Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4448 of 2021
(Arising out of SLP (C) No. 29868 of 2018)

Shri Saurav Jain & Anr **…Appellants**

vs

M/s A. B. P. Design & Anr **…Respondents**

J U D G M E N T

Dr Justice Dhananjaya Y Chandrachud

1 This appeal arises from a judgment dated 22 February 2018 of the High Court of Judicature at Allahabad in a first appeal[1] under Section 96 of the Code of Civil Procedure 1908 (**"CPC"**). On 18 October 2011, the Additional District and Sessions Judge, Moradabad dismissed a suit[2] instituted by the first respondent. The High Court allowed the appeal by the first respondent and reversed the judgment of the

[1] First Appeal No. 411 of 2011.
[2] Original Suit No. 602 of 2008.

Trial Court, holding that the auction conducted by Moradabad Development Authority (**"MDA"**) in respect of the land in dispute is null and void. The appellant is an auction purchaser who purchased the suit land from the MDA. MDA has been impleaded as the second respondent to these proceedings. Both the appellant and the second respondent have been restrained from interfering with the possession of the first respondent over the land.

Facts

2 The first respondent instituted a suit in the Court of the Civil Judge (Senior Division), Moradabad claiming to be a "transferable owner and cultivator" of lands comprising of Gata No. 200/1 admeasuring 0.1300 hectares equivalent to 1295.04 sq. mts. situated in village Sonakpur, in the city and district of Moradabad. MDA was impleaded as the first defendant while the appellant was the second defendant to the suit. The averments in the plaint need to be adverted to at this stage. A person by the name of Zahid Hussain had title over vacant land admeasuring 6960.84 sq. mts in Moradabad. Ceiling case no. 437/5325 (titled State vs. Zahid Hussain) was instituted against him in the Court of the Competent Authority, Urban Land Ceiling, Moradabad in respect of his lands including the lands comprised in Gata No. 200 admeasuring 1295.04 sq. mts. By an order dated 16 March 1988, the land comprised in Gata No. 200, among other pieces of land, was declared as "surplus" by the Competent Authority under the Urban Land (Ceiling and Regulation) Act 1976 **("ULCRA")**. Pursuant to the order of the Competent Authority, possession of the land in Gata No. 200 was allegedly handed over by the State of Uttar Pradesh to the

MDA. Meanwhile, Zahid Hussain filed a revenue appeal[3] before the District Judge, Moradabad against the order dated 16 March 1988. By an order dated 6 January 1993, the District Judge allowed the appeal and remanded the proceedings for re-consideration to the Competent Authority on the basis of an amended Master Plan.

3 It is the case of the plaintiff that Zahid Hussain was the erstwhile owner and occupier of lands comprised in Gata No. 200 admeasuring 0.32 acres. Out of the above holding, land admeasuring 0.05 acres (equivalent to 0.0200 hectares or 200 sq. mt.) was acquired by MDA on 30 January 1986 under the provisions of the Land Acquisition Act, 1894. After the acquisition, Gata No. 200 was divided into two plots:

- Gata No. 200/1 measuring 0.1300 hectares (1300 sq. mt.)
- Gata No. 200/2 measuring 0.2000 hectares (200 sq. mt.)

Zahid Hussain is stated to have become the owner of Gata No. 200/1, while MDA became the owner of Gata No. 200/2. The case of the plaintiff in the suit is that after the ceiling case was remanded to the Competent Authority and during its pendency, Zahid Hussain obtained permission to sell the lands situated in Gata No. 200/1 to the first respondent from the Office of the Prescribed Authority, Urban Land Ceiling, Moradabad on 5 May 1993. The first respondent claims to have purchased Gata No. 200/1 admeasuring 1295.04 sq. mt. from Zahid Hussain by a registered sale deed dated 22 June 1993. During the pendency of the ceiling case before the Competent Authority, ULCRA was repealed by Act 15 of 1999 **("Repeal Act")**. The Competent Authority (City Land Boundary), Moradabad passed an order dated 15 June 2001

[3] Revenue Appeal No. 23 of 1988.

dismissing Case No. 437/5325 in view of Section 4 of the Repeal Act which states that proceedings pending before any court, tribunal, or authority shall stand abated.

4 In this manner, it was alleged that the eclipse of ceiling over Gata No. 200/1 measuring 1295.04 sq. mt. was lifted. The plaintiff – first respondent claimed to be the owner of the entire area of 1295.04 sq. mt., while MDA was entitled to ownership rights over Gata No. 200/2 in respect of 200 sq. mt. of land.

5 MDA published a notice on 31 August 2008 for auction and sale of 600 sq. mt. of land in Gata No. 200. The first respondent claims to have submitted representations on 2 September 2008 and 4 September 2008 against the auction. The first respondent instituted a writ petition against the State of Uttar Pradesh and MDA before the High Court challenging the auction. By an order dated 11 September 2008, the High Court disposed of the petition with liberty to the first respondent to seek reliefs in a civil suit. The auction sale in favour of the appellant is stated to have been approved on 12 September 2008, and a sale deed was executed between the MDA and the appellant on 20 March 2009 for a consideration of Rs. 65,75,000.

6 The first respondent challenged the auction proceedings in the suit on the ground that MDA had title only over the land measuring 200 sq. mt (that is, Gata No.200/2) of the auctioned land, and thus the sale of the remaining land measuring 400 sq. mt. was null and void in view of the sale deed executed by Zahid Hussain in

favour of the first respondent on 22 June 1993. In the suit, as it was originally instituted, the reliefs sought were:

(i) A declaration that the auction of land to the extent of 400 sq. mt. by MDA is illegal and void;

(ii) A permanent injunction restraining MDA from alienating the suit land in favour of the appellant and from dispossessing the first respondent. The particulars of the suit land as indicated in the plaint were as follows:

> "PARTICULARS OF SUIT LANDS
> Lands measuring 400 Sq. Mt. of Gata no.200/1 a part of erstwhile integrated Gata no.200 situated in Village Sonakpur, City and District Moradabad."

The plaint was amended to seek:

(i) A declaration that the auction of lands measuring 660.32 sq. mt. by MDA was illegal and void;

(ii) A declaration that the first respondent is the exclusive owner and occupier of the suit lands detailed in schedule (B) including the suit lands in schedule A; and

(iii) A permanent injunction from dispossessing the first respondent.

7 Shri Sai Siddhi Developers was impleaded as the third defendant to the suit. The amended plaint set up the plea that before the lands were transferred in favour of the first respondent by Zahid Hussain, the latter had obtained permission of the Competent Authority, Moradabad on 5 May 1993. Schedule (A) and Schedule (B) of the amended plaint are extracted below:

"SCHEDULE 'A' OF SUIT LANDS

Lands measuring 660.32 Sq. Mt. of Gata no.200/1 a part of erstwhile integrated Gata no.200 situated in Village Sonakpur, City and District Moradabad which is shown in the enclosed site plan with alphabets BCDE.

The boundaries of the above gata are as under –

East: Police Post
West: 12 Mt. wide road.
North: Kaanth Road.
South: Commercial Plot no.7 (Property of the Plaintiff).

SCHEDULE 'B' OF THE SUIT LANDS
Lands measuring 1295.04 Sq. Mt. of Gata no.200/1 a part of erstwhile integrated Gata no.200 situated in Village Sonakpur, City and District Moradabad which is shown in enclosed site plan with alphabets ABCDEF.

The boundaries of the above gata are as under -
East: Police Post and thereafter plot of Haji Qayum
West: 12 Mt. wide road.
North: Kaanth Road.
South: Plot and lands of Praan Singh."

8 MDA filed a written statement stating that:

(i) Possession of the suit land in Gata No. 200/1 was taken over by the State Government after the land was declared to be surplus, and was transferred by the Naib Tehsildar, Sadar, Moradabad and Collector, Moradabad to the MDA on 31 July 1992. MDA has been in possession of the suit land in Gata No. 200/1 since then till it was sold through auction;

(ii) A registered sale deed of 660.32 sq. mt. was executed on 20 March 2009;

(iii) The ceiling proceedings against Zahid Hussain were concluded and thus, he is not entitled to avail of the benefit under the Repeal Act;

(iv) No permission had been granted by the Competent Authority, Urban Ceiling, Moradabad to Zahid Hussain for the transfer of the suit lands of Gata No. 200/1;

(v) The sale deed executed between Zahid Hussain and the first respondent *after* possession had been taken over by MDA on 31 July 1992 is invalid; and

(vi) The State of Uttar Pradesh and the Ceiling Authority were necessary parties but were not impleaded in the suit.

9 The appellant (defendant no. 2 before the Trial Court) filed a written statement stating that:

(i) The entire suit land had vested in the State Government under Section 10(3) of the ULCRA;

(ii) The sale deed dated 22 June 1993 by Zahid Hussain in favour of the first respondent was void since he could not have entered into any transaction when the land was under adjudication by the Competent Authority, Urban Land Ceiling;

(iii) The land was alleged to have been transferred on 31 July 1992 to MDA and any sale deed executed allegedly to the first respondent-plaintiff on 22 June 1993 would confer no title on the purchaser;

(iv) The revenue appeal before the District Judge against the order of the Competent Authority could not have been disposed of without impleading MDA;

(v) Since MDA was in possession of the land before the enforcement of the Repeal Act (pursuant to the communication dated 31 July 1992 of the Competent Authority, Urban Land Ceiling), the repeal would be of no consequence; and

(vi) The plaintiff – first respondent had no concern with the auction of the land admeasuring 660.32 sq. mt. by MDA for which a consideration of Rs. 65.75 lacs had been paid in auction.

10 The following issues were framed in the suit:

> "1. Whether Plaintiff is the owner and occupier of the Suit lands?
> 2. Whether auction proceedings initiated by defendant no.1 in favour of defendant no.2 on 12.9.2008 to the extent of disputed schedule admeasuring 660.32 Sq. Mt., are illegal and void?
> 3. Whether Suit has been undervalued?
> 4. Whether deficit court-fee has been paid?
> 5. Whether Suit of plaintiff is bad for misjoinder of necessary parties?
> 6. Whether this Court doesn't have any jurisdiction to hear this Suit?
> 7. Whether any cause of action has arisen in favour of Plaintiff?
> 8. Relief."

11 By its judgment dated 18 October 2011, the Trial Court held that it had the jurisdiction to grant declaratory and injunctive relief and that the suit was therefore maintainable. The Trial Court dismissed the suit holding that the MDA was the lawful owner of the land and the auction held on 12 September 2008 was valid. The Trial Judge made the following findings:

(i) Zahid Hussain was the erstwhile owner of Gata No. 200 admeasuring 1295.04 sq. mt. situated in village Sonakpur, District Moradabad;

(ii) By an order dated 16 March 1988 passed by the Competent Authority in Ceiling Case No. 437/5325 under the ULCRA, a total holding of 2,000 sq. mt. out of 6960.84 sq. mt. land was declared to be retainable while the balance admeasuring 4960.84 sq. mt. was declared surplus;

(iii) The lands admeasuring 1295.04 sq. mt. in Gata No. 200 were found to be 'excess vacant land';

(iv) Possession of 1295.04 sq. mt out of Gata No.200 in village Sonakpur was handed over by the Naib Tahsildar Urban Land Ceiling, Moradabad to the Naib Tahsildar of MDA on 31 July 1992 on behalf of the District Collector. When an appeal was filed before the District Judge, Moradabad against the order dated 16 March 1988, the fact that possession of the suit land had been handed over to the MDA was not brought to the notice of the court. In any event, the case was remanded to the Competent Authority in order to take into consideration the amended Master Plan. In the meantime, prior to the order of the District Judge, possession of 1295.04 sq. mt of Gata No. 200 was handed over to MDA on 31 July 1992 pursuant to which it was the legal owner of the aforesaid land in Gata No. 200;

(v) Zahid Hussain who is alleged to have sold the land to the first respondent – plaintiff had not come forth before the court nor was the original sale deed dated 22 June 1993 alleged to be executed by him filed in court. Only a certified copy of the sale deed was filed;

(vi) MDA to whom the lands were handed over on 31 July 1992 was not a party to the revenue appeal before the District Judge nor had the Competent Authority

in its order dated 15 June 2001, abating the proceedings in the ceiling case, directed that 'possession' should be restored to Zahid Hussain;

(vii) Possession had already been transferred to MDA on 31 July 1992 and the acquisition would not be affected by the Repeal Act since the land had vested under Section 10(3) of the ULCRA, and possession had been taken over by a person duly authorised by the State Government (Section 3(1)(a) of the Repeal Act);

(viii) According to the first respondent, Zahid Hussain had obtained permission on 5 May 1993 to sell the lands admeasuring 1295.04 sq. mt. of Gata No. 200/1. The entire proceedings appear to be fabricated because Zahid Hussain was no longer the owner of 1295.04 sq. mt of Gata No. 200/1. The possession of Gata No. 200 had been transferred to MDA on 31 July 1992. Moreover, the permission which was granted to Zahid Hussain on 5 May 1993 to sell the lands was not in respect of land which had been declared as surplus but only in respect of his own retainable lands admeasuring 2000 sq. mt., which did not include the land in Gata No. 200/1; and

(ix) Since an order had already been passed under Section 8(4) of the ULCRA with respect to the suit lands, Zahid Hussain did not have any right to transfer the land (in accordance with the law laid down by this Court in **Ritesh Tiwari & Ors. v. State of U.P & Ors.**[4]).

[4] 2011 (84) A.L.R. 292 (SC).

12 The High Court by its judgment dated 22 February 2018 reversed the judgment and decree of the Trial Court. The Division Bench of the High Court while allowing the appeal observed that:

(i) Against the order of the Competent Authority dated 16 March 1988, the District Judge, Moradabad allowed the appeal on 6 January 1993 and the Competent Authority was directed to decide the matter afresh after taking into consideration the amended Master Plan;

(ii) In the meantime, a notification had been issued on 27 September 1988 under Section 10(1) of ULCLRA vesting surplus land in the State including Gata No. 200 admeasuring 1295.04 sq. mt.;

(iii) No material had been forthcoming on record on whether any subsequent proceedings were undertaken;

(iv) It was not clear as to when possession was taken by the Competent Authority from the landowner under ULCRA;

(v) The letter dated 31 July 1992 which is addressed to the Competent Authority, Urban Land Ceiling, Moradabad stating that possession had been handed over by the Naib Tahsildar, Urban Land Ceiling, MDA is only to show a "paper possession" and not "actual physical possession" under Section 10(5)[5] or

[5] "10(5). Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice".

10(6) of the ULCRA[6]. For "actual possession" to have been taken, possession should have been taken by drawing a panchnama;

(vi) Since an appeal against the order dated 6 March 1988 was allowed on 6 January 1993 remanding the case to the Competent Authority, the order declaring the land as surplus would not remain in existence. Thus, no question of a valid vesting of title in the State or of it taking possession would arise. The subsequent proceedings would become null and void and the land would continue to belong to Zahid Hussain;

(vii) After the issuance of a notification under Section 10(1) on 27 September 1988, no other notification was published under Section 10(3) of the ULCRA. Hence, the issue of deemed physical possession of the land and its vesting in the State Government would not arise. Even otherwise, the Repeal Act only saves those proceedings where actual possession under Section 10(5) (peaceful or voluntary) or Section 10(6) (forcible possession) has been taken, and it does not apply to deemed possession;

(viii) In the written statement filed by MDA, there was no reference to actual possession being taken apart from the letter of possession dated 31 July 1992, which was only a paper transaction. Even this letter is not a memo of possession transferring possession to MDA;

[6] "10(6). If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary".

(ix) In the absence of physical taking over of possession and of the handing over of possession to MDA on the enforcement of the Repeal Act, the land comprised in Gata No. 200 admeasuring 1295.04 sq. mt. remained the property of Zahid Hussain; and

(x) The fact that proceedings for possession under Section 10(5) had not been undertaken was adverted to in the order of Competent Authority dated 15 June 2001.

Submissions

13 Mr Venkita Subramoniam T.R., learned Counsel appearing on behalf of the appellant submitted that the judgment of the High Court is erroneous for the following reasons:

(i) The jurisdiction of the civil court to entertain the suit was barred since a fair reading of the plaint would make it evident that the object and purpose of the suit was to impugn the validity of the proceedings under the ULCRA without impleading either the State of Uttar Pradesh or the Competent Authority under the ULCRA;

(ii) The purchase of the lands by the first respondent from Zahid Hussain in 1993 is hit by the provisions of Section 5(3) and Section 27 of ULCRA;

(iii) The sale deed in favour of the first respondent was void, and hence the basis and foundation on which the first respondent instituted the suit stands nullified;

(iv) As a matter of fact, possession was taken and handed over to MDA on 31 July 1992; and

(v) The original claim in the suit was subsequently expanded through an amendment to set up a plea over a larger area of land.

14 On the other hand, Mr Manoj Swarup, learned Senior Counsel appearing on behalf of the first respondent submitted that:

(i) Originally in 1986, an acquisition took place under the provisions of the Land Acquisition Act 1894 of an area admeasuring 200 sq. mt. in Gata No. 200. As a consequence, the remaining portion of the land was divided into Gata No.200/1 admeasuring 1295.04 and Gata No.200/2 admeasuring 200 sq. mt;

(ii) Though an order was passed by the Competent Authority in 1988, by the order of the District Judge dated 6 January 1993, the case was remanded back to the Competent Authority for reconsideration of the matter on the basis of the amended Master Plan, and there is no evidence in regard to any further proceedings prior to the enactment of the Repeal Act;

(iii) The frame of the suit was proper because the cause of action arose due to the advertisement which was issued on 31 August 2008 by MDA for the auction of 660 sq. mt of land, which included a portion of the suit land in Gata No. 200/1. The suit in other words had nothing to do with the ceiling proceedings;

(iv) The cornerstone of the case of the appellant is the possession letter dated 31 July 1992 which is in the nature of an inter-departmental communication. In

the absence of a panchnama with independent witnesses, it is not possible to hold that actual physical possession was taken over;

(v) Even if the document evidencing possession dated 31 July 1992 is considered to be valid, subsequently in 1993 there was a remand by the District Judge as a consequence of which there would be no vesting in the State prior to the date of the repeal; and

(vi) After the issuance of a notification under Section 10(1) on 27 September 1988, there is no evidence of any further steps having been taken to take possession before the Repeal Act came into force.

Analysis

15 The rival submissions shall now be considered.

16 At the outset, it needs to be noted that the first respondent claims title on the basis of a registered sale deed dated 22 June 1993 under which Zahid Hussain purportedly conveyed an area admeasuring 1295.04 sq. mt. in Gata No. 200/1 for a consideration of Rs. 5 lacs. The sale deed refers to the permission sought for the sale of the property under Section 27 of the ULCRA on 29 March 1993, which was allegedly granted by an order dated 5 May 1993.

17 The declaration filed by Zahid Hussain before the Office of the Prescribed Authority, Urban Land Ceiling, Moradabad adverts to the total extent of the land as 1295.04 sq. mt. However, there is no reference to the survey number (or gata number) of the lands in respect of which permission was sought. Further, the order

dated 5 May 1993, which allegedly grants permission for sale of the land to the first respondent, notes that a declaration dated 29 March 1993 was made for transfer of the land situated at Sonakpur, bearing Gata No. 200, with an area of 1295.04 sq. mts. However, the permission for transfer of that land was not granted as there was a pending suit pertaining to it. The order further notes that another application dated 30 March 1993 was submitted by Zahid Hussain. After conducting an enquiry, it was found that the permission to "transfer the land area 1295.04 sq mt. ha[d] now been sought from his [Zahid Hussain's] property of admeasuring 2000 sq mt". Based on this, the Competent Authority by its order dated 5 May 1993 granted permission for transfer of land measuring 1295.05 sq. mt from land measuring 2000 sq. mt. Thus the order dated 5 May 1993 indicates that the Competent Authority had categorically denied permission for transfer of lands situated in Gata No. 200/1 since there was a pending suit, and the permission was only granted for 1295.05 sq. mt. of land out of the 2000 sq. mt. of land owned by Zahid Hussain, which was not the subject of the ceiling proceedings.

18 Section 5(3) of the ULCRA is in the following terms:

> "In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void".

Section 27(1) further provides:

> "(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority."

19 Section 5(3) states that a person holding land in excess of the ceiling limit before the commencement of the Act shall not transfer the land until (a) the land owner has furnished a statement under Section 6[7]; and (b) the Competent Authority has published the notification pertaining to the excess land under Section 10(1)[8]. The purported transfer by Zahid Hussain in favour of the first respondent is in the teeth of and contrary to the prohibition contained in sub section (3) of Section 5. Pursuant to the initial order dated 16 March 1988 under Section 8(4) of the ULCRA, a notification was published under Section 10(1) of the ULCRA on 27 September 1988. However, once the order was set aside by the District Judge and the case was remanded back to the Competent Authority, no further order was passed under

[7] "6. (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain[..]
(2)[…]
(a)[…]
(b) in any State which adopts this Act under clause (1) of article 252 of the Constitution, any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1)".

[8] "10. (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that- (i) such vacant land is to be acquired by the concerned State Government; and (ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed".

Section 8(4) and consequently, no notification was published under Section 10(1). Thus, at the relevant time, that is between the order dated 6 January 1993 remanding the matter to the Competent Authority and when the sale deed was executed on 22 June 1993, there was no notification under Section 10(1) of the ULCRA. Thus, the dual requirement for a valid transfer under Section 5(3) was not fulfilled. Any transfer in contravention of the provisions of Section 5(3) would be null and void. The suit instituted by the first respondent was founded on his alleged claim of title based on the transfer by Zahid Hussain and was liable to fail on this ground alone.

20 There is a specific finding of fact in the judgment of the Trial Court that the permission which was issued on 5 May 1993 to Zahid Hussain for the transfer of 1295.04 sq mt of land was in modification of an earlier order dated 29 March 1993. The permission was in respect of the 2000 sq. mt of land which was retained by Zahid Hussain. The High Court has not adverted to this finding of fact at all nor has it found any substantive basis to displace the finding. That apart, it is evident, that the order of the Competent Authority dated 16 March 1988 was set aside in appeal by the District Judge on 6 January 1993 and the case was remanded for fresh adjudication of the excess land in view of the amended Master Plan. In such an instance, when the case was remanded, Zahid Hussain could not have transferred the suit property, having regard to the clear bar which is contained in the provisions of Section 5(3). No transfer of the land could have been lawfully made and any such transfer in contravention with the provision would be null and void.

21 Apart from the above findings which negate the basis and foundation of the suit, the appellant-defendant has also raised an objection to the jurisdiction of the Trial Court to entertain the present suit, given the bar on jurisdiction under the ULCRA. The appellant has submitted that the first respondent, through an artful drafting of the plaint in the course of the pleadings in the suit placed in issue the entire gamut of proceedings under the ULCRA, without impleading either the State of Uttar Pradesh or the Competent Authority under the ULCRA. At the outset, we note that the ground of lack of jurisdiction of the Trial Court over the suit was raised in the proceedings before the court of first instance. The Trial Court rejected the objection raised by the appellant-defendant on the exercise of its jurisdiction, holding that the suit for declaratory relief against the auction sale and for an injunction could be entertained. In the appeal against the judgment of the Trial Court filed by the first respondent before the High Court, the appellant did not file a cross-objection against this finding of the Trial Court on the exercise of its jurisdiction. The appellant has urged before this Court that the jurisdiction of the civil court is impliedly excluded under the provisions of the ULCRA. Reliance has been placed by the appellant on Order XLI Rule 22 of the CPC to argue that a party, in whose favour the civil court has decreed a suit, can raise arguments against findings without having to file a cross- objection, in the appeal.

22 Order XLI Rule 22(1) reads in the following terms:

> "(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way

of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation. – A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]"

Order XLI Rule 22 CPC was amended by the CPC Amendment (Act 104 of 1976), with effect from 1 February 1977. The text of the pre-amendment and post-amendment provision is reproduced below:

Order XLI Rule 22 prior to its amendment	**Order XLI Rule 22 as amended by Act 104 of 1976**
R.22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.	R.22. Upon hearing, respondent way object to decree as If he had preferred a separate appeal- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [**but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour**; ***and*** may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow. [Explanation. – A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the

	decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.] **(emphasis supplied)**

23 The effect of the amendment was considered in **Banarsi & Ors. v. Ram Phal**[9], where this Court held that after the 1976 amendment, the respondent could file cross-objections against the 'findings' of the lower court, while previously cross-objections could only be filed when the decree of the lower court was partly against the respondent. Justice R.C Lahoti (as the learned Chief Justice then was), speaking for the two judge bench observed:

> "10-. […] There may be three situations:
> (*i*) The impugned decree is *partly* in favour of the appellant and *partly* in favour of the respondent.
> (*ii*) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.
> (*iii*) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.
>
> 11. In the type of case (*i*) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (*ii*) and (*iii*) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. **Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to**

[9] (2003) 9 SCC 606.

> **any *finding* adverse to him as the decree is *entirely* in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a *finding* recorded against him either while answering an issue or while dealing with an issue.** The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent."
>
> **(emphasis supplied)**

24 Order XLI Rule 22(2) of the CPC states that a "cross-objection shall be filed in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto." This Court in **S. Nazeer Ahmed v. State Bank of Mysore**[10] elaborated on the *form* of objections made under Order XLI Rule 22 CPC. In **Nazeer Ahmed** (**supra**), the respondent had filed a suit for enforcement of an equitable mortgage. In deciding the suit, the Trial Court rejected the argument of the appellant-defendant and held that the suit was not barred by Order II Rule 2 of the CPC. However, the court dismissed the suit on grounds of limitation. On an appeal filed by the respondent before the High Court, the High Court observed that although the suit was barred by Order II Rule 2 of the CPC, the appellant had not challenged this finding of the Trial Court by filing a memorandum of cross-objection. Thus, the High Court granted the respondent a decree against the appellant. When this finding of the High Court was assailed

[10] (2007) 11 SCC 75.

before this Court, Justice P.K Balasubramanyam held that a memorandum of cross-objection needs to be filed while taking recourse to Order XLI Rule 22 only when the respondent claims a relief that had been rejected by the trial court or seeks an additional relief apart from that provided by the trial court. The court held that a memorandum of objection need not be filed when the appellant only assailed a 'finding' of the lower court:

> "7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order 41 Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. **The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvas the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court.**"
>
> (**emphasis supplied**)

25 It is apparent from the amended provisions of Order XLI Rule 22 CPC and the above authorities that there are two changes that were brought by the 1976 amendment. *First,* the scope of filing of a cross-objection was enhanced substantively to include objections against 'findings' of the lower court; *second*,

different forms of raising cross-objections were recognised. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase "*but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour*" from "*may also take any cross-objection to the decree*" with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of the court of first instance before the appellate court without a cross objection.

26 The applicability of the principle in Order XLI Rule 22 CPC to proceedings before this Court under Article 136 of the Constitution was considered by a Constitution Bench in the decision in **Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji**[11]. Justice JR Mudholkar overruled the judgment of the three judge bench in **Vashist Narain Sharma v. Dev Chandra**[12] which had rejected the argument of the respondent that a party could raise arguments on the 'findings' that were against him, while supporting the judgment. It was held that Order XLI Rule 22 of the CPC does not have application to an appeal under Article 136. In **Ramanbhai Ashabhai Patel (supra)**, this Court held that the provisions of Order XLI Rule 22 of the CPC are not applicable to the Supreme Court and the rules of the Supreme

[11] AIR 1965 SC 669.
[12] (1955) 1 SCR 509.

Court do not provide for any analogous provisions. However, it was held that this deficiency must be supplemented by drawing from CPC:

> "18. […] Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order [4]1 Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. **There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment**. […]"
>
> **(emphasis supplied)**

Expanding on this further, a two judge Bench (Justice R.C Lahoti speaking for himself and Justice Brijesh Kumar) of this Court in **Jamshed Hormusji Wadia v. Port of Mumbai**[13], observed:

> "35. A few decisions were brought to the notice of this Court by the learned Additional Solicitor General wherein this Court has made a reference to Order 41 Rule 22 CPC and permitted the respondent to support the decree or decision under appeal by laying challenge to a finding recorded or issue decided against him though the order, judgment or decree was in the end in his favour. Illustratively, see *Ramanbhai Ashabhai Patel* [*Ramanbhai Ashabhai Patel* v. *Dabhi Ajitkumar Fulsinji*, AIR 1965 SC 669] , *Northern Railway Coop. Credit Society Ltd.* [*Northern Railway Coop. Credit Society Ltd.* v. *Industrial Tribunal*, AIR 1967 SC 1182] and *Bharat Kala Bhandar (P) Ltd.* [*Bharat Kala Bhandar (P) Ltd.* v. *Municipal Committee, Dhamangaon*, AIR 1966 SC 249] The

[13] (2004) 3 SCC 214.

learned Additional Solicitor General is right. But we would like to clarify that this is done not because Order 41 Rule 22 CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to courts of superior jurisdiction. A person who has entirely succeeded before a court or tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words 'person aggrieved'. In an appeal or revision, as a matter of general principle, the party who has an order in his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below. This position of law is supportable on general principles without having recourse to Order 41 Rule 22 of the Code of Civil Procedure. Reference may be had to a recent decision of this Court in *Nalakath Sainuddin* v. *Koorikadan Sulaiman* [(2002) 6 SCC 1] and also *Banarsi* v. *Ram Phal* [(2003) 9 SCC 606] . This Court being a court of plenary jurisdiction, once the matter has come to it in appeal, shall have power to pass any decree and make any order which ought to have been passed or made as the facts of the case and law applicable thereto call for. **Such a power is exercised by this Court by virtue of its own jurisdiction and not by having recourse to Order 41 Rule 33 CPC though in some of the cases observations are available to the effect that this Court can act on the principles deducible from Order 41 Rule 33 CPC. It may be added that this Court has jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Such jurisdiction is conferred on this Court by Article 142 of the Constitution and this Court is not required to have recourse to any provision of the Code of Civil Procedure or any principle deducible therefrom.** However, still, in spite of the wide jurisdiction being available, this Court would not ordinarily make an order, direction or decree placing the party appealing to it in a position more disadvantageous than in what it would have been had it not appealed."

(emphasis supplied)

27 On a perusal of the above authorities, it is evident that the principle stipulated in Order XLI Rule 22 of CPC can be applied to petitions under Article 136 of the Constitution because of this Court's wide powers to do justice under Article 142 of the Constitution. Since the principle in Order XLI Rule 22 of the CPC furthers the cause of justice by providing the party other than the 'aggrieved party' to raise any adverse findings against them, this Court can draw colour from Order XLI Rule 22 CPC and permit objections to findings.

28 From the above it has been established that it not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection. In the present case, we note that the appellant had raised an objection to the jurisdiction of the Trial Court for entertaining the suit on the ground that an injunction and declaratory relief could not have been given. Although the Trial Court passed a decree in favour of the appellant, it had decided against the appellant on the question of jurisdiction. This finding was not challenged by the appellant before the High Court in the form of a memorandum of cross-objection. The judgment of the High Court makes no mention that a plea of lack of jurisdiction was taken by either the appellant or the MDA. Before this Court, the appellant has not filed the counter-affidavit it had filed before the High Court. Thus, the conclusion that emanates from the record before us is that the ground of jurisdiction was only raised by the appellant before the Trial Court and not before the High Court. In effect then, this Court would have to adjudicate on a plea, which did not form a part of the decision of the High Court in challenge before us.

29 With regard to new grounds being raised before this Court in a special leave petition under Article 136, we note that under Order 21 Rule 3(c) of the Supreme Court Rules 2013, SLPs are to be confined to the pleadings before the court whose order is challenged. However, with the leave of the Court, additional grounds can be urged at the time of the hearing.

30 This Court in **Bharat Kala Bhandar (P) Ltd.** v. **Municipal Committee**[14] dealt with a civil appeal where a contention had not been raised in the suit or in the grounds of appeal before the High Court, and was advanced before this Court for the first time. Although the Court noted that the scope of the appeal cannot be broadened at the instance of the parties, if a plea raises a question of considerable importance, it can be entertained by this Court. In a similar vein, this Court in **Vasant Kumar Radhakisan Vora** v. **Board of Trustees of the Port of Bombay**[15], noted that pure questions of law which go to the root of the jurisdiction in a case can be raised for the first time in an appeal under Article 136 of the Constitution.

31 In **Chandrika Misir v. Bhaiya Lal**[16], this Court was hearing a special leave petition concerning the possession of parties over the suit property which was the subject of the U.P. Zamindari Abolition and Land Reforms Act (Act 1 of 1951). While adjudicating on whether the suit was barred by limitation, Justice DG Palekar, speaking for a two Judge bench, observed that the civil court did not have

[14] AIR 1966 SC 249.
[15] (1991) 1 SCC 761.
[16] (1973) 2 SCC 474.

jurisdiction to entertain the suit at all. Although the plea of bar on jurisdiction had not been raised in the courts below, the Court held that:

> "6. It is from this order that the present appeal has been filed by special leave. It is to be noticed that the suit had been filed in a civil court for possession and the Limitation Act will be the Act which will govern such a suit. It is not the case that U.P. Act 1 of 1951 authorises the filing of the suit in a civil court and prescribes a period of limitation for granting the relief of possession superseding the one prescribed by the Limitation Act. It was, therefore, perfectly arguable that if the suit is one properly entertainable by the civil court the period of limitation must be governed by the provisions of the Limitation Act and no other. In that case there would have been no alternative but to pass a decree for possession in favour of the plaintiffs. **But the unfortunate part of the whole case is that the civil court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the defendant in the trial court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr Yogeshwar Prasad, even in execution proceedings on the ground that the decree was a nullity.** If one reads Sections 209 and 331 of the U.P. Act 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the rules made under the Act and the jurisdiction of the ordinary civil court is absolutely barred."
>
> (**emphasis supplied**)

32 In **Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma**[17] as well, a three Judge bench of this Court entertained an objection as to maintainability of the suit under Section 9 of the CPC, despite the plea not having been raised before the courts below. The Court observed that the plea of a bar or lack of jurisdiction can be entertained at any stage, since an order or decree passed without jurisdiction is non-est in law.

[17] 1995 Supp (4) SCC 286

33 The position of law has been consistently applied even in criminal proceedings under Article 136 of the Constitution. In **Masalti v. State of Uttar Pradesh**[18], the confirmation of the death sentence of a number of accused persons by the High Court was under challenge before this Court. Chief Justice Gajendragadkar, speaking for a four judge Bench of this Court, observed that:

> "11. We are not prepared to accept Mr Sawhney's argument that even if this point was not raised by the appellants before the High Court, they are entitled to ask us to consider that point having regard to the fact that 10 persons have been ordered to be hanged. **It may be conceded that if a point of fact which plainly arises on the record, or a point of law which is relevant and material and can be argued without any further evidence being taken, was urged before the trial court and after it was rejected by it was not repeated before the High Court, it may, in a proper case, be permissible to the appellants to ask this Court to consider that point in an appeal under Article 136 of the Constitution; after all in criminal proceedings of this character where sentences of death are imposed on the appellants, it may not be appropriate to refuse to consider relevant and material pleas of fact and law only on the ground that they were not urged before the High Court.** If it is shown that the pleas were actually urged before the High Court and had not been considered by it, then, of course, the party is entitled as a matter of right to obtain a decision on those pleas from this Court. But even otherwise no hard and fast rule can be laid down prohibiting such pleas being raised in appeals under Article 136."
>
> (**emphasis supplied**)

34 Based on the position of law, we find it just to allow the appellant to raise the ground of jurisdiction before us. Allowing the ground to be raised would not require the submission of additional evidence since it is a pure question of law and strikes at the heart of the matter. We shall now turn to the merits of this argument.

[18] AIR 1965 SC 202

35 The pleadings in the suit indicate that the case of the first respondent was that:

(i) Zahid Hussain had obtained the permission of the Competent Authority on 5 May 1993 before transferring the lands in favour of the first respondent on 22 June 1993;

(ii) Ceiling proceedings under the ULCRA had resulted in an order of the Competent Authority dated 16 March 1988 declaring 1295.04 sq. mt as surplus but the order of the Competent Authority had been set aside in appeal on 6 January 1993 and the proceedings had been remanded;

(iii) As a result of the Repeal Act, proceedings under ULCRA stood abated; and

(iv) The first respondent continued to be the owner of 1295.04 sq. mt of Gata No. 200/1, while MDA was the owner of only 200 sq. mt. of lands in Gata No. 200/2.

In other words, the basis on which the first respondent sought a declaration in regard to the legality of the auction conducted by MDA and the injunction was the abatement of the proceedings under the ULCRA. The maintainability of such a suit has been considered in a judgment of two learned Judges of this Court in **Competent Authority, Calcutta, Under the Urban Land (Ceiling and Regulation) Act, 1976 v. David Mantosh**[19]. In **David Montosh**, the Bench consisting of Justice Abhay Manohar Sapre and Justice Indu Malhotra considered whether the jurisdiction of the civil court was expressly or impliedly excluded by the ULCRA in relation to

[19] (2020) 12 SCC 542.

matters arising out of the Act. The Bench referred to the tests laid down in the Constitution Bench decision of **Dhulabhai v. State of M.P**[20] and held:

> "45. Hidayatullah, J., 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: (*Dhulabhai case* [*Dhulabhai* v. *State of M.P.*, AIR 1969 SC 78] , AIR pp. 89-90, para 32)
> "(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 courts 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.

[20] AIR 1969 SC 78.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."
[…]

47. Having examined the issue, we are clearly of the opinion that the present case falls under clause (1) of para 32 of *Dhulabhai* [*Dhulabhai* v. *State of M.P.*, AIR 1969 SC 78] 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:
47.1. First, the Act in question gives finality to the orders passed by the appellate authority [refer to Section 33(3)].
47.2. 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)].
47.3. Third, the Act is a complete code in itself and gives overriding powers on other laws (refer to Section 42).
47.4. 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].

48. 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 para 32 of *Dhulabhai* [*Dhulabhai* v. *State of M.P.*, AIR 1969 SC 78]."

(emphasis supplied)

Thus, the Court summarised the conclusions as below:

"47.1. First, the Act in question gives finality to the orders passed by the appellate authority [refer to Section 33(3)].
47.2. 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)].
47.3. Third, the Act is a complete code in itself and gives overriding powers on other laws (refer to Section 42).
47.4. 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]."

36 The real object and purpose of the suit, in the guise or pretext of challenging the auction notice by MDA was to affirm the title of the first respondent on the basis

of an alleged permission obtained on 5 May 1993 for the sale of the property, the deed of transfer executed by Zahid Hussain and the abatement of proceedings under the ULCRA. The High Court has held that the document dated 31 July 1992 on the basis of which possession was transferred to MDA does not evidence actual physical possession but is only a paper transaction. The High Court held that no material was forthcoming on whether actual and physical possession was taken by the Competent Authority from the land owner and it held that in the absence thereof, the first respondent, as the purchaser from Zahid Hussain, would continue to have a valid title. The High Court has entered these findings despite the fact that by a process of engineered drafting, the first respondent sought no reliefs in regard to the proceedings under the ULCRA (to obviate a bar to the maintainability of the suit) and did not implead either the State or the Competent Authority who would have been in a position to answer the challenge.

37 Both the High Court and Trial Court have failed to correctly assess the issue regarding the jurisdiction of the civil court to try a suit, which in its essence, arises out of matters pertaining to the ULCRA. The first respondent has made efforts to artfully draft the plaint in a manner that would make it appear as if the issue only pertains to the auction notice issued by MDA. This Court, has time and again, warned against drafting of this nature which seeks to distract attention away from

the real cause of action. In **T. Arivandandam v. T.V Satyapal**[21], Justice V.R. Krishna Iyer, speaking for a two Judge bench, observed:

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. **The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC.** An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. […]"
>
> (**emphasis supplied**)

This dictum of the Court has since then been followed consistently in **Madanuri Sri Rama Chandra Murthy v. Syed Jala**[22], **Sopan Sukhdeo Sable v. Assistant Charity Commissioner**[23], and most recently by one of us (Justice MR Shah) in **Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs**[24] and **Canara Bank v. P. Selathal & Ors.**[25]. Therefore, the jurisdiction of the civil court to entertain the suit instituted by the first respondent was barred.

38 The High Court allowed the appeal against the judgment of the Trial Court on the ground that after the District Judge allowed the appeal and set aside the order dated 16 March 1988 passed by the Competent Authority under Section 8(4) of

[21] (1977) 4 SCC 467.
[22] (2017) 13 SCC 174.
[23] (2004) 3 SCC 137.
[24] AIR 2019 SC 1430.
[25] (2020) 13 SCC 143.

ULCRA, all further proceedings pursuant to the order under section 8(4) of ULCRA – including the taking of possession by the State – would be null and void. The bench then held then even otherwise, only 'paper possession' and not 'actual possession' of the suit land was taken, and thus in these circumstances Zahid Hussain would have both the title and possession of the suit land. The findings of the High Court are a non-sequitur since even if Zahid Hussain had title and possession of the suit land at the time of transfer, the purported transfer to the first respondent is null and void. The High Court ought to have upheld the dismissal of the suit on this ground. A plaintiff has to stand on their own legs and the respondent – plaintiff had no valid title or interest in law on the basis of which the suit could have been founded. The respondent – plaintiff had no cause of action to challenge the auction by MDA in favour of the appellant, once the purported transfer was invalid.

39 We have come to the conclusion that the suit instituted by the first respondent had to be dismissed. The judgment of the Trial Judge dismissing the suit was correct, but for the following reasons:

(i) The purported transfer of the suit land by Zahid Hussain to the first respondent was before the Repeal Act was enacted. The dual conditions stipulated under Section 5(3) of ULCRA were not fulfilled before the transfer was made since the statement under Section 6 had not been submitted and the Competent Authority had not issued a notification under Section 10(1) of the ULCRA (which was in operation at the time). Therefore, even if the Zahid

Hussain had the title to the suit land, the transfer to the first respondent was null and void under section 5(3) of ULCRA;

(ii) When Zahid Hussain had filed a declaration seeking permission for transfer of the suit land, the permission under Section 27 of ULCRA was not granted since there was a pending suit concerning the said land. He then filed another application seeking permission for transfer of land admeasuring 1295 sq. mt of his 'retainable' 2000 sq. mt. of land. The permission that was granted under Section 27 of ULCRA by the Office of the Competent Authority on 5 May 1993 was for the transfer of lands from his 'retainable' property and not the suit land;

(iii) The plaintiff- first respondent has artfully drafted the plaint to challenge the validity of the auction and sought an injunction and declaration, when the substantive cause of action of the suit arises out of the land ceiling proceedings;

(iv) The ULCRA impliedly excludes the jurisdiction of the civil court on matters arising out of the ceiling proceedings; and

(v) Though the appellant did not assail the finding of the Trial Court on the issue of jurisdiction before the High Court under Order XLI Rule 22 CPC either by filing a memorandum of cross-objection or otherwise, he is not precluded from raising the argument before this Court. This Court in view of its plenary jurisdiction under Article 136 of the Constitution read with its power to do

complete justice under Article 142, can entertain new grounds raised for the first time if it involves a question of law which does not require adducing additional evidence, specifically one concerning jurisdiction of the court which goes to the root of the matter.

40 We accordingly allow the appeal and set aside the impugned judgment of the High Court dated 22 February 2018. The suit instituted by the first respondent shall stand dismissed. The first respondent shall pay costs to the appellant quantified at Rupees fifty thousand.

……..…..…..…….....J.
[Dr Dhananjaya Y Chandrachud]

…..……..…..…….....J.
[M R Shah]

New Delhi;
August 5, 2021