"REPORTABLE"

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7434 OF 2012

Vipinchandra Vadilal Bavishi (D) by Lrs.
and another ....Appellant(s)

versus

State of Gujarat and others ....Respondent(s)

J U D G M E N T

M.Y. EQBAL, J.

The appellants are aggrieved by the judgment and order dated 26.3.2010 passed by the Division Bench of Gujarat High Court dismissing the Letters Patent Appeal No.740 of 2002 holding that the appellants are not entitled to the benefit of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and thereby upheld the judgment passed by the learned Single Judge in the writ petition filed by the appellants.

2. The factual matrix of the case is that the appellants were the owners and land holders of vacant lands situated in different places in the State of Gujarat. When the Urban Land (Ceiling and Regulation) Act, 1976 (in short, "Act of 1976") came into force in August, 1976, the appellants filed the return as required under Section 6 of the Act of 1976 and in the said form the appellants declared their lands situated in village Rajkot, Kothariya and Nana Mauva in the district of Rajkot, Gujarat. The return in the specified form shows that the appellants owned land in survey nos. 1, 2, 7 to 18 and 44 in Village Rajkot and plot nos. 36 to 43 in village Nana Mauva in the district of Rajkot. The wife of the appellant Bipin Chandra Babhishi (appellant No.2) also filed separate return.

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3. The draft statement was prepared by the authority and final statement under Section 9 was issued showing plot nos. 1 to 16 as excess land held by the appellants beyond ceiling limit.

4. The Notification under Section 10(1) of the Act was published on 24-3-1986 declaring the land together with other land as surplus land. The respondent's case is that the numbers of plots and the measurements were described as Plot Nos. 1 to 16, instead of either 16 plots or Plot Nos. 36 to 43 and the area was mentioned as of 9030.71 sq.mtrs. instead of 4610 sq.mtrs. Thereafter, on 16-6-1986, the Notification under Section 10 (3) was published showing the details of the land of Plot No. 1 to 16 as they were shown in the Notification under Section 10(1) of the Act. Against the order dated 27-2-1986 for declaring the land in question together with the other land as surplus land, the appellant preferred appeal being No. Rajkot/41/86, before the Urban Land Tribunal and on 17-6-1986. In the said appeal, the interim stay was granted against the publication of the Notification under Section 10(3) of the Act. However, prior thereto, i.e. on 16-6-1986, the Notification under Section 10(3) of the Act as stated above, was already

published. On 20-12-1988, the Urban Land Tribunal dismissed the appeal preferred by the appellant as well as by his wife. However, so far as the land in question is concerned, the Tribunal, vide Para No. 4 of the judgment in the Appeal No. 41 of 1986 of the appellants, considered that the land in question bearing Plot Nos. 36 to 43 admeasuring 4610 sq. mtrs. was declared as land under holding of the appellant and had also recorded that the declaration under Section 10(3) of the Act was issued on 16-6-1986.

5. Thereafter, corrigendum dated 26-6-1989 allegedly issued for correcting the mistake occurred in the description of plot numbers and areas of the land in question and as per the said order, it was mentioned that the plot numbers are to be correctly read as 16 to 23 and 36 to 43. It is the case of the respondent authorities that on 26-6-1989, the possession of the land in question bearing Plot Nos. 16 to 23 and Plot Nos. 36 to 43 was taken over and the panchnama was also drawn

to that effect. In the panchnama dated 26-6-1989, it has also been mentioned that over the land in question Plot Nos. 16, 17, 23 and 24, the construction of houses are made. In October 1989, the appellant preferred Spl.C.A. No. 3456 of 1989 before the High Court against the order dated 27-2-1986 passed by the Urban Land Authority and order dated 28-12-1988 passed by the Urban Land Tribunal. In the said Spl. Civil Application, High Court passed an order of issuing notice and directed the parties to maintain the status quo as on that day. The said petition was heard and dismissed by the High Court on 19-7-1993. Being aggrieved, the appellant had preferred appeal before this Court under Article 136 of the Constitution, which stood dismissed.

6. On 18th March, 1999, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short, "Repeal Act") came into force whereby the Urban Land (Ceiling & Regulation) Act stood repealed. In September, 2000, the appellant preferred

a petition before the High Court for declaration that respondent nos. 1 and 2 have no powers or authority to take the possession of the land in question and has also prayed for the permanent injunction against respondent Nos. 1 and 2 for dealing or disposing of the land in question pending the petition. The appellants came to know that the land in question admeasuring 2100 Sq. Mtrs. has been allotted to one Shram Deep Co-op. Housing Society, by the State Government as per order dated 12th Sept., 2000, and therefore, the appellants also challenged the legality and validity of the said order for allotment of the land.

7. Learned Single Judge of the High Court dismissed the petition filed by the appellants. Observing that the State Government was not legally justified in disposing the land in question after the Repeal Act and since the same has been disposed of without observing the settled norms for disposal of the public property, learned Single Judge also quashed and set aside the order dated 12-9-2000 whereby the land in

question was allotted to the respondent No. 3-Society. The appellants herein challenged dismissal of their petition by way of filing Letters Patent Appeal. Respondent-Society also filed Letters Patent Appeal challenging cancellation of aforesaid allotment.

8. After hearing both sides, the Division Bench of the High Court dismissed the appeal preferred by the appellants and allowed the appeal filed by the Society. The Division Bench confirmed the order of learned Single Judge in Special Civil Application so far as it related to the appellant, and set aside the findings so far it related to the Co-operative Society, holding thus:

> "39. Learned Single Judge has non-suited the petitioners on the ground that their land at village Kotharia was sold in the year 1997 by the State Government authorities, no objection was raised by them in this relation. Thus, for all practical purposes they have understood that the land belonging to them having been declared as surplus has rightly vested in the State Government and the State Government had a right to sell the same and therefore no grievance whatsoever was raised in that relation. That tantamounts to acquiescence of the petitioners and we do not think that learned Single Judge was wrong in holding the same.

40. Learned Single Judge has also noticed that there is non-disclosure of necessary facts in the petition filed before this Court regarding the material questions, such as corrigendum, preparation of panchnama and the proceedings initiated by them for encroachment which tantamounts to withholding the material information and this shows that the petitioners had not come to this Court with clean hands and lack bona fides and therefore on that count also the judgement of learned Single Judge is not found vitiated by us.

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44. In view of the aforesaid, we are of the considered opinion that the petitioners' petition has rightly been dismissed by learned Single Judge. Since the petitioners' petition held by us to be not maintainable in the facts of this case, the question of allotment of the land acquired from the petitioners to the respondent/appellant Co-operative Society is not gone into by us because if the petition itself is held to be not maintainable then that question was not liable to be gone into by learned Single Judge because such allotment would not fall within the purview of its jurisdiction exercised by learned Single Judge. That could have been done in a Public Interest Litigation. In any case, the Co-operative Society having been made to deposit money in the year 1991 and the State having not allotted the land to it until this Court had issued a direction, we consider that that question is not required to be gone into at the instance of the petitioners. Therefore, the findings of learned Single Judge in that relation are considered by us to be not proper and therefore they are liable to be set aside.

45. In view of the above, the petition filed by the petitioners before learned Single Judge is dismissed. Since we have dismissed Special Civil Application filed by the petitioners, the findings in relation to the Co-operative Society are also set aside. In that view of the matter, the appeal of the Co-operative Society stands allowed."

9. Hence the present appeal by special leave by the landholders.

10. Mr. Harin P. Raval, learned senior counsel appearing for the appellants-landholders, before briefing the point of submission, contended that the instant case is squarely covered by the judgment rendered by this Court in the case of ***State of Uttar Pradesh vs. Hari Ram,*** (2013) 4 SCC 280. Learned counsel submitted that in the instant case the State Government has failed to establish that possession has been legally taken over either by way of the voluntary surrender of possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10 of the Act.

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11. Mr. Raval submitted that admittedly there was a status quo order granted by the Land Ceiling Tribunal on 17.6.1986. Hence, the notification purported to have been issued under-sub-section (3) of Section 10 and any action taken will be a nullity. Consequently, Notification under Section 10 (1), under

Section 10(3) and under Section 10(5) and the Panchnama mentioned therein in respect of survey nos. 73, 74 and 71 are patently bad and illegal.

12. Mr. Raval submitted that in the final statement dated 27.2.1986 issued under Section 9 of the Act relates to plot nos. 1 to 16 of survey no.71. So also Notification under Section 10(1), Section 10(3) are in respect of of plot Nos. 1 to 16 whereas Panchnama dated 26.6.1989 was prepared for taking possession of plot nos.16 to 23 and 36 to 43 of Survey No. 71 of village Mauva. That was based on so called corrigendum dated 26.6.1989 alleging that plot numbers have been corrected. Admittedly the same was not published in the Government Gazette and the appellants never knew the same. Learned counsel submitted that the said corrigendum is a got up document which is very clear from the letter dated 18.8.2000.

13. Mr. Raval, learned senior counsel, lastly contended that the stand of the State Government that the corrigendum is not required to be published in the Government Gazette cannot be sustained in view of Section 21 of the General Clauses Act and the law decided by this Court in the case of ***Mahendra Lal Jaini vs. State of U.P. & Ors.*** AIR 1963 SC 1019, and ***State of Kerala vs. P.J. Joseph,*** AIR 1958 SC 296.

14. Mr. Preetesh Kapur, learned counsel appearing for the respondent-State firstly contended that the learned Single Judge rightly dismissed the writ petition on the ground of constructive *res judicata* as well delay and acquiescence. Learned counsel submitted that all the contentions raised by the appellant in the present proceedings could have been and ought to have been raised in the first round of litigation in the Writ Petition No. 3456 of 1989. Learned counsel submitted that the appellants were fully aware that in pursuance of the corrigendum dated 26.6.1989 possession of the land in question namely plot Nos. 36 to 43 has been taken over by the

State which is clear from the Panchnama and the notice dated 23.10.1989. Further, in the earlier writ petition, the appellants in effect accepted that the correct plot nos. 36 to 43 were declared surplus. According to the learned counsel, therefore, the appellants were all along aware of this corrigendum.

15. Mr. Kapur then contended that in any view of the matter, the appellants could have challenged the said corrigendum as well as taking over the possession of plot nos. 36 to 43, if according to the appellant there is no valid Notification under Section 10(3) in respect of plots in question or that the corrigendum was required to be notified.

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16. Referring to the Repeal Act of 1999, learned counsel submitted that the said Repeal Act does not give any fresh cause of action to the appellants if the foundation for the relief in the present proceedings is nothing but the ground that was always available to the appellants in the earlier round of

litigation. In this regard, learned counsel relied upon the decision in the case of ***Shiv Chander More & Ors. vs. Lieutenant Governor & Ors.,*** (2014) 11 SCC 744.

17. Mr. C.A. Sundaram, learned senior counsel appearing for some of the appellants, at the very outset, submitted that a person can be divested from his property only by Notification under Section 10(3) of the Act and not by an order under Section 45 of the Act. Learned counsel submitted that the cause of action for approaching the court arose only after the Repeal Act of 1999 came into force. Learned counsel drawn our attention to the scheme of the Act and the mandate provided therein. Divesting the land-holders from their property without following the mandatory provision is a nullity.

18. In order to decide the correctness of the impugned judgment of the High Court, we would like to refer some of the facts which are not in dispute.

(i) After the statutory form under Section 6 of the Act was submitted by the appellants-land-holders, Notification was issued under Section 10(1) of the Act giving the particulars of the vacant land held by the appellants in excess of ceiling limit. In the said Notification, plot nos. 1 to 16 were declared as excess land. There is no mention of plot nos. 36 to 43.

(ii) On 16.6.1986, Notification under Section 10(3) was issued by the competent authority declaring the excess vacant land referred to in the Notification under Section 10(1) deemed to have been acquired by the State Government. In that Section 10(3) Notification also there is no mention of vesting of land of plot nos. 36 to 43.

(iii) Although Land Ceiling Tribunal by order dated 17.6.1986 granted status quo restraining publication of Section 10(3) Notification and not to conduct further proceedings, but in spite of status quo, again Section 10(3) Notification was published in the Gazette on 24.7.1986 showing plot nos. 1 to 16 as excess vacant land deemed to have been acquired.

(iv) A handwritten corrigendum was allegedly prepared on 26.6.1989, but it was never given effect

to, which is evident from the letter dated 18.8.2000. We shall discuss the said letter dated 18.8.2000 hereinafter.

19. Now the question that needs consideration is as to whether handwritten corrigendum dated 26.6.1989 and the alleged panchnama of the same dated 26.6.1989 can be relied upon and that on the basis of said corrigendum and the panchnama can the land stood vested in the State. As noticed above, according to the respondent-State a handwritten corrigendum dated 26.6.1989 correcting plot numbers have been issued, but from the letter dated 18.8.2000, it is clear that the said handwritten corrigendum was never given effect to. In the letter dated 18.8.2000 issued by the Deputy Secretary, Revenue Department to the Additional Collector, (Competent Officer of Urban Land Ceiling), it was mentioned that possession of land of plot nos. 1 to 16 of survey no. 71 was taken over by the Government and when it came to the notice that the landholders were holding plot nos. 36 to 43,

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possession was taken over of those plots. The competent officer has sought sanction of the Government for publishing necessary corrigendum. It is also mentioned in the letter that sanction is required for showing plot nos. 36 to 43 by issuing a corrigendum.

20. From these facts and the documents available on record, it is evidently clear that neither the Notifications under Sections 10(1), 10(2), 10(3) and 10(5) were issued in respect of plot nos. 36 to 43 nor possession of those plots have been taken over by the respondents. Curiously enough even the map attached to the letter dated 26.6.1989 shows that the possession of plot nos. 1 to 16 were taken and not of plot nos. 36 to 43.

21. From perusal of the Urban Land (Ceiling and Regulation) Act, 1976 (in short "Ceiling Act"), the provisions contained in Sections 8, 9 and 10 have to be mandatorily complied with before the land is declared in excess of the ceiling limit.

Section 8 empowers the authority to prepare a draft statement giving particulars of the land holders, vacant lands and such draft statement is served upon the land holders inviting objections to the draft statement. Admittedly, in the draft statement, neither the lands comprised within plot nos. 36 to 43 were shown as excess land nor objection was invited from the appellants. In the final statement prepared under Section 9 of the Act, again the land of plot nos. 36 to 43 was not shown as excess land beyond ceiling limit. As noticed above, a Notification under Section 10(1) of the Act was published showing the land of plot nos. 1 to 16 as excess vacant land held by the appellants. Thereafter, the competent authority issued Notification under Section 10(3) of the Act which was published in the Gazette of the State declaring that the land of plot nos. 1 to 16 deemed to have been acquired by the State. In spite of the fact that the land in question being plot nos. 36 to 43 of survey no. 71 was not the land under Notification issued under Section 10(1) and 10(3) of the Act, the authority alleged to have proceeded under Section 10(5) of the Act for

taking possession of the land. At this juncture, it is relevant to mention here that no notice has been produced by the State to show that the appellants were asked to surrender or deliver the possession of plot nos. 36 to 43. Nor there is any evidence to show that the appellants ever refused or failed to comply with any notice issued under Section 10(5) of the Act.

22. Perusal of the documents reveals that the respondent-State has not come with clean hands which is evident from the counter affidavit filed by the State before the High Court in the writ petition. In paragraph 13 of the counter affidavit it was stated by the State that by order dated 27.2.1986 land comprised within the plot nos. 1 to 16 of Village Nana mauva was declared excess. It is stated that the said order was passed relying upon the documents dated 6.9.1965 submitted with form No.1, wherein total number of plots were shown as 1 to 16. However, it is stated that by corrigendum dated 26.6.1989, instead of plot nos. 1 to 16, possession of plot nos. 16 to 23 and 36 to 43 was published in compliance with the

provision contained in Section 45 of the Act and accordingly the possession of plot nos. 16 to 23 and 36 to 43 was taken over on 26.6.1989 in the presence of panchas. From perusal of panchnama dated 26.6.1989, it is mentioned that the appellants were informed to remain present for handing over possession but the appellants had not remained present to hand over the possession. Hence, in presence of two panchs possession of excess land as per particulars given therein was taken over. In the particulars of land regarding the taken over possession plot nos. 16 to 19 has been shown with boundary. If the contention of the respondent is accepted, then according to the respondent everything i.e. preparation of corrigendum, information to the appellant for the handing over the possession and finally taking over the possession have been done on the same date i.e. on 26.6.1989. If that was so, then why sanction was sought by the authority of the respondent for notifying the corrigendum by letter dated 18.8.2000 after the Repeal Act came into force. We are therefore, constraint to hold that the case made out by the respondent-State the

possession of plot nos. 36 to 43 was taken over on 26.6.1989 cannot be accepted.

23. A similar question came up for consideration before this Court in the case of ***State of U.P. vs. Hari Ram***, 2013 (4) SCC 280. In this case, a question arose as to whether the deemed vesting of surplus land under Section 10(3) of the Act would amount to taking *de facto* possession depriving the landholders of the benefit of the saving clause under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. After examining in detailed provisions of the Ceiling Act as also the Repeal Act, the Court observed :-

> "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.

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"."

24. The Bench further considered the effect of Repeal Act and held that:-

> "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.
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> 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.
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> 43. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals.

> No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 4 of the Repeal Act. However, there will be no order as to costs."

25. The submission of Mr. Kapoor, learned counsel appearing for the respondent-State, that mentioning of Plot Nos. 1 to 16 in the Notification issued under Sections 10(1), 10(3) and 10(5) is a clerical mistake which can be corrected by issuing a corrigendum, is absolutely not tenable in law. How Plot Nos. 1 to 16 can be replaced by Plot Nos. 36 to 43 in those Notifications by issuing a hand-written corrigendum which was not even finally approved by the authorities after 1976 Act stood repealed.

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26. An arithmetical mistake is a mistake in calculation, while a clerical mistake is a mistake of writing or typing error occurring due to accidental slip or omissions or error due to careless mistake or omission. In our considered opinion,

substituting different lands in place of the lands which have been notified by a statutory Notification under Section 10(1), 10(3) and 10(5) cannot and shall not be done by issuing a corrigendum unless the mandatory requirements contained in the aforementioned sections is complied with. A land holder cannot be divested from his land on the plea of clerical or arithmetical mistake liable to be corrected by issuing corrigendum.

27. The submission of the learned counsel appearing for the respondent-State that the writ petition is barred by *res judicata* is also not sustainable in law. In our considered view, question as to whether the appellants landholders were dispossessed from the land in question and the effect of the Repeal Act on this was not the issue in the earlier writ petition and, therefore, it cannot be held that the instant writ petition is barred by *res judicata* or constructive *res judicata*.

28. For the aforesaid reasons this appeal is allowed and the impugned judgment passed by the High Court is set aside. Consequently, it is held that the appellants landholders are entitled to retain possession of the land comprised within Plot Nos. 36-43, Survey No.71 in village Nana Mauva in the District of Rajkot, Gujarat, as the same is not vested in the State.

29. So far the contention made by respondent no.3 - Cooperative Society is concerned, we have examined their case and found that the Division Bench rightly set aside the finding of the learned Single Judge so far it related to the Co-operative Society.

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.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
January 28, 2016