

STATE OF TAMIL NADU & ORS.

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v.

M. S. VISWANATHAN & ORS.

(Civil Appeal No. 5881 of 2010)

SEPTEMBER 20, 2021

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[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 – Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 – s.3 – The land owner, mother of the respondents, was required to surrender the excess land of 6750 sq. mts. under the 1978 Act – A notice was served to her regarding the same u/s.9(4) of the 1978 Act – Thereafter, notifications were issued u/s.11(1) and s.11(3) of the 1978 Act and she was directed to surrender or deliver the vacant possession of the excess land – In compliance, she surrendered land vide letter dated 11.11.1980 and the compensation payable to her was determined and paid – The Government first allotted the said excess land of 6750 sq. mts. to the Madras Snake Park Trust, however, the said allotment was cancelled and the excess land was re-allotted to the forest department – In the meantime, the 1978 Act was repealed through the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 – The land owner died in 1998 – After five years of the said repeal, the respondents-owners filed writ petition before the High Court for declaration that the entire proceeding under the 1978 Act and process of allotment and re-allotment was void ab initio under the Repeal Act – The writ petition was allowed by the Single Judge of the High Court on the short ground that as per Inspection Reports of the competent authority and the Assistant Commissioner, the acquired land was lying vacant enclosed by a compound wall – The intra-Court appeal was dismissed by the Division Bench of the High Court – On appeal, held: Admittedly, by her own letter dated 11.11.1980, the land owner voluntarily surrendered and delivered possession – The respondents cannot go beyond the contents of the letter dated 11.11.1980 – The High Court did not look into the letter dated 11.11.1980 nor the records of the Department were examined – Both the Single Judge as well as the Division Bench proceeded on the premise that the land was lying vacant with a compound wall and that therefore, the

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- A *claim of the land owner to be in possession must be correct – The presumption was wrong – The existence of the compound wall enclosing the land that had already been sold by the land owner to the Trust, and it is admitted by the land owner herself in her letter dated 11.11.1980 – Therefore, the High Court committed a grave error in granting the benefit of s.3(2) of the Repeal Act to the respondents – Thus, the judgment of the Single Judge as well as the Division Bench are set aside and the writ petition of the respondents-owners is dismissed.*
- B **Allowing C.A. No. 5885 of 2010 and closing C.A.No. 5881 of 2010, the Court**

- C **HELD:** 1. Section 3 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 incorporates, in simple terms, two rules. They are: (i) the repeal of the principal Act will not affect the vesting of any vacant land under Section 11(3), if the possession thereof has been taken over either by the State Government or by any person duly authorised by the State Government or by the competent authority; (ii) but if the possession of a land which is deemed to have vested in the State Government under Section 11(3), has not been taken over by the Government or the competent authority, the same shall be restored to the person in respect of whom the land was declared surplus, provided the amount paid by the State Government towards compensation has been refunded to the State Government. [Para 17][614-B-D]
2. In essence, “*taking over possession*” forms the lifeline of Section 3 of the Repeal Act and a person seeking the benefit of the Repeal Act for restoration of the land should plead and prove that possession was not taken over. However, in the instant case, admittedly by her own letter dated 11.11.1980, the land owner voluntarily surrendered and delivered possession pursuant to the notice under Section 11(5) of the Act dated 24.10.1980. The respondents, who are the sons and daughters of the land owner, cannot go beyond the contents of the aforesaid letter dated 11.11.1980, as she admittedly passed away on 26.10.1998, even before the Repeal Act was enacted. From 11.11.1980 till her death in 1998, the land owner never went back on the contents of the said letter. [Paras 18, 19 and 20][614-E-H]
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3. The respondents attempted to get over a categorical statement regarding surrender of possession made by the land owner herself in the first part of her letter dated 11.11.1980, by relying upon the last few lines of the very same letter, which stated that "I have left keys with the Secretary, Madras Snake Park Trust for the purpose of safety...whenever required by you". It was contended that a mere statement that the keys were left with the Trust may not tantamount to delivery of possession. A careful reading of the last paragraph of the said letter would show that the land owner had already sold to the Snake Park Trust, a land adjoining the surplus land, when both formed part of one large piece of land encompassed by a big compound wall with the gates. Therefore, she had left the keys with the Secretary of the same Trust, to which the acquired land was also first allotted, after vesting took place in terms of Section 11(3). There was no indication in the last paragraph to retain control of possession. In fact, the first paragraph of the letter contains a categorical statement that the owner was surrendering and delivering possession. She was merely asking for payment of compensation. Therefore, this is not a case where there is any scope for word play. [Paras 21,22, 23 and 24][614-H; 615-A, H; 616-A-E]

4. Unfortunately, the High Court did not even look into the letter dated 11.11.1980 nor did the High Court examine the records of the Department. Both the Single Judge as well as the Division Bench proceeded on the premise that the land was lying vacant with a compound wall and that therefore, the claim of the land owner to be in possession must be correct. There can hardly be any such presumption. The existence of the compound wall enclosing even the land that had already been sold by the land owner to the Trust, is admitted by the land owner herself in her letter dated 11.11.1980. Therefore, the High Court committed a grave error in granting the benefit of Section 3(2) of the Repeal Act to the respondents herein. [Para 26][617-A-C]

Gajanan Kamlya Patil v. Additional Collector And Competent Authority (ULC) And Others (2014) 12 SCC 523 : [2014] 1 SCR 1032 – referred to.

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Case Law Reference**[2014] 1 SCR 1032****referred to****Para 22**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5881 of 2010.

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From the Judgment and Order dated 26.04.2006 of the High Court of Judicature at Madras in W.A. M.P. No.937 of 2006 in Review Application Sr. No.31171 of 2006 in W.A. No.2087 of 2005 dated 26.10.2005.

With

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Civil Appeal No.5885 of 2010.

Sanjay Hegde, Sr. Adv., D. Kumanan, Sheikh Fakhruddin Kalia, Advs. for the Appellants.

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R. Balasubramanian, Sr. Adv., S. Ramesh, R. Venkatraman, Kumar Dushyant Singh, Mukul Latter, Dharmendra Kumar Sinha, Ms. Subasri Jaganathan, E. C. Agrawala, Sameer Shah, Ms. Madhavi Agrawal, Ms. Prashi Tyagi, Satyam Agarwal, Advs. for the Respondents.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

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1. The State of Tamil Nadu and the officials in the Department of Urban Land Ceiling have come up with the above appeals challenging, *(i)* an order of the Division Bench of the Madras High Court dismissing an intra-court appeal; and *(ii)* the subsequent order of the Division Bench refusing to condone the delay in seeking review of the original order.

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2. We have heard Mr. Sanjay R. Hegde, learned senior counsel for the appellant-State, Mr. E.C. Agrawala, learned counsel appearing for the respondents and Capt. R. Balasubramanian, learned senior counsel for the party seeking intervention.

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3. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (*hereinafter referred to as the 'Act'*) came into force partly on 28.03.1978 and was deemed to have come into force partly on 03.08.1976. One Smt. Nagarathinam Ammal wife of Sambanda Mudaliar, residing at No.29, Appu Mudali Street, Mylapore, Chennai-4, who owned two parcels of land, one measuring 2428 sq.mts in survey No.279/2 and another measuring 7810 sq.mts in Survey No.279/5 in Kottivakkam

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Village, filed a return under Section 6(1) of the Act on 20.09.1976. A
Thereafter, she applied for exemption under Section 19 of the Act on
26.02.1977 in respect of the excess vacant land, but the Government
turned down the request vide letter dated 10.01.1978.

4. A draft statement under Section 9(1) of the Act was prepared B
by the 3rd appellant, indicating that the total extent of vacant land owned/
held by Nagarathinam Ammal was 10238 sq.mts and that after deducting
the ceiling area of 3500 sq.mts, she was required to surrender the excess
vacant land of 6738 sq.mts. This draft statement under Section 9(1) was
served on the owner along with a notice under Section 9(4) dated
07.04.1979. The said notice under Section 9(4) was received by C
Nagarathinam Ammal on 18.04.1979 and she filed a petition for
reconsideration of the order of rejection regarding exemption on
16.05.1979. But the said petition was rejected on 06.11.1979 and orders
were passed under Section 9(5) of the Act on 31.03.1980.

5. A final statement was issued under Section 10(1) of the Act on D
01.04.1980, followed by notifications under Section 11(1) dated 09.05.1980
and Section 11(3) dated 03.10.1980. The notification under Section 11(1)
was also published in the Tamil Nadu Government Gazette dated
21.05.1980, and Nagarathinam Ammal was directed to surrender or
deliver vacant possession of excess land measuring 6750 sq.mts.

6. By a letter dated 11.11.1980 Nagarathinam Ammal intimated E
the 3rd appellant and the District Collector that she was surrendering the
land and she requested for payment of compensation. Under a land
delivery receipt dated 18.02.1981, Nagarathinam Ammal also handed
over the possession.

7. Thereafter, a notice dated 03.03.1981 under Section 12(7) was F
issued to her, calling upon her to appear for an enquiry to show the share
of the compensation payable to her under Section 12. It appears that as
per the scheme of the Act, the compensation was determined and paid
to Nagarathinam Ammal in 15 instalments.

8. The Government then issued an order in G.O.MS. No.147 G
Revenue dated 25.01.1982 allotting the excess vacant land of 6750 sq.mts
to the Madras Snake Park Trust (*hereinafter referred to as the 'Trust'*),
with a mandate that the Trust should develop a snake park on modern
lines within two years. The Collector of Chengalpattu, was directed to

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- A handover physical possession to the trust and the Trust was called upon to pay a sum of Rs.2,90,000/-.

9. It appears that after several extinctions of time to the Trust, the Trust surrendered the land back to the Government on the ground that they were unable to carry out the desired objective. Upon coming to know of the surrender of the land, the Principal Chief Conservator of Forests requested the Government by a letter dated 02.09.1998 to allot the land to the Forest Department in view of the fact that the original allottee, namely the Trust, was actually functioning already from a forest land and that therefore the land in question could be used by the forest Department for the establishment of an Urban Nursery Ecological and Awareness Centre. Accordingly, the Government issued G.O.MS. No. 297 Revenue dated 08.07.2002, cancelling the allotment made in favour of the Snake Park Trust and allotting the same to the forest Department. It was mentioned in the Government Order that the allotment of the land to the Forest Department was made along with the compound wall enclosing the land.

10. In the meantime, the Act was repealed through the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (*hereinafter referred to as the 'Repeal Act'*). It came into force on 16.06.1999. Section 3 of the said Repeal Act contained a savings clause which reads as follows:-

- “3. Savings –**(1) the repeal of the principal Act shall not affect-
- (a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
- (b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken therunder, notwithstanding any judgment of any Court to the contrary;
- (c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.
- (2)Where-
- (a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State

Government or any person duly authorised by the State A
Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect
to such land, then, such land shall not be restored unless the amount
paid, if any, has been refunded to the State Government”

11. After five years of the said repeal, the three sons and two
daughters of Nagarathinam Ammal joined together and filed a writ petition
in Writ Petition No. 39419 of 2004, seeking a declaration that the entire
proceedings under the Act followed by the allotment in favour of the
Trust and the re-allotment in favour of the Forest Department are *void*
ab initio in view of the Repeal Act. It appears that the writ petition was
filed in December, 2004.

12. The said writ petition was allowed by a learned Single Judge
of the High Court by an order dated 24.06.2005, on the short ground that
as per the Inspection Report of the competent authority dated 05.11.1996
and the Inspection Report of the Assistant Commissioner dated
20.01.2005, the acquired land was still lying vacant enclosed by a
compound wall and that therefore the claim of the writ petitioners that
possession was not taken over, must be taken to be true.

13. Challenging the order of the Ld. Single Judge, the appellants
herein filed an intra-court appeal in W.A.No.2087 of 2005. The said
appeal was dismissed by the Division Bench of the High Court by an
order dated 26.10.2005, again on the basis of the Inspection Report of
the Assistant Commissioner dated 20.01.2005 to the effect that the land
was lying vacant and that therefore, finding recorded by the Ld. Single
Judge regarding possession must be taken to be correct.

14. The appellants filed an application for review along with a
petition for condonation of the delay of 113 days in filing the review
application. The Division Bench of the High Court, by its order dated
26.04.2006 dismissed the application for condonation of delay, on the
ground that no sufficient cause was shown for the condonation of delay.

15. Challenging the refusal of the Division Bench of the High
Court to condone the delay in filing the review petition, the appellants
have come up with Civil Appeal No.5881 of 2010. Challenging the
substantial order passed in the intra-court appeal on 26.10.2005, the
appellants have come up with the next appeal namely Civil Appeal
No.5885 of 2010.

- A 16. Since Civil Appeal No.5885 of 2010 challenges the original order passed in the intra-court appeal, the disposal of the same would decide the fate of Civil Appeal No.5881 of 2010. Therefore, we shall deal with Civil Appeal No.5885 of 2010, first.
- B 17. We have already extracted Section 3 of the Repeal Act.
- C Section 3 incorporates, in simple terms, two rules. They are: *(i)* the repeal of the principal Act will not affect the vesting of any vacant land under Section 11(3), if the possession thereof has been taken over either by the State Government or by any person duly authorised by the State Government or by the competent authority; *(ii)* but if the possession of a land which is deemed to have vested in the State Government under Section 11(3), has not been taken over by the Government or the competent authority, the same shall be restored to the person in respect of whom the land was declared surplus, provided the amount paid by the State Government towards compensation has been refunded to the State Government.
- D 18. In essence, "*taking over possession*" forms the lifeline of Section 3 of the Repeal Act and a person seeking the benefit of the Repeal Act for restoration of the land should plead and prove that possession was not taken over.
- E 19. It is true that the word '*possession*' has been subjected to repeated assaults by judicial pronouncements and courts have considered several facets of possession such as actual possession, physical possession, paper possession, symbolic possession etc. But fortunately this case does not provide any room for display of any such semantic acrobatics. This is for the reason that admittedly by her own letter dated 11.11.1980, the land owner Nagarathinam Ammal voluntarily surrendered and delivered possession pursuant to the notice under Section 11(5) of the Act dated 24.10.1980.
- F 20. Today, the respondents, who are the sons and daughters of Nagarathinam Ammal, cannot go beyond the contents of the aforesaid letter dated 11.11.1980, as she admittedly passed away on 26.10.1998, even before the Repeal Act was enacted. From 11.11.1980 till her death in 1998, Nagarathinam Ammal never went back on the contents of the said letter.
- G 21. However, a valiant attempt was made Mr. E.C.Agrawala, learned counsel for the respondents to get over a categorical statement
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regarding surrender of possession made by the land owner herself in the first part of her letter dated 11.11.1980, by relying upon the last few lines of the very same letter. Though we could have rejected the said contention outright on the ground that after the death of the author of the letter, her legal heirs cannot seek to interpret it, we would still deal with the contention. Before we do so, it may be useful to extract the said letter in entirety as follows:-

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“In pursuance of instructions of Assistant Commissioner, Urban Land (Ceiling and Regulations) Act 1978 contained in the notice issued to me in form VII of the above Act regarding the surrender and delivery of possession of the excess vacant land acquitted under sub section 3 of section 11 of the same act of 1978. I surrender and deliver possession of Re-survey Nos.279/5B and 279/2B of 141 Kottivakkam of Saidapet taluk as conceded by R.c. 3457/77 dated 24-10-1980 in the office of Assistant Commissioner, Urban Land Tax, Alandur.

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Previously, I signed the subdivision statements in respect of these lands and soon after a notification (G.O. VI (1) 497/80, dated 9.5.80 was issued in Tamil Nadu gazette clarifying the details of Re-survey Nos. 279/5B and 279/2B. On the strength of the aforesaid, I sold Re-survey Nos.279/5A and 279/2A to the Madras Snake Park Trust covered by the sale deed registered in the office of Sub Registrar, Saidapet as document No. 1722 dated 29-5-1980 after meticulously following the prescribed procedure in procuring the encumbrance certificates for the entire land in my possession and also the income tax clearance certificate. I handed over the relevant records to the Secretary, Madras Snake Park Trust.

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As I am pressed financially on account of domestic difficulties, I make humble request to the competent authority to complete the acquisition and order payment of compensation based on the prevailing market rate and rate fixed in the aforesaid sale deed to Madras Snake Park Trust on 29-5-1980.

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Since the present acquired land of 30 grounds and the 15 grounds of land sold by me to the Madras Snake Park Trust originally formed one piece of land encompassed by a big compound wall, with gates, I have left the keys with the Secretary,

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- A Madras Snake Park Trust for purpose of safety. Since my husband is very sick and unable to move about. I am not in a position to leave my house frequently. The Madras snake Park Trust through its Hon. Secretary have agreed to give the keys and show the relevant records whenever required by you.”
- B 22. Mr. Agrawala, learned counsel, sought to contend that a mere statement that the keys were left with the Trust may not tantamount to delivery of possession. He places reliance upon the decision of this Court in *Gajanan Kamlya Patil vs. Additional Collector And Competent Authority (ULC) And Others*¹
- C 23. But we do not agree. A careful reading of the last paragraph of the above letter would show that the land owner had already sold to the Snake Park Trust, a land adjoining the surplus land, when both formed part of one large piece of land encompassed by a big compound wall with the gates. Therefore, she had left the keys with the Secretary of the same Trust, to which the acquired land was also first allotted, after vesting took place in terms of Section 11(3). There was no indication in the last paragraph to retain control of possession. Actually there could not have been one in the teeth of the first paragraph of the letter.
- D 24. The first paragraph of the above letter contains a categorical statement that the owner was surrendering and delivering possession.
- E She was merely asking for payment of compensation. Therefore, this is not a case where there is any scope for word play.
- F 25. The decision in *Gajanan Kamlya Patil* (supra) will not go to the rescue of the respondents, as there was no voluntary surrendering of possession in that case. As noticed from the facts of that case, the Repeal Act came into force in the State of Maharashtra on 01.12.2007. A notice for taking possession had been issued on 17.02.2005. The notice itself was challenged after the Repeat Act came into force. It was sought to be contended by the Government of Maharashtra that there was a possession receipt. But it was dated subsequent to the repeal. In
- G paragraph 11 of the judgment in *Gajanan Kamlya Patil* (supra), this Court indicated that apart from the affidavits of the officials, no other document was made available either to show that the land owner had voluntarily surrendered possession or to show that the officials had taken

peaceful or forcible possession. Therefore, the said decision is of no use A
to the respondents.

26. Unfortunately, the High Court did not even look into the letter dated 11.11.1980 nor did the High Court examine the records of the Department. Both the Single Judge as well as the Division Bench proceeded on the premise that the land was lying vacant with a compound wall and that therefore, the claim of the land owner to be in possession must be correct. There can hardly be any such presumption. The existence of the compound wall enclosing even the land that had already been sold by the land owner to the Trust, is admitted by the land owner herself in her letter dated 11.11.1980. Therefore, the High Court committed a grave error in granting the benefit of Section 3(2) of the Repeal Act to the respondents herein. C

27. There is one more reason why the respondents are not entitled to pursue their claim for restoration of possession under the Repeal Act. According to the respondents themselves, as seen from their pleading in I.A.No.1 of 2008 in C.A.No.5881 of 2010, they executed a General Power of Attorney on 14.02.2005 in favour of one S. Sundararaman. The said S. Sundararaman, has come up with an application for impleadment in I.A.No.3 of 2009 in C.A.No.5885 of 2010 claiming that he is a property developer and that he had entered into an unregistered agreement of sale on 14.02.2005 with the respondents. The said Sundararaman, has also claimed that he had paid the entire sale consideration of Rs.75,00,000/- (Seventy Five Lakhs Only), on two dates namely 01.02.2006 and 10.02.2006. D E

28. It must be remembered that the writ petition seeking the benefit of the Repeal Act was filed in December 2004 and the learned Single Judge allowed the writ petition by an order dated 25.06.2005. It means that the respondents created a Power of Attorney and the said Sundararaman claimed to have entered into an agreement for the purchase of the land, after the filing of the writ petition but before the writ petition was allowed. These facts were not brought to the notice of the High court. F G

29. Interestingly, the land owners claim in their I.A.No.1 of 2008 in C.A.No.5881 of 2010 that Sundararaman had also mortgaged the property under a registered deed for a consideration of Rs. 5 crores. The land owners now claim that they came to know about the mortgage H

- A only after the disposal of the review petition and that therefore, they cancelled the Power of Attorney by a deed of revocation dated 11/12/6.2007. Thereafter, the land owners claim to have executed a fresh Power of Attorney on 11.02.2008 in favour of another realtor by name NADI Realtors, followed by an agreement of sale dated 31.03.2008 with them. All these events have led to civil, criminal and arbitration proceedings between the respondents and third parties, showing thereby that there is a concerted attempt by a group of realtors to grab the land already vested with the Government. What the land owners and the 2 third parties namely Sundararaman and NADI Realtors have actually done, is nothing but champerty and they are not entitled to any relief
- B from the court.

30. The reason why we have taken pains to point out the above developments is that the land owners have actually parted with their right to continue the litigation. The third parties are mere interlopers and they have no right to question the proceedings under the Act.

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- D 31. In view of the above, C.A.No.5885 of 2010 is allowed and the judgment of the learned Single Judge as well as the Division Bench are set aside and the writ petition of the respondents-land owners is dismissed.

- E 32. As a consequence, no orders are necessary in C.A.No.5881 of 2010 and hence it is closed. All applications for impleadment are dismissed and the other applications also stand closed.

Ankit Gyan

Appeal allowed.