

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 31618 of 2012

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W.P.M.P. No.22469 of 2013

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CONTEMPT CASE (SR) No.9722 of 2015

COMMON ORDER:

W.P.No.31618 of 2012 is filed seeking issuance of writ of mandamus to declare the orders dated 19.12.2005 and 10.02.2006 passed under section 10(5) and 10(6) of the Urban Land Ceiling Act in C.C. No.D1/2359/76 in respect of lands in Sy.No.74 and 75 of Nandimusalayaguda village, Bahadurpura Mandal, Hyderabad as illegal and void. W.P.M.P. No.22469 of 2013 is filed by Rabijeet Kaur and 3 others for impleading themselves as respondents 6 to 9 while C.C. (SR) No.9722 of 2015 is filed against the Official respondents and others for violating the interim order dated 15.10.2012 passed in W.P.M.P. No. 40313 of 2012 in W.P.No.31618 of 2012.

2. The averments in the affidavit filed in support of the Writ Petition are as under :

The second petitioner is a wife of the first petitioner and petitioners 3 to 7 are their children. One Gaddam Venkataswamy was the absolute owner of land admeasuring Ac.2.10 gts. in Sy.No.74 and 75 of

Nandimusalayaguda village, Charminar Taluk, Hyderabad. He sold away Ac.2.02 guntas out of the said land to the first petitioner herein and one Prakash Yadav through an agreement of sale dated 28.07.1981 after receiving the entire sale consideration. Since the vendor of the first petitioner failed to execute a registered sale deed, the petitioners filed O.S.No.532 of 1987 on the file of IV Additional Judge, City Civil Court, Hyderabad, which was decreed on 27.11.1995. It is averred that petitioners are in possession of 6800 sq. yards of lands while co-vendor Prakash Yadav was in possession of 3000 sq. yards. It is said that in 1988 the petitioners obtained a license from Municipal Corporation and established a factory in the name and style of Shiv Metal works. It is further averred that another factory in the name and style of Sai Industries was established in the name of the wife of the first petitioner after obtaining license from Municipal Corporation of Hyderabad vide license dated 02.02.1989. Power supply was also obtained from the electricity department in the month of February 1990. Later both the industries were merged and got the same were registered with Central Sales Tax vide Regn.No.CST/CHM/03/3/1427/90-91 dated 22.10.1990. It is said that the petitioners have established the industry in the subject property and are in possession of the property. While things stood thus, the original owner

Gaddam Venkata Swamy died on 03.10.2005 and thereafter the first petitioner gifted different extents of land in favour of his wife and children through registered gift settlement deeds and their names were alleged to have been mutated in Municipal records. When the children of G.Venkataswamy were interfering with the property, the petitioners' claim to have filed O.S.No.2612 of 2011 and 2611 of 2011 seeking various reliefs. However, it is said that there was a compromise between both the parties and in view of the same the suits were closed. As things stand, the R.D.O., Hyderabad issued a notice dated 10.05.2011 u/s.7 of the A.P. Land Encroachment Act to 2nd and 3rd petitioners stating that they are in unauthorized occupation of land specified in the notice as the said property is a Government property (ceiling surplus land). The encorachers were directed to appear before the Tahasildar, on 28.05.2011 to show cause as to why they should not be subjected to eviction from the land. It is averred that the enquiries made by the petitioners revealed that late G.Venkataswamy has submitted a declaration u/s.6 of the U.L.C. Act vide C.C.No.D1/2359/76 with regard to subject property showing 8105 sq. meters as excess land. On further verification the petitioners came to know that the Special Officer and Competent authority, U.L.C., has passed final orders under 8(4) of the Act dated 23.11.1996 and also

u/s.9 of the Act. Hence, the present Writ Petition came to be filed questioning the action of the authorities in passing final orders without issuing any notice to the petitioners who are in possession of the property.

3. The main grounds urged in the affidavit filed in support of the writ petition are that 1) though the petitioners are in physical possession of the lands since 1981, no notice was served either on the petitioners or on any of the family members of late G.Venkataswamy. 2) It is further submitted that the entire proceedings are vitiated since notices under Sections 10(3), 19(5) and 10(6) were issued after the death of G.Venkataswamy, in the name of dead person. The order u/s.10(5) came to be served on one G.Pochamma, the daughter of late G.Venkataswamy on 03.02.2006 directing late Venkataswamy to deliver possession of the property within 30 days to Deputy Tahasildar. It is said that without even waiting for 30 days, as contemplated u/s.10(6), orders were passed on 10.02.2006 which is contrary to the mandate of the provision. Further, in view of the U.L.C. Repeal Act 15 of 1999 which came into effect in the state of Andhra Pradesh from 27.03.2008, the entire process gets abated since the petitioners were in possession of the property as on the date when the Act was repealed.

4. On 15.10.2012 this Court while issuing rule nisi and calling for records, ordered "*status quo*, obtaining as on

today as regards possession of the land in question, shall be maintained until further orders.”

5. One S.Sattaiah, the Special Officer and Competent Authority filed his counter in the month of August, 2015 denying the allegations made in the affidavit except to the extent of his admission. He submits that originally Gaddam Venkatswsamy filed a declaration in Form-I of U.L.C. Act 1976, declaring himself to be the owner of the land admeasuring Ac.1.36 gts., and 0.14 gts., in Sy.Nos.74 and 75 of Nandimusaliguda village. It was specifically stated in the counter that the petitioners herein are neither the declarants nor the legal heirs of the declarants and that they are strangers to the proceedings before the Authority. The averment in the petition that they have purchased Ac.2.10 gts., of land from its original owner G.Venkataswamy in the year 1981 under an agreement of sale would be contrary to Section 5 of the Act. It is said that the said agreement of sale, even if true, does not confer any title over the property infavour of the petitioners. It is said that decree dated 27.11.1995 passed in O.S.No.532/1987 is subsequent to the appointed date and as such the same is null and void u/s.42 of the Act. The averments in the counter further show that after declaration, an enquiry under the Act was taken up and a provisional orders u/s.8(2) and 8(3) were issued on 06.07.1995 declaring the said Venkatswamy as

surplus landholder to an extent of 8105 sq. meters, while allowing him to retain an extent of 1000 sq. meters. It is said that the orders under 8(1) were sent for service through registered post acknowledgement to the declarant asking him to file objections as required under rule 5 of the Act. The said notice was returned with an endorsement "seven days absent, hence returned to sender". Thereafter the orders were got served on the declarant on 20.10.1995 through the Enquiry Officer. Though 30 days time was granted to the declarant to file objections, he did not choose to do so. Hence, provisional orders passed u/s.8(1) of the Act was confirmed, final orders u/s.8(4) were issued on 23.11.1996 and later a notice u/s.9 of the Act. The order passed u/s.8(4) were served on the wife of the declarant on 06.02.1997 who acknowledged the same by putting a signature. It is stated in the counter that 10(1) notification was issued on 20.01.1998 and the same was published in the Gazette vide A.P. Gazette No.6 dated 05.03.1998. A notification under Section 10(3) was issued on 26.09.2002 and the same was published in the A.P. Gazette No.264 dated 28.11.2005. 10(5) notice was issued on 19.12.2005 and the same was served on Smt. G.Pochamma, the daughter of the declarant on 03.02.2006, who acknowledged the said notice. It is said that though the notice u/s.10(5) was received by Pochamma, the daughter of the declarant, she did not file any objections to the said notice and as such the

proceedings u/s.10(6) was issued on 10.02.2006. Possession of the surplus land was taken on 10.02.2006 and thereafter the same was handedover to the Mandal Revenue Officer, Bahadurpura for safe custody under a panchanama dated 16.02.2010. It is thus stated that the proceedings under U.L.C. Act with reference to surplus land has reached its finality long prior to the cut off date and the petitioners, who are neither the declarants nor legalheirs of the declarant, can maintain this Writ since their alleged transaction with late Venkataswamy is invalid and contrary to the provisions of the Act.

6. At this stage one Rabijeet Kaur and 3 others filed W.P.M.P.No.22469 of 2013 for impleading themselves as respondents 6 to 9, on the ground that they are necessary parties to the litigation. As per the affidavit filed in support of the implead petition, one Gaddam Krishnaiah claiming himself to be the absolute owner of the land, having obtained the same by inheritance from his forefathers, sold the same to various persons by dividing it into plots. One such piece of land admeasuring 978.01 sq. yards was sold to Balbir Singh under a regd. sale deed dated 11.03.1983 registered as Doc.No.287/1983 in the office of S.R.O., Doodbowli, Hyderabad. It is said that the said Balbirsingh is in possession of the property and when the writ petitioners made an attempt to interfere with the property, he filed a suit against one Gaddam Kistaiah and

the writ petitioner vide O.S.No.2208 of 1987. The said Balbir Singh died on 01.11.1998 leaving behind the implead petitioners as his successors. In the year 2011 i.e., nearly 13 years after the death of Balbir Singh, the legal heirs found certain documents and on a perusal of the same, they came to know about the purchase of the property by Balbir Singh. When his son Sri Gurumith Singh went to the said place to identify the property, found that the writ petitioners have grabbed the land. Immediately, the implead petitioners filed LGC. SR.No.1066 of 2012. Pending the said proceedings, the Land Grabbing Court called for a report from Tahasildar, Bahadurpura, who in his report stated that the subject land is a surplus land and there is Government interest over the said land. He also referred to the pendency of the present Writ Petition before this Court. In view of the above, the land grabbing court is said to have directed the petitioners to implead themselves in the writ petition and contest the matter. Hence, the present application.

7. A counter came to be filed by the Writ Petitioners to the said implead petition stating that said Gaddam Kistaiah has nothing to do with the land and the Government has granted occupancy right certificate in favour of Venkataswamy but not Gaddam Kistaiah. It is said that the alleged sale deed said to have been executed by Gaddam Kistaiah in favour of Balbir Singh is

sham and nominal and will not create any interest over the said property. It is stated that Gaddam Kistaiah was neither a owner nor an occupier of the said land and that their predecessors in interest were never the absolute owners of the land. It is further stated that Balbir Singh filed O.S.No.2208 of 1997 for declaration of title and injunction in respect of the very same property against the writ petitioner, his vendor and one Prakash Yadav, which was dismissed on 04.12.1991. Insofar as L.G.C. (SR).1066 of 2012 is concerned, it is stated that the said LGC was returned on 05.09.2013. In view of the above, the writ petitioners submit that the implead petitioners have no *locus standi* to contest the matter.

8. A perusal of the docket order dated 23.11.2015 would show that on 07.11.2015 the proposed implead petitioners, appearing in-person, while arguing the implead petition stated that the petitioners have violated the interim orders of statusquo by raising structures in the said land. Then the court questioned the A.G.P., as to what the authorities are doing when the interim orders are being violated. The counsel for the petitioner Mr. Srinivasarao Velivela who was present in the court also stated that structures if any raised in violation of the order have to be removed. The A.G.P., stated that as per the Government records the land in question was already taken possession and vested with the Government. Hence, the

court directed the parties to maintain rule of law and see that the interim orders are not violated. On 23.11.2015 when the matter was taken up for hearing the counsel for the petitioners submitted that the respondent authorities while demolishing the structures raised, after passing of the interim order, have intentionally removed old structures alleged to have been in existence even prior to the passing of the interim orders, which, according to him, is in contemptuous in nature. He submits that the court only directed the petitioners to remove the structures if any by the next date of hearing and not by the respondent authorities. It is also brought to the notice of the court that steps are being taken for filing of contempt case and also a suit for damages.

The Assistant Government Pleader for Revenue denied the allegations made by the counsel for the petitioner with regard to demolition of old structures. In view of the above, this court with the consent of all the parties directed posting of all cases together for hearing.

9. Thereafter on 01.12.2015 the 5th respondent/Tahasildar filed a counter stating that the land which is the subject of matter of dispute is a vacant land on ground and the same is included in the land bank register. It is stated that when the petitioners tried to encroach on to the Government surplus land, a notice u/s.7 of A.P. Land Encroachment Act was issued on

10.05.2011. In paragraph 5 of the said counter it has been mentioned that the third petitioner herein, who is the son of the first petitioner, made an application for issuance of no objection certificate for construction on 292.90 sq. meters to the District Collector on 15.12.2010 and the 3rd respondent in turn directed the Tahasildar to make an enquiry with regard to the said application. After receiving the report of the then Tahasildar, the Joint Collector vide his order dated 24.01.2011 rejected the said application for issuance of N.O.C. Similar such application made by the 2nd petitioner was also rejected by the committee on 18.01.2011. Thereafter, the 2nd petitioner is said to have filed W.P.No.3160 of 2014 questioning the action of the authorities in refusing to process the said application. It is further stated that suppressing the pendency of the present writ petition, the interim orders passed by this Court in the present writ petition and the rejection of N.O.C., by the competent authority on 15.12.2010, W.P.No.3160 of 2014 was filed. By an order dated 16.10.2014 this Court disposed of the above Writ Petition directing the G.H.M.C., to take a decision on the application of the petitioner seeking permission to construct a building without insisting on production of no objection certificate from the revenue authorities. The said counter also refers to certain aspects which transpired in the court on 07.11.2015. The averments made in para 7

of the affidavit shows as if the deponent was present in the court and heard the arguments and rival submissions made on that date. But however it is admitted that the deponent was not present in the court on that day. On 09.12.2015 Sri D. Prakash Reddy, the learned Senior Counsel appearing for the petitioners, after referring to certain paras in the counter filed by the 5th respondent, stated that the averments are unwarranted and the same are not necessary to decide the said writ petition. Having regard to the circumstances, the Government Pleader for Assignment filed an additional counter on 16.12.2015 requesting the court to substitute the averments and contents made in para 7 of the counter filed on 01.12.2015 with the averments made in the additional counter. Counsel for the petitioners submits that he has no objection for the same, but however seeks time to file a reply. Having regard to the said circumstances, the said counter is taken on file.

10. Reply to the counters of 5th respondent came to be filed on 07.12.2015 and 18.12.2015. In reply affidavit dated 07.12.2015, it has been stated that the petitioners herein have highhandedly acted by removing the old structures standing on the said land since 1987 and when the 5th respondent was questioned about the same, she is alleged to have behaved in highhanded manner. Infact the 5th respondent is alleged to have stated that the action

of demolition was being done pursuant to the orders passed by this Court, which is incorrect. It is further stated in the counter that inspite of bringing to the notice of the authorities about the *status quo* orders passed by this Court, the 5th respondent has acted in a highhanded manner thereby violating the interim orders, which amounts to contempt.

11. In the additional reply affidavit filed by the writ petitioners it has been stated that the compound wall to the said property was constructed in the year 1982 and all the sheds in the premises were raised in the year 1988 and 1989 itself. It is said that new constructions are made only in 292.29 sq. meters of land after obtaining permission from G.H.M.C. It is said that five rooms, which were constructed about 32 years back, were demolished by the 5th respondent without following the due process of law. It is said that the entire process of demolition was recorded in mobile phones and the action of the respondents is contrary to law. Number of additional affidavits and counter affidavits are filed by the implead petitioner, who is appearing in person, ventilating his grievance over the subject property.

12. At this stage, it may also be necessary to refer to the averments made in the Contempt Case C.C. (SR)No.9722 of 2015 filed along with the leave petition.

The averments made in the affidavit filed in support of the Contempt Case are as under:

13. It is stated that the first petitioner is the absolute owner of the land admeasuring 6840 sq. yards in Sy.Nos.74 and 75 of Nandi Malsaiguda village, Charminar Taluq, Hyderabad having purchased the same from one Gaddam Venkata Swamy and when the children of G.Venkata Swamy interfered with their possession and enjoyment they filed civil suits and thereafter the suits ended in compromise. It is said that the first petitioner established a factory in a part of said site under the name and style of Shiv Metal works by obtaining license from Municipal Corporation of Hyderabad vide RC.No.320/II/Cir-2/MCH/88 dated 11.07.1988 and thereafter he also registered the said firm with Department of Industries vide Regn.No.01-08-46996-PMT-SSI dated 30.11.1990 and in the remaining part he also established a small scale industry in the name of his wife under the name and style of Sai Industry by obtaining trade license from Municipal Corporation of Hyderabad. They also obtained power supply. Subsequently, both the industries were merged under the name and style of M/s.Shiva Sai Metal Industries and registered the same with Central Sales Tax vide registration certificate No.CST/CHM/03/3/1427/90-91 dated 22.10.1990 and has been in possession and enjoyment of the same. While

things stood thus, the Tahasildar, Bahadurpura issued a notice dated 10.05.2011 u/s.7 of the APLE Act to 2nd and 3rd petitioners alleging that they are in possession of ceiling surplus land. On enquiry, the petitioner came to know that late G.Venkata Swamy submitted a declaration u/s.6 of ULC Act vide CC.No.D1/2359/76 with regard to subject property by showing 8105 sq. meters as excess land. It is averred that even though the petitioner is in physical possession, no notice was issued and further the ULC proceedings were issued subsequent to death of G.Venkata Swamy in his name, who died on 03.10.2005, moreover Urban Land Ceiling Act was repealed with effect from 27.03.2008. Challenging the said proceedings, he filed Writ Petition and also filed W.P.M.P. with a prayer that “direct the respondents not to dispossess the petitioners or otherwise interfere with the possession and enjoyment of petitioners of the land admeasuring 6840 sq. yards land in Sy.Nos.74 and 75 co-relating to TS No.17/1 & 17/2 of Nandi Muslaiguda village, Bahadurpura Mandal, Hyderabad.” This Court granted interim order on 15.10.2012 directing that “status quo, obtaining as on today as regards possession of the land in question, shall be maintained until further orders.” Thereafter, the second petitioner obtained building permission to the extent of 292.62 sq. meters and commenced construction. Meanwhile, Rabijeet Kaur and others filed an application

t o implead themselves in the writ petition as party respondents and they started harassing him with ulterior motive. Pursuant to the threats made by them, the petitioner lodged a complaint vide Cr.No.213 of 2015 of Charminar Police Station. While so, the implead petition was heard in part and the posted the matter to 13.11.2015. But the respondents herein without issuing any notice and even when the status quo order is in force, highhandedly, along with 20 constables and JCB, came to the site and started demolishing the entire structure along with the old shed. Due to the said demolition, which was done without any notice, the petitioner claims to have suffered a loss of Rs.35 Lakhs. It is further stated that if the respondents want to interfere with the possession and structure in any manner, they have to follow the procedure but not act on their whims and fancies. It is further stated that the respondents are acting to the tune of implead petitioners. It is further stated that in the interim order of this Court status quo regarding possession of the land was ordered, as such the construction of building with valid permission from the GHMC is no violation. It is stated that though the respondents 2 to 4 are not parties to the writ petition and they having knowledge of interim order participated in the process of demolition, as such the respondents have committed contempt by deliberately, wantonly and willfully disobeying the order of this Court.

14. Sri D.Prakash Reddy, the learned Senior Counsel appearing for the writ petitioner submits that except the ground of locus standi of the writ petitioner, the counters do not anywhere substantiate that the proceedings are in accordance with the provisions of the Urban Land Ceiling Act. He strenuously contends that the petitioners who have purchased the property in the year 1981 from one G.Venkataswamy under an agreement of sale dated 28.07.1981, are in possession of the property since then and as such taking possession of the property without issuing any notice to them is contrary to the mandate of the authorities. He submits that 10(5) notice was issued in the name of dead person, which act does not amount to compliance though the same was received by the daughter of the declarant. He submits that though the first petitioner is an agreement holder with his vendor, his possession cannot be doubted on account of the documents filed evidencing establishment of factory after obtaining necessary permission from the appropriate authorities. It is his case that the act of demolition, establishes that the petitioners are in possession of the property. He further submits that when the petitioners are the persons interested in the property being not only the owner of the property but also persons in possession and persons having interest over the property are entitled to be put on notice before taking possession of the surplus

land. He placed on record number of judgments to show that the entire proceedings are vitiated due to non-compliance of mandatory provisions and that the petitioners have to be declared as possessors. He also submits that the mandatory period of 30 days for taking possession u/s.10(6) of the Act is not complied with since possession was taken within one week from the date of service of notice u/s.10(5). It is his case that there is no proof to show that possession was taken in the year 2006 itself.

15. On the other hand, the Government Pleader for Assignment would submit that the petitioners have no *locus standi* to file the writ petition as they are neither legal heirs to the declarant nor do they have a legal right over the said property. He submits that all the transactions which took place after 1977 Act came into force are illegal and void in view of Section 5 of the Act. Even otherwise, he submits that the Government took possession of the land in the year 2006 itself and served a copy of the notice under Section 10 (3) and 10 (5) of the Act on the legal heir of declarant who did not respond to the said notices. It is urged that there is no material on record to show that the petitioners are owners of the property as admittedly they claim possession under an unregistered agreement of sale. In the suit filed by the petitioners, government was not a party to the said

proceedings as such they are not aware about the petitioners being the purchasers of the property, which is a vacant plot. He submits that in the year 2011, when the petitioners started encroaching on to the land admeasuring 294 square yards, the Tahsildar issued notice under Section 7 of the Land Encroachment Act vide proceedings No. E/901/2010, dated 10.05.2011. He submits that by the date of the interim order passed by this Court, the Government has already taken possession of the property and any activity done thereafter amounts to violation of the interim order. He further submits that without disclosing the factual aspects, the petitioner obtained a direction against G.H.M.C. for grant of building permission and basing on that they were raising construction in violation of the earlier interim order, to which suitable action was taken. He thus submits that neither the Writ Petition nor the contempt case has any merit.

16. The implead petitioner in W.P.M.P. No.22469 of 2013, who appeared in-person submits that his father purchased the land by way of a registered sale deed from Gaddam Kistaiah (brother of Gaddam Venkataswamy) to an extent of 970 square yards in the year 1983 vide document No.287 of 1983 but the averments show that they were never in possession of the property. According to him, the writ petitioners encroached onto the land of his

father and erected a compound wall around the total extent of 970 sq. yards land which he came to know in the year 2011. He also placed on record the suit relating to O.S.No.2208 of 1982 filed by his father against Gaddam Kistaian, Ranveer Singh (first writ petitioner) and Prakash Yadav, seeking declaration and injunction which was dismissed for default, and the proceedings initiated by him before the Land Grabbing Court, which were returned, in view of the pendency of the writ petition. In view of the above, he submits that he is a necessary party to the proceedings and that the plea of the petitioners that they are the owners of the land has to be rejected. He pleads that the possession of land to which he is legally entitled to may be directed to be handed over.

17. Insofar as the request of implead petitioners to come on record as respondents is concerned, the counsel for the writ petitioners did not seriously oppose their impleadment, but however he submits that the implead petitioners would get a right to claim a part of the property only if the writ petitioners succeeds in the writ petition. It is urged that if the Writ Petitioners loses their case, even the implead petitioner will not get a **morsel of the pie**. But since he also claims right over the property by way of a registered sale deed executed by one Gaddam Kistaiah in the year 1983, no prejudice would be caused to any of the parties if the implead petition is allowed.

Accordingly, W.P.M.P. filed for impleading the petitioners therein as proposed respondent is allowed and the arguments advanced on merits of the case are take note of.

18. Before proceeding further, it is to be noticed that neither the legalheirs of Venkatswamy nor the implead petitioners herein have challenged the proceedings initiated under the provisions of the Urban Land Ceiling Act as violative or contrary to law. Infact the legalheirs of Venkataswamy have not approached this Court with any relief. However, the implead petitioners approached this Court stating that their father purchased the land from one Kistaiah by way of registered sale deed which fact they came to know long after the death of their father, who was contesting his right by filing a suit against the encroachers including the writ petitioners. But the material on record does not anywhere indicate that the implead petitioners were in possession of the property in dispute. Therefore, the implead petitioners who are claiming the land by way of registered sale deed executed in 1982 i.e., after the Act 1977 came into force and which forms part of the total extent of land claimed by the writ petitioners, will get a right over the said land provided the writ petitioners herein are able to establish that they are in possession of the said property and have right over the same under an agreement of sale entered into with Venkataswamy. The

dispute between the implead petitioners and the writ petitioners, whom they claim to have encroached on to their lands, is a dispute on factual aspects which a civil court alone can decide, if this Court comes to a conclusion that the proceedings under the Urban Land Ceiling Act initiated against the writ-petitioners are void and contrary to the mandate of law.

19. The first question that falls for consideration is “Whether the Writ Petitioners have *locus standi* to file the present Writ Petition?”

20. To the preliminary objection raised by the Government Pleader, the counsel for the petitioners submits that the petitioners having purchased the same from the original owners under an agreement of sale, have come into possession and enjoyment of the same from the date of purchase, are persons interested in the land, and have every right to object the proceedings.

21. In order to appreciate the same it would be necessary to refer to Section 5 of the Urban Land Ceiling Act and Judgments relied upon.

Section 5 : Transfer of vacant land:—

[\(1\)](#) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of this Chapter, be selected out of the vacant land held by him after such

transfer and in case the entire excess vacant land cannot be so selected, the balance, or where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee: Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

22. A reading of Section 5 of the Act makes it clear that the same prohibits transfer of excess vacant land so selected as null and void.

23. In M/s. Star Home Constructions and 17 others v. State of A.P. and 3 others vide W.P. Nos.12701 & 12717 of 2008 this court was dealing with the situation where, after the Act 1976 came into force, the owners filed separate declaration u/s.6(1) on 14.09.1976. While the declarations were pending, the original owner obtained certificate from Special Officer u/s.2(o) of the U.L.C. Act, and thereafter sold an extent of Ac.7.32 guntas to Md.

Siddique and Md. Mohsin Ahmed under two registered sale deeds dated 01.04.1980 and 17.08.1981 as agricultural lands. Out of the said lands, the said two persons alienated land to an extent of Ac.4.32 guntas infavour of Ramkishore Badwa and 5 others, who later divided the said land into six plots each admeasuring 32 guntas. Later, one V.Nagarjun purchased plots and sold the same to Kakatiya Properties private limited under registered sale deeds, who inturn alienated the same to several other persons. In the said case, 8(1) notice was given and 8(3) notice was also given to the land owner for which he has not filed any objection. Final order u/s.8(4) was passed on 07.06.2007 and thereafter final statement was issued notice u/s.10(3) on 26.07.2007 and then 10.(6) on 29.08.2007. In the said case, the enquiry officer brought to the notice of the authorities about the death of the original owner and inspite of the same, no steps were taken to issue notices to the persons who purchased the lands by way of registered sale deeds. Infact the judgment of this Court in M/s. L.S. & Co., v. State AIR 1996 A.P., 157 relied upon categorically states that the scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statement and all other interested persons at every stage of the proceedings. In the said case, the E.O., brought to the notice of the U.L.C. authority the factum of death of Balakrishnareddy but the special officer

failed to take any steps to issue notice to his son or to the persons who were found to in possession of the land as evident by the report dated 14.09.2006 of the enquiry Officer and as all the transactions took place were by way of registered sale deeds. Further, the Enquiry Officer in his report dated 15.04.1996, categorically stated that P.L.N.Reddy was in possession of land and his father P.Balakrishna Reddy expired. He also refers to the plots being sold to several persons during his life time. Under those circumstances, the Court held that issuance of notice to persons in possession was necessary before any order is passed under the U.L.C. Act. But, it is to be noted that the case on hand differs totally to the one referred to above.

24. As observed earlier, in the instant case, the Enquiry Officer served notice on the declarant, who was alive by then, calling upon him to file objections, but he did not do so and hence the authorities proceeded further by issuing provisional order under Section 8. Apart from that the revenue records do not indicate that the petitioners are the owners or possessors of the property in dispute. Hence, the said judgment may not be of any help to establish that the petitioners have *locus standi* to file the writ petition and also for issuance of notice before taking action under U.L.C. Act.

25. The next authority relied upon by the learned

Senior Counsel, in support of the plea of maintainability, is the judgment of this Court in **A.Appa Rao v. Competent Authority Defence Estates Officer and Competent Authority**^[1]. It was a case where one C.P.Thamaskoty who was the owner of property in Bungalow No.184, sold the same to P.Kuppuswamy through a sale deed dated 16.02.1962. Thereafter Kuppuswamy filed a declaration under Section 6 and also filed an application under Section 20 of the Act before the Secretary, Revenue Department for exemption from the provisions of the Act. The first respondent who processed the declaration, issued a letter dated 14.12.1977 stating that land is not covered under the provisions of Act. Later he again issued another letter dated 19.06.1978, requesting Kuppuswamy to file declaration, in view of the charges in the cantonment. A fresh declaration was filed by Kuppuswamy on 04.09.1978, and thereafter he sold the property in favour of the Petitioners on 30.04.1981 by way of a registered sale deed. Dealing with the aspect of *locus standi* of the petitioners, the court held that sale in favour of the petitioners does not have the effect on the holdings of the concerned person and holdings have to be reckoned irrespective of subsequent transfer. It has been held that the petitioner cannot claim independent rights, in negation of the provisions of the Act but held that they would step into the shoes of their vendor to carry the

proceedings. But the proposition of law laid down by the learned Judge will not apply to the case on hand since the petitioners herein claim to have purchased lands under an agreement of sale in 1981, which was already declared as excess land by the declarant under Section 6(1) of the Act.

26. However, a Division Bench of this Court in **Parchuri Ratnakar Rao V. State of A.P.**^[2] has exhaustively dealt with rights of the parties who purchased land after the Act 1976 coming into force. The said case arose under the provisions of the Land Acquisition Act. In the said case, one V.Laxmaiah filed declaration under section 6 of the Act on 12.08.1976 as Kartha claiming to have purchased from the joint family funds. He showed his wife, four major sons and two minor grand children as members of the family. After considering the same, Special Officer issued final statement on 16.09.1981 u/s.9 of the Act and declared that the landowner viz., V.Laxmaiah was holding 18,328 sq. meters of excess land. This was followed by notification u/s.10(3) and thereafter notification on 24.10.1992 u/s.10(6) of the Act. Possession of land was taken on 16.11.1998. The appellants therein, who purchased the land from the heirs of late V.Laxmaiah prayed for quashing of the final statement dated 16.09.1981 and notifications issued u/s.10(3) and 10(6) on the ground that

in terms of G.O.Ms.No.733 dated 31.10.1998 land belonging to V.Laxmaiah is liable to be exempted. It was pleaded that the land in question was neither in urban land nor it will be treated as vacant land under 2(q) of the Act. The Court held as under :-

“42. Thus, the decisional law is to the effect that the exemption under G.O. Ms. No.733 is automatic notwithstanding vesting of surplus land in the Government, if the proceedings under Chapter-III of the Act remained inconclusive by 31.10.1988, the date of G.O. Ms. No.733. However, the preponderance of judicial opinion is that any sale of the surplus land after the Act is null and void and it is only the original owner that can seek exemption under G.O. Ms. No.733 and not any purchaser after the Act. If the statutory proceedings become final and conclusive, in the absence of any statutory appeal or objection by the original owner, the purchaser under a null and void sale cannot challenge such proceedings.

43.By the date of purchase by the appellants on 26.8.1997, all the proceedings under Chapter- III of the Act including acquisition of vacant land in excess of ceiling limit under Section 10 were completed with the last notice under Section 10(5) on 17.6.1992 and the last memo, under Section 10(6) directing the field staff to take possession on 27.3.1993. Only the ministerial act of taking physical possession happened on 16.11.1998 and hence it may not be open to the appellants to seek any exemption under G.O. Ms. No.733. The appellants whose purchase was after the Act and after the proceedings under Section 10(6) cannot challenge the earlier statutory proceedings on the strength of their purchase which is null and void. Even otherwise when the original owner or any of his legal representatives never raised any objection or claim so far, including any benefit under G.O. Ms. No.733, it is not open to the appellants to

make any such claim. The contention that the land did not fall under 'vacant land' under Section 2(q) or 'urban land' under Section 2(o), is not open to the appellants when the original owner himself filed the declaration on the premise that the land is urban vacant land and never retracted from the same. The alleged bona fide belief of the appellants in the land being exempt under G.O. Ms. No.733 is rendered doubtful by their silence since their purchase in 1997 and even after the officials taking over possession in 1998 till 2005. Irrespective of whether the abnormal and unexplained delay in approaching the Court defeats the request of the appellants for the exercise of the equitable jurisdiction of the High Court under Article 226 of the Constitution of India or not, the appellants have to fail for the other reasons elaborated above. Hence, the impugned orders of the learned Single Judge dismissing the writ petitions at the admission stage need no interference.”

27. In **Mahesh Cooperative Housing Society Ltd., Secunderabad v. Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and others**^[3], another learned single judge of this Court while dealing with the issue of *locus standi* of the petitioner therein, who purchased lands under an agreement of sale after coming into force of U.L.C. Act, negated the plea of the petitioners holding as under:

“11. The principal contention of the learned Counsel appearing for the petitioner-society is that the land in S.No.124 cannot be treated as vacant land within the meaning of Section 2(q) of the ULC Act. He further submits that the petitioner-Society being a irrevocable power of attorney from the landholders comes within the meaning of "to hold" as defined in Section 2(1) of ULC Act and therefore, is an aggrieved party and so the petitioner-society is entitled to challenge the proceedings of the 1st and 2nd respondents. In support of his submissions, reliance has been placed on the decision of our High Court in State of A.P. v.

Smt. A. Bharathi, 2002 (4) ALD 638 = 2002 (4) ALT 334 (DB), and the decision of Supreme Court in State of Karnataka v. Shankara Textile Mills Ltd., (1995) 1 SCC 295 and Govt. of A.P. v. H.E.H., THE Nizam, Hyderabad, (1996) 3 SCC 282 = 1996 AIR SCW 1715 = 1996 (3) (SCSN) 28. In the first cited case of State of A.P. v. Smt. A. Bharathi, a Division Bench of our High Court held that the phrase "to hold" connotes two concepts i.e., physical possession or legal title to the vacant land and that both the concepts stand attracted to the concept 'hold' under the Land Ceiling Act. In the cited case, on the date of the ULC Act coming into force, the vendor of the writ petitioner therein has parted with the possession of the land under an agreement of sale and subsequently executed registered sale deed, after issuing the statutory notice under Section 26 of ULC Act. Coming to the facts of the case on hand, the purchase of land by the petitioner-society under agreements of sale is after the ULC Act came into force. No statutory notice has been issued by the landholders to the Competent Authority as contemplated under Section 26 of ULC Act before transfer of land in favour of the petitioner-society. Therefore, the cited decision has no application to the facts of the case on hand. In the case of State of Karnataka v. Shankara Textile Mills Ltd., the Supreme Court while dealing with Karnataka Land Revenue Act, 1964 has held that in the absence of permission for conversion of agricultural and non-agricultural land mere non-user of the land for agricultural purposes or purposes subservient thereto or user for non-agricultural purpose would not have the effect of converting the land into non-agricultural land. Much emphasis has been laid by learned Counsel on Para 9 of the judgment, which reads as under:

"9. Thus the High Court has proceeded on the basis that there is no specific finding regarding the nature and usage of the land as agricultural and hence, the Special Deputy Commissioner could not treat it to be an agricultural land merely on account of the fact that permission for conversion of the land under Section 95(2) of the Revenue Act was sought (but admittedly not given). Secondly, it has proceeded on the footing that the land in question does not satisfy any of the characteristics as required under the definition of the 'land' in Section 2(18) of the Act, i.e., Karnataka Land Reforms Act investing the authorities with the jurisdiction to take proceedings under Section 79-B of the Act. We are afraid that the High Court has misread the facts on record. THE consistent stand taken by the authorities is that the land was never converted for non-agricultural use as required by the provisions of Section 95(2) of the Revenue Act. THE mere fact that at the relevant time, the land was not used for agricultural purpose or

purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would in particular, render the provisions of Section 95(2) of the Revenue Act, nugatory. Such, an interpretation is not permissible by any rule of the interpretation of statutes. What is further, the respondent-company had itself filed a declaration under Section 79-B(2)(a) of the Act stating therein that the entire disputed land was agricultural land and had claimed exemption from the provisions of the said Section 79-B under Section 109 of the Act on the ground that the land was mortgaged to the Mysore State Financial Corporation. We are, therefore, unable to agree with the view taken by the High Court on the point."

Reverting to the facts of the case on hand, the petitioner-society purchased the lands from the declarants for the purpose of house plots to its members. THE very purpose for which the lands have been purchased under agreements of sale from the landholders makes it clear that it is no more an agricultural land and thus it is a "vacant land" within the meaning of the provisions of ULC Act. THE facts in the case on hand and the facts in the cited case are distinct and therefore, the proposition of law laid down in the cited case is of no help to the petitioner. In the third cited decision of Govt. of A.P. v. H.E.H., the Nizam, Hyderabad, the Supreme Court held that a party who purchased property under registered conveyance deed from the declarant after draft statement was served under Section 8 of ULC Act has a right to file an appeal. The cited decision has no application to the facts of the case on hand since it is not the case of the petitioner-society that it purchased the land under registered conveyance deed after the draft statement was served on the landholders."

28. In the instant case, the facts which are born out from the record show that the writ petitioners herein purchased the above said property by way of agreement of sale from one G.Venkataswamy in the year 1981. Admittedly, the said transaction was after Act 1976 came into force and after the declaration under Section 6(1) of the Urban Land Ceiling Act by G.Venkataswamy. Since

G.Venkataswamy failed to execute a registered sale deed, the petitioners herein filed O.S.No.532 of 1987 which was decreed on 27.11.1995. But it is to be noted that from 1981 onwards, no steps were taken by the petitioners to get their names mutated in the revenue records nor did they take any steps to get the decree executed.

29. Having regard to the facts and circumstances of the case, wherein, the alleged sale took place by way of an agreement of sale after coming into force of the Act, the transaction itself would be null and void in view of Section 5(2) of the Act. Hence, the Writ Petitioners have no *locus standi* to question the proceedings.

30. Even assuming for the sake of argument that the petitioners have *locus*, the question that falls for consideration is “whether the petitioners are in possession of property as on 27.03.2008 and whether they are entitled for a statutory notices before taking possession?”

31. In order to deal with these aspects, it would be necessary to refer to the provisions of Urban Land Ceiling Act, 1976, which are as under :

32. The Government of India enacted the Urban Land Ceiling Act to provide for imposition of a ceiling on vacant land in urban agglomeration and for acquisition of such land in excess of the ceiling limit. It has also been

enacted to regulate the constructions of buildings on such land and for the matters connected therewith with an intention to prevent concentration of urban lands in the hands of few persons and regulations and profiteering therein. The relevant provisions which are germane for deciding the case on hand are Section 5,6,8,9 and 10. As per Section 5 of the Act there is a prohibition on the transfer of vacant land in excess of ceiling limit and the said provision render such transaction null and void. Section 6 of the Act imposes obligation on the person holding vacant land in excess of ceiling limit at the time of commencement of the Act to file a statement before the competent authority disclosing the excess land held by him and also specifying the vacant land which is the ceiling limit which he deserves to retain. Section 6(2)(b) of the Act states that if any person holds at the time of commencement of the Act, vacant land in excess of ceiling limit, then the authority will serve a notice on the person holding land in excess of the ceiling limit, requiring to file, within such period as specified in the notice, the statement referred to in sub section 1. Section 8 of the Act deals with preparation of draft statement with regard to vacant land held in excess of ceiling limit. The said provision of law obligates the competent authority to prepare a draft statement on the basis of the statement filed u/s.6 of the Act after holding an enquiry. Sub section 3 of Section 8 mandates that draft statement shall be

served on the concerned person with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. Section 8(4) obligates the competent authority to consider the objections received and pass orders after giving the objector a reasonable opportunity of being heard. Section 9 of the Act which deals with final statement, mandates the competent authority to pass orders on the objections submitted u/s.8 and to determine the vacant land held by the person concerned and to serve the said statement on the persons concerned as per the procedure under sub section 3 of Section 8. Section 10 of the Act mandates that after service of the statement u/s.9 the competent authority shall cause a notification, giving particulars of the vacant land and also provide an opportunity for filing claims by all the persons interested. It also refers to publication of the same in official gazette. Sub-section 2 of Section 10 obligates the competent authority to determine the nature and extent of the claims filed under section 10(1) and to pass orders. Under sub section 3 of section 10 a notification has to be published by the competent authority declaring the excess vacant land and the said provision deals with vesting of the property with the Government. Sub-sections 5 and 6 of Section 10 deal with procedure of taking possession of excess land. In the light of the provisions of law, it is now required to be

seen as to whether the authorities in the instant writ petition conducted the proceedings in accordance with the provisions of law and whether the impugned proceedings are sustainable in view of the authorities referred to by either side.

33. As stated earlier, the petitioners claim themselves to be in possession of land by virtue of an agreement of sale executed in the year 1981 and also the decree which has been passed by the Civil Court in the year 1995. As stated earlier, though they claim to be in possession of the land no steps have been taken by them to get their names mutated in records. Had they got their names entered in the revenue records, there would have been some force in the argument.

34. It is also important to note that Section 6 of the Act which deals with filing of the statement refers only to the person holding vacant land in excess of ceiling limit at the time of commencement of this Act. As stated earlier, Section 6(2) of the Act empowers the competent authority to serve notice on the person holding land in excess of ceiling limit on the date of commencement of the Act. As seen from the record, after 6(1) declaration, enquiry was conducted under the Act and provisional orders u/s.8(1) and (3) were issued on 06.07.1995 declaring Venkataswamy as surplus land holder to an extent of 8105 sq. meters. The draft statement u/s.8(1) shall be

only in respect of a person who has filed the statement u/s.6 and the draft statement u/s.8(3) shall be served in such manner on the said person concerned with a notice stating that any objections to the draft statement shall be made within 30 days of service. As the declarant was alive by then, the draft order and statement u/s.8 was sent to the declarant by registered post with acknowledgment due along with the required notice. The postal letter was returned with an endorsement as "seven days absent since returned to sender". Thereafter one Narasimha Reddy the Enquiry Officer of the U.L.C. office was directed to serve the orders u/s.8(1) and notice 8(3) of the Act on the declarant. The record discloses that Sri Venkataswamy acknowledged the same on 20.10.1995. As there was no response, on 04.10.1996, Sri Narasimha Reddy the E.O., of U.L.C. office, was directed to inspect the lands and inform the land dues along with list of encroachments if any within 7 days. Since no objections are filed by Venkataswamy, at any point of time in spite of service of notice, though alive, final orders u/s.8(4) were issued on 23.11.1996. The orders u/s.8(4) were served on the wife of the declarant on 06.02.1997. The same acknowledged by her. Thereafter, notice u/s.9 of the Act was received and 10(1) notification was also issued on 20.01.1998 giving particulars of vacant land and also filing claims by all the persons interested and the same was published in A.P.

Gazette on 05.03.1998. Since none objected to any of these proceedings, 10(3) notification was issued on 26.09.2002 which was published in the Gazette vide No.264 dated 28.11.2005. It is to be noted that Venkataswamy was alive till issuance of 10(3) notification, but they did not take recourse to any legal proceedings. No information was furnished to the authorities with regard to the death of the declarant. Subsequently, 10(5) notice was issued on 19.12.2005, which was served on the daughter of the declarant by name Pochamma on 03.02.2006. Thereafter possession was taken in the month of February 2006. It is true that there was no panchanama prepared on the date of taking possession but proceedings D/1 2359/76 dated 10.02.2006 issued from the Office of Special Officer, competent authority, urban land ceiling, signed by one Bhanu, show that Collector, Hyderabad was requested to issue instructions to the M.R.O., Bahadurpura, for taking possession of the land which vested with the Government u/s.10(3) of the Act. Copy of the said notice was marked to M.R.O., Bhaadurpura and also to D.Satataiah, the Enquiry Officer, U.L.C. Thereafter on 16.02.2010 the property was handedover to the Tahasildar for safe custody under a panchanama.

35. The learned Senior counsel for the petitioner strenuously contended that if really the authorities took possession of the land in the month of February 2006 itself nothing prevented them from preparing panchanama and that the proceedings which are prepared in the year

2010 are an after-thought and created. If really possession of land was not taken in the year 2006, and if the authorities wanted to create a document to that effect, they could have easily created a panchanama and inserted the same in the records evidencing possession being taken in the year 2006 itself. It is also to be noted that there were no proceedings upto the year 2011, to the knowledge of the authorities which warranted creation of a fake panchanama, in 2010. Therefore, the argument of the learned Senior counsel that these proceedings are an after thought and that no possession was taken in 2006, cannot be accepted.

36. It is to be noted that the Government was not a party to any of the proceedings. It may be true that the petitioners might have obtained permissions from the concerned Department for setting up of an industry but definitely it cannot be said that the revenue authorities were put on notice about obtaining such permission. It is not the case of the petitioner that such permissions were communicated to the revenue authorities. Apart from that, the revenue authorities were sending notices to the persons in whose names the lands stand in their records. The petitioner herein refers to execution of gift deeds in the name of respondents 2 to 7 and also to mutate their names in the records but no document has been placed to show mutation of names of the kith and kin of the first

petitioner in the revenue records. If any transaction takes place among the writ petitioners inter se, the respondents cannot be put to blame on the ground that no notice was served on them before initiating any proceedings. As referred to earlier, notice u/s.10(5) of the Act was issued in the name of Venkataswamy but since he was no more, (fact not known to authorities) it was received by his daughter by name Pochamma, who did not contest the matter by raising objections to the said notice. Infact even much prior to the issuance of 10(5) notice, the said Venkataswamy (while he was alive) was served with a notice issued under Section 8 of the Act. But he did not take any steps. In a situation like this, can it be said that the action of the authorities is contrary to the provisions of the Act.

37. The learned counsel for the petitioner also relied upon the following judgments in support of his plea.

38. In **State of U.P. v. Hariram 2013(4) SCC 280** one Hariram filed a statement on 28.09.1976 giving details of vacant land he was holding in excess of the ceiling limit as prescribed u/s.6 of the Act. Competent authority served draft statement u/s.8(3) on 13.05.1981 calling for objections. Since no objections were received, an order effecting holding of excess land was passed u/s.8(4). Later, on 12.06.1982 a notification u/s.10 of the Act was issued and the same was published in the gazette.

Thereafter a notification was issued on 22.11.1997 stating that the land shall be deemed to vest in the Government. Aggrieved by the issuance of notice u/s.10(5), the said Hariram preferred an appeal u/s.33 of the Act on 19.06.1999 contending that before passing an order u/s.8(4) of the Act, no notice as contemplated u/s.8(3) of the Act was served on him. Appeal was allowed and the order dated 29.06.1981 was quashed. Aggrieved by the same, the State of U.P., preferred a writ Petition before the High Court, Allahabad. The Hon'ble High Court took the view that sub section 3 of Section 10 does not envisage seeking physical possession of surplus land for which proceedings under sub section 5 of section 10 have to be followed. The Division Bench confirmed the said judgment. Challenging the same, the Government preferred a SLP. The argument before the Apex Court was that the High Court committed an error in interpreting subsection 3 of Section 10 of the Act and that the expressions deemed acquisition and deemed vesting which find place in Section 10(3) of the Act would take not only de jure possession but also de facto possession. Referring to various provisions of the Act, it was held that the language used in Section 10 envisages various possibilities of taking possession u/s.10(3), 10(5) or 10(6) of the Act. Dealing with the same, the court observed as under :

39. The above mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the landowner 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.

41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this Judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. 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 18.03.1999. The 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 landowner or holder can claim the benefit of Section 4 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 4 of the Repeal Act.”

39. But the said judgment may not apply to the case on hand for the reason that in the above said cases the

original owner who gave details about the excess land was still holding the land and possession was not taken by the authorities. In the instant case, though the petitioners claim to be in possession of land, they could not substantiate the same by producing necessary documents. It is also to be noted that the title passed on to the subsequent purchaser by way of a registered sale deed, which is not so in the case on hand.

40. **BHEL (R&D) Employees' Co-operative Housing Society Limited, Hyderabad, rep.by its President, C.N.Srinivasan v. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (since repealed) and another** ^[4] was a case where the petitioner/society entered into an agreement with one Pranothi Srihari and 8 others in respect of certain land under an agreement. The vendor Smt. Pranothi Srihari got the same under a Will dated 24.07.1976 who purchased the lands under a sale deed dated 29.03.1966 from one Deoni Mallaiah. Mallaiah in turn purchased the land under a sale deed dated 08.10.1963 from the original pattedar M.Syamsundar. Rule 5(2)(a)ii) of U.L.C. Rules provides that draft statement prepared under section 8(1) of the Act shall be served together with a notice under sub section 3 of Section 8 on all other persons so far as may be known or are likely to have, any claim or interest in the ownership or possession or both of the vacant

lands by sending the same to the person concerned i.e., 1) in case of landholders of vacant land to the address given in the statement given in pursuant of sub- Section 1 of Section 6 and 2) in the case of others to the last known address. Since none of them was put to notice by the first respondent while exercising *suo motu* powers of revision in deciding the surplus lands held by the declaration, the order dated 11.02.2008 and the consequential order were declared nonest. Situation on hand is totally different. In the instant case, notice under Section 8(3) of the Act was not only sent by regd. Post with ack. due but the Enquiry Officer personally served the said notice on the declarant on 20.10.1995. He did not file any objections to the said notice. Hence, the judgment relied upon by the counsel for the petitioner with regard to taking possession without notice may not be of any help to him.

41. In **Ashraful Madaris Educational Society, rep.by its Secretary Mr. Syed Mujebuddin v. State of Andhra Pradesh, rep.by its Principal Secretary, Revenue Department and others**^[5], a learned single judge of this court was dealing with a case where the petitioners were running a school in the land and possession of the same was taken without putting on notice before passing orders u/s.10(3)and 10(5) of the Act. This Court upheld the objections stating that no record was produced to show that possession was taken before coming into force of the

Repeal Act.

42. In **P.Vijaya Jyothi v. State of Andhra Pradesh rep.by its Principal Secretary, Revenue Department and another**^[6], this Court was dealing with the situation where an order was made against the dead person inspite of enquiry officer informing the urban land ceiling authority about the death of the original owner. In view of the above, the Court held that the order passed against a dead person was nonest in the eye of law.

43. In **Birguban Singh and others v. Land Acquisition Officer, R.D.O., Hyderabad East Division, R.R. District and another**^[7], a Division Bench of this Court held that the effect of Section 42 of the Ceiling Act is that any provision in any other law inconsistent with any of the provisions of the Ceiling Act, has no effect.

44. In **State of Assam v. Bhaskar Jyoti Sarma and others**^[8], the Apex Court while dealing with a situation where an erstwhile owner was dispossessed of land without issuing any notice, held that the erstwhile owner, that is the father of the respondent therein, had not made any grievance based on breach of Section 10(5), at any stage during his lifetime, implying thereby that he had waived his right to do so. As the owner failed to do so, forcible taking over possession would acquire legitimacy

by lapse of time. In such a situation the court held that the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act.

45. Therefore, the judgments relied upon by the counsel may not come to his rescue. As seen from the judgments referred to above, in all the cases, the Writ Petitions were filed by the persons who were not served with statutory notice though the claimants were in legal possession of the land. All the transactions in the said cases took place by way of registered sale deeds, their names were recorded in the official registers and were in possession of the property. As referred to above, the case on hand is different. No effort was made by the writ petitioners to get the documents registered inspite of getting a decree against the original vendor while he was still alive. No reasons are forthcoming as to why the writ petitioners have kept quiet without getting their names entered in revenue records after obtaining the decree in the year 1995. The counsel for the petitioners strenuously contends that since the petitioners are running a metal box unit in the said premises the authorities have no right to say that they have no knowledge about the same. It may be true that the petitioners have obtained license, but they are alleged to have purchased the said land under an agreement of sale after the Act came into force, which transaction is void in view of Section 5 of the Act. Further,

it needs to be mentioned here that the authorities who granted permission for running of the industry and the authorities who deal with the provisions of land ceiling Act are different and the second respondent may not be knowing about the same for the purpose of giving a notice u/s.5. A perusal of the material on record further discloses that after taking possession of the property in the year 2006 and handing over of the same to the Tahasildar in the year 2010, the petitioners herein encroached on to the land which made the authorities under the Urban Land Ceiling Act to issue notice u/s.7 of the Act seeking their eviction. In spite of receiving the said notice and rejection of N.O.C., for construction of a building in the year 2012, the petitioners herein have approached this Hon'ble court by way of filing a Writ Petition suppressing all the proceedings and obtained a direction to the M.C.H., authorities for considering their request for building permission without insisting for NOC from revenue authorities. This attitude of the petitioners speaks volumes as no explanation is forthcoming as to why the petitioners suppressed the interim orders passed by this Court in the present writ petition and the rejection of N.O.C. by the authorities after passing of the interim order.

46. In view of the judgment of the Division Bench of this Court in **Parchuri Ratnakar Rao (1st supra)** and also the judgment in **Mahesh Cooperative Housing Society Ltd.,**

Secunderabad (3rd supra) it has to be held that the petitioners have no *locus standi* to question the same since they entered into an agreement of sale after the Act came into force, which is non-est in the eye of law. Apart from that, by the date of decree, the authorities have commenced the land acquisition proceedings and the order under 8(1) along with a notice under section 8(3) were served on the original holder by name Venkataswamy, by way of regd. Post with ack. Due and also in person through the enquiry officer. Hence, it can be said that the transaction entered into is void and non-est in view of Section 5 of L.A. Act and as such the petitioners have no right to question the proceedings. Further, as seen from the record, possession of the land was taken even before the cut of date i.e., in the year 2006 itself, which fact is reflected in the record and also in the panchanama prepared, later in point of time. Though a comment is made about the panchanama being prepared in the year 2010, while handing over the land to the Tahasildar, but it is to be noted that the respondents would not have anticipated initiation of these proceedings, at that point of time so as to create a false panchanama. If really they intended to create a panchanama, evidencing taking possession, they could have created a panchanama showing taking possession in the year 2006 itself. Since the implead petitioners also stand on the same footing as that of the petitioners, as they claimed to

have purchased the property after the declaration, I see no ground to grant any relief to the implead petitioners as well.

47. Coming to the Contempt Case, the facts which lead to filing of the Contempt Case are narrated in paras 12 and 13 of this Order, hence, it may not be necessary to reiterate the same. The question that falls for consideration is whether in the given set of circumstances, can it be said that the respondents in the Contempt Case have violated the order passed by this Court?

48. In view of the finding given with regard to the locus of the writ petitioners in filing the present Writ Petition, the question of respondents violating any of the orders would not arise. Even otherwise on merits it is to be noted that after taking possession of the property in the year 2006 and handing over of the same to the Tahasildar in the year 2010 itself the petitioners herein encroached on to the land which made the authorities under the Urban Land Ceiling Act to issue notice under Section 7 of the Act seeking their eviction. In spite of receiving the said notice and in spite of rejection of N.O.C., for construction of a building in the year 2012, the petitioners herein have approached this Hon'ble Court by way of filing a Writ Petition suppressing all the earlier proceedings. By an

order dated 16.10.2014 this Hon'ble court directed the Authorities to consider the request for permission without insisting on "No objection certificate". It is to be noted that no objection certificate was rejected by the Revenue Authorities on an application made by the petitioner in view of the fact that possession was taken long back. This attitude of the petitioners speaks volumes as no explanation is forthcoming as to why the petitioners suppressed the interim orders passed by this Court in the present writ petition, the rejection of N.O.C. by the authorities after passing of the interim order while filing the writ petition. There appears to be a *prima facie* case where the petitioners have encroached on to the land and started raising constructions.

49. The second ground urged is that the contemnors not only demolished the existing structures but also the old structures which were existing in the site since 1988. There is no material to that effect except some photographs of tin sheets being removed. Whether the tin sheets were raised in the year 1988 or after 2006 is a matter which requires adjudication before a competent civil court by adducing legal evidence.

50. The last ground urged by the learned counsel for the petitioners is that the respondents herein violated the order of *status quo* granted in the year 2012 by trespassing into the land and removing the structures. It is

true that there was an order of *status quo* with regard to the possession as on 15.10.2012. But, as held earlier, the record reveals that the Government took possession of the land in the year 2006 itself and a letter was also issued to the Tahasildar in the year 2006 itself to that effect. Though Panchanama was not prepared at that time, but that by itself cannot be a ground to say that possession was not taken. Proceedings C.C.No.D1/12359/76 dated 10.02.2006 issued from the Office of Special Officer show that Collector was requested to issue instructions to Mandal Revenue Officer to take possession of land. The panchanama executed in the year 2010, and notice u/s.7 of the Land Encroachment Act which were issued prior to the filing of the Writ Petition, clearly establish taking possession of the land prior to the cut off date. Therefore, even on merits it cannot be said that there was any willful disobedience of the order of this Court and accordingly, the Contempt Case is liable to be dismissed.

51. Viewed from any angle this Court is of the view that there are no merits in the Writ Petition and the Contempt Case and the same are dismissed. Though the implead petition is ordered, but the arguments of the party-in-person with regard to their right over the property lack merit as the said property was purchased after the declaration under Section 5 of the Act. There shall be no

order as to costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 30.03.2016
GM

[\[1\]](#) (2009)4 ALT 308
[\[2\]](#) 2006(5)ALD 132
[\[3\]](#) 2005(6)ALD 772
[\[4\]](#) (2012(6) ALT 105)
[\[5\]](#) 2014(1)ALT 214
[\[6\]](#) (2014(5) ALT 650)
[\[7\]](#) (1993(2) ALT 173(D.B)
[\[8\]](#) (2015(5) Supreme Court Cases 321