

PETITIONER:

YEDIDA CHAKRADHARARAO (DEAD) THROUGH HIS LRS. & ORS. ETC.

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ORS. ETC.

DATE OF JUDGMENT 29/03/1990

BENCH:

KANIA, M.H.

BENCH:

KANIA, M.H.

MUKHARJI, SBYASACHI (CJ)

RAY, B.C. (J)

SAIKIA, K.N. (J)

AGRAWAL, S.C. (J)

CITATION:

1990 SCR (2) 220

1990 SCC (2) 523

JT 1990 (2) 1

1990 SCALE (1) 628

ACT:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973: S. 3(i)--Land sold under agreement performance of agreement by delivery of possession--Such land whether could be included in the holdings of owner/vendor as well as purchaser.

HEADNOTE:

Sub-section (i) of s. 3 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 defines the expression "holding" as meaning the entire land held by a person as an owner, a limited owner, usufructuary mortgagee, a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale. The Explanation thereto states that where the same land is held by one person in one capacity and by another person in any other capacity such land shall be included in the holding of both such persons.

The appellants/petitioners had alienated agricultural lands under agreements of sale and the possession of these lands was delivered in part performance of the said agreements but no conveyance of the said lands had been executed till the relevant date. A question arose whether such land could be excluded from the holding of the owner-vendor within the meaning of the Act. The Land Reforms Appellate Tribunal found that the vendees alone were in possession and enjoyment of the respective lands and, therefore, the appellants could not be said to be holding the said lands. The High Court held that the lands covered by the agreements of sale have to be included in the holdings of the appellants as well.

In these appeals and special leave petitions filed by them it was contended that use of the word 'held' in the definition in s. 3(i) indicates that the person who is supposed to hold the land must necessarily be the person in possession of the said land and hence where, in part performance of an agreement of sale or under a lease, the purchaser or lessee has been put in possession of any land, the owner of the said land cannot any longer be regarded as

holding the same, and that although the

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Explanation to sub-s.(i) of s.3 was very widely worded, its meaning could not be so extended as to cover a case where the owner of the land had parted with the possession thereof under an agreement creating a right, legal or equitable, in the land concerned.

Dismissing the appeals and the special leave petitions, the Court,

HELD: 1. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 is a piece of agrarian legislation enacted with a view to achieve a more equitable distribution of land for common good and with a view to subserve the objectives enshrined in Article 39 of the Constitution, being one of the Directive Principles embodied in the Constitution. Provisions of such a legislation have to be interpreted liberally and with a view to furthering the object of the legislation. [226B-C]

2.1 The very language of sub-s.(i) of s.3 indicates that a person can 'hold' land for the purposes of the Act as an owner, as a limited owner, as a usufructuary mortgagee, as a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale. The Explanation thereto in plain language states that the same land can be held by one person in one capacity and by another person in a different capacity and provides that such land shall be included in the holdings of both such persons. The Explanation thus clearly contemplates that the same land can be "held" as contemplated under sub-s. (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of an agreement to sell. It cannot, therefore, be said that only where the land is in possession of a person can that land be regarded as held by him. [226G-227B]

2.2 The Explanation to s. 3(i) was incorporated in the Andhra Pradesh Land Reforms Act because the legislature took the view that, but for such a drastic provision, it would not be possible to effectively implement the provisions of the said Act regarding the acquisition and distribution of the surplus land to the landless and other deserving persons. If the legislature has used language in s. 3(i) and the Explanation thereto which on a plain reading shows that in case of land covered under an agreement for sale or an agreement of lease, even though the purchaser or the lessee might be in possession of the land, it would be included in the holdings of both of the purchaser as well as the owner or the lessee and the owner, there is no reason to cut down the plain meaning of the language employed in that provision [230B, C-D]

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State of Andhra Pradesh v. Mohd. Ashrafuddin, [1982] 3 SCR 482 applied; Begulla Bapi Raju etc. etc. v. State of Andhra Pradesh etc. etc., [1983] 3 SCR 701 referred to.

Burmah Shell oil Storage and Distributing Co. of India Ltd. & Anr. v. The Commercial Tax Officer & Ors., [1961] 1 SCR 902, distinguished.

The Authorised Officer (LR), Vijayawada v. Kalyanam China Venkata Narasayya, [1978] 1 A.P. Law Journal 98 overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3388 of

1984. etc.

From the Judgment and Order dated 4.4.1989 of the Andhra Pradesh High Court in C.R.P. No. 1450 of 1981.

A.K. Sen, C. Sitaramiah, P.A. Chaudhary, K. Jagannatha Rao, P.R. Ramachandra Murthy, Mrs. Anjani, K. Ram Kumar, Y.P. Rao, P.S.R. Murthy, B. Kanta Rao, N.D.B. Raju, R.N. Keshwani, R.F. Nariman, Raj Kumar Gupta, P.C. Kapur, Rajendra Chaudhary, A. Subba Rao, K.R. Nagaraja, P.K. Rao, A.T.M. Sampath, P.N. Ramalingam, R. Venkatramani, G. Narasimhulu, G.N. Rao and S.K. Sucharita for the Appellants.

K. Parasaran, T.V.S.N. Chari, Mrs. B. Sunita Rao, Ms. Manjula Gupta and V. Sekhar for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. This is a group of matters comprising Civil Appeal No. 3388 of 1984 in this Court and other cases which have been placed before us for hearing along with this appeal. We propose to deal first with Civil Appeal No. 3388 of 1984.

This appeal by special leave is directed against a judgment of the Andhra Pradesh High Court in Civil Revision Petition No. 1450 of 1981. The question involved in the appeal before the High Court from which this appeal arises was whether land which has been agreed to be sold by the owner under an agreement of sale and possession of which was delivered in part performance of the agreement for sale but pursuant to which no conveyance had been executed till the relevant date, could be included both in the holding of the owner-vendor as

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well as the purchaser or whether it was liable to be included only in the holding of the purchaser for the purposes of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as 'the said Act').

There are a number of connected matters where the same question is involved and which have been placed for hearing before us. In some of these cases, a part of the consideration has been paid and in a few others, the entire consideration has been paid. It has also been alleged that the possession of the land was transferred to the purchaser pursuant to the agreements of sale referred to. In some of these cases, lands belonging to the owners have been given on lease to tenants who are in possession thereof as lessees.

In order to appreciate the controversy arising before us, it is necessary to bear in mind the relevant provisions of the said Act. Before the said Act was enacted, there was in force in Andhra Pradesh an Act entitled Andhra Pradesh (Ceiling on Agricultural Holdings) Act, 1961 which provided for the imposition of a ceiling on holdings of agricultural land. After that Act had been in force for some time, the Central Committee on Land Reforms made certain recommendations regarding the fixation of ceiling on agricultural holdings and in line with this proposed policy, the said Act was enacted in 1973 to bring about comprehensive legislation for the imposition of ceiling on agricultural holdings in the State of Andhra Pradesh and with a view to replace the aforesaid Act of 1961 as well as Andhra Pradesh Agricultural Lands (Prohibition of Alienation Act, 1972). The object of the legislation was to take over the lands in excess of the ceiling prescribed and to distribute the same among landless and other deserving persons to subserve the common good. The said Act was included in the Ninth Schedule to the Constitution at Item 67 by the Constitution 34th (Amendment) Act and was protected under Article 31-A. The object of the said Act

was agrarian reform. Under sub-section (c) of section 3 of the said Act 'ceiling area' is defined as under:

"3(c): 'ceiling area' means the extent of land specified in section 4 or section 4-A to be ceiling area."

It may be mentioned here that the agricultural land was classified into wet land, dry land and so on and appropriate areas were fixed as ceiling in respect of such lands taking into account the nature and yield capacity of the lands in question. Section 3(i) runs as follows:

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"3(i): 'holding' means the entire land held by a person--

(i) as an owner;

(ii) as a limited owner;

(iii) as an usufructuary mortgagee;

(iv) as a tenant;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of such capacities; and the expression 'to hold land' shall be construed accordingly;

Explanation: Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons."

Section 3(m) provides that "notified date" means the date notified under sub-section (3) of section 1 on which the said Act came into force. It may be mentioned that the notified date in respect of the said Act is 1.1.1975. Very briefly stated, under section 4, the ceiling area in the case of a family unit consisting of not more than five members was prescribed as one standard holding. Where the family consisted of more than five members, there was, broadly speaking, a proportionate increase in the ceiling area. Under section 5, the standard holding is fixed taking into account the classification of the land according to the nature of the land. Sub-section (1) of section 7 runs as follows:

"7(1). Special provision in respect of certain transfers, etc. already made:

Where on or after the 24th January, 1971 but before the notified date, any person has transferred whether by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, any land held by him or created a trust of any land held by him, then the burden of proving that such transfer or creation of trust has not been effected in anticipation of, and with a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings, shall be on

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such person, and where he has not so proved, such transfer or creation of trust, shall be disregarded for the purpose of the computation of the ceiling area of such person."

Very briefly stated, sub-section (2) of section 7 provides inter alia that any alienation made by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise as set out in the said sub-section on or after 2nd May, 1972 and before the notified date in contravention of the Andhra Pradesh Agricultural Land (Prohibition of Alienation) Act, 1972 shall be null and void. The other sub-sections also provide that in the various other circumstances set out therein alienations made will be disregarded for purposes of fixation of ceiling.

Section 8 provides, in brief, that every person whose holding on the notified date together with any land trans-

ferred by him on or after 24th January, 1971 exceeds the specified limits, shall within 30 days from the notified date, namely 1.1. 1975 or such extended period as the Government may notify in that behalf furnish a declaration in respect of his holding to the competent Tribunal.

Section 9 deals with determination of the ceiling area by the Tribunal constituted under Section 6. Section 10 deals with the surrender of lands in certain cases. Sub-section (5) of the said section provides that it shall be open to the Tribunal to refuse to accept the surrender of any land as contemplated under sub-section (1) or deemed surrender of land as contemplated under sub-section (4) of the said section in the circumstances set out in sub-section (5). Section 11 deals with the vesting of surrendered lands.

Section 12 deals with revision and vesting of lands surrendered. The opening part of that section provides that where any land is surrendered or deemed to have been surrendered under the said Act by any usufructuary mortgagee or a tenant, the possession of such land shall, subject to such rules, as may be prescribed, revert to the owner. Sub-section (4) of section 12 provides that where any land is surrendered or is deemed to have been surrendered under the said Act by any person in possession by virtue of a mortgage by conditional sale or through a part performance of contract for sale or otherwise the possession of such land shall subject to such rules as may be prescribed, revert to the owner. Sub-section (5-A) make an analogous provision in connection with lands surrendered by limited owners and provides that such surrendered lands shall revert to the person having a vested interest in the remainder.

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Section 13 makes special provision for the exclusion from the holding of the owner of land belonging to him held by a protected tenant where such land or part thereof stands transferred to the protected tenant under Section 38A of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Land Act, 1950.

Before going into the merits of the contentions urged and considering the proper interpretation to be given to the relevant sections of the said Act, we cannot lose sight of the fact that the said Act is a piece of agrarian legislation enacted with a view to achieve a more equitable distribution of lands for common good and with a view to subserve the objectives enshrined in Article 39 of the Constitution, being one of the Directive Principles embodied in the Constitution. Provisions of such a legislation have to be interpreted liberally and with a view to furthering the object of the legislation and not with a view to defeat the same in a strict and constricted manner in which a taxing law, for instance, might be interpreted.

The main submission of learned counsel for the appellants is that the expression 'holding' has been defined in sub-section (i) of Section 3 of the said Act, the definition section set out earlier, as meaning the entire land held by a person (emphasis supplied) and that the use of the said word "held" in the definition indicates that the person who is supposed to hold the land, must necessarily be the person in possession of the said land; and hence where, in part performance of an agreement for sale or under a lease, the purchaser or lessee has been put in possession of any land, the owner of the said land cannot any longer be regarded as holding the said land and it cannot be said that the said land is held by him. It was submitted by learned counsel that in view of this context although the Explanation to sub-section (i) of section 3 is very widely worded, its

meaning cannot be so extended as to cover a case where the owner of the land is no longer in possession of the land and has parted with the possession thereof under an agreement creating a right, legal or equitable, in the land concerned. We find it difficult to accept this contention. Clauses (i) to (v) of subsection (i) of section 3 set out the various capacities in which a person can be said to "hold" land for the purposes of the said Act and among these capacities are "as a usufructuary mortgagee, as a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale". The very language of sub-section (i) of section 3 indicates that land can be held as contemplated in the said sub-section by persons in a number of capacities. The Explanation in plain language states that the same land can be held by

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one person in one capacity and by another person in a different capacity and provides that such land shall be included in the holdings of both such persons. The Explanation thus clearly contemplates that the same land can be held as contemplated under sub-section (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of an agreement to sell. On a plain reading of the language used in the Explanation, we find it that it is not possible to accept the submission that only where the land is in possession of a person can that land be regarded as held by him.

Apart from what we have pointed out earlier we find that the question which arises before us in this appeal is already covered by the decision of this Court in *State of Andhra Pradesh v. Mohd. Ashrafuddin*, [1982] 3 SCR 482. The facts of the case were that out of the total holding of his land the respondent transferred some land to another person under two unregistered sale deeds pursuant to an agreement for sale and gifted away some land to his son. In the return submitted by him under the said Act the respondent did not include in his holding the area transferred under the unregistered sale deeds or the land gifted by him which was in the possession of the purchaser and donee respectively. The Land Reforms Tribunal ignoring the two transfers computed his holding at 1.7692 standard holding and called upon him to surrender land equivalent to 0.7692 standard holding. In revision, the High Court held that the land transferred under the two sale deeds could not be included in the holding of the respondent for ascertaining the ceiling area. In coming to this conclusion, the High Court gave the benefit of section 53A of the Transfer of Property Act to the person in possession of the plot pursuant to the contract for sale and treated the land as a part of his holding. On appeal to this court, a Division Bench comprising three learned Judges of this Court reversed the decision of the High Court and held that the High Court was in error in holding that the land in the possession of the transferee cannot be taken to be a part of the holding of the respondent. It was held by this Court that the expression "held" connotes both ownership as well as possession. In the context of the definition it is not possible to interpret the term "holding" only in the sense of possession. The Explanation to the definition of the term "holding" clearly contemplates that the same land can be the holding of two different persons holding the land in different capacities, (See page 486). The Court went on to state that:

"It is by now well settled that a person in possession pursuant to a contract for sale does not get title to the

land

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unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession"

The Court went on to observe that:

"There may conceivably be cases where the same land is included in holding of two persons in different capacities and serious prejudice might be caused to one or both of them if they were asked to surrender the excess area. To safeguard the interest of the owners in such a case the legislature has made a provision in section 12(4) and (5) of the Act. Even so there might be cases where some prejudice might be caused to some tenure holders."

The Court further observed that:

"But if the definition of the term 'holding' is couched in clear and unambiguous language the court has to accept it as it stands. So construed the same land can be a part of the holding of various persons holding it in different capacities. When the terms of the definition are clear and unambiguous there is no question of taking extraneous aid for construing it."

The correctness of this decision has been upheld by this court in Begulla Bapi Raju etc. etc. v. State of Andhra Pradesh etc. etc., [1983] 3 SCR 70 1 at p. 7 17. In that case one of the contentions urged on behalf of the petitioners was that land transferred by the petitioners under various transfer deeds to the outsiders and who came in possession also could not be included in the holding of the petitioners. This argument was negatived by a Bench comprising three learned Judges of this Court, which followed the decision of this Court in Mohd. Ashrafuddin's case (supra), and did not accept the plea that the decision in that case required reconsideration.

The question raised for our determination in this appeal is

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directly covered against the appellant by the decisions of this Court in two cases just referred to by us. In these circumstances, even assuming that there is another equally plausible view regarding the construction and the legal effect of section 3(i) of the said Act read with Explanation, that would not necessarily justify our reconsidering the question which has already been decided by this Court, although the decision was rendered by a Bench comprising only three learned Judges of this Court. In our opinion, unless we find that the decisions in the aforesaid cases are erroneous, it would not be proper on our part to reconsider the same. Apart from this, as we have pointed out earlier, in our view, considering the clear language of section 3(i) of the said Act read with Explanation to that section, the view taken in Mohd. Ashrafuddin's case (supra) is, with respect, the correct view, and we are inclined to take the same view on the construction and legal effect of that provision.

Learned counsel for the appellant sought to place reliance on the decision of a Division Bench of the Andhra Pradesh High Court in The Authorised Officer (LR), Vijayawada v. Kalyanam China Venkata Narasayya, [1978] 1 A.P. Law Journal 98. In that case a Division Bench of the Andhra

Pradesh High Court took the view that, if the owner of the land has put the transferee in possession of the land in part performance of a contract for sale, such land can be included only in the holding of the transferee and cannot simultaneously be computed in the holding of the transferor as well, for that land is not "held" by him as an "owner". It could be included in the holding of the transferor only as and when the transferee surrenders that land and that land reverts to the transferor as provided under section 12 of the said Act. The Division Bench also took the view that the expression "holding" and the expression "held by a person" occurring in section 3(i) of the said Act must be construed as taking in the idea of actual possession and not merely any right, title or interest in the land devoid of actual possession. In our view, this decision cannot be regarded as laying down good law and must be treated as overruled by the decisions of this Court in Mohd. Ashrafuddin's case (supra) and Begulla Bapi Raju's case (supra). We cannot lose sight of the fact that the said Act is a piece of agrarian reform legislation passed with a view to effectively fix a ceiling on agricultural holdings and to achieve equitable distribution of surplus land among the landless and the other deserving persons. The plain language of section 3(i) read with Explanation supports the view taken by this Court in Mohd. Ashrafuddin's case (supra). It is true that the Division Bench of the Andhra Pradesh High Court in the aforesaid judgment has given certain examples

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where the interpretation which has been given in Mohd. Ashrafuddin's case (supra), might lead to some hardship. That, however, in our opinion, cannot justify restricting the effect of the plain language of the relevant provisions in the manner done by the Division Bench of the Andhra Pradesh High Court. The Explanation to section 3(i) was incorporated in the said Act because the legislature took the view that, but for such a drastic provision, it would not be possible to effectively implement the provisions of the said Act regarding the acquisition of surplus land and distribution of the surplus land to the landless and the other deserving persons. It is a notorious fact that there were a large number of cases where agreements for sale or documents for lease in respect of excess lands were executed by owners of lands in excess of the ceiling area with a view to defeat the provisions of the said Act. In fact, a perusal of the facts in the cases before us generally lends support to the existence of such a situation. In these circumstances, if the legislature has used language in section 3(i) and the Explanation thereto which, on a plain reading, shows that in case of land covered under an agreement for sale or an agreement of lease, even though the purchaser or the lessee might be in possession of the land, it would be included in the holdings of both of the purchaser as well as the owner or the lessee and the owner, we see no reason to cut down the plain meaning of the language employed in that provision, merely because that it might possibly result in hardship in few cases. Moreover we find that, to some extent, the legislature has tried to mitigate this hardship by providing that, if the purchaser under the agreement of sale or the lessee has in his holding land in excess of the ceiling area, such excess would revert to the owner of the land. If the interpretation sought to be put by learned counsel for the appellants, which finds support from the aforementioned decision of the Andhra Pradesh High Court, were correct, we fail to see why such a provision as aforesaid for reversion of excess land to the owner should have

been made.

It was contended by learned counsel for the appellants that if the construction placed on the said provisions by the judgment of the Division Bench of the Andhra Pradesh High Court in the aforesaid judgment was accepted, it is not as if the object of the said legislation would be defeated because where an agreement for sale or agreement of lease cannot be shown to be bona fide, the land would be included in the holding of the owner. This circumstance, however, is of a little avail. Where such agreements for sale or of lease are executed in writing and possession is handed over to the purchaser or the lessee, it would be very difficult to show that the transaction was not bona fide although the agreement might well have been executed really with a

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view to defeat the provisions of the said Act. We cannot lose sight of the fact that section 3(i) and the Explanation only deals with cases where the transfer of ownership is not complete and the owner does not part completely with his legal interest in the land, so that on the termination of the agreement for sale or agreement of lease without any document being registered, the land would fully revert to the owner. Moreover, in many cases, it was found that the owner of the land himself continued to cultivate the land claiming that he was doing so on behalf of his son who was the lessee or the purchaser under an agreement. In these circumstances, we fail to see any reason to cut down the plain meaning of the provisions of section 3(i) and the Explanation thereto.

It was submitted by learned counsel for the appellants that the definition of the word 'holding' contained in sub-section (i) of section 3 was an exhaustive definition and that definition contained in the main section could not be interpreted in the light of the Explanation thereto. It was submitted by him that the meaning of the term 'holding' and 'held' in sub-section (i) of section 3 could not be governed by the Explanation. In support of the contention, reliance was placed on a decision of this Court in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. & Anr. v. The Commercial Tax Officer and Others*, [1961] 1 SCR 902 at pp. 914-917. In our opinion, this decision is hardly of any assistance in the matter before us. It is well settled that the provisions in an Act have to be read harmoniously and in the light of the context in which they occur. In our opinion, there can be no quarrel with the reliance being placed on the Explanation in order to understand the meaning of the term "holding" and "held" used in sub-section (i) of section 3 of the said Act. Although some other decisions have been referred to us, we do not think any useful purpose would be served by discussing the same in view of what we have observed earlier, nor would it serve any purpose to refer to the various examples of ownership set out in the American Jurisprudence to which our attention was drawn.

In the result, in our opinion, there is no merit in the appeal and the same must fail and is dismissed. Looking to the facts and circumstances of the case, we, however, direct that there will be no order as to costs of the appeal.

The other connected Civil Appeals and Special Leave Petitions have all been directed to be tagged with the aforesaid Civil Appeal disposed of by us as they involve the same points as raised in the said

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Civil Appeal. Following our decision, the said Civil Appeals and the Special Leave Petitions are dismissed but with no order as to costs.

In view of the dismissal of all the Appeals and Special Leave Petitions, the Civil Miscellaneous Petitions therein do not survive and all are dismissed with no order as to costs. Interim orders, if any, are vacated.

P.S. S
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Appeals and
Petitions dismissed.

JUDIS