

KAPILABEN AMBALAL PATEL & ORS.

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v.

STATE OF GUJARAT & ANR.

(Civil Appeal No. 6380 of 2012)

MAY 06, 2020

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[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Urban Land (Ceiling and Regulation) Act, 1976 – ss.6, 9, 10(1), 10(3), 10(5), 10(6), 11, 20(1)(a), 21, 33 – Appellants/land owners are legal representatives of the original owner of the land in question – Possession of the surplus/excess land was taken over under a Possession Panchanama dated. 20.03.1986 – Eventually, Power of Attorney holder of one of the land owner filed writ petition challenging the Panchanama – Partly allowed by Single Judge – Appeal filed by State Government – Meanwhile, the appellants filed an independent writ petition in 2001 for the same relief – Appeal filed by the State Government was allowed by Division Bench – Writ petition filed by the appellants was allowed by Single Judge – Order set aside by Division Bench – On appeal, held: Appellants resorted to all possible pleas – Further, they chose to file the writ petition only in the name of one of the land owner in the capacity of his Power of Attorney holder, little realizing that the authority given by him came to an end after his demise – It was only after the other appellants realised that the decision of the Single Judge was flawed and was justly assailed by State Government on that count, they filed the present writ petition – Appellants thought of the last attempt to assail the Possession Panchanama itself without seeking any further relief of declaration regarding the earlier proceedings which had attained finality – Writ petition filed by the appellants after lapse of 14 years was hopelessly barred by delay and suffered from laches – Impugned order upheld – Urban Land (Ceiling and Regulation) Repeal Act, 1999.

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Dismissing the appeal, the Court

1.1 The appellants have resorted to all possible pleas. First, the application for exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 was moved, which was allowed

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- A by the competent authority on 6.3.1980, but the appellants chose to withdraw the same. That request was eventually granted by the competent authority on 1.2.1985. The appellants then waited till the notification under Section 10(3) of the 1976 Act was issued on 25.7.1985 and opted for remedy of exemption under Section 21 by filing an application on 22.8.1985. That came to be rejected on 15.12.1986 against which decision a review application was filed only by Devikaben Chandubhai Bhailalbhai (daughter of Chandubhai Bhailalbhai Patel, who in turn was son of Bhailalbhai Parsottambhai Patel- one of the five sons of original owner of the land in question, Parsottambhai Patel. The other four sons were-
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- C (i) Ambalal Parsottambhai Patel, (ii) Maganbhai Parsottambhai Patel, (iii) Babarbhai Parsottambhai Patel, and (iv) Ramanbhai Parsottambhai Patel) alongwith her three siblings, after lapse of two years. Nevertheless, the same was entertained by the authority concerned and after quashing the entire order in appeal, a remand order came to be passed on 19.9.1998. Even in review proceedings, the fact of State authorities having taken forcible possession of the surplus/excess land on 20.3.1986 vide Possession Panchnama, was reiterated, as can be discerned from the order dated 19.9.1998. It is not clear as to why the appellants did not take clue at least from such unambiguous stand taken by
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- E the respondent and forthwith proceed to assail the stated stand of the State (of having taken over forcible possession on 20.3.1986). Besides taking possession, the respondent had determined the compensation for which notice under Section 11 was issued to the appellants on 17.5.1986. It is not the case of the appellants that they were unaware even about that
- F development until 2001. No such plea is taken by the appellants in the writ petition filed in the year 2001. It is only after the competent authority declined to issue No Objection Certificate vide order dated 19.5.1999, they thought of changing the track by taking advantage of the repeal Act having come into force on
- G 30.3.1999. However, they chose to file the writ petition only in the name of Kamleshbhai Parekh in the capacity of Power of Attorney holder of late Ambalal Parsottambhai Patel, being SCA No. 8402/1999, little realizing that the authority given by Ambalal Parsottambhai Patel had come to an end after his demise on 31.12.1985 itself. No doubt the Single Judge was persuaded to
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quash the entire proceedings which had culminated with taking forcible possession of the surplus/excess land vide Possession Panchnama dated 20.3.1986, being vitiated and/or abated. However, it is only after the other appellants realised that the decision of the Single Judge in SCA No. 8402/1999 was flawed and has been justly assailed by the State Government on that count by way of LPA No. 460/2002, they chose to file the present writ petition (SCA No. 12602/2001). In the said writ petition, however, no disclosure has been made as to why these appellants did not assail the Possession Panchnama dated 20.3.1986 in earlier point of time including when the existence of this document was specifically pleaded by the respondent-State, in particular, in the review application. [Paras 3, 15][1123-C; 1133-F-H; 1134-A-F]

1.2 The earlier part of the writ petition deals with the factual background and assertion that the appellants still continue to be in physical possession of the stated land and was using it for agricultural purpose, as can be noticed from the Revenue record. Indeed, the Revenue record may have presumptive value, but that can be rebutted, which in this case has been done by the respondent-State by relying on the Possession Panchnama and the subsequent proceedings including the application submitted to the Mamlatdar, Baroda City in right earnest for entering the name of the State Government in the Revenue records, dated 11.4.1986, and pursuant to which entries had been effected on 26.9.1989 and 15.2.2000 respectively. Obviously, therefore, the appellants thought of the last attempt to assail the Possession Panchnama dated 20.3.1986 itself without seeking any further relief of declaration regarding the earlier proceedings which had attained finality. The Division Bench therefore, was right in concluding that the writ petition filed by the appellants after lapse of 14 years was hopelessly barred by delay and suffered from laches. The Court is in agreement with the said view taken by the High Court in the peculiar facts of the present case. Further, it is manifest from the acknowledgement produced by the respondent-State that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.12.1985. By the time second notice under Section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patel had died (on 31.12.1985).

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- A The second notice was also issued to others, namely, Bhikhhabhai Maganbhai Patel, son of deceased Maganbhai Parsottambhai Patel, Natvarbhai Bhailalbhai Patel, son of deceased Bhailalbhai Parsottambhai Patel and Jayantibhai Babarbhai Patel, son of deceased Babarbhai Parsottambhai Patel. [Paras 3, 15-18][1135-F-H; 1136-A-E]
- B *Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority & Ors.* (2012) 4 SCC 718 : [2012] 2 SCR 219; *State of Uttar Pradesh v. Hari Ram* (2013) 4 SCC 280 : [2013] 2 SCR 301; *Gajanan Kamlya Patil v. Additional Collector and Competent Authority(ULC) & Ors.* (2014) 12 SCC 523 : [2014] 1 SCR 1032;
- C *Mangalsen v. State of Uttar Pradesh & Anr.* (2014) 15 SCC 332; *M/s. Avanti Organisation v. Competent Authority & Additional Collector, Urban Land Ceiling Act, Rajkot & Anr.* AIR 1989 Guj 129; *Samrathben Manilal Chokshi & Anr. v. State of Gujarat & Anr.* (1994) 35 (1) GLR 203; *Savitaben Ramanbhai Patel vs. State of Gujarat & Ors.* (1999) 40(1) GLR 860; *Darothi Clare Parreira (Smt.) & Ors. v. State of Maharashtra & Ors.* (1996) 9 SCC 633 : [1996] 4 Suppl. SCR 46; *SouthIndia Corporation (P) Ltd. v. Secretary, Board of Trivandrum & Anr.* AIR 1964 SC 207 : [1964] SCR 280; *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad & Anr. v. P.S. Rao* (2000) 2 SCC 451 : [2000] 1 SCR 257; *Ramanlal Bhailal Patel & Ors. v. State of Gujarat* (2008) 5 SCC 449 : [2008] 2 SCR 468; *Har Pyari (Smt.) v. HInd Additional Judge, Moradabad & Ors.* (2001) 10 SCC 525; *State of Assam v. Bhaskar Jyoti Sarma & Ors.* (2015) 5 SCC 321 : [2014] 14 SCR 1451; *Larsen & Toubro Ltd. v. State of Gujarat & Ors.* (1998) 4 SCC 387 : [1998] 2 SCR 339; *State of Gujarat & Anr. v. Gyanaba Dilavarsinh Jadega* (2013) 11 SCC 486; *Madhusudan Bhanuprasad Pandya v. State of Gujarat & Ors.* (2019) SCC Online SC 1050; *Balwant Narayan Bhagde v. M.D. Bhagwat & Ors.* (1976) 1 SCC 700; *Balmokand Khatri Educational and Industrial Trust v.*
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State of Punjab (1996) 4 SCC 212; Tamil Nadu Housing Board v. A. Viswam (Dead) by Lrs. (1996) 8 SCC 259 – referred to.

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<u>Case Law Reference</u>			
[2012] 2 SCR 219	referred to	Para 10	B
[2013] 2 SCR 301	referred to	Para 10	
[2014] 1 SCR 1032	referred to	Para 10	
(2014) 15 SCC 332	referred to	Para 10	
[1996] 4 Suppl. SCR 46	referred to	Para 10	C
[1964] SCR 280	referred to	Para 10	
[2000] 1 SCR 257	referred to	Para 10	
[2008] 2 SCR 468	referred to	Para 10	
(2001) 10 SCC 525	referred to	Para 10	D
[2014] 14 SCR 1451	referred to	Para 12	
[1998] 2 SCR 339	referred to	Para 12	
(2013) 11 SCC 486	referred to	Para 12	
(1976) 1 SCC 700	referred to	Para 19	E
(1996) 4 SCC 212	referred to	Para 19	
(1996) 8 SCC 259	referred to	Para 19	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6380
of 2012.

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From the Judgment and Order dated 26.04.2011 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 233 of 2006.

Shyam Divan, Sr. Adv., Santhosh Krishnan (For Gaurav Agrawal), Advs. for the Appellants.

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Ms. Deepanwita Priyanka (For Aniruddha P. Mayee),
Ms. Hemantika Wahi, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
A. M. KHANWILKAR, J.
- B 1. This appeal takes exception to the judgment and order dated 26.4.2011 passed by the Division Bench of the High Court of Gujarat at Ahmedabad¹ in Letters Patent Appeal (LPA) No. 233/2006, whereby, the writ petition being Special Civil Application No. 12602/2001 filed by the appellants came to be dismissed whilst setting aside the judgment and order dated 21.12.2005 passed by the learned single Judge of the High Court in the said writ petition. By the said writ petition, the appellants had sought following reliefs: -
- C “8. The petitioners pray that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction and/or order and be pleased:
- D (A) to declare that the Panchnama dated 20.03.1986, (Annexure D) and the purported action of the respondents to take possession, purported constructive or actual of the lands mentioned in para (c) hereinabove is contrary to law and of no legal effect.
- E (B) to permanently restrain the respondents from disturbing or taking possession of the petitioners lands admeasuring 12,385 sq. mts. or any part thereof mentioned in Panchnama dated 20.03.1986 (Annexure D).
- F (C) commanding the respondents to deliver back to the petitioners possession of the said lands, if they are held to be in possession de facto or de jure thereof.
- G (D) to restrain the respondents from taking any proceedings in respect of the said lands pursuant to the order dated 01.02.85 of the Competent Authority.
- H (E) to restrain pending the hearing and final disposal of this Petition the respondents from in any manner disturbing or interfering with the possession of the said lands which are in joint possession of the petitioners and other joint holders.
- I (F) to grant such other and further reliefs as this Honourable Court in the facts and circumstances of the case deems fit and proper.

H ¹For short, “the High Court”

(G) to provide for the costs of this petition."

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2. The backdrop in which the writ petition was filed can be stated thus.

3. The appellants claim to be legal representatives of the original owner of the land in question, namely, Parsottambhai Patel, who died on 28.1.1976 before the commencement of the Urban Land (Ceiling and Regulation) Act, 1976² in the State of Gujarat i.e., with effect from 17th February, 1976. He had five sons, namely, (i) Ambalal Parsottambhai Patel, (ii) Maganbhai Parsottambhai Patel, (iii) Babarbhai Parsottambhai Patel, (iv) Bhailalbhai Parsottambhai Patel and (v) Ramanbhai Parsottambhai Patel. Family of the said Parsottambhai Patel filed statements under Section 6 of the 1976 Act on 13.8.1976 in the name(s) of (i) Ambalal Parsottambhai Patel, (ii) Bhikhabhai Maganbhai Patel, son of deceased Maganbhai Parsottambhai Patel, (iii) Jayantibhai Babarbhai Patel and Jethabhai Babarbhai Patel, sons of deceased Babarbhai Parsottambhai Patel, (iv) Natvarbhai Bhailalbhai Patel, son of deceased Bhailalbhai Parsottambhai Patel and (v) Ramanbhai Parsottambhai Patel as owners of land admeasuring 30385.10 square meters bearing Survey Nos. 362, 378, 592, 593/1, 593/2 (Final Plot numbers 280, 287, 108, 115 and 116) of Village Manjalpur, District Vadodara in the State of Gujarat. The statements disclosed that other persons were also interested in the stated land. Later, an application came to be filed on behalf of the five brothers for exemption under Section 20(1)(a) of the 1976 Act. That was granted vide order dated 6.3.1980/29.11.1980 by the Deputy Collector and Under Secretary, Revenue Department, Government of Gujarat. On 8.6.1981, in response to the draft statements, objections were filed in the name of Ambalal Parsottambhai Patel through Power of Attorney holder - Ramanbhai Parsottambhai Patel. Pursuant to request made by the land owners to cancel the agriculture exemption, an order was passed by the office of competent authority and Additional Collector (ULC), Vadodara on 7.11.1983. The competent authority, pursuant to the statements submitted by the land owners and considering the objections to the draft statement, issued final statement under Section 9 of the 1976 Act, declaring 12 persons as holders of surplus/excess land to the tune of 12385 square meters, particulars whereof have been noted in the order dated 1.2.1985, as follows: -

² For short, "the 1976 Act"

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“Particulars of surplus land.

	Village	S.No.	Final Plot No.	Extent	Zone
B	Manjapur	362	280 Paiki	2672.3	Residential
	”	378	287	3035.0	”
	”	592	108	2747.0	”
C	”	593/1	115	1546.0	”
	”	593/2	116	2385.0	”
				12385.3	

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12385 Square metres”

- The land owners were duly informed that the surplus/excess land referred to in the final statement will be acquired as and when required by the Government and till then, the holders may continue to remain in possession thereof. Thereafter, on 8.3.1985/21.3.1985, a notification under Section 10(1) of the 1976 Act was issued proposing acquisition of surplus/excess land. The said notification included only four (4) names being Ambalal Parsottambhai Patel, Bhikhabhai Maganbhai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel and excluded the names of eight (8) other joint owners, as referred to in the order dated 1.2.1985, who were also the legal representatives of the original owner and members of family of deceased Parsottambhai Patel. A follow up notification (dated 31.5.1985) under Section 10(3) of the 1976 Act was published in the Gazette on 25.7.1985. Only after the issuance of notification under Section 10(3) of the 1976 Act, whereby, the surplus/excess land came to be vested in the State Government, an application for exemption under Section 21 of the 1976 Act was filed by Ambalal Parsottambhai Patel and Tribhovandas Chotabhai Patel on 22.8.1985. While the said application under Section 21 was pending consideration, notification under Section 10(5) of the 1976 Act came to be issued on 17.12.1985 to handover possession of the vacant land. The same was duly served upon Ambalal Parsottambhai Patel on 26.12.1985 as per the endorsement shown in Annexure A-11 and on Jayantibhai Babarbhai Patel on the same date as

per endorsement in Annexure A-12. After service of notification/notice under Section 10(5) of the 1976 Act, Ambalal Parsottambhai Patel expired on 31.12.1985. Despite that, another notice came to be issued on 23.1.1986 under Section 10(5) of the 1976 Act mentioning the names of Ambalal Parsottambhai Patel, Bhikhabhai Maganbai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel. In the said notice, it was mentioned that the date of handing over possession was fixed on 1.2.1986 at 11.00 hrs. and the addressees were called upon to remain present at the site for handing over possession. According to the appellants, this notice was issued only to Ambalal Parsottambhai Patel and not to other land owners. The respondent-State has, however, countered this factual narrative of the appellants and have relied on acknowledgments produced alongwith Written Submissions in Annexure R-2. However, it is not disputed by the respondent-State that the notice sent to Ambalal Parsottambhai Patel was returned on 2.2.1986 with endorsement "said owner has expired". The possession of the surplus/excess land was taken over under a Panchanama dated 20.3.1986 signed by two independent witnesses. On 11.4.1986, the Mamlatdar, Baroda City was requested to enter the name of the State Government in the Revenue record concerning the stated lands. Thereafter, notice dated 17.5.1986 under Section 11 of the 1976 Act was issued to Bhikhabhai Maganbai Patel being heir of the deceased Ambalal Parsottambhai Patel to appear on 27.5.1986 for determination of compensation amount. The competent authority determined the compensation amount on 6.8.1986. The application filed by the land owners under Section 21 of the 1976 Act came to be rejected on 15.12.1986.

4. The above decision was challenged by the land owners through their Power of Attorney holders Ramanbhai Parsottambhai Patel and Tribhovandas Chotabhai Patel by way of appeal under Section 33 of the 1976 Act. In this appeal, the competent authority had filed reply on 4.4.1988, stating that the application under Section 21 was not maintainable, as the land had already vested in the State Government, as a consequence of notification under Section 10(3) of the 1976 Act. The aforesaid appeal was rejected by the appellate authority on 28.8.1995. However, one Devikaben Chandubhai Bhailalbhai (daughter of Chandubhai Bhailalbhai Patel, who in turn was son of Bhailalbhai Parsottambhai Patel) alongwith her three siblings filed review application against the order passed by the appellate authority dated 28.8.1995 after lapse of over two years i.e. on 29.4.1998. That review application was

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- A allowed on 19.9.1998 and the proceedings came to be remanded to the competent authority for consideration afresh on merits.
5. During the pendency of the remanded proceedings (arising from application under Section 21), the repeal Act, namely, the Urban Land (Ceiling and Regulation) Repeal Act, 1999³ came into force from
- B 30.3.1999. The land owners then filed an application dated 30.4.1999 before the competent authority to give No Objection Certificate to the effect that vide order dated 19.9.1998 passed by the Urban Land Tribunal/ Ex-Officio Additional Chief Secretary, Revenue Department, Gujarat, all the earlier orders or notifications stood quashed and set aside and the
- C land no longer vested in the Government in any manner. Pursuant to the said application, the competent authority vide order dated 19.5.1999, held that such No Objection Certificate cannot be given to the land owners, as the land had already been declared surplus and steps have been taken under Sections 10(1), 10(3), 10(5) and 10(6) of the 1976 Act, which have attained finality.
- D 6. After this decision, one Kamleshbhai Parekh, Power of Attorney holder of Ambalal Parsottambhai Patel was advised to file writ petition being Special Civil Application (SCA) No. 8402/1999, challenging the Possession Panchnama dated 20.3.1986. The learned single Judge, partly allowed the said writ petition vide judgment and order dated 5.12.2000.
- E Feeling aggrieved by that decision, the State Government carried the matter in appeal by way of LPA No. 460/2002 before the Division Bench of the High Court on the ground, amongst others, that Kamleshbhai Parekh had no subsisting right or locus to file the writ petition on account of the death of Ambalal Parsottambhai Patel on 31.12.1985, as a result of which the authority to file such a petition had come to an end. When
- F the said appeal was pending, the appellants herein were advised to file an independent writ petition for the same relief(s), being SCA No. 12602/ 2001. The reliefs in this writ petition have been reproduced in paragraph 1 above.
- G 7. Finally, the appeal filed by the State Government being LPA No. 460/2002 came to be allowed by the Division Bench of the High Court on 16.8.2005, accepting the objection regarding maintainability of the writ petition by the Power of Attorney holder of the deceased Ambalal Parsottambhai Patel. However, all other questions were left open.
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- H ³ For short, “the repeal Act”

8. Be that as it may, the writ petition filed by the appellants herein being SCA No. 12602/2001 was allowed by the learned single Judge of the High Court vide judgment and order dated 21.12.2005 for reasons noted therein. That decision was assailed by the State Government by way of LPA No. 233/2006 before the Division Bench of the High Court, which came to be allowed vide impugned judgment and order dated 26.4.2011.

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9. The Division Bench first proceeded to hold that the application filed by the land owners under Section 21 of the 1976 Act was barred by limitation having been filed after 1139 days from the date of commencement of the 1976 Act. It ought to have been filed before 3.4.1979, whereas, it was filed on 22.8.1985 and there was no power bestowed on the competent authority to entertain such delayed application. Having said that, it went on to hold that all the land owners had not challenged the decision of the competent authority. The appeal under Section 33, however, was preferred only by Ramanbhai Parsottambhai Patel and Tribhovandas Chotabhai Patel, the Power of Attorney holders of Ambalal Parsottambhai Patel. No other appellant had preferred the said appeal and thus they allowed the order dated 15.12.1986 rejecting the application under Section 21 to attain finality. The Division Bench then proceeded to consider the objection taken by the State regarding delay in filing the subject writ petition by these appellants, to question the Possession Panchnama dated 20.3.1986 after lapse of 14 years, in 2001. While considering this objection, the Division Bench noted thus: -

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“41. The appellant-State has taken specific plea that the order taking possession was never challenged before the appellate authority or the reviewing authority. It was only challenged in the writ petition after a long delay. **Though the aforesaid stand was taken before the learned Single Judge, it was not properly discussed.**

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42. The appellant-State has taken specific plea that the order taking possession was never challenged before the appellate authority or the reviewing authority. It was only challenged in the writ petition after long delay. Though the aforesaid stand was taken, but not properly discussed by the learned Single Judge.

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43. In the case of Shivgonda Anna Patil v. State of Maharashtra reported in AIR 1990 SC 2281 the Supreme Court while dealing

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- A Sec. 10 of the Act held that the writ petition under Article 226 for reopening the proceeding on the ground that the competent authority had not taken into consideration certain fact, filed after ten years, after the excess land was vested in the State Government was rightly summarily dismissed by the High Court.
- B 44. While deciding the question of delay and laches in preferring the petition under Article 226, Supreme Court in the case of *The Municipal Council, Ahmednagar v. Shah Hyder Beig* reported in JT 1999 (10) SC 336 held that the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law.
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- D 45. **In the present case, we have noticed that possession of the land was taken on 20th March 1986. The order rejecting the application u/Sec. 21 reached finality on 15th December 1986 against all the petitioners, except one Ramanbhai Purshottambhai Patel. The writ petition was preferred against the petitioners being not vigilant in exercise of their rights, learned Single Judge ought not to have entertained the petition against the order taking possession after such a long delay."**
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(emphasis supplied)

- F The Division Bench accordingly allowed the appeal preferred by the State and dismissed the writ petition filed by the appellants herein by setting aside the judgment and order of the learned single Judge and declaring that the possession of the land has been rightly taken over by the competent authority of the State on 20.3.1986.
- G 10. Feeling aggrieved, the land owners have approached this Court.
- H It is urged that there is no title of evidence to substantiate the fact asserted by the respondent-State that physical possession of the land in question has been taken over on 20.3.1986. It was merely a paper-possession in the form of Possession Panchnama. According to the appellants, *de facto* possession of the subject land as on the date of the repeal Act is crucial and entail in abatement of all the actions of the

State authorities under the 1976 Act. Mere issuance of notification under Section 10(3) of the 1976 Act regarding deemed vesting of the land in the State is not enough for the purposes of the repeal Act. Reliance has been placed on *Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority & Ors.*⁴, *State of Uttar Pradesh vs. Hari Ram*⁵, *Gajanan Kamlya Patil vs. Additional Collector and Competent Authority (ULC) & Ors.*⁶ and *Mangalsen vs. State of Uttar Pradesh & Anr.*⁷. The consistent view of this Court is that physical possession must be taken by the State authorities, failing which the proceedings shall abate on account of the repeal Act. The appellants have relied on Revenue records to show that the continued possession remained with the appellants/land owners even after the Possession Panchnama was made on 20.3.1986. The Revenue entries have presumptive value and the respondent State had failed to rebut the same. It is further contended that the purported Possession Panchnama dated 20.3.1986 is not a reliable document at all. It is vague and bereft of details. Its authenticity and contents have been disputed by the appellants. It is intriguing that although the subject land is dispersed and not one continuous piece of land, yet one common Possession Panchnama is drawn without any explanation as to the manner in which the possession of five non-contiguous plots came to be taken by the authorities concerned. Further, the Panchnama does not bear any time. All these deficiencies lead to the only conclusion that the Possession Panchnama was prepared by the officials sitting in their office without visiting the site. Secondly, the Possession Panchnama has not been signed by any of the twelve (12) land owners. The appellants are also relying on the observations made by the learned single Judge recording the factum of possession being in favour of the appellants to hold that the Possession Panchnama was illegal. It is then urged that the authorities could not have recorded Possession Panchnama until the application under Section 21 of the 1976 Act was finally decided by the competent authority. Admittedly, the said application was filed on 22.8.1985 and was pending on 20.3.1986. This is impermissible in law and the action is vitiated even on that count. To bolster this position, reliance is placed on the dictum in Full Bench of the High Court in *M/s. Avanti Organisation vs. Competent Authority & Additional*

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⁴ (2012) 4 SCC 718 (paragraphs 9 to 11)

⁵ (2013) 4 SCC 280 (paragraphs 36-37)

⁶ (2014) 12 SCC 523 (paragraphs 10 and 12)

⁷ (2014) 15 SCC 332 (paragraphs 10 to 14)

- A *Collector, Urban Land Ceiling Act, Rajkot & Anr.*⁸ and also on *Samrathben Manilal Chokshi & Anr. vs. State of Gujarat & Anr.*⁹ and *Savitaben Ramanbhai Patel vs. State of Gujarat & Ors.*¹⁰. Reliance is also placed on the decision of this Court in *Darothi Clare Parreira (Smt.) & Ors. vs. State of Maharashtra & Ors.*¹¹. Reliance is also placed on *South India Corporation (P) Ltd. vs. Secretary, Board of Trivandrum & Anr.*¹², wherein it is held that Sections 10 and 21, both, fall under Chapter III of the Act, and thus, Section 21 operates “in spite of Section 10”. Reliance is also placed on *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad & Anr. vs. P.S. Rao*¹³, wherein it is observed that unless the quantum of excess land is determined, the land owner cannot be expected to surrender the excess land or seek exemption under Sections 20 or 21 or 22 of the 1976 Act. Moreover, the period of filing the application under Section 21 ought to be reckoned from the date of withdrawal of the exemption under Section 20 of the 1976 Act and not from the date of commencement of the Act i.e. 17.2.1976, as such. It is urged that notice was not served upon all the land owners in respect of action(s) under Section 10 of the 1976 Act. Hence, the Possession Panchnama would be of no avail and is void and illegal. This Court in *Hariram (supra)* has expounded that requirement of giving notice under Section 10(5) and/or 10(6) is mandatory and failure to do so would entail in the land owner being dispossessed without notice, which cannot be countenanced. It is urged that the respective shares of the four (4) noticees are as follows: -

	S. No.	Individual	Total land owned (sq. mt.)	Land permitted under ULC Act (sq. mt.)	Excess Land (sq. mt.)
F	1.	Ambala1	7329.50	1500	5829.50
	2.	Bhikhhabhai	2613.50	1500	1113.50
	3.	Natwarbhai	1546.40	1500	46.40
	4.	Jayantibhai	1758.30	1500	258.30

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⁸ AIR 1989 Guj 129⁹ (1994) 35(1) GLR 203¹⁰ (1999) 40(1) GLR 860¹¹ (1996) 9 SCC 633 (paragraphs 5 and 6)¹² AIR 1964 SC 207 (paragraph 19)H ¹³ (2000) 2 SCC 451 (paragraph 4)

Although the competent authority recognised twelve (12) land owners, it chose to issue notice only to selected four (4) land owners. The notice served on them cannot bind the other land owners. In absence of notice, plea regarding vesting of land *qua* such land owners cannot be countenanced. Reliance is placed on *Ramanlal Bhailal Patel & Ors. vs. State of Gujarat*¹⁴ and *Har Pyari (Smt.) vs. HInd Additional Judge, Moradabad & Ors.*¹⁵. As regards Ambalal Parsottambhai Patel, he had expired on 31.12.1985. As a result, notice issued to Ambalal Parsottambhai Patel admittedly remained unserved on his legal representatives. Further, Ambalal Parsottambhai Patel's share is 5829.50 square meters of total surplus/excess land, which must be excluded and no further action can be taken in that regard in view of the repeal Act. In substance, the grievance is that the Division Bench ought not to have interfered with the decision of the learned single Judge, which was a well-considered decision and a just approach, considering the facts of the present case.

11. The respondent State, on the other hand, would urge that the writ petition filed by the appellants was hopelessly delayed and suffered from laches. The possession of the suit land was taken under the Possession Panchnama dated 20.3.1986. That fact was within the knowledge of the appellants as is evident from the record and in particular from the stand taken by the respondent-State to oppose review application in relation to application under Section 21 of the 1976 Act. It was clearly stated by the respondent in the said proceedings that the appellants were not entitled for any relief as possession has already been taken on 20.3.1986 and that the subject land had already vested in the State. Thus, it was within the knowledge of the appellants being party to the said proceedings. That fact has been recorded in the order dated 19.9.1998 in review application while remanding the application (under Section 21) for reconsideration by the competent authority. The present writ petition, however, has been filed only in 2001 without disclosing any cause for such delay and laches, much less plausible explanation. The Division Bench of the High Court was, therefore, justified in non-suiting the appellants including on the ground of delay and laches in filing of the writ petition. That finding is unexceptionable. It is urged that before taking possession vide Possession Panchnama dated 20.3.1986, notices

¹⁴ (2008) 5 SCC 449 (paras 27 and 29)

¹⁵ (2001) 10 SCC 525 (paragraphs 3 and 4)

- A were duly issued to the land owners under Section 10(5) of the 1976 Act. The first notice was issued on 17.12.1985 to Ambalal Parsottambhai Patel, Bhikhabhai Maganbai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel. This was duly served. The second notice dated 23.1.1986 was also issued to Ambalal Parsottambhai Patel, Bhikhabhai Maganbai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel. The second notice sent to Ambalal Parsottambhai Patel returned with endorsement "said owner has expired". However, the other noticees – Bhikhabhai Maganbai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai were duly served with the second notice and their acknowledgments have been produced on record.
- B Despite those notices, the concerned appellants failed to remain present for handing over the possession on the specified date. Therefore, after waiting for 30 days' period, the authority proceeded to take forcible possession on 20.3.1986 vide Possession Panchnama. That is permissible in law and was the only course open to the authority to take forward the acquisition process of the excess/surplus land. It is urged that none of the appellants challenged the said notices or the Possession Panchnama of 1986. Further, the appellants have not asked for further relief of declaration regarding the other proceedings, which have become final or for that matter that the entire proceedings stood abated in terms of the repeal Act, knowing fully well that such a plea would not be available
- C to them in light of having lost possession of the surplus/excess land on 20.3.1986.

12. The respondent has placed reliance on *State of Assam vs. Bhaskar Jyoti Sarma & Ors.*¹⁶ and also on *Larsen & Toubro Ltd. vs. State of Gujarat & Ors.*¹⁷. According to the respondent, pendency of application under Section 21 of the 1976 Act is no bar for proceeding beyond Section 10(3) of the 1976 Act, as is contended by the appellants. This legal position is no more *res integra* and in fact, has been plainly rejected by this Court in *Darothi Clare Parreira* (supra). Moreover, the pendency of application under Section 21 is not saved by the repeal Act, as in those proceedings, the claim of the owners is for acquiring a right and not for enforcement of accrued right. Reliance is placed on *State of Gujarat & Anr. vs. Gyanaba Dilavarsinh Jadega*¹⁸ and *Madhusudan Bhanuprasad Pandya vs. State of Gujarat & Ors.*¹⁹.

¹⁶ (2015) 5 SCC 321 (paragraphs 13 to 17)

¹⁷ (1998) 4 SCC 387 (paragraphs 14 to 16)

¹⁸ (2013) 11 SCC 486 (paragraph 13)

¹⁹ (2019) SCC Online SC 1050 (paragraphs 14 and 16)

13. It is urged that the State authorities have already taken possession of the land as is evident from the Possession Panchnama and also from the Revenue record, as the name of the State has been entered therein *qua* Survey No. 362, Final Plot No. 280 on 26.9.1989 and for other surplus lands on 15.2.2000 pursuant to the request made to the Mamlatdar, Baroda City vide communication dated 11.4.1986. This application was made much before coming into force of the repeal Act. In other words, after the final statement was drawn on 1.2.1985, soon thereafter notice under Section 10(1) was issued on 8.3.1985/21.3.1985 and under Section 10(3), on 25.7.1985 followed by notification/notice under Section 10(5) of the 1976 Act, dated 17.12.1985 and again on 23.1.1986 before taking forcible possession on 20.3.1986. Soon thereafter, request was sent to the Mamlatdar, Baroda City for entering name of the State in the Revenue records on 11.4.1986. Pursuant thereto, the entry in the name of the State was effected in the revenue record in due course. Further, the fact of possession having been taken was noted even in the Review proceedings in September, 1998 and despite that, the subject writ petition was filed only in 2001 to assail the Possession Panchnama dated 20.3.1986. It is, therefore, urged by the respondent that the appeal be dismissed and the decision of the Division Bench ought to be upheld on this count alone.

14. We have heard Mr. Shyam Divan, learned senior counsel for the appellants and Ms. Deepanwita Priyanka, learned counsel for the respondent.

15. After cogitating over the rival submissions and the relevant record, it is manifest that the appellants have resorted to all possible pleas. First, the application for exemption under Section 20 of the 1976 Act was moved, which was allowed by the competent authority on 6.3.1980, but the appellants chose to withdraw the same. That request was eventually granted by the competent authority on 1.2.1985. The appellants then waited till the notification under Section 10(3) of the 1976 Act was issued on 25.7.1985 and opted for remedy of exemption under Section 21 by filing an application on 22.8.1985. That came to be rejected on 15.12.1986 against which decision a review application was filed only by Devikaben Chandubhai Bhailalbhai alongwith her three siblings, after lapse of two years. Nevertheless, the same was entertained by the authority concerned and after quashing the entire order in appeal, a remand order came to be passed on 19.9.1998. Even in review

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- A proceedings, the fact of State authorities having taken forcible possession of the surplus/excess land on 20.3.1986 vide Possession Panchnama, was reiterated, as can be discerned from the order dated 19.9.1998. It is not clear as to why the appellants did not take clue at least from such unambiguous stand taken by the respondent and forthwith proceed to assail the stated stand of the State (of having taken over forcible possession on 20.3.1986). Besides taking possession, the respondent had determined the compensation for which notice under Section 11 was issued to the appellants on 17.5.1986. It is not the case of the appellants that they were unaware even about that development until 2001. No such plea is taken by the appellants in the writ petition filed in the year 2001. It is only after the competent authority declined to issue No Objection Certificate vide order dated 19.5.1999, they thought of changing the track by taking advantage of the repeal Act having come into force on 30.3.1999. However, they chose to file the writ petition only in the name of Kamleshbhai Parekh in the capacity of Power of Attorney holder of late Ambalal Parsottambhai Patel, being SCA No. 8402/1999, little realizing that the authority given by Ambalal Parsottambhai Patel had come to an end after his demise on 31.12.1985 itself. No doubt the learned single Judge was persuaded to quash the entire proceedings which had culminated with taking forcible possession of the surplus/excess land vide Possession Panchnama dated 20.3.1986, being vitiated and/or abated. However, it is only after the other appellants realised that the decision of the learned single Judge in SCA No. 8402/1999 was flawed and has been justly assailed by the State Government on that count by way of LPA No. 460/2002, they chose to file the present writ petition (SCA No. 12602/2001). In the said writ petition, however, no disclosure has been made as to why these appellants did not assail the Possession Panchnama dated 20.3.1986 in earlier point of time including when the existence of this document was specifically pleaded by the respondent-State, in particular, in the review application. In the writ petition, the only assertion made regarding delay and laches can be discerned from paragraph 5, which reads thus: -
 - G “5. The petitioners have approached this Hon’ble Court without any delay or laches. **The petitioners had remained under an impression that the matter was being looked after by the late Ambalal Purshottamdas Patel’s constituted attorney and that therefore it was not necessary for them to approach this Hon’ble Court in the matter.** The petitioners are
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agriculturists and not conversant with the intricacies of law were not aware that on Ambalal Purshottamdas Patel's death the Authority of his constituted attorney Kamlesh Parekh had come to an end. Though Kamleshbhai Parekh has informed the petitioners of the objections likely to be raised on behalf of the appellants in the said Letters Patent Appeal, he has also informed the petitioners that he was not aware that he could not rely upon the power of attorney given by Ambalal Purshottamdas Patel after his death and in fact has regretted putting the petitioners in the awkward position. The petitioners submit that under the circumstances the time taken in the prosecution of the Special Civil Application No. 8402 of 1999 and the said Civil Application and the Letters Patent Appeal by the respondents be excluded in considering the time taken by the petitioners to approach this Hon'ble Court in the matter. **The petitioners submit that they are approaching this Hon'ble Court as expeditiously as the circumstances of the case would permit. The petitioners further submit that the delay, if any, on the part of the petitioners in approaching this Hon'ble Court has not in any manner caused any prejudice or detriment to the respondents. The petitioners submit that this Hon'ble Court be pleased to entertain the Petition and not to reject it on the ground of delay, acquiescence or laches."**

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(emphasis supplied)

The earlier part of the writ petition deals with the factual background and assertion that the appellants still continue to be in physical possession of the stated land and was using it for agricultural purpose, as can be noticed from the Revenue record. Indeed, the Revenue record may have presumptive value, but that can be rebutted, which in this case has been done by the respondent-State by relying on the Possession Panchnama and the subsequent proceedings including the application submitted to the Mamlatdar, Baroda City in right earnest for entering the name of the State Government in the Revenue records, dated 11.4.1986, and pursuant to which entries had been effected on 26.9.1989 and 15.2.2000 respectively.

16. Obviously, therefore, the appellants thought of the last attempt to assail the Possession Panchnama dated 20.3.1986 itself without seeking any further relief of declaration regarding the earlier proceedings which had attained finality.

- A 17. The Division Bench, in our opinion, therefore, was right in concluding that the writ petition filed by the appellants after lapse of 14 years was hopelessly barred by delay and suffered from laches. We are in agreement with the said view taken by the High Court in the peculiar facts of the present case.
- B 18. Strikingly, in this appeal by special leave, a vague ground has been raised to challenge the said conclusion of the Division Bench. Further, no substantial question of law has been formulated in the appeal by special leave in that regard. Furthermore, in the grounds all that is asserted is that the High Court erred in holding that there was delay of 14 years in filing of writ petition and in not appreciating that the notice under Section 10(5) of the 1976 Act, dated 23.1.1986, was not served upon Ambalal Parsottambhai Patel as he had already expired on 31.12.1985 and the notice sent to him was returned back on 2.2.1986 unserved with remark "said owner has expired". Further, the legal heirs of Ambalal Parsottambhai Patel ought to have been served with the said notice. From the factual matrix already stated hitherto, these grounds, in our opinion, are of no avail to the appellants. It is manifest from the acknowledgement produced by the respondent-State that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.12.1985. By the time second notice under Section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patel had died (on 31.12.1985). The second notice was also issued to others, namely, Bhikhhabhai Maganbhai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Babarbhai Patel. Be that as it may, we are not inclined to reverse the conclusion recorded by the Division Bench of the High Court that the writ petition filed by the appellants was hopelessly delayed and suffered from laches. That is a possible view in the facts of the present case.
- C 19. The respondents had additionally relied on the decision of this Court in *Larsen & Toubro Ltd.* (supra), wherein the Court adverted to the exposition in *Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors.²⁰, Balmokand Khatri Educational and Industrial Trust vs. State of Punjab²¹* and *Tamil Nadu Housing Board vs. A. Viswam (Dead) by LRs.²²* regarding the settled legal position that it is difficult to take
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- ²⁰ (1976) 1 SCC 700 (paragraph 28)
- ²¹ (1996) 4 SCC 212 (paragraph 4)
- H ²² (1996) 8 SCC 259 (paragraph 9)

physical possession of the land under compulsory acquisition. Further, A that the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paragraphs 14 to 16 of *Bhaskar Jyoti Sarma* (supra). However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the Division Bench of the High Court that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3.1986, suffered from laches. The Division Bench of the High Court noted that the learned single Judge completely glossed over this crucial aspect of the matter, and we find no reason to depart from that conclusion.

20. In view of the above, it is not necessary for us to dilate on other contentions raised by the appellants or by the respondent-State on merits. D

21. Having said thus, it must follow that the present appeal is devoid of merits and the impugned decision of the Division Bench of the High Court ought to be upheld on the threshold ground of writ petition being barred by laches.

22. Accordingly, this appeal must fail. The same is dismissed with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of. E

Divya Pandey

Appeal dismissed.