

W.A.No.1005 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2020

C O R A M

The Hon'ble **Mr. A.P.SAHI, THE CHIEF JUSTICE**

and

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

W.A.No.1005 of 2020

and

C.M.P.No.12291 of 2020

1.The Special Commissioner and
Commissioner of Urban Land Ceiling and
Urban Land Tax,
Ezhilagam.
Chennai – 600 005.

2.The Assistant Commissioner/
Urban Land Tax,
Ezhilagam.
Chennai – 600 005.

3.The Special Tahsildar,
Fort – Tondiarpet Taluk,
Chennai – 600 003.

... Appellants/Respondents

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Chennai Port Trust,
Rep. by its Estate Officer,
No.1 Rajaji Salai,
Chennai – 600 001.

... Respondent/Petitioner

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This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.34764 of 2007.

For Appellants : Mr.V.Jayaprakash Narayanan
Government Pleader

For Respondent : Mr.P.M.Subramaniam

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

This writ appeal is directed against the order dated 11.06.2019 in W.P. No.34764 of 2007. The said writ petition was filed by the Chennai Port Trust, the Respondent herein, for a Writ of Mandamus to forbear the Appellants herein from demanding payment of urban land tax in respect of the lands comprised in Survey Nos.4035/1, 4035/3, 4036/3 and 3870/1 of Tondiarpet Village measuring an extent of 52248, 23528, 2831 and 6579 sq. metres, respectively (the Lands) and to direct the Appellants herein to refund a sum of Rs.11,29,116/- paid by the Respondent herein under protest for the period extending from 01.07.2003 to 30.06.2006. The said writ petition was allowed by order dated 11.06.2019. The facts and

circumstances that resulted in this litigation are set out in the following paragraphs.

2. The Madras Dock Labour Board was a body corporate constituted under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (the Dock Workers Act 1948). The Madras Dock Labour Board administered four statutory schemes framed by the Central Government under Section 4 of the Dock Workers Act. Each scheme pertained to different kinds of cargo handling operations at the Chennai Port. At the requisition of the stevedoring employers, who were licensed by the Chennai Port Trust to carry on their stevedoring operations at the Chennai Port, the Madras Dock Labour Board supplied labour from the separate cadres of labour administered under four statutory schemes. The Respondent herein is a major port constituted under the provisions of the Major Port Trusts Act, 1963 (The Major Port Trusts Act). The Assistant Commissioner (Urban Land Tax) issued Assessment Orders dated 28.02.1994 to the Madras Dock Labour Board in respect of various parcels of land, including the Lands. In response, by communication dated 28.02.1994, the Madras Dock Labour Board informed the Assistant

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Commissioner that except for the Lands, the other lands do not belong to the Madras Dock Labour Board and that urban land tax is being remitted for the Lands (Survey Nos. 4035/3, 4035/1, 4036/3 and 3870/1) periodically. The return was filed thereafter by the Madras Dock Labour Board on 03.03.1994.

3. Both the Madras Dock Labour Board and the Chennai Port Trust functioned under the control of the Ministry of Surface Transport and Shipping. In 1997, Parliament enacted the Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997 (the Dock Workers Act 1997), which came into force on 05.01.1998. In terms thereof, the dock labour boards that functioned in various ports were merged with the respective port trust. As per Section 3 of the Dock Workers Act 1997, the management of the Madras Dock Labour Board, the workers thereof and the management of the Chennai Port Trust entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947. Based on such settlement, the Central Government issued a Gazette notification dated 29.05.2001 making the Dock Workers Act 1948 inapplicable to the Chennai Port Trust. As per Section 4 of the Dock Workers Act 1997, all the assets and funds that were vested in the Madras Dock Labour Board immediately

before 28.05.2001 would vest in the Board of Trustees of the Chennai Port Trust from the appointed date and the Madras Dock Labour Board would be dissolved. Thus, the Madras Dock Labour Board ceased to exist.

4. Later, the third Appellant made a demand for the payment of urban land tax for the period 01.07.2003 to 30.06.2006 in respect of the Lands (more fully described in paragraph 1 above), which stood in the name of the erstwhile Madras Dock Labour Board until 27.05.2001. In response to a request by the first Appellant under letter dated 12.01.2007 for the transfer deeds pertaining to the transfer of the assets of the Madras Dock Labour Board to the Board of Trustees of the Chennai Port Trust, the Chennai Port Trust, by letter dated 31.05.2007, pointed out that there are no deeds of transfer and that it is a vesting by operation of law. By a subsequent communication dated 20.07.2007, the Respondent stated that in view of the vesting, no urban land tax can be levied. Meanwhile, demand notices for urban land tax were issued on 16.07.2007 by the third Appellant and in spite of the reply dated 29.08.2007 from the Respondent to await the decision of the first Appellant, by proceedings dated 03.09.2007, the third Appellant threatened to initiate proceedings under the Revenue Recovery Act in the

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event of non-payment of urban land tax. According to the Respondent, the Lands are owned by the Central Government and, therefore, exempt from urban land tax as per Section 29(a) of the Tamil Nadu Urban Land Tax Act 1966 (the Urban Land Tax Act). Meanwhile, in light of the threat to initiate proceedings under the Revenue Recovery Act, under protest, the Respondent herein paid the amounts demanded towards urban land tax.

5. Pursuant thereto, W.P. No.34764 of 2007 was filed for a Writ of Mandamus to restrain the Respondent from demanding payment of urban land tax in respect of the Lands and to direct the Appellants to refund the sum of Rs.11,29,116/- which had been paid by the Respondent under protest. The said writ petition was allowed by order dated 11.06.2019 by relying upon the order passed in a batch, wherein **C.R.P. No.4550 of 1982, Assistant Commissioner, Urban Land Tax, Tondiarpet v. The Trustees of the Port Trust of Madras (C.R.P. No.4550 of 1982)** was the lead case. In **C.R.P. No. 4550 of 1982**, this Court concluded that the use of the word "vest" does not lead to the inference that ownership is transferred. Accordingly, it was held that the exemption under Section 29(a) of the Urban Land Tax Act would extend to lands vested in the Board of Trustees of the Chennai Port Trust. The said order is impugned in this appeal.

6. We heard Mr.V.Jayaprakash Narayanan, the learned Government Pleader for the Appellants; and Mr.P.M.Subramaniam, the learned counsel for the Respondent, Chennai Port Trust.

7. The principal contention of Mr.Jayaprakash Narayanan was that the Urban Land Tax Act provides for an exemption if the lands in question are owned by the State or Central Government. In this case, the Lands were previously owned by the Madras Dock Labour Board and are presently owned by the Chennai Port Trust. Consequently, the Respondent is not entitled to an exemption under Section 29(a) of the Urban Land Tax Act. An ancillary contention is that guidelines were issued under Board Circular No.K.Dis.11137/76, dated 30.06.1976, that lands owned by the institutions specified therein, which includes the Tamil Nadu Warehousing Corporation, the Food Corporation of India, the Madras Port Trust and Tamil Nadu Small Industries Corporation Limited, are not entitled to exemption under Section 29(a) of the Urban Land Tax Act. In support of this contention, he produced a Compendium and Manual under the Urban Land Tax Act which contains the aforesaid Board Circular. Therefore, he submitted that the Respondent is not entitled to the exemption and that the

learned single Judge erred in relying upon the order in **C.R.P. No.4550 of 1982** to allow the writ petition.

8. On the contrary, Mr.P.M.Subramaniam submitted that the Lands stood originally in the name of the Madras Dock Labour Board. The Madras Dock Labour Board supplied labour to the Chennai Port Trust. Both the entities were fully controlled by the Ministry of Surface Transport and Shipping of the Union of India. Therefore, although the Lands stood in the name of the Madras Dock Labour Board, the owner was the Central Government. Likewise, upon vesting of the Lands in the Chennai Port Trust in accordance with Section 3 of the Dock Workers Act 1997, the Lands continued to be owned by the Central Government. He also relied upon Article 285 of the Constitution of India to contend that the State of Tamil Nadu cannot impose urban land tax on the property of the Union Government.

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9. In support of this contention, he relied upon the order in **C.R.P. No. 4550 of 1982**. With reference thereto, he contended that the question before the Court was whether the Port Trust is liable to pay urban land tax

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on account of the vesting of the assets of the Central Government in the Port Trust by virtue of Section 29 of the Major Port Trusts Act. He also pointed out that the Court thoroughly examined the meaning of the word vested by referring to judgments of the Hon'ble Supreme Court and eventually concluded that the word vested, as used in Section 29 of the Major Port Trusts Act, does not mean that the ownership of the property is transferred to the Port Trust. Instead, it merely connotes that the administration and management of the property is transferred to the Board of the Port Trust. He also pointed out that in the context of the Kandla Port Trust, the conclusion that vesting does not mean transfer of ownership of assets to the Port Trust was affirmed by the Hon'ble Supreme Court. Therefore, he submits that the order of the learned single Judge does not suffer from infirmity and is liable to be affirmed.

10. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

11. The principal question that arises for consideration is whether the Chennai Port Trust is entitled to an exemption from the payment of

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urban land tax as per Section 29(a) of the Urban Land Tax Act. Therefore, the first port of call is to examine the text of Section 29(a). Section 29(a) is as under:

“29. Exemptions – Nothing in this Act shall apply to:

(a) **any urban land owned by the State or the Central Government**” (emphasis added).

From the above exemption provision, it is clear that the exemption would apply provided the land is owned by the State or Central Government. In the present case, the admitted position is that the Lands were previously in the name of the Madras Dock Labour Board. The Madras Dock Labour Board was constituted under the Dock Workers Act 1948. Section 5(a) of the said Act is as under:

“5A. Dock Labour Boards.- (1) The Government may, by notification in the Official Gazette, establish a Dock Labour Board for a port or group of ports to be known by such name as may be specified in the notification.

(2) **Every such Board shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power to acquire,**

hold and dispose of property and to contract and may, by that name, sue and be sued. (emphasis added).

(3) Every such Board shall consist of a Chairman and such number of other members as may be appointed by the Government:

Provided that every such Board shall include an equal number of members representing-

- (i) the Government
- (ii) the dock workers, and
- (iii) the employers of dock workers, and shipping companies.

(4) The Chairman of a Board shall be one of the members appointed to represent the Government, and nominated in this behalf by the Government.”

On perusal of Section 5-A, it is clear that the Dock Labour Board was given the status of a body corporate with perpetual succession, a common seal, and, significantly, the power to acquire, hold and dispose of property and contract, sue and be sued in its name. Thus, the Madras Dock Labour Board was a distinct and independent legal entity which was capable of owning and disposing of property and contracting or prosecuting cases in its own name.

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12. The documents on record disclose that the revenue records pertaining to the Lands indicate that the Madras Dock Labour Board was the assessee. Indeed, by communication dated 28.02.1994, the Madras Dock Labour Board disputed ownership of lands in Survey Nos. 4035/2 and 4035/4 but admitted ownership of the Lands (Survey Nos. 4035/3, 4035/1, 4036/1 and 3870/1) and further stated as under:

" The urban land tax for the above Survey Numbers are being remitted to the Special Tahsildar, Urban and Development, Tondiarpet periodically".

The return in respect of the Lands was submitted, thereafter, on 03.03.1994. Therefore, the undisputed position is that the Lands were assessed to property tax in the name of the Madras Dock Labour Board and that such property tax was paid by the Madras Dock Labour Board by admitting ownership and, significantly, without claiming that the Lands were owned by the Central Government. सत्यमेव जयते

13. Upon enactment of the Dock Workers Act 1997, it was decided to merge the dock labour boards with the respective port trust. Section 4(1)(a) stipulated as under:

"4. Transfer of assets and liabilities of the Dock Labour Board, etc. to the Board- (1) On the appointed day in relation to a major port-
(a) all property, assets and funds vested in the Dock Labour Board immediately before such day shall vest in the Board."

The definition of Board was incorporated by reference from Section 2(b) of the Major Port Trusts Act, i.e. the Board of Trustees of the port. Accordingly, by a Gazette notification dated 29.05.2001, the properties, assets and funds of the Madras Dock Labour Board vested with the Board of Trustees of the Chennai Port Trust with effect from the appointed date, namely, 28.05.2001. Consequently, the Lands that were in the name of the Madras Dock Labour Board were vested in the Board of Trustees of the Chennai Port Trust. In **C.R.P. No.4550 of 1982**, the Court considered the question as to whether the ownership of the properties of the Central Government were transferred to the Board of Trustees of the Madras Port Trust as per Section 29 of the Major Ports Trust Act and not whether the lands of dock labour boards, such as the Madras Dock Labour Board, were owned by the Central Government and whether they continue to be owned by the Central Government notwithstanding the subsequent vesting thereof in the Board of Trustees of the Chennai Port Trust. To put it differently, the

question before the Court in **C.R.P. No.4550 of 1982** was whether the lands lose their character as Central Government lands upon vesting in favour of the Board of Trustees of the Chennai Port Trust under Section 29 of the Major Ports Trust Act. This position becomes abundantly clear on examining paragraph 7 of the order, wherein the Court set out Section 29(1) of the Major Port Trusts Act and captured the issue that had to be decided as follows:

"Sub-section (1) of Section 29 states thus:-

As from the appointed day in relation to any port-
(a) all property, assets and funds and all rights to levy rates vested in the Central Government or, as the case may be, any other authority for the purposes of the part immediately before such day, shall vest in the Board."

It is in view of this clause in Section 29(1)(a) of the Major Ports Trust Act, 1963, it is contended by learned Government Advocate who is appearing for the petitioner (who is common in all the Revision Petitions) that the Board of Trustees have become the absolute owners, and the Central Government has divested all its right, title and interest in the properties and, therefore, the Port Trust comes within the mischief of the Urban Land Tax Act, 1966. It is the submission of the learned Government Advocate that the word "vest" provided in

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that Act is meant to convey absolute title to the Board.

The said submission is disputed by the Board of Trustees."

In effect, the said order dealt with lands that were owned by the Central Government and, thereafter, vested in the Board of Trustees of the Chennai Port Trust. The present case stands on a different footing. The Lands were held in the name of the Madras Dock Labour Board, which was a body corporate with the capacity to own and dispose of land, and, thereafter, vested in the Chennai Port Trust as per Section 4 of the Dock Workers Act 1997. In contrast to that case, there is no evidence that the Lands were owned by the Central Government either prior to or after the vesting thereof in the Board of Trustees of the Chennai Port Trust, whereas there is evidence of ownership by the Madras Dock Labour Board earlier. Therefore, in our view, the order in **C.R.P. No.4550 of 1982** and the principle laid down therein does not advance the cause of the Respondent.

14. In the case at hand, it is also pertinent to bear in mind that an exemption provision in a tax statute is being construed and the Constitution Bench of the Hon'ble Supreme Court in **Commissioner of Customs v. Dilip Kumar, (2018) 9 SCC 1 (Dilip Kumar)**, held that an exemption

notification in a tax statute should be construed strictly especially as regards the resolution of ambiguity in the applicability thereof, and that such ambiguity should be resolved in favour of the tax authorities. The following paragraphs of the said judgment, including the conclusion of the Hon'ble Supreme Court in paragraph 66, clarify and crystallize the position:

"53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

59. The above decision, which is also a decision of a two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt

is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of *Parle Exports case* [*CCE v. Parle Exports (P) Ltd.*, (1989) 1 SCC 345 : 1989 SCC (Tax) 84] deduced as follows: (*Wood Papers Ltd. Case* [*Union of India v. Wood Papers Ltd.*, (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , SCC p. 262, para 6)

“6. ... Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally.”

60. We do not find any strong and compelling reasons to differ, taking a *contra* view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in *Hari Chand case* [*CCE v. Hari Chand Shri Gopal*, (2011) 1 SCC 236] .

66.To sum up, we answer the reference holding as under:

66.1.Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue."

15. Upon examining Section 29(a) of the Urban Land Tax Act, we find that it undoubtedly applies to lands owned by the Central or State Government. The learned counsel for the Respondent did not produce any evidence to prove that the Lands were owned by the Central Government and that the Madras Dock Labour Board was only the ostensible owner. Indeed, the evidence on record indicates that the Madras Dock Labour Board was both the ostensible and real owner. The other factor to be borne in mind is that the Lands were assessed to urban land tax and that the Madras Dock Labour Board paid urban land tax as and when demanded. Moreover, the learned Government Pleader cited the Board Circular dated 30.06.1976 whereby it was expressly provided that lands owned by the Madras Port Trust would not be eligible for the exemption under Section 29(a). In light of the above conclusion that there is no evidence of ownership by the Central Government, Article 285 of the Constitution does not come to the aid of the Respondent.

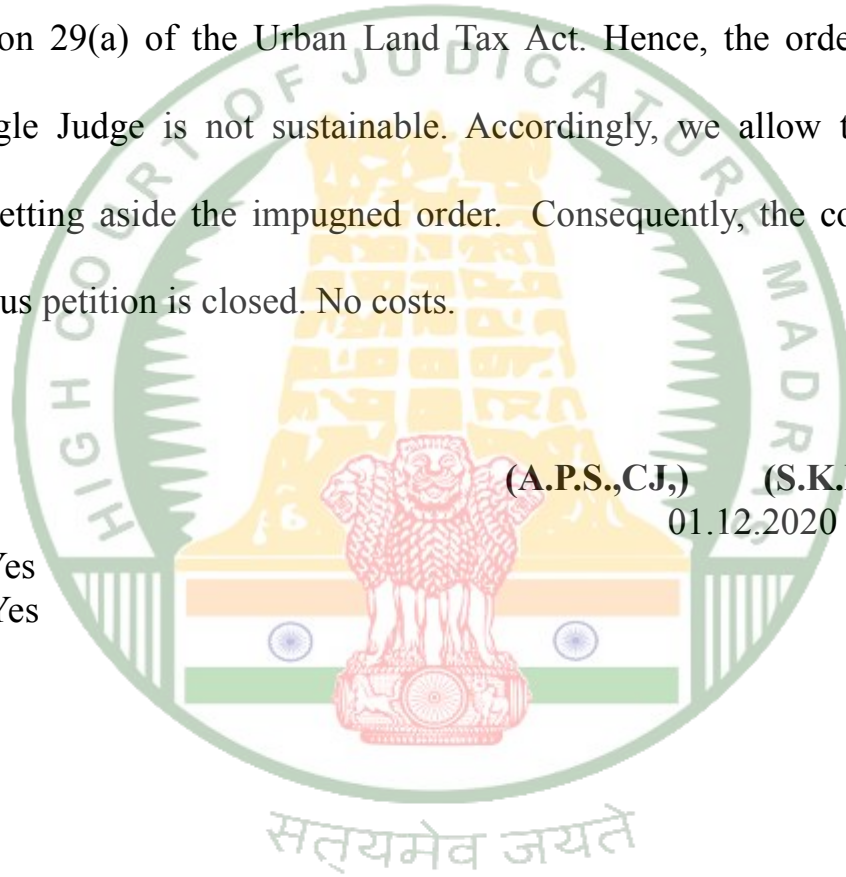
16. When the facts are considered cumulatively in light of the statute and the principle laid down in **Dilip Kumar**, we are of the view that the Chennai Port Trust failed to establish that it is entitled to an exemption under Section 29(a) of the Urban Land Tax Act. Hence, the order of the learned single Judge is not sustainable. Accordingly, we allow this writ appeal by setting aside the impugned order. Consequently, the connected miscellaneous petition is closed. No costs.

(A.P.S.,CJ)

(S.K.R.,J)

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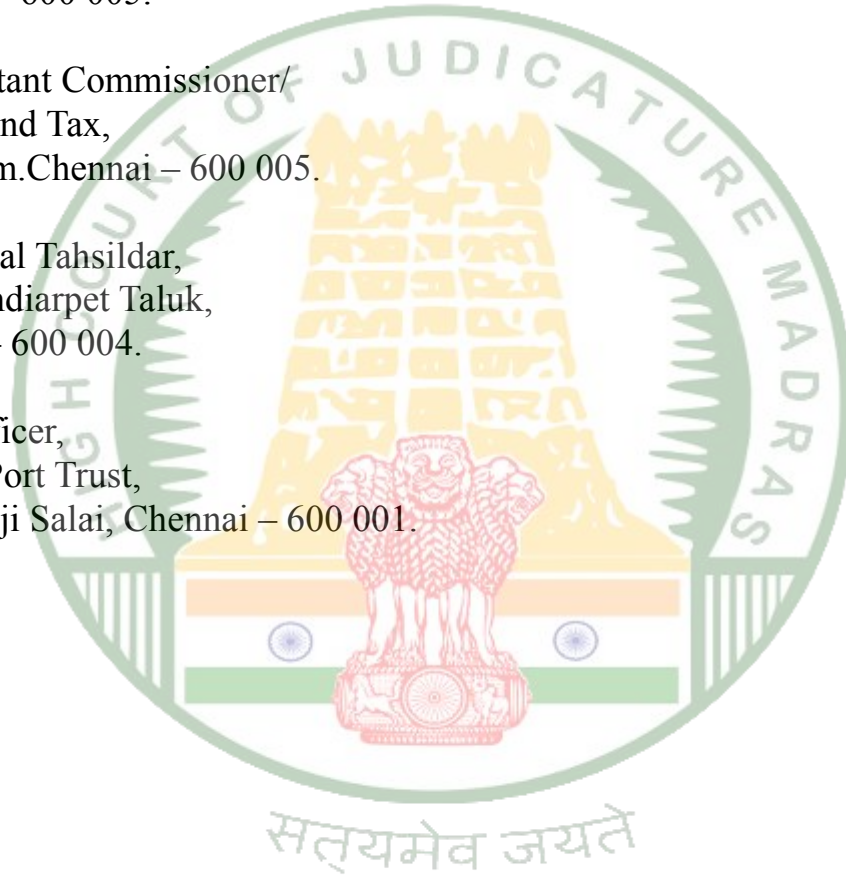
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To

- 1.The Special Commissioner and
Commissioner of Urban Land Ceiling and
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**THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY.J.,**

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**Judgment in
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