

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 7753 OF 2015

Between:

Sri Rajendra Agarwal and others.

... PETITIONERS

VERSUS

The State of Telangana,
rep. by its Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others.

...RESPONDENTS

Date of Judgment pronounced: 25.10.2016

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

1. Whether Reporters of Local newspapers
May be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see the fair
Copy of the Judgment? Yes/No

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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! **Counsel for the Petitioners:** MR. C.Hanumantha Rao

^ **Counsel for the Respondents:** Government Pleader for
Revenue for Respondent Nos. 1 to 5

Sri Y.Rama Rao, Standing
Counsel for Respondent No.6

Sri Sampath Prabhakar Reddy,
Standing Counsel for
Respondent Nos.7 & 8.

Government Pleader for Home
for Respondent No.10

> HEAD NOTE:

? Cases referred

¹ AIR 1999 Supreme Court 3495

² 2014 (4) ALD 757 (DB)

³ 2012 (3) Scale 514 : 2014 (15) SCC 332

⁴ (2013) 4 SCC 280

⁵ (2015) 5 Supreme Court Cases 321

⁶ 2014 (12) SCC 523: 2014 AIR (SC) 1843

⁷ 2015 (3) ALD 248

⁸ 2015 (1) ALD 151 (SC)

⁹ (2010) 1 SCC 512

¹⁰ (2015) 5 Supreme Court Cases 321

¹¹ (2015) 2 Supreme Court Cases 390

¹² 2006 (5) ALD 132 (D.B)

¹³ 2002 (5) ALD 779 (DB)

¹⁴ AIR 1990 AP 307

¹⁵ 2005 (6) ALD 772

¹⁶ 1989 (1) ALT 48

¹⁷ (2003) 11 Supreme Court Cases 584

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**WP No.7753 OF 2015****ORDER:**

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 8th respondent-Chief City Planner, GHMC, Hyderabad, in issuing letter No.523/CSC/TP11/WZ/2010/2612, dated 30.12.2010 and the Memo No.F1/A6/689/2003 in CC.No.F1/4143/2004, dated 22.04.2013 issued by the 2nd respondent-Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, as illegal, arbitrary, without jurisdiction being contrary to the statutory provisions of the Urban Land (Ceiling & Regulation) Repeal, Act, 1999, (for short 'the Repeal Act, 1999') and violative of Articles 14, 19, 21 and 300-A of the Constitution and for a consequential direction to sanction building permission on the application dated 21.07.2010 made by them.

2. Brief facts necessary for disposal of the writ petition are as follows:

Originally, one M. Vitalaiah and four others are the owners and possessors of the land admeasuring Acs.2.00 situated at Sy.No.62, Madhapur Village, Serilingampally Mandal, Ranga Reddy District, (for short 'the subject land'). One P.Nageswara

Rao, who was the managing director of the 9th respondent-M/s.Midwest (India) Industries Ltd., purchased the subject land from M. Vitalaiah and others through registered sale deed bearing Doc.No.8881/1987, dated 07.12.1987. Deposit holders in 9th respondent-Company approached the Police by filing criminal cases against the said P.Nageshwar Rao, for non-payment of deposits and also fraud committed by him in managing the affairs of the Company. In order to evade Police action, the managing director of 9th respondent-Company filed WP No.32498 of 1998 seeking a writ of mandamus directing the respondents therein to make enquiry before registering any crime as and when complaints are lodged either against him or the 9th respondent-Company.

3. It is a matter of record that this Court, by order dated 13.12.1999, disposed of the said writ petition being W.P.No.32498 of 1998 appointing two Advocate Commissioners with a direction to take physical possession of the subject land and other piece of land situated at Sy.Nos.105 and 106 of Khajaguda village to an extent of Ac.1.20 gts. That pursuant thereto, the Advocate Commissioners, with the assistance of Mandal Revenue Officer, Revenue Inspector and Village Administrative officer, after

identifying the subject land and other piece of land situated at Sy.Nos.105 and 106 of Khajaguda village to an extent of Ac.1.20 gts., took custody of the original title deeds in respect of the said properties from the managing director of the 9th respondent-Company, and deposited the title deeds with the Registrar (Judicial) for safe custody. In the said order, a direction was also given to the Reserve Bank of India to take steps for winding up of the 9th respondent-Company. Accordingly, the Reserve Bank of India filed Company Petition No.39/2000 and C.A.No.119/2000, wherein the Company Court appointed Official Liquidator. By orders of the Company Court dated 22.09.2003 in C.A.No.666 of 2003, the assets of the directors of the 9th respondent-Company were directed to be put on sale including the subject land in open auction on 'as is where is and whatever there is' basis. That the petitioners participated in the said open auction and purchased the subject land for total sale consideration of Rs.2,21,00,000/- and this Court, by order dated 17.11.2003 in C.A.No.666/2003 also confirmed the sale of the subject land in favour of the petitioners being the highest bidders. This Court, vide order dated 09.12.2003 in C.A.No.2012 of 2003, directed the Official Liquidator to handover possession of the subject land to the

petitioners and accordingly, possession of the subject land was delivered to the petitioners on the day of registration in their favour vide registered sale deed bearing No.8405 of 2004, dated 12.02.2004 through Official Liquidator. That thereafter, the names of the petitioners were also mutated in revenue records, by the Tahsildar vide proceedings No.B/4584/2004, dated .02.2005.

4. That on the application of the petitioners dated 17.09.2008, the State Government after calling reports from the HMDA and other authorities and having collected Rs.3,66,277/- towards development charges and publication charges under Section 15(3) & 15 (4) of the HMDA Act, 2008, issued GO Ms.No.548 Municipal Administration & Urban Development (I) Department, dated 02.09.2009 changing the land use to an extent of 1767.51 sq.mtrs out of Acs.2.00 of the subject land from recreation use to commercial use zone and the remaining land was kept for recreational use. Thereafter, on application made by the petitioners, on 21.07.2010 for building permission, the 8th respondent-Chief City Planner, GHMC, vide proceeding Lr.No.523/CSC/TP11/WZ/2010/1454, dated 06.08.2010 informed petitioners that the subject land is covered by the

provisions of the Urban Land (Ceiling and Regulation) Act, 1976, (for short, 'the ULC Act, 1976') in the light of the communication received vide Lr.No.A4/1844/08, dated 01.05.2008, from the 2nd respondent-Special Officer & Competent Authority, ULC, Hyderabad, and, therefore, the application could not be processed and advised the petitioners for taking up necessary action.

5. That thereafter the petitioners made further representation dated 20.12.2010, to the 8th respondent-Chief City Planner, but the 8th respondent issued the impugned proceeding Lr.No.523/CSC/TPH/WZ/2010/2612, dated 30.12.2010, requiring the petitioners to submit NOC from 2nd respondent-Special Officer & Competent Authority, ULC, Hyderabad, since the subject land is affected under the ULC Act, 1976. That petitioners made application dated 08.04.2013 to the 2nd respondent for issuing 'no objection certificate', for the purpose of obtaining building permission, but the 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, issued impugned proceeding No.F1/A6/689/2013 in CC No.F1/4143/2004, dated 22.04.2013, advising the petitioners to apply for regularization of the land in terms of GO Ms.No.747 Revenue (UC-I) Department, dated 18.06.2008, by paying the

requisite amount. Aggrieved by the proceedings noted above of the 8th and 2nd respondents, respectively, the present writ petition is filed.

6. 3rd respondent-District Collector, Ranga Reddy District, filed counter affidavit wherein it is stated that the petitioners are neither declarants nor legal heirs of declarant M. Vittalaiah, and they are strangers to the proceedings before the 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, as such, the present writ petition is not maintainable. It is stated the urban land ceiling proceedings under the ULC Act, 1976, have become final and possession of surplus lands was taken by Government on 14.03.2008 in Ceiling Case No.F1/4143/6(1)/2004. As the declarants have not filed any appeal against the said proceedings before the Commissioner of (Appeals), under Section 33 of the ULC Act, 1976, the same have become final. That the petitioners have filed the writ petition after 8 years of the impugned proceedings, as such, the same is liable to be dismissed on the ground of *latches*. An extent of 73,462.38 sq. mtrs of land, out of land in Sy.Nos.31 to 36 & 62 including the subject land in Sy. No.62 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District, was determined as

surplus land from out of the holding of M. Vittalaiah under the provisions of the ULC Act, 1976.

7. That petitioners were advised by the 2nd respondent vide Memo No.A1/A6/689/2013 in C.C.No.F1/4143/2004, dated 22.04.2013 to apply for regularization of the subject land in terms of G.O.Ms.No.747, Rev (UC-1) Department, dated 18.06.2008.

That the petitioners admitted that they have purchased the subject land in an extent of Ac.2.00 gts of land in Sy.No.62 of Madhapur village, Serilingampally Mandal, Ranga Reddy District, through registered sale deed bearing document No.8405/2004, dated 12.02.2004, which is after and during enforcement of the ULC Act, 1976, as such, the said purchase is void under Sections 5(3) and 10(4) of the ULC Act, 1976. That the date of holding of the land is to be reckoned from the date of commencement of the ULC Act, 1976, in the State, but not from the date of filing of declaration. That the holding of the declarant was decided on the basis of revenue records like Faisal patti for the years 1975-76, as such, petitioners have no *locus standi* to maintain the writ petition being strangers to the ULC proceedings. That Section 42 of the ULC Act, 1976, over rides any orders passed by other authority and since the subject land is Government land, the petitioners

cannot seek permission from 7th and 8th respondents for construction of building on the subject land without regularization of the land under the provisions of the ULC Act, 1976. Unauthorized possession over the surplus land under the guise of any sale deed cannot create any right or title in favour of the petitioners.

8. Reply affidavit is filed by the petitioners to the counter affidavit filed by the 3rd respondent-District Collector, Ranga Reddy District, contending that the subject land was an agricultural land as on the date of transfer and not a vacant land, as such, it does not come under the purview of the Repeal Act, 1999. That the alleged declaration dated 11.11.2004 under Section 6(1) of the ULC Act, 1976, was filed after 9 months of the acquisition of ownership by the petitioners vide registered sale deed dated 12.02.2004. That the registered sale deed dated 12.02.2004 is a notice to the State and all authorities of the State as per Section 3 of the Transfer of Property Act. That the Government had taken 583 sq.yds of land for road widening, free of cost and an extent of 2264 sq.yds was ear marked as buffer zone, where no construction is allowed and that an extent of Ac1.39 gts was shown as FTL area where no constructions are

permissible permanently. The subject land is not a vacant land and, therefore, the provisions of the ULC Act, 1976 cannot be invoked. That without following the mandatory provision under Section 10 (5) of the ULC Act, 1976, and without issuing any notice, the possession of the subject land was taken on 14.03.2008 under manipulated panchanama, which is illegal. Notice along with draft statement as required under Section 8(1) of the ULC Act, 1976, has not been served on the petitioners. That the petitioners are *bonafide* purchasers of the subject property from this Court through Official Liquidator, as such, they cannot be termed as strangers.

9. Additional counter affidavit is filed stating that the death of said M.Vittalaiah, declarant was never brought to notice of the then Special Officer & Competent Authority, Hyderabad, by the legal heirs of the declarant, as such the factum of death of the declarant on 16.02.2006 is denied. That all the proceedings up to the stage of Section 10(3) notification were issued during the life time of declarant, as such, there is nothing illegal in issuing the proceedings under Section 10(6) of the Act and taking possession of the surplus land by conducting panchanama on 14.03.2008.

There is no specific provision in the ULC Act, 1976, to bring on record the legal representatives of the declarant.

10. Petitioners filed reply affidavit to the additional counter affidavit filed by the 3rd respondent-District Collector, Ranga Reddy District, stating that the proceedings against the dead person are void *ab initio* and nullity in the eye of law. No panchanama was conducted on 14.03.2008 at the subject land and that the petitioners are in actual, physical possession of the subject land having acquired the same through registered sale deed dated 12.02.2004.

11. 7th and 8th respondents have also filed counter affidavit stating that one Venkat Reddy & others have submitted proposals for construction of commercial building consisting of 2 cellars, ground + 4 upper floors in the subject land vide file No.523/CSC/TP11/WZ/2010, dated 21.07.2010, the file has been sent to LAO/SDC, GHMC for verification of ownership of the land, who sent-up a report stating that the subject land is under the clutches of the provisions of the ULC Act, 1976. Understood that, the applicants were accordingly informed that they are not having *prima facie* title to the subject land. The other averments made are reiteration of the averments made by the 2nd respondent-

District Collector in the counter and additional counter, therefore need not be noted.

12. Petitioners filed reply affidavit to the counter affidavit of the 7th and 8th respondents stating that part of the subject land, *i.e.* to the extent of 1767.51 sq. meters out of 2 acres, for the first time, became vacant on 02.09.2009, when the ULC Act, 1976, was no more in force as it was repealed on 27.03.2008 vide G.O.Ms.No.548 (MA), dated 02.09.2009, and under those situations, respondents 7th and 8th are bound by the said G.O., but cannot contend that the petitioners have no prima facie title to the subject land. That respondents 7 and 8 have not passed orders rejecting building permission, but have withheld the permission on the false information of the 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, which is illegal and arbitrary.

13. Heard Sri C.Hanumantha Rao, learned counsel for the petitioners and learned Government Pleader for Revenue for the respondents 1 to 6 and Sri Sampath Prabhakar Reddy, learned Standing Counsel for the respondents 7 and 8.

14. Learned counsel for the petitioners contended that the subject land is an agricultural land but not a vacant land and that

the declaration under Section 6(1) of the ULC Act, 1976 alleged to have been given by M.Vittalaiah is a created one. He contended that without issuing notice of draft statement under Section 8(1) of the ULC Act, 1976, to the petitioners, consequential orders were passed under Section 9, 10 (4), 10(5) and 10(6) of the ULC Act, 1976, which is erroneous. Learned counsel contends that issuance of notice to the petitioners under Section 10(5) of the ULC Act, 1976, is mandatory. It is also stated that there is no legal requirement for the petitioners to seek NOC from the 2nd respondent and furnish the same to the 7th and 8th respondents, as they have purchased the subject land through valid registered sale deed and they are *bona-fide* purchasers. He further submits that the petitioners had paid developmental charges and other charges in accordance with G.O.Ms.No.548, which was published in A.P. Gazette 429, dated 10.09.2009. He further contended that as on the date of Repeal Act, 1999, i.e. 27.03.2008, the petitioners are in actual and physical possession of the subject land and that the proceedings if any initiated against M.Vitalaiah behind the back of the petitioners shall abate in view Sections 3 & 4 of the Repeal Act, 1999. In support of his contentions, relied on the judgments reported in **Anurag Virmani v. State of M.P¹, State of**

¹ AIR 1999 Supreme Court 3495

Andhra Pradesh v. G.V.Mohan², Mangalsen v. State of UP³, State of U.P vs. Hari Ram⁴, State of Assam v. Bhaskar Jyoti Sarma⁵, Gajanan Kamlya Patil v. Addl. Collector and Competent Authority⁶, P.Laxmi Kantha Rao v. Government of A.P⁷, D.R.Somayajulu Secretary, D.L.S v. Attili Appala Swamy⁸ Urban Improvement Trust, Bikaner v. Mohan Lal⁹.

15. On the other hand, learned Government Pleader for Revenue (Assignment) contended that the petitioners are neither declarants nor the legal heirs of the declarants, as such, they are strangers and have no *locus standi* to file the writ petition. He contended that the Government, after following due process of law as required under the ULC Act, 1976, has taken possession of the subject land on 14.03.2008. He would further contend that the writ petition filed is hit by latches as it is almost eight years from the date of taking over the possession of the subject land by the Government. It is also contended that the alleged purchase of the subject land by the petitioners was after the commencement of the ULC Act, as such, same is void in view of Section 5(3) of the ULC Act, 1976. In support of his contentions, relied on the judgments

² 2014 (4) ALD 757 (DB)

³ 2012 (3) Scale 514 : 2014 (15) SCC 332

⁴ (2013) 4 SCC 280

⁵ (2015) 5 Supreme Court Cases 321

⁶ 2014 (12) SCC 523: 2014 AIR (SC) 1843

⁷ 2015 (3) ALD 248

⁸ 2015 (1) ALD 151 (SC)

⁹ (2010) 1 SCC 512

reported in **State of Assam v. Bhaskar Jyoti Sarma**¹⁰, **Dr. Somayajulu, secretary, Diesel Loco Shed and South Eastern Railway House Building Cooperative Society Ltd., Visakhapatnam**¹¹, **Parchuri Ratnakar Rao v. State of A.P**¹², **Zarina v. Special Officer and Competent Authority, ULC, Vijayawada, Krishna District**¹³, **B.Ramesh v. The Special Officer and Competent Authority, ULC, Barkatpura, Hyderabad**¹⁴ and **Mahesh Co-operative Housing Society Ltd., Secunderabad v. Special Officer and Competent Authority, ULC, Hyderabad and others**¹⁵

16. Admittedly, the petitioners purchased Ac.2.00 of land in Sy.No.62, Madhapur Village, Serilingampally Mandal, R.R.District, through registered document No.8405/2004, dated 12.02.2004 executed by Official Liquidator, pursuant to the orders in CA No.666 of 2003, dated 17.11.2003 passed by the Company Court. It is also not in dispute that the managing director of 9th respondent purchased the subject land by virtue of registered sale deed No.8881 of 1987, dated 07.12.1987 from M. Vittalaiah and others. The possession was also handed over to the petitioners, much prior to the registration i.e., on 09.12.2003 after receiving entire sale consideration of Rs.2.21 Crores in pursuant to orders in C.A.No.2012 of 2003, dated 09.12.2003 by the Official

¹⁰ (2015) 5 Supreme Court Cases 321

¹¹ (2015) 2 Supreme Court Cases 390

¹² 2006 (5) ALD 132 (D.B)

¹³ 2002 (5) ALD 779 (DB)

¹⁴ AIR 1990 AP 307

¹⁵ 2005 (6) ALD 772

Liquidator. The names of the petitioners were also mutated vide proceedings No.B/4584/2004 of the Tahsildar, dated 02.2005, which goes to show that the names of the petitioners were recorded in revenue records and no objections were received in respect thereof from any corner. Thus, the petitioners are in possession of the subject land.

17. In **Anurag Virmani v. State of M.P (supra)**, the Hon'ble Supreme Court held that the appellant purchased land from original owner much prior to issuance of an order under Section 9 Urban Land (Ceiling and Regulation) Act (33 of 1976), in respect of holding of original owner and proceedings under Section 9 affected lands conveyed to the appellant, as such, the appellant has *locus standi* to file appeal in respect of said proceedings. In the instant case, when once the petitioners purchased the property in an open auction vide registered sale deed No.8405/2004, dated 12.02.2004, conducted by the Official Liquidator and sale was confirmed by this Court and they were put in possession, and so called declaration under Section 6(1) of the Act by M.Vittalaiah is after nine months i.e., on 11.11.2004 and admittedly no notices were issued to petitioners under Rule 5(2) of the Rules framed

under the Act, though their names are recorded in revenue records.

18. In **Y.Sri Rama Krishnaiah v. Special Officer and Competent**

Authority, Urban Land Ceiling, Vijayawada¹⁶, it is held as follows:

“4. The second contention merits acceptance. Rule 5 of the Rules provides thus:

“Rule 5: - Particulars to be contained in draft statement as regards vacant lands and manner of service of the same: (1) Every draft statement prepared under sub-section (1) of Section 1 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served together with the notice referred to in sub-section (3) of Section 8 on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant lands by sending the same by registered post addressed to the person concerned.”

6. A reading of the above Rule provides that if the competent authority has got prior knowledge that all or any other person known to him who have or are likely to have any claim to, or interest either in the ownership or possession or both of the vacant land, notice is mandatory as their interest or claim is likely to be affected. Issuance and service of notice as contemplated under sub-rule (2) of Rule 5 of the Rules is mandatory. Therefore, any statement prepared under Section 10 without following the mandatory requirement under Rule 5(2) is clearly invalid and illegal. The appellate order itself mentions that the authorities have prior knowledge that the declarant has major son. Under those circumstances, the order under Section 10(3) as well as the order under Section 8(4) of the Act are quashed. The matter is remitted to the Special Officer & Competent Authority. The Special Officer & Competent Authority is directed to issue notice to the petitioner as well as to the other son and daughter of the declarant-and consider their objections and then pass appropriate orders after following the procedure prescribed under the Act.”

In this case, the names of petitioners were mutated in revenue records in the year 2005 in pursuance to registered sale deeds executed by Official Liquidator, as such, they have interest in the ownership and possession of land, as held in above judgment.

¹⁶ 1989 (1) ALT 48

In view of same, the order under Section 10(3) of the Act as well as order under Section 8(4) of the Act in this case are liable to be quashed. Moreover, since the petitioners filed the present writ petition immediately after passing of impugned orders, as they were not put on notice earlier, the delay in challenging the same cannot be attributed to the petitioners. As such, the contention of the learned Government Pleader for Revenue that the writ petition is not maintainable on the ground of delay, is not correct.

19. In the sale deed dated 12.02.2004 executed by the Official Liquidator in favour of the petitioners, on the directions of Company Court, it is mentioned as follows:

“During the trial in W.P.No.32498/98, the Hon’ble High Court appointed two Advocate Commissioners namely Sri V.S.Raju, Advocate and Smt. E.Urmila Advocate, as Advocate Commissioners, primarily to pay the deposit holders their amount and given some directions to the Advocate Commissioners also. The Hon’ble Court vide its order Dt 23.08.99 passed further interim direction to the following effect:

Pending further orders, the Advocate Commissioners shall take physical possession of the land situated in Sy.No.62, Madhapur, Ranga Reddy District, having an extent of Acres 2-00 and another piece of land situated in Sy.Nos.105 and 106 of Khajaguda having an extent of Acres 1.20 guntas forthwith. The petitioner shall identify the land and hand over the physical possession as directed above.

The petitioner shall deposit the sale deeds in respect of the aforesaid lands with the Advocate Commissioners. The Advocate Commissioners shall, if necessary, appoint watchmen for the purpose of safeguarding the aforesaid property. The Superintendent of Police of Ranga Reddy District and the Mandal Revenue Officer concerned are directed to ensure that no encroachment takes place on the above land and they shall render

necessary assistance to the Advocate Commissioner as and when required by them in this regard.

Accordingly, the Advocate Commissioners have visited the schedule land on 30-09-99 and identified the land in Sy.No.62 of Madhapur, having an extent of Acres 2-00 and at Khajaguda in Sy.Nos.105 & 106 having an extent of Acres 1-20 guntas with the assistance of Mandal Revenue Officer, Revenue Inspector and village Administrative Officer concerned and took possession of the land.

The original title deeds of the said properties were also handed over to the Advocate Commissioners. The Hon'ble High Court in the said Writ Petition, Dt.13-12-99, directed the Advocate Commissioner to deposit all the documents delivered by the petitioners namely Dr.Pinna Nageshwar Rao to them with the Registrar (Judicial) for safe custody with further direction that as and when requisition is received from the winding up Court, the same may be transmitted under appropriate receipt. The said title deeds were deposited with the Registrar (Judicial).

...

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Whereas in the above said assets including the other assets of the erstwhile directors were put to auction as per the order of Hon'ble High Court on Dated 22-09-03 in C.A.No.666/03 on 'as is where is and whatever there is' basis on 29-10-2003 for 1 to 11 lots. Whereas the vendee at No.1 herein has deposited a sum of Rs.10,00,000-00 (Rupees ten lakhs only) as earnest money deposit and participated in the auction in respect of lot no.6 in the auction notice issued by vendor i.e., the schedule property herein, and their bid was knocked in their favour being highest bid at Rs.2,21,00,000-00 (rupees Two Crores Twenty One Lakhs Only) and immediately the vendee at No.1 herein paid (20% of bid amount) a sum of Rs.44,60,000-00 (Rupees Forty Four Lakhs Sixty Thousand only) to the vendor as per the terms of auction.

Whereas the Hon'ble High Court by its order Dated 17-11-2003 in C.A.No.666/2003 has confirmed the sale of the schedule property for a consideration of Rs.2,21,00,000-00 (Two Crores Twenty One Lakhs).

Whereas the Hon'ble High Court in C.A.No.2012/2003, vide its order Dt: 09-12-2003, had directed the vendor to handover the

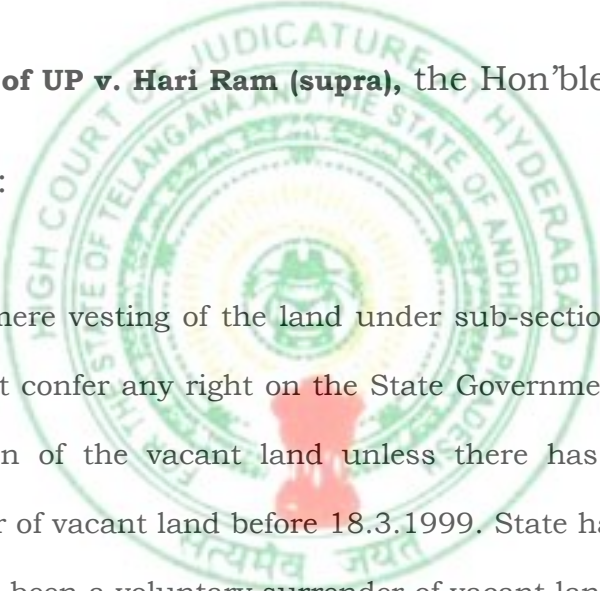
possession of the schedule property to the vendee No.1 herein. Accordingly, the vendor has delivered the physical possession of the schedule property to the vendees on Dt: 9-12-2003.

Whereas the Hon'ble High Court by its Subsequent order Dt: 29-01-2004 in C.A.No.2012, has directed the vendor to execute and register the sale deed of the schedule property in favour of the vendees. Hence, the present sale deed is executed on this day. A copy of the Court order Dt: 29-01-2004 is enclosed herewith."

20. The sale deed contains the factual aspects about the title and possession over the subject property. As per contents of Sale Deed dated 12.02.2004 referred to supra executed in favour of petitioners, possession was taken by Advocate Commissioners with the assistance of revenue officials and later petitioners were put into possession of the subject land by Official Liquidator after obtaining orders of the Company Court. Ever since the date of purchase of the subject property, the petitioners are in possession and enjoyment of the property and their names have also been mutated in revenue records. The Government, basing on the application of the petitioners, had issued G.O.Ms.No.548, dated 02.09.2009 changing the land use from recreation use to commercial use zone in the subject property, after collecting requisite charges, as demanded. Even though the petitioners are in physical possession of subject property, as the same was delivered to them on 09.12.2003 by the Official Liquidator, no

notice as required under Section 10(5) of the ULC Act, 1976, was issued to the petitioners either before initiating proceedings under ULC Act, 1976, or at the time of passing of final orders. Thus, in view of above factual aspects, it cannot be said that the petitioners are strangers to the subject land and the writ petition is not maintainable. Therefore, the contention of the learned Government Pleader that the petitioners have no *locus standi*, cannot be countenanced.

21. In **State of UP v. Hari Ram (supra)**, the Hon'ble Supreme Court held as follows:



“39. The mere vesting of the land under sub-section (3) of [Section 10](#) would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of [Section 10](#) or forceful dispossession under sub-section (6) of [Section 10](#). On failure to establish any of those situations, the land owner or holder can claim the benefit of [Section 3](#) of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of [Section 3](#) of the Repeal Act.

22. In **P.Laxmi Kantha Rao v. Government of Andhra Pradesh (Supra)**, it is held as follows:

“22. Either way, on the ground that the 2nd respondent failed to discharge the onus of service of notice under Section 10(5) of the Act on the petitioners, the impugned proceedings are liable to be set aside and accordingly they are set aside. As the 2nd respondent failed to discharge the onus, the benefit of possession that was and is with the petitioners is protected by Section 3(2) of the Repeal Act. As there is patent illegality in following the procedure under Section 10 of the Act, this Court sets aside the order dated 8.3.2006. The other points formulated are not considered in view of the findings and effect of Repeal Act from 28.3.2008.”

23. In **Mangalsen v. State of U.P (supra)**, the Hon’ble Supreme Court held as follows:

“Urban Land (Ceiling and Regulations) Act, 1976, Section 8(4), 10(1) and 10(3)-Urban Land (Ceiling and Regulations) Repeal Act, 1999-Abatement of proceedings initiated under the 1976 Act-Possession Certificate prepared by Revenue Authorities on 30.1.1990-No evidence to prove that the notice issued under Section 10(5) have been served upon the appellant or that he had illegally occupied the surplus land after 30.1.1990-Sufficient credibility to the appellant’s assertion that he had not given possession of the surplus land on 30.1.1990 and continued to cultivate the same-Held that, possession of the surplus land had not been taken on 30.1.1990 or anything thereafter and with the coming into force of the 1999 Act, the proceedings held by the Competent Authority under the 1976 Act abated.”

24. In view of the law laid down by this Court as well as Hon’ble Apex Court, in judgments cited by the learned counsel for petitioners noted supra, it shows that notice is required to be

issued under Section 10(5) of the Act of 1976, to the person in possession of the property, the petitioners herein, to surrender excess land and deliver possession of the same. In the present case on hand, though the petitioners are in physical possession of the subject property since 09.12.2003 as per the orders of this Court in C.A.No.2012/2003, dated 09.12.2003, no such notice was issued to the petitioners before alleged taking possession of the subject land on 14.03.2008.

25. Learned Government Pleader for Revenue, relied on the judgment of the Hon'ble Supreme Court in **State of Assam v. Bhaskar Jyoti Sarma (supra)** and contended that notice under Section 10(5) of the Act is not mandatory but in the instant case on hand, Rule 5 (2) of Rules framed under the Act, is violated as stated above and as such, all subsequent proceedings under Section 8 (4) and 10(3) are not valid. The respondents have not substantiated that petitioners are dispossessed by following due process of law, as such, aforesaid decision is not applicable to the facts of the present case.

26. It is pertinent to note that the Dy.Collector & Mandal Revenue Officer, vide proceedings No.B/4584/2004, dated .02.2005, mutated names of the petitioners in the revenue records. It is also not in dispute that basing on the application of the petitioners for change of land use from recreation use to

commercial use, the Metropolitan Commissioner, Hyderabad Metropolitan Development Authority, issued letter No.14229/CDA/Plg/H/2008, dated 04.08.2009, asking the petitioners to pay an amount of Rs.2,65,127/- towards development charges and Rs.1,01,150/- towards publication charges under Section 15(3) of the Act. In pursuant to the said letter, the petitioners paid an amount of Rs.3,66,277/- and same was informed to the Metropolitan Commissioner dated 08.08.2009.

27. It is also relevant to note that while referring the representation from the 1st petitioner, the 1st respondent-Principal Secretary to Government addressed letter No.16816/1/2008, dated 23.12.2008 to the Metropolitan Commissioner-6th respondent stating that the Government has agreed in principle to change of land use from recreational to commercial use zone for the portion of land falling outside FTL and 30 mts buffer from FTL in Sy.No.62, Madhapur village, Serilingampally Village, R.R.District. The State Government, after collecting an amount of Rs.2,65,127/- towards development charges, issued G.O.Ms.No.548, dated 02.09.2009.

28. Learned Government Pleader has placed reliance in **Zarina v. Special Officer and Competent Authority, ULC, Vijayawada, Krishna District (supra)** and submitted that the subject land in the present case is excess ceiling land, as such, the sale of the same by the declarant is not valid. In the aforesaid citation, the excess land was determined. But in the instant case, by the date of sale, no declaration was filed by the original owner i.e., M.Vittalaiah, showing the subject land as excess land, in his declaration. Admittedly, the declaration was filed after sale deed was executed in favour of the petitioners by the Official Liquidator in respect of the subject land. More so, whether petitioners acquired lawful rights or not in the subject land is not relevant for deciding the issue whether the proceedings stood abated by virtue of provisions of Repeal Act.

29. In **State of AP v. G.V.Mohan (supra)**, the Hon'ble Division Bench of this Court held as follows:

“65. At any rate, for deciding the issue whether the provisions of the [ULC Repeal Act](#) are attracted to the case on hand it is not necessary to go into the question whether the possession of the excess vacant land remained with the declarants or not, but what is required is whether the possession has been taken over by the State Government or any person duly authorized by the State Government in that behalf or by the competent authority by the date of enforcement of the said Act.

According to us, the question whether the society acquired lawful rights or not in respect of the excess vacant land is also irrelevant for deciding the issue whether the proceedings stood abated by virtue of the provisions of the repeal Act.

66. In the light of the discussion made above, it is clear to our mind that the appellants failed to establish that the possession of the land in question has been taken over by the State Government by the date of enforcement of [ULC Repeal Act](#) in the State of Andhra Pradesh.”

30. In **Ashwani Kumar Singh v. U.P. Public Service Commission**¹⁷, the Hon’ble Supreme Court held as follows:

10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid’s theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graying Dock Co. Ltd. v. Horton* (1951 AC 737 at p. 761), Lord MacDermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

12. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

13. The following words of Lord Denning in the matter of applying precedents have become locus classicus :

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a

¹⁷ (2003) 11 Supreme Court Cases 584

single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the board resemblance to another case is not at all decisive."

xxx xxx xxx xxx

"Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

31. Learned Government Pleader for Revenue has placed reliance on the judgments of Hon'ble Supreme Court as well as this Court referred to supra. A bare reading of the judgments shows that they were rendered in a different factual and legal background, as such, the same are not applicable to the facts of the present case. The petitioners were not put on notice at any stage of the proceedings initiated under the ULC Act, 1976 though they purchased the property through Official Liquidator, who was appointed by the Company Court. In this fact situation, if petitioners, who purchased the subject property on the directions of Company Court, is not granted relief, it would be very unjust and arbitrary and open auction conducted on the direction of Court would lose its sanctity. As rightly contended by the learned counsel for the petitioners there is no legal requirement for the petitioners to seek NOC from the 2nd respondent for grant of building permission since they are in physical possession of the

subject property on 27.03.2008, by which date the Repeal Act, 1999 came into force and that proceedings initiated under the Act shall stand abated as per Sections 3 and 4 of the Repeal Act, 1999. Since the Repeal Act, 1999 came into force on 27.03.2008 in the State of Andhra Pradesh, the question of remanding the matter back for issuance of notice either under Rule 5 of Rules framed there under the Act or under Section 10(5) of the Act of 1976 does not arise and all the proceedings stand abated by virtue of Repeal Act, 1999. It would, therefore, be appropriate to refer to Sections 2, 3 and 4 of the Repeal Act, 1999, which read as under:

“2. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter refer to as the principal Act) is hereby repealed.

3. (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 the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b).....

(c).....

(2)...

4. 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.

32. In view of above facts and circumstances, the Memo No.F1/A6/689/2003 in CC No.F1/4143/2004, dated 22.04.2013 issued by the 2nd respondent and letter No.523/CSC/TP11/WZ/2010/2612, dated 30.12.2010 issued by the 8th respondent are set aside. 7th and 8th respondents are directed to process the building application of the petitioners dated 21.07.2010 in accordance with law, without insisting for NOC from the 2nd respondent.

Accordingly, the Writ Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stands disposed of.

25.10.2015.
kvs

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY



Date: 25-10-2016

kvs

