

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2992 of 2011

ORDER:

Heard Sri C.Ramachandra Raju, learned counsel for the petitioner and Sri B.Mahender Reddy, Special Government Pleader attached to the office of the Advocate General.

2. This Writ Petition has been filed seeking a Writ of Certiorari to call for the records relating to proceedings dt.12-07-2007 under Section 10 (3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), proceedings dt.10-08-2007 under Section 10 (5) of the said Act, proceedings dt.Nil.3.2008 under Section 10 (6) of the said Act, panchanama dt.11-03-2008 issued by the respondents and the consequent panchanama dt.27-08-2010 and quash the same.

3. Petitioners' father by name S.M.S.Vijayam (hereinafter referred to as 'declarant') was the owner and possessor of land admeasuring 4126.29 sq m. in old Sy. No.202 equivalent to new Sy. No.207, co-related to T.S.No.27, Block-F, Ward 137 of Bathukamma Kunta, Lallaguda village, Hyderabad.

4. After the advent of the Act, the declarant filed declaration under Section 6 (1) of the Act for the said extent. The

1st respondent allowed him to retain 1000 sq. m. vide

order

dt.12-06-1978 under Section 8 (4) of the Act and declared that he was holding excess land of 2730.80 sq. m.

5. The declarant filed appeal U.C.2/3512/79 before the Commissioner of Appeals which was dismissed on 25-02-1983.

6. The declarant died on 01-10-1987.

7. It is the case of the petitioner that he brought to the notice of the 1st respondent the factum of death of his father and also particulars of legal heirs in February 1988. Petitioner alleges that the legal heirs of the declarant were not brought on record by the 1st respondent in the proceedings pending before him under the Act, no notice or opportunity was given to them and orders under Section 9, 10 (3), 10 (5) dt.10-08-2007 and 10 (6) dt.10-09-2007 of the Act were passed against the declarant who was already dead. He alleges that they are a nullity and that a panchanama dt.11-03-2008 under which the respondents claim to have taken possession of the said excess vacant land was a fabricated one and no possession was taken on that date.

8. Petitioner contended that he came to know about the various orders passed by the 1st respondent referred to above when one Mekala Sudhakara Reddy and Mirza Bashir Baig tried to interfere with his

possession and enjoyment over the land in an enquiry directed by the Hon'ble Lokayukta.

9. He contended that the alleged panchanama dt.11-03-2008 being relied upon by the respondents as evidence of taking possession under the Act is a concocted one; that the Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the Repeal Act') with effect from 28-03-2008; and that actual possession was taken under a panchanama dt.27-08-2010 behind his back. According to him proceedings dt.nil-03-2008 were issued by

1st respondent directing one R.Satya Babu, Enquiry Officer, ULC to take over possession under Section 10 (6) of the Act on the basis that notice under Section 10 (5) of the Act was issued to the declarant, who was by then dead, and no notice was issued to his family members. Therefore he contends that all proceedings are a nullity and liable to be set aside.

10. An additional affidavit was also filed by the petitioner stating that Sri R.Satya Babu, Enquiry Officer, ULC did not take physical possession of the surplus land on 11-03-2008 as alleged by 1st respondent and that the panchanama Ex.P-3 relied upon by the respondents does not contain any date. He contended that proceedings under Section 10(6) of the Act also did not contain any date and were not served on him or the other legal heirs of

the declarant. Certain correspondence bearing date 14-03-2011, 09-11-2010, 02-07-2010 and 02-03-2015 among the Revenue Officials was filed, which according to petitioner shows that physical possession of surplus land was taken only on 27-08-2010, after the Repeal Act came into force. He also relied on a complaint dt.22-09-2011 addressed to the Commissioner of Police requesting him to provide police protection to himself and his family members and their property in the context of a threat from one Mekala Sudhakara Reddy and his son wherein he also alleged that possession of the surplus land was taken only on

27-08-2010. According to him, none of the respondents or any Government authority identified the surplus land till the land in Sy.No.207 of Lalaguda village, Maredpalli Mandal, which forms part of surplus land, was surveyed and demarcated in 2010 by Dy.Director of Survey and Land Records.

11. The 1st respondent filed a counter refuting the above contentions asserting that final orders under Section 8(4) of the Act and statement under Section 9 of the Act were passed on 12-06-1978 confirming the provisional orders passed earlier under Section 8(1) of the Act on 19-02-1978. It is stated that the declarant challenged the same in appeal before the appellate authority under Section 33 of the Act and the said appeal was also dismissed in proceedings UC2/3512/79 dt.25-

02-1982; that the declarant filed W.P.No.5001 of 1983 challenging the said order and the said Writ Petition was also dismissed on 26-06-1988, thus rendering final the proceedings under Section 8(4) of the Act. It is asserted that notification under Section 10(1), declaration under Section 10(3) were issued and got published in the A.P.Gazette No.168 dt.07-06-2007 and gazette No.208

dt.12-07-2007 vesting the surplus land with the Government free from all encumbrances. Thereafter notice under Section 10(5) of the Act was issued on 19-08-2007 in the name of the declarant asking him to surrender the excess land determined, and that this was served on Mrs.Irene Rao, the daughter-in-law of the declarant. Since no objection or reply was received in response to the said notice, proceedings under Section 10(6) of the Act were issued on 10-03-2008 authorising the Enquiry Officer to take over possession of the surplus land and he took possession on 11-03-2008 duly conducting panchanama. According to the 1st respondent, the excess land falls in T.S.No.27, Block F, Ward No.137 of Lalaguda village correlated to old Sy.No.202 recorded in the name of the declarant.

12. The 1st respondent further contends that in the process of making sub-division, the Dy. Inspector of Survey issued notice to the declarant on 28-11-1988 in File No.F1/2808/76 to participate in the survey work on 30-11-1988 to identify and demarcate the properties

failing which further action would be taken to finalize the case and that the said notice was served on 29-11-1988. It is stated that the plea of the petitioner that he gave a reply in February, 1988 for the notice issued on 28-11-1988 cannot be accepted. It is asserted that possession was taken on 11-03-2008, that the same is saved under the Repeal Act, 1999 which was adopted only from 27-03-2008 and that possession was handed over to Tahsildar, Marredpally Mandal, Hyderabad District on 27-08-2010. It is stated that the action of the

1st respondent is valid and it cannot be contended that the case was processed against a dead person since even in the letter dt.Feb, 1988 the petitioner stated that certain documents required by the office of 1st respondent would be submitted through his Advocate Sri S.L.N. Chari, Gandhi Nagar, Hyderabad to whom vakalatnama was given, but neither the petitioner nor the said Advocate turned up. It is alleged that the petitioner had sold away the land under a registered sale deed No.1221/2009 to one Appa Rao, who had complained on 31-01-2011 to the Hon'ble Lokayukta. It is stated that the petitioner had admitted the action taken by the 1st respondent in para-15 of the counter-affidavit filed by him in W.P.No.14062 of 2010 and had not objected against the proceedings of the 1st respondent.

13. Sri C.Ramachandra Raju, learned counsel

for petitioner reiterated the stand taken in the pleadings and also contended that the notice under Section 10(5) of the Act, the proceeding under Section 10(6) and the panchanama allegedly evidencing taking of possession on 11-03-2008 do not contain any schedule of the surplus land, that the land was not at all identified with specific boundaries, that unless the surplus land and the retainable land are both demarcated, the question of taking physical possession does not arise. Reliance was also placed on the judgment dt.21-04-2015 in W.P.No.11288 of 2002 wherein this Court held that proceedings issued under the Act against a dead person, without bringing the legal representatives on record, stand abated. It is also contended that proceedings under Section 10(5) or 10(6) of the Act have to be served either on the declarant or on his legal heirs, that proceedings under Section 10(5) of the Act was issued against a dead person instead of against the legal heirs of the declarant and therefore the proceedings are *non est* in law. It is also contended that notice under Section 10(6) of the Act is mandatory and should be served either on the declarant or on the legal heirs of the declarant and therefore such proceedings are also *non est* in law. He relied on the judgment of the Supreme Court in **State of Uttar Pradesh Vs. Hari Ram**^[1] in support of his submissions.

14. Learned Government Pleader appearing for respondents contended that the petitioner received the

notice of demarcation dt.28-11-1988 and mentioned about it in his letter dt. February, 1988 itself, and so the petitioner was aware of the proceedings under the Act; that he is not claiming any independent right in the property except through the declarant; and once W.P.No.5001 of 1983 was dismissed on 26-06-1988, the proceedings under the Act bind the petitioner also. It is contended that the petitioner kept quiet and did nothing even though notice under Section 10(5) of the Act was served on the daughter-in-law of the declarant Mrs.Irene Rao on 19-09-2007 and such laches disentitle the petitioner to any relief. He contended that the declarant died on 01-10-1987 and even assuming that the legal representatives of the declarant were not brought on record, the proceedings are not vitiated in view of the judgment of the Supreme Court in **D.R. Somayajulu, Secretary, Diesel Loco Shed and South Eastern Railway House Building Cooperative Society Limited, Visakhapatnam and others Vs. Attili Appala Swamy and others**^[2]. He contended that provisions of Order XXII C.P.C. do not apply to proceedings under the Act and there is no question of abatement. He contended that the death of the declarant having occurred after the order under Section 8(4) of the Act was passed on 12-06-1978 which was also confirmed in appeal on 25-04-1982, it has no bearing on the further proceedings under the Act. He asserted that possession was taken by the 1st

respondent's office on 11-03-2008 and on 27-08-2010, possession was handed over to the Revenue authorities. According to him, once possession was taken prior to the adoption of the Repeal Act, 1999 on 27-03-2008, the title, if any, of the petitioner and his family members stood extinguished. He also contended that the judgment in **Hari Ram** (1 supra) is no longer good law in view of the judgment in **State of Assam Vs. Bhaskar Jyoti Sarma and others** [\[3\]](#). He also filed the sub-division sketch prepared on 11-03-2008 by the office of the 1st respondent demarcating not only the surplus land but also the retainable area and disputed the contention of the counsel for petitioner that there was no demarcation prior to 27-03-2008 of the retainable land and the excess land by the officials of the 1st respondent.

15. In the reply arguments, learned counsel for petitioner contended that in **D.R.Somayajulu** (2 supra), the Supreme Court did not lay down any ratio that legal representatives of deceased declarant need not be brought on record, that they ought to be brought on record and if not, proceedings taken after the death of the declarant are a nullity. He also contended that even if petitioner is aware of the pendency of proceedings under the Act before the 1st respondent, he has no obligation to come on record by filing any petition before

1st respondent. He stated that notice under Section 10(5) of the Act is issued in the name of declarant and the legal heirs did not have any notice although they were in possession and service of notice on persons in possession is mandatory. Since this is not done, the proceedings are vitiated in view of the judgment in **Hari Ram**

(1 supra). He contended that since there is no valid taking of possession of land by the State, after the coming into force of the Repeal Act, the entire proceedings lapsed.

16. Refuting the same, the Government Pleader contended that notice dt.09-08-2007 under Section 10(5) of the Act was served on Mrs.Irene Rao, an elder member of the family and daughter-in-law of the declarant and that the petitioner in a counter-affidavit filed by him (para-15) in W.V.M.P.No.3119 of 2010 in another W.P. filed by certain third parties admitted the taking of possession.

17. In view of the above submissions, the following points arise for consideration :

- a) *Whether proceedings under the Act abate on the death of the declarant if the legal heirs are not brought on record rendering them a nullity?*
- b) *Whether possession of the subject land was taken validly by the 1st respondent under the provisions of the Act before its repeal w.e.f. 27-03-2008?*

Point (a):

18. The Supreme Court had occasion to consider the question whether death of a land owner after filing declaration under Section 6 of the Act has any effect on the proceedings under the Act in **D.Y.Somayajulu** (2 supra). It observed that entire provisions of Code of Civil Procedure are not made applicable to proceedings under the Act and only in regard to matters specified in clauses (a) to (e) of Section 31 of the Act, the competent Authority has been given all the powers of the Civil Court while trying a suit under the Code of Civil Procedure. It further held that no rule has been framed by the Central Government under its rule making power in Section 46(2) (n) of the Act making provisions of the C.P.C. applicable. It referred to Order 22 Rule 2 C.P.C. and held that when legal representatives of a deceased plaintiff are already on record in their individual capacity, a mere note under Order 22 Rule 2 C.P.C. is sufficient. Since in that case the legal heirs of the deceased declarant were already on record in their individual capacity, it held that they cannot complain of prejudice due to their formal non-impleadment or non-service of notice on them.

19. It follows from the above decision of the Supreme Court that the provisions relating to abatement of proceedings contained in Order 22 of C.P.C. are not made applicable to proceedings under the Act. Therefore non-impleadment of the legal representatives of the

deceased declarant in such proceedings after his death does not lead to abatement of proceedings under the Act.

20. More so since his death occurred on 01-10-1987 by which time orders under Section 8(4) and statement under Section 9 of the Act had been passed by the 1st respondent on 12-06-1978 and were confirmed in order dt.25-02-1982 passed by the appellate authority under Section 33 of the Act and in W.P.No.5001 of 1983 which was dismissed on 26-06-1988.

21. If the petitioner or other legal heirs intended to contest further proceedings under the Act before the 1st respondent, since they were aware of the pendency of further proceedings before 1st respondent as can be seen from the letter dt.Feb, 1988 addressed by the petitioner to the 1st respondent, they ought to have got impleaded in such proceedings and protected their interests. They cannot take advantage of their own inaction and negligence in pursuing matters before the 1st respondent after the death of the declarant and seek to wriggle out of the consequences of their inaction. Therefore I hold on point (a) that the proceedings under the Act did not abate consequent to the death of the declarant and they cannot be said to be a nullity and the petitioner cannot ignore them.

Point (b)

22. Sub-section (5) of Section 10 of the Act states that where any vacant 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 deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within 30 days from the service of the notice.

23. Sub-Section (6) of Section 10 states that if any person refuses or fails to comply with the order made under sub-Section (5) of Section 10, the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf and may, for that purpose, use such force as may be necessary.

24. It is not in dispute that notice under Section 10(5) of the Act was issued on 10-08-2007 in the name of the declarant and copy thereof was served on Mrs.Irene Rao, the daughter-in-law of the declarant on 19-09-2007. By then no doubt, the declarant was not alive.

25. It is not denied by the petitioner that in the process of making sub-division, the Dy.Inspector of Survey attached to the office of the 1st respondent issued a notice to the declarant on 28-11-1988 in File

No.F1/2808/76 to participate in the survey work on 30-11-1988 to identify and demarcate the property, failing which further necessary action would be taken as deemed fit to finalize the case on the basis of material available and that this was received on 29-11-1988 by petitioner. It was to this letter that the alleged reply dt.Feb, 1988 was admittedly given by petitioner although the reference to the year 1988 is probably a mistake and it was possibly given in Feb,1989 and not in Feb, 1988.

26. However, as per the sketch map filed by 1st respondent, the actual survey and demarcation of the land of the declarant separating the surplus area and the retainable area was done by the Surveyor attached to the Office of the 1st respondent and other Officials on 11-03-2008 and it is on that date, according to the 1st petitioner, that physical possession of the land was taken. Panchanama was prepared on 11-03-2008 recording the taking of possession of the land stating that there was no response from the land owner to the notice dt.10-08-2007 under Section 10(5) of the Act within the time granted.

27. This event thus took place after the service of notice under Section 10(5) of the Act dt.10-08-2007 on Mrs.Irene Rao, the daughter-in-law of the declarant on 19-09-2007, and after proceedings under Section 10(6) of the Act were issued on 10-03-2008 authorizing Sri R.Satya

Babu, Enquiry Officer attached to the Office of the 1st respondent to take over possession of the land and hand over the same to the Mandal Revenue Officer concerned.

28. The petitioner however insists that these proceedings are all fabricated and there was no physical delivery of possession on 11-03-2008 at all since service of notice under sub-Section (5) of Section 10 of the Act is mandatory as per the decision in **Hari Ram** (1 supra). According to the petitioner, the notice dt.10-08-2007 under Section 10(5) was addressed to the declarant who was dead on 01-10-1987 long before it was issued and its service on Mrs.Irene Rao on 19-09-2007 does not cure the defect.

29. A reading of sub-Section (5) of Section 10 of the Act shows that such notice is to be issued to any person in possession of the vacant land vested in the State Government under sub-Section (3) of Section 10 of the Act to surrender or deliver possession thereof.

30. What **Hari Ram** (1 supra) holds is that requirement of giving notice under sub-Section (5) and (6) of Section 10 is mandatory. It held that sub-Section (3) takes in only *dejure* possession and not *de facto* possession and if the land owner is not surrendering possession voluntarily under sub-Section (3) of Section 10, or surrendering or delivering possession after notice,

under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land. It held that mere vesting of 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 the vacant land before 27-03-2008 (in the place of 18-03-1999 since the repeal of the Act in the State of Andhra Pradesh became operative from 27-03-2008). It held that the State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of possession under sub-Section (5) of Section 10 or forceful dispossession under Sub-Section (6) of Section 10, and on failure to establish any of these situations, the land owner or holder can claim benefit of Section 4 of the Repeal Act.

31. Keeping in mind the above principles, we have to see whether the alleged taking of possession by 1st respondent's Office on 11-03-2008 is valid or not.

32. The Rules framed under the Act do not contain any particular method of service of notice under sub-Section (5) of Section 10 of the Act on the person in possession of vacant land which vested in the State Government under sub-Section (3) of Section 10 of the Act. No doubt the notice dt.10-08-2007 under sub-Section (5) of Section 10 was addressed to the declarant

who was dead by that date. But the fact remains that it was served on the daughter-in-law of the declarant Mrs.Irene Rao on 19-09-2007. This fact is not disputed by petitioner. By that date, since the declarant was dead, possession was admittedly with the family members of the declarant including the petitioner and Mrs.Irene Rao. In my considered opinion, service of notice on her amounts to substantial compliance with sub-Section (5) of Section 10 of the Act since the purpose of service of notice is to make the person in possession aware of the request of the

1st respondent to deliver or surrender possession peacefully, and that purpose is fulfilled if such notice is served on the adult member of the family of the legal heirs of the deceased. Therefore the mere irregularity in the said notice being addressed to the deceased declarant, cannot lead to a conclusion that there is non-compliance with the requirement of service of notice under sub-Section (5) of Section 10 of the Act. Therefore I hold that notice under Sub-Section (5) of Section 10 was validly served on persons in possession.

33. Once the petitioner or other persons in possession of the vacant land of the declarant did not deliver possession voluntarily, the 1st respondent rightly initiated action under sub-Section (6) of Section 10 of the Act on 10-03-2008. This is evidenced by Ex.P-4 authorizing Sri R.Satya Babu to take over possession of

the vacant land under that provision and by conducting demarcation of the retainable area and the surplus area on 11-03-2008 which is reflected in the Sub-Division Sketch prepared by the Surveyor of the 1st respondent. Later, under Ex.P-3 panchanama dt.11-03-2008, possession was taken over by the officials of 1st respondent.

34. In my considered opinion, since this event occurred before the Repeal Act became applicable i.e. before 27-03-2008, the petitioner cannot claim benefit of Section 4 of the Repeal Act and seek to retain possession of the vacant surplus land because under Section 3(1) (a) of the Repeal Act, the vesting of vacant land under sub-Section (3) of Section 10, possession of which has been taken over by the State Government, is not affected by the repeal of the Act.

35. The petitioner therefore cannot place reliance on the Ex.P-5 panchanama dt.27-08-2010 and seek to contend that possession of the surplus vacant land was taken from the petitioner on that day only and not on 27-03-2008, when the Act was repealed and such taking of possession is invalid in view of Section 4 of the Act.

36. Under the said panchanama Ex.P-5 dt.27-08-2010, the land which was taken possession on 11-03-2008 was handed over to the Mandal Revenue Officer of

Maredpally by the officials of the

1st respondent on 27-08-2010. This is an irrelevant factor and the relevant fact is only whether the petitioner and his family members were dispossessed before 27-03-2008 or not and since I have held that they were validly dispossessed on 11-03-2008, the repeal of the Act cannot come to the aid of the petitioner.

37. Also, this Writ Petition has been filed on 07-02-2011 by the petitioner long after possession of the land was taken on 11-03-2008 by the Officials of the 1st respondent and there is no explanation for the inaction of the petitioner for this period and also for the period from February, 1989 (when he submitted Ex.P-15 letter to the 1st respondent wrongly mentioning the date as Feb,1988) till the date of filing of the Writ Petition. The petitioner cannot be allowed to take advantage of his own laches and inaction and seek to benefit from it by raising technical pleas which have no substance.

38. I reject the contention of the learned counsel for petitioner that there was no demarcation of the retainable area and the surplus vacant land of the declarant in view of the sketch dt.11-03-2008 filed by the respondents which shows such demarcation and hold that demarcation was done on that day and possession was also taken on that day by the 1st respondent.

39. I also reject the contention of the petitioner that the respondents could not have taken possession of the surplus vacant land just before the coming into force of the Repeal Act and the further plea that because the land was not used for a public purpose after 11-03-2008, the petitioner is entitled to it. This is because during subsistence of the Act, the respondents were entitled to act pursuant to it and take possession of the land. Once it vested in the State, the petitioner's rights are extinguished and he cannot enjoy the same on the ground that the State had not utilized it for a public purpose after 11-03-2008.

40. Therefore point (b) is answered against the petitioner and in favour of the respondents.

41. Accordingly, the Writ Petition is dismissed.
No costs.

42. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-08-2016
KVR/Vsv

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

[\[2\]](#) (2015) 2 SCC 390

[\[3\]](#) (2015) 5 SCC 321