

(2020) 06 BOM CK 0005
In the Bombay High Court
Case No : Suit No. 4347 Of 1996

Pandurang Kamlakar Patil (Since Deceased) And Others APPELLANT
Vs
M/s. Soham Builders And Another RESPONDENT

Date of Decision : 02-06-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 3 Rule 1, Order 3 Rule 2
Specific Relief Act, 1963 — Section 6, 8, 9
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6, 6(1), 8(4)
Bombay Tenancy And Agriculture Lands Act, 1948 — Section 2(14), 4(A), 41, 70, 70(b), 85, 87(1), 88(a)(1), 88(1)(b), 88(b)
Bombay Tenancy Act, 1939 — Section 3, 3A, 4, 4A, 31
Evidence Act, — Section 114
Monopolies And Restrictive Trade Practices Act, 1969 — Section 37
Limitation Act, 1963 — Article 64, 65

Citation : (2020) 06 BOM CK 0005

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Suresh K. Mali, Vishnu L. Chaudhari, Vaibhav R. Shah, Deepti Panda, Jheel Mehta, M/s. Purnand & Co, Manish Upadhye, Brijesh Upadhyay

Final Decision : Dismissed

Judgement

1. This is a suit for declaration, injunction, possession and damages in respect of the lands situated at village Mulund (E), Tal.Kurla, Mumbai Suburban, District - Mumbai bearing CTS No. 98, 62, 63 and 64 corresponding survey Nos. 29, 30, 31 and 32 more particularly described in the Schedule (Exhibit A) appended to the Plaint ('the suit lands').

2. The Plaintiffs claim to be the legal representatives of one Kamlakar @ Kamlya Deo Patil. The basic premise of the claim is that the suit lands were acquired by one Waman Dharma Vaity, Barik Posha Bhoir and Posha Bama Bhoir in the year 1929. The said Vaity and Bhoirs had let the suit premises for farming and fishing purpose to the Kamlya Deo Patil, Ganpat Bama Patil and Hari Barik Patil. They were in possession and cultivation of the suit lands.

Defendant Nos. 15 to 22 are the legal representatives of Waman Dharma Vaity. The Defendant Nos. 23 to 54 are the legal representatives of Barik Posha Bhoir and Posha Bama Bhoir. The Defendant Nos. 55 to 59 are the legal representatives of Hari Barik Patil, the joint tenant. The Defendant Nos. 66 to 69 are the legal representatives of Ganpat Bama Patil, another joint tenant. Defendant Nos. 62 to 65 are the legal representatives of Kamlya Deo Patil. The Defendant Nos. 1 to 3 are the entities who claim to have acquired the interest in the suit land from the legal representatives of the original owners Vaity and Bhoirs. Defendant Nos. 4 to 10 are the officers in the Revenue Department of the State of Maharashtra-the Defendant No. 10. The Defendant No. 11 to 13 are the officers of Municipal Corporation of Greater Mumbai-the Defendant No.14. The Defendant Nos.70 to 73 are the builders and developers, whereas Defendant Nos.74 to 179 are the purchasers of the flats in the buildings constructed over the suit lands by the Defendant Nos. 1 to 3 and 70 to 73.

3. The material averments in the Plaint can be stated in brief as under:

(i) The Vaity and Bhoirs, the owners of the suit land, had let the land bearing Survey No. 29 to Kamlya Patil and Ganpat Patil for cultivation. Likewise, Posha Bhoir had let the lands bearing Survey Nos. 30, 31 and 32 to Kamlya Patil, Ganpat Patil and Hari Patil for farming and fishing purpose. The names of Kamlya, Ganpat and Hari came to be mutated to the record of rights of the suit lands, bearing survey No. 29 admeasuring 3 Acre and $\frac{3}{4}$ Gunthas, and survey No.30 admeasuring 3 Acre and $26\frac{1}{4}$ Gunthas, in the other rights column. On 17th August, 1956 vide mutation entry No. 2844 the names of Kamlya Patil, Ganpat Patil and Hari Patil were mutated in the record of rights as the protected tenants of the lands, survey Nos. 29, 30, 31 and 32 aggregating 10 Acre and 38 Gunthas. Hari Patil, one of the joint tenants relinquished the tenancy rights in favour of the other joint tenants Kamlya and Ganpat.

(ii) The Maharashtra and Tenancy and Agriculture Lands Act, 1948 ('the Tenancy Act, 1948') came to be amended in the year 1956. On 1st April 1957, Kamlya Patil and Ganpat Patil were thus statutorily deemed to have purchased the agriculture lands, which were under their cultivation as protected tenants. However, on 27th January 1959, pursuant to mutation entry Nos.3107 and 3108, the names of the protected tenants were unlawfully deleted from survey Nos. 31 and 32. No notice was served on the protected tenants. The mutation proceedings were conducted in flagrant violation of the principles of natural justice. In view of the provisions contained in the Tenancy Act, 1948 after the tillers day the names of the protected tenants could not have been deleted by effecting mutation. Yet, the predecessors-in-title of the Plaintiffs and Ganpat Bama Patil continued to cultivate the suit lands in the capacity of the protected tenants.

(iii) On 6th December, 1971 after the death of the original owner, the suit lands were partitioned amongst the legal heirs. While sub-dividing the suit lands, vide mutation entry No. 4403, the legal representatives of the original owners in

connivance with the officers of the revenue department further curtailed the extent of the holding under cultivation of the protected tenants. Only an area admeasuring 1 Acre 27 Gunthas, out of Survey No. 29 and 21 Gunthas out of survey No. 30, were shown to be under the cultivation of the protected tenants as against the original holding under cultivation of 10 Acres and 38 Gunthas. Despite the entries in the revenue record to the contrary, the predecessor-in-title of the Plaintiffs and after the death of Kamlya Deo Patil, in the year 1971, the Plaintiffs continued to cultivate the suit lands in the capacity of the protected tenants.

(iv) On 25th January, 1989 a public notice was published in the newspapers inviting objections to the proposed sale of the suit land to Defendant No. 3, in pursuance of an agreement of sale executed by the owners of the suit land on 26th September, 1979. The Plaintiffs raised objections by communication dated 11th February, 1989. Things did not move thereafter. However, on 15th September, 1994 another public notice was issued inviting objections to the alienation of the suit land in pursuance of the alleged agreement of sale dated 12th February, 1984 executed by Defendant Nos. 15 to 22 and Defendant Nos. 23 to 54, the legal representatives of the original owners. The Plaintiff raised objection by communication dated 20th September, 1994. As the correspondence was being exchanged between the Plaintiffs and Defendant No. 2, who claimed to have acquired the development rights in respect of the suit lands, the Defendant Nos. 1, 2, 2A and 3 started to illegally fill the suit lands. The Defendant Nos. 1 to 3 eventually dispossessed the Plaintiffs from the suit land by unlawful and illegal means. The Plaintiff approached the authorities, including the police. However, the authorities paid no heed.

(v) In the meanwhile, the Defendant No. 2A submitted an application to Defendant No. 5 to delete the names of Kamlya Deo Patil, Ganpat Bama Patil and Hari Barik Patil from the record of rights of suit land, bearing survey No. 29 and survey No. 30. The Defendant No. 5 purportedly issued notices to Kamlya, Ganpat and Hari, who were dead. A farce of inquiry was made. The Defendant No. 60 -Baburao Kamlakar Patil and Defendant No.66-Hiralal Ganpat Patil were coerced to give pre-prepared statements to suit, the cause of the Defendant Nos.1 to 3. The Circle Inspector, by order dated 27th December, 1995 deleted the names of Kamlya, Ganpat and Hari as protected tenants of the suit lands bearing survey No. 29 and survey No. 30. As objection was raised by the Plaintiffs, the Tahsildar conducted an inquiry and certified the mutation entry No. 5007 deleting the names of the protected tenants without providing an opportunity of hearing to the Plaintiffs and Defendant Nos. 60 to 65.

(vi) In the intervening period, after the commencement of the Urban Land (Ceiling and Regulation) Act, 1976 ('the ULC Act'), the Defendant Nos. 1 to 3 obtained orders under section 8(4) of the ULC Act by making false representations. In the aforesaid backdrop, the Plaintiffs were constrained to institute the suit initially for the declaration that the Defendant Nos. 1, 2, 2A and

3 are the trespassers and Defendant Nos. 1, 2, 2A and 3 be ordered and decreed to handover vacant and peaceful possession of the suit lands; the agreement for sale dated 26th September, 1979, 12th February, 1984 and 21st June, 1988 entered into between Defendant Nos. 15 to 22 and Defendant Nos. 23 to 54, the legal heirs of original owners, and Defendant Nos. 1, 2, 2A and 3 are illegal and not binding on the Plaintiffs and Defendant Nos. 60 to 69. In addition the reliefs of perpetual injunction and damages were also sought.

(vii) During the pendency of the suit, there were developments on two fronts. With the commencement of the ULC Act, the original owners and the transferee in interest filed statement under section 6 of the ULC Act and obtained orders under section 8(4) of the Act. The Plaintiffs alleged that the orders were obtained by making false representations. The Plaintiffs thus made representation before the Competent Authority under the ULC Act. As there was no desired response, the Plaintiffs were constrained to approach the High Court by invoking the writ jurisdiction. In Writ Petition No.1471 of 1997, initially the Division Bench of this Court directed the authorities to decide the representation of the Petitioner within six weeks and later on the Writ Petition came to be dismissed as withdrawn as the authorities had posted the matter for hearing. Subsequently, corrigendums came to be issued to earlier order under section 8(4) of the ULC Act pursuant to the applications made on behalf of the owners. The Plaintiffs eventually challenged all those orders, revised orders and corrigendums issued under the ULC Act in Writ Petition No. 977 of 2002. The said Writ Petition came to be dismissed on 29th January, 2003 with the clarification that the observations therein shall not affect the rights and contentions of the parties in the pending suit.

(viii) On another front, the certification of the mutation entry No. 5007 by Tahsildar, by order dated 12th June, 1996, was challenged by the Plaintiffs by preferring Appeal No. A-22 of 1996 and A-25 of 1996. The Appeals were dismissed by the Sub Divisional Officer by judgment and order dated 20th May, 1997 opining, inter alia, that the suit lands were not governed by the provisions of the Tenancy Act, 1948 in view of the notification issued under section 88(b) of the Tenancy Act, 1948 and there was no evidence to establish that either the Plaintiffs or the predecessors-in-title of the Plaintiffs were in possession of the suit land bearing survey Nos. 29 and 30. The challenge to the said order, in RTS Second Appeal No. 11 of 1997, before the Dy. Collector, Mumbai Suburban Division also failed, as Second Appeal was dismissed on 22nd April, 1998. The matter was carried in revision, before the Divisional Commissioner, Konkan Division in RTS, Revision No. 30 of 1998. The revision was also dismissed by judgment and order dated 29th September, 2000 by the Additional Commissioner, Konkan Division.

(ix) On behalf of the Plaintiffs, an endeavor was made to also assail mutation entry No. 2844 dated 27th August, 1956, mutation entry No. 3107 and 3108 dated 27th January, 1959, whereby the names of the protected tenants were

deleted from the record of rights in respect of survey No.31 and 32, and mutation entry No. 4403 of 6th December, 1971, whereby holdings under the cultivation of the protected tenants were allegedly curtailed, by filing Revision Application Nos. 22 of 2000 and 23 of 2000. These revision applications were also dismissed by the Sub Divisional Officer, Mumbai Suburban District, by judgment and order dated 31st March, 2000. To complete the narration of facts, it would be contextually relevant to note that the Plaintiffs challenged the orders passed by the revenue authorities in the aforesaid proceedings by filing Writ Petition No.500 of 2001. By an interim order dated 16th April, 2001, this Court had stayed the effect and operation of the aforesaid orders.

(x) In the light of the aforesaid developments, in the intervening period, the Plaintiffs amended the Plaint and the Defendant Nos. 70 to 73, the associate entities of Defendant Nos. 1 to 3, and Defendant Nos. 74 to 179, the purchasers of the flats in the buildings constructed by the Defendant Nos. 1 to 3 and 70 to 73, were impleaded as party-Defendants. Now the Plaintiffs also assailed various intimations of disapproval (IODs), commencement certificates and completion certificates granted by the Municipal Corporation- Defendant No. 14, to the buildings erected on the suit lands. By way of amendment, the Plaintiffs sought declaration that Defendant Nos. 70 to 179 be also declared trespassers and they be also directed to hand over clear and vacant possession of the suit lands. The Plaintiffs sought declaration that the above referred mutation entries be quashed and set aside and the orders passed by the Tahasildar as well as the appellate and revisional authorities (referred to above) be also quashed and set aside. A direction was sought to the office of Defendant No. 4 to mutate the names of the Plaintiffs as protected tenants in respect of entire survey No.29 and 30. A further declaration was sought that the mutation entry No. 2844 dated 17th August, 1956, whereby the names of the protected tenants were recorded, be declared to be still valid and subsisting.

4. It would be suffice to note that by orders dated 18th August, 2004 and 1st September, 2004, the suit against Defendant Nos. 1, 2, 23 to 32, 34 to 51, 53, 54 and 70 to 73 was directed to be transferred to the list of Long Cause Suits. Whereas, by an order dated 22nd September, 2004, the suit against Defendant Nos. 75, 77, 78, 81 to 84, 88 to 100, 105, 106, 108 to 111, 114, 115, 121, 123 to 133, 136, 139 to 142, 144 to 152, 154 to 156, 159 to 161, 164, 166 to 170, 172, 173, 177 and 179 was directed to be transferred to the list of undefended suits.

5. The principal resistance to the suit was mounted by Defendant No. 70- M/s. Gautam Enterprises, by filing a comprehensive written statement:

(i) At the outset, the tenability of the suit was put in contest. In the absence of a declaration of title that the Plaintiffs are the protected tenants of the suit lands, according to Defendant No. 70, the suit is not legally tenable. The claim of the Plaintiffs on the aspect of possession was also stated to be ambivalent. On the one hand, the Plaintiffs have alleged that they were dispossessed in the month of

December, 1994. On the other hand, in the communications addressed on 4th November, 1994, 31st December, 1994, 16th February, 1994 and 30th January, 1996 the Plaintiffs have asserted that they were in possession of the suit lands and endeavored to protect their possession. This false foundation of the Plaintiffs claim disentitles the Plaintiffs from any relief, contended the Defendant No. 70.

(ii) The tenability of the suit was also assailed on the ground that the Plaintiffs claimed that they were dispossessed in December 1994 and yet, the suit came to be instituted in the month of November, 1996 much beyond the period of six months prescribed under section 6 of the Specific Relief Act, 1963. Hence, the suit is not tenable. The Defendant No. 70, thus, contends that the suit based on possessory title simplicitor is not tenable against the true owners i.e. Defendant Nos. 15 to 54, which fact the Plaintiffs have unequivocally admitted. The suit was also stated to be barred by the law of limitation as well as the names of the predecessors-in-title of the Plaintiffs were removed from the record of rights in respect of survey No.31 and 32, in the year 1959. Moreover, Defendant Nos. 15 to 54, the owners of the suit lands had executed agreements in favour of the Defendant No. 2 on 12th February, 1984 and thereby put the Defendant No. 2 in possession of the suit lands. On this count also the suit is alleged to be barred by the law of limitation.

(iii) On merits, the Defendant No. 70 contends that neither the Plaintiffs nor the Defendants 62 to 69 were ever in possession of the suit lands. The suit is instituted with an oblique motive of deriving some pecuniary advantage after the Defendant Nos. 1 to 3 developed the suit lands and started construction of a big housing complex "Hari-Om Nagar". The Defendant No. 70 has banked upon the agreements for sale (Development Agreement), dated 12th February, 1984 executed by Defendant Nos. 15 to 54, whereunder, the Defendant No. 2 was put in possession of the respective portions of the suit lands, in part performance of the said agreements. It is contended that, before the execution of those agreements, Defendant No. 2 had published a public notice in the newspapers "Free Press Journal" and "Loksatta" on 5th August, 1982 and 3rd August, 1982, respectively. However, neither the Plaintiffs nor anybody else had raised any objection or lodged any claim. Certain disputes arose between the owners and Defendant No.2. The Defendant No. 2 had instituted the Suits bearing Nos. 2623 of 1989, 3292 of 1989, 3293 of 1989 and 3294 of 1989 against Defendant Nos. 23 to 54. In the said Suits, consent terms were arrived at between the parties and the Defendant Nos. 23 to 54 agreed to specifically perform the said agreements, dated 12th February, 1984. Under the said consent terms, the Defendants confirmed to have delivered the vacant and peaceful possession of the suit lands to Defendant No. 2, in part performance of the said agreements. Subsequently, in pursuance of the Partnership Deed executed on 27th March, 1986, the Defendant No. 2 entered into a partnership with M/s. Sadguru Construction Pvt. Ltd. and Others to develop various pieces of lands admeasuring about 30 Acres, including the suit lands admeasuring 10 Acres, through a Joint Venture under the name and style "Gautam Enterprises"- the Defendant No. 70.

The Defendant No. 70 was, thus, developing the suit lands.

(iv) The Defendant No. 70 has, thereafter, adverted to various proceedings before the revenue authorities, including the appeals and revisions preferred by the Plaintiffs, to bolster up its defence that the primary factum of possession and cultivation of the suit lands by the Plaintiffs or their predecessors-in-title is far from established. Since the Plaintiffs had challenged the orders passed under the ULC Act by preferring writ petitions before this Court, the assertions in the Plaint on that count and the reliefs sought in respect thereof were stated to be unsustainable. On these, amongst other grounds, Defendant No. 70 has prayed for dismissal of the suit with cost.

6. (i) The Defendant Nos. 15 to 18 (the legal heirs of Vaity) have also resisted the claim by filing written statement raising, by and large, identical contentions. Defendant Nos. 15 to 18 have assailed the tenability of the suit on the ground that the suit having been filed after six months of the alleged dispossession is not in order, the Plaintiffs cannot seek possession from the true owners and the claim of the Plaintiffs of having been dispossessed in the month of December, 1994 is ex-facie contradicted by the correspondence, namely, the letters dated 4th November, 1994, 31st December, 1994, and 16th February, 1994 and the public notices issued in newspapers as well as the letter dated 30th January, 1996 to the effect that the Plaintiffs were still in possession of the suit lands. The Defendants contend that neither the Plaintiffs nor the predecessors-in-title of the Plaintiffs were in possession of the suit lands since 1984. The suit is thus stated to be barred by law of limitation if the time is reckoned from the date of the deletion of the names of the predecessors-in-title of the Plaintiffs from the record of rights of the suit lands bearing survey Nos. 31 and 32 (1959) and even from the date of the execution of the agreements for sale, i.e. 12th February, 1984 by the original owners in favour of Defendant No. 2, who has been put in possession of the suit lands. The jurisdiction of this Court to entertain, try and adjudicate the claim of protected tenancy is also questioned on the premise that the provisions contained in section 85 of the Bombay Tenancy and Agriculture Lands Act, 1948 expressly oust the jurisdiction of the Civil Court.

(ii) On the merits of the matter, Defendant Nos. 15 to 18, like Defendant No.70, contend that the Defendants had executed the agreements for sale on 12th February, 1984 in favour of Defendant No. 2. In pursuance of the said agreements, Defendant No. 2 was put in possession of the suit lands. Neither the predecessors-in-title of the Plaintiffs nor the Plaintiffs were in possession of the suit lands. The Plaintiffs have, according to the Defendants Nos. 15 to 18, instituted the suit with an oblique motive to gain undue pecuniary advantage on the basis of shallow and stale entries in the revenue record after Defendant Nos. 1 to 3 and 70 and its associates started the development of the suit lands.

7. The resistance put-forth by Defendants Nos. 23 to 32, 34 to 51, and 53 and 54 (the legal heirs of Bhoirs) proceeds on identical lines. The tenor of the defence, put-forth by Defendant No. 70 and adopted by Defendant Nos. 15 to 18,

finds reflection in the written statement of these Defendants as well.

8. At this stage, it may be apposite to make a brief reference to the written statement filed on behalf of the rest of the Defendants.

(i) In its written statement, Defendant No. 1 contends that Defendant No. 1 has been unjustifiably impleaded as a party Defendant to the suit. While adopting the written statement of the Defendant No. 70, Defendant No. 1 asserts that the suit has been instituted with an ulterior motive to harass and pressurize the developers/builders, being the sister concerns and/or associates of the Defendant No. 70, to succumb to the unlawful demand of money made by the Plaintiffs.

(ii) Defendant No. 2 - M/s. Hanna Developers, in whose favour the legal representatives of the original owners professed to transfer the suit lands, has adopted the written statement of Defendant No. 70 and, contended that the suit has been instituted with an ulterior motive to extract money.

(iii) Defendant No. 71 - M/s. G.V. Corporation claims to be a joint venture between M/s. Gautam Enterprises- the Defendant No. 70 and M/s. V.M. Corporation. It claims to have carried out the construction activities over the suit lands at the instance of Defendant No.1. Defendant No. 71 has thus adopted the written statement of Defendant No. 70.

(iv) Defendant No. 72 -M/s. Concept Commercial Pvt. Ltd. claims to have been appointed as a project management consultant by Defendant No. 70 and discharged the responsibilities in that capacity as an agent of Defendant No. 70. Thus, the impleadment of Defendant No.72 as a party Defendant to the suit is sought to be questioned. Ultimately, Defendant No. 72 has adopted the written statement of Defendant No. 70.

(v) Defendant No. 73 M/s. Shreeji Ratna Corporation claims to be a joint venture between Defendant No. 70-M/s. Gautam Enterprises and M/s. Shreeji Corporation. Defendant No. 73 has also questioned its impleadment as a party Defendant to the suit, and adopted the written statement of Defendant No. 70.

(vi) Defendant No. 74 -Mr. Bipin Chimanlal Shah has contested the suit by filing the written statement contending, inter alia, that Defendant No. 74, like the rest of Defendant No. 75 to 179, is a bonafide purchaser for value of one of the flats in the buildings developed by the Defendant No. 1 over the suit lands. Defendant No. 74 contends that unless the Plaintiffs prove their case and succeed against the original owners the question of passing any decree against the flat purchasers and directing them to deliver possession thereof does not arise. Defendant No. 74 has adopted all the defenses and contentions raised by Defendant Nos. 1 to 73 in their written statement. Another flat purchaser Smt. Jayshree Bipin Shah (Defendant No. 106) has also filed written statement on the similar lines as that of Defendant No. 74.

9. In the backdrop of the aforesaid rival pleadings, issues were settled on 11th

December, 2014. I have reproduced the issues with my findings against each of them for the reasons to follow:

ISSUES

FINDINGS

1.

Whether the suit is barred by Section 85 of Bombay Tenancy and Agricultural Lands Act, 1948?

In the negative

2.

Whether the suit is barred by the law of limitation?

In the affirmative

3.

Whether the Plaintiffs are in exclusive possession of the suit land?

In the negative

4.

Whether defendant No.70 has legal right to develop the suit property?

In view of findings on issue Nos.2, 3 and 6, do not survive for consideration

5.

Whether the ULC orders, IOD orders, and Corrigendum order are illegal and void?

6.

Whether defendant Nos. 1, 2, 2A and 3 have trespassed upon the suit property?

In the negative

7.

What relief, if any, are the plaintiffs entitled to ?

Suit stands dismissed.

REASONS :

10. In order to substantiate the averments in the Plaint, the Plaintiffs have examined two witnesses namely Murtimant Balkrishna Tandel (P.W. 1), the constituted attorney of the Plaintiffs, and Mrs. Alpita Dilip Tandel (P.W. 2) the Principal of Thane Municipal Corporation, School No. 16, Thane. The Plaintiffs have tendered a number of documents for the perusal of the Court in support of

their claim. The Plaintiffs have essentially banked upon the entries made in the record of rights of the suit lands to evidence the fact that the predecessors-in-title of the Plaintiffs especially Kamlya Deo Patil was shown as the tenant of the suit lands.

11. In the rebuttal, Defendant Nos.1 to 70 and 73 have examined Chaitanya Parekh (D.W.1), the partner of Defendant No. 70 -Gautam Enterprises. The Defendants have also tendered a number of documents to bolster up their defence.

12. Before advertng to deal with the contentious issues, it may be apposite to note few uncontroverted facts. There is not much controversy over the fact that the predecessors-in-title of the Defendant Nos. 15 to 22 and 23 to 54, namely, Vaitys and Bhoirs were the holders of the suit lands. The owners acquired the suit lands in the year 1929-30. It is the claim of the Plaintiffs that the predecessors-in-title of the Plaintiffs Kamlya, Ganpat Patil and Hari Patil were cultivating the suit lands in the capacity of the tenant since the year 1930. The names of the predecessors-in-title of the Plaintiffs Kamlya, Ganpat, Hari and others were mutated to the record of rights of the suit lands (form No.6) in the year 1956 as protected tenants, vide mutation entry No.2844. The names of the tenants were however deleted from the record of rights of the suit lands, bearing survey Nos.31 and 32, vide mutation entry 3107 and 3108 which came to be certified on 11th April, 1959. The Plaintiffs claimed that the names of the predecessors-in-title of the Plaintiffs were also deleted from the record of rights of the suit lands bearing survey Nos. 29 and 30 vide mutation entry No. 5007 which was certified on 12th June, 1996, pursuant to the applications made by Anant Laxman Bhoir and Ramkrishna Waman Vaity, respectively. The Plaintiffs have assailed the legality, propriety and correctness of these orders whereby the names of the predecessors-in-title of the Plaintiffs were deleted from the record of rights of the suit lands. However, the fact remains that the Plaintiffs endeavoured to assail the correctness and validity of the aforesaid orders before the revenue authorities upto the Divisional Commissioner, Konkan Division, without any success. In the meanwhile, the ULC Act came into force. The suit lands, which were initially in 'no development zone', were subsequently brought in the 'residential zone' under the development plan published by the Planning Authority, i.e., Defendant No.14 Municipal Corporation of Greater Mumbai, with the approval of the State Government. Thus, the proceedings under the ULC Act were commenced at the instance of the original owners and certain orders under section 8(4) of the ULC Act were passed. There were further revisions and corrigendums in respect of those orders. Eventually, the owners i.e. Defendant Nos. 15 to 22 and 23 to 54 professed to alienate the suit lands in favour of Defendant No. 2 by executing the agreements for sale on 12th February, 1984. Indisputably, over the period of time, the suit lands have been developed and third party rights have been created. Defendant Nos. 74 to 159 are the purchasers of the flats in the buildings constructed over the suit lands.

13. In the backdrop of aforesaid facts, the controversy revolves around the claim of the Plaintiffs that the predecessors-in-title of the Plaintiffs, and after their demise, the Plaintiffs have been the protected tenants of the suit lands and they have been illegally dispossessed of the suit lands. The pivotal question that wrenches to the fore is whether the Plaintiffs are entitled to the reliefs either in the capacity of the protected tenants or on the strength of the possessory title?

ISSUE NO. 1 :-

14. The Defendants have questioned the jurisdiction of this Court to entertain, try and adjudicate the issues which arise in the instant suit on the premise that there is an express bar under section 85 of the Tenancy Act, 1948. This plea of bar of jurisdiction is rested on the ground that the Plaintiffs have claimed that their predecessor-in-title has been a protected tenant of the suit lands. The question whether a person is or was a tenant of the agriculture land squarely falls within the province of the authority of Mamlatdar under the provisions of section 70 of the Tenancy Act, 1948. Thus the Civil Court's jurisdiction is expressly barred under section 85 of the Tenancy Act, 1948, contend the Defendants.

15. In addition to the defence of bar of jurisdiction, the Defendants have also pressed into service the ground that the suit lands are not at all governed by the provisions of the Tenancy Act, 1948 as the suit lands have been exempted from the operation of the provisions of the Tenancy Act, 1948 by a notification issued under section 88 (1) (b) of the Tenancy Act, 1948.

16. In a sense, these two defences are mutually exclusive in nature. Nonetheless, the determination of the question as to whether the jurisdiction of this Court is barred under the provisions of section 85 of the Tenancy Act, 1948 and as to whether the suit lands are exempted from the operations of the Tenancy Act, 1948 have a significant bearing on the claim of the Plaintiffs. Hence, I propose to deal with these two issues simultaneously.

17. The claim of the Plaintiffs that the predecessors-in-title of the Plaintiffs were the protected tenants of the suit lands is sought to be substantiated by placing reliance upon the mutation entry No. 2844 which was certified on 4th September, 1956. The record of rights (form No. 6) indicates that the names of the predecessors-in-title Kamlya Deo Patil, Hari Barik Patil and Ors. were shown as protected tenants of the suit lands bearing survey Nos. 29, 30, 31 and 32 in pursuance of a tenancy proceeding. The fact that the predecessors-in-title of the Plaintiffs were shown to be in cultivation of the suit lands is also sought to be established by placing reliance upon the 7/12 extracts of the suit lands bearing survey No. 29, 30, 31 and 32 (Exhibit 'B' colly.) which indicate that names of the tenants were shown in the cultivation column since the years 1955-56 (survey No.29), 1944-45 (survey No. 30), 1951-52 (survey No.31), 1944-45 (survey No. 32).

18. On the strength of the aforesaid entries in the record of rights, it was

strenuously urged by Mr. Mali, the learned counsel for the Plaintiffs that the fact that the predecessor-in-title of the Plaintiffs has been the protected tenant of the suit lands before the tiller's day is established beyond the pale of controversy. In this view of the matter, according to learned counsel for the Plaintiffs, the status of the predecessor-in-title of the Plaintiffs as the protected tenant of the suit lands can hardly be put in contest and on the tiller's day the protected tenant is deemed to have purchased the suit lands. This indefeasible right of protected tenants could not have been defeated by resorting to deletion of the entries in the record of rights in a surreptitious manner, urged Mr. Mali.

19. In opposition to this, Ms. Deepti Panda, the learned counsel for Defendant Nos. 1 to 70 and 73 would urge that the question as to whether a person is/or was a protected tenant of the suit land is a matter for the determination of the authorities under the Tenancy Act, 1948. The said question cannot be decided by the Civil Court in view of the express bar incorporated in section 85 of the Tenancy Act, 1948.

20. In order to appreciate the aforesaid controversy, as regards jurisdiction in a proper perspective, it may be apposite to note the relevant provisions of the Bombay Tenancy and Agriculture Land Act, 1948 :-

"(Sec.2(14) Protected Tenant :- "Protected tenant" means a person who is recognised to be a protected tenant under section 4A. Section 4A : Protected Tenants : - For the purposes of this Act, a person shall be recognized to be a protected tenant, if such person have been deemed to be a protected tenant under sections 3, 3A and 4 of the Bombay Tenancy Act, 1939, referred to in Schedule I to this Act.

Section 70 (b) : Duties of the Mamlatdar :- For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar.

(a)....

(b) To decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant."

Section 85 : Bar of jurisdiction.-

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question [(including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him)] which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the [Maharashtra Revenue Tribunal] in appeal or revision or the [State] Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the [Maharashtra Revenue Tribunal] or the [State] Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation. - For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906.

Section 85A. : Suits involving issues required to be decided under this Act :

(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "competent authority") the Civil Court shall stay till suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation. - For the purpose of this section a Civil Court shall include a Mamlatdar Court constituted under the Mamlatdar Courts Act, 1906.]

Section 88 : Exemption to Government lands and certain other lands :

[(1)] [Save as otherwise provided in sub -section (2), nothing in the foregoing provisions of this Act]shall apply :

(a) to lands belonging to, or held on lease from, the Government;

(b) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development;....."

21. A conjoint reading of the definitions of 'protected tenant' under section 2(14) and section 4(A) of the Tenancy Act, 1948, it becomes evident that "protected tenant" means a person who has been deemed to be a protected tenant under section 3, 3A and 4 of the Bombay Tenancy Act, 1939 referred to in Schedule I of the Tenancy Act, 1948. Under section 70(b) of the Tenancy Act, 1948, the Mamlatdar is entrusted with the function to determine the question as to whether a person is or was at any time in the past a tenant or protected tenant or a permanent tenant.

22. If the provisions of section 70(b), 85 and 85A of the Tenancy Act, 1948 extracted above, are considered in juxtaposition with each other, the legislative scheme, which emerges is that if, on rival pleadings, an issue arises as to whether a person is or was a tenant or a protected tenant or a permanent tenant, the question has to be decided or dealt with by the Competent Authority under the Tenancy Act, 1948 and the Civil Court is statutorily enjoined to stay the suit and refer such issue or issues to such Competent Authority under the Tenancy Act, 1948 for determination. Furthermore, on receipt of such reference from the Civil Court the Competent Authority is enjoined to deal with and decide such issue in conformity with the provisions of the Tenancy Act, 1948 and thereafter communicate its decision to the Civil Court, which, in turn, is again

statutorily enjoined to dispose of the suit in accordance with the findings recorded by the Competent Authority. The Mamlatdar, while performing the functions and discharging the duties under section 70(b), namely, determination of the question as to whether a person is or was a tenant of the agricultural land, would thus constitute an exclusive forum, to the exclusion of the Civil Court, and jurisdiction of the Civil Court would thus be completely barred.

23. In this context, the reliance placed by the learned counsel for the Defendant Nos. 1 to 70 and 73 on the judgment of the Supreme Court in the case of *Gundaji Satwaji Shinde vs. Ramchandra Bhikaji Joshi* (1979) 2 SCC 495, appears to be well founded. In the said case after adverting to the relevant provisions of the Tenancy Act, 1948 and the previous pronouncements, the legal position was expounded in Para No. 19 as under:

"19 Thus, both on principle and on authority there is no escape from the conclusion that wherein a suit is properly constituted and cognizable by the Civil Court upon contest an issue arises which is required to be settled, decided or dealt with by Competent Authority under the Tenancy Act, the jurisdiction of the Civil Court would be ousted, and the same is not only ousted but the Civil Court is under the statutory obligation to refer the issue to the Competent Authority under the Tenancy Act to decide the same and upon the reference being answered back, to dispose of the suit in accordance with the decision of the Competent Authority under the Tenancy Act."

24. In the backdrop of the aforesaid legal position, the issue which wrenches to the fore is, whether, in the facts of the instant case, the question as to whether the predecessor-in-title of the Plaintiff was a tenant or a protected tenant of the suit lands is peremptorily required to be adjudicated upon by the Mamlatdar under section 70(b) of the Tenancy Act, 1948? It is imperative to note that the jurisdiction of the Civil Court is ousted only when the question whether the person is or was at any time in the past a tenant of the suit land is, by or under the Act, required to be settled, decided or dealt with by the Mamlatdar or the other authorities provided under the said Act. This proposition is thus impregnated with the question as to whether the Tenancy Act, 1948 itself governs the rights and liabilities of the parties in a given fact-situation. If the question which arises for determination, may it be of tenancy in an agriculture land, is not required to be compulsorily decided by the authorities under the Act, then the bar of jurisdiction envisaged in section 85 also may not operate. The controversy, thus, revolves around the applicability of the provisions of the Tenancy Act, 1948 itself ?

25. For this purpose recourse to the provisions of section 88 of the Tenancy Act, extracted above (in part) becomes imperative. Sub section 1 of section 88 declares that nothing in the foregoing provisions of the Tenancy Act, 1948 shall apply to four categories of lands, save as otherwise provided in sub section (2). One of the items of the exempted categories of lands is the lands falling in any area which the State Government may from time to time, by notification in the

official gazette, specify as being reserved for non-agriculture or industrial development (clause b). It is the bold defence of the Defendants that State Government had in fact issued a notification in the official gazette on 29th March, 1957 exempting the lands situated in the Mulund village of Borivali Taluka of Bombay suburban district, wherein the suit lands are situated.

26. The notification dated 29th March, 1957 inter alia provides that the Government of Bombay was pleased to specify the areas in the schedule appended thereto as reserved for "non agriculture and industrial development". The Schedule includes the lands situated at village Mulund of Taluka Borivali. Evidently the said notification came to be issued before the tiller's day i.e. 1st April, 1957, on which day a tenant is deemed to have purchased the agriculture land which he cultivated.

27. At this juncture, it would be relevant to note that the authorities under the Land Revenue Code, before whom the Plaintiffs agitated the question of deletion of the names of the predecessor-in-title of the Plaintiffs from record of rights of the suit land, have consistently held that the provisions of the Tenancy Act, 1948 did not govern the suit lands as they were exempted from the operation of the provisions of the Tenancy Act, 1948 in view of the aforesaid notification issued under section 88(1)(b) of the Tenancy Act, 1948. The authorities have also held that since the village Mulund was brought within the limits of the Municipal Corporation in 1952, the benefit of the provisions contained in section 88(A-I) of the Tenancy Act, 1948 was also not available to the tenants.

28. Though the Plaintiffs have made an endeavour to contest this position, yet in the Plaint itself the Plaintiffs have averred that notwithstanding the non-applicability of the provisions of the Tenancy Act, 1948 the authorities ought to have considered the legality, propriety and correctness of the deletion of the names of the tenants from the records of rights of the suit land and the unlawful dispossession therefrom.

29. The position which thus emerges is that in view of the aforesaid notification dated 29th of March, 1957 reserving the lands at Mulund including the suit lands for non-agriculture and industrial development the provisions of the Tenancy Act, 1948 did not govern the suit lands. Once this position is conceded, the benefit of the provisions contained in the Tenancy Act, 1948 cannot be claimed for the purpose of protecting the rights which emanate from the claim of tenancy.

30. A profitable reference, in this context, can be made to a Constitution Bench Judgment of the Supreme Court in the case of S.M. Kamble vs. Sholapur Borough Municipality and Anr. AIR 1966 SC 538. In the said case the question of applicability of clause (a) of sub section (1) of Section 88, namely the exemption of the lands belonging to or held on lease from Government, was under consideration. The Appellant therein had taken certain lands of the Municipality for cultivation and claimed the protection of the tenancy. The Supreme Court, inter alia, considered the question, "whether there is anything express in the

1948 Act which takes away the interest of the protected tenants acquired before its commencement". The Supreme Court answered the said question in the affirmative. The observations of the Supreme Court in paragraphs No. 9, 11, 12 and 13 are instructive. They read as under:

"9 The narrow question then is whether there is anything express in the 1948-Act which takes away the interest of a protected tenant acquired before its commencement. If there is any such express provision then s. 89(2) (b) would be of no help to the appellant. The contention of the respondent is that S. 88 is an express provision and in the face of this express provision the interest acquired as a protected tenant under the 1939 - Act cannot prevail. On the other hand, it is urged on behalf of the appellant that s. 88 does not in express terms lay down that the interest acquired by a protected tenant under the 1939 -Act is being taken away and therefore it should not be treated as an express provision. Now there is no doubt that s. 88 when it lays down inter alia that nothing in the foregoing provisions of the 1948-Act shall apply to lands held on lease from a 'local authority, it is an express provision which takes out such leases from the purview of sections 1 to 87 of the 1948-Act. One of the provisions therefore which must be treated as non-existent where lands are given on lease by a local authority is in s. 31. The only provision in the 1948 -Act which recognised protected tenants is s. 31 and if that section is to be treated as non-existent so far as lands held on lease from a local authority are concerned, it follows that there can be no protected tenants of lands held on lease from a local authority under the 1948 -Act. It is true that s. 88 does not in so many words say that the interest of a protected tenant acquired under the 1939-Act is being taken away so, far as lands held on lease from a local authority are concerned; but the effect of the express provision contained in s. 88 (1) (a) clearly is that s. 31 must be treated as non-existent so far as lands held on lease from a local authority are concerned and in effect therefore s. 88 (1) (a) must be held to say that there will be no protection under the 1948-Act for protected tenants under the 1939-Act so far as lands held on lease from a local authority are concerned. It was not necessary that the express provision should in so many words say that there will be no protected tenants after the 1948-Act came into force with respect to lands held on lease from a local authority. The intention from the express words of s. 88(1) is clearly the same and therefore there is no difficulty in holding that there is an express provision in the 1948-Act which lays down that there will be no protected tenant of lands held on lease from a local authority. In view of this express provision contained in s. 88(1) (a), the appellant cannot claim the benefit of s. 31 ; nor can it be said that his interest as protected tenant is saved by s. 89 (2) (b). This in our opinion is the plain effect of the provisions contained in s. 31, s. 88 and s. 89(2)(b) of the 1948-Act.

.....

11 We may also mention that by an oversight 'it was stated in Mohanlal Chunilal Kothari's case, (1963) 2 SCR 707 :(AIR 1963 SC 358), that clauses (a), (b) and

(c) of S. 88(1) apply to things as they were at the date of the enactment. It is however clear that clauses (a), (b) and (c) of S. 88 (1) also apply in the future. For example cl. (a) lays down that nothing in the foregoing provisions of this Act shall apply to lands held on lease from Government, a local authority or co-operative society. The words "held on lease" in this clause are only descriptive of the lands and are not confined to lands held on lease on the date the Act came into force; they equally apply to lands ceased before or after the Act became law and the distinction that was drawn in Mohanlal Chunilal Kothari's case⁽¹⁾ that cls. (a), (b) and (c) applied to things as they were at the date of the enactment whereas cl. (d) was with respect to future, with respect, does not appear to be correct.

12 In this view of the matter, the view taken by the High Court in the judgment under appeal that s. 88 (1)(a) is an express provision which takes away the interest of protected tenants under the 1939-Act must be held to be correct.

13 So far as the argument based on s. 88-B is concerned, it IS enough to say that we agree with the High Court that section will not protect the appellant for his lease had already been determined before the section came into force on April 1, 1956. Besides it may be observed that s. 4-A which takes the place of s. 31 after the amendment of 1956 still does not apply to a case of lands held on lease from a local authority and therefore what we have said with respect to s. 31 will equally apply to s. 4-A and the appellant cannot claim the benefit of that section and contend that he is a protected tenant under the 1939-Act and therefore cannot be ejected."

31. The Supreme Court has thus expounded the legal position that there is an express provision in the Tenancy Act, 1948 which laid down that there will be no protected tenant of land held on lease from a local authority. Clauses (a), (b) and (c) of Section 88(1) also apply in future. Section 4A of the Act (which takes the place of section 31, after the amendment of 1956) does not apply to case of lands held on lease from a local authority and a person cannot claim benefit of that section and contend that he is a protected tenant under 1939 Act and therefore cannot be ejected.

32. A useful reference can also be made to a judgment of learned single Judge of this Court in the case of Ramrao Parshuram Ghogade and Anr. Vs. Mukund Govind Kini 1986(1) Bombay C.R. 361. In the said case, an application was filed before the Court of Small Causes for possession of the land situated at village Eksar, Tal. Borivali under section 41 of the Presidency Small Causes Court Act on the ground that the tenancy was terminated. The learned Judge, Court of Small Causes, returned that application for presentation to the proper Court on the premise that the provisions of Bombay Tenancy and Agriculture Lands Act, 1948 governed the rights of the parties as the subject matter was an agriculture land. Reversing the order of the learned Judge, Court of Small Causes, the High Court held that in view of the notification dated 29th March, 1957 the provisions of the Tenancy Act, 1948 were not applicable to the subject lands and enunciated the

legal position as under:

"2 However, as the appeal has been dismissed as not maintainable the petitioners have filed present writ petition. It is true that generally speaking the rights over the agricultural land are covered by the Tenancy Act. However, the said Act contains a number of provisions to show that the Tenancy Act is not applicable to certain types of land. In the present case section 88(1)(b) is relevant. It provides that the Tenancy Act would not apply to any land which the State Government by notification certify as being reserved for non-agricultural or Industrial development. The State Government has issued a notification No. TNC. 5157/31190-M dated 29-3-1957 under section 88(b). The said notification is published in the Government Gazette dated 4-4-1957. The notification clearly states that the lands mentioned in the schedule (the schedule contains a list of various villages including the village Eksar) as being reserved for non-agricultural and Industrial development. At this juncture it would be relevant to take into account the section 88(a)(1). It provides that the lands within the limits of the erstwhile Borivli Municipality would be governed by the Tenancy Act unless those lands have been exempted by the above mentioned notification issued under section 88(1)(b). The net result of all these provisions, therefore, is that the suit land is not governed by the provisions of the Tenancy Act. It is also material to note that the lands are equally not governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, as that Act is primarily meant for non-agricultural properties. In this view of the matter an application under section 41 of the unamended Act would be tenable."

33. The upshot of the aforesaid consideration is that in view of the notification dated 29th March, 1957 issued under the provisions of section 88(1)(b) of the Tenancy Act, 1948, the protective umbrella of the provisions of the Tenancy Act, 1948 is not available to the person who claims tenancy in respect of suit lands, even though the tenancy was in force before the tiller's day. Conversely, the bar under section 85 of the Act would also not operate as the question is not to be determined exclusively by the authorities under the Act i.e. Mamlatdar, under section 70(b) of the Tenancy Act, 1948. Resultantly, though the Issue No. 1 is required to be answered in the negative, yet, the further adjudication would proceed on the premise that the predecessors-in-title of the Plaintiffs and Plaintiffs are not entitled to protection of the provisions contained in the Tenancy Act, 1948. With this clarification the Issue No. 1 is answered in the negative.

ISSUE NOS. 2, 3 AND 6 :-

34. The aspect of possession and dispossession has a significant bearing on the claim of the Plaintiffs and also bears upon the tenability of the suit and the bar of limitation. The Plaintiffs have approached the Court with a case that the Plaintiffs were forcibly dispossessed in or about December, 1994. Hence, the Plaintiffs have prayed for restoration of possession of the suit lands as well. The Defendants have assailed this claim of the Plaintiffs by laying emphasis on the correspondence exchanged between the parties prior to the institution of the suit

wherein the Plaintiffs consistently claimed that they were in possession of the suit land and sought protection of the possession. This falsity in the claim of the Plaintiffs about the possession over the suit lands, according to the learned counsel for the Defendants, erodes the very foundation of the claim of the Plaintiffs which is, at best, based on possessory title. On the one hand, the factum of possession cannot be said to have been established. On the other hand, the claim of dispossession in the month of December, 1994 is itself proved to be incorrect on the own showing of the Plaintiffs, urged the learned counsel for the Defendants.

35. The criticism advanced on behalf of the Defendants as regards the assertions on the aspect of possession cannot be said to be unfounded as in the communications preceding the suit the Plaintiffs did assert that they were in possession of the suit lands. In the reply to the public notice dated 20th September, 1994, the Plaintiffs asserted that they were in continuous uninterrupted use, occupation and possession of the suit lands in the capacity of the legal representatives of the protected tenants. On the issue being joined by Defendant No. 2, by a reply, dated 12th October 1994, the Plaintiffs again issued a rejoinder on 4th November, 1994 and asserted the factum of possession. In a further rejoinder dated 31st December, 1994 (Exhibit 'C' Colly.) the Plaintiffs again asserted their exclusive occupation and possession of the suit lands. In the public notice dated 31st March, 1995, published in newspaper "Navshakti" (Exhibit- MMM Colly.), it was again asserted that the Plaintiffs were in continuous possession and cultivation of the suit lands in the capacity of the legal heirs of the Kamlakar Deo Patil. By a communication dated 6th April, 1995 addressed by some of the Plaintiffs to the Asstt. Commissioner of Police (Exhibit LLL), an apprehension was expressed that the Plaintiffs might be dispossessed at the instance of the clients of M/s. Purnanand and Co. who had issued the public notice inviting objections to the proposed transactions. Similar assertions were made in the notice dated 6th April, 1995 addressed to the Tahasildar, Kurla, Mumbai.

36. The aforesaid documents which were authored on behalf of the Plaintiffs, prior to the institution of the suit, render the claim of possession over the suit lands at a particular point of time in the realm of uncertainty. These assertions run counter to the claim of the Plaintiffs in the Plaint that they were disposed forcibly in the month of December, 1994. To add to this, the evidence led by the Plaintiffs on the aspect of possession is extremely unsatisfactory.

37. As far as the documentary evidence, in the nature of the entries in the record of rights, the claim of possession of the Plaintiffs predecessors-in-title over survey No. 29 is substantiated up to the year 1978-79; the record of rights (Exhibit 'B' Colly.) in respect of survey No.30 indicates the cultivation by the predecessors-in-title of the Plaintiffs up to the year 1950-51; in respect of survey No. 31 the possession is shown up to the year 1958-59 and in respect of survey No. 32 the cultivation by the tenants is shown up to the year 1950-51 only. The

Plaintiffs have not placed on record any document to show the cultivation of the suit lands beyond the said years, in the context of respective suit lands. The oral evidence led by the Plaintiffs stands on a much weaker foundation.

38. Mr. Murtimant Balkrishna Tandel (P.W.1), the constituted attorney of the Plaintiffs deposed that on or about December, 1994, Defendant No. 1 M/s. Soham Builders, Defendant No. 2 M/s. Hanna Developers, Defendant No. 2A Naagraj Ganeshmal Jain and Defendant No. 3 Hajra and Associates had illegally and forcibly dispossessed the Plaintiffs and Defendant Nos. 60 to 65 from the suit lands.

39. The learned counsel for the Defendants would urge that the evidence of Murtimant Balkrishna Tandel (P.W.1) is unworthy of consideration much less reliance. It was urged with tenacity that the said witness has no personal knowledge about the suit lands or the circumstances in which the names of the predecessors-in-title of the Plaintiffs came to be deleted. Mr. Murtimant Balkrishna Tandel (P.W.1) has professed to depose on the strength of the irrevocable general power of attorney allegedly executed by the Plaintiffs. In this backdrop, it was urged that nobody can authorize anybody to depose on his behalf. Thus, the evidence of Murtimant Tandel (P.W.1) is bereft of any evidentiary value.

40. To lend support to this submission, Shri Brijesh Upadhyay, the learned counsel for defendants placed a strong reliance on the judgment of the Supreme Court in the case of S. Kesri Hanuman Gaud vs. Anjumjehan and Ors. (2013) 12 SCC 64. In this case the Supreme Court adverted to the previous pronouncements on the legal competence of a power of attorney to depose on behalf of and in the place of the principal, unless the power of attorney has personal knowledge of the facts he professed to depose to. The legal position was expounded in following words:

"23. It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts", would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. (See: Vidhyadhar v. Manikrao & Anr., AIR 1999 SC 1441; Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217; M/S Shankar Finance and Investment v. State of A.P & Ors., AIR 2009 SC 422; and Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512).

41. In the light of the aforesaid legal position, it would be expedient to appreciate the manner in which Mr. Murtimant Tandel (P.W.1) fared in the cross examination. It was brought out in the cross examination of Mr. Tandel (P.W.1) that he is the son-in-law of the original Plaintiff Nos. 13 and 14 and brother-in-law of Plaintiff Nos. 15, 16 and 17. He claimed to have become acquainted with the Plaintiffs post his marriage, i.e. 27th May, 1996. He was candid enough to concede that he does not have personal knowledge as to what transpired between the Plaintiffs and Defendants prior to 1996. Mr. Tandel (P.W.1) had no qualms in conceding that he was giving evidence as a family member and he did not have any personal interest in the property. However, during the course of further cross examination, it was brought out that Mr. Tandel (P.W.1), in a sense, stood in the position of conflict of duty and interest. Mr. Tandel (P.W.1) went on to concede that in the power of attorney whereby he was authorized to depose, it was mentioned that on 24th November, 1997 the protected tenants have executed a formal agreement in favour of Shri Shahjanand Associates, to sell their rights in the suit property. Mr. Tandel (P.W.1) went on to admit in clear and unequivocal terms that he is one of the partners of M/s. Shahjanand Associates. Mr. Tandel (P.W.1) further conceded in no uncertain terms that he has been appointed as a constituted attorney in the capacity of partner of Shri Shahjanand Associates and not as a family member.

42. These admissions indicate that on the one hand Mr. Tandel (P.W.1) has no personal knowledge of the facts and circumstances which bear upon the lis. On the other hand, Mr. Tandel (P.W.1) is prosecuting the suit in order to advance his personal interest in the suit property in the capacity of a partner of M/s. Shahjanand Associates, in whose favour the Plaintiffs have allegedly transferred their supposed right and interest in the suit lands.

43. As regards the alleged dispossession in or about December, 1994, in the backdrop of the aforesaid admissions in the cross examination, evidently, Mr. Tandel (P.W. 1) was totally unaware. He asserted that the said fact was apprised to him by original Plaintiff No. 15. Thus, there is next to no evidence on the aspect of the alleged dispossession in the month of December 1994. Conversely, on the aspect of possession also Mr. Tandel (P.W.1) went on to admit in clear and unequivocal terms that none of the protected tenants were cultivating any exclusive area out of the suit lands.

44. The situation which, thus, obtains is that there is neither any documentary nor oral evidence which commands implicit reliance either on the aspect of possession or dispossession of the Plaintiffs. This inference becomes justifiable if the evidence on record is appreciated in the backdrop of the fact that the suit lands were not in a cultivable state as they were submerged with tidal water since a considerable period, and, thus, rendering them unsuitable for cultivation.

45. Thus the aspect of exclusive possession of the Plaintiffs over the suit land is required to be considered on a larger canvass rather than the proof or otherwise of possession of the Plaintiffs over the suit land on a particular date or for that

matter on the date of the institution of the suit. This aspect is of some salience from the point of view of the tenability of the suit. The learned counsel for the Defendants urged that if the claim of the Plaintiffs that they were dispossessed in the month of December, 1994 is taken at par they ought to have instituted the suit within six months as is envisaged by section 6 of the Specific Relief Act. Since the suit is instituted in the month of November, 1995 the claim of the Plaintiffs is, *ex facie*, barred by the limitation. As suit for possession based on prior possession beyond the said period of six months is not legally competent, urged the learned counsel for the Defendants.

46. In the backdrop of the aforesaid submission and the undisputed facts as regards the alleged claim of dispossession and the time lag between the stated date of dispossession and institution of suit being more than six months, the question which comes to the fore is whether after the expiry of six months regular suit based on prior possession without proof of title is maintainable ?

47. The legal position is no longer *res integra*. This aspect was considered elaborately by the Supreme Court in the case of *Nair Service Society Limited vs. Rev. Father K. C. Alexander & Ors.* AIR 1968 S.C. 1165.

48. In the said case the Plaintiffs-Respondents filed a suit for possession more than one year after dispossession. The tenability of the suit was questioned on the ground that the suit ought to have been instituted within one year of Travancore Act and section 9 of the Specific Relief Act (Old). The Supreme Court repelled the said submission and held that a suit based on prior possession without proof of title was competent. However, the Defendant in such a suit could raise the issue of title and in that case if the Defendant proves the title the Court cannot pass a decree of possession, even if dispossession is established.

49. The observations of the Supreme Court in paragraph Nos. 13 and 14 are instructive, they read as under:

"13 We agree as to a part of the reasoning but with respect we cannot subscribe to the view that after the period of 6 months is over a suit based on prior possession alone, is not possible. Section 8 of the Specific Relief Act does not limit the kinds of suit but only lays down that the, procedure laid down by the Code of Civil Procedure must be followed. This is very different from saying that a suit based on possession alone is incompetent after the expiry of 6 months. Under s. 9 of the Code of Civil Procedure itself all suits of a civil nature are triable excepting suits of which their cognizance is either expressly or impliedly barred. No prohibition expressly barring a suit based on possession alone has been brought to our notice, hence the added attempt to show an implied prohibition by reason of s. 8 (s. 7 of the Travancore Act) of the Specific Relief Act. There is, however, good authority for the contrary proposition. In *Mustapha Sahib v. Santha Pillai* (1), Subramania, Ayyar J. observes :

"..... that a party ousted by a person who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had

held before (1) I.L.R. 23 Mad. 179 at 182. the ouster even though that possession was without any title."

* * *

"The rule in question is so firmly established as to render a lengthened discussion about it quite superfluous. Asher v. Whitlock (L.R. 1 Q.B. 1) and the rulings of the Judicial Committee in Musammat Sundar v. musammat Parbati (16 I.A. 186) and Ismail Ariff v. Mahomed- Ghouse (20 I.A. 99) not to mention numerous other decisions here and in England to the same effect, are clear authorities in support of the view stated above..... Section 9 of the Specific Relief Act cannot possibly be held to take away any remedy available with reference to the well-recognised doctrine expressed in Pollock and Wright on possession thus :- Possession in law is a substantive right or interest which exists and has legal incidents and advantages apart from the owner's title (p. 19)".

In the same case O'Farrell J. points out that,"all the dictum of the Privy Council in Wise v. Ameerunissa Khatoon (7 I.A. 73) appears to amount to is this, that where a plaintiff in possession without any title seeks to recover possession of which he has been forcibly deprived by a defendant having good title, he can only do so under the provisions of section 9 of the Specific Relief Act and not otherwise."

It is not necessary to refer to the other authorities some of which are already referred to in the judgment under appeal and in the judgment of the same court reported in Kuttan Narayaman v. Thomman Mathai (1). The last cited case gives all the extracts from the leading judgments to which we would have liked to refer. We entirely agree with the statement of the law in the Madras case from which we have extracted the observations of the learned Judges. The other cases on the subject are collected by Sarkar on Evidence under s. 110. 14 The Limitation Act, before its recent amendment provided a period of twelve years as limitation to recover possession of immovable property when the plaintiff, while in possession of the property was dispossessed or had discontinued possession and the period was calculated from the date of dispossession or discontinuance. Mr. Nambiar argues that there cannot be two periods of limitation, namely, 6 months and 12 years for suits based on possession alone and that the longer period of limitation (1) 1966 Kerala Law Times 1. requires proof of title by the plaintiff. We do not agree. No doubt there are a few old cases in which this view was expressed but they have since been either overruled or dissented from. The uniform view of the courts is that if s. 9 of the Specific Relief Act is utilised the plaintiff need not prove title and the title of the defendant does not avail him. When, however, the period of 6 months has passed questions of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fail. In other words, the right is only restricted to possession. only in a suit under S. 9 of the Specific Relief Act but that does, not bar a suit on prior possession within 12 years and title neednot be proved unless the defendant can prove one. The present. amended articles 64 and 65 bring out this difference.

Article 64 enables a suit within 12 years from dispossession, for possession of immovable property based on possession and not on title, when the plaintiff while in possession of the property has been dispossessed. Article 65 is for possession of immovable property or any interest therein based on title. The amendment is not remedial but declaratory of the law. In our judgment the suit was competent."

50. The aforesaid pronouncement of the Supreme Court was followed by the Supreme Court in the case of *Tirumala Tirupati Devasthanam vs. K. M. Krishnaiah*. AIR (1998) SC 1132.

51. In view of the aforesaid exposition of law, I am not persuaded to accede to the submission on behalf of the Defendants that the suit instituted beyond six months of alleged dispossession, on the basis of possessory title, is not tenable. Yet, the onus rests on the Plaintiffs to establish the factum of possession over, and dispossession from, the suit lands, within the period of 12 years preceding the institution of the suit.

52. The aforesaid material, however, justifies an inference that the claim of the Plaintiffs that the Plaintiffs and their predecessors-in-title have been in exclusive possession of the suit lands does not find requisite support either in the documentary or oral evidence. The latter is extremely fragile. Mr. Murtimant Tandel (P.W.1) acquits himself as a stranger to the circumstances of the case. Nay he had the audacity to concede that the power of attorney was executed in his favour in the capacity of the partner of the transferee of the professed rights of the protected tenants. Thus the evidence of Mr. Murtimant Tandel (P.W.1) is bereft of any probative value.

53. The matter can be looked at from another prospective. The Plaintiffs claimed to be in exclusive possession of the suit lands after the demise of Kamlya Deo Patil, in the year 1971. The Plaintiffs further claimed that they were in possession of a large tract of land of about 10 Acres. The cultivation of such a large tract of land for such a long period would not vanish traceless. It would be accompanied by attendant facts and circumstances which would vouch for the cultivation. However, no endeavor was made by the Plaintiffs to lead evidence to substantiate the said claim. None of the Plaintiffs dared to enter the witness box and apprise the Court as to the nature, extent, periodicity of alleged cultivation, the crops and produce taken from the suit lands and the facts and circumstances which evidenced the same.

54. This reluctance on the part of the Plaintiffs entails consequences. In the facts of the case, the claim of possession is such that the Plaintiffs could have substantiated the same by examining the persons who allegedly cultivated the suit lands. Thus, the failure to lead evidence warrants the drawing of an adverse inference against the Plaintiffs.

55. In this context, the learned counsel for the Defendants rightly placed reliance on the judgment of the Supreme Court in the case of *Vidyadhar vs. Manikrao*

(1999) 3 SCC 573, wherein the following proposition was expounded :

"17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh and Anr . .* This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh and Ors.* AIR (1930) Lahore 1 and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* AIR (1931) Bombay 97. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* also followed the Privy Council decision in *Sardar Gurbakhsh Singh's case* (supra). The Allahabad High Court in *Arjun Singh v. Virender Nath and Anr.* held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in *Bhagwan Dass v. Bhishan Chand and Ors . .* , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

56. The conduct of the Plaintiffs is also of determinative significance. Evidently during his life time, Kamlya Deo Patil did not raise any grievance about the deletion of the names from the record of rights of the suit lands, survey No. 31 and 32 vide mutation entries No. 3107 and 3108, certified on 11th April, 1959. Plaintiffs claimed that Kamlya died in the year 1971. Yet, no steps to mutate the names of the legal heirs of the deceased Kamlya were taken till the deletion of the names of the predecessors-in-title of the Plaintiffs from the, "other rights" column of the record of rights of the suit lands, bearing survey No. 29 and 30, vide mutation entry No. 5007 dated 12th June, 1996". It is imperative to note that the application to mutate the names of the heirs of Kamlya to the suit lands was made for the first time on 1st August, 1996. This inaction on the part of the Plaintiffs, especially in the backdrop of the claim of continuous cultivation, cannot be said to be immaterial or inconsequential. This conduct of stoic silence for decades militates against the claim of continuous and exclusive possession.

57. The failure to establish the factum of possession with reference to a particular time frame impairs the claim of dispossession as well. As indicated above, the claim of dispossession wavered from one end to another, as regards the date of dispossession. Nor there is any contemporaneous material to lend support to this claim of dispossession at the hands of Defendant Nos.1, 2, 2A and 3. The date of dispossession is of significance for the purpose of determining the issue of limitation. As the suit is evidently based on previous possession and not on title, Article 64 of the Limitation Act would govern the position. Under Article 64, the period of limitation is 12 years from the date of dispossession. Thus, the starting point of limitation is the date of dispossession. In other words for suits based on possessory, and not proprietary, title the time runs from the date when the Plaintiff, while in possession, has been dispossessed or has been discontinued

in possession. From this standpoint, the failure of the Plaintiffs to establish the date of dispossession, with an amount of certainty, further erodes their claim.

58. Conversely, the material on record in the form of agreements for sale dated 12th February, 1994 (Exhibit D1/4 D1/8), coupled with the minutes of order in Suit Nos. 2623 of 1989, 3292 of 1989, 3293 of 1989 and 3294 of 1989 (Exhibit D1/9 to D1/12), lend requisite support to the claim of the contesting Defendants that the Defendant No. 2 was put in possession of the suit lands in part performance of the said agreements dated 12th February, 1984 by the legal heirs of Vaity's and Bhoirs. In the consent terms appended to the minutes of the order, the said factum of delivery of possession under the agreements for sale dated 12th February, 1984 and confirmation thereof, have been expressly mentioned.

59. If the absence of evidence to establish the factum of possession of the Plaintiffs or their predecessors-in-title after 1978-79, over any of the suit lands, and the failure to establish the factum of dispossession are considered in conjunction with the aforesaid evidence of the execution of the instruments on 12th February, 1984 and the delivery of possession thereunder, an inference become justifiable that as of 12th February, 1984 the Plaintiffs were not in possession of the suit lands. If the said date of 12th February, 1984 is construed as the date of dispossession or discontinuance of the possession of the Plaintiffs, the institution of the suit on 5th November, 1996 appears to be beyond the period of 12 years stipulated by Article 64 of the Limitation Act.

60. Even otherwise, the fundamental nature of the suit cannot be lost sight of. It is a suit based on possessory title. At the cost of repetition, it must be mentioned that the Plaintiffs do not profess to contest the title of Defendant Nos. 15 to 22 and 23 to 54, the legal heirs of the original owners, over the suit lands, nor the Plaintiffs claim either proprietary title over the suit lands or perfection of title by adverse possession. In this view of the matter, even if the case of the Plaintiffs is construed rather generously and it is assumed that the Plaintiffs were dispossessed in the month of December, 1994, the Plaintiffs are not entitled to the relief of restoration of possession against the Defendant Nos. 15 to 22 and 23 to 54, who are the owners of the suit lands and have successfully set up the plea of title.

61. The necessary corollary of the aforesaid finding is that in the absence of any challenge to the right, title and interest of Defendant No. 2 and its associate entities i.e. Defendant Nos. 70 to 73, at the instance of the original owners of the suit lands, the endeavor of the Plaintiffs, who failed to establish the possessory title, does not deserve any countenance. For the aforesaid reasons, I am impelled to answer Issue Nos. 3 and 6 in the negative, and Issue No.2 in the affirmative.

ISSUE NOS. 4, 5 AND 7 :-

62. In view of the aforesaid findings, in the strict sense, further inquiry is not warranted. Since the edifice of the claim of the Plaintiffs was built on the

possessory title, which the Plaintiffs failed to establish, the challenge to the transactions between the owners of the suit lands (Defendant Nos. 15 to 22 and 23 to 54), on the one part, and Defendant No. 2 and its associates (Defendant Nos. 1, 2A, 3 and 70 to 73), on the other part, at the instance of the Plaintiffs does not merit consideration.

63. It is the claim of Defendant No. 70 that after the owners executed the instruments on 12th February, 1984 (Exhibit D1/4 to D1/8), in favour of Defendant No. 2, the later entered into a partnership to develop various pieces of lands admeasuring about 30 Acres including the suit lands with the other entities to form a joint venture partnership firm namely M/s. Gautam Enterprises, under a Deed of Partnership dated 27th March, 1986 (Exhibit "CP-LLL"). It is the claim of Defendant No. 70 that under the said deed of partnership Defendant No. 2 brought the benefits of the said five agreements dated 12th February, 1984 in respect of the suit lands, into the partnership firm.

64. The learned counsel for the Plaintiffs made an earnest endeavor to demonstrate that Mr. Chaitanya Parekh (D.W.1) the partner of Defendant No. 70 has played a dubious role in the entire transaction and has filed the pleadings on behalf of most of the Defendants in different and often conflicting capacities. To buttress this submission, Mr. Mali invited the attention of the Court to the written statements filed by the Defendants. The written statement on behalf of Defendant No. 1 was verified by Mr. Chaitanya Parekh (D.W.1), in the capacity of the partner of Defendant No. 1. The written statement of Defendant No. 2 was also verified by Mr. Chaitanya Parekh (D.W.1) in the capacity of the partner of Defendant No. 2. The written statement of Defendant No. 70 was also verified by the same Mr. Chaitanya Parekh (D.W.1) in the capacity of the partner of M/s. Gautam Enterprises. The said Chaitanya Parekh also assumed the character of the constituted of attorney of Defendant Nos. 35 to 38, the legal representatives of the original owner Bhoir. Mr. Chaitanya Parekh again donned the role of constituted attorney of Defendant Nos. 15 to 18 and verified the written statement filed on behalf of Defendant Nos. 15 to 18, the legal representatives of Vaity. Mr. Chaitanya Parekh also verified the written statement filed on behalf of Defendant No. 72, in the capacity of Director of Defendant No. 72.

65. On the strength of the aforesaid fact-situation, Mr. Mali urged, with a degree of vehemence, that Mr. Chaitanya Parekh has manipulated the entire transaction and thus the alleged agreements for sale dated 12th February, 1984 and the subsequent deed of partnership between Defendant No. 2, the transferee, and Defendant No. 70 are mere subterfuge. Mr. Mali invited the attention of the Court to the manner in which Mr. Chaitanya Parekh fared in the cross examination as regards the inter-se transaction between Defendant No. 2 and the other associate entities.

66. It is true that the material on record indicates that Mr. Chaitanya Parekh (D.W.1) has played a dominant role in defending the instant suit. An inference is also deducible that the Defendant Nos. 1, 2, 2A, 3 and 70 to 73 formed a

conglomerate and the role of Chaitanya Parekh (D.W.1) was that of primus. However, these factors are of no assistance to advance the cause of the Plaintiff's case. As the Plaintiffs have failed to establish their possession over the suit lands and entitlement to the reliefs on the basis of possessory title, the Plaintiffs have no locus to challenge the inter se transactions between the original owners and the transferees.

67. Though a concerted effort was made on behalf of the Plaintiffs to demonstrate that the orders passed under the ULC Act, 1976, the revisional orders and the corrigendum issued there under were void and non-est in the eyes of law, yet, in view of the undisputed fact that the Plaintiffs had invoked the writ jurisdiction of this Court not once but twice and the endeavour of the Plaintiffs was not countenanced by this Court cannot be brushed aside lightly. In fact, in view of the failure of the Plaintiffs to establish their claim of being the protected tenants of the suit lands, or otherwise entitled to the reliefs on the basis of possessory title, the Plaintiffs cannot be heard to question the various orders passed under the ULC Act, 1976 and the consequent development permissions granted by the Planning Authority.

68. Without delving deep into this aspect of the matter, it would suffice to note the observations of the Division Bench of this Court in the order dated 29th January, 2003 passed in Writ Petition No. 977 of 2002 wherein some of the Plaintiffs had assailed the orders passed by the Competent Authority under section 8(4) and the corrigendums issued on 24th November, 1997 :

"On commencement of the Urban Land (Ceiling and Regulations) Act, 1976, hereinafter referred to the "said Act", Vaithys and Bhoirs filed statement under section 6(1) of the said Act. By five separate orders which were passed by the Additional Collector and Competent Authority during the period 1985-87 under section 8(4) of the said Act, a part of the land was declared as surplus. The owners i.e., Vaitys and Bhoirs then preferred applications for exemption under section 20 of the said Act which were accepted and exemption was granted permitting the owners of the land to construct buildings upon the said land as per the scheme. The petitioners challenged the orders passed under section 8(4) of the said Act by filing Writ Petition No. 1471 of 1997. In the said writ petition, it was inter alia contended that the orders under section 8(4) were obtained by the owners by misleading the authorities under the said Act and some of the members of owner's families who were minor at the relevant time were falsely shown as major and were allowed to retain land on the bias of bogus school leaving certificates. The said writ petition was disposed by the Division Bench vide order dated 2.7.1998 by directing the competent authority to dispose of the representation of the petitioner on merits after giving hearing to all the concerned parties within six weeks.

It appears that even before the petitioners approached this Court, orders passed under section 8(4) were rectified by the Additional Collector and Competent Authority and corrigendums were issued on 24.11.1997. it appears that the

owners preferred applications to the Additional Collector and Competent Authority pointing out that when the said Act came into force, the suit property was under "No Development Zone" and therefore it was not "vacant land" within the meaning of section 2(q) of the said Act. It was further pointed out that the Municipal Corporation published draft development plan in 1983-84 inviting objections from the interested persons for transferring the land in question from No Development Zone to Residential Zone. This development plan was sanctioned in 1993 and thus the property fell under the residential zone. The contention of the owners was that since that the land fell in residential zone on 1.6.1993, said Act would be applicable only from the said date and accordingly excess land if any has to be determined as on the 1.6.1993. This case of the petitioner was accepted and the orders passed earlier were modified and corrigendums were issued accordingly.

Ms. Iyer, learned counsel appearing for the petitioners has not disputed that the said Act would be applicable only from the date of commencement of the master plan. She fairly conceded that in view of the decision in the State of A.P. and Ors. Vs. N. Audikesava Reddy & Ors. AIR 2002 SC 5, the provisions of the said Act will be applicable to the said land when the land is included in the master plan. She however, submitted that in the present case, the draft development plan was published on 30.4.1984 and even on that date persons who were falsely shown as major continued to be minor and therefore determination of the ceiling area must be effected with reference to the publication of the draft development plan. Secondly, she submitted that the land fell in CRZ area and therefore no construction upon the said land is permissible and consequently exemption order issued in favour of the respondent nos.8 to 18 who are builders is not valid.

We are unable to accept the submission of the learned counsel. The draft development plan which was published on 30.4.1984 was sanctioned under section 37 of the MRTP Act only on 1.6.1993. Earlier the development plan of 1967 was in force. Under the said plan the land was shown in 'No Development Zone' and therefore the relevant date for the purpose of application of the said Act would be 1.6.1993 and not 30.4.1984. The objection raised on the basis of the CRZ notification is also without any substance. It has been pointed out by the respondents that the Coastal Zone Management Plan of the State has been approved by MOEF, GOI vide letter dated 27.9.1999 with some modifications. As per the said letter, the CRZ area along with creeks is minimum 150 mt from HTL. In the present case the property under reference is beyond the distance of 150 mt from HTL and therefore the CZMP conditions are not applicable.

In the result, petition is dismissed. However, it is made clear that the above observations shall not affect the rights and contentions of the parties in the pending suit."

69. In the backdrop of the aforesaid observations, the Plaintiffs cannot be permitted to re-agitate the validity of the orders passed by the Competent Authority under the ULC Act, 1976 and the development permissions granted by

the Planning Authority. The learned counsel for the Plaintiffs attempted to salvage the position, by canvassing a submission that the Division Bench had expressly observed that the observations shall not affect the rights and contentions of the parties in the pending suit. I am afraid to accede to this submission. These observations cannot be construed to the effect that those issues of validity of the orders under ULC Act, 1976 could be re-agitated before the Civil Court. Such orders passed by the Competent Authority under the ULC Act, 1976 are not amenable to the jurisdiction of the Civil Court. The clarification simply implies that the rights which emanate from the claim of the Plaintiffs that they were in possession of the suit lands would not be affected by those observations.

70. The conspectus of the aforesaid consideration is that at the instance of the Plaintiffs who have not succeeded in establishing the possessory title and entitlement to the reliefs on the strength of the possessory title, the legality of the right of Defendant No. 70 to develop the suit lands cannot be questioned. Nor the legality and validity of the orders passed and corrigendum issued under the ULC Act, 1976 and development permissions granted by Defendant No. 14 Municipal Corporation of Greater Mumbai can be adjudicated. Thus, I am persuaded to answer Issue No. 4 and Issue No. 5 as do not survive for consideration.

71. For the foregoing reasons and findings on Issue Nos. 1 to 6, the suit deserves to be dismissed. Hence, the following order :

ORDER

The suit stands dismissed with costs. Decree be drawn accordingly.