

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.18316 of 2008, 20373, 22436, 30481, 17793, 20351, 20355, 20359, 20362, 20551, 20554, 20569, 20585, 22461, 23112, 23113, 23157, 23162, 23224, 23400, 23420, 23449, 23648, 23660, 23661, 23667, 23668, 23669, 23696, 23699, 23763, 23963, 24441, 24472, 24475, 24511, 24550, 24553, 24562, 24564, 24568, 24572, 30502, 30531, 30534, 30573, 30590, 30595, 30608, 30616, 30853 and 32909 of 2012

COMMON ORDER :

Since issue involved in all these writ petitions is arising out of common impugned proceedings, they are being heard together and disposed of by way of this Common Order.

2. All these writ petitions are filed seeking writ of mandamus declaring the proceedings No.H1/7496/76, dated 30.08.1995 passed by the 2nd respondent-Special Officer and Competent Authority, Urban Land Ceiling as illegal and arbitrary and consequently to set aside the G.O.Ms.No.985 (Revenue-UCI Department), dated 02.08.2008 issued by the 1st respondent. W.P.No.18316 of 2008 is filed by the Gopal Nagar Co-operative House Building Society (hereinafter referred to as 'Society'), rep. by its President P.Rama Goud, which is figured as 6th respondent in W.P.Nos.20373 of 2012 & batch filed by the petitioners in individual capacity as members of the 6th respondent Housing Society and some of the petitioners are purchasers from the members of the 6th respondent society.

3. For the sake of convenience, the parties hereinafter will be referred to as arrayed in W.P.No.20373 of 2012.

Originally, the agricultural land to an extent of Acs.92.21 guntas in Sy.Nos.148 to 155 of Hydernagar village, Balanagar

Mandal (the then Rajendranagar Taluq) Ranga Reddy District belongs to Sri Abdul Rehman and Sri Shaik Ibrahim. Sri K.Seetharam Reddy, S/o.K.Raj Reddy, K.Yellaiah, Sri S.Govind Reddy, Sri G.Shankar Reddy, Sri Abdul Aziz and Sri Mohammed Ismail have jointly purchased the subject property vide registered sale deed No.600/64 dated 10.11.1964, who in turn sold the said agricultural land to the 6th respondent Society vide registered document No.613/1980, dated 20.05.1980. As per the sale deed No.600/64, dated 10.11.1964, Abdul Aziz, S/o.Mohammed Yaqub who is one of the vendors of the 6th respondent-Society had share of 2 anna 8 paise i.e., 1/6th share in the entire land (hereinafter referred to as 'subject property'). The name of the 6th respondent society is also incorporated in the revenue records as possessor of the land for the year 1982-83 till 2011-2012. The subject property is situated in Hydernagar Village, which was included in the master plan of Twin cities with effect from 23.06.1980 through G.O.Ms.No.319, after the purchase of the subject land by the 6th respondent society and earmarked for conservation use. The vendors of the 6th respondent Society have also obtained a certificate under Section 2(o) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act of 1976') for the entire land vide S.O and C.A Lr.No.C/1264/79, dated 13.08.1979 and the certificate issued by the Competent authority shows that the subject land is an agricultural land. Thereafter, the 6th respondent Society after obtaining approved layout from the competent authority had divided the land into about 950 plots and sold the same to its members from 1981 onwards.

4. The petitioners, some being the members of the 6th respondent Society and some other petitioners, purchased different plots from the members of the 6th respondent society in Sy.No.148 to 155, Block No.2, Hydernagar Village, Kukatpally Municipality, Balanagar Mandal, Ranga Reddy District, through registered sale deeds, from their lawful owners for lawful consideration and they are in possession and enjoyment of the respective plots since the date of purchase.

5. While so, in the 1st week of August, 2008, the officials of the 2nd respondent claimed that the land to an extent of 43700.95 sq.mtrs was declared as surplus land under the Act of 1976, stating that Sri Mohd. Abdul Aziz, who is one of the vendors of the 6th respondent Society, had filed statement under Section 6(1) of the Act and declared as surplus holder to an extent of 43700.95 sq. mtrs in Sy Nos.148 to 155 of Hydernagar village, Balanagar Mandal, R.R.District. That the statement under Section 6(1) of the Act of 1976 by said Mohd.Abdul Aziz, was after alienation of the subject land in favour of the 6th respondent society and the exact location of the share of said Mohd.Abdul Aziz in the entire land is not specified. The 2nd respondent prepared draft statement dated 27.03.1989 under Section 8(1) together with notice under Section 8(3) of the Act of 1976, which was issued against Mohd.Abdul Aziz, and passed final order under Section 8(4) vide proceedings in file No.H1/7496/1976, dated 30.08.1995. It is stated that the 2nd respondent prepared the draft statement without furnishing the correct details as required under Section 8(2) of the Act of 1976, ignoring the fact that the subject land is

an agricultural land and not a vacant land within the definition of the Act of 1976 and that that the subject land was transferred to the 6th respondent Society by the declarant along with five others through registered sale deed dated 20.05.1980. That the 2nd respondent knowing fully well about the alienation of the subject land in favour of the 6th respondent society has issued notices and draft statement in the name of Mohd.Abdul Aziz, who has no title or interest over the land in question. The 2nd respondent had not issued draft statement under Section 8(3) of the Act as required under Section 8(4) of the Act of 1976, to the 6th respondent society, who is possessor of the said land, as the same is affected party and has interest and ownership over the subject land. That the subject property was not divided among Mohd.Abdul Aziz and five other partners as on the date of execution of sale deed dated 20.05.1980 in favour of the 6th respondent Society. That the notice under Section 10(1) of the Act was published in official gazette on 17.01.2006, after lapse of 11 years of notification of final statement under Section 8(4) of the Act of 1976, dated 30.08.1995. That neither the petitioners nor the other co-owners, who have purchased the land along with Mohd.Abdul Aziz, were not put on notice by the 2nd respondent during the course of impugned proceedings. Subsequently, the 1st respondent, without any power, issued G.O.Ms.No.985, dated 02.08.2008 allotting the subject land to an extent of 64216 sq.mts in Sy.Nos.148 to 155 of Hydernagar village in favour of the 3rd respondent. Aggrieved by the same, present writ petitions are filed.

6. The 1st respondent filed common counter affidavit denying the averments in the affidavits filed in support of these writ petitions adopting the averments in the counter affidavit of 2nd respondent stating that the petitioners have purchased the subject plots subsequent to the Act of 1976 came into force, as such, all the transactions are void as per Section 5(3) and 10(4) of the Act of 1976. Therefore, the petitioners have no *locus standi* to challenge the proceedings of the 2nd respondent, which have become final. That 38 petitioners having applied for regularization under G.O.Ms.No.92, Revenue (ULC) Department, dated 26.05.2016, cannot challenge the proceedings of the 2nd respondent. That the subject surplus land i.e., 64,216 sq.mtrs was already allotted to the Hyderabad Urban Development Authority, presently known as Hyderabad Metro Development Authority (HMDA) vide G.O.Ms.No.985, Revenue (UC.I) Department dated 02.08.2008. That the then Special Officer vide proceedings dated 27.02.2009 wrote to the Principal Secretary (Revenue (UC.II) to the then Government of Andhra Pradesh for the deletion of areas that could be retainable and that he is taking steps to review G.O.Ms.No.985, dated 02.08.2008.

7. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the writ petition stating that an extent of 281.00 sq.mtrs in premises No.8-4-490 & 491 of Erragadda, an extent of 719.00 sq.mtrs in Sy.No.165 of Hydernagar were allowed under Section 4(1)(b) of the Act. Sri Mohd. Abdul Aziz was provisionally declared as surplus land holder to an extent of 64,216.25 sq.mtrs viz., 62, 405.94 sq.mtrs

in Sy.No.148 to 155 of Hydernagar village and 1,810.31 sq.mtrs in Sy.No.165 of Hydernagar village. As per orders under Section 8(4) and final statement under Section 9 dated 30.08.1995, an extent of 281.00 sq.mtrs in premises No.8-4-490 & 491 of Erragadda was not treated as vacant land as per Section 2(q) of the Act. An extent of 1,000.00 sq.mtrs under Section 4(1)(b) and an extent of 20,234.30 sq.mtrs as per G.O.Ms.No.733 Revenue (UC.II) Department dated 31.10.1988 were allowed and declared an extent of 43,700.95 sq.mtrs as vacant ceiling surplus land in Sy.No.148 to 155 of Hydernagar village. Aggrieved by the same, the said declarant filed appeal No.Hyd/223/95 and though stay was granted on 21.10.1995, the said appeal was dismissed on 04.08.2005 and the same has become final as the same was not challenged. Notification under Section 10(1) was issued on 02.09.2005 and published in the Gazette No.202, dated 13.09.2005. The declaration under Section 10(3) was issued on 11.01.2006 and published in the gazette No.15, dated 17.01.2006 and notice under Section 10(5) of the Act of 1976 was issued on 19.01.2006 to surrender the possession of surplus land and proceedings dated 20.02.2006 under Section 10(6) of the Act of 1976 authorizing the Enquiry officer to take possession and the same was taken on 18.03.2008 by conducting panchanama and allotted to APIIC (now TSIIC) on 02.08.2008, as such, T.S.I.I.C is in possession of the land. That a certificate No.C/1264/79, dated 13.08.1979 was issued to K.Seetha Rama Reddy, K.yellaiah, S.Govind Reddy, G.Shankar Reddy, Abdul Aziz & Mohd.Ismail stating that the land to an extent of Acs.93.24 gts in Hydernagar

village are outside the municipal limits and within the peripheral limits of the Agglomeration and are not attracted by Section 2(o) of the Act of 1976, as long as the land continues to be used for agricultural purpose and not for any other purpose. That the impugned proceedings dated 30.08.1995 was issued duly taking into account of the fact of violation of the condition laid down in the certificate No.C/1264/79, dated 13.08.1979 issued under Section 2(o) of the Act by the declarant and co-share holders of the subject land, which was sold to 6th respondent society, who in turn divided the same into house site plots and sold to the petitioners, who are members of the 6th respondent Society.

8. Notification under Section 10(1) of the Act of 1976 dated 02.09.2005 was published in the State Gazette No.202 on 13.09.2005 requiring the interested persons in such vacant land to appeal against the said notification on or before 15.09.2005. Declaration under Section 10(3) of the Act of 1976 dated 11.01.2006 was published in the State Gazette No.15 on 17.01.2006 stating that the land notified in the Gazette on 13.09.2005 shall with effect from 15.09.2005 be deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrance with effect from 20.01.2006. That no objections were filed by the petitioners, as such, non-issuance of Notice under Section 10(5) of the Act of 1976 to the writ petitioners before taking the possession of the subject land under Section 10(6) of the Act of 1976 is justifiable. That the writ petitioners are neither declarants nor title holders of the subject property at the time of commencement of the Act and

does not figure out even once in the entire proceedings right from 1976 to 2008, as such, no *locus-standi* to question the proceedings initiated under the Act of 1976. Notices were issued to co-owners on 27.03.1989 under Section 6(2) of the Act of 1976 to file statement in Form-I with respect to their shares on or before 26.04.1989. The Enquiry Officer submitted a report on 16.08.1989 stating that the above co-owners are not residing at the given address while returning the un-served notices under Section 6(2) of the Act of 1976. Since the co-owners did not file any declarations, issuance of notices to them does not arise at all. Though the subject land is an agricultural land, subsequently it was divided into plots and sold by the 6th respondent Society, in violation of the certificate issued to that affect; orders under Section 8(4) of the Act of 1976 were issued on 30.08.1995. Since the 6th respondent Society is not in possession of the subject land, it is not entitled for issuance of any notice. The subject land is declared as ceiling surplus land and unless the same is regularized by the Government, issuance of No Objection Certificate does not arise. As on the date of commencement of the Act, Mohd.Abdul Aziz is the owner of the subject land but not the 6th respondent Society and incorporation of names of the petitioners in the revenue records subsequent to the commencement of the Act of 1976 is of no consequence. As per the Enquiry Officer's report dated 28.12.1987, the Sy.Nos.148 to 155 falls outside Municipal limits and within Hyderabad Urban Agglomeration and the lands be meant for agriculture purpose. That the subject land remained as an agricultural land but

subsequently, it was divided into plots, thereby the same ceased to be mainly used for agricultural purpose. Mohd.Abdul Aziz, who is declarant has not made any objection regarding the subject land being declared as surplus land, the writ petitioners are raising this issue after 40 years from the date of filing of statement by said Mohd.Abdul Aziz. As per Section 23(4) of the Act of 1976, the vacant lands deemed to have been acquired by the State Government under this Act shall be disposed of by the State Government to sub-serve the common good on such terms and conditions as the State Government may deem fit to impose. Possession of surplus land to an extent of 43,700.95 sq.mtrs situated in Sy.Nos.148 to 155 of Hydernagar Village taken over on 18.03.2008 under cover of panchanama, the same vested with the Government under Section 10(3) of the Act of 1976 and same is saved as per Section 3(1)(a) of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short 'the Act of 1999').

9. Counter affidavit is filed by the 3rd respondent reiterating the averments in the counters of the 1st and 2nd respondents.

10. The 7th respondent filed counter affidavit reiterating the averments in the counter affidavits filed by the respondents 1 to 3 stating that no approved layout was granted by any authority in the subject land and that the 3rd respondent addressed letter No.B4/12111/2008, dated 28.09.2012 requesting this respondent not to grant any building permission in Sy.Nos.148 to 155 of Hydernagar Village, Balanagar Mandal, R.R. District. Since the subject land is surplus land, this respondent is insisting ULC clearance certificate for clearance of LRS application which is

required as per G.O.Ms.No.902 MA, dated 31.12.2008 and G.O.Ms.No.151 MA, dated 02.11.2015 and that the petitioners are not entitled for considering their applications under LRS & BRS and sought for dismissal of the writ petitions.

11. Heard Sri V.R.Avula, learned counsel for the petitioners in W.P.No.20373 of 2012 & batch and other counsel who adopted same arguments, who also supported the plea of the 6th respondent Society, learned Government Pleader for Assignment, Sri Y.Rama Rao, learned Standing Counsel for the 3rd respondent-HMDA and Sri Sampath Prabhakar Reddy, learned Standing Counsel for the 7th respondent-GHMC.

12. Sri V.R.Avula, learned counsel for the petitioners submit that the 6th respondent-Society purchased the subject land in the year 1980 vide registered sale deed No.613 of 1980 dated 20.05.1980 and by that time, the subject land was an agricultural land and not a vacant land. He submits that other owners along with whom, said Mohd. Abdul Aziz sold the subject property to the 6th respondent-Society, were not issued any notice before passing the impugned proceedings. He submits that when once the subject land is not a vacant land as on the date of purchase by the 6th respondent Society, the question of declaring the same as excess land by Mohd.Abdul Aziz does not arise, and the same was not divided among co-owners. In support of his contention, he relied on the judgment of this Court in W.A.No.449 of 1990, dated 10.04.1990. He submits that the subject land is included in the residential zone only in the year 2008 as per Master Plan dated 23.06.1980, but whereas the 6th respondent Society

purchased the subject land by registered sale deed No.613 of 1980, dated 20.05.1980. He also submits that the subject land is purchased by Md.Abdul Aziz along with other co-owners jointly, that Md.Abdul Aziz, the declarant had got 1/6th undivided share out of Acs. 92.21 guntas and that when the same is not divided among themselves and not identified, the question of taking possession of the subject land by the Government, without survey and identification, does not arise. He submits that for survey and demarcation, the procedure under 6 of the A.P. Survey and Boundaries Act, 1923 has to be followed and that without following the procedure envisaged, there is no possibility of taking possession in respect of 1/6th share of Abdul Aziz only. In support of his contention, he relied on the judgment reported in **Lakshmi Construction, a Partnership Firm rep. by its Managing Partner v. Government of A.P, rep. by its Principal Secretary, Revenue Department**¹. He submits that though in the declaration filed by Mohd.Abdul Aziz under Section 6(1) of the Act of 1976 and also in Form III, family member particulars are mentioned, no notices were issued to them while issuing proceedings under Sections 8(1) and 8(4) and subsequent proceedings under the Act of 1976, as such, the impugned proceedings are liable to be quashed. In support of his contention, he relied on judgment reported in **D.R.Somayajulu, Secretary v. Attili Appala Swamy**². He submits that the 6th respondent Society and the petitioners, who purchased the subject land are in possession and enjoyment of the same and is evident from entries in adangals/pahanies i.e., from 1997-98 to

¹ 2004 (3) ALT 410² (2015) 2 SCC 390

2013-14 and houses were constructed by some of the petitioners and assessment was also done in respect of the same. He submits that when Sri Abdul Aziz has declared the other properties under Section 6(1) of the Act of 1976 along with the subject property, the same were not taken into account while calculating the surplus land. He submits that the 6th respondent Society and petitioners are *bonafide* purchasers, as such, they cannot be troubled. In support of his contention, he relied on the judgment reported in **J.Pitchaiah v. Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad**³. He further submits that though the 6th respondent Society purchased the land in the year 1980 and the said fact is known to the competent authority-2nd respondent when the draft statement was prepared on 27.03.1989 under Section 8(1) together with notice under Section 8(3) and final orders were passed under Section 8(4) of the Act of 1976 through proceedings No.H1/7496/76, dated 30.08.1995, no notices were issued to the petitioners, which is in violation of Rule 5(2) of the Urban Land (Ceiling & Regulation) Rules (for short 'the Rules') framed under the Act of 1976. In support of his contention, he relied on the judgment reported in **Y.Sri Rama Krishnaiah v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada**⁴. He further submits that in the Gazette notification under Section 10(1) of the Act, it is mentioned that the subject land in Sy.Nos.148 to 155 of Hydernagar Village is situated at Serilingampally Mandal, but actually the subject lands are situated in Hydernagar Village, Balanagar Mandal, which

³ 1990 (3) ALT 262 (S.B)

⁴ 1989 (1) ALT 48

shows that there is non-application of mind on the part of the authorities in issuing notification under Section 10(1) of the Act of 1976 and that same cannot be corrected without giving fresh opportunity to file objections. In support of his contention, he relied on the judgment reported in **Kboob Lal v. State of Uttar Pradesh**⁵.

13. On the other hand, learned Government Pleader for Assignment submits that against orders under Section 8(4) of the Act and final statement under Section 9 dated 30.08.1995, appeal was preferred by the declarant Mohd.Abdul Aziz and the same was dismissed on 04.08.2005 and that the same has become final as was not challenged till date, as such, the writ petitioners cannot challenge the impugned proceedings, which are confirmed in the appeal. He submits that the petitioners purchased the land in violation of certificate granted by the 2nd respondent under Section 2(o) of the Act of 1976, the purchase itself is void, as such, the petitioners have no *locus standi* to challenge the impugned proceedings. In support of his contention he relied on the judgment reported in **Parchuri Ratnakar Rao v. State of A.P**⁶. He submits that the possession of the subject land was taken on 18.03.2008 after conducting a detailed panchanama, the proceedings under the Act of 1976 have culminated and that the writ petitions are filed belatedly. He further submits that the petitioners, having filed regularization applications, they cannot challenge impugned proceedings in the writ petitions. He submits that Section 42 of the Act of 1976 has over riding effect over the

⁵ LAWS (ALL)-1983-11-49

⁶ 2006 (5) ALD 132 (DB)

other laws and that the A.P. Survey and Boundaries Act, 1923 has no application to the present case in view of Section 42 of the Act of 1976. As per the provisions of the Act of 1976, the subject land is deemed to be vacant land as per Section 2(q) of the Act of 1976 and that provisions of the said Act of 1976 are applicable. In support of his contention, he relied on the judgment reported in **S.Sulakshana Bai v. State of A.P.**⁷. He submits that since the notices under Section 10(5) of the Act of 1976 have been issued to the legal heirs of Mohd.Abdul Aziz, no notice is required to be issued to the petitioners. In support of his contention, he relied on the judgment reported in **State of Assam v. Bhaskar Jyoti Sarma**⁸. He further submits that there is no specific provision in the Act of 1976 to bring on record the legal representatives of a declarant who subsequently dies after filing declaration. In support of his contention, he relied on the judgment reported in **D.R.Somayajulu, Secretary v. Attili Appala Swamy**⁹. He further submits that when the original owner declared as surplus holder and the orders have become final, the purchase of subject land subsequently by the petitioners is void. In support of his contention, he relied on the judgment reported in **Zarina v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada, Krishna District**¹⁰.

14. Sri Y.Rama Rao, learned Standing Counsel for the 3rd respondent-HMDA, while adopting the submissions of the learned Government Pleader for Assignment, submits that the procedure as envisaged under the Act of 1976 has been followed and that

⁷ 1996 (3) ALD 669 (D.B)

⁸ (2015) 5 Supreme Court Cases 321

⁹ (2015) 2 Supreme Court Cases 390

¹⁰ 2002 (5) ALD 779 (DB)

petitioners never raised any objections during the course of impugned proceedings, as such, no interference is warranted.

15. Sri Sampath Prabhakar Reddy, learned Standing Counsel for 7th respondent-GHMC submits that no relief is claimed against the GHMC, as such, no relief can be granted against the 7th respondent.

16. In view of the above factual back ground, the following points that emerge for consideration in these writ petitions.

- a) Whether the 2nd respondent is justified in issuing impugned proceedings in pursuant to declaration filed by Sri Mohd.Abdul Aziz? If so, without notice to the petitioners and 6th respondent Society?
- b) Whether the proceedings initiated under Section 10(1) & 10(3) of the Act of 1976 and Panchanama dated 18.03.2008 without proper description of the property are valid?
- c) Whether the alleged possession of the subject property on 18.03.2008 by the Enquiry Officer is true & valid?

17. Point-a:

Admittedly, the vendors of the 6th respondent-Society, i.e., K.Seetharam Reddy, K.Yellaiah, S.govind Reddy, G.Shankar Reddy, Sri Abdul Aziz and Sri Mohammed Ismail, jointly purchased the subject property vide registered sale deed No.600/64, dated 10.11.1964 from its original owners i.e., Abdul Rehman and Sri Shaik Ibrahim. The 6th respondent Society purchased the agricultural dry land admeasuring Acs.92-21 guntas in Sy.No.148 to 155 of Hydernagar Village, Balanagar Mandal, Ranga Reddy District from said K.Seetharam Reddy and five others, vide registered sale deed No.613 of 1980, dated 20.05.1980. Since the subject land was described as agriculture land, the Competent Authority-2nd respondent issued certificate

Lr.No.C/1264/79, dated 13.08.1979 to that effect stating that the subject land is agricultural land, as such, the said land does not attract Section 2(q) of the Act of 1976. Admittedly, the subject land was not divided among Sri K.Seetharam Reddy and others. The Statement under Section 6(1) of the Act of 1976 was alleged to be filed by Mohd.Abdul Aziz on 12.08.1976, but the same was not finalized. A perusal of the material available on record shows that Mohd.Abdul Aziz was issued notice on 07.10.1980 for attending enquiry on 14.10.1980 for verification of the statement in Form-I filed by the declarant and in pursuant thereto, the statement of Mohd.Abdul Aziz was recorded on 18.10.1987 in which he stated that he purchased the subject land jointly along with five others and sold the same to the 6th respondent-Society and that his name was also recorded in revenue records, which goes to show that the 2nd respondent is aware about the purchase of the subject land by the 6th respondent society. Admittedly, the 6th respondent-Society purchased the subject property on 20.05.1980 as an agricultural land i.e., much before notice issued to Mohd.Abdul Aziz on 07.10.1980. By that time, the subject property remained as an agricultural land. According to the 6th respondent-Society, the subject land was divided into plots and sold to the writ petitioners and even if that is taken into account, the same becomes vacant land by the date of sale of the property by the 6th respondent Society and the writ petitioners along with 6th respondent Society is in possession and enjoyment of the subject and their names have been entered in revenue records. As such, the 2nd respondent could not have continued the

proceedings against the declarant i.e., Mohd.Abdul Aziz and he ought to have issued notice to the 6th respondent-Society or its members when the land has become vacant land.

18. It is relevant to note that even in the proceedings C.C.No.H1/7496/76, dated 27.03.1989 of the Special Officer & Competent Authority-2nd respondent issued under Sections 8(1) & 8(3) of the Act of 1976, it is well within the knowledge of the 2nd respondent that declarant along with co-owners have sold the subject land to the 6th respondent in the year 1980-81. In the said proceedings at page No.3, it is observed as follows:

“The declarant and his co-owners have obtained a Certificate U/s 2(o) of the Act for the entire land of 92.21 Acs. Vide S.O. & C.A.Lr.No.C/1264/79, dt.13-8-79 and disposed of in favour of Gokul Co-op. Housing Society Ltd. In the year 1980-81 for housing purpose. As the Certificate obtained u/s.2(o) of the Act was mis-used by the declarant the transactions stated to have been done with the said Society is treated as null and void.”

Having knowledge of the said transaction in the year 1989 itself, the 2nd respondent issued proceedings dated 27.03.1989 i.e., draft statement under Section 8(1) and notice under Section 8(3) of the Act, to the said Abdul Aziz, without issuing any notice to the 6th respondent Society or its members i.e., petitioners herein. Even while issuing statement under Section 8(4) of the Act and final orders under Section 8(4) and statement under Section 9 of the Act of 1976 vide proceedings dated 23.06.1990, no notice was issued to the 6th respondent Society or its members. Though the statement under Section 9 of the Act of 1976 dated 30.08.1995 was issued holding that the declarant has not filed any objections, no notice was issued to the 6th respondent Society.

19. In **The Commissioner, Land Reforms, A.P, Hyderabad vs. Katragadda Venkata Narayana Rao (WA No.449 of 1990)**, this Court held as follows:

“We do not see any substance in this writ appeal. According to the definition of ‘Vacant land’ in section 2(o) of the Urban Land (Ceiling and Regulation Act) 1976, urban vacant land does not include land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situate. Now, in this case, it is not disputed that the land concerned herein is shown as being reserved for transport and communication purpose and that no building is permitted to be constructed there. Once this fact is not in dispute it follows that the land concerned herein is not ‘vacant land’ for the purpose of the Act. Indeed the learned Judge has made an observation that it and when the Master Plan is altered and this land becomes a land upon which construction can be made it is always open to the authorities to take action according to law under the Act. This is sufficient safeguard for the appellants. The writ appeal is accordingly dismissed.”

In view of above said judgment when once the land is ‘vacant land’ as per the provisions of the Act of 1976, the 2nd respondent ought to have issued notice to the 6th respondent Society and initiate proceedings against it. Admittedly, the 6th respondent Society purchased the subject property in the year 1980 and the same is in possession till date and the same is within the knowledge of the 2nd respondent, no notice under the Act of 1976 was issued to the 6th respondent Society or its members, which are affected and interested persons of the subject property, is in violation of Rule 5(2) of the Rules, in view of judgment in **Y.Sri Rama Krishnaiah v. Special Officer and Competent Authority (supra)**, wherein it is held as follows:

“4. The second contention merits acceptance. Rule 5 of the Rules provide 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 view of the above decision, though the 2nd respondent is having prior knowledge of the fact that Mohd. Abdul Aziz and five others have sold the subject land in favour of the 6th respondent Society in the year 1980 itself, the 2nd respondent issued subsequent proceedings without issuing any notice to the 6th respondent-Society or its members, who are in physical possession of the subject property, the proceedings dated 27.03.1989 issued by the 2nd respondent are not sustainable in law as the same is in violation of Rule 5(2) of the Rules. The fact remains that the subject land becomes vacant land only, even according to the respondents, when the 6th respondent Society sold to the petitioners as plots, as such, non issuance of notice to the petitioners is in violation of Rule 5(2) of the Rules. When once the proceedings dated 27.03.1989 are not valid, subsequent proceedings under Section 10(1) to 10(6) of the Act are also liable to be quashed. In view of the same, initiation of proceedings

against original declarant i.e., Mohd. Abdul Aziz appears to be erroneous as the subject land was only an agricultural land and not vacant land as on the date of purchase by the 6th respondent society on 20.05.1980. Therefore, judgment relied on by the learned Government Pleader for Assignment in **S.Sulakshana Bai v. State of A.P (supra)**, has no application to the facts of the case on hand since in that case the declarant sold the house plots, as such initiation of proceedings against declarant, without issuing notice to the concerned parties i.e., 6th respondent Society or its members, were not justified. In view of the same, it can be concluded that the 2nd respondent is not justified in issuing the impugned proceedings without notice to the writ petitioners or 6th respondent-Society. This point is answered accordingly.

20. Point b:

In the notification issued under Section 10(1) of the Act dated 02.09.2005 and notification under Section 10(3) of the Act dated 11.01.2006, it is mentioned that the subject land is falling under Serilingampally Mandal. The declaration under Section 10(3) of the Act dated 11.01.2006 filed by Mohd.Ansar Ahmed and five others being legal heirs of Mohd. Abdul Aziz shows that the subject land falls under Serilingampally Mandal. Even the Gazette Notification dated 17.01.2006 shows that the subject land falls under Serilingampally Mandal, represented by legal heirs of Mohd.Abdul Aziz. The notice under Section 10(5) of the Act of 1976 dated 19.01.2006 also issued to so-called legal heirs of Mohd.Abdul Aziz (declarant) but not to the 6th respondent Society or to its writ petitioners. Subsequently, the 2nd respondent issued

proceedings dated 20.02.2006, wherein there was correction in the description of the property. In the 'Description of the Property' column, initially, it was mentioned as 'Serilingampally Mandal' but subsequently, it was rounded off and mentioned as 'Balanagar Mandal'. It is pertinent to note that Form III under Rule 5 of the Rules prepared by the 2nd respondent also shows that the subject property falls under Serilingampally Mandal and in that statement, the name of Mohd.Ansar Ahmed is not shown as legal heir of Mohd.Abdul Aziz. Even a perusal of the panchanama dated 18.03.2008 prepared by the Upa Tahsildar-cum-Enquiry Officer, who is one of the official competent under the Act of 1976, who had conducted panchanama had mentioned the location of the subject land as Hydernagar Village, Serilingampally Mandal. The Panchanama is much after the proceedings initiated under Sections 10(1) and 10(3) of the Act. The above proceedings of the 2nd respondent shows non application of mind on the part of authorities while issuing impugned proceedings. Admittedly, subject land was jointly purchased by Mohd.Abdul Aziz along with others and sold to 6th respondent Society, but it is not known how the respondents could have taken possession of land falling to the share of Mohd.Abdul Aziz without demarcation of his share. Therefore, it can be safely concluded that the official respondents themselves could not identify the subject land and its description along with boundaries, which fell to the share of Mohd.Abdul Aziz (declarant), they have issued the impugned proceedings without application of mind. As such, the 2nd respondent cannot expect

the petitioners or 6th respondent Society to file any objections, as the subject land falls under 'Balanagar Mandal'. Corrections were made in the proceedings under Section 10(6) of the Act, without any notice to the 6th respondent Society or to the writ petitioners. The said corrections are made without amending the notification issued under Section 10(1) and 10(3) of the Act. In **Kboob Lal v. State of Uttar Pradesh (supra)**, the Hon'ble High Court of Allahabad held as follows:

"In view, if after survey by the Competent Authority himself, he discovered some arithmetical or clerical error in the draft statement which had been prepared earlier and a copy of which had been sent to the petitioner, then the Competent Authority should have corrected such clerical or arithmetical error in the draft statement and a copy of such corrected draft statement should have been served upon the petitioner intimating him of the correction which had been made and he should have been given an opportunity to submit his objection thereafter. There is nothing very specific in section 8 of the Act to provide for such contingencies as arose in this case. However, on general reasoning and taking into consideration the rules of natural justice, it seems to me that while I should hold that the Competent Authority has jurisdiction to correct clerical or arithmetical error or errors due to inadvertence in the draft statement prepared under section 8(1) of the Act, the person concerned who holds the land, must be given, a fresh opportunity to file his objection in the light of the amendment effected in the draft statement. Since this course was not followed in the instant case, in my view, the impugned order passed by the Competent Authority under section 8(4) of the Act and the impugned appellate order dismissing the appeal and affirming the said order of the Competent Authority under Section 8(4) of the Act should be quashed."

There is no doubt that the Competent Authority-2nd respondent has jurisdiction to correct clerical error in respect of the identification of the subject land, which was subsequently corrected in proceedings dated 20.02.2006 as 'Balanagar Mandal' by rounding off 'Serilingampally Mandal', but before affecting correction, he ought to have issued notice to the petitioners and afford opportunity to file their objection in the light of the amendment effected in the draft statement. In view of wrong

mentioning of the location of the property, there was no occasion for the 6th respondent or its members i.e., writ petitioners herein to file any objections to the notifications under Sections 10(1) and 10(3) of the Act. Since this course was not followed in the instant case while changing the description of the property, in my view, notifications issued under Section 10(1) and 10(3) of the Act, Panchanama dated 18.03.2008 and also the Gazette notification dated 17.01.2006 and subsequent proceedings under Sections 8(4) and 10(3) of the Act of 1976 are liable to be quashed, in view of the aforesaid judgment. This point is answered accordingly.

21.Point c:

It is not in dispute that by the time, the 6th respondent-Society purchased the subject land on 20.05.1980, the same was only an agricultural land. Sri Mohd.Abdul Aziz and five others, have jointly sold the same to the 6th respondent Society and that no partition took place between them. Admittedly, declaration was filed by Mohd.Abdul Aziz only to the extent of 1/6th fell to his share. When it is alleged that the 6th respondent Society sold the plots to the petitioners, then the 6th respondent Society ought to have been issued notice and proceedings ought to have been initiated against the 6th respondent Society by the 2nd respondent-Competent Authority. As observed supra, the panchanama dated 18.03.2008 prepared by the Upa Tahsildar-cum-Enquiry Officer, who is one of the official competent under the Act of 1976, had conducted panchanama and mentioned the location of the subject land as Hydernagar Village, Serilingampally Mandal, but the subject land is located in 'Balanagar Mandal'. It appears from

the record that no survey was conducted, no demarcation was done and that not identified the land, which is said to have been declared by the original owner i.e., Mohd. Abdul Aziz, though it is admitted that he has 1/6th share in the subject property out of Acs.92.21 gts. As such, taking of possession of the subject land by the Enquiry Officer vide proceedings dated 18.03.2008 cannot be believed and issuance of subsequent proceedings vide G.O.Ms.No.985 Revenue (UC.I) Department, dated 02.08.2008 allotting the subject land in favour of 3rd respondent-H.M.D.A, without identification and demarcation of the subject land as required under Section 17 of the Act and provisions of the Survey and Boundaries Act, 1923, is not sustainable under law as held in **Lakshmi Construction, a Partnership Firm rep. by its Managing Partner v. Government of A.P, rep. by its Principal Secretary, Revenue Department (supra)**. As such, the contention of the learned Government Pleader for Assignment that the Survey and Boundaries Act, 1923 is not applicable in view of Section 42 of the Act is not correct. Moreover, it is pertinent to note that though the 6th respondent Society and its members i.e., writ petitioners are in possession and enjoyment of the subject property and their names have been shown in revenue records. When once it is noticed by the 2nd respondent that the subject land becomes vacant land in the hands of the 6th respondent Society, he ought to have issued notices under Section 6(2) of the Act to the 6th respondent Society. Without serving notice to the 6th respondent Society, the possession of the subject land by the Government and its subsequent allotment to the 3rd respondent-HMDA is not valid in

the eye of law. As such, the alleged possession of the subject land by the 2nd respondent is not valid in the eye of law.

22. Learned Government Pleader for Assignment while placing reliance in **Mahesh Co-operative Housing Society Ltd., Secunderabad v. Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad**¹¹ submits that the purchase of the subject land by the 6th respondent is in violation of the provisions of the Act of 1976 since the subject land was vacant land and not agricultural land by the date of said purchase, as such, the sale transaction by and between the declarant along with others and 6th respondent itself is void. In the aforesaid decision, the petitioner-society itself purchased the land for providing house sites to its members. But in the present case on hand, the 6th respondent Society initially purchased agricultural land, but subsequently divided the same into house plots after obtaining necessary permission from the concerned authorities. The aforesaid decision has no application to the facts of the case.

23. There is yet another discrepancy in the extent of land that was alleged to have been acquired by the respondent authorities. In the allotment GO i.e., G.O.Ms.No.985, dated 02.08.2008, the extent of land acquired is mentioned as 64.216.00 sq.mtrs, but in all other proceedings of the respondents, the extent of land was mentioned as of 43,700.25 sq.mts.

24. Learned Government Pleader for Assignment while relying on the judgment reported in **District Collector, Mahabubnagar v.**

¹¹ 2005 (6) ALD 772

R.Venkataswamy Goud¹² submits that when once writ petitioners applied for regularization of the subject land in their favour, they cannot challenge the proceedings issued under the Act of 1976. In this case, the 6th respondent Society in the first instance filed W.P.No.18316 of 2008 which has not applied for regularization, even according to the respondents, as such, such plea cannot be raised in the said writ petition.

25. Learned Government Pleader for Revenue while placing reliance on the judgment of the Hon'ble Supreme Court in **State of Assam v. Bhaskar Jyoti Sarma (supra)** contends 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. In the above decision rendered by the Apex Court, appellants filed Writ Petition for restoration of possession after Repeal Act came into force long after possession was taken and in the present case respondents failed to establish that possession was taken before Repeal Act came into force, as such, the said decision has no application to the facts of the present case. The respondents have also 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. 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

¹² 2012 (1) ALT 212 (D.B)

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. In the instant case, the excess land of the declarant was not determined. As already observed supra that Mohd.Abdul Aziz along with five others purchased the subject property jointly and the same was not partitioned among them. Admittedly, Mohd.Abdul Aziz is holding 1/6th share out of the entire extent of subject land. As already observed in the above paragraphs that the respondents have failed to identify the property that fell to the share of Mohd.Abdul Aziz (declarant) and there is also discrepancy in respect of extent as well as location of the subject property. As such, the aforesaid decision is not applicable to the facts of the present case on hand.

27. 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.”

In the present case also respondent authorities have failed to establish that possession of the land in question has been taken

over by the State Government by the date of enforcement of Repeal Act, 1999, as such, 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 reads 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.

28. It is relevant to note that declarant Mohd.Abdul Aziz passed away on 12.01.2001 and the appeal i.e., Appeal No.HYD/223/95 filed by him was dismissed on 04.08.2005 showing Mohd.Ansar Ahmed and five others as legal heirs of Mohd.Abdul Aziz. Even though the writ petitioner sought information under RTI Act with regard to the subject property along with legal heir certificate alleged to have been produced by Mohd.Ansar Ahmed, the 2nd respondent vide Memo dated 10.09.2014, only supplied a copy of orders in appeal No.Hyd/223/95, dated 04.08.2008 confirming that Mohd.Ansar Ahmed & five others are the legal heirs of

Mohd.Abdul Aziz, but legal heir certificate filed by Mohd. Ansar Ahmed is not produced by the respondent authorities. Even the notification under Section 10(1) of the Act of 1976 dated 02.09.2005 also goes to show that Mohd.Abdul Aziz, represented by legal heirs i.e., Mohd.Ansar Ahmed and five others. The 2nd respondent, except issuing copy of orders in appeal filed by the declarant, no particulars were furnished.

In view of above facts and circumstances, the impugned proceedings No.H1/7496/76, dated 30.08.1995 issued by the 2nd respondent and G.O.Ms.No.985 Revenue-UCI Department, dated 02.08.2008 are set aside and W.P.No.18316 of 2008 is liable to be allowed and consequently, other writ petitions i.e., W.P.Nos.20373 of 2012 & batch are liable to be allowed.

Accordingly, all writ petitions are allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

29.12.2016
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.18316 of 2008, 20373, 22436, 30481, 17793, 20351, 20355, 20359, 20362, 20551, 20554, 20569, 20585, 22461, 23112, 23113, 23157, 23162, 23224, 23400, 23420, 23449, 23648, 23660, 23661, 23667, 23668, 23669, 23696, 23699, 23763, 23963, 24441, 24472, 24475, 24511, 24550, 24553, 24562, 24564, 24568, 24572, 30502, 30531, 30534, 30573, 30590, 30595, 30608, 30616, 30853 and 32909 of 2012



Date: 29.12.2016

kvs

