

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18982 of 2008

ORDER:

The case of the petitioners is that their father K.Narasimha was the owner and possessor of the land admeasuring Ac.5-12 guntas in Sy.Nos. 300 and 301 situated at Uppal Bhaghat Village. By virtue of the provisions of the Act 33 of 1976 being Kartha of Hindu Joint Family filed declaration in F2/13696/1976. The authorities computed the entire extent under Section 8 (1) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act") admeasuring 24,819 square meters and thereafter, passed orders holding that there is a surplus of 20,958 square meters. Questioning the same, the appeal was filed in Appeal No.146 of 1992 dated 20-11-1992 before the Commissioner of Appeals-3rd respondent herein. The appellate authority passed orders of *status-quo* on 21-11-1992 directing the 2nd respondent to main *status-quo* till 20-12-1992. Thereafter, the appellate authority passed orders on 30-12-1992 directing to maintain *status-quo* till the disposal of the appeal and the appeal was pending till 02-02-2006. The 2nd respondent issued notification under Section 10(1) of the Act on 26-11-1992 and

notification under Section 10(3) was issued on 23-04-2007 and notice under Section 10(5) of the Act was issued on 05-10-2007 stated to have affixed on electrical pole stating declarant is not residing in the village. Basing on the same, the panchanama dated 14-02-2008 was prepared. Questioning the notice under Section 10(5) and the panchanama dated 14-02-2008, the present writ petition is filed.

Counter affidavit is filed by the 2nd respondent stating that one K.Narasimha filed declaration under Section 6(1) of the Act and declarant declared holding agricultural land in Sy.Nos.300, 301 to an extent of 4 ½ acres at Uppal and in Sy.No.384 to an extent of Ac.02-09 guntas at Koaramala. The statement filed by the declarant was got enquired into and in the meanwhile, declarant K.Narasimha died and the legal representatives were brought on record and they were determined as holder of the following properties:

Sl.No.	Description of the property	Locality	Sy.No.	Vacant land
1.	Vacant land	Uppal	4.63 (old)	1820.42
2.	Vacant land	Uppal	1.92(old)	1550.58
3.	Vacant land	Uppal	300, 301	21,448.38

The total area held by the declarant measuring 24819.38 square meters, an extent of 1000.00 was

allowed and the declarant was provisionally determined as surplus land holder to an extent of 23819.38 square meters. Draft statement under Section 8(1) and notice under Section 8(3) of the Act were issued on 17-09-1991 and accordingly, objections were called for. In response to the draft statement, the legal representatives of the declarant filed their objections on 21-02-1992. After giving opportunity of personal hearing and after considering the objections, the declarant was determined to be holder of the following properties:

Sl. No.	H.No./ Sy.No.	Total area	Plinth Area	Apart land	Addl.Appt. land	Area protected	Vacant land
1.	1-92 (old Uppal)	822.68	168.25	500.00	153.83	822.68	
2.	63 (old Uppal)	174066	231.04	500.00	500.00	1231.04	509.62
3.	300 & 301 Uppal	21448.38	--	--	--	--	21,448,38
		24011.72	399.29	1000.00	653.83	2053.72	21958

Out of the total extent of 24011.72 square meters, an extent of 2053.72 square meters was excluded from computation being protected under Section 4(1) of the Act and in 21958 square meters of vacant land, an extent of 1000.00 square meters was allowed to be retained by the declarant and he was finally determined surplus vacant land holder to an extent of 20958 square meters. As such, final order under Section 8(4) and final

statement under Section 9 of the Act were issued on 23-10-1992 and same were served on the son of declarant on 31-10-1992. Against the orders passed under Section 8(4) of the Act, the legal representatives of the declarant have filed appeal under Section 33 of the Act and the same was dismissed by Chief Commissioner of Land Administration, Hyderabad vide proceedings No.Hyd/146/92, dated 02-02-2006. After disposal of the appeal, notification under Section 10(1) of the Act was issued and declaration under Section 10(3) of the Act was published in A.P.Gazettee No.116, dated 23-04-2007. Meanwhile, the legal representatives of declarant filed WP.No.12536 of 2006 and this Court dismissed the same by its order, dated 23-06-2006. Aggrieved by the same, appeal W.A.No.329 of 2007 was filed and the same was also dismissed on 19-07-2007. Notice under Section 10(5) of the Act was affixed in a conspicuous place of last known address and after lapse of statutory period of 30 days, order under Section 10(6) of the Act was passed authorizing the enquiry officer to take possession of the surplus land. Accordingly, the possession of the surplus land was taken over on 14-02-2008 by conducting panchanama.

Learned counsel for the petitioners submit that since notice under Section 10(5) of the Act was not served to the petitioners and subsequent proceedings pursuant to proceedings under Section 10(5) of the Act are bad in law.

On the other hand, learned Government Pleader for Revenue (Assignment) submits that once the proceedings under Section 8(4) of the Act have become final and same were confirmed by this Court in W.A.No.329 of 2007, it is not open for the petitioners to challenge the said proceedings. It is submitted that proceedings under Section 10(5) of the Act is only issuance of notice and the same cannot be questioned. He submits that issuance of notice under Section 10(5) of the Act is not mandatory, by relying on the judgment of **State of Assam v. Bhaskar Jyoti Sarma**¹.

In this case, it is to be seen that the proceedings under Sections 8 (4) and 9 of the Act have become final, since the same were confirmed by appellate authority under Section 33 of the Act and WP.No.12536 of 2006 was filed against the same and the same was also dismissed by order dated 23-06-2006. The said order was also confirmed in WA.No.329 of 2007. Learned counsel

¹ (2015) 5 Supreme Court Cases 321

for the petitioners says that benefit of Repeal Act is to be extended to the petitioners, but in the writ affidavit taking of possession was not disputed. In fact, the grievance of the petitioners is that they were denied the statutory appeal against notice under Section 10(5) of the Act. A Reading of section 33 of the Act goes to show that appeal lies against any order and what is envisaged under Section 10(5) of the Act is issuance of notice. Though, it is not disputed in the writ affidavit that possession was taken and in the counter also it is categorically stated that possession was taken on 14-02-2008, the same is also not disputed by filing any reply affidavit. When once possession is taken on 14-02-2008 much before the Repeal Act came into force i.e. on 27-03-2008, the benefit under Repeal Act cannot be extended to the petitioners and also I am of the opinion that question of challenging notice under Section 10(5) of the Act does not arise. In the judgment cited supra relied by the learned Government Pleader for Revenue, the Supreme Court held as under:

“13. The case of the appellant is that actual physical possession of the land was taken over on 7th December, 1991 no matter unilaterally and without notice to the erstwhile land owner. That assertion is stoutly denied by the respondents giving

rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under [Article 226](#) of the constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the land owners in terms of [Section 10\(5\)](#) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract [Section 3](#) of the Repeal Act. Our answer to that question is in the negative.

15. The High Court has held that the alleged dispossession was not preceded by any notice under [Section 10\(5\)](#) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on [Section 10\(5\)](#) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under [Sections 10\(5\)](#) and [10\(6\)](#) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under [Section 10\(3\)](#) would not consider it worthwhile to agitate the violation of [Section 10\(5\)](#) for he can well understand that even when the Court may uphold

his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under [Section 10\(5\)](#). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under [Section 10\(5\)](#) had been served upon him.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word 'may' appearing in [Section 10\(5\)](#) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under [Section 10\(6\)](#). The question whether breach of [Section 10\(5\)](#) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case.”

In this case, taking possession of the surplus land on 14-02-2008 is not seriously disputed. The identity of property and demarcation is not disputed. This writ petition is filed on 31-08-2008 after Repeal Act of 1999 came into force in the State of Andhra Pradesh on 27-03-2008.

In view of above facts and circumstances of the case, I do not see any merit in the writ petition and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

07-12-2016
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