of a civil litigation. Therefore, a report had been sent to the Director of Urban Land Ceiling and Urban Land Tax, on 14.03.1980, suggesting that the petitioner therein may be advised to renew her request after the disposal of the civil litigation. Accordingly, the erstwhile Board of Revenue (Urban Land Ceiling and Urban Land Tax), in Ref.C3/3987/77, dated 30.03.1980, had recommended to the Government that the request for exemption be rejected and instructions were issued to the competent authority to determine the ownership, as on 03.08.1976, and to proceed with the acquisition proceedings, under Sections 9 to 11 of the Principal Act. While so, A.Heera, by her letter, dated 06.01.1981, had reported that she had sold the property to one T.V.Antony (the present respondent herein) on 13.12.1980. The competent authority had informed the purchaser that the sale, having been done in violation of the provisions of the Principal Act, would be treated as null and void. Despite the issue of another notice, dated 30.06.1981, received by her, on 02.07.1981, she had not attended the enquiry. The competent authority had declared an extent of 3900 Sq.Mts., in S.No.42/2B-1, of Pulikoradu Village, as surplus vacant land held by A.Heera. After due service of the statement,

under Section 9(1) of the Principal Act, dated 23.05.1981, on the Urban Land owner, on 01.06.1981, an order, under Section 9 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been passed, on 12.10.1981. The order, dated 12.10.81, had been served on T.V.Antony, on 20.10.1981. The urban land owner, A.Heera, had appealed against the said order to the Commissioner of Land Reforms, by letter dated 16.2.1983. The said appeal had been dismissed by the Commissioner of Land Reforms, in reference D.Dis.J2/6745/83, dated 11.7.83. Thereafter, a notification, under Section 11(1) of the Act, had been approved by the Commissioner of Land Reforms, in D.Dis.31442/83, dated 10.1.83, and it had been published in the Tamilnadu Gazette, dated 25.11.83. The final notification, under Section 11(3) of the Act, had been published, on 10.10.84. Thereafter, the excess vacant land stood vested with the Government, with effect from 8.10.84. The notice, under Section 11(5) of the Act, had been acknowledged by the urban land owner, on 08.02.85. The possession of the acquired excess vacant land, measuring 3900 Sq.Mts. in S.No.43/2B-1 of Pulikoradu Village, had been handed over, on 28.05.87. The notice, under Section 12 (7) of the Act, had been issued and it had been acknowledged by the land owner, on 9.6.87. In her reply, dated 30.06.87, A.Heera, had declared that she had no interest over the said property, as she had already sold the land to T.V.Antony and therefore, she had made a prayer for exemption of the land from the acquisition proceedings. The competent authority had issued an order, dated 7.11.87, in Rc.D.120/87, specifying the amount calculated, under Section 12(1)(a) of the Act. The initial payment had been sent to the urban land owner, A.Heera. However, A.Heera had reiterated her stand stating that the property in question had been sold to T.V.Antony, in the year, 1980. On enquiry, T.V.Antony had admitted that he had purchased the land measuring 1 acre and 2 cents, in S.No.43/2B-1, from the urban land owner, A.Heera, vide Document No.6810, dated 13.12.80, and that he had constructed a terrace building for his residence and he had installed a crusher unit in the said land. He had also stated that a Church had been constructed by the members of the Christian community of the area. He had further stated that 38 coconut trees were existing in the land. However, he had declared that at the time of the purchase it was a vacant site and that the structures were put up only in the year, 1982. Thus, it was clear that the property had been deliberately sold by its erstwhile owner, A.Heera, in violation of the provisions of the Principal Act and therefore, the said transaction is null and void.

4. Furthermore, the respondent had filed a writ petition before this Court, in W.P.No.4374 of 1989, challenging the acquisition of the excess vacant land, stating that he had purchased the land from A.Heera, as per Document No.6010/80,

dated 13.12.80 and that he is eligible for exemption as he had installed a stone crushing unit in the said land. By order, dated 24.4.98, this Court had allowed the writ petition with a direction to give adequate opportunity to put forth his claim. In letter W.P.R.32/95, dated 20.2.2000, a detailed report had been sent, narrating the history of the case. Since there is no provision in the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, to grant exemption, the Government, in its letter No.4385/ULC-II(2)99-8, Revenue, dated 8.3.2001, had requested the case to be examined in the light of the orders of the Government, in G.O.Ms.No. 353, Revenue, dated 30.6.2000 and to send a report thereon. In Letter Rc.No.B/738/2001, dated 3.10.2001, a report had been sent to the Government stating that, in G.O.Ms.No.353, Revenue, dated 30.6.2000, the Government had issued instructions that the encroachments on the acquired lands, used for commercial purposes, may be regularised, subject to collection of double the guide-line value. Hence, the respondent herein had been called upon to appear for an enquiry. He had filed a written statement, dated 9.7.2001, stating that the land in question had been in his possession from the date of its purchase in the year, 1980 and that, by an order of injunction granted by this Court, his possession of the land had been protected. Further, the Special Appellate Tribunal for land reforms had categorically stated that wherever possession had not been taken, the entire proceedings would stand abated. Since T.V.Antony, respondent herein had taken such a stand, a report had been sent stating that he was not interested in regularising the land in the light of the orders passed by the Government, in G.O.Ms.No.353, Revenue, dated 30.1.2000. The Government, in G.O.Ms.No.513, Revenue, ULC2(1) Department, dated 28.11.2002, had informed the respondent that the purchase of the land by him, on 13.12.1980, was after the Principal Act coming into force and therefore, it is null and void, as per Section 6 of the Principal Act. Hence, there is no provision to consider the request for exemption.

5. The case of the respondent is that the patta was transferred in his name, on 25.3.81, in respect of the land in Survey No.43/2B-1, to an extent of 1 acre and 2 cents, in Pulikoradu Village, Tambaram. The respondent has put up constructions on the land and had also planted coconut trees. A Church is also located in the land. Therefore, the said land would not come under the purview of the Principal Act. In such circumstances, the respondent had filed an application for exemption, as a precautionary measure, in the year, 1986. Even though, the application had been acknowledged, on 23.10.86, the State Government had not done anything in furtherance of the said request. Therefore, the respondent was constrained to file a writ petition before this Court, in W.P.No.4374 of 1989, praying for a writ of mandamus to forbear the authorities from

acquiring and dispossessing him from his land, comprised in Survey No.43/2B 1A of Pulikoradu Village, Saidapet Taluk, Chengalpat District, without following the provisions of the Principal Act. By order dated 24.4.98, this Court had directed the respondents therein to take proceedings, in accordance with the provisions of the Principal Act. It was only after the said order passed by this Court, the third appellant had issued a letter, dated 10.12.99, requesting the respondent to appear for an enquiry, under Section 21(1)(g) of the Principal Act. The respondent had appeared for the enquiry, and his statement was recorded. While so, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, with effect from 16.6.99 and therefore, all the proceedings, which were pending, had abated. Since there was no response from the appellants, the respondent was under the impression that the entire proceedings had been dropped. However, the third appellant had issued a letter, dated 2.7.2001, asking the respondent to appear before him for regularising the sale deed. The respondent had submitted a detailed reply on 13.7.2001, which was acknowledged by the third appellant on 18.7.2001. Instead of considering the reply of the respondent, the third appellant had issued a notice, dated 7.8.2001, to appear before him, on 14.9.2001. In the meanwhile, the objections raised by the respondent had reached the third appellant. The third appellant had insisted for the regularisation of the sale of the land, according to which the respondent became the owner of the land in the year, 1980. While so, the respondent was shocked to receive the order issued by the first appellant/first respondent, in G.O.No.513, Revenue Department, dated 28.11.2002, setting aside the sale made in his favour by the vendor in the year 1980. In such circumstances, the respondent has filed the present writ petition before the writ court.

6. The learned single judge after hearing the arguments of both sides, allowed the writ petition.

7. Aggrieved by the order passed by the learned single judge in WP.No.1863 of 2003, the appellants have preferred the present writ appeal.

8. We have heard the learned Special Government Pleader for the appellants and the learned counsel for the respondent.

9. The Special Government Pleader has produced the original files pertaining to this acquisition proceedings. We have carefully perused the records in original.

10. A perusal of the records would show that the land in S.No.43/2B-1A of Pulikoradu village, Tambaram was purchased by

Selvi.A.Heera vide Doc.No.92 of 1962 dated 17.01.1962. The letter dated 21.01.1977 given by A.Heera, to the Government for exemption from the operation of the Act, is extracted hereunder :-

"I am a fatherless unmarried lady struggling to maintain myself and my mother and other dependent for family necessity I had to arrange for the sale of 1 acre 2 cents in 164 Pulicorudu village near Tambaram under a sale agreement dated 01.11.1974 to Gandhi Real Estate agents at 22, Madley St, Madras.17 who had committed breach of the terms of the said sale agreement and I had to file OS.2007/76 against them which is now pending on th file of the 6th Assistant City Civil Court, Madras.

2)In respect of my building site land at 105, Sdanjeru village 1 ground 400sqft it is encumbered by way of mortgage dated 16.12.1975 in favour of Sri.S.Kala at 1, Lal Mohammed St, Triplicane, Madras.5. Thus unless exemption is ordered in my favour in respect of the above mentioned lands I will be put to great hardship by not completing the sale and by not realising the benefits of the mortgaged land by retaining it for my personal use and occupation.

3)I therefore pray that an early order be passed granting exemption from the operation of the Urban Land Ceiling Act, 1976."

11. On 21.01.1977, A.Heera submitted Form-I statement under Section 7(1) of the Principal Act. The statement reveals that the land was kept vacant and she entered into an agreement with Gandhi real estate agent on the date of making the statement for granting exemption of land under the Principal Act. After receiving the Form-I statement under Section 7(1) of the Principal Act and the representation made by A.Heera, the competent authority passed an order on 12.10.1981, rejecting the claim and treating the sale dated 13.12.1980 executed by her as null and void. Against the said order, neither the agreement holder nor the purchaser have preferred any appeal, whereas A.Heera had preferred an appeal under Section 33 of the Act before the Commissioner of Land Reforms. After considering the matter elaborately, the Commissioner dismissed the appeal. The said order was not challenged by way of filing writ petition before this Court. Whereas, the purchaser/T.V.Antony has approached this Court by way of writ petition.

12. At this juncture, it is pertinent to refer Sections 3 (1), 6, 7, 21 and 27 of the Act, which are extracted hereunder :-

"3(1) "to hold" with its grammatical variations, in relation to any vacant land, means--

(i) to own such land; or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power-of-attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

6. Transfer of vacant land :- 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 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 11; and any such transfer made in contravention of this provision shall be deemed to be null and void.

7. Persons holding vacant land in excess of ceiling limit to file statement :- (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent and such other particulars as may be prescribed of all vacant lands and of any urban or other land on which there is a building, whether or not with a dwelling unit therein in any urban agglomeration held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain.

(2) If the competent authority is of opinion that any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1) and the person on whom such notice is served shall be bound to comply with such notice.

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend

the date for filing the statement under this section by such further period or periods, as it may think fit :

Provided that the period or the aggregate of the periods of such extension shall not exceed such period as may be prescribed.

(4) The statement under this section shall be filed,-

(a) in the case of an individual, by the individual himself ; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs by his guardian or any other person competent to act on his behalf ;

(b) in the case of a family, by the husband or wife, and where the husband or wife is absent from India. or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both ;

(c) in the case of a company, by the principal officer thereof ;

(d) in the case of a firm, by any partner thereof ;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by a person competent to act on his behalf.

Explanation - For the purposes of this sub-section, " principal officer" -

(i) in relation to a company, means the secretary, treasurer, manager or managing director of the company ;

(ii) in relation to any association, means the secretary, treasurer, manager or agent of the association; and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of its intention of treating him as the principal officer thereof.

(5) If any person who is liable to file a statement under this section fails to file the statement within the period within which it has to be filed, the competent authority, may obtain necessary information In such manner as it thinks fit.

21. Power to exempt :- (1) Notwithstanding anything contained in any other forgoing 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 is 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, the State Government may, by order, exempt [whether prospectively or retrospectively and] 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, the State Government may, by order, exempt [whether prospectively or retrospectively and] 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.

(c) Where any person holds vacant land in excess of the ceiling limit and where in respect of such excess land the State Government or the Central Government or any company or corporation owned or controlled by the Central or State Government or any educational or medical institution has entered into an agreement before the commencement of this Act for sale of such excess vacant land or part thereof and the State Government either on its own motion or otherwise is satisfied that such agreement is for the benefit of the State Government or the Central Government or such company or corporation or institution, as the case may be, and that the transaction is bonafide, the State Government

may, by order, subject to such conditions, if any, as may be specified in the order, exempt [whether prospectively or retrospectively] such vacant land or part thereof as the case may be, from the provisions of this Chapter.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a), clause (b) or clause (c) 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 thereupon all the provisions of this Chapter shall apply accordingly.

27. Statement to be made before the registering authority in certain cases :- (1) No document relating to transfer of any vacant land either by sale, gift, exchange, lease, possessory mortgage, surrender, agreement, settlement, or otherwise, shall be registered unless a statement in writing is made in duplicate in such form as may be prescribed and filed by the transferor and the transferee before the registering authority under the Registration Act, 1908 (Central Act XVI of 1908), as to the total extent of vacant land held by him :

Provided that no statement as required under this sub-section need be filed by the transferor and the transferee to the registering authority in respect of such document as is referred to in this sub-section which has been presented to the registering authority before the commencement of this Act and is pending registration on the date of the publication of this Act in the Tamil Nadu Government Gazette.

(2) The registering authority referred to in sub section (1) shall forward within such time and in such manner as may be prescribed, one copy of the statement referred to in sub-section (1) to the competent authority, within whose jurisdiction such land which is the subject-matter of the transfer or the major part thereof is situated.

(3) On receipt of the copy of the statement under sub-section (2), the competent authority may obtain such information as may be necessary and take such action as he deems fit in accordance with the provisions of this Act, and

in accordance with such rules as may be made in this behalf.

13. The statement made by Thiru.Madasamy during the acquisition proceedings shows that he was in possession of the property. The respondent is said to have purchased the property only during the pendency of the suit. Hence, the sale is hit by lis-pendens. As per section 6 of the Principal Act, the sale in favour of the respondent is not valid, as it was made after the commencement of the Principal Act. The landowner A.Heera has submitted her statement under Form-I and representation dated 21.01.1977. Even before passing orders, she executed the sale deed in favour of the respondent on 13.12.1980. Hence, the sale will not bind the authority and the same is null and void.

14. This Court, by order dated 24.04.1998 in WP.No.4374 of 1989, allowed the claim of the respondent with a direction to give adequate opportunity to put forth his claim. The Government in its letter No.4385/ULC-II(2) 99-8, Revenue dated 08.03.2001, had requested the case to be examined in the light of the orders of the Government, in GO.Ms.No.353, Revenue, dated 30.06.2000. The Government had issued instructions that the encroachments on the acquired lands, used for commercial purposes may be regularized, subject to the payment of double the guideline value. The respondent appeared and filed his written statement dated 09.07.2001, stating that the land in question had been in his possession from the date of purchase and by an order of injunction granted by this Court, his possession of land had been protected. The respondent also admitted that he had constructed a terrace building for his residence and installed a crusher unit and further constructed a church for the members of the Christian community and there are 38 coconut trees in the land. Further, the respondent declared that at the time of purchase the land was vacant and the superstructures were put up only during 1982. The respondent refused to accept the offer of payment of double the guideline value of the land for regularisation and challenged the acquisition proceedings on the ground that as on the date of commencement of the Repeal Act, he was in possession of the land.

15. A perusal of the entire records, reveal that despite the service of order under Section 9(5) of the principal Act, the respondent has not challenged the same before the appellant authority under Section 33 of the Principal Act. The land owner A.Heera alone challenged the order under Section 33 of the principal Act and has participated throughout the acquisition proceedings. After completing the acquisition proceedings, the land was handed over to the Revenue Inspector, Tambaram on 28.05.1987. After publishing the notification under Section 11 (1) of the Act and section 11(3) of the Act such land shall be

deemed to have vested absolutely with the State Government free from all encumbrances with effect from 05.09.1984.

16. A reading of the provisions under Sections 6, 7, 21 and 27 of the Act, clearly shows that the respondent has violated the provisions of the Principal Act. The sale deed executed by A.Heera in favour of the respondent is null and void and it is not binding on the appellants.

17. It is pertinent to state that in view of Section 6 of the Principal Act, the Government has treated the respondent as an encroacher and as per the direction of this Court based on his representation, the Government had issued instructions that the encroachments on the acquired lands, used for commercial purposes may be regularized, subject to collection of double the guideline value. Therefore, the respondent is not entitled to any notice under Sections 11(5) and 11(6) of the Act. At this juncture, it is useful to refer Sections 3 (j) (1), 11(5) and 11 (6) of the Act:-

Section - 3(j) "Person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;

(1)"to hold" with its grammatical variations, in relation to any vacant land, means--

(i)to own such land; or

(ii)to possess such land as owner or as tenant or as mortgagee or under an irrevocable power-of-attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

11.Acquisition of vacant land in excess of ceiling limit :-

(5)Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6)If any person refuses or fails to comply with an order made under sub section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State

Government in this behalf and may for that purpose use such force as may be necessary.

18. Notice to any persons who may be in possession does not include any encroacher or trespasser of the land.

19. Section 6 itself would go to show that after the commencement of the principal Act if any sale is made, the same is not valid. Whereas in this case only after the commencement of the Principal Act i.e., after 03.08.1976 A.Heera has submitted her statement under Form-I and representation dated 21.01.1977 and before publication under sub section (1) of Section 11 of the Principal Act i.e., 25.11.1983, she executed the sale deed in favour of the respondent on 13.12.1980. The competent authority passed an order on 12.10.1981 rejecting the claim of A.Heera. Against the said order, she preferred an appeal under Section 33 of the Act and the same was also dismissed by the Commissioner of Land Reforms on 11.07.1983, she has not challenged the order passed by the appellate authority.

20. In fact, it is settled that the statute must be read as a whole in its context. When a question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context entirety. Such context means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. Therefore, the Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute besides comparing the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

21. In this context, it is worthwhile to refer various decisions of the Hon'ble Apex Court, which are mentioned herein below :-

1. In the case of State of West Bengal V. Union of India reported in AIR 1963 SC 1241 (V 50 C 188) the Hon'ble Supreme Court has referred to the judgment of the privy council in the case of Province of Bombay v. Municipal corporation of the City of Bombay reported in (AIR) 1947 PC 34, it is held as follows :-

"In considering the true meaning of words or expression used by the Legislature the Court have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not

merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

2. In the case of The State of Punjab v. The Okara Grain buyers syndicate ltd and others reported in AIR (1964) SC 669 (V 51 C 81) the Constitution bench of the Hon'ble Supreme Court has also referred to the judgment of the privy council in the case of Province of Bombay v. Municipal corporation of the City of Bombay reported in (AIR) 1947 PC 34 (cited supra) and the earlier judgment of the six judges in the case of State of West Bengal V. Union of India reported in AIR 1963 SC 1241 (V 50 C 188) (cited supra)
3. In the case of Attar Singh V. Inder Kumar reported in AIR (1967) SC 773 (V 54 c 163) the Hon'ble Supreme Court has held under:-

"7. We are of opinion that the contention raised on behalf of the appellant is correct, and the view taken by the High Court in the case of Municipal Committee Abohar [ILR (1959) Punjab 1131] cannot be sustained. It is true that in sub-clause (a) the words "for his own use" are not qualified and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use, whatever may be the use to which he may put it after eviction. Now if sub-clauses (b) and (c) were not there this would be the correct interpretation of sub-clause (a). This interpretation has been put by the High Court in Municipal Committee Abohar [ILR (1959) Punjab 1131] ; but in that case the High Court has not considered the effect of sub-clauses (b) and (c) on the meaning to be given to the words "for his own use" in sub-clause (a) and seems to have proceeded as if sub-clauses (b) and (c) were not there at all. We are of opinion that sub-clause (a) has to be read in this provision along with sub-clauses (b) and (c) and it has to be seen whether the presence of sub-clauses (b) and (c) makes any difference to the meaning of the words "for his own use" in sub-clause (a), which is otherwise unqualified. Now if sub-clauses (b) and (c) were not there, a landlord can ask for an order directing the tenant to put him in possession in the case of rented land if he required it for his own use. In such circumstances it would have been immaterial what was the use to

which the landlord intended to put the rented land after he gets possession of it so long as he uses it himself. But as the provision stands, the landlord cannot get possession of rented land merely by saying that he requires it "for his own use" (whatever may be the use to which he may put it after getting possession of it); he has also to show before he can get possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business any other such rented land. If (for example) he is in possession of any other rented land in the urban area concerned for the purpose of his business he cannot ask for eviction of his tenant from his rented land, even though the rented land of which he may be in possession for the purpose of his business may not be his own land and he may only be a tenant of that land. This shows clearly that though the words "for his own use" in sub-clause (a) are not qualified, the intention of the legislature must have been that if the landlord is in possession of other rented land, whether his own or belonging to somebody else, for his business he cannot evict a tenant from his own rented land. It clearly follows from this that the intention when the words "for his own use" are used in sub-clause (a) is that the landlord requires the rented land from which he is asking for eviction of the tenant for his own trade or business. Otherwise we cannot understand why, if it is the intention of the legislature that the landlord can ask for eviction of his tenant of rented land for any purpose whatever, he should not get it back if he is in possession of other rented land for his business. This to our mind clearly implies that sub-clause (a) has to be read in the light of sub-clause (b), and if that is so, the words "for his own use" must receive a meaning restricted by the implication arising from sub-clause (b)."

4. In the case of M/s. Punjab Beverages Pvt Ltd., Chandigarh v. Suresh Chand and another reported in (1978) 2 SCC 144 the Hon'ble Supreme Court has held under

"It is well-settled rule of interpretation of statutes that no one section of a statute should be read in isolation but it should be construed with reference to the context and other provisions of the statute so as, as far as possible, to make a consistent enactment of

the whole statute. The Court, must, therefore, have regard not only to the language of Section 33(2)(b) but also to the object and purpose of that provision, the context in which it occurs and other provisions of the Act in order to determine what the Legislature intended should be the effect of contravention of Section 33(2)(b) on the order of dismissal."

5. In the case of Union of India V. Elphinstone Spinning and weaving co. ltd and others reported in (2001) 4 SCC 139 the Hon'ble Supreme Court has held under :

"When the question arises as to the meaning of a certain provision in a statute it is only legitimate but proper to read that provision in its context. The context means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy."

6. In the case of Steel Authority of India Limited v. Sutni Sangam and others reported in (2009) 16 SCC 1 the Hon'ble Supreme Court has held under :

"It was contended that a statute must be read as a whole and then chapter by chapter, section by section, and then word by word. For the said purpose, the scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the Court leads to a fair reading of the provisions, the same would fulfil the conditions of applying the principles of purposive constructions."

7. In the case of Pallawi Resources Limited v. Protos Engineering Company Private Limited reported in (2010) 5 SCC 196 the Hon'ble Supreme Court has held under :-

"17. A cardinal principle of statutory interpretation is that a provision in a statute must be read as a whole and not in isolation ignoring the other provisions of that statute. While dealing with a statutory instrument, one cannot be allowed to pick and choose. It will be grossly unjust if the court allows a person to single out and avail the benefit of a provision from a chain of provisions which is favourable to him. Reference may be made to a

Constitution Bench decision of this Court in *Prakash Kumar v. State of Gujarat* [(2005) 2 SCC 409 : 2005 SCC (Cri) 518] . The Court in para 30 of that judgment observed as follows: (SCC p. 427)

30. By now it is a well-settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.

19. From these authorities, it is amply clear that a provision in a statute ought not to be read in isolation. On the contrary, a statute must be read as an integral whole keeping in view the other provisions which may be relevant to the provision in question in order to correctly arrive at the legislative intent behind the provision in question. Applying this principle to the case at hand which involves an interpretation of Section 17(4-A), it will not be appropriate for us to read sub-section (4-A) of Section 17 ignoring the other relevant provisions.

24. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature in a certain manner, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to the

recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [(2009) 3 SCC 553]."

8. In the case of Raheja Universal Limited v. NRC Limited and others reported in (2012) 4 SCC 148 the Hon'ble Supreme Court has held under :

"64. It is a settled principle of interpretation of statutes that every word and expression used by the legislature has to be given its proper and effective meaning as the legislature uses no expression without purpose or meaning. The maxim *lex nil frustra jubet* i.e. law commands nothing vainly further elucidates this principle. Of course, the power to make this declaration as already noticed is controlled by limitation of time as specified in the proviso to the section. Lifting of such declaration by lapse of time or otherwise or in accordance with the provisions of Section 22(4) shall bring the status quo ante as if such declaration had never been made."

9. In the case of State of Uttarakhand and others v. Guru Ram Das Educational Trust Society reported in (2012) 11 SCC 648 the Hon'ble Supreme Court has held under :-

"6. The question before us is: whether a charitable trust is covered by the expression "any person" occurring in Section 154(1) of the 1950 Act?

7. It may be immediately noticed that the expression used in Section 154(1) is :

"154. Restriction on transfer by a bhumidhar.- ... to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 ha (12.50 acres) in Uttar Pradesh."

(emphasis supplied)

A close look at the above expression would show that the legislature intended to cover only natural person. It is so because the words "any person" are followed in the sentence by the words "his family". "Family" is explained in the Explanation appended to Section 154 which means the transferee, his or her wife or husband, as the case may be, and minor children and where

transferee is a minor, his or her parents. This makes it clear that a legal person is not intended to be included in the expression "any person". The word "person", in law, may include both a natural person and a legal person. Sometimes it is restricted to the former. Having regard to the text of Section 154(1) and also the scheme of that provision, there remains no doubt that the expression "any person" refers to a natural person and not an artificial person. This is fortified by the fact that in 1997 the legislature inserted the Explanation by U.P. Act 20 of 1997 declaring that in sub-section (1) the expression "person" shall include and be deemed to have been included on 15-6-1976 a "cooperative society". Had the expression "person" included artificial person, no explanation was necessary. Since the expression "person" in Section 154 did not include legal or artificial person, the legislature brought in cooperative society by way of an explanation. The Explanation came to be added in 1997 in a declaratory form to retrospectively bring "cooperative society" within the meaning of expression "any person".

22. From the above decisions of the Hon'ble Apex Court, the core question that arises before us is whether the words "any person who may be in possession of it" mention in sub section (5) of Section 11 is restricted to the person in any one of the said capacities mentioned in section 3(1) of the Principal Act.

23. In this regard, it is pertinent to refer the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Hari Ram reported in (2013) 4 SCC 280. The relevant paragraphs 18 to 24, 41 and 42 are reproduced hereunder :-

"18. The legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a "deeming provision". In interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General

Mills Co. Ltd. v. State of Rajasthan [(1996) 2 SCC 449] held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

19. James, L.J. in *Levy, In re, ex p Walton* [(1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)] speaks on deeming fiction as: (Ch D p. 756)

"... When a statute enacts that something shall be deemed to have been done, which in fact and [in] truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

20. In *Szoma v. Secy. of State for Work and Pensions* [(2006) 1 AC 564 : (2005) 3 WLR 955 : (2006) 1 All ER 1 (HL)] the Court held: (AC p. 574, para 25)

"25. ... it would ... be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. 'The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further'..."

(See also *DEG Deutsche Investitions und Entwicklungsgesellschaft mbH v. Koshy* [(2001) 3 All ER 878 (CA)] .)

21. Let us test the meaning of the expressions "deemed to have been acquired" and "deemed to have been vested absolutely" in the above legal settings. The expressions "acquired" and "vested" are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in *Organo Chemical Industries v. Union of India* [(1979) 4 SCC 573 : 1980 SCC (L&S) 92] that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the judgment of this Court in *Directorate of Enforcement v. Deepak Mahajan* [(1994) 3 SCC 440 : 1994 SCC (Cri) 785] . Words and phrases, therefore, occurring in the statute are to be taken not in an

isolated or detached manner, they are associated on the context but are read together and construed in the light of the purpose and object of the Act.

22. This Court in *S. Gopal Reddy v. State of A.P.* [(1996) 4 SCC 596 : 1996 SCC (Cri) 792] held: (SCC p. 607, para 12)

12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

23. In *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* [AIR 1955 SC 376] , S.R. Das, J. stated: (AIR p. 381, para 6)

6. ... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.

24. The expression "deemed to have been acquired" used as a deeming fiction under subsection (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of "vesting" on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in *Customs and Excise Commissioners v. Zielinski Baker and Partners Ltd.* [(2004) 1 WLR 707 : (2004) 2 All ER 141 (HL)] , All ER at para 11 described as "heroic piece of

deeming".

41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."

24. In this case, the respondent is not coming under the definition of Section 3(1) of the Principal Act. Therefore, he is not entitled to get the benefit under Section 4 of the Repeal Act. The respondent is one who purchased the land when the principal Act was in force and therefore, the sale is invalid under Section 6 of the Principal Act. The land, after being declared surplus under the 1978 Act, was acquired under Section 11 of the 1978 Act, and it is vested in the State absolutely free from all encumbrances. The land once vested cannot be divested.

25. The Hon'ble Supreme Court in the case of Sulochana Chandrakant Galande v. Pune Municipal Transport and others reported in (2010) 8 SCC 467, held that where possession of land is taken by the State, Repeal Act would not confer any benefit on the owner, and only those proceedings would stand abated where possession has not been taken. Paragraphs 36 and 38 are

extracted hereunder :-

"36. Undoubtedly, the 1976 Act, stood repealed by the 1999 Act. However, it has no bearing on this case for the reason that proceeding pending in any court relating to the 1976 Act, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. (Vide Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. [(2000) 6 SCC 325] , Ghasitey Lal Sahu v. Competent Authority [(2004) 13 SCC 452] and Mukarram Ali Khan v. State of U.P. [(2007) 11 SCC 90])

38. Therefore, the law, as it exists today, is that the land in dispute could be subjected to the provisions of the 1976 Act, with effect from 17-5-1976 i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the 1999 Act. The High Court has taken note of the fact that the appellant's revision had been entertained only on the basis of the judgment of this Court in Atia Mohammadi Begum [(1993) 2 SCC 546 : AIR 1993 SC 2465] , which stood overruled by the subsequent judgment in N. Audikesava Reddy [(2002) 1 SCC 227 : AIR 2002 SC 5]."

26. In view of the statutory bar under Section 6 of the Principal Act, the sale is void. The respondent is not in possession under a valid title.

27. The Hon'ble Apex Court in the case of Hari Ram and others V. Babu Gokul Prasad reported in 1991 Supp (2) SCC 608, observed thus:-

"5. No proceedings for resumption were taken. Therefore the appellants became Bhumiswami by operation of law provided they held the land as ordinary tenants under Section 185(1) of 1959 Code. The High Court held otherwise. According to it, the tenancy being annual, it came to an end by efflux of time at the expiry of the year. Therefore the appellants were not holding the land as occupancy tenants on the date the Act came into force. The word 'holds' is not a word

of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title. That appears to be the meaning of the word in the context in which it has been used, as the requirements are that the land should be in Mahakoshal region, the person should be an ordinary tenant, and he must be holding the land on the date the Act came into force as such."

28. Again in State of Andhra Pradesh v. Mohd. Ashrafuddin reported in AIR 1981 SC 913, it was held as follows :- According to the Oxford Dictionary 'held' means to possess; to be the owner or holder of tenant of; keep possession of; occupy. Thus, 'held' connotes both ownership as well as possession, and in the context of the definition it is not possible to interpret the term 'hold' only in the sense of possession.

29. The word 'holds' was again interpreted in Hari Ram v. Babu Gokul Prasad reported in 1991 (2) SCC (supp) 608 as it occurs in section 185(1) of the Madhya Pradesh Land Revenue Code, 1959. It was observed : the word 'holds' is not a word of art. It has been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title.

30. In this case, as on the date of notification under Section 11(3) of the principal Act, the owner of the land Selvi.A.Heera was not in possession. The respondent was not the owner of the land, as the sale is void under Section 6 of the Principal Act. The respondent was not in possession in any one of the capacities mentioned in Section 3(1) of the Principal Act. Therefore, after the notification under Section 11(3) of the Act, the land stood vested with the Government. The respondent has been treated as encroacher.

31. In view of the above facts and the settled position of law, we are of the considered opinion that the order passed by the learned single judge warrants interference.

32. In the result, the writ appeal is allowed by setting

aside the order passed by the learned single judge in WP.No.1863 of 2003 dated 23.01.2009. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

tsh/tar

To

1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-9.

2.The Commissioner,
Urban Land Ceiling and Regulation and
Urban Land Tax, Chepauk, Chennai-5.

3.The Assistant Commissioner,
Urban Land Tax, Tambaram,
No.169, Sannadhi Street,
Adambakkam, Chennai-88.

+1cc to the Government Pleader, S.R.No. 12192
+1cc to Mr.M.SRIRAM, Advocate, S.R.No. 11610

Judgment in

WA.No.1552 of 2017

SS (CO)
TR(12/03/2018)

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