REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.13516 OF 2015

FERRODOUS ESTATES (PVT.) LTD. … APPELLANT

VERSUS

P. GOPIRATHNAM (DEAD) & ORS. … RESPONDENTS

J U D G M E N T

R.F. Nariman, J.

1. This appeal arises from a suit for specific performance that was filed by the appellant against four defendants who are today represented by the respondents. By an agreement to sell dated 12.06.1980 entered into between the appellant company and P. Nagarathina Mudaliar, P. Gopirathnam, P. Lavakumar, and P. Basantkumar, the agreement recites:

> "Whereas the property more particularly described in the Schedule hereunder and hereinafter referred to as the said property, originally belonged to the Hindu Undivided Family consisting of Sri P. Nagarathina Mudaliar and his father Sri P. Thiruvengada Mudaliar;

Whereas there was a partial partition in the said family as a result of which, the first vendor has become the owner of the said property, said deed of partition having been registered with the Sub-Registrar, Madras-Chingleput, as Document No. 1268 of 1944;

Whereas the vendors have mortgaged the said property along with the other properties owned by them at Haddows Road, Madras-1, for a sum of Rs.5,65,000/- (Rupees Five Lakh Sixty-Five Thousand Only) by way of a deed of mortgage registered with the Sub-Registrar, T. Nagar, Madras, as Document No. 3429 of 1967;

Whereas the vendors have offered to sell the said property to the purchasers, free from all encumbrances, including the mortgage created in favour of Syndicate Bank, Madras-1;

Whereas the vendors are making necessary arrangements for discharging the said loan due to Syndicate Bank, Madras-1, and also to get a letter from Syndicate Bank, releasing their interest, if any, in the said property offered to be sold;

xxx xxx xxx"

The material clauses of the agreement are as follows:

"**3.** It is agreed that the sale consideration should be paid as follows:

(a) A sum of Rs.1,00,000/- (Rupees One Lakh Only) deposited by the purchasers with M/s Venkataraman & Co. on behalf of the vendors as advance for the said sale consideration;

(b) The purchasers hereby agree to pay the balance of the price of Rs.4,40,000/- (Rupees Four Lakhs And Forty Thousand Only) to Syndicate Bank in discharge of the loan borrowed by the vendors on the mortgage of the said property subject to the bankers giving the certificate of discharge in respect of the said property.

4. The vendor shall arrange to secure (a) Income-tax Clearance Certificate, (b) Permission from the Competent Authority under the Urban Land Ceiling Act, and (c) such other orders of permits and the like as may be necessary for completing the sale transaction at the cost of the vendors.

5. The purchaser shall complete the transaction within six months from the date of this agreement. This period shall be subject to the vendors obtaining the necessary clearance certificate from the appropriate authorities as stated above and giving vacant possession of the said property."

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"**8.** The vendors hereby confirm that the said property is subject to a mortgage loan taken by them from Syndicate Bank, Armenian Street, Madras-1, and that necessary provision has been made to discharge the loan, in the sale agreement itself and excepting the above, the said property to be conveyed is not subject to any claim, attachment, lien, charge, mortgage, lis pendens or any other encumbrance, whatsoever.

9. The vendors undertake to deliver vacant possession of the property, before the execution of the sale deed.

10. In the event of the vendors commit default or acts in breach of this agreement the purchasers shall be entitled without prejudice to the right of specific performance, to the refund of the advance of Rs.1,00,000/- (Rupees One Lakh Only) and damages."

The suit property admeasured 8 grounds and 2354 sq. feet.

2. Given the fact that the necessary permissions were not obtained by the defendants, in particular, the permission from the competent authority

under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 ["**Tamil Nadu Urban Land Ceiling Act**"], the appellant filed a suit for specific performance on 24.02.1981, in which it was specifically pleaded as follows:

> "**5.** The plaintiff which is a private limited company has agreed to purchase the schedule mentioned property with a view to construct the multi-storeyed building and the plaintiffs are always ready and willing to perform their part of the obligation under the agreement for completion of the sale transaction. Further the plaintiffs are ready and willing to deposit the balance of the sale price agreed to be paid under the agreement in question before this Hon'ble Court to show their bonafide in purchasing the property and to show their readiness to perform their part of the contract in accordance with the agreement. The plaintiff submits that the defendants are bound to secure income tax clearance certificate and permission from the competent authority etc. which are prerequisite for the completion of the sale transaction and to complete the transactions within 6 months from the date of the agreement.
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> **6.** The plaintiff submits that the defendants have not so far arranged to get income tax clearance certificate and permission from the competent authority and such other formalities to the be observed for the completion of the sale transaction and they have not shown any interest in concluding the transactions. In the circumstances the plaintiff submits that they are willing to perform their part of the contract and it is the defendants who are evading to completing the sale transactions within the agreed time. The plaintiff understands and believes the same to be true that the defendants are not willing to complete the sale transaction and they reliably understand that the defendants are trying to alienate the property to third parties for higher price taking advantage of the rise in price of the landed properties ignoring the agreement to sell. The plaintiff submits that the conduct and attitude of the defendants in evading and postponing the execution

> of the sale deed is unjust and wanton and it is only with a view to get higher price for the property ignoring the lawful claims of the plaintiff under the agreement, the defendants do not show any inclination to complete the sale transaction."

A written statement filed by P. Nagarathina Mudaliar and his two sons, namely, P. Gopirathnam and P. Lavakumar, who were defendants no.1, 2, and 3 respectively, denied that the total consideration for the agreement was Rs.5,40,000/- as is stated therein. Apart from other denials made on the merits of the case, it is important to note that no defence was taken on any plea that the Tamil Nadu Urban Land Ceiling Act would be infracted if the suit for specific performance were to be decreed. This was only done, almost by way of an afterthought, by an additional written statement filed by the self-same defendants on 16.07.1986, in which it was pleaded:

> "**2.** In any event, these defendants submit that the plaintiff is not entitled to any decree since the plaintiff is not entitled to purchase more than the prescribed limit of 500 sq. metres under the provisions of Tamil Nadu Urban Land Ceiling Act and hence the agreement is void as violating the provisions of statues."

3. As many as eight issues were framed in the suit. Issue no. 5 reads as follows:

> "**5.** Whether the plaintiff is not entitled to purchase more than 500 sq. metres under the Tamil Nadu Urban Land Ceiling Act and whether the suit agreement is void on that account?"

4. By a judgment dated 15.03.1991, delivered by a learned Single Judge of the Madras High Court, the learned Single Judge held that the fixation of the sale price of Rs.1,02,000/- per ground was because the land was low-lying and requires to be levelled. It was also held that a layout plan had been sanctioned for the purpose of putting up flats in the suit property. The Single Judge further held that there were circumstances to show that there was necessity on the part of the defendants to sell the suit property, given that a loan from Syndicate Bank was taken by mortgaging a larger piece of land of 30 grounds, and that money was required for the defendant no.1's son's marriage, which was celebrated on 23.06.1980. It was further found that M/s Venkataraman & Co., the auditor of the defendants, negotiated the sale of the suit property, the first defendant admitting that a sum of Rs.65,000/- was received by him for the marriage of his son out of the advance money of Rs.1,00,000/- paid to the aforesaid auditor, M/s Venkataraman & Co. It was also held that the first defendant was the karta and manager of the joint family, and that even though the fourth defendant was not present at the time of execution of the sale agreement and did not actually sign the sale agreement, the fourth defendant had given a letter of authorisation, authorising the first defendant to sell the property on his behalf. It was further held:

> "Having signed Ex.P.2 and received Rs.65,000/- as per Ex.P.4, it would not be fair on the part of the first defendant to come forward and surprise the plaintiff during trial that he does not know the contents thereof. The inconsistent stand taken by the first defendant during the trial, quite different from the plea in the written statement, would lead to presume the lack of truth in his version."

5. Importantly, so far as obtaining of permission from the Urban Land Ceiling authorities was concerned, it was held that the defendants did not comply with this condition, as a result of which there would be no legal obstacles standing in the way of the plaintiff suing for specific performance, given the fact that the defendants were in breach of the agreement. Insofar as the plea in the additional written statement was concerned, issue no. 5 was answered by the learned Single Judge as follows:

> "The plea of the defendants in their additional written statement that they will not be competent to sell anything beyond 500 sq. metres prescribed as ceiling under the Urban Land Ceiling Act and that because Ex.P.2 envisages the sale of 8 grounds and 2354 sq. ft. exceeding the ceiling area, Ex.P.2 must be deemed to be invalid and unenforceable, is not sound. There is no term in Ex.P.2 that the agreement of sale is subject to the grant of permission by the competent authority under the Urban Land Ceiling Act and that in the event of refusal of the permission by the competent authority, the agreement of sale shall fail. It has to be pointed out here, that even if there is a clause in Ex.P.2 stating that the defendant should arrange for securing the permission of the competent authority and if the same has not been obtained by the defendants, it cannot be a ground for the

> defendants to refuse the sale of the suit property. It is open to the plaintiff (the purchaser) to get a sale of the entire suit property measuring 8 grounds and 2354 sq.ft. even if it exceeds 500 sq. metres. The plaintiff may get the sale with that risk."

6. Thereafter, the appellant-plaintiff established that it had been ready and willing to perform its part of the contract continuously, the balance sum of Rs.4,40,000/- being deposited in the Court on the directions of the Court. The result, therefore, was as follows:

> "**23.** From the foregoing discussions, my findings on the issues are that the suit agreement of sale dated 12.06.1980 is true, valid and enforceable, that it does not suffer from any material alteration, that it is a concluded contract, that the agreement of sale is binding on the 4th defendant, that the defendants have committed breach of the agreement, that the plaintiff is entitled to purchase the suit property and to get a decree for specific performance of the agreement as prayed for.
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> **24.** In the result, the suit is decreed directing defendants 2 to 6 to execute the sale deed in respect of the suit property in favour of the plaintiff within a period of two months, in default the sale deed shall be executed by Court and got registered."

7. A first appeal was filed to a Division Bench of the High Court, which then referred the matter to a Full Bench on various questions that were submitted by it. The Full Bench, by a judgment dated 03.03.1999, set out the reference order as follows:

"Section 4 of the Act states that no person shall be entitled to hold vacant land in excess of the ceiling limit, except as otherwise provided in the Act. Section 7 of the Act makes it obligatory on the person holding excess land to file statement. Under section 11 of the Act, excess land could be acquired.

Section 17 of the Act places ceiling limit on future acquisition by inheritance, bequest or by the sale in execution of decrees etc. Section 19 of the Act provides for penalty for concealment etc., of particulars of vacant land. Even under section 6 of the Act, there is a prohibition to transfer the excess vacant land unless such person has filed a statement, and notification regarding the excess vacant land held by him has been published under sub-section (1) of section 11 of the Act. The said section further declares that any transfer made in contravention of the provisions of the Act, shall be deemed to be null and void. As can be seen from the various provisions contained in the Act, section 21 deals with power of exemption. A plain reading of section 6 goes to show that what is prohibited is a transfer of excess vacant land and the consequence of such transfer in contravention of the provision contained in the said section *viz*., such transfer shall be deemed to be null and void. In other words, it speaks of a completed transaction of transfer. It does not refer to the agreements at all. We are not able to read any prohibition in the said provision prohibiting the parties from entering into agreement of sale. In the decision of the Division Bench of this Court aforementioned, a view is taken that courts in passing a decree for specific performance, cannot lend support to the parties to enforce the agreement so as to defeat the provisions of the Act, in particular section 6 of the Act. We are unable to agree with this view. There may be a decree for specific performance subject to certain conditions, to be complied with provisions of section 6 itself or subject to grant of exemption and in the light of the judgment of the Supreme Court in the case of **Jambu Rao Satappa Kocheri v. Neminath Appayya Hanamannayyar**, AIR 1968 SC 1358 : [1968] 3 SCR 706, it cannot be said that

such an agreement is hit by section 23 of the Act. Under the circumstances, we are of the view that this question is required to be decided by a larger Bench. Hence we refer this case for hearing and disposal by a larger Bench including the question as we have stated above."

The Full Bench then referred to the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, which came into force w.e.f. 03.08.1976. After referring to a number of decisions, the Full Bench then concluded:

"**24.** From these decisions, it is clear that even if the contract by itself may not be illegal but its enforcement if violates any law that will be a ground to hold that the agreement cannot be enforced. We have already extracted preamble of state Act and also the decision reported in AIR 1979 SC 1415 : [1979] 3 SCR 802 , why the Act was enacted. It is to prevent concentration of Urban Land in the hands of few persons and speculation in profiteering therein. It is to implement this provision of the Act, this provision under section 6 and 11(4) of the Act are enacted. If the seller is having land in excess than the ceiling limits and if it is ultimately found that the Act also applies permitting such persons to execute sale deed pursuant to the agreement of sale, it will be defeating or circumventing the provisions of the Act. Equitable distribution of land, which is contemplated under the provisions may not be possible if the sale is allowed to take place. The intention is also very clear that third party right should not be created, which is likely to affect him also. If by enforcement of contract, if it amounts to subvert or circumvent law, court cannot be party to such enforcement, Court will have to discountenance the practice and it will have to safeguard the foundation of Society.

25. The question whether only completed transactions are contemplated under section 6 of the Act and therefore enforcement of agreement for sale is not a bar is also an

argument without any merit. It is true that under the Act, no person is entitled to hold more than the ceiling limit as prescribed under section 4 of the Act. Argument is that purchaser is not holding any land on the basis of an agreement unless he gets some title. It still continues only with vendor. Therefore, there is no prohibition in enforcement of contract. Section 6 prohibits transfer by a person holding land in excess of ceiling limits. The matter will have to be considered taking into consideration the rights of seller and if that person holds more land than prescribed under section 5, such transfer shall be deemed to be null and void. The prohibition under section 6 is for transferring the land and consequently declares that any violation of law shall be deemed to be null and void. Section 6 contemplates both proposed transfer and completed transfer. An agreement of sale is also affected by section 6 of the Act."

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"**38.** It is true that the Act is a self-contained Code with regard to urban lands and ceiling provisions. It is also true that there are authorities to decide as to whether transaction is valid or invalid. Question of valid or invalid transaction will apply only regarding completed transaction. When section 6 prohibits even proposed transfer, question of considering validity or invalidity does not arise and the consequences are also already declared by the Act as null and void. It takes as if there is no transaction at all in the eye of law.

39. In the decision reported in **Shah Jitendra Nanalal v. Patel Lallubhai Ishverbhai**, AIR 1984 Guj 145 (FB), one of the questions that was raised before the Full Bench was whether a decree for specific performance could be given condition. What is the effect of section 5(3) read with section 20 of the Central Act in the agreement of transfer was the matter in issue. Once it is held that section 6 is an absolute bar, question of granting conditional decree also will not arise. The said argument pre-supposes that agreement and sale are valid and is invalid only as against Government.

40. We do not think that the decision therein could be applied so far as Tamil Nadu Act is concerned. Exemption under section 21 can be applied only by vendor and it is for him exemption is granted. While considering suit for specific performance, Court is only concerned whether purchaser has come to Court for enforcing the agreement in terms thereof. Asking vendor to get exemption and then to execute the agreement will be deviating from the terms of contract and the Court will not enforce such a contract. That will mean that purchaser is not willing to purchase the land as per agreement, but only with deviation, i.e., Vendor must get exemption and execute the sale deed.

41. In paragraph 11 of the Full Bench judgment, it is said that,

> "So long as provision declaring the transfer under s. 5(3) as void is subject to the right to move for exemption, obtain exemption and transfer the property, the power of an owner is vacant land in excess of the ceiling limit to "alienate" such land is dormant in him and such power could be exercised by him in case he seeks exemption, satisfies the Government that the grounds for exemption exist and obtains such exemption. That being the case, a decree cannot be defeated on the ground that "transfer" inter-parties would not be possible..."

We cannot subscribe the said view, for, granting decree for specific performance of contract itself being discretionary. Apart from the sale, when a transaction is only after obtaining exemption or permission from another authority, over which Court has no control, the relief of specific performance usually is not granted. While giving such direction, it will be going beyond contract and if ultimately exemption is refused, in effect, the decree will become waste paper. While exercising discretion, the Court will have to see whether it could pass executable decree and while exercising discretion, these factors are also considered for granting relief. The decision reported

in **Shoba Viswanathan v. D.P. Kinggley**, 1996 (1) LW 721 of the judgment supports the view, which we have taken.

42. Therefore, we answer the reference as follows:

Since provisions of Bombay Tenancy and Agricultural Lands Act are entirely different from that of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, various Bench decisions of this Court, wherein it was held that a decree for specific performance of contract cannot be granted, if it violates section 6 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 do not require reconsideration.

We also hold that section 6 of the Act not only prohibits a completed transfer but also a proposed transfer.

We also hold that a decree for specific performance of contract cannot be granted conditionally upon vendor satisfying certain conditions, if it is not part of the agreement."

8. Given this declaration of law inter-parties, the matter went back to the Division Bench. The Division Bench then referred to paragraph 22 of the judgment of the learned Single Judge and remanded the matter to the learned Single Judge to record a finding as follows:

"**4.** We have, therefore, felt it necessary to direct the learned trial Judge to record a finding on the question as to whether the extent of 8 grounds and 2354 sq.ft. which is the subject matter of the agreement to sell was held by the defendants in excess of the ceiling limit applicable to them, and as to whether that extent could have been sold if at all only with the permission of the authorities under the Act."

9. The learned Single Judge, by a judgment dated 30.09.2003, ultimately recorded:

> "**9.** However, I am to point out that the material questions whether the plaintiff is entitled to claim the relief of specific performance or not and the question, whether sub-section 3 of section 5 and proviso to section 5(3) and section 6 are applicable to this case or not, whether after repeal of the Tamil Nadu Urban Land (Ceiling and Regulation) Act the claim of the defendants under the repealed Act is no longer available or not, whether permission was necessary to effect alienation in pursuance of agreement of sale involved in this case and like matters can be decided only by the Division Bench of this court which has called for the finding as indicated above.
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> **10.** However, the finding is recorded to the effect that the subject matter of the suit viz., 8 grounds and 2354 sq.ft. factually stands as excess lands within the meaning of the Tamil Nadu Urban Land (Ceiling and Regulation) Act before it was repealed. Accordingly, the finding is submitted to that effect for kind consideration of the Hon'ble Division Bench of this Court."

10. The matter then returned to the Division Bench, which by the impugned judgment dated 29.01.2007, reversed the judgment of the learned Single Judge by applying the Full Bench decision relating to the matter inter-parties. Dealing with section 5(3) and its proviso of the Tamil Nadu Urban Land Ceiling Act, the Division Bench first held:

> "**28.** In the present case, the land proposed to be transferred under the agreement is 8 grounds and 2354 sq.ft. The entire land is admittedly a vacant land. For the purpose of this case it is assumed that the plaintiff did not have any dwelling unit or any vacant land. If, instead of

> the agreement, the sale itself could have been affected in respect of 8 grounds 2354 sq.ft., the plaintiff would have become the owner of the said vacant land. In other words, the land transferred would have exceeded the ceiling limit of the transferee. The main provision contained in section 5(3) enables the person holding land in excess to continue to hold such land because the sanctioned layout is available. However, the proviso indicates that he cannot sell such land if ultimately the lands in the hands of the transferee would exceed the ceiling limit of such transferee. It does not mean that wherever transferee is without any dwelling unit or does not own any vacant land, any extent of land could be sold to such person. The clear intention is that the person intending to purchase such property should not in the process acquire land in excess of his own ceiling limit. Any other interpretation would obviously defeat the very purpose of the proviso.
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> **29.** Therefore, in our opinion, even assuming that the intended purchaser did not have dwelling unit or vacant land, since the agreement of sale was in respect of vacant land, which would have in the aggregate exceeded the ceiling limit of the proposed transferee, the embargo contained in section 5(3) proviso read with section 6 was equally applicable."

11. Referring to the argument of the appellant that the Tamil Nadu Urban Land Ceiling Act had been repealed *vide* the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 ["**Repeal Act**"] w.e.f. 16.06.1999, the Division Bench then held:

> "**31.** We have already extracted in extenso the different observations made by the Full Bench, which is the opinion rendered in a matter arising out of the present dispute. In such Full Bench decision, the earlier views expressed by several Division Bench decisions of this Court holding the agreement in contravention of the

provisions of the Act to be invalid is obviously binding on us. At several places it has been indicated that such agreement is void. If the agreement was void at the inception, the subsequent repeal of the Act possibly may not have the effect of reviving such void agreement. Since such agreement has been considered to be against the Public Policy and void by the Full Bench, which opinion is obviously binding on us and also on the parties at least for the time being, we are unable to hold otherwise."

Thus holding, the Division Bench then found:

"**34.** If this contention is accepted it would mean that during duration of the Act, i.e., till 1999, the agreement was not enforceable and such agreement could be specifically performed after 1999, when the Act was repealed. In other words, the court would be called upon to enforce the agreement after 19 years on the basis of a consideration which was fixed almost two decades back. It is of course true that there are many instances where such matters are pending before the Court for a long period and thereafter the Court passes a decree at trial stage or appellate stage for enforcement of the contract. But, such a position cannot be compared to the present case, wherein as per the opinion of the Full Bench such agreement was contrary to the Public Policy under section 23 of the Indian Contract Act and was not enforceable, if not void. To enforce such an agreement after long lapse of time because of the subsequent event, namely, repeal of the Act, would not be equitable.

35. In this context, it would be more appropriate to indicate that during course of hearing, the learned Senior Counsel on the basis of the specific instructions of and in the presence of counsel on record had submitted that apart from Rs.4,40,000/-, which has been deposited in court and which has been invested in fixed deposit earning interest, the plaintiff/respondent is prepared to pay a further sum of Rs.1.25 Crore for completing the transaction. On the other hand, the learned Senior Counsel appearing for the defendants/appellants

submitted that since the agreement itself contemplated payment of compensation/damages in case of default by the defendants, the court should instead of specifically enforcing the agreement, direct payment of compensation/damages to the plaintiff. Learned Senior Counsel on the basis of specific instructions and in the presence of counsel on record made a submission that the defendants/appellants are prepared to pay a consolidated compensation/damages of Rs. 2 crores.

36. It may be that the plaintiff, if permitted to purchase the property, it would develop the same and earn more profit than Rs.2 crores offered by the defendants/appellants. However, keeping in view the fact that the defendants are the original owners and weighing both the options, we feel interest of justice would be served by directing the defendants/appellants, on the basis of concession of the counsels that the defendants/appellants shall be liable to pay a consolidated sum of Rs. 2 crores as compensation/damages to the plaintiff, which would discharge their liability in full.

37. In view of the above conclusions, it is not necessary for us to go into other questions raised by the appellants to the effect that the plaintiff was not ready and willing to perform its part of the contract.

38. In the result, the appeal is allowed in part. The judgment and decree of the learned single Judge is modified and instead of decree for specific performance of the agreement, we direct that the defendants/appellants shall be liable to pay a sum of Rs.2 crores to the plaintiff, in discharge of their entire liability. Such amount should be paid or deposited in court on or before 31.3.2007, failing which such amount shall carry interest at the rate of 10% per annum thereafter. The amount deposited by the plaintiff is permitted to be withdrawn by the plaintiff along with the accrued interest. The parties shall bear their own costs throughout."

12. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the appellant, has argued that every single factual finding found by the learned Single Judge, including findings as to the dishonesty of the defendants, had not been reversed by the Division Bench in appeal. He argued that on a wrong application of the Full Bench judgment, the bar contained in section 6 of the Tamil Nadu Urban Land Ceiling Act was applied against the appellant, as a result of which the agreement would have to be held to be void *ab initio*, which was incorrect, given the fact that in this agreement, it was the defendants who were to obtain permission from the competent authority under the Tamil Nadu Urban Land Ceiling Act, which permission could have been obtained. He referred to the Repeal Act and said that in any case, given the fact that a first appeal is in the nature of a rehearing of a suit, on the date that the Division Bench passed its decree, the Tamil Nadu Urban Land Ceiling Act stood repealed, as a result of which none of its provisions could be used in order to hit the agreement in the present case. He then referred to section 5(3) and its proviso, and cited judgments to show that the Division Bench's construction of the proviso would render the main part of section 5(3) redundant. He argued that on balance, it was found that the appellant-plaintiff had been ready and willing throughout to perform its part of the agreement, whereas the

defendants were correctly found to be in breach, neither of which findings has been set aside by the Division Bench. To, therefore, arrive at the conclusion that the agreement is null and void *ab initio*, as a result of which specific performance cannot be decreed, is wholly incorrect in the facts of the present case. He also stressed the fact that it was open to the defendants to have applied for exemption of the suit property out of the larger property that was owned by them, and had they done so, the suit property, being within the ceiling limit of the original four defendants in the suit, the suit for specific performance was correctly decreed in the appellant's favour. The fact that the appellant, in turn, could only purchase up to 500 sq. metres, the same being the ceiling limit, would not render the agreement null and void *ab initio*, but on the contrary, would be at the risk of the appellant, as correctly held by the learned Single Judge. In any case, the Tamil Nadu Urban Land Ceiling Act having been repealed in 1999, by the time the Division Bench passed its judgment, there was no impediment in decreeing specific performance of the suit property, consequent upon the repeal of the said Act. He cited a number of judgments to buttress his submissions. He also attacked the Division Bench judgment stating that the fact that litigation took 27 years by the time the Division Bench passed

its judgment could not be put against the appellant, as has been held by a series of judgments of this Court.

13. Shri V. Giri, learned Senior Advocate appearing on behalf of the respondents, argued that the Full Bench judgment was inter-parties and bound the parties. Being *res judicata* between the parties, it is not now possible to reopen what was held therein, the appellant not having appealed from the said Full Bench judgment which, therefore, became final between the parties. If the Full Bench judgment is to be seen, the Division Bench was absolutely correct in its conclusion that the agreement being void *ab initio*, and therefore stillborn, could not be resuscitated at any future point of time, given the repeal of the Tamil Nadu Urban Land Ceiling Act. Further, he cited judgments to show that where a vested right accrues on the date of the filing of the suit, that cannot be taken away later, and the suit must be decided as on the date the plaint is filed and not on the date of the state of the law when the appellate decree is passed. He also argued that in any event, this Court should not interfere under Article 136 as the judgment under appeal is equitable – the appellant has been awarded Rs.2 crores with interest, which would come to a sum of over Rs.3 crores today, despite the fact that specific performance could not be granted of a void agreement. He also added that the Division Bench was right in stating that

after so many years, grant of specific performance, being discretionary, was correctly refused.

14. Having heard learned counsel for the parties, it is first important to deal with Shri Giri's basic contention that the Full Bench judgment stands as a roadblock to the decreeing of a suit for specific performance in the present case. Shri Giri is right in arguing that it is not open to the appellant to go behind the Full Bench judgment as it is inter-parties, as a result of which the law laid down by the Full Bench judgment must apply to the parties, *res judicata* clearly attaching even to issues of law based on the same cause of action – *see* **Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy**, (1970) 3 SCR 830 at p. 836. This being the case, it is important now to analyse what was held by the Full Bench.

15. The Full Bench judgment, while stating that section 6 of the Tamil Nadu Urban Land Ceiling Act prohibited even agreements to sell, as a result of which there would be no transaction at all in the eyes of law, was careful thereafter to point out:

> "**40.** …… While considering suit for specific performance, Court is only concerned whether purchaser has come to Court for enforcing the agreement in terms thereof. Asking vendor to get exemption and then to execute the agreement will be deviating from the terms of contract and the Court will not enforce such a contract. That will

> mean that purchaser is not willing to purchase the land as per agreement, but only with deviation, i.e., vendor must get exemption and execute the sale deed."

16. In paragraph 41, the Full Bench also went on to state that it is possible to obtain exemption under the Tamil Nadu Urban Land Ceiling Act, over which the Court has no control, but despite that, the relief of specific performance is not usually granted as it would be going beyond the contract. Equally, after holding that section 6 prohibits a proposed transfer, the Full Bench went on to hold that a decree for specific performance cannot be granted conditionally upon the vendor satisfying certain conditions if it is not part of the agreement.

17. When these portions of the Full Bench judgment are applied to the agreement in question, it is clear that the agreement itself contains a specific clause, namely, clause 4, in which it is for the vendor to obtain permission from the competent authority under the Tamil Nadu Urban Land Ceiling Act. This agreement, therefore, cannot be said to be hit by the decision of the Full Bench judgment as the Full Bench itself recognises that there may be agreements with such clauses, in which case it is the Court's duty to enforce such clause. That is all that the learned Single Judge has done in the facts of this case – he has correctly held that it was for the

defendants to obtain exemption from the authorities under the Tamil Nadu Urban Land Ceiling Act which they did not, as a result of which they were in breach of the agreement.

18. Viewed slightly differently, it is clear that the Full Bench judgment cannot stand in the way of the appellant for another reason. There can be no doubt that the suit property, admeasuring roughly 2002 sq. metres, was part of a larger property of 30 grounds, and that the defendants, being four in number, were entitled to retain 2000 sq. metres of the land owned by them. It was for this reason that it was incumbent upon the defendants to have obtained the Urban Land Ceiling permission to sell the land that was within their ceiling limit, which they failed to do. As a matter of fact, a later Single Judge of the Madras High Court, in **Sushila v. Nihalchand Nahata**, AIR 2004 Mad 18, understood the Full Bench judgment of his own High Court as follows:

> "**11.** With respect to the ratio laid down in the decision of the Full Bench of this Court, (1999) 2 CTC 181, cited supra and the decision of the Division Bench of this Court, (2003) 1 Mad LW 696, cited supra, there cannot be any dispute. The ratio decidendi in both the decisions is that any transfer by a person holding land in excess of ceiling limit is invalid. Even proposed transfers of excess land is invalid. The agreement for sale of excess land also is null and void and therefore, no suit for specific performance would lie to enforce an agreement for sale of "excess land". That is, what is prohibited or what is illegal and

hence null and void is, an agreement to sell any “excess land” under the Urban Land Ceiling Act. If the agreement is with respect to the “exempted” land or with reference to the land that is likely to be exempted, such an agreement is not invalid; such agreements are valid and enforceable by a suit for specific performance.

12. Learned counsel for the plaintiff submitted that the agreement itself is only for sale of the land after getting exemption from the appropriate authorities. The terms of the agreement make it clear that the parties never intended to sell or purchase the land in possession of the defendant in excess of ceiling limit, unless exemption is granted by the authorities. Therefore, the agreement is not in contravention of the provisions of the Urban Land Ceiling Act. Therefore, the decisions relied upon by the counsel for the defendant is not applicable to the facts of this case. There is no intention among the parties to violate the provisions of the Urban Land Ceiling Act. Therefore, the agreement is valid and can be specifically enforced.

13. This argument of the counsel for the plaintiff is acceptable. The decisions relied upon by the counsel for the defendant are with respect to agreements of intended transaction of excess land, whereas this agreement Ex.P. 5 had been entered specifically to transfer the land only after getting exemption. When the Act itself provides for grant of exemption, any person can reasonably expect that he may get the exemption, as provided under the Act. When it is possible and permissible for the authorities to grant exemption under the Urban Land Ceiling Act, nothing prohibits a person from entering into a contract for sale of such land after getting exemption. Such an agreement is not intended to violate the provisions of the Act. It is only in accordance with the provisions of the Act and therefore, such an agreement cannot be said to be invalid or void ab initio. Therefore, such an agreement is valid and enforceable in a suit for specific performance of the agreement.

> **14.** A perusal of Ex.P. 5 shows that what is agreed by the petitioner is that land shall be sold/purchased after getting exemption from the Urban Land Ceiling Authority. That is, this agreement is not for sale/purchase of the "excess" land under the Land Ceiling Act, but only after getting exemption under the Urban Land Ceiling Act. Nowhere in the agreement is it stated that the parties intended to purchase or sell the land without getting exemption under the Act. Therefore, the judgments relied on by the defendants are not applicable to the facts of the present case and hence, this agreement cannot be said to be invalid as it does not contemplate either parties to act in a manner contrary to the Urban Land Ceiling Act. Therefore, the agreement is not invalid and hence, it is valid and enforceable. Issue No. 1 is answered in favour of the plaintiff."

19. It is clear, therefore, that the agreement to sell cannot be said to be void *ab initio*, as a result of which the basis of the Division Bench judgment under appeal goes. Resultantly, the judgments in **Jacques v. Withy**, 1 H. Bl. 65, **Hitchcock v. Way**, (1837) 6 A & E 943 : 112 ER 360, and **Ram Kristo Mandal v. Dhankisto Mandal**, (1969) 1 SCR 342 (at p. 349) cited by Shri Giri in support of the proposition that the repeal of a statute which makes void an agreement cannot revive such void agreement have no application on the facts of this case. In view of this, it is unnecessary to go into whether section 5(3) of the Tamil Nadu Urban Land Ceiling Act, together with its proviso, applies to the facts of this case.

20. However, the other contention on behalf of the respondents is that even if this were so, the appellant was not entitled to more than 500 sq. metres, which was the ceiling limit so far as the appellant was concerned. This being the case, no decree for specific performance could be made in favour of the appellant.

21. That conditional decrees for specific performance have been passed and upheld by this Court cannot be denied. Thus, in **Vishwa Nath Sharma v. Shyam Shanker Goela**, (2007) 10 SCC 595 ["**Vishwa Nath Sharma**"], this Court held:

> "**12.** The Privy Council in *Motilal* v. *Nanhelal* [(1929-30) 57 IA 333 : AIR 1930 PC 287] laid down that if the vendor had agreed to sell the property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming, to convey to the purchaser within a certain time. This proposition of law was followed in *Chandnee Widya Vati Madden* v. *Dr. C.L. Katial* [AIR 1964 SC 978] and *R.C. Chandiok* v. *Chuni Lal Sabharwal* [(1970) 3 SCC 140 : AIR 1971 SC 1238]. The Privy Council in *Motilal case* [(1929-30) 57 IA 333 : AIR 1930 PC 287] also laid down that there is always an implied covenant on the part of the vendor to do all things necessary to effect transfer of the property regarding which he has agreed to sell the same to the vendee. Permission from the Land and Development Officer is not a condition precedent for grant of decree for specific performance. The High Court relied upon the decisions in *Chandnee Widya Vati Madden* v. *Dr. C.L. Katial* [AIR 1964 SC 978] and *Bhim Singhji* v. *Union of India* [(1981) 1 SCC 166 : AIR 1981

SC 234] to substantiate the conclusion. In *Chandnee Widya* [AIR 1964 SC 978] this Court confirmed the decision of the Punjab and Haryana High Court holding that if the Chief Commissioner ultimately refused to grant the sanction to the sale, the plaintiff may not be able to enforce the decree for specific performance of the contract but that was not a bar to the court passing a decree for that relief. The same is the position in the recent case. If after the grant of the decree of specific performance of the contract, the Land and Development Officer refused to grant permission for sale, the decree-holder may not be in a position to enforce the decree but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance of the contract.

13. In *R.C. Chandiok* v. *Chuni Lal Sabharwal* [(1970) 3 SCC 140 : AIR 1971 SC 1238] it was held that proper form of decree in a case like the instant one would be to direct specific performance of the contract between the defendant and the plaintiff and to direct the subsequent transferee to join in the conveyance so as to pass on the title residing in him. This is because Defendant 2, son of Defendant 1 cannot take the stand that he was a transferee without notice. Admittedly, he is the son of Defendant 1. The view in *R.C. Chandiok* [(1970) 3 SCC 140 : AIR 1971 SC 1238] was a reiteration of earlier view in *Durga Prasad* v. *Deep Chand* [AIR 1954 SC 75] . This Court has repeatedly held that the decree can be passed and the sanction can be obtained for transfer of immovable property and the decree in such a case would be in the way the High Court has directed. (See *Motilal Jain* v. *Ramdasi Devi* [(2000) 6 SCC 420], *Nirmala Anand* v. *Advent Corpn. (P) Ltd.* [(2002) 5 SCC 481], *HPA International* v. *Bhagwandas Fateh Chand Daswani* [(2004) 6 SCC 537] and *Aniglase Yohannan* v. *Ramlatha* [(2005) 7 SCC 534].)”

In **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander**, (2010) 14 SCC 596 ["**Van Vibhag**"], this Court referred to a suit in which specific performance was not claimed on the ground that in view of the Urban Land (Ceiling & Regulation) Act, 1976, the appellant could not have made such claim. This was turned down specifically by this Court, stating:

> "**26.** The appellant, on noticing the same, filed a suit on 11-2-1991 but he did not include the plea of specific performance. The appellant wanted to defend this action by referring to two facts (*i*) there was an acquisition proceeding over the said land under the Land Acquisition Act, and (*ii*) in view of the provisions of the Ceiling Act, the appellant could not have made the prayer for specific performance.
>
> **27.** The aforesaid purported justification of the appellant is not tenable in law. If the alleged statutory bar referred to by the appellant stood in its way to file a suit for specific performance, the same would also be a bar to the suit which it had filed claiming declaration of title and injunction. In fact, a suit for specific performance could have been easily filed subject to the provision of section 20 of the Ceiling Act.
>
> **28.** Similar questions came up for consideration before a Full Bench of the Gujarat High Court in *Shah Jitendra Nanalal* v. *Patel Lallubhai Ishverbhai* [AIR 1984 Guj 145]. The Full Bench held that a suit for specific performance could be filed despite the provisions of the Ceiling Act. A suit for specific performance in respect of vacant land in excess of ceiling limit can be filed and a conditional decree can be passed for specific performance, subject to exemption being obtained under section 20 of the Act (AIR paras 11-13).

> **29.** We are in respectful agreement with the views of the Full Bench in the abovementioned decision and the principles decided therein are attracted here."

The judgments of **Immani Appa Rao v. Gollapalli Ramalingamurthi**, (1962) 3 SCR 739 and **Narayanamma v. Govindappa**, 2019 SCC OnLine SC 1260 cited by Shri Giri in support of the proposition that no court will lend its aid to a man who founds his cause of action upon an illegal act has no application in a situation covered by the judgments contained in **Vishwa Nath Sharma** (supra) and **Van Vibhag** (supra).

22. Even otherwise, the Repeal Act makes it clear that the Tamil Nadu Urban Land Ceiling Act is repealed as follows:

> "**2. Repeal of Tamil Nadu Act 24 of 1978.**–The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978) (hereinafter referred to as the principal Act), is hereby repealed.
>
> **3. Savings.**–(1) The repeal of the principal Act shall not affect–
>
> > (a) the vesting of any vacant land under sub-section (3) of section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
> >
> > (b) the validity of any order granting exemption under sub-section (1) of section 21 or any action taken thereunder.

(2) Where -

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

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

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

It is clear that as no steps whatsoever were taken under the Tamil Nadu Urban Land Ceiling Act, the savings clause will not apply.

23. In **Gajraj Singh v. State Transport Appellate Tribunal**, (1997) 1 SCC 650, this Court spoke of the effect of an Act that is repealed as follows:

"**22.** Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. Legal fiction is one which is not an actual reality and which the law recognises and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore,

when Section 217(1) of the Act repealed Act 4 of 1939 w.e.f. 1-7-1989, the law in Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed or saved.

23. In Crawford's *Interpretation of Law* (1989) at p. 626, it is stated that:

> "[A]n express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation."

At p. 627, it is stated that:

> "[M]oreover, where a repealing clause expressly refers to a portion of a prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title, it will not be extended to an act upon a different subject."

Section 6 of the GC Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (*a*) revive anything not in force or existing at the time at which the repeal takes effect; or (*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In *India Tobacco Co. Ltd.* v. *CTO* [(1975) 3 SCC 512 : 1975 SCC (Tax) 49] (SCC at p. 517) in paras 6 and 11, a Bench of three Judges had held that repeal

> connotes abrogation and obliteration of one statute by another from the statute-book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as if it had never existed. Repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or *pro tanto* repeal."

24. It is settled law that an appeal is a continuation of a suit, as a result of which a change in law will become applicable on the date of the appellate decree, provided that no vested right is taken away thereby. This was felicitously put in **Rameshwar v. Jot Ram**, (1976) 1 SCR 847 as follows:

> "In *P. Venkateswarlu* v. *Motor & General Traders* [(1975) 1 SCC 770, 772 : AIR 1975 SC 1409, 1410] this Court dealt with the adjectival activism relating to post-institution circumstances. Two propositions were laid down. Firstly, it was held that 'it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding.' This is an emphatic statement that the *right* of a party is determined by the facts as they exist *on the date the action is instituted*. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or right crystallised in the initial cause of action. This position finds support in *Bhajan Lal* v. *State of Punjab* [(1971) 1 SCC 34].
>
> (emphasis in original)

The impact of subsequent happenings may now be spelt out. First, its bearing on the *right* of action, second, on the nature of the *relief* and third, on its impotence to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson* [*Patterson* v. *State of Alabama*, (1934) 294 US 600, 607] illustrates this position. It is important that the party claiming the relief or change of relief must have *the same right* from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of *substantive rights* enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould *reliefs*. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape *reliefs* — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts *at the time the relief is to be ultimately granted*, the Court, even in appeal, can take note of such supervening facts with fundamental impact. *Venkateswarlu* [*P. Venkateswarlu* v. *Motor & General Traders*, (1975) 1 SCC 770 : AIR 1975 SC 1409], read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other

side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (See *Chokalingam Chetty* [54 MLJ 88 (PC)]). The law stated in *Ramji Lal* v. *State of Punjab* [AIR 1966 Punj 374 : ILR (1966) 2 Punj 125] is sound:

> "Courts, do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff's suit would be wholly displaced by the proposed amendment (see *Steward* v. *North Metropolitan Tramways Company* [(1885) 16 QBD 178]) and a fresh suit by him would be so barred by limitation."

One may as well add that while taking cautious judicial cognisance of "post-natal" events, even for the limited and exceptional purposes explained earlier, no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis."

(emphasis in original)

(at pp. 851-852)

25. This judgment follows the hallowed principle that an appellate proceeding is in continuation of an original proceeding, as laid down in

Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, AIR 1941 FC 5, also followed in later judgments of this Court. In **Dayawati v. Inderjit**, (1966) 3 SCR 275, this Court held:

> "Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke, whose maxim — a new law ought to be prospective, not retrospective in its operation — is oft-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the court is invited by law to take away from a successful plaintiff, what he has obtained under judgment. See *Quilter* v. *Maple son* [(1882) 9 QBD 672] and *Stovin* v. *Fairbrass* [(1919) 88 LJ KB 1004] which are instances of new laws being applied. In the former the vested rights of the landlord to recover possession and in the latter the vested right of the statutory tenant to remain in possession were taken away after judgment. See also *Maxwell's Interpretation of Statutes* (11th Edn. pp. 211 and 213, and *Mukerjee (K.C.)* v. *Mst. Ramaraton* [63 IA 47] where no saving in respect of pending suits was implied when Section 26(N) and (O) of the Bihar Tenancy Act (as

amended by Bihar Tenancy Amendment Act, 1934) were clearly applicable to all cases without exception.

Section 6 of the Relief of Indebtedness Act is clearly retrospective. Indeed, the heading of the section shows that it lays down the retrospective effect. This being so, the core of the problem really is whether the suit could be said to be pending on June 8, 1956 when only an appeal from the judgment in the suit was pending. This requires the consideration whether the word 'suit' includes an appeal from the judgment in the suit. An appeal has been said to be "the right of entering a superior court, and invoking its aid and interposition to redress the error of the court below". (Per Lord Westbury in *Attorney-General* v. *Sillem* [11 ER 1200 at 1209]. The only difference between a suit and an appeal is this that an appeal "only reviews and corrects the proceedings in a cause already constituted but does not create the cause". As it is intended to interfere in the cause by its means, it is a part of it, and in connection with some matters and some statutes it is said that an appeal is a continuation of a suit. In the present Act the intention is to give relief in respect of excessive interest in a suit which is pending and a preliminary decree in a suit of this kind does not terminate the suit. The appeal is a part of the cause because the preliminary decree which emerges from the appeal will be the decree, which can become a final decree. Such an appeal cannot have an independent existence. If this be not accepted for the purpose of the application of Section 3 of the Usurious Loans Act (as amended) curious results will follow. The appeal court in the appeal is not able to resort to the section but if the suit were remanded the trial court would be compelled to apply it. For although, in the appeal proper, that judgment must be rendered which could be rendered by the court of trial, but if the suit is to be reheard, then the judgment must be given on the existing state of the law and that must include Section 5 by reason of Section 6 of the Punjab Relief of Indebtedness Act. It is hardly to be suggested that this obvious anomaly was allowed to exist.

> It would, therefore, appear that in speaking of a pending suit, the legislature was thinking not only in terms of the suit proper but also of those stages in the life of the suit which ordinarily take place before a final executable document comes into existence. The words of the section we are concerned with, speak of a suit pending on the commencement of the Act and it means a live suit whether in the court of first instance or in an appeal court where the judgment of the court of first instance is being considered. It only excludes those suits in which nothing further needs to be done in relation to the rights or claims litigated, because an executable decree which may not be reopened is already in existence. The decision of the High Court was right in applying Section 3 of the Usurious Loans Act (as amended) to the case."
>
> (at pp. 281-283)

Similarly, in **Amarjit Kaur v. Pritam Singh**, (1974) 2 SCC 363, this Court held:

> "**4.** In *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [1940 FCR 84] it was held that once the decree passed by a court had been appealed against, the matter became sub-judice again and thereafter the appellate court has seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the courts below retained jurisdiction. The Court further said that it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction, that even before the enactment of that Code, the position was explained by Bhashyam Iyengar, J. in *Kristnama Chariar* v. *Mangammal* [ILR (1903) 26 Mad 91, at p. 95-96.] in language which makes it clear that the hearing of an appeal is under the processual law of this country in the

nature of a re-hearing, and that it is on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

5. As an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal."

In **Lakshmi Narayan Guin v. Niranjan Modak**, (1985) 1 SCC 270, this Court held:

"**9.** That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in *Ram Swarup* v. *Munshi* [AIR 1963 SC 553 : (1963) 3 SCR 858] which was followed by this Court in *Mula* v. *Godhu* [(1969) 2 SCC 653 : AIR 1971 SC 89 : (1970) 2 SCR 129]. We may point out that in *Dayawati* v. *Inderjit* [AIR 1966 SC 1423 : (1966) 3 SCR 275 : (1966) 2 SCJ 784] this Court observed:

> "If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even

> after the judgment of the Court of first instance."
>
> Reference may also be made to the decision of this Court in *Amarjit Kaur* v. *Pritam Singh* [(1974) 2 SCC 363 : AIR 1974 SC 2068 : (1975) 1 SCR 605] where effect was given to a change in the law during the pendency of an appeal, relying on the proposition formulated as long ago as *Kristnama Chariar* v. *Mangammal* [ILR (1902) 26 Mad 91 (FB)] by Bhashyam Ayyangar, J., that the hearing of an appeal was, under the processual law of this country, in the nature of a re-hearing of the suit. In *Amarjit Kaur* [(1974) 2 SCC 363 : AIR 1974 SC 2068 : (1975) 1 SCR 605] this Court referred also to *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [AIR 1941 FC 5 : 1940 FCR 84 : 191 1C 659] in which the Federal Court had laid down that once a decree passed by a court had been appealed against the matter became sub judice again and thereafter the appellate court acquired seisin of the whole case, except that for certain purposes, for example, execution, the decree was regarded as final and the court below retained jurisdiction."

26. However, Shri Giri referred to the judgment in **Keshavan Madhava Menon v. State of Bombay**, 1951 SCR 228 in order to buttress the proposition that a repealing Act cannot be retrospectively applied so as to destroy a fundamental right. For this purpose, he relied upon Mahajan J.'s concurring judgment at pp. 249-250. This judgment is wholly distinguishable given the fact that there is no fundamental right involved of the defendants in the present case and the fact that no vested right of the defendants has been affected by the Repeal Act. Equally, the judgment in

John Lemm v. Thomas Alexander Mitchell, [1912] A.C. 400 correctly lays down the principle stated by Tindal, C.J. in **Kay v. Goodwin**, 130 E.R. 1403 [1830] as follows:

> "I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law."
>
> (at p. 406)

In that case, since it was held on facts that persons had vested rights acquired by them in actions duly determined under the repealed law, these could not be affected. This is wholly distinguishable from the fact situation in the present case.

27. This being the case, on the date on which the appellate decree was passed, in any case, the Tamil Nadu Urban Land Ceiling Act having been repealed would not stand in the way of a decree for specific performance. It must be remembered that there is no vested right under the Tamil Nadu Urban Land Ceiling Act in favour of the respondents. Any right, if at all, is in favour of the State Government, which, like Pontius Pilate, has washed its hands off this matter by a report submitted to this Court on 17.08.2015.

28. The Division Bench judgment is also wholly incorrect in stating that for no fault of the appellant, since the court process has taken 27 years to decide the specific performance suit, specific performance being a discretionary relief ought not to be granted. Section 20 of the Specific Relief Act, 1963, prior to its substitution by the Specific Relief (Amendment) Act, 2018, read as follows:

> "**20. Discretion as to decreeing specific performance.—**(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.
>
> (2) The following are cases in which the court may properly exercise discretion not to decree specific performance—
>
> (*a*) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
>
> (*b*) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
>
> (*c*) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

> *Explanation I*.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (*a*) or hardship within the meaning of clause (*b*).
>
> *Explanation II*.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (*b*) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.
>
> (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.
>
> (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

Section 20, as it then stood, makes it clear that the jurisdiction to decree specific performance is discretionary; but that this discretion is not arbitrary but has to be exercised soundly and reasonably, guided by judicial principles, and capable of correction by a court of appeal – *see* section 20(1). Section 20(2) speaks of cases in which the court may properly exercise discretion <u>not</u> to decree specific performance. Significantly, under clause (a) of sub-section (2), what is to be seen is the terms of the contract or the conduct of the parties <u>at the time of entering into the contract</u>. Even

“other circumstances under which the contract was entered into” refers only to circumstances that prevailed at the time of entering into the contract. It is only then that this exception kicks in – and this is when the plaintiff gets an unfair advantage over the defendant. Equally, under clause (b) of sub-section (2), the hardship involved is again at the time of entering into the contract which is clear from the expression “which he did not foresee”. This is made clear beyond doubt by Explanation II of section 20 which states that the only exception to the hardship principle contained in clause (b) of sub-section (2) is where hardship results from an act of the plaintiff subsequent to the contract. In this case also, the act cannot be an act of a third party or of the court – the act must only be the act of the plaintiff. Clause (c) of sub-section (2) again refers to the defendant entering into the contract under circumstances which makes it inequitable to enforce specific performance. Here again, the point of time at which this is to be judged is the time of entering into the contract.

29. Given section 20, the courts have uniformly held that the mere escalation of land prices after the date of the filing of the suit cannot be the sole ground to deny specific performance. Thus, in **Nirmala Anand v. Advent Corporation (P) Ltd.**, (2002) 8 SCC 146, a three-Judge bench of this Court held:

"**3.** The appeal was heard by a two-Judge Bench. The learned Judges have concurred that the appellant is entitled to specific performance of the agreement dated 8-9-1966. There has, however, been difference of opinion between learned Judges on the condition in respect of additional amount that may be paid by the appellant to Respondents 1 and 2 and, therefore, the matter has been placed before this three-Judge Bench. The opinions of the learned Judges are reported in *Nirmala Anand* v. *Advent Corpn. (P) Ltd.* [(2002) 5 SCC 481] In the opinion expressed by Brother Justice Doraiswamy Raju, the appellant has been directed to pay a sum of Rs 40,00,000 in addition to the sum already paid to Respondents 1 and 2 and in the view of Brother Justice Ashok Bhan, it would be unfair to impose the condition of payment of Rs 40,00,000 and the appellant is entitled to specific performance of agreement to sell on the price mentioned in the agreement."

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"**5.** The appellant is prepared and willing to take possession of the incomplete flat without claiming any reduction in the purchase price and would not hold Respondents 1 and 2 responsible for anything incomplete in the building. It has been concurrently held that she did not commit breach of the agreement to sell. She has always been ready and willing to perform her part of the agreement. The appellant is ready and willing to pay to Respondents 1 and 2 interest on the sum of Rs 25,000. The breach was committed by Respondents 1 and 2 as noticed hereinbefore. It is evident that the appellant is ready to take incomplete flat and pay further sum as noticed, most likely on account of phenomenal increase in the market price of the flat during the pendency of this litigation for over three decades. We see no reason why the appellant cannot be allowed to have, for her alone, the entire benefit of manifold mega increase of the value of real estate property in the locality. In our view, it would not be unreasonable and inequitable to make the appellant the sole beneficiary of the escalation of real estate prices and the enhanced value of the flat in

question. There is no reason why the appellant, who is not a defaulting party, should not be allowed to reap to herself the fruits of increase in value.

6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

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"**8.** Having regard to the totality of the circumstances, we would direct the appellant to pay to Respondents 1 and 2 a sum of Rs 6,25,000 instead of Rs 25,000. The amount of Rs 40,00,000 wherever it appears in the opinion of Justice Doraiswamy Raju, would be read as Rs 6,25,000. All other conditions will remain."

In **P. D'Souza v. Shondrilo Naidu**, (2004) 6 SCC 649, this Court held:

> "**39.** It is not a case where the defendant did not foresee the hardship. It is furthermore not a case that non-performance of the agreement would not cause any hardship to the plaintiff. The defendant was the landlord of the plaintiff. He had accepted part-payments from the plaintiff from time to time without any demur whatsoever. He redeemed the mortgage only upon receipt of requisite payment from the plaintiff. Even in August 1981 i.e. just two months prior to the institution of suit, he had accepted Rs 20,000 from the plaintiff. It is, therefore, too late for the appellant now to suggest that having regard to the escalation in price, the respondent should be denied the benefit of the decree passed in his favour. Explanation I appended to Section 20 clearly stipulates that merely inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature would not constitute an unfair advantage within the meaning of sub-section (2) of Section 20.
>
> **40.** The decision of this Court in *Nirmala Anand* [(2002) 5 SCC 481] may be considered in the aforementioned context.
>
> **41.** Raju, J. in the facts and circumstances of the matter obtaining therein held that it would not only be unreasonable but too inequitable for courts to make the appellant the sole beneficiary of the escalation of real estate prices and the enhanced value of the flat in question, preserved all along by Respondents 1 and 2 by keeping alive the issues pending with the authorities of the Government and the municipal body. It was in the facts and circumstances of the case held: (SCC p. 501, para 23)
>
> > "*23*. … Specific performance being an equitable relief, balance of equities have also to be struck taking into account all these relevant aspects of the matter, including the lapses which occurred and parties respectively responsible therefor. Before

> decreeing specific performance, it is obligatory for courts to consider whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement inequitable, besides taking into (sic consideration) the totality of circumstances of each case."

43. Bhan, J., however, while expressing his dissension in part observed: (SCC pp. 506 & 507, paras 38 & 40)

> "*38*. It is well settled that in cases of contract for sale of immovable property the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the plaintiff.
>
> ***
>
> *40*. Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend on the facts and circumstances of each case."

44. The learned Judge further observed that delay in performance of the contract due to pendency of proceedings in court cannot by itself be a ground to refuse relief of specific performance in absence of any compelling circumstances to take a contrary view. ……

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45. The said decision cannot be said to constitute a binding precedent to the effect that in all cases where there had been an escalation of prices, the court should

> either refuse to pass a decree on specific performance of contract or direct the plaintiff to pay a higher sum. No law in absolute terms to that effect has been laid down by this Court nor is discernible from the aforementioned decision."

In **P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi**, (2007) 10 SCC 231, this Court held:

> "**19.** Submission of Mr Chandrashekhar to the effect that having regard to the rise in price of an immovable property in Bangalore, the Court ought not to have exercised its discretionary jurisdiction under Section 20 of the Specific Relief Act is stated to be rejected. We have noticed hereinbefore that the appellant had entered into an agreement for sale with others also. He had, even after 11-5-1979, received a sum of Rs 5000 from the respondent. He with a view to defeat the lawful claim of Respondent 1 had raised a plea of having executed a prior agreement for sale in respect of self-same property in favour of his son-in-law who had never claimed any right thereunder or filed a suit for specific performance of contract. The courts below have categorically arrived at a finding that the said contention of the appellant was not acceptable. Rise in the price of an immovable property by itself is not a ground for refusal to enforce a lawful agreement of sale. (See *P. D'Souza* [(2004) 6 SCC 649] and *Jai Narain Parasrampuria* [(2006) 7 SCC 756].)"

In **Narinderjit Singh v. North Star Estate Promoters Ltd.**, (2012) 5 SCC 712, this Court held:

> "**25.** We are also inclined to agree with the lower appellate court that escalation in the price of the land cannot, by itself, be a ground for denying relief of specific performance. In *K. Narendra* v. *Riviera Apartments (P) Ltd.* [(1999) 5 SCC 77] this Court interpreted Section 20

of the Act and laid down the following propositions: (SCC p. 91, para 29)

> "*29*. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognised in India. *However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant*."
>
> (emphasis in original)

26. In the present case, the appellant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. Rather, the important plea taken by the appellant was that the agreement was fictitious and fabricated and his father had neither executed the same nor received the earnest money and, as mentioned above, all the courts have found this plea to be wholly untenable.

27. In the result, the appeals are dismissed and the following directions are given:

> (*i*) Within three months from today the respondent shall pay Rs 5 crores to the

appellant. This direction is being given keeping in view the statement made by Shri Dushyant Dave, learned Senior Counsel for the respondent on 3-5-2012 that his client would be willing to pay Rs 5 crores in all to the appellant as the price of the land.

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In **Satya Jain v. Anis Ahmed Rushdie**, (2013) 8 SCC 131, this Court held:

"**40.** The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy* v. *M.K. Bhagyalakshmi* [(2007) 10 SCC 231] and more recently in *Narinderjit Singh* v. *North Star Estate Promoters Ltd.* [(2012) 5 SCC 712 : (2012) 3 SCC (Civ) 379] may be usefully recapitulated.

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the

long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final court.

42. Having given our anxious consideration to all the relevant aspects of the case we are of the view that the ends of justice would require this Court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in *Anis Ahmed Rushdie* v. *Bhiku Ram Jain* [*Anis Ahmed Rushdie* v. *Bhiku Ram Jain*, RFA (OS) No. 11 of 1984, decided on 31-10-2011 (Del)] and to decree the suit of the plaintiffs for specific performance of the agreement dated 22-12-1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial Judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances."

In **K. Prakash v. B.R. Sampath Kumar**, (2015) 1 SCC 597, this Court held:

"**18.** Subsequent rise in the price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

19. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the

case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant owner of the property. This aspect of the matter is considered by a three-Judge Bench of this Court in *Nirmala Anand* v. *Advent Corpn. (P) Ltd.* [(2002) 8 SCC 146], wherein this Court held: (SCC p. 150, para 6)

> "*6*. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be

other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

20. As discussed above the agreement was entered into between the parties in 2003 for sale of the property for a total consideration of Rs 16,10,000. Ten years have passed by and now the price of the property in that area where it situates has increased by not less than five times. Keeping in mind the factual position we are of the view that the appellant should pay a total consideration of Rs 25 lakhs, being the price for the said property."

In **Zarina Siddiqui v. A. Ramalingam**, (2015) 1 SCC 705, this Court held:

"**33.** The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance."

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"**36.** As held by this Court time and again, efflux of time and escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the Court in its discretion may impose reasonable conditions including payment of additional amount to the vendor. It is equally well settled that the plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of litigation."

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"**38.** … [I]n the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending in different courts, we

> are of the considered opinion that the impugned order [*A. Ramalingam* v. *H. Siddiqui*, RFA No. 265 of 1999, decided on 1-3-2012 (KAR)] under appeal be set aside but with a condition imposed upon the appellant-plaintiff to pay a sum of Rs 15,00,000 (Rupees fifteen lakhs) in addition to the amount already paid by the appellant to the respondent."

In **Ramathal v. Maruthathal**, (2018) 18 SCC 303, this Court held:

> "**22.** The buyer has taken prompt steps to file a suit for specific performance as soon as the execution of the sale was stalled by the seller. From this discussion, it is clear that the buyer has always been ready and willing to perform his part of the contract at all stages. Moreover, it is the seller who had always been trying to wriggle out of the contract. Now the seller cannot take advantage of their own wrong and then plead that the grant of decree of specific performance would be inequitable. Escalation of prices cannot be a ground for denying the relief of specific performance. Specific performance is an equitable relief and granting the relief is the discretion of the court. The discretion has to be exercised by the court judicially and within the settled principles of law. Absolutely there is no illegality or infirmity in the judgments of the courts below, which has judicially exercised its discretion and the High Court ought not to have interfered with the same. ……"

In **Sunkara Lakshminarasamma v. Sagi Subba Raju**, (2019) 11 SCC 787, this Court held:

> "**9.** Shri A. Subba Rao, learned counsel for the appellants was however forceful in his arguments, insofar as the suit for specific performance is concerned. According to him, the appellants herein (defendants in the suit for specific performance) would be put to hardship if the decree for specific performance is confirmed, inasmuch as there has

been a huge escalation in the price of the properties since the agreement of sale. Such plea of escalation in price cannot be accepted in view of the fact that the appellants in the first instance do not have the right to question the agreement of sale. As mentioned supra, since Veeraswamy was the absolute owner of the properties including the property involved in the suit for specific performance, he had the right to enter into an agreement of sale also. This property was bequeathed to Veeraswamy under Ext. B-4 will by Padmanabhudu. Hence, Veeraswamy was the sole owner of the property. Consequently, he had entered into an agreement of sale with Sagi Subba Raju, as far back as on 19-9-1974. The suit was filed in the year 1978, which was later transferred to another court and the same was re-numbered as OS No. 72 of 1983. Since 1978, this litigation is being fought by the prospective vendee. The property of about three-and-a-half acres was agreed to be sold by Veeraswamy in favour of the prospective vendee in the year 1974 for a sum of Rs 51,000. Such price was agreed to between the vendor as well as the prospective vendee.

10. This Court cannot imagine the value of the property as it stood in the year 1974 in the said area i.e. at Bhimavaram Village in Andhra Pradesh. Be that as it may, we find that hardship was neither pleaded nor proved by the appellants herein before the trial court. No issue was raised relating to hardship before the trial court. A plea which was not urged before the trial court cannot be allowed to be raised for the first time before the appellate courts. Moreover, mere escalation of price is no ground for interference at this stage (*see* the judgment of this Court in *Narinderjit Singh* v. *North Star Estate Promoters Ltd.* [*Narinderjit Singh* v. *North Star Estate Promoters Ltd.*, (2012) 5 SCC 712 : (2012) 3 SCC (Civ) 379]). Added to it, as mentioned supra, the appellants do not have the locus standi to question the judgment of the Division Bench since they are not the owners of the property. As a matter of fact, Veeraswamy, the vendor of the properties, had entered the witness box before the trial court and

> supported all his alienations in favour of the defendants. Therefore, in our considered opinion, the Division Bench has rightly concluded in favour of Sagi Subba Raju and against the appellants and granted the decree for specific performance."

30. It is settled law that mere delay by itself, without more, cannot be the sole factor to deny specific performance – *See* **Mademsetty Satyanarayana v. G. Yelloji Rao**, (1965) 2 SCR 221 at pp. 229-230. Thus, in **K.S. Vidyanadam v. Vairavan**, (1997) 3 SCC 1, this Court made it clear that if property prices have risen dramatically within a period of two and a half years before filing of the suit for specific performance, and it is coupled with violation of the agreement by the plaintiff, specific performance will not be decreed. The Court held:

> "**10.** … In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973 [It is a well-known fact that the steep rise in the price of oil following the 1973 Arab-Israeli war set in inflationary trends all over the world. Particularly affected were countries like who import bulk of their requirement of oil]. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981, i.e.,

more than two years after the expiry of six months' period. The question is what was the plaintiff doing in this interval of more than two years? … The defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15-12-1978 till 11-7-1981, i.e., for a period of more than 2 1/2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendants' case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to wake up after 2 1/2 years and demand specific performance.

11. Shri Sivasubramaniam cited the decision of the Madras High Court in *S.V. Sankaralinga Nadar* v. *P.T.S. Ratnaswami Nadar* [AIR 1952 Mad 389 : (1952) 1 MLJ 44] holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of

urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation. Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs 5000 and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs 5000 (as against the total consideration of Rs 60,000) the plaintiff did nothing until he issued the suit notice 2 1/2 years after the agreement. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. The learned counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has

not been made the essence of the contract (relating to immovable properties)."

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"**13.** In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices — according to the defendants, three times — between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.

14. Shri Sivasubramaniam then relied upon the decision in *Jiwan Lal (Dr)* v. *Brij Mohan Mehra* [(1972) 2 SCC 757 : (1973) 2 SCR 230] to show that the delay of two years is not a ground to deny specific performance. But a perusal of the judgment shows that there were good reasons for the plaintiff to wait in that case because of the pendency of an appeal against the order of requisition of the suit property. We may reiterate that the true principle is the one stated by the Constitution Bench in *Chand Rani* [(1993) 1 SCC 519]. Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

Likewise, this Court, in **Saradamani Kandappan v. S. Rajalakshmi**, (2011) 12 SCC 18, made it clear that given the steep rise in urban land prices, it may not be correct now to say that time is not of essence in performance of a contract of sale of immovable property. Thus, where time

can be said to be of the essence in the facts of a given case, and the purchaser does not take steps to complete the sale within the stipulated period and the vendor is not responsible for any delay, the steep rise in price within the stipulated time would be a circumstance which would make it inequitable to grant the relief of specific performance. This Court held:

> "**36.** The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

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41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in *K.S. Vidyanadam* v. *Vairavan* [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the

Constitution Bench in *Chand Rani* [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)

> "*10*. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. … *in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973*. …
>
> *11*. … *We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. … Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so*."
>
> (emphasis in original)

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* [(1993) 1 SCC 519] and other cases. Be that as it may.

> **43.** Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyanadam* [(1997) 3 SCC 1]:
>
> > (*i*) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.
> >
> > (*ii*) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.
> >
> > (*iii*) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser."

In **Nanjappan v. Ramasamy**, (2015) 14 SCC 341, the suit for specific performance was filed many years after the agreement dated 30.09.1987, which agreement was extended by three years twice and thereafter, by another two years. It was only after these extensions and exchange of legal

notices between the parties that the respondents filed a suit for specific performance. It was in this factual background that the Court held:

> "**10.** In a suit for specific performance, the plaintiff has to aver and prove with satisfactory evidence that he was always ready and willing to perform his part of contract at all material time as mandatorily required under Section 16(*c*) of the Specific Relief Act, 1963. The first appellate court and the High Court recorded findings that the plaintiff was always ready and willing to perform his part of the contract. By a careful reading of the recitals in the agreement, the concurrent findings so recorded do not seem to reflect the conduct of the parties. As per recitals in Ext. P-1 agreement dated 30-9-1987, an amount of Rs 25,000 was paid by the respondent-plaintiffs to the appellant-defendant. Balance amount of Rs 20,000 was to be paid within 2½ years thereafter and get the sale executed. In the second agreement of sale (Ext. P-2 dated 21-3-1990) it is stated that the plaintiffs were unable to pay the balance amount within the stipulated period and get the sale deed executed and therefore the second sale agreement was executed extending the period for execution of sale deed for a further period of three years. As could be seen from the recitals from Ext. P-2, the respondents were unable to pay the balance sale consideration and get the sale deed executed. It is pertinent to note that the time for performance of contract was extended again and again totalling period of eight years. Even though the first appellate court and the High Court recorded findings that the respondent-plaintiffs were ready and willing to perform their part of contract, the fact that time was extended for eight years is to be kept in view while considering the question whether discretion is to be exercised in favour of the respondent-plaintiffs."
>
> xxx xxx xxx
>
> "**13.** The first sale agreement was executed on 30-9-1987 about twenty-seven years ago. The property is situated in Coimbatore City and over these years, value of property

in Coimbatore City would have considerably increased. In *Saradamani Kandappan* v. *S. Rajalakshmi* [(2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104] , this Court has held that the value of the property escalates in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, the first agreement was executed on 30-9-1987 i.e. twenty-seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondent-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his family members.

14. Considering the totality and the facts and circumstances, in our view, it is not appropriate to grant discretionary relief of specific performance to the respondent-plaintiffs for more than one reason. Admittedly, the suit property is the only property of the appellant-defendant and the appellant is said to have constructed a house and where he is currently residing with the family. As compared to the respondents, the appellant will suffer significant hardship if a decree for specific performance is granted against the appellant. Considering the circumstances, such as the construction of the residential house over the suit property, sale consideration, passage of time and hardship caused to the appellant, makes it inequitable to exercise the discretionary relief of specific performance and the concurrent finding of the first appellate court and the High Court decreeing the suit for specific performance is to be set aside."

31. The resultant position in law is that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay or laches. However, an exception to this rule is where immovable property is to be sold within a certain period, time being of the essence, and it is found

that owing to some default on the part of the plaintiff, the sale could not take place within the stipulated time. Once a suit for specific performance has been filed, any delay as a result of the court process cannot be put against the plaintiff as a matter of law in decreeing specific performance. However, it is within the discretion of the Court, regard being had to the facts of each case, as to whether some additional amount ought or ought not to be paid by the plaintiff once a decree of specific performance is passed in its favour, even at the appellate stage.

32. Shri Giri's fervent appeal that we should not exercise our discretionary jurisdiction under Article 136, given the fact that Rs.2 crores plus interest is to be paid almost by way of solatium to the appellant, has also to be rejected. As has been found earlier in this judgment, the defendants were held to have taken up dishonest pleas and also held to have been in breach of a solemn agreement in which they were to obtain the Urban Land Ceiling permission which, if not obtained, would, under the agreement itself, not stand in the way of the specific performance of the agreement between the parties. He who asks for equity must do equity. Given the conduct of the defendants in this case, as contrasted with the conduct of the appellant who is ready and willing throughout to perform its part of the bargain, we think this is a fit case in which the Division Bench

judgment should be set aside. As a result, the decree passed by the Single Judge is restored. Since the appellant itself offered a sum of Rs.1.25 crores to the Division Bench, it must be made to pay this amount to the respondents within a period of eight weeks from the date of this judgment.

33. The Civil Appeal is allowed in the aforesaid terms with no order as to costs.

…….. J.
(R.F. Nariman)

…….. J.
(Navin Sinha)

New Delhi.
October 12, 2020.