

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL Nos.10629-10631 OF 2014

The Competent Authority Calcutta,
Under the Land (Ceiling And Regulation)
Act, 1976 And Anr.Appellant(s)

Versus

David Mantosh & Ors.Respondent(s)

WITH

CIVIL APPEAL Nos.9829-9830 OF 2016

Apollo Gleneagles Hospitals Ltd.Appellant(s)

Versus

David Mantosh & Ors.Respondent(s)

AND

CIVIL APPEAL No.9900 OF 2016

Apollo Gleneagles Hospitals Ltd.Appellant(s)

Versus

David Mantosh & Ors.Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. C.A. Nos.10629-10631 of 2014 are filed by the Competent Authority against the Judgment and Order dated 27.09.2013 in F.A. No. 202/2008, Judgment and Order dated 24.07.2014 in the Review Petition being RVW No. 36/2014 with CAN No.1450/2014 in F.A. No.202/2008 passed by the High Court at Calcutta.

2. C.A. Nos.9829-9830 of 2016 are filed by M/s Apollo Gleneagles Hospitals Ltd. against the judgment and order dated 27.09.2013 in F.A. No.202/2008 with CAN No.1054/2014 and C.A. No. 9900/2016 against the judgment and order dated 24.07.2014 in RVW No.117/2014 in F.A. No.202/2008 passed by the High Court at Calcutta.

3. In order to appreciate the controversy involved in these appeals, it is necessary to set out the facts

in detail, which led to filing of these appeals. The facts set out hereinbelow are taken from the list of dates filed by the parties.

4. Appellant No.1 herein is the Competent Authority, Calcutta-Defendant No. 3, Appellant No.2 is the State of West Bengal-Defendant No. 2, whereas Respondent Nos. 1 to 7 herein are Plaintiff Nos. 1 to 7, Respondent No. 8 is Defendant No.1 and Respondent No. 9 is Defendant No. 2 in the Civil Suit out of which these appeals arise.

5. The dispute pertains to land bearing No.73, holding No.42, Canal Circular Road, Calcutta - 700 054 measuring around 2 bighas, 2 katas, 4 chataks and 25 sq. ft. (which is a part of and adjacent to a bigger chunk of land measuring around 29 bighas) (hereinafter referred to as “suit property”).

6. One Abdul Jabbar claimed to have purchased the suit property on 29.07.1919 in an auction sale.

He, in turn, claimed to have sold it to one Maula Ataul Haq on 29.09.1927 who, in turn, is alleged to have sold it to one Poonam Chand Sethia on 15.08.1933.

7. Mr. Poonam Chand Sethia, in turn, on 17.08.1933 claimed to have transferred the suit property to one Moti Chand Nakhat, Amrito Lal Shah, Thakur Lal Mehta and Champa Lal Daphtary, being the trustees of a Trust who, in turn, claimed to have transferred it to one Mr. P.S. Mantosh - the predecessor-in-interest of the original Plaintiff, who is now represented by his legal representatives (Respondent Nos. 1 to 7).

8. It may be mentioned here that after 1933 till 30.11.1962, the suit property went through several transfers between various parties. It was also the subject matter of civil and criminal proceedings between the parties, who claimed to have possessed

the suit property. We, however, do not consider it necessary to set out these details here.

9. Suffice it to say, that eventually the suit property along with its adjacent land bearing Nos.73, 60, 72, etc. came into the hands of Mr. Monilal Goyee and Mr. Bijay Kumar Goyee who, in turn, claimed to have sold it to M/s Hindustan Housing on 15.06.1957. M/s Hindustan Housing, in turn, transferred the suit property along with adjacent land to M/s Orient Beverage Ltd. (hereinafter referred to as “M/s OBL”) vide registered sale deed dated 30.11.1962.

10. On 17.02.1976, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the Act”) came into force. It was extended to the State of West Bengal on the same day. The suit property along-with the adjacent land was an “urban land” under Section 2(o) of this Act, and was falling under

urban agglomeration as defined by Section 2(n) of the Act.

11. M/s OBL claiming to be a “person” under Section 2(i) of the Act, and claiming “to hold” the suit property under Section 2(l) of the Act in excess of the ceiling limits specified under Section 4 of the Act filed a statement on 15.09.1976 under Section 6(1) of the Act before the Competent Authority.

12. It may be mentioned here that in the statement M/s OBL showed the suit property as a vacant land, and prayed that they be allowed to hold the excess vacant land for constructing the dwelling houses thereon under Section 21 of the Act.

13. The Competent Authority by order dated 27.09.1988, however, rejected the prayer made by M/s OBL. The rejection resulted in M/s OBL agreeing to surrender the possession of the entire

excess land held by them beyond the prescribed ceiling limit. On 04.01.1990, M/s OBL accordingly surrendered their possession on the land bearing Nos. 58, 60, 72, 73, 79, & 81 situated at Canal Circular Road, Calcutta in favour of the State. The said surrender included the suit property also. The Deputy Secretary, Land & Land Reforms Department then directed M/s OBL to file the statement as required under Sections 8 to 10 of the Act.

14. On 22.01.1990, M/s OBL informed the Competent Authority that they are prepared to surrender the possession of the suit property subject to awarding them compensation as provided under the Act. On 08.02.1990, the Competent Authority served final statement under Section 9 of the Act on M/s OBL. This led to the issuance of a notification by the State under Section 10(1) of the

Act which was duly published in the Calcutta Gazette Extraordinary on 15.02.1990 inviting objections from the general public. The Competent Authority, however, did not receive any objection from any person pursuant to the notice published. This was followed by issuance of the final notification under Section 10(3) on 11.05.1990 which resulted in vesting of the suit property in the State of West Bengal free from all encumbrances.

15. The Competent Authority, on 23.05.1990, served notice to M/s OBL calling upon them to physically surrender the possession of the suit property to the State, which was done on 28.05.1990.

16. The State of West Bengal (Appellant No.2 herein) on 04.04.1991 allotted the suit property (No.73) along with adjacent land measuring around 34,147 sq. meters bearing premises Nos. 58, 59, 60,

61, 62, 72, 73, 79, & 81 at Canal Circular Road to Respondent No. 8 (Defendant No. 1-M/s Apollo Gleneagles Hospitals) on a long term lease of 30 years. The Respondent No. 8 (Defendant No. 1) then was given possession of the land from the State. The State executed a lease deed dated 02.12.1994 in favour of M/s Apollo Gleneagles Hospitals. Thereafter, M/s Apollo Gleneagles Hospitals set up a hospital at a huge cost, and is running their hospital since the last two decades.

17. In the year 1992, Respondent No.1 (Plaintiff No. 1) woke up from her slumber, and claimed to be the owner and holder of the suit property and part of the adjacent land. The Plaintiff felt aggrieved by the notification issued under Section 10(3) on 11.05.1990 and filed a Writ Petition (WP No.1382/1992) to challenge the same before the Calcutta High Court.

18. The Single Judge vide Order dated 26.08.1992 allowed the Writ Petition and quashed the notification dated 11.05.1990.

19. The Respondent No.8 (Apollo Gleneagles Hospitals Ltd.) felt aggrieved by the order of the Single Judge dated 26.08.1992 and filed Writ Appeal No.324/1993 before the Division Bench of the High Court.

20. The Division Bench vide order 03.04.1997 allowed the appeal and set aside the order of the Single Judge, and dismissed the Writ Petition. As a consequence, thereof, the notification dated 11.05.1990 issued by the State was held to be legal and valid and was accordingly restored.

21. The Respondent No.1 felt aggrieved by the Judgment of the Division Bench and filed S.L.P.(C) No.12726 of 1997 in this Court. By Order dated 28.07.1997, this Court dismissed the said petition.

This Court, however, observed that if the Petitioner (Respondent No.1 herein) has any appropriate remedy under the Act or any other law, it would be open to her to avail the same in accordance with law.

22. It is in this background, that Respondent Nos. 1 to 7 filed Civil Suit (TS No. 101/1998) out of which the present appeals arise. The suit was filed against the present Appellants, i.e., the Competent Authority under the Act, the State of West Bengal, and Respondent Nos. 8 and 9 in the Court of Additional District Judge, Sealdah.

23. The Civil Suit was filed for declaration and possession of the suit property. The Plaintiffs claimed a declaration that the entire proceedings which culminated in the issuance of the notification dated 12.02.1990 under Section 10 (1) under the Act in relation to the suit property be declared null

and void and the plaintiffs be declared owners of the suit property. The reliefs claimed in the suit read as under:

“(a) A declaration that the Notification No.53-X-U.L.(Cal) dated February 12, 1990 is null and void.

a) A declaration the statement filed by the defendant No.2 under sub-Section 1 of Section 6 of Urban Land (Ceiling and Regulation) Act, 1976 is null and void so far as it relates to premises No.73, Canal Circular Road, Calcutta being the suit premises;

b) A declaration that the draft statement prepared by the defendant No.3 under Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976, on the basis of the statement filed by the defendant No.2 is null and void and not binding upon the plaintiffs so far as it relates to the suit property;

c) A declaration that letter No.1500-UL/AV-11/19 dated April 4, 1991 and/or the purported allotment of the suit premises to the defendant No.1 by the defendant No.3 is inoperative, collusive, fraudulent and void;

d) A declaration that the plaintiffs are the owners of the premises No.73, Canal Circular Road, Calcutta and the plaintiffs

is entitled to possession of the suit property as owner;

e) A decree for recovery of possession evicting the defendant No.1 from suit property;

f) A decree for a sum of Rs.1 crore from the defendant No.1 as mesne profit and/or damages for illegal use and occupation of the suit premises;

g) Costs of the suit;

h) Such other or further relief or reliefs that the plaintiffs may be entitled to in law or equity.”

24. The Appellants-State of West Bengal, the Competent Authority, and Respondent Nos. 8 and 9 herein filed their respective Written Statements.

25. The Trial Court on the basis of pleadings framed the following 11 issues:

“1. Is there any cause of action for the suit?

2. Is the suit maintainable?

3. Is the suit barred by limitation?

4. Is the suit bad for non-joinder of necessary parties?

- 5. Has the plaintiff any right title and interest over the land in suit?**
- 6. Has the suit property vested to the State?**
- 7. Is the Plaintiff entitled to get a decree for declaration that Notification No.53-X-UL(Cal) dated 12.02.1990 is null and void, or a declaration that the statement filed by the Defendant No.2 under provisions of Urban Land (Ceiling & Regulation) Act is null and void or declaration that the statement prepared by Defendant No.3 is null and void or a declaration that letter No.1500-UL/AV/II/19 dated 04.04.1981 and the purported allotment of the suit premises to the Defendant No.1 is inoperative, collusive, fraudulent and void?**
- 8. Is the Plaintiff entitled to a decree for declaration that the Plaintiff is entitled to a possession of the suit property as a co-owner?**
- 9. Is the plaintiff entitled to get a decree for recovery of possession of the suit property by evicting the Defendant No.1 therefrom?**
- 10. Is the Plaintiff entitled to a decree of Rs.1 crore against the Defendant and mesne profit?**
- 11. To what other relief, if any, is the Plaintiff entitled to?"**

26. The parties then adduced their evidence. The Trial Court vide judgment and decree dated 24.04.2008 answered all the 11 issues against the Plaintiffs (Respondent Nos. 1 to 7 herein) and dismissed the Suit which gave rise to filing of First Appeal (No.202/2008) before the Calcutta High Court by the Plaintiffs - Respondent Nos. 1 to 7.

27. The Division Bench vide the impugned Judgment allowed the plaintiffs' appeal, and set aside the Judgment and Decree of the Trial Court, and decreed the suit filed by the Plaintiffs'. The High Court held that the suit is maintainable; that it is not barred; that the Civil Court has the jurisdiction to try the civil suit on merits; that the Plaintiffs are the owners of the suit property; that the competent authorities did not follow the mandatory procedure laid down under the Act; that the proceedings under

the Act are not binding on the Plaintiffs; that the Appellant–Apollo Gleneagles Hospitals was in unauthorized possession of the suit property and were directed to deliver vacant possession of the suit property to the Plaintiffs, or in the alternative, to pay its value within 3 months to the Plaintiffs.

28. The Competent Authority - Defendant No. 3, the State of West Bengal - Defendant No. 4 and Apollo Gleneagles Hospitals - Defendant No.1 being aggrieved by the Judgment of the High Court filed the present Special Leave Petitions in this Court, which have been renumbered as Civil Appeal Nos. 10629-10631/2014.

29. The question, which arises for consideration in these appeals, is whether the Division Bench of the High Court was justified in allowing the appeal filed by the Plaintiffs' (Respondent Nos. 1 to 7) and decreeing the suit.

30. We have heard Mr. Kalyan Bandopadhyaya, learned senior counsel appearing for the Appellant - State of West Bengal and Competent Authority, Mr. C.U Singh learned Senior counsel appearing for Appellant - M/s Apollo Gleneagles Hospitals and Mr. Dhruv Mehta, learned senior counsel for the Respondent – Plaintiffs.

31. The counsel for the Competent Authority *inter alia* submitted that:

(i) the reliefs prayed for by the Plaintiffs could not be granted by the Civil Court, as the Civil Suit was barred under the Act. Having regard to the scheme of the Act, the Act is a self-contained Act which provided adequate remedies to the land holders to challenge any action taken, and orders passed by the competent authorities in revision/appeals, as

the case may be, in ceiling proceedings under the Act itself.

(ii) It was further contended that Respondent Nos. 1 to 7 having lost their legal battle, which had attained finality up to this Court in the first round of litigation, all issues pertaining to the suit property had already come to an end. According to the learned counsel, no issue in relation to the suit property survived for adjudication by any Court, much less the Civil Court.

(iii) It was further contended that the legal effect of issuance of the notification under Section 10 (1) of the Act on 12.02.1990, followed by issuance of the consequential final notification under Section 10(3) on 11.05.1990, was that the suit property stood vested in the State free from all encumbrances.

Therefore, no person has any right to claim a right, title and interest over the suit property on and after the suit property stood vested in the State on 11.05.1990.

(iv) Learned counsel for the Appellants then contended that the Civil Suit filed by the Plaintiffs (Respondent Nos. 1 to 7) was barred by limitation, because the Plaintiffs had slept over their alleged right of ownership over the suit property by not availing of remedies under the Act.

(v) According to learned counsel for the Appellants, when M/s OBL claimed to have purchased the suit property in 1962, the Plaintiffs ought to have filed a Suit for Declaration of their title, which they failed to do so. In any case, the Plaintiffs had a remedy to file their statement under Section 6 of the

Act on 15.09.1976, or raised an objection on the issue of ownership *qua* M/s OBL at that time under Section 10(4) of the Act.

(vi) It was contended that the Respondent-Plaintiffs, at no stage of the pendency of the ceiling proceedings, raised any objection under Section 10 (1). Hence, their right, if any, to claim any right, title and interest in the suit property got extinguished consequent upon vesting of the suit property in the State under Section 10(3) of the Act on and after 11.05.1990.

32. The learned Senior Counsel for Apollo Gleneagles Hospitals *inter alia* while elaborating the submission of learned senior counsel Mr. Kalyan Bandopadhyaya submitted that:

(i) The suit property is governed by the Act, which continues to be in operation in the State

of West Bengal. As a consequence, according to the learned counsel, a Civil Suit would impliedly be barred and hence the Respondents had a remedy which is available under the Act. It was urged that the Act being a complete Code creates rights, remedies and fora for adjudication of disputes and hence the Civil Suit filed by Respondents No.1 to 7 would not be maintainable.

(ii) That in any event Respondent Nos. 1 to 7 had failed to establish their claim of ownership and possession over the suit property. The suit instituted by Respondent Nos. 1 to 7 was also barred by limitation because the Plaintiffs/Respondent Nos. 1 to 7 were not in possession of the suit property since 1962. The notification under the Urban Land Ceiling and Regulation Act, 1976 was published on

17.02.1976 and as per scheme of the Act, the owner of the suit property was obligated to file a return, since the suit property was beyond the ceiling limit.

(iii) Plaintiffs/Respondent Nos. 1 to 7 claimed that their predecessor-in-interest viz. namely Ms. Daisy Mantosh was the owner of premises No. 71/1, 60,72 and 73 Canal Circular Road and since the extent of land held was in excess of the ceiling limit, yet she did not file any return in respect of the suit properties.

(iv) On the other hand, M/s Orient Properties Pvt. Ltd. (renamed as M/s Orient Beverages Ltd. "OBL") submitted a return under Section 6 of the Act, and also made an application under Section 21 for retaining the excess land, which was refused on 27.09.1986.

(v) The Land and Reforms Department on 04.04.1991 decided to allot the suit property to M/s Janapriya Hospital Corporation Ltd., later renamed as Apollo Gleneagles Hospitals for setting up a hospital. This was done by executing a lease for 30 years, for which a premium of Rs. 98, 41,300 was paid to the State. A large hospital with all amenities has since been set up.

33. Mr. Dhruv Mehta, learned Senior Counsel, appeared on behalf of Respondent Nos. 1 to 7/Plaintiffs and supported the reasoning and conclusion of the Division Bench of the High Court in the impugned Order. It was *inter alia* contended that no case for interference was made out with the impugned Order.

34. The Counsel submitted that there was a non-compliance with the provisions of the Act and the

Rules framed thereunder while dealing with the suit property. A mere notification in the Official Gazette was not sufficient for vesting to take place under the Act. The notification, according to learned counsel was issued without ensuring proper compliance of the Act read with Rules and therefore the entire process of vesting of the suit property in the Appellants was vitiated and bad in law.

35. It was then contended that the Civil Suit was maintainable and the civil court's jurisdiction was not impliedly excluded as the Civil Suit was filed pursuant to the directions of the Division Bench of the Calcutta High Court and this Court in SLP (C) No. 12726 of 2007. This Court had dismissed the said SLP vide Order dated 28.07.1998 with the liberty to pursue the remedy available under the Act or any other law. It was submitted that since the Respondent Nos. 1 to 7/Plaintiffs were illegally

dispossessed from the suit property (as they were not given a proper and valid notice in terms of the provisions of the Act and the Rules framed thereunder), there was a violation of the principles of natural justice.

36. Thus, according to learned counsel, even where a statute gives finality to a decision, such a provision does not exclude cases where the provisions of the particular statute have not been complied with, or the tribunal has not acted in conformity with the statute or fundamental principles of judicial procedure. Hence, the Civil Suit filed by Respondent Nos. 1 to 7/Plaintiffs was maintainable and not barred by law.

37. It was sought to be contended that the rights, title and interest of the Respondent Nos. 1 to 7/Plaintiffs in the suit property are common law

rights and do not emanate from the Act and therefore, must be adjudicated only by a civil court.

38. The learned counsel further contended that there was no occasion for the Respondent Nos. 1 to 7/Plaintiffs to file a Return or declaration in respect of the suit property since the suit property was not a “vacant land” in terms of the Act. The Act only contemplates filing of Returns with respect to “vacant lands”. Hence, the provisions of the Act were not applicable to the present case.

39. The learned Counsel further argued that the civil court was therefore the proper forum for adjudication of the disputes between the parties as the Appellants/Defendants had colluded amongst themselves with respect to the suit property and had committed a fraud on the Respondent Nos. 1 to 7/Plaintiffs. Hence, the dispute could not have been

decided by a tribunal by ousting the jurisdiction of the civil court.

40. Lastly, the Senior Counsel contended that the Civil Suit filed on 29.06.1998 was well within limitation since the cause of action of the Respondent Nos. 1 to 7/Plaintiffs to file the suit ripened only after this Court vide Order dated 28.07.1997 had disposed of the SLP (C) No. 12726/1997 granting liberty to the Respondent Nos. 1 to 7/Plaintiffs to pursue any appropriate remedy under the Act or any other law.

41. We have heard the learned Senior Counsels appearing for the parties and perused the record of the case including the written submissions. We find force in the submissions advanced on behalf of the Appellants - Defendants.

42. The three principal issues, which arise for consideration in these appeals, are:

First, whether the High Court was justified in holding that the Civil Court has the jurisdiction to try the civil suit in relation to the suit property which was subjected to ceiling proceedings under the Act.

Second, whether the Civil Court has jurisdiction to declare the ceiling proceedings under the Act as void and not binding on the Plaintiffs even though the same had attained finality in the first round of litigation upto this Court.

Third, whether the High Court was justified in holding that the Plaintiffs are the owners of the suit property and entitled to claim possession of the suit property or its value from the Appellant - M/s Apollo Gleneagles Hospitals.

43. Before we examine the afore-mentioned three issues, it is necessary to first examine the scheme of

the Act in question and the law governing the issues raised in the present appeals.

44. The Act in question was enacted to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of building on such land, and for matters connected therewith. It was enacted with the object of preventing the concentration of urban land in the hands of a few persons, and speculation and profiteering with a view to bringing about the equitable distribution of land in urban areas to subserve the common good.

45. The Act has 47 Sections. Section 2(a) to (q) defines the various expressions used in the Act. Section 3 prohibits the person from holding the land in excess of the ceiling limits after coming into the force of the Act. Section 4 specifies the ceiling limit

for holding the land by any person. Section 5 deals with the transfer of vacant land by its holder. Section 6 provides for filing of Statement by the persons holding vacant land in excess of ceiling limits. Section 7 also deals with filing of Statement in case if the land is situated within the jurisdiction of two or more competent authorities. Section 8 deals with preparation of draft statement as regards the vacant land in excess of ceiling limits. Section 9 deals with the preparation of final statement. Section 10 deals with acquisition of vacant land in excess of ceiling limits.

46. Section 11 provides for payment of amount for vacant land acquired. Section 12 provides for constitution of Tribunal and appeal to the Tribunal. Section 13 provides for filing second appeal to the High Court against the order of Tribunal. Section 14 provides for mode of payment. Section 15 provides

for ceiling limits on future acquisition by inheritance, bequest or by sale in execution of decree etc. Section 16 deals with filing of Statement when the Act is adopted by the State subsequently. Section 17 deals with power to enter upon any vacant land. Section 18 provides for imposition of penalties for concealment of particulars of vacant land. Section 19 provides exclusion clause from applicability of certain provisions of the Act to some specified landowners. Section 20 deals with power to exempt any land.

47. Section 21 provides that excess land not to be treated excess land in certain cases. Section 22 deals with retention of vacant land under certain circumstances. Sections 23 and 24 deal with disposal of vacant land acquired under the Act. Section 25 defines certain expressions. Section 26 enjoins notice to be given before transfer of vacant

land. Section 27 provides for prohibition on transfer of urban property. Section 28 deals with regulation of registration of documents in certain cases. Section 29 deals with regulation of construction of building with dwelling units. Section 30 gives power of demolition and stoppage of building. It also provides a right of appeal and bar of filing suits in civil court in relation to matters falling under Section 30.

48. Section 31 deals with powers of competent authority. Section 32 deals with jurisdiction of competent authorities and the Tribunal in special cases. Section 33 provides a right of appeal to the appellate authority whose order shall be final whereas Section 34 provides for filing revision to State. Section 35 empowers the State to issue orders and directions to competent authority. Section 36 gives power to central government to give

directions to the State Government. Section 37 deals with filing of returns and report by the competent authority. Section 38 deals with offences and punishment. Section 39 deals with offences by companies.

49. Section 40 again provides for a bar from filing of the suit or other legal proceedings against the Government and officers in respect of anything, which is done in good faith or intended to be done by or under the Act. Section 41 deals with cognizance of offences. Section 42 gives overriding effect of the Act on other laws. Section 43 specifies the court fees payable on the applications, appeals or other proceedings under the Act. Section 44 specifies certain officers to be public servant. Section 45 empowers the authorities to correct the clerical errors. Section 46 is a rule making power

and lastly Section 47 gives power to remove difficulties.

50. The entire scheme of the Act set out above would make two things clear. First, the Act is a self-contained code in itself, which provides complete machinery while dealing with the rights of the land-owners in relation to their lands, which are in excess of the ceiling limits prescribed under the Act. It also provides adequate remedies to correct all kinds of errors committed by the competent authority under the Act; and Second, the Act gives finality to the orders passed by the appellate authority under Section 33, and also provides a bar to file the civil suits in relation to cases falling under Section 30 (5) and Section 40 of the Act.

51. The Constitution Bench of this Court in the case of **Dhula Bai vs. State of MP** (AIR 1969 SC 78) examined the question as to when the jurisdiction of

the Civil Court can be held to have been expressly or impliedly excluded in trying a civil suit in the context of Section 9 of Code of Civil procedure, 1908.

52. Justice Hidayatullah, the then learned Chief Justice, speaking for the Bench in his inimitable style, laid down 7 tests for examining the aforementioned question. These tests read as under:

“(1) Where the statute gives a finality to the orders of the special tribunals the civil courts’ jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the

intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is

an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

53. In the light of the tests laid down in **Dhula Bai** (*supra*) and further keeping in view the scheme of the Act, we have to examine the issue as to whether the jurisdiction of the Civil Court is expressly or impliedly excluded in trying the civil suit in relation to matters arising out of the Act in question and second, whether the Civil Court has the jurisdiction to declare the proceedings held under the Act, as being void.

54. Having examined the issue, we are clearly of the opinion that the present case falls under clause(1) of **Dhula Bai** (*supra*) and satisfies the test laid down therein. Hence, the jurisdiction of the

Civil Court is held to be excluded by implication to try the civil suit in question. This we say for the following reasons: -

First, the Act in question gives finality to the orders passed by the appellate authority [refer to Section 33(3)].

Second, the Act provides adequate remedies in the nature of appeals, such as first appeal to the Tribunal and second appeal to the High Court. [refer to Sections 12 (4), 13 and 33 (1)].

Third, the Act is a complete code in itself and gives overriding powers on other laws (refer to Section 42).

Fourth, the Act expressly excludes the jurisdiction of the Civil Court in relation to the cases falling under Sections 30 and 40 (refer to Section 30(5) and Section 40).

Fifth, as a result of dismissal of writ petition and SLP, it is held therein that the proceedings under the Act in question were done in conformity with the Act in question.

55. In light of the aforesaid five reasons - *a fortiori*, the jurisdiction of the Civil Court in relation to all the issues arising under the Act is held impliedly excluded thereby satisfying all the conditions set out in clause (1) of **Dhula Bai** (*supra*).

56. We are, therefore, of the considered view that the jurisdiction of the Civil Courts to try the civil Suits with respect to the lands, which were subjected to ceiling proceedings under the Act, are held to be impliedly barred, since the Act excludes the jurisdiction of the Civil Court.

57. Now coming to the facts of the case, we find from the relief prayed for in the plaint (see prayers (a) to (d) quoted *supra*) that the plaintiffs have

sought a declaration, that the notification dated 12.02.1990 issued under Section 10 of the Act be declared null and void; Second, a statement filed by M/s OBL - defendant No. 2 under Section 6 of the Act before the Competent Authority be declared null and void; Third, the statement filed by defendant No. 3 under Section 8 of the Act be declared null and void.

58. In our opinion, the Civil Court had no jurisdiction to grant the afore-mentioned reliefs inasmuch as its jurisdiction to grant such reliefs is impliedly barred under the Act.

59. In our view, if Respondent Nos. 1 to 7 - Plaintiffs claimed themselves to be the lawful owners and holders of the suit property to the exclusion of others, there were three remedies available in law which they could have availed of:

(i) *First*, a remedy accrued in favour of Respondent Nos. 1 to 7 if not earlier when M/s OBL claimed to have purchased the suit property from the alleged vendors on 30.11.1962. It was at that point of time, a cloud was cast on their alleged title in relation to the suit property. Since registration of the sale deed amounts to a public notice, the Respondents should have filed a Civil Suit against the vendors of M/s OBL, and M/s OBL, for a declaration of their ownership and cancellation of their sale deed in relation to the suit property. It was not availed of.

(ii) The *second* remedy arose under Section 6 of the Act, for filing a statement as owners and holders of the suit property before the Competent Authority, after the Act came into

force in 1976. This was also not availed of by the plaintiffs.

(iii) The *third* remedy was in filing objections under Section 10 (1) of the Act before the Competent Authority when the Competent Authority invited objections on 12.02.1990 from public and pursuant to it, the notice was issued in that behalf. The respondents again did not avail of this remedy, and failed to file any objections.

60. The Respondents-Plaintiffs having failed to avail any of the three remedies at appropriate time, resorted to fourth remedy of filing a Writ Petition to challenge the notifications dated 11.05.1990 in the High Court of Calcutta. This Writ Petition was, however, dismissed by a Division Bench of the High Court vide dated 03.04.1997. The order of dismissal

was affirmed vide order dated 28.07.1997 passed by this Court in SLP (C) No.12726 of 1997.

61. In our considered opinion, the dismissal of the SLP by this Court vide Order 28.07.1997 had a three-fold effect on the rights of the parties to the *Lis* in relation to the suit property:

First, the entire action taken by the competent authority initiated from Section 6 of the Act till issuance of notifications under Section 10(1) and (3) of the Act issued on 12.02.1990 and 11.05.1990 in relation to the suit property were held to be in conformity with the provisions of the Act. This satisfied the last condition of clause (1) of **Dhula Bai** (*supra*) also.

Second, the suit property stood vested in the State free from all encumbrances under Section 10 (3) of the Act.

Third, the State Government was held to be in legal possession of the suit property as the owner on and after 11.05.1990, to the exclusion of all, by following the due procedure of law.

62. In such a situation, the Respondent Nos.1 to 7 could not take recourse to filing of the Civil Suit on the basis of the observation made by this Court.

63. As observed *supra*, if there were any remedy available to the Respondents in relation to the suit property, then any such remedy was under the Act but not by filing a civil suit in a Civil Court and start a fresh round of litigation with respect to the suit property. Such a suit was, in our view, impliedly barred in the light of exclusion of jurisdiction of the Civil Court under the Act.

64. Indeed, we find support for our reasoning by the decisions of this Court rendered in several decided cases as mentioned below.

65. In **State of Bihar vs. Dhirendra Kumar** (1995) 4 SCC 229, a question arose as to whether a civil suit is maintainable, and if so, whether ad-interim injunction could be issued by the Civil Court in such suit against the State where the proceedings under the Land Acquisition Act were taken pursuant to the notice issued under Section 9 of the Land Acquisition Act, and delivered to its beneficiary.

66. This Court examined the issue in the context of the scheme of the Land Acquisition Act in *juxtaposition* with Section 9 of the CPC and held that having regard to the object and scheme of the Act, the jurisdiction of the Civil Court to deal with the matters falling under the Act stands impliedly

excluded, and is barred. Para 3 of the decision is apposite and reads as under:

“3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under Section 6, the public purpose gets crystallised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11-A now prescribes limitation to make the award within 2 years from the last date of publication envisaged under Section 6 of the Act. In an appropriate case, where the Government needs possession of the land urgently, it would exercise the power under Section 17(4) of the Act and dispense with the enquiry under Section 5-A. Thereon, the State is entitled to

issue notice to the parties under Section 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under Section 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable.” (Emphasis supplied)

67. This very issue then came up for consideration in another decision of this Court in **Laxmi Chand vs. Gram Panchayat Kararia** (1996) 7 SCC 218. In that case, the question arose as to whether the civil suit filed to challenge the award passed under the Land Acquisition Act is maintainable and, if so, whether the Civil Court has jurisdiction to entertain

such suit for deciding the issue raised therein on its merits.

68. This Court held that the Civil Court has no jurisdiction to entertain and try such civil suit on its merits. Its jurisdiction is impliedly barred having regard to the object and the scheme of the Act. Paras 2 and 3 of the decision are apposite and read as under:

“2.....It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The *inference* gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from

the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court."

(Emphasis supplied)

69. This view was reiterated by this Court in two later decisions (refer - **Bangalore Development Authority vs. K.S Narayan** (2006) 8 SCC 336 and **State of Punjab vs. Amarjit Singh** (2011) 14 SCC 713).

70. On comparing the scheme of the Land Acquisition Act with the scheme of the present Act in question, we find that the intention of the Legislature is more explicit in excluding the jurisdiction of the Civil Court under the Act in question.

71. Indeed, it is clear from a reading of Sections 12(4), 13, 30, 33(1), 33(3), 33(5) and 40 of the Act in question. We also find that some sections of the Act in question which has bearing on the question of exclusion of the jurisdiction of the Civil Court are in *pari materia* with the Sections in the Land Acquisition Act whereas some Sections of the Act which also have bearing on this question are not to be found in the Land Acquisition Act. Yet, this Court on examining the scheme of the Land Acquisition Act and the remedies provided therein has held that the jurisdiction of the Civil Court is

impliedly excluded and barred to try the civil suit. The scheme of this Act, therefore, clearly indicates that exclusion of Civil Court jurisdiction is provided therein impliedly.

72. It is for all these reasons, we have no hesitation in holding that the Civil Court had no jurisdiction to try the civil suit in relation to the land which is subject to ceiling proceedings under the Act in question; nor did the Civil Court have the jurisdiction to declare the proceedings held under the Act, as void or illegal or *non est*, since it was impliedly excluded and barred under the Act.

73. Mr. Dhruv Mehta, learned senior counsel for the Respondents - Plaintiffs vehemently argued on the facts of the case, which are set out in detail above, that a perusal of the facts would go to show as to how the plaintiffs derived their title over the suit property from their predecessor-in-title, and the

prejudice which was caused to them by the ceiling proceedings which proceeded against them behind their back.

74. We reject the contentions and submissions made on behalf of Respondent Nos. 1 to 7/ Plaintiffs since we have *inter alia* held that the Civil Court had no jurisdiction to entertain a Civil Suit with respect to proceedings under the Urban Land Ceiling Act, being a special and self-contained enactment.

75. Furthermore, the Respondent Nos. 1 to 7/ Plaintiffs having failed to raise objections to the ceiling proceedings at any stage, the suit property stood vested in the State, free from all encumbrances. The belated challenge to the same is meritless. Having failed to avail of the remedies under the Urban Land Ceiling Act and the one resorted to resulted in rejection of the claim made

therein upto this Court, Respondent Nos.1 to 7/ Plaintiffs sought to start a fresh round of litigation by filing a Civil Suit, which was barred under the Act. Furthermore, the State after acquiring ownership over the suit land has allotted the suit land to the M/s Apollo Gleneagles Hospitals on a 30 years lease. Hence, the situation, in our view, has now become irreversible.

76. In view of the foregoing discussion, we are of the view that the Division Bench was not justified in allowing the Respondents' appeal, and decreeing the Civil Suit whereas the Trial Court was right in dismissing the Civil Suit.

77. As a consequence, the appeals succeed and are allowed. The impugned judgments are set aside and the judgment of the Trial Court is restored. As a result thereof, the suit filed by Respondent Nos. 1

to 7 out of which these appeals arise is dismissed
with no order as to costs.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[INDU MALHOTRA]

New Delhi;
February 26, 2019.