

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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WRIT PETITION No. 25388 of 2012

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ORDER:

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The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the proceedings of the respondents in file No.F1/2577/6(1)/06, dated 13.09.2006 issued under Section 8 (4), 10 (1), 10 (3), 10(5) and 10(6) of the Urban Land Ceiling Act, 1976, dated 13.09.2006, 12.01.2007, 02.02.2007 and March, 2008, as illegal and without jurisdiction; and consequently to set aside the same holding that the land admeasuring 8195 square meters situated in Survey No.22 of Guttala Begumpet Village, Sherilingampally Mandal, Ranga Reddy District, is not covered by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act").

The averments in the affidavit filed in support of the writ petition are as under:

The father of the petitioner Nos.1 to 3 by name Chinna Chittayya claims to be owner of the land admeasuring Ac.2.01 gts., situated in Sy.No.22 of Guttala Begumpet Village, Sherilingampalli Mandal, Ranga Reddy District, having purchased the same from one Lt.Col.G.E.Cox, S/o. William Cox, through registered sale deed bearing document No.147 of 1972, dated 08.02.1972. The name of the father of petitioner Nos.1 to 3 was also entered in the revenue records as pattadar. The said Chinna Chittayya died in the year 1975 and after his death, the petitioners, who are the surviving sons and grand sons succeeded to the said property and their names were also recorded in pahani for the year 1994-95.

While things stood thus, the second respondent, in exercise of his powers under section 6 (2) of the Act, claims to have issued notice

to Lt. Col.G.E.Cox, s/o. William Cox, who died in the year 1982 and without issuing notice to the persons interested as contemplated under the Act, declared various extents of lands in Sy.Nos. 19, 22, 49, 55, 56, 57 and 61 of Guttala Begumpet Village, as surplus lands. It is averred that the act of the second respondent in suo motu taking up the proceedings without serving notice on the legal representatives of Lt. Col.G.E.Cox or on his legal heirs or the persons in possession, is without jurisdiction. It is further averred that all the consequential proceedings which are taken up on a dead person are liable to be set aside. It is said that the petitioners were majors as on the date of commencement of the Act itself and as such, there was no surplus land available in the said survey number. The property was orally divided among the legal heirs of Chinna Chittayya and all the heirs are in possession of their respective extents of land before commencement of the Act. It is stated that since the Act has been repealed, the petitioners have no other alternative remedy except to approach this Court. Hence, the writ petition.

A counter came to be filed by the second respondent stating that as per the Act, any person who holds vacant land in the limits of Urban Agglomeration in excess of the ceiling limit needs to file a declaration under Section 6 (1) of the Act. It has come to the notice of the second respondent that one Sri Col.Cox was holding vacant land in excess of the ceiling limit in various survey numbers of Guttala Begumpet Village, as such, notice under Section 6 (2) of the Act was issued on 19.04.2006 to file the declaration under the Act. As Col.Cox died and his legal heirs failed to file any objections, draft statement under Section 8 (1) of the Act was issued on 20.07.2006 calling for objections if any with regard to surplus land and finally draft orders were issued under Section 8 (4) of the Act and final statement under Section 9 of the Act was also issued on 13.09.2006, which was said to have been served as per rule 5 (2) (b) of the Rules. Later,

a notification under Section 10 (1) of the Act was issued on 17.01.2007 which was also got published in A.P.Gazette on 18.01.2007. Soon after publication of notification, declaration under Section 10 (3) of the Act was issued on 02.02.2007 and the same was also published in the Gazette. After complying with all the formalities, as per the provisions of the Act, possession of surplus land was taken on 24.03.2008. It is further stated that objections were called for from the interested person at the time of issuance of 10 (1) of the Act, and even at that stage, the petitioners, who are claiming title over the property, did not come forward with any objections. The contention of the petitioners that the land is being used for agricultural purpose and the provisions of the Act do not apply to the case on hand is not correct as Guttala Begumpet Village is within the limits of Hyderabad Urban Agglomeration and as per the extended Master Plan it is in residential zone. It is further contended that six applications have been received from third parties, seeking allotment of the same in terms of G.O.Ms.No.747, dated 18.06.2008, which was suspended in W.P.M.P.No.32366 of 2012. Since this Court suspended the entire proceedings issued by the Special Officer, the applications filed by third parties for regularization of their possession could not be processed and prayed to vacate the interim order.

In order to appreciate the rival contentions, it may be useful to refer to certain provisions of the Act.

Section 6 of the Act which deals with the persons holding vacant land in excess of ceiling limit to file a statement reads as under:

- (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 interest therein) and also specifying the vacant land within the ceiling limit which he desires to retain.

Section 8 of the Act which deals with draft statement reads as under:

8. Preparation of draft statement as regard vacant land held in excess of ceiling limit:

(1) on the basis of the statement filed under Section 6 and after such inquiry as the competent authority may deem fit to make, the competent authority shall prepare a draft statement in respect of the person who has filed the statement under Section 6.

(2) xxxxxx

(3) xxxxxx

(4) The competent authority shall duly consider any objection received within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under the sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

Section 9 of the Act refers to publication of final statement. It states that after the disposal of the objections, if any, received under sub-section (4) of Section 8 of the Act, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease, or mortgage, or a hire-purchase agreement or an irrevocable power of attorney, also on the owner of such vacant land.

Section 10 of the Act reads as under:

10. Acquisition of vacant land in excess of ceiling limit: (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 interest 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.

(2) After considering the claims of the person interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1) of the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1), shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such, Government is free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (2) and ending with the date specified in the declaration made under sub-section (3).

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof), specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or caused to be altered the use of such excess vacant land.

(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 authorized by the State Government in this behalf within thirty days of the service of the notice.

At this stage, it may also be useful to refer to Urban Land

(Ceiling and Regulation) Repeal Act, 1999 (for short “the Repeal Act”), which was adopted by the State of Andhra Pradesh with effect from 27.03.2008. The Repeal Act contains a saving clause vide Section 3 which reads as under:

3. Savings: (1) The repeal of the principal Act shall not affect –

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where –

(a) any land is deemed to have vested in the state Government under sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

Section 4 of the Repeal Act, reads as under:

4. Abatement of legal proceedings.—All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate: Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

In **State of Uttar Pradesh v. Hariram**^[1] the Apex Court while dealing with Section 10 of the Act, which is the subject matter of issue

in the present case, held as under:

“15. Before examining the impart of the Repeal Act on Act 33 of 1976, particularly, Section 3 of the Repeal Act on sub-section (3) of Section 10 of the Act, let us examine whether possession could be taken following the procedure laid down in sub-section (3) of Section 10 of the Act.

16. Section 6 casts an obligation on every person holding vacant land in excess of the ceiling limit to file a statement before the competent authority and after following all the statutory procedures, the competent authority has to pass the order under Section 8 (4) on the draft statement. Following that, a final statement has to be issued under Section 9 on the person concerned. Sub-section (1) of Section 10 states that after the service of the statement, the competent authority has to issue a notification giving particulars of the land held by such person in excess of the ceiling limit. A notification has to be published for the information of the general public in the Official Gazette, stating that such vacant land is to be acquired and that the claims of all the persons interested in such vacant land be made by them giving particulars of the nature of their interests in such land.

17. Sub-section (2) of Section 10 states that after considering the claims of persons interested in the vacant land, the competent authority has to determine the nature and extent of such claims and pass such orders as it might deem fit. Sub-section (3) of Section 10 states that after the publication of the notification under sub-section (1), the competent authority has to declare that the excess land referred to in the notification published under sub-section (1) of Section 10 shall, with effect from such date, as might be prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect such land shall be deemed to have been vested absolutely in the State Government, free from all encumbrances, with effect from the date so specified.”

Dealing with sub-section (5) and sub-section (6) of Section 10, the Apex Court held as under:

“34. Sub-section (5) of Section 10, for the first time, speaks of “possession” which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State

Government.

35. If *de facto* possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression “where any land is vested” under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the sub-sections has to be understood as “shall” because a Court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall”.

Though material has been produced to show that the respondents have been dispossessed before coming into force of the Repeal Act, the Apex Court held that the respondents are entitled to get the benefit of Section 4 of the Repeal Act and consequently dismissed the appeal filed by the State.

In ***Kamal Kishan Rastogi v. State of Bihar***^[2] the Apex Court while dealing with a situation of service of notice on a dead person held that the order of the Additional Collector was unsustainable for the reason that it was passed against a dead person.

The case on hand is identical to the cases referred to above. In the instant case, the order dated 13.09.2006 passed by the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad under

Section 9 of the Act, clearly discloses that Col. Cox held the land to an extent of Ac.11.30 gts., in Sy.Nos. 19, 22, 49, 50, 55, 56, 57 and 61 of Guttala Begumpet Village, for which no declaration has been filed. In exercise of the powers conferred under section 6 (2) of the Act, a notice was said to have been issued to file the declaration under Section 6 (1) of the Act, which is said to have been served through Enquiry Officer as per rule 5 (2) (b) of the Act since the whereabouts of legal heirs of Col. Cox are not known. The outer time limit fixed for filing the declaration was kept blank. It is stated that pursuant to the guidelines issued in G.O.Ms.No.1499, Revenue (UC-I) Department, dated 02.11.1983 suo moto action was taken to compute the land under the provisions of the Act, after due verification of record as the original owner Col. Cox (deceased pattadar) died per L.R.s not known.

The impugned order further states that draft statement under Sections 8 (1) and 8 (3) of the Act were issued and as no objections were received within the stipulated period, it was presumed that there was no objection for determination of the excess land and accordingly final statement under Section 9 of the Act was prepared.

From a reading of the above order, it is clear that notice under Section 6 (2) of the Act, objections under Section 8 (3) of the Act and notice under Section 10 (5) of the Act were sent to a dead person. Obviously the said notices could not be served on Col.Cox as he died in the year 1982 itself. The notices could not have been served on the legal heirs of Col.Cox, as it was specifically stated in the order that whereabouts of legal heirs of Col.Cox are not known. That being the position the question of filing a statement under Section 6 (2) of the Act or raising objections to the draft statement under Section 8 (3) of the Act would not arise. Further, the State Government failed to establish that there has been a voluntary surrender of vacant land or delivery of peaceful possession under Section 10 (5) of the Act or

forceful possession under Section 10 (6) of the Act. On the otherhand, there is enough material in the form of adangals, to show that petitioners and implead petitioners (family members) are in possession of the property since 1972 and no steps were taken to serve any of the notices on them. Though the learned Government Pleader tried to contend that notice under Section 10 (5) of the Act was issued but a perusal of the original record does not anywhere indicate the same. The note file of the record only refers to placement of draft notice under Section 10 (5) of the Act for approval and an endorsement for issuance of notice under Section 10 (5) of the Act. There is also an endorsement dated 23.08.2007 for putting up Section 10 (5) Notice. But a copy of notice under Section 10 (5) of the Act and its issuance to owner/possessor is not found in the record. Apart from that a perusal of the order issued under Section 10 (6) of the Act would show that the column pertaining to the date on which the period of 30 days from the date of the purported notice under Section 10 (5) of the Act expired was kept blank. It would be useful to refer to the contents of the notice issued under Section 10 (6) of the Act, which reads as under:

“Notice under Section 10 (5) of the Act was issued to the declarant Col.Cox asking him/her to deliver the possession of the following surplus land within thirty (30) days from the date of service of notice under Section 10 (5) of the Act.

Sl.No.	Description of property	Location	Extent in Sq. Mts.
1.	Survey Nos. 19, 22, 49 50, 55, 56, 59 and 61 of Guttala Begumpet Sherilingampally Mdl. Ranga Reddy Dist.	Guttala Begumpet Village, Sherilin- Gampally Mdl., Ranga Reddy Dist.	46,552.24

The (30) days time given in the notice U/s. 10 (5) of the Act expired on.....but he/she failed to deliver possession before the expiry date. Hence, Sri R.Satya Babu, Enquiry Officer of this office is authorized to take over possession of land in question U/s. 10 (6) of the Act and hand over the same to Mandal Revenue Officer concerned and

report compliance.”

From the above, a doubt arises as to whether a notice under Section 10 (5) of the Act has been issued, which is mandatory in view of the judgment of the Apex Court in **State of U.P. v. Hari Ram case (1 supra)**. As stated above, the claim of the petitioners is that they have been in possession of the land admeasuring 8195 square meters situated in Survey No.22 of Guttala Begumpet Village and the notices were issued on a dead person i.e. Col.Cox, which remained unserved either on him or on his legal heirs. In the absence of any material to show that the respondents took possession of the land before the Repeal Act came into force and having regard to the circumstances referred to above, the petitioners are entitled to get the benefit under Section 4 of the Repeal Act.

Accordingly, the writ petition is allowed and the proceedings in file No.F1/2577/6(1)/06, dated 13.09.2006 issued under Section 8 (4), 10 (1), 10 (3), 10(5) and 10(6) of the Urban Land Ceiling Act, dated 13.09.2006, 12.01.2007, 02.02.2007 and March, 2008 are hereby set-aside. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

16.12.2015

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[\[1\]](#) (2013) 4 SCC 280

[\[2\]](#) AIR (SC) 2009 Page No.1182