

U.A. BASHEER THR. G.P.A. HOLDER

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v.

STATE OF KARNATAKA & ANR.

(Civil Appeal No.3032 of 2010)

FEBRUARY 17, 2021

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**[MOHAN M. SHANTANAGOUDAR
AND VINEET SARAN, JJ.]**

Urban Land (Ceiling and Regulation) Act, 1976 – ss.6(1), 8(1),(4), 10(1), (3),(6), 42 – Urban Land (Ceiling and Regulation) Repeal Act, 1999 – ss.3(1)(a), (2), 4, 5 – Joint family property of two sisters under various Survey Nos. including Survey No.53/3A – Partition of the property alleged in 1984 between their children, one of whom filed statement u/s.6(1) declaring the particulars of the joint family property – Competent Authority issued a draft statement to the declarant to surrender excess vacant land including land falling within Survey No.53/3A – Objection filed – Eventually, land in inter alia Survey No.53/3A was declared as excess land – Appellant claims to have purchased a portion of Survey No.53/3A comprising a house (suit property) in 1994 from the daughter of one of the sisters who had allegedly acquired it by virtue of the aforesaid partition – Appellant filed petition under the Repeal Act, 1999 for his name to be restored in the records instead of the government's – Petition rejected by Competent Authority – Appellant's writ petition and appeal dismissed in High Court – Held: Determination of excess land is to be made considering the status of the land at the time of commencement of the Principal Act and not at the time of filing of the declaration – Since, admittedly the partition, if any, was only effected after the Principal Act's commencement, the Division Bench correctly held that the partition deed of 1984 would not affect the validity of the Competent Authority's determination of excess land owned by the joint family at the time of commencement of the Act – To this limited extent, findings of the Division Bench concurred with – However, there is nothing on record to conclusively establish possession of the suit property either by the Competent Authority or the appellant – Conflicting averments made by parties – It was incumbent on the Division Bench to enquire into and settle the questions of fact –

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- A *Impugned judgment set aside – Matter remitted to the Division Bench to consider the case afresh.*

Urban Land (Ceiling and Regulation) Act, 1976 – ss. 6, 8, 9, 10 – Held: ss.8 and 9 make it incumbent on the Competent Authority to issue notice to or provide an opportunity to be heard only to the ‘person concerned’, i.e., the person who has filed the statement u/s.6 – Claims of all other persons interested in the vacant land are to be considered through issuing a Gazetted notification as per s.10(1) – Urban Land (Ceiling and Regulation) Repeal Act, 1999.

Disposing of the appeal, the Court

- C **HELD: 1.1** The Urban Land (Ceiling and Regulation) Act, 1976 (Principal Act) came into force in Karnataka on 17.02.1976. Section 6 of the Principal Act requires that a statement be filed before the Competent Authority by ‘every person holding vacant land in excess of the ceiling limit at the commencement of the Act...’. Thus, the determination of ‘excess land’ is to be made considering the status of the land at the time of commencement of the Principal Act, and not at the time of filing of the declaration. Since it is an admitted fact that the partition, if any, was only effected after the Principal Act’s commencement, the Division Bench was correct in holding that the partition deed dated 9.01.1984 would not affect the validity of the Competent Authority’s determination of excess land owned by the joint family at the time of commencement of the Act. Hence, to this limited extent, this Court concurs with the findings of the Division Bench. [Paras 3, 13][896-H; 901-A-C]

- F **1.2** Section 8 and Section 9 of the Principal Act make it incumbent on the Competent Authority to issue notice to or provide an opportunity to be heard only to the ‘person concerned’, i.e., the person who has filed the statement under Section 6 of the Principal Act. The claims of all other persons interested in the vacant land are to be considered through issuing a Gazetted notification to that effect as per Section 10(1) of the Principal Act. The Competent Authority had duly issued such notification on 27.10.1995. [Para 14][901-D-E]

- H **1.3** It is the Appellant’s contention that, subsequent to the declaration, he acquired the suit property from ‘Smt. LS’

(appellant's vendor), by sale agreement dated 26.03.1994, and continues to be in possession of it. That 'Smt. LS' was competent to sell the suit property, as it was a portion of the 1,983 sq. mts. of the joint family property she acquired by virtue of the partition deed dated 9.01.1984. This argument is relevant in light of the passage of the Repeal Act, with effect from 8.07.1999. Section 3(1)(a) of the Repeal Act, which provides for a savings clause states that the repeal shall not affect the vesting of any vacant land in the State Government by the Principal Act, the possession of which has been taken over by the concerned State Government. This is further qualified in Section 3(2) which states that vacant land vested in the State Government by the Principal Act, the possession for which has not been taken over, shall be restored only once any compensation paid to the land-holder has been returned. It is thus clear that the question of current possession of the suit property is absolutely material to a full adjudication of the controversy. This is because, if the Appellant does enjoy possession, as claimed by him, any proceedings for any excess land under the Principal Act are liable to abate, as per Section 3 and Section 4 of the Repeal Act, and the Appellant would be entitled to ownership and possession over the suit property. However, neither the partition deed dated 9.01.1984 that is alleged to have conferred title on 'Smt. LS', nor the sale deed dated 26.03.1994 that purportedly passed on the title to the Appellant, have been produced before this Court. There is, thus, nothing on record to establish Appellant's purchase of, possession of, or interest in the suit property. There is nothing on record, that conclusively establishes possession of the suit property either by the Competent Authority or the Appellant. Given the conflicting averments made by the parties, this is a pure question of fact. [Paras 15-17][901-F-G; 902-B-F, G]

1.4 The impugned judgment is set aside. It was incumbent on the Division Bench to enquire into and settle the questions of fact arising from the present controversy, such as whether the Appellant's claim over the suit property was valid, whether he was in actual physical possession of the suit property, and resultantly, whether he had the locus standi to pray for abatement of the proceedings under the Repeal Act. Since the Single Judge has already given a definite factual finding as to the question of

A **the Appellant's ownership and possession of the suit property, it is not appropriate to remit the matter to the Single Judge. The matter is remitted to the Division Bench to consider the case afresh. [Paras 19-21][903-D-H]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3032 of 2010.

From the Judgment and Order dated 26.03.2009 of the High Court of Karnataka at Bangalore in Writ Appeal No. 7758 of 2003 (ULC).

C Girish Anantha Murthy, Mrs. Vijayanthi Girish, Shubhramshu Padhi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J.

D This appeal arises out of order and judgment of the Division Bench of the High Court of Karnataka (hereinafter, 'High Court') dated 26.03.2009, dismissing Writ Appeal No. 7758 of 2003 [ULC] filed by the Appellant herein against the order dated 21.10.2003 passed by the learned Single Judge of the High Court in W.P. No. 35449 of 2001.

Factual Background:

E 2. The facts leading to this appeal are as follows: Five properties/ Survey Nos. (53-3B2, 53-2A, 53-7, 53-3A, 53-9), totally measuring 3 acres and 11 cents, situated in Ullal village, Mangalore Agglomeration ('joint family property'), originally belonged to the joint family of two sisters, namely, Smt. Korapalu Sapalyathi and Smt. Nemu Sapalyathi. Korapalu Sapalyathi had three children and Smt. Nemu Sapalyathi had seven children. After the death of the two sisters, the Appellant's case is that their ten children benefited through a registered partition deed dated 9.01.1984. Through the said partition deed, Smt. Leela Sapalyathi, daughter of Smt. Korapalu Sapalyathi, allegedly came to hold a share of 1983 sq. mts. of land, including land to the extent of 30 cents falling under Survey No. 53/3A. Likewise, the other nine children of Smt. Korapalu Sapalyathi and Smt. Nemu Sapalyathi are also said to have got their share of the joint family property through the said partition deed.

H 3. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter, 'Principal Act') came into force in Karnataka on 17.02.1976.

Padmanabha, one of the seven children of Smt. Nemu Sapalyathi, filed a statement under Section 6(1) of the Principal Act on 15.06.1984 declaring the particulars of the joint family property. Thereafter, the Deputy Commissioner and Competent Authority, Mangalore Urban Agglomeration (Respondent No. 2 herein; hereinafter, 'Competent Authority') issued a draft statement under Section 8(1) of the Principal Act to the declarant, i.e., Padmanabha to surrender excess vacant land of 9,489.48 sq. mts, which included land falling within Survey No. 53/3A. In response to the said notice, Padmanabha filed his objections on 1.07.1985 stating that the property belonged to his late mother and her sister and that after their death, the joint family property had been divided through the aforementioned partition deed. He further stated that the individual share of each of the children subsequent to the partition was within the ceiling limit prescribed under the Principal Act.

4. On 5.12.1994, the Competent Authority passed an order holding that the partition deed having been effected on 9.01.1984, i.e., subsequent to the commencement of the Principal Act, the same could not be considered as per Section 42 of the Principal Act. Thus, the Competent Authority directed that an extent of 5,210.10 sq. mts. of land in Ullal village held by the declarant be treated as excess vacant land to be surrendered. Subsequently, on 16.10.1996, the Competent Authority passed an award fixing compensation for the said excess land at Rs.15,630/-. In the said award, it was stated that Gazette notification was made in respect of acquisition of the land on 27.10.1995 and 22.1.1996 as per the provisions of Section 10(1) and 10(3) of the Principal Act.

5. It is the Appellant's case that he had executed a sale deed on 26.03.1994 with Smt. Leela Sapalyathi whereby he purchased a portion of Survey No. 53/3A measuring 14 cents comprising an old house D. No. 20-6 (hereinafter, 'suit property'). The Appellant claims that he took possession of the suit property on the date of purchase and has been in possession till date. The Appellant further contends that after the said purchase, the suit property was mutated in his name. In this regard, he has produced copies of the Record of Rights, Tenancy and Crops ('RTC') for the years 1993-1994 and 1994-1995. The Appellant states that he was unaware of the Competent Authority's orders dated 5.12.1994 and 16.10.1996 mentioned supra. In April 2001, the Appellant wished to undertake renovation of the house on the suit property and hence,

A approached the village accountant for the latest copy of the RTC. It was at this stage that he noticed that the Government's name had been entered in the RTC. Upon inquiry, the Appellant was apprised of the proceedings under the Principal Act and the subsequent orders passed by the Competent Authority.

B 6. On 9.05.2001, the Appellant filed a petition under Sections 4 & 5 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter, 'Repeal Act') praying for his name to be restored in the RTC, inter alia on the grounds that the Competent Authority had not issued notice to the Appellant regarding taking of possession of the suit property. That, in any case, the Competent Authority had not taken
C physical possession of the suit property as on the date of commencement of the Repeal Act. Hence, as per the provisions of the Repeal Act, the proceedings would abate and the Competent Authority could not take further action under the Principal Act. The said petition was rejected by the Competent Authority vide order dated 12.06.2001.

D 7. Thereafter, the Appellant approached the High Court by way of Writ Petition No. 35449/2001 which was dismissed vide order dated 21.10.2003. The Appellant's Writ Appeal No. 7758/2003 [ULC] before the Division Bench of the High Court was also dismissed vide impugned order dated 26.03.2009 with certain observations. Aggrieved, the
E Appellant has come before this Court.

Appellant's Submissions:

8. We have heard the learned counsel for the Appellant at length. The Appellant's main contentions may be summarised as follows:

F (i) That vide partition deed dated 9.01.1984, Smt. Leela Sapalyathi obtained 1983 sq. mts. of land in the joint family property which consisted of a residential house as well. As per Schedule 1, Category D of the Principal Act, a person is entitled to hold 2000 sq. mts. of land. In such case, the Competent Authority erred in concluding that the declarant Padmanabha holds excess land where in fact Survey No. 53/3A has
G fallen to the share of Leela Sapalyathi who is the Appellant's vendor. In fact, in light of the partition deed, Padmanbha, has no right to file the declaration under Section 6(1) of the Principal Act in respect of the suit property, and therefore, the entire proceedings are vitiated;

H (ii) That the order dated 5.12.1994 was passed by the Competent Authority without issuing notice to the Appellant or his vendor, i.e., Smt.

Leela Sapalyathi and that the said proceedings under the Principal Act were carried out behind their backs; A

(iii) That the declaration under Section 6(1) of the Principal Act had been filed by Padmanabha way back on 15.06.1984 and his objections were filed on 1.07.1985. However, the Competent Authority passed its order dated 05.12.1994 after 9 years without issuing notice to any of the 10 members of the joint family; B

(iv) That it is not the case of the Respondents that compensation had been paid. Since neither compensation had been paid nor possession been taken on the date of coming into force of the Repeal Act, i.e., on 8.07.1999, the orders passed by the Competent Authority under the Principal Act have abated. C

Respondents' Submissions:

9. The Competent Authority's contentions may be summarised as follows:

(i) That an extent of 0.57 acre in Survey No. 53/3A and 0.71³/₄ acre in Survey No. 53/3B2 of Ullal Village have been declared excess as per Section 10(3) of the Principal Act on the basis of the declaration filed by Padmanabha under Section 6(1) of the Principal Act on 15.06.1984. Hence, all transactions made after the said date, i.e., sale of suit property to the Appellant, without the permission of the Competent Authority are null and void, as per Section 42 of the Principal Act; D E

(ii) That after the issuance of notification under Section 10(3) of the Principal Act, the suit property vests with the Government free from all encumbrances. Accordingly, the necessary entries were made in the Government's name in the RTC. Hence, the Appellant's contentions are baseless and may be overruled; F

(iii) That the declarant Padmanabha was given the opportunity to put forth his objections and the same were considered by the Competent Authority before passing orders under Section 8(4) of the Principal Act. The partition deed was affected on 9.01.1984, i.e., subsequent to the commencement of the Principal Act and the same cannot be considered as per Section 42 of the Principal Act; G

(iv) Since the Appellant had not filed the declaration under Section 6(1) of the Principal Act, the question of issue of notice to him does not arise; H

A (v) The Government had taken possession of the suit property on 12.07.1996 as per Section 10(6) of the Principal Act.

(vi) The order dated 5.12.1994 passed by the Competent Authority is well within jurisdiction. The declaration filed by Padmanabha was enquired into properly and decided on merit. Proper notices were issued
B to the declarant at all stages. The Appellant does not have any right over the excess land.

III. This Court's Analysis

10. Having undertaken a thorough perusal of the documents and submissions on record, we find ourselves unable to completely affirm
C the impugned judgment dated 26.03.2009 of the Division Bench. Before proceeding to lay down our conclusions, it may be useful to first refer to the findings of the learned Single Judge and the learned Division Bench.

11. The learned Single Judge dismissed the Appellant's writ petition on the sole ground that the partition deed dated 9.01.1984, that the
D Appellant had heavily relied on in furtherance of his submissions, was not produced before the Court. The Single Judge observed as follows:

“4. It is relevant to observe here that the petitioner being the object or before the respondent no.2 did not produce any proof of partition in respect of the subject property fallen to the share of the vendor to succeed to execute the sale deed in the month of March, 1994. He would have done definitely that when he had made out a case before the respondent no.2. Even before this Court, the petitioner had not filed any document as that of the partition deed to show that the subject property was the subject matter of partition. Therefore, it appears to me that the petition fails on that score alone. In view of that, the petition does not merit any consideration. The writ petition is therefore dismissed as the same is devoid of merit; I order accordingly.”
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12. The Division Bench, on the other hand, while dismissing the Appellant's writ appeal, observed that regardless of whether the declarant Padmanabha and his family members had effected partition after the Principal Act commenced, the concerned land would still be subject to the proceedings initiated under the Principal Act. The Division Bench further observed that the Appellant has not established that he acquired any interest in the suit property prior to the Principal Act's commencement
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H or to the filing of the declaration by Padmanabha, and thus, there was no

obligation on the Competent Authority to issue notice to the Appellant and afford him a hearing before passing the order. A

13. At this juncture, it is pertinent to refer to Section 6 of the Principal Act, which requires that a statement be filed before the Competent Authority by ‘*every person holding vacant land in excess of the ceiling limit at the commencement of the Act...*’ (emphasis supplied). Thus, the determination of ‘excess land’ is to be made considering the status of the land at the time of commencement of the Principal Act, and not at the time of filing of the declaration. In our considered opinion, since it is an admitted fact that the partition, if any, was only effected after the Principal Act’s commencement, the Division Bench was correct in holding that the partition deed dated 9.01.1984 would not affect the validity of the Competent Authority’s determination of excess land owned by the joint family at the time of commencement of the Act. Hence, to this limited extent, we concur with the findings of the Division Bench. B C

14. We have also given due consideration to the provisions of Section 8 and Section 9 of the Principal Act, and in our opinion, the aforementioned Sections make it incumbent on the Competent Authority to issue notice to or provide an opportunity to be heard only to the ‘person concerned’, i.e., the person who has filed the statement under Section 6 of the Principal Act. The claims of all other persons interested in the vacant land are to be considered through issuing a Gazetted notification to that effect as per Section 10(1) of the Principal Act. The Competent Authority had duly issued such notification on 27.10.1995. D E

15. Now, coming to the question of possession, it is the Appellant’s contention that, subsequent to the declaration, he acquired the suit property from Smt. Leela Sapalyathi, by sale agreement dated 26.03.1994, and continues to be in possession of it. That Smt. Leela Sapalyathi was competent to sell the suit property, as it was a portion of the 1,983 sq. mts. of the joint family property she acquired by virtue of the partition deed dated 9.01.1984. We find that this argument is relevant in light of the passage of the Repeal Act, with effect from 8.07.1999. Section 4 of the Repeal Act provides as follows: F G

“4. 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 other authority shall abate: H

A Provided that this section shall not apply to the proceedings relating to sections 11,12,13 and 14 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.”

B Section 3(1)(a) of the Repeal Act, which provides for a savings clause, throws light on this, by stating that the repeal shall not affect the vesting of any vacant land in the State Government by the Principal Act, the possession of which has been taken over by the concerned State Government. This is further qualified in Section 3(2) which states that

C vacant land vested in the State Government by the Principal Act, the possession for which has not been taken over, shall be restored only once any compensation paid to the land-holder has been returned.

16. It is clear from the aforementioned legislative provisions that the question of current possession of the suit property is absolutely material to a full adjudication of the controversy before us. This is because, if the Appellant does enjoy possession, as claimed by him, any proceedings for any excess land under the Principal Act are liable to abate, as per Section 3 and Section 4 of the Repeal Act, and the Appellant would be entitled to ownership and possession over the suit property. However,

D neither the partition deed dated 9.01.1984 that is alleged to have conferred title on Smt. Leela Sapalyathi, nor the sale deed dated 26.03.1994 that purportedly passed on the title to the Appellant, have been produced before this Court. There is, thus, nothing on record to establish Appellant’s purchase of, possession of, or interest in the suit property.

17. Whereas the Appellant maintains that he has *locus standi* to pray for abatement of the proceedings which are the subject matter of this appeal, being in possession of the suit property; the Competent Authority’s order dated 16.10.1996 declaring the award of compensation for the excess land, states that the Competent Authority had taken over possession of the suit property with effect from 12.07.1996, i.e., before the passage of the Repeal Act. In our opinion, there is nothing on record, that conclusively establishes possession of the suit property either by the Competent Authority or the Appellant herein. Given the conflicting averments made by the parties, this is a pure question of fact.

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18. In this regard, the Division Bench in the impugned order has

H observed the following:

“5. It is contended that the possession of the land is not taken by the Government in spite of the said order and the appellant continues to be in possession. It is clear from the repealed Act, if the possession has not been taken after the proceedings initiated under the Act, the order is ceased to have any effect and the person in possession is continued to be the owner. A perusal of the order discloses that 5 Sy. Nos. were involved in the declaration, from the order it is not possible to make out in which survey number the excess land falls. If there is no indication of the said excess land falling within any particular survey number and if the authorities have proceeded to take possession, it would not be in consonance with the order. If really possession has not yet been taken under the repealed Act, the petitioner is entitled to continue in possession of the land. All these matter cannot be the subject matter of the writ petition filed challenging the order under Section 10 filed by the declarant. Notwithstanding the dismissal of the writ appeal or writ petition, it is open to the appellant/petitioner to work out his remedy in accordance with law...” (emphasis supplied)

19. We find ourselves unable to agree with the Division Bench on this aspect of the matter, and thus set aside the impugned judgment. It was incumbent on the Division Bench to enquire into and settle the questions of fact arising from the present controversy, such as whether the Appellant’s claim over the suit property was valid, whether he was in actual physical possession of the suit property, and resultantly, whether he had the *locus standi* to pray for abatement of the proceedings under the Repeal Act. This would have settled finally the question of abatement of the proceedings, and prevented the inefficient proliferation of further litigation between the parties.

IV. Conclusions and Directions

20. Since the learned Single Judge has already given a definite factual finding as to the question of the Appellant’s ownership and possession of the suit property in his judgment dated 21.10.2003 (supra), we do not think it appropriate to remit the matter to the learned Single Judge.

21. Instead, we direct the matter to be remitted to the Division Bench of the Karnataka High Court to consider the case afresh. All questions of fact outlined above are to remain open, and the parties are

- A given liberty to place on record additional evidence not made a part of the proceedings heretofore. Since the other original owners of the joint family property have accepted the orders of the Competent Authority, in so far as they have not questioned the said orders, the Division Bench will confine its findings only with regard to the issue of possession of the suit property.
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22. The appeal stands disposed of accordingly. No order as to costs.

Divya Pandey

Appeal disposed of.