

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.03.2020

C O R A M

**THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD**

Writ Appeal Nos.970 and 1738 of 2017

1. The State of Tamil Nadu,  
Rep. by its Secretary,  
Revenue Department,  
Fort St.George,  
Chennai - 9.
2. Competent Authority (Urban Land Ceiling)  
and Assistant Commissioner (Urban Land Tax),  
Ambattur, No.5, Sannadhi Street,  
Poonamallee, Chennai - 600 056.

...

Appellants in  
both the Writ  
Appeals

सत्यमेव जयते  
Vs

1. Rane Brake Linings Limited  
Rep. by its Vice President Finance and  
Secretary Mr.V.Krishnan having its registered  
Office at "Maithri", No.132, Cathedral Road,  
Chennai - 600 086.

...

Sole Respondent in  
WA.1738/2017 and  
1<sup>st</sup> respondent  
in WA.970/2017

2. Mr.Ashok @ Ashok Vardhanan,  
S/o. Late.Mr.Purushothaman Reddy,  
Anganna Reddy Street, Attipattu,  
Chennai - 600 058.

... 2<sup>nd</sup> Respondent in  
WA.No.970/2017

**Prayer in W.A.No.970 of 2017:** Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.32025 of 2005, dated 18/4/2011.

**Prayer in W.A.No.1738 of 2017:** Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18/4/2011 in W.P.No.32202 of 2005.

For appellants ... Mr.P.H.Aravind Pandian  
Advocate General  
Assisted by Mr.V.Jayaprakash  
Narayanan,  
State Government Pleader

For respondents ... Mr. Ramakrishnan  
Viraraghavan,  
Barrister and Senior Counsel  
for M/s.G.Sivashankaran

COMMON JUDGMENT

**SUBRAMONIUM PRASAD,J**

These appeals are directed against a common order dated 18.04.2011 passed in WP.Nos.970 and 1738 of 2005. The State

Government is the appellant. The writ petitions were directed against the notification declaring the subject matter lands as excess vacant land under Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after called as Ceiling Act, for short) and also to direct the appellant to restrain them from interfering the peaceful possession of the land in question.

2. The writ petitioners / respondents claimed to have purchased the property from one Tmt.Lakshmiammal, w/o.Govindaraju Reddy by different sale deeds dated 24.03.1983, 31.03.1983, 28.03.1983 and 02.04.1983. The descriptions of lands are not being given in this judgment for the reason that they are not material.

3. Section 6 of the Ceiling Act specifies that 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.

4. Admittedly, the vendor has not followed the mandate given in Section 6 of the Ceiling Act. Proceedings by the competent authority were initiated under the "Ceiling Act". It is brought to the knowledge of the competent authority that lands had been sold to the writ petitioners. The competent authority ignored the sales effected by the vendor of the petitioners on the ground that the sales are null and void, since they have been made in violation of Section 6 of the Ceiling Act. Consequent to the proceedings of the competent authority determining the excess vacant land sold by the vendor of the petitioners, orders were passed under Section 11(3) of the Act, declaring the lands in possession of the petitioners as excess lands and that the lands are deemed to have vested absolutely in the State Government, free from all encumbrances.

5. It is pertinent to mention that consequent to the order declaring the land in possession of the petitioners are excess and

consequent to the notification in Tamil Nadu Gazette, the land delivery receipt was issued by which it is shown that the property was handed over by the Sub Inspector of Survey, Urban Land Tax Department, Ambattur and possession was taken over by the Inspector, Ambattur.

6. The Ceiling Act was repealed by the Tamil Nadu Urban Land(Ceiling and Regulation)Repeal Act,1999 (herein after called as Repeal Act). The Repeal Act was came into force on 14.06.1999. The respondents herein filed the instant writ petitions as stated earlier challenging the order passed under Section 11(3) and also for a direction to restrain the respondents from interfering from the possession of the land on the ground that the lands are in possession of the respondent writ petitioners.

7. Learned Single Judge by the impugned judgment found that the procedure prescribed under Section 11(5) and 11(6) of the Ceiling Act, for taking possession of the land had not been followed. The learned Single Judge held that the so called possession taken over by the Government is non est in the eyes of law and then consequently writ petition was allowed. The present

writ appeals have been filed by the State Government assailing the order of the learned Single Judge.

8. It is further pertinent to mention at this juncture that after the Repeal Act was passed, the writ petitioner respondents had requested the Government to allot the excess vacant land which was in a possession of the petitioners to it. The Government issued a G.O.No.353, Revenue, dated 30.06.2000, giving directions to regularize the encroachment in the excess vacant lands as requested under the Repeal Act. The writ petitioners were asked to pay amounts double than the market value to regularize the encroachment. The amount was sent by the respondents towards the regularization, but the cheque was returned stated that the amount could be accepted only after the regularization order was passed. The respondents were therefore in actual physical possession of the land.

9. Heard Shri.Aravind Pandian, Additional Advocate General, for State Government and Shri.Ramakrishnan, learned counsel appearing for the respondent writ petitioners. Shri.Aravind Pandian, Additional Advocate General, would contend that the writ

petitioners had no locus to challenge the proceedings in as much as the sale deed executed in its favour being contrary to the mandate under Section 6 of the Ceiling Act is null and void. It is therefore contended that the petitioner does not have even semblance of a right to challenge the Ceiling proceedings.

10. He would contend that since the sale deed executed in favour of the writ petitioner was void, the land being declared as excess would automatically vest in the State and therefore the procedure prescribed under the Ceiling Act had been followed.

11. Shri.Aravind Pandian, Additional Advocate General, placed heavy reliance on a judgment passed by a Division Bench of this Court in WA.No.2305 to 2307 of 2019, the Government of Tamil Nadu Vs. G.I.Baskaran, wherein the learned Division Bench after analysing the provisions of the Act, an identical case had observed as under:-

*"16. Once the respondents have not submitted any returns, even after receiving the notices under Section 9(4) and if they have not filed any objections for the orders under Section 9(5) or no response to the subsequent proceedings and after notifications*

*under Section 11(3) excess land declared by the competent authority are vested with the Government. Therefore, for taking possession, the competent authority issued notices under Section 11(5) were also issued requesting to surrender possession of the excess vacant lands within thirty days, since the respondents have not received the notices and notices were affixed. Subsequently, possessions were taken on excess vacant lands from the respondents on 28.04.1999 and 24.05.1999 respectively and handed over the same to the Revenue Authority/Revenue Inspector. Therefore, the titles are vested with the Government and the possessions are with the Government, when the repeal Act came into force on 16.06.1999."*

12. The Learned Additional Advocate General, contends that once the title gets vested in the State, then the Repeal Act would not come to the aid of the writ petitioners. He has also placed reliance on a judgment of the Hon'ble Supreme Court in Ritesh Tewari & another Vs. State of Uttar Pradesh & Ors., (2010) 10 SCC 677, wherein the Hon'ble Supreme Court observed as under:-

*"16. The aforesaid conclusion leads us further to the question as to whether the appellants have any justifiable cause to approach the court. Firstly, no*

*proceedings had ever been initiated against the appellants by the authorities under the 1976 Act. Secondly, the State authorities, the respondent herein, failed miserably to perform their statutory duties and it appears that they could not muster the courage to take the actual physical possession of the land in dispute in spite of issuance of notice under Section 10(5) of the 1976 Act in the year 1993. More so, the so-called authorities could issue notices under Section 10 of the 1976 Act after a lapse of twelve years as the assessment of surplus land became final in 1981 itself. Such an indifferent attitude on the part of the authorities is not commendable rather it is condemnable, but that does not mean that the court should decide only the effect of the repealing 1999 Act in these proceedings at the behest of the appellants in the absence of the original tenure-holders and subsequent transferees inasmuch as in the fact situation of this case where the appellants, for the reasons best known to them, did not consider it proper to place either of the sale deeds on record."*

13. The learned Additional Advocate General, would again contend that even in the present case, there is no reason given by the writ petitioners as to why did they approach the Court after such a long time. He would also state that once the sale deed has

been declared as null and void and the Repeal Act came way back in the year 1999, there is no justification on the part of the writ petitioner to approach the Court in 2005.

14. Per contra, Mr.Ramakrishnan, learned Senior Counsel appearing for the writ petitioner respondents would state that assuming though not admitting the sale deed as void, the authorities are still bound to follow the procedure under Section 11 of the Ceiling Act. He would state that the fact that the sale deed even if void would reflect that the possession would be either treated to be in the hands of the original land owner or actually with the petitioner and until unless possession is not taken from the original land owner or the petitioner in the manner prescribed under Section 11 of the Ceiling Act, the proceedings would abate by the advent of the Repeal Act.

15. He would state that the appellants themselves in the counter affidavit have admitted that the writ petitioners respondents are in possession of the land and therefore it cannot be said that the appellants have taken actual physical possession of the land in question. He would state that if the actual physical

possession of the land has not been taken, then the Repeal Act would operate and the proceedings would abate and the appellants cannot interfere with the peaceful possession of the writ petitioners.

16. For resolving the controversy, it is necessary to extract Section 11 of the Ceiling Act and Section 3 and 4 of the Repeal Act.

*"(1) As soon as may be after the service of the final statement under section 10 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 State Government ; and*

*(ii) the claims of all persons 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 Tamil Nadu Government Gazette, and in such other manner as may be prescribed.*

*(2) After considering the claims of the persons interested in the vacant land, made to the competent*

*authority in pursuance of the notification published under sub-section (I), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.*

*(3) At any time after the publication of the notification under sub-section (I) the competent authority may, by notification in the Tamil Nadu Government Gazette, 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 with effect from the date so specified.*

*(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)-*

*(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and*

*(ii) no person shall alter or cause to be altered the use of such excess vacant land.*

*(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 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."*

Repeal Act, Section 3 and 4 read as under:-

**"3. Savings.**— (1) *The repeal of the principal Act shall not affect—*

*(a) the vesting of any vacant land under sub-section (3) of section 11, possession of which has been taken over by the 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 21 or any action taken thereunder.*

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 11 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

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

Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

17. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh Vs. Hari Ram*, (2013) 4 SCC 280, has elaborately dealt with the manner in which possession should be taken under the Urban Land (Ceiling and Regulation) Act, 1976 and effect of vesting under the Urban Land (Ceiling and Regulation) Act, 1976. Paragraphs 18 to 37 read as under:-

*"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 sub-section (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".

**25.** The word "vest" or "vesting" has different meanings. Legal Glossary, published by the Official Language (Legislative) Commission, 1970 Edn. at p.

302:

*"Vest.—(1) To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, (2) To become legally vested; (TP Act)*

*Vesting order.—An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;"*

**26.***Black's Law Dictionary (6th Edn.), 1990 at p. 1563:*

*"Vested.—Fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not continue 'vested right'. Vaughn v. Nadel [228 Kan 469 : 618 P 2d 778 (1980)] . See also Accrue; Vest, and specific types of vested interests, infra."*

**27.***Webster's Third New International Dictionary, of the English Language unabridged, Vol. III S to Z at p. 2547 defines the word "vest" as follows:*

*"'vest' vest ... To place or give into the possession or discretion of some person or authority [the regulation of the waterways ... to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) (a deed that vests a title estate in the grantee and a remainder in his children)*

*(b) to grant, endow, or clothe with a particular authority right or property ... to put (a person) in possession of land by the feudal ceremony of investiture ... to become legally vested (normally) title to real property vests in the holder of a property executed deed.]"*

**28.** *"Vest"/"vested", therefore, may or may not include "transfer of possession", the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.*

**29.** *What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land are pitted against a statutory hypothesis. Possession, there is an adage is "nine points of the law". In *Beddall v. Maitland* [(1881) 17 Ch D 174 : (1881-85) All ER Rep Ext 1812] Sir Edward Fry, while speaking of a statute which makes a forcible entry an indictable offence, stated as follows: (Ch D p. 188)*

*"... This statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession he may use force to keep out a trespasser; but, if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance."*

**30.** *Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words "acquired" and "vested" have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more*

*reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.*

**31.** *The "vesting" in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in Maharaj Singh v. State of U.P. [(1977) 1 SCC 155] , while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in Rajendra Kumar v. Kalyan [(2000) 8 SCC 99] held as follows: (SCC p. 114, para 28)*

*"28. ... We do find some contentious substance in the contextual facts, since vesting shall have to be a 'vesting' certain. 'To "vest", generally means to give a property in.' (Per Brett, L.J. Coverdale v. Charlton [(1878) 4 QBD 104 (CA)] : Stroud's Judicial Dictionary, 5th Edn., Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorisation cannot*

*however but be termed to be a contingent event. To 'vest', cannot be termed to be an executory devise. Be it noted however, that 'vested' does not necessarily and always mean 'vest in possession' but includes 'vest in interest' as well."*

**32.** *We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.*

**33.** *Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore,*

*continues to be with the holder of the land.*

**34.** *Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.*

**35.** *If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.*

**36.** *The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section*

(6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

**37.** The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-

*section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall". "*

18. In the very same judgment, the effect of the Repeal Act has also been discussed. Paragraphs 41 and 42 read as under:-

*"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."*

19. A perusal of the above judgment would show that the Hon'ble Supreme Court has held that though Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1978 (herein after called as Central Act), which is para-materia to Section 11(3) of the Ceiling Act, the vacant land is deemed to be acquired, it does not mean that the possession of the land has been taken over. The Hon'ble Supreme Court has categorically stated that the procedure contained under sub section 5 and 6 of the Central Act must be scrupulously followed. The Hon'ble Supreme Court was of the view that Section 10 (5) of the Central Act which is para-materia to Section 11(5) of the Ceiling Act stipulates that any vacant land even if vested in the State under sub section (3), the competent authority has to by notice on writing or any person who may be in possession of it to surrender or deliver possession of the land to the State Government within thirty days of the service of the

notice. If the land owner said to do, then the State Government has to follow the procedure under sub section (6) of Section 10 or Section 11 as the case may be, and take forcible possession.

20. This Bench had an occasion to deal with the provisions of the Section 11 of the Ceiling Act in Principle Commissioner and Commissioner for Land Reforms Vs. B.Bhooshanam, (2020) SCC Online Mad 152, wherein this Bench observed as under:-

*"9. While dealing with the question of vesting of land under Section 10(3) of the Ceiling Act which is pari materia to Section 11(3) of the Ceiling Act, the Hon'ble Supreme Court has in various decisions held that vacant land is deemed to have been acquired but acquisition does not mean taking over of the possession of the land. For taking possession of the land, the procedure contained under the sub-Section (6) of Section 10 para materia to Section 11(6) of the Tamil Nadu Act has to be followed. Under Section 11(3) what has vested is dejuræ possession and not de facto possession. Section 11(5) stipulates that 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 within thirty days of*

*the service of the notice. Sub-Section 6 of Section 11 postulates that if a 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, and for that purpose, use such forces as may be necessary. The procedure under Section 11(6), therefore, operates when the land owner fails to comply with the direction issued to him under 11(5) of the Act. Silence on the part of the land owner does not mean that the land owner has given possession and there is no necessity to comply with the procedure under Section 11(6) of the Ceiling Act.*

**14.** *A perusal of the above position would show that Section 10(5) postulates that the land owner himself surrenders the possession. If the land owner does not surrender possession, then procedure under Section 10(6) of the Ceiling Act has to be adopted. Section 10(6) of the Ceiling Act, therefore, postulates that authorities must go to the land and take physical possession on the land itself. This procedure cannot be adopted while sitting inside the office of the authorities. Notice under Section 11(5) of the Act was served, on the land owners only by affixture. There is nothing to show where the notice was pasted. There is no witness to show whether there was actual*

*pasting or not. The possession certificate only shows that the land was handed over by the Deputy Tahsildar to the Zonal Deputy Tahsildar. As observed earlier, the words "from the urban land owner" has been struck off. There is nothing on record to satisfy us that the Government took physical possession of the property from the land owners. There are no witnesses to show that the officers went to the land physically and took over possession which is normally done in favour of independent witnesses. It looks as if the entire exercise of affixture and taking over of the possession of the land was done inside the office of the respondents. This Court is of an opinion that there has to be some form of material showing service of notice under Section 11(5) of the Ceiling Act having being done through affixture. There has to be some material to show voluntary surrender of possession. In the absence of any material, it cannot be presumed that there has been a voluntary surrender of the land. In the absence of voluntary surrender of the land, the State Government will have to resort to the procedure under Section 11(6) of the Ceiling Act. Admittedly, Section 11(6) of the Ceiling Act has not been resorted to. The stand of the State Government that unless there is a physical resistance, Section 11(6) need not be resorted at all, cannot be accepted."*

In the said decision, the State Government had placed reliance on another Division Bench of this Court in State of Tamil Nadu, Rep. by its Secretary, Revenue Department Vs. T.V.Antony, (2018) SCC Online Mad 541, the said judgment was distinguished in the judgment of Principle Commissioner Vs. B.Bhooshanam (supra). The Division Bench judgment of the T.V.Antony (supra) has been set aside by the Hon'ble Supreme Court in T.V.Antony Vs. State of Tamil Nadu and others, (2019) SCC Online SC 1486.

21. This Court is of the view that the contention of the State Government that once the land had vested with the State Government under sub section (3) of Section 11 of the Ceiling Act, then there is no necessity of following the procedure under Section 10(5) or (6) is accepted, then the Repeal Act will lose its meaning. The Repeal Act had been brought out to save such lands of which actual physical possession had not been taken over by the State Government. The land receipt relied on by the appellant does not show that the procedure under Section 11(6) had been followed. In fact, the State Government has accepted that the actual physical possession was not taken.

22. The fact that the respondents are in possession of the property is actually admitted by the appellants in the counter affidavit. Paragraphs 4 and 10 of the counter affidavit read as under:-

*"4. It is submitted that the petitioner had requested Government on 17.2.99 to allot the excess vacant land acquired in S.No.95/ 1 and 95/2. Before finalizing the request the principal Act was repealed. In G.O.(Ms)No.353, Revenue, dated 30.6.2000 Government had given directions to regularise the encroachment in the excess vacant land acquired under the provisions of the said Act. As per G.O.(Ms)No.353, Revenue, dated 30.6.2000 the lands acquired under the said Act covered by encroachment may be regularised in favour of the encroacher, after collecting double time of the present market value of the land. The petitioner had given consent to pay the value. Hence, a report for collection of the value and regularization of the land is under perusal. Tvl. Rane Brake Linings in their letter dated 31.3.2005 had sent a cheque for Rs.43,72,840/- towards the regularization. It was returned on 3.5.2005 stating that the amount has to be paid after the regularisation orders is passed for fixing the amount. Orders of regularization is pending. At this stage the petitioner has filed this present writ petition.*

*10. It is submitted that the averments made in paragraph 8 of the affidavit are not accepted. The possession of the excess vacant land was not handed over by the owner of the land on the date of commencement of the said Act even after receipt of the notice under section 11(5) of the said Act. The possession of the excess vacant land was handed over to the Revenue authorities on 29.6.90 by signing the land delivery receipt. The possession of the petitioner has to be treated only as an encroachment. The request of the Petitioner to allot the land is pending consideration."*

23. It is therefore undisputed that the land was in possession of the writ petitioners when the Repeal Act came into force even if the sale deed in their favour is treated to be void, being in contravention of Section 6 of the Ceiling Act. This issue is between the petitioner and the owner but it does reflect that actual physical possession was never taken over by the government. Since it was mandatory on the part of the Government to take actual physical possession from the land owner under Section 11(5) and 11(6) of the Ceiling Act, mere vesting under Section 11(3) does not amount to taking over of possession. The effect of holding the sale as null

and void would only mean that the land owner was divested of the title over the property but he still possessed it and his possession could have been taken away only by following the procedure under the Ceiling Act. The land owner never voluntarily succeeded possession, rather he handed it and the petitioner which fact as stated above is also reflected from the counter affidavit of the State. The land receipt handing over and taking over by the Government authorities is only a paper transaction that does not establish taking over possession either from the land owner or the writ petitioner. The procedure which has been prescribed under Section 11(5) and 11(6) of the Ceiling Act has not been followed. It is not the case of the State that it took recourse to Section 11(6) for taking possession forcibly from the occupier. To the contrary the State negotiated regularisation of the land in favour of the writ petitioner.

24. Before the judgment could be pronounced, Shri Aravind Pandian, learned Additional Advocate General has cited three judgments and has also urged with the aid of paragraph (18) of the counter affidavit filed before the learned Single Judge that the respondents/writ petitioners were well aware of the acquisition

proceedings in the year 1987 and did not file any writ petition. The argument of Shri Pandian is that a writ petition ought not to have been entertained at a delayed stage in the year 2005.

25. We may point out that the allegations contained in paragraph (10) of the counter affidavit that possession had been handed over to the Revenue authorities on 29.6.1990 by signing land delivery receipt is not borne out from the record and neither the land owner, nor the respondents/writ petitioners have signed such receipt, which is evident from the original records produced before us. The signatories to the receipt are only Government officials and no one else. Paragraph (10) of the counter affidavit also states that the possession of the respondents/writ petitioners has to be treated only as an encroachment. This very sentence indicates that there was no dispossession. The last sentence of paragraph (10) of the counter affidavit states that the request of the respondents/writ petitioners to allot the land is pending consideration. In paragraph (12), it has again been stated that the possession of the respondents/writ petitioners is only an encroachment. It is, thus, evident that there is complete absence of any material to demonstrate voluntary possession having been

handed over, by the writ petitioners or land owner, or any document in terms of Section 11(5) of the Ceiling Act. The proceedings under Section 11(6) admittedly were never undertaken either to forcibly expel the original owner or the writ petitioners from possession.

26. The question of possession and vesting has already been dealt with by us herein above, but the learned Additional Advocate General has come up with three judgments, the first is of the Apex Court in the case of *State of U.P. and others v. Adarsh Seva Sahkari Samiti Limited*, (2016) 12 SCC 493. It is urged that according to the said judgment a subsequent transferee has no right as his transfer is void *ab initio*, being in violation of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. The said decision is related to the Urban Land (Ceiling and Regulation) Act, 1976 as applicable in the State of Uttar Pradesh. We may point out that Sections 10(5) and 10(6) of the Central Act as applicable to the State of Uttar Pradesh are *pari materia* to Sections 11(5) and 11(6) involved herein. The said decision nowhere has dealt with the law laid down in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra). To the contrary, in paragraph

(6), the Apex Court has declined to examine the said question in the following words:

*"6. In our opinion, the respondent herein has no locus standi to challenge the inaction on the part of the appellants viz. not taking possession legally strictly complying with the statutory provisions under Section 10(5) of the Act and taking over possession as provided under Section 10(6) of the Act. At this juncture, this aspect need not be examined by this Court at the instance of the respondent."*

In the said case also, it is evident that the possession had been taken over and had been handed over to a Development Authority, thereby introducing a third party in possession, which is not a fact in the present case.

27. The second decision relied on by Shri Pandian is the Apex Court decision in the case of *State of Uttar Pradesh and others v. Surendra Pratap and others*, (2016) 12 SCC 497, which in turn has relied on the above mentioned judgment. In the said case also, the Apex Court had arrived at the finding that possession certificate was issued and an objection was filed against the same which came to be rejected and thus, on such facts, it was held that

there was no statable claim of possession. The said case is also distinguishable on facts, in as much as in the present case the land delivery receipt nowhere bears the signature of either the land owner or the writ petitioners, as already observed herein above. There is no evidence with regard to taking over of possession. Apart from this, the decision in the case of *State of Uttar Pradesh and others v. Surendra Pratap and others* (supra), nowhere even refers to the judgment in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra).

28. The third judgment which has been cited and which has been heavily relied on by Shri Pandian is the latest Five-Judges Constitution Bench judgment in the case of *Indore Development Authority v. Manoharlal and others, etc.*, [decided on 6.3.2020 in SLP (C) Nos.9036-9038 of 2016], on the strength whereof he contends that this Five-Judges Constitution Bench judgment in effect has impliedly overruled the judgment in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra), inasmuch as it has expressly approved of the judgment in the case of *State of Assam v. Bhaskar Jyoti Sarma and others*, (2015) 5 SCC 321. For this, he has extensively relied on the answer given by the Constitution

Bench against Issue No.4, which is the mode of taking possession under the Act of 1894 and paragraph 244 to paragraph 277 and then to paragraph 341 to paragraph 346 and again to paragraph 363 to contend that the mode of taking possession by virtue of the vesting of the land in the present case is full and complete and the Apex Court has rendered the Five Judges Constitution Bench judgment after taking into consideration the judgment in the case of *State of Assam v. Bhaskar Jyoti Sarma and others* (supra), which was directly in issue in relation to the taking over of surplus land declared in Urban Land Ceiling proceedings. He, therefore, submits that once the land has vested, then this will amount to vesting of possession and title both.

29. We have perused the relevant paragraphs pointed out by Shri Pandian and we do not find any consideration of paragraphs 41 and 42 of the judgment in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra) having been dealt with or having been overruled by the Constitution Bench. We may also point out that the Five Judges Constitution Bench has extracted the ratio of the judgment in the case of *State of Assam v. Bhaskar Jyoti Sarma and others* (supra) contained in paragraphs 15 to 17 thereof, that

has been quoted in paragraph 341. The said quotation even though refers to the case of *State of Uttar Pradesh Vs. Hari Ram* (supra), it appears that it was only the word “may” that was taken into consideration for interpreting an exercise of a discretion by the Competent Authority to issue notice or otherwise. It was also clearly stated in *State of Assam v. Bhaskar Jyoti Sarma and others* (supra) that the question whether the breach of the provisions vitiate the act of dispossession itself or render it non-est in the eye of law had not fallen for consideration in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra). Thus, it was on that distinction that the Apex Court proceeded to deliver the judgment in the case of *State of Assam v. Bhaskar Jyoti Sarma and others* (supra). The decision of the Five-Judges Bench in the case of *Indore Development Authority v. Manoharlal and others, etc.* (supra), therefore, in our opinion, cannot be read as a judgment overruling the ratio in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra). Thus, paragraphs 41 and 42 of the judgment in the case of *State of Uttar Pradesh Vs. Hari Ram* (supra), for the present purpose, still hold the field and consequently, the argument raised by Shri Pandian deserves to be rejected.

30. It is further relevant to point out that vesting has a different context in different statutes, which has also been explained by the Constitution bench in the case of *Indore Development Authority v. Manoharlal and others, etc.* (supra). In the present case, the act of vesting has to be followed by taking over possession and is not simultaneous. There is no deemed actual physical possession, which has to be accomplished later on either through Section 11(5) or Section 11(6) of the Ceiling Act.

31. Apart from this, the very purpose and object of the repeal of the Land Acquisition Act, 1894, substituting it with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 had a different purpose altogether in order to ensure that the land is acquired in a more systematic manner and with the best of compensation, together with rehabilitation facilities available to the land owners. The Ceiling Act was an Act of confiscation of land being excess and surplus area, over and above that prescribed therein, but when the Repeal Act came, the very purpose of the Repeal Act was to save the land of which possession had not been taken. Consequently, the judgment in the case of *Indore Development Authority v.*

*Manoharlal and others, etc.* (supra) cannot be pressed into service without taking into consideration the aforesaid distinction of the very purpose of the two legislations and a different methodology of taking over possession. It is settled that the law has to be applied on the facts emerging on a *lis* being contested by either of the parties. The facts relating to possession or dispossession in the present case have been clearly outlined by us herein above. To say the least, a case is an authority on what it actually decides and the ratio of a judgment is that which enunciates the law and not what logically follows from it. A precedent, therefore, has to be carefully applied, as one single fact at times can be sufficient to distinguish the very foundation of the applicability of law arising from the pleadings exchanged between the parties. In our opinion, the dissimilarity of facts, as noted above, therefore do not persuade us to apply the law as suggested by the learned Additional Advocate General and relied on by him on the facts of the present case.

32. As indicated above, in the instant case, even though the land had been declared surplus, it had not been handed over to any third party or to any authority of the State Government and to

the contrary, the possession was retained by the owners who transferred ownership and possession to the writ petitioners and proceedings with regard to regularisation of the land in their favour were admittedly in process, as is admitted in the counter affidavit of the State.

33. The exact pleadings of delay and laches has nowhere been pleaded in the counter affidavit except paragraph 18 thereof which is vague and at the most suggestive.

34. Shri Ramakrishan, learned Senior Counsel has rightly invited the attention of the Court to the judgment in the case of *Government of Tamil Nadu v. Mecca Prime Tannery*, 2012 4 LW 289, where it has been held that the State has to initiate action for taking possession of the land and the wordings used in Section 11(3) read with Sections 11(5) and 11(6) of the Ceiling Act would mean that even though right, title and interest in respect of the land on declaration of surplus would vest in the State, yet the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in

the Government. The said decision squarely applies on the facts of the present case. We are further informed that that an SLP (c) No.12569 of 2016 filed against the said Division Bench judgment was dismissed by the Apex Court on 17.10.2016.

33. Resultantly, the Repeal Act would come to the aid of the writ petitioners respondents and therefore. there is no infirmity with the judgment of the learned Single Judge. The Writ Appeals therefore fails. No Costs.

Index: Yes  
pkn.

(A.P.S., C.J.) (S.P.,J.)  
9/3/2020

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W.A.Nos.970 and 1738 of 2017

THE HON'BLE CHIEF JUSTICE  
and  
SUBRAMONIUM PRASAD, J

mvs/pkn.



Pre-delivery common judgment in  
Writ Appeal Nos.970 and 1738 of 2017

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