THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 26833 of 2005 and 26834 of 2005

COMMON ORDER:

1) Both these writ petitions are filed to declare G.O.Ms.Nos.1982 and 1983 Revenue (UC-II) Department, dated 19.11.2005, issued by the first respondent, as illegal and contrary to G.O.Ms.No.456 dated 27.9.2002.

2) The facts which lead to filing of the present writ petitions are as under:

The petitioner in both the cases is one and the same. He claims himself to be the absolute owner and possessor of land admeasuring Ac.2.30 gts., in Sy.No.129 (old) of Yousufguda Village, Khairatabad Mandal, Hyderabad, corresponding to Sy.No.31 of Babbuguda Village, Balanagar Mandal, Ranga Reddy District. It is said that originally the said property belonged to Sir Vicarul-ul-Umra and was one of the items in the partition suit bearing O.S.No.47 of 1965. The father of the petitioner by name Mohd. Nizamuddin, was a party to the partition suit and was also a legal heir of late Nawab Mumtazim Zam. The petitioner herein, as a legal heir, claimed to be in possession and enjoyment of the said property. When the revenue authorities tried to interfere with his enjoyment, he filed O.S.No.742 of 2001 on the file of the Principal Junior Civil Judge, West and South, Ranga Reddy District, wherein an exparte interim injunction was granted in I.A.No.2037 of 2001. He also claims to have filed O.S.No.533 of 2002 against the Commissioner, Kukatpally Municipality. While things stood thus, the third respondent and her sister filed L.G.C.No.67 of 2001 under the provisions of the Land Grabbing Act against various persons. They also filed W.P.No.16541 of 2002 before the Hon'ble High Court, in which the writ petitioner was arrayed as seventh respondent, which was dismissed on 10.12.2002. It is said that thereafter, the third respondent approached the second respondent for regularization of the land to an extent of 3999 square meters in the said survey number, by depositing necessary fees, in pursuance of G.O.Ms.No.456 dated 29.07.2002. When the said application was forwarded to the first respondent, the petitioner filed W.P.No.17520 of 2004, seeking a direction that the said application cannot be considered in view of the pendency of civil disputes between the parties in respect of the very same land. While dismissing the said writ petition, the Court observed that the Government will not blindly consider the claims of respondent Nos.3 and 4 therein for regularization of land, without taking note of disputes pending between the parties. Against the said order, the third respondent preferred Writ Appeal (SR) No.107434 of 2004 which was dismissed on 28.12.2004. Thereafter, the impugned G.Os. came to be issued, in exercise of power vested under Section 20 (1) (a) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") exempting the excess land from surrender/regularization of surplus land, ignoring the objections raised by the petitioner. It is said that the exemption which was granted was in contravention of clause 3 (b) to (e) of G.O.Ms.No.456, dated 29.07.2002.

3) By an order dated 16.12.2005, this Court, while admitting the writ petition granted interim suspension.

4) A counter came to be filed by the third respondent stating that G.O.Ms.Nos.1983 and 1982, permitting the third respondent to retain 1000 square meters under Section 4 (1) of the Act is in accordance with law. It is stated that the writ petitioner has filed the present writ petitions suppressing the relevant material and also mislead this Court by making false and baseless allegations, in W.P.No.17520 of 2004. It is further urged that the petitioner has played fraud in obtaining injunction order before the Civil Court and the very filing of the suit against the government officials is an abuse of process of law. It is stated that the suit itself is not maintainable, as the Government is owner of the land, as on the date of filing of the suit, in view of the notification issued under Section 10 (3) of the Act. Hence, pleaded that mere filing of the suit

does not preclude the government to exercise its statutory powers and no injunction can be issued to stop the statutory powers to be exercised by the Government under Sections 20 and 23 of the Act. Para Nos.7 to 15 of the counter affidavit refers to the litigation in respect of the property and the manner in which the petitioner came into possession of the property. It is stated that the petitioner came into possession of the property by way of gift deed No.3636 of 1975 dated 26.12.1975, executed by late Venkataramamma in favour of the petitioner.

5) While things stood thus, the Act, 1977 came into force on 17.02.1976, and declaration under Section 6 (1) of the Act was filed by late K.Rama Chandra Rao, father of the third respondent. At the same time, the father of the third respondent filed an application under Section 20 (1) (a) of the Act seeking regularization of the surplus land, for construction of a hospital for public purpose as the husband of the third respondent is a doctor by profession. However, the government took possession of the land on 19.03.2001. Challenging the same, the third respondent preferred W.P.No.9955 of 2001. In the statutory appeal filed under Section 33 of the Act, the Commissioner of Appeals stayed all further proceedings. At that stage, the Government issued G.O.Ms.Nos.455 and 456 dated 29.07.2002, inviting

applications from the general public and the excess land owners, for regularization of their respective extents by paying compensation to the Government. After withdrawing the statutory appeal, the third respondent approached the Government seeking regularization under G.O.Ms.No.456. The Special Officer and Competent Authority, Urban Land Ceiling, directed the Government to receive the compensation and send the necessary proposals to the Government. Accordingly, the third respondent paid a sum of Rs.24,94,800/- and submitted necessary documents along with an application on 17.09.2002. The averments in the counter further show that in the suits filed by the petitioner, the third respondent was not shown as a party and any order passed by the Court is not binding on her. It is submitted that in view of the registered sale deed dated 22.02.1965, executed by the Court Receiver, as per the order in I.A.No.14 of 1965 in O.S.No.10 of 1962 in favour of Friends and Company, who is the vendor of Venkata Ramana and Ramachandra Rao and in the absence of any piece of paper in support of the claim made by the petitioner, the writ petitions are liable to be dismissed on this score alone. Since the petitioner is making false and frivolous claim basing on a preliminary decree in O.S.No.47 of 1965; and as there is no other material except the xerox copy of the preliminary decree, it is stated that the petitioner cannot find fault with the impugned government orders. Trying to explain the circumstances referred to in clause 3 (b) to 3 (e) of the G.O.Ms.No. 456, the counsel for the third respondent would submit that the same would not come in the way of regularizing the excess land.

6) The Government Pleader for Revenue though failed to file counter in spite of taking time, orally submits that unless the proceedings under Urban Land Ceiling are challenged, the petitioner cannot challenge the order granting exemption to the third respondent. It is urged that under Section 42 of the Act, any order passed under the Act shall prevail over other orders passed under other provisions of law. It is stated that since possession of land was taken on 19.03.2001 and in view of the Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Repeal Act") which came into effect from 27.03.2008, the appeal filed by the petitioner gets abated. Hence, it is urged that the petitioner has no locus and also has no ground to challenge the proceedings.

7) Heard learned counsel for the petitioner and respondents, perused the pleadings and also the entire material placed before the Court.

8) Learned counsel for the petitioner relied upon the following judgments of the Apex Court.

1. Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and others[1]

2. Ritesh Tewari and another v. State of U.P. and others[2]

3. National Textile Workers Union and others v. P.R.Ramakrishnan and others[3]

4. The Siemens Engineering and Manufacturing v. The Union of India and another[4]

5. Nawabkhan Abbaskhan v. The State of Gujarath[5]

6. Cat Educational Society, Hyderabad v. Govt. of A.P.[6]

9) In order to appreciate the rival contentions which are being advanced, it would be useful to refer to relevant clauses in G.O.Ms.No.456 and also Section 20 (1) (a) and (b) of the Act.

Clauses 3 (a) to (f) of G.O.Ms.No.456 reads as under:

> (a) The exemption shall be considered in cases where the excess land already vested with Government under Section 10 (3) of the Act free from all encumbrances and the excess lands that may so vest with them in future.
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> (b) These orders will not apply to cases where possession of such excess land has already been taken over by Government prior to these orders and (i) allotted already by the Government

[1] (2012) 4 SCC 718
[2] (2010) 10 SCC 677
[3] (1983) 1 SCC 228
[4] (1976) 2 SCC 981
[5] (1974) 2 SCC 121
[6] (2009) 4 ALD 55

under Section 23 of the Act, (ii) handed over to the Urban Development Authorities for the purpose of public auction in terms of G.O.Ms.No.166, Rev. (UC.I) Department, dated 03.03.2001, (iii) decided to be retained by the Government.

(c) The exemption shall be subject to withdrawal of all litigations filed either by the declarants/excess land holder of their successors in interest or any other interested person and pending before any Court or Authority in respect of the excess land, as on the date of this G.O.

(d) The excess lands covered by Appeals/W.Ps/W.As/SLPs/or any other suit or proceedings including land grab cases filed by Government and pending before any Court or authority shall be considered for exemption under these orders only after (i) such cases are finally disposed of by such Court or authority and the Government or other party deciding not to carry such order in further appeal, or (ii) the Government deciding to withdraw litigation in any case.

(e) The exemption upto the limit specified above shall be considered only when the land is in the possession of the excess land holder/or successors in interest with or without structures.

(f) The exemption shall be conditional on payment of compensation to Government for the excess land exempted as per the rates indicated in Schedule-I to this order which are prevalent in the relevant financial year. This amount shall be paid in lumpsum, by way of Demand Draft/ Pay Order/ Banker's cheque drawn in favour of the Special Officer and Competent Authorities concerned.

Section 20. Power to exempt: (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter--

a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, the Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

> Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

10) Before dealing with the above it will be useful to refer to certain factual aspects.

11) There is no dispute that the father of the third respondent herein made a declaration under Section 6 (1) of the Act and thereafter he submitted an application under Section 20 (1) (a) of the Act, seeking regularization of the surplus land for construction of a hospital as the husband of the third respondent is doctor by profession. Taking into consideration the request made and the conditions specified in G.O.Ms.Nos.455 and 456 dated 27.09.2002, the request of un-official respondent for regularization of the excess land, on payment of certain amount, was accepted vide G.Os.1982 and 1983. These government orders are subject matter of challenge in the present writ petitions. It is not in dispute that the proceedings initiated by the second respondent under Sections 10 (1), 10 (3), 10 (5) and 10 (6) of the Act have become final, which remained un-challenged. The writ petitioner did not question the declaration made by the father of the un-official respondent under Section 6 (1) of the Act. That being the position, the question would be whether the writ petitioner has any locus to question the consequential

proceedings issued by the Government by accepting the request of the third respondent.

12) It is to be noted that pending the writ petition, the Urban Land Ceiling Act got repealed and the same came into effect, in the State of Andhra Pradesh, from 27.03.2008. Things took a turn with the repealment of the Urban Land Ceiling Act and Section 4 of the Repeal Act.

13) The issues referred to above can be better appreciated if few more facts are brought on record.

14) The petitioner herein filed O.S.No.742 of 2001 on the file of the Principal Junior Civil Judge, West and South, Ranga Reddy District, seeking injunction and the same was decreed. Challenging the same, the third respondent preferred A.S.No.216 of 2007 before the court of II Additional District Judge, Ranga Reddy. In the said case, the Mandal Revenue Officer, Balanagar, who was examined as DW.1, categorically deposed that the subject land was declared as surplus land by the competent authority under the Act and the possession of the land was handed over to Mandal Revenue Officer, Kairatabad on 19.03.2001 under a cover of panchanama. Having regard to the evidence available on record, the appellate Court categorically held that the property vested with the Government and that the writ petitioner has no title

and possession over the plaint schedule property. The said judgment in appeal was delivered on 21.07.2011 and the same has become final. From the judgment referred to above, it is clear that the writ petitioner failed to establish his title and possession over the said land. The said judgment came to be passed after the Repeal Act came into effect. The record also discloses that in I.A.No.1014 of 2003 in O.S.No.435 of 2002, the request of the petitioner for injunction was rejected on 30.03.2005.

15) Learned counsel for the petitioner mainly relies upon a preliminary decree passed in O.S.No.47 of 1965 to show that he is in possession of the land. He also relies upon an order passed in L.G.C.No.67 of 2001, wherein the claim of the third petitioner to declare the writ petitioner as land grabber was rejected. It is to be noted that all the cases filed by either parties, relating to the subject property and issues involved therein were considered in A.S.No.216 of 2007, wherein the Court held that the writ petitioner/plaintiff has failed to establish his title and possession over the schedule land and further held that the plaintiff has filed the suit without arraying the appellants, who are un-official respondents herein, knowing fully well that the appellants are claiming title over the property. As observed earlier, the said judgment has become final. No proceedings have been placed

on record to show that the said judgment was challenged before the Higher Court.

16) The said judgment came to be passed in the year 2011 ie. after the Repeal Act came into force, where as the present writ petition is of the year 2005. The subsequent events which took place in the year 2008 and 2011 coupled with Section 4 of the Repeal Act would give a new turn to the events. It would be useful to refer to Section 3 (1) (a) (b) and (c) and Section 4 of the Repeal Act, which reads as under:

> "Section 3 (1) The repeal of the principal Act shall not affect:-
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> a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or the competent authority;
> b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken there under, not withstanding any judgment of any court to the contrary;
> c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.
>
> Section 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 insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

17) As per Section 4 of the Repeal Act all the proceedings relating to any order made or purported to be made under the principal Act pending immediately before commencement of this Act, before any court, tribunal or other authority shall abate. Similarly Section 3 (1) (a) of the Repeal Act shall not affect vesting of any vacant land under sub section (3) of Section 10, possession of which already been taken over by the State Government.

18) As seen from the record, there is ample material, in the form of panchanama and also the evidence of Mandal Revenue Officer in A.S.No.216 of 2007 to show that possession of the land was already taken over by the Government in the year 2001 and exemption being granted basing on the guidelines issued by the Government. Further, the un-official respondents herein paid substantial amount to the State Government, as a condition precedent for granting exemption. As per the scheme of the Act, any excess land shall vest with the Government from the date of publication in the gazette under Section 10 (3) of the Act. There is no dispute that the

land, in the instant case, is an excess land and the same got vested with the government. The same remained unchallenged till date. Though the writ petitioner claims to be in possession of the property, except the preliminary decree of the year 1965, no other material is placed to substantiate the same. The preliminary decree of the year 1965, remained a preliminary decree till today. No steps are being taken to get the same executed. As observed earlier, in A.S.No.216 of 2007, all these issues were considered while denying the claim of the writ petitioner.

19) Learned counsel for the petitioner mainly submits that clause 3 (e) and (f) of G.O.Ms.No.456 demonstrate that exemption can be granted only when the land is in possession of the land holder and since the possession has already been taken over by the Government, the G.O. cannot be put to use for granting exemption. I am afraid the said argument cannot be accepted.

20) A reading of clause 3 (e) of the G.O. would reveal that the exemption upto the limit specified therein shall be considered only when the land is in possession of the excess land holder/or successors in interest with or without structures. Clause 3 (f) states that the exemption shall be on payment of compensation to Government, for the excess land exempted, as per the rates indicated in Schedule-I to this

order which are prevalent in the relevant financial year. Admittedly, the land was in possession of the excess landholder at the time of making the declaration under Section 6 (1) of the Act and thereafter the un-official respondents deposited the compensation amount. Surrender of land and taking possession of the same remained unchallenged. Hence, it can be safely said that, exemption came to be granted only after fulfillment of both the conditions.

21) It is true that any Government Order should contain valid reasons. There is also no dispute with regard to the proposition of law laid down in the judgments relied upon by the learned counsel for the petitioner, with regard to giving reason even if it is an administrative order or a quasi-judicial order. But in view of the findings referred to above, and more particularly the findings of the civil Court in A.S.No.216 of 2001 and in O.S.No.435 of 2002, this Court is of the view that the petitioner has no locus to question the impugned G.Os.

22) Issue some what identical to the case on hand came up for consideration before a Division Bench of this Court in *Kasani Narayana and others v. The Government of Andhra Pradesh rep. by Principal Secretary, Revenue (UC)*

Department, Hyderabad and others[7]. It was also a case where a writ petition came to be filed against an order passed under Section 20 of the Act. On an application of the owner, who owned excess vacant land, an order was passed granting exemption under Section 20 of the Act. A third party challenged the validity of the order granting statutory exemption, while the owner welcomed and accepted the order of the Government. The writ petition was filed by the person, who was not hurt by that order. He had no right or interest over the property. The question was whether the judicial process can be let loose for such a person? The Bench upheld the order of the learned Single Judge denying the *locus standi to* the appellant therein, to file the writ petition.

23) Even in the instant case, the unofficial respondent surrendered his excess land and possession of which was already taken over by the Government, which remained unchallenged, either by the petitioner or by any third party. Hence, the writ petitioner, cannot question the subsequent acts of the Government over the said land, in view of the findings of the Division Bench in Kasani Narayana's case (7 supra) which are as under:

[7] (1998) 1 ALT (DB) 739

> "A third party cannot, therefore, attempt to do what the owner himself is unwilling to do. It follows that in relation to a dispute about property its ownership and enjoyment a third party which is unconnected with that property in any manner shall be totally barred from the Courts. No *locus standi* can be granted by the Courts to such a third party even in public interest litigation."

24) Viewed from any angle, this Court is of the view that the orders under challenge warrant no interference and accordingly, the writ petitions are dismissed.

25) There shall be no order as to costs. Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:01.06.2017
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