

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). _____ OF 2022
(Arising out of SLP(Civil) No(s). 27652 of 2015)**

**GOPALBHAI PANCHABHAI
ZALAVADIA (DEAD) THR LRs**

....APPELLANT(S)

VERSUS

THE STATE OF GUJARAT AND ORS.

....RESPONDENT(S)

J U D G M E N T

Ajay Rastogi, J.

1. Leave granted.
2. The present appeal is directed against the judgment and order passed by the Division Bench of the High Court of Gujarat dated 24th March, 2015 primarily holding that since the Government took possession of the subject land in question in the presence of Panchas after going through the procedure prescribed under Section 10(1), 10(3) and 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter being referred to as the “Act 1976”) that disentitles the appellants of seeking any legitimate grievance and there appears no reason of permitting mutation of the subject land in their favour.

3. Briefly stated, the facts are that the predecessors of the appellants were in possession of the agricultural land. In 1976, the predecessor of the appellants had filled a form under the Act, 1976 disclosing that the lands are agricultural lands and, therefore, cannot be termed as 'vacant land' under the Act 1976. However, the prescribed authority (Deputy Collector), after affording opportunity of hearing and holding enquiry in furtherance thereof, under its order dated 6th May, 1987 recorded a finding that 21,615 sq. meters of land was 'surplus' in the hands of the appellants and after holding further inquiry under Sections 10(1), 10(3) and 10(5) of the Act 1976, the State Government took possession of the subject land on 24th November, 1987 in the presence of Panchas and in furtherance thereof, the competent authority passed an order dated 29th February, 1988 of making payment of compensation after ascertaining the price under Section 11 of the Act 1976.

4. The order passed by prescribed authority was the subject matter of challenge at the instance of the appellants before the Land Tribunal and that came to be dismissed by an Order dated 30th May, 1988 and the finding of fact was affirmed about the procedure being

followed by the State Government while taking possession of the subject land in question and also with respect to the compensation paid by the competent authority after ascertaining the price under Section 11 of the Act, 1976 and indisputedly, no further proceedings were initiated by the appellants against the order of the Land Tribunal dated 30th May, 1988 and that has attained finality.

5. What reveals from the record is that after five years down the line, the other alleged co-parceners filed their appeal(Appeal No. Rajkot-3/1992) before the Urban Land Tribunal, Ahmedabad which was not maintainable, still while disposing of the appeal at the instance of other co-parceners, the Land Tribunal, under its Order dated 21st September, 1992 while remitting it to the prescribed authority made it clear that Appeal No. Rajkot-18/88 preferred by the present appellants and decided by the Land Tribunal has nothing to do with Appeal No. Rajkot-3/1992 preferred by the other co-parceners.

6. It is informed to this Court that so far as the order which was later passed by the Tribunal dated 21st September, 1992 in Appeal No. Rajkot-3/1992 preferred at the instance of the other co-

parceners remitting the matter back to the prescribed authority is concerned, either party has not been able to inform this Court as to what steps were later taken by the prescribed authority and the fact is that the proceedings stood closed because of the Act stood later repealed. Be that as it may, that may not have a material bearing on the present matter for the reason that even while remitting the matter to the prescribed authority by the Land Tribunal under its Order dated 21st September 1992, the finding recorded by the Land Tribunal in its earlier order dated 30th May, 1988 passed in Appeal no. Rajkot-18/88 filed at the instance of the appellants has not been questioned in reference to the land vested with the State Government on 24th November 1987, in consequence thereof, mutations were also opened in favour of the Government.

7. The appellants approached the High Court by filing of the writ petition with a grievance that mutation which was opened in the name of the Government, after passing of the order of remand by the Tribunal in Appeal No. Rajkot-3/1992 nullify the earlier order of the Tribunal dated 30th May, 1988 passed in Appeal No. Rajkot-18/88, in consequence, the possession has to be restored back in favour of

the appellants taking into consideration the latter order of the Tribunal dated 21st September, 1992 on the premise that by fiction, the possession is deemed to have been with the present appellants and that submission was found to be misconceived by the learned Single Judge and accordingly the petition came to be dismissed by Order dated 17th July, 2007 which came to be further challenged at the instance of the appellants in letters patent appeal before the Division Bench of the High Court which was dismissed by Order dated 24th March, 2015 holding that the appeal which was later preferred by the co-parceners before the Land Tribunal was not maintainable, thus, remitting the matter back to the prescribed authority in appeal preferred by the other co-parceners of the Land Tribunal was legally not sustainable in law.

8. Learned counsel for the respondents has brought to our notice that the statement made by the appellants before this Court of the notice not being served upon the co-parceners is factually incorrect as the so-called alleged co-parceners were duly served and their documents have been placed on record at pages 283, 289, 292 and 294 of the paper book.

9. Learned counsel for the appellants is unable to justify the factual statement which has been recorded by this Court in support of which a sufficient material has been placed on record. Counsel submits that the appellants are practically in possession of the subject land in question and this fact can be verified either from the official records or by holding an inquiry in reference to the person in possession of the subject land in question.

10. Learned counsel further submits that the appellants are poor agriculturists and this land is an irrigated land and is their only source of livelihood and since this question has not been considered by the Division Bench of the High Court in the impugned judgment, the matter be remitted back to the High Court for re-consideration and the letters patent appeal be decided afresh.

11. In addition, learned counsel further submits that the only question to be examined is that who is in possession of the subject land in question, although the finding has been recorded by the Tribunal under its Order dated 30th May 1988, but for all practical purposes, the appellants are still in physical possession of the subject land and if that stands verified from the records after inquiry

being conducted by the respondents, at least once the Act, 1976 stood repealed, divesting the rights of the appellants from the subject property, in the given circumstances, may not be justified and needs indulgence of this Court to invoke its jurisdiction under Article 142 of the Constitution to do complete justice with the parties.

12. Per contra, learned counsel for the respondents, while supporting the impugned judgment, submits that the finding has been returned by the Land Tribunal noticing the procedure that was adopted for taking possession of the subject land in question as prescribed under the Act, 1976 under the impugned order and that has not been challenged at any later stage and that being the uncontroverted factual statement on record, no error was committed by the High Court in passing the impugned judgment which may call for interference.

13. After we have heard learned counsel for the parties, we are also of the view that once the Land Tribunal has returned a finding in reference to the procedure which was followed as contemplated under Section 10 of the Act, 1976 for the purpose of taking possession of the subject land on 24th November, 1987 and making payment of

compensation on 29th February, 1988 after ascertaining the price under Section 11 of the Act, not being assailed by the appellants at any stage has attained finality.

14. So far as the appeal preferred by the co-parceners at the later stage before the Urban Land Tribunal is concerned, we would restrain from making any comment for the reason that the co-parceners have never questioned the earlier proceedings at any later stage even after the order was passed on 21st September, 1992 and so far as the case of the present appellants is concerned, the Land Tribunal had restrained in recording any finding in this regard.

15. That apart, the appellants have failed to place even any documentary evidence in rebuttal before this Court that the finding returned by the Tribunal of taking over possession in presence of Panchas of the subject land on 24th November 1987, and payment of compensation by an Order dated 29th February 1988, after ascertaining the price under Section 11 of the Act is factually not sustainable.

16. In absence thereof, the Court has to proceed on the premise as to what will be the legal effect if the State authorities having gone

through a procedure prescribed under Section 10 of the Act, 1976 took possession of the subject land on 24th November, 1987 and the payment of compensation in furtherance thereof was made over by order dated 29th February, 1988 and unless the finding remain undisturbed, the consequential effect would be that the State Government was justified in holding possession and there appears no error in the mutation opened in favour of the State Government.

17. So far as the writ petition filed by the appellants before the learned Single Judge of the High Court is concerned, that was only in reference to restitution of deemed possession because of the order of remand passed by the Land Tribunal in appeal preferred by the co-parceners as referred to in the Order dated 21st September, 1992 but that has not disturbed the finding returned by the Land Tribunal in the case of the appellants as being reflected from the Order dated 30th May 1988.

18. That albeit being the factual position emerged from the record, the High Court has rightly dismissed the writ petition and also the letters patent appeal preferred by the appellants in the instant proceedings.

19. The submission made by learned counsel for the appellants that they are in possession of the subject land in question for all practical purposes is not substantiated for the reason that the Tribunal has returned a finding of possession being taken over by the Government, after due compliance of the procedure prescribed under the law on 24th November 1987. Mere statement, without there being any factual foundation, is of no substance.

20. The further submission made by learned counsel for the appellants that the appellants being the poor agriculturists and this is the only source of their livelihood, we have full sympathy with the appellants but this Court has to proceed on the basis of pleadings and in accordance with law. Once the land stood vested with the Government on 24th November, 1987 and compensation has been made over in furtherance thereof by the competent authority after ascertaining the price of the subject land determined under Section 11 of the Act on 29th February 1988, there appears no justification for the appellants to claim deemed possession of the subject land in question and even if they are in physical possession, no right could be claimed in reference to the subject land by the appellants.

21. Consequently, in our considered view, the appeal fails and is accordingly dismissed. No costs.

22. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
SEPTEMBER 05, 2022.