

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION No.9680 OF 2006

Between:

J.Sarada Govardhini

....Petitioner

and

The Special Officer and Competent
Authority, Urban Land Ceiling, Illrd Floor,
Chandra Vihar, Nampally, Hyderabad.

....Respondent

JUDGMENT PRONOUNCED ON

: 14.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ WRIT PETITION No.9680 OF 2006

% 14.07.2017

J.Sarada Govardhini

...Petitioner

vs.

\$ The Special Officer and Competent
Authority, Urban Land Ceiling, IIIrd Floor,
Chandra Vihar, Nampally, Hyderabad.

... Respondent

!Counsel for the Petitioner : Sri Hari Sridhar

^Counsel for the Respondent : Sri P.Harinath Gupta
GP for Assignment (TG)

<Gist :

>Head Note :

? Cases referred

1. (2012) 4 SCC 718
2. (2013) 4 SCC 280
3. (2014) 12 SCC 523



HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.9680 OF 2006

ORDER:

Heard learned counsel for petitioner and learned Government Pleader for respondent.

The petitioner states that she is the absolute owner and possessor of house with appurtenant site in a land admeasuring 1000 square yards bearing plot No.103 in Survey No.45 of Guttala Begumpet Village, Hyderabad. She states that she purchased the said land under a registered sale deed, dated 18.01.1990 from Smt K.Sarojini Devi, the original owner. The original owner was the pattadar and possessor of the land admeasuring Acs.4.01 guntas in the said survey number. She filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity), which was numbered as C.C.No.F1/3018/76 by the respondent. The respondent, after consideration of the declaration, passed a final order under Section 8(4) of the Act on 26.06.1982 determining an extent of 16,288.61 square meters, as excess land. She filed an application seeking exemption of the said land and the Government issued Memo No.44953/UC-II(2), 89-1, dated 19.05.1989 stating that there was no need of issuing separate orders exempting the land since the land came within the five acres mentioned in G.O.Ms.No.733, Revenue Department, dated 31.10.1988, for which she was entitled for exemption under the provisions of the Act, provided the land in question was sold as house site plots after getting the layout approved by the Hyderabad Urban Development Authority. She along with the owners of the land in Survey Nos.43 (part), 44 (part) and 46 along with her land in Survey No.45, applied to the then Hyderabad Urban Development Authority for sanction of a layout, the layout was tentatively sanctioned in 1989 and a final layout was later on released. After the

approval of the layout by the Hyderabad Urban Development Authority, she sold the land to various persons including the petitioner herein during the years 1989-90. The petitioner purchased plot No.103, admeasuring 1000 square yards as stated above.

However, the respondent published a Notification on 28.07.2005 under Section 10(1) of the Act in respect of the excess land held by the vendor of the petitioner and also published a Notification under Section 10(3) of the Act. The petitioner states that she came to know of the said Notification only on 18.04.2006 through another, the petitioner in W.P.No.6413 of 2006, and the said writ petition was disposed of on 31.03.2006 at the admission stage directing the petitioner therein to avail the alternative remedy of Appeal. The petitioner in the said writ petition filed W.A.No.430 of 2006 and the same was allowed on 24.04.2006 holding that there was no alternative remedy and the matter was remitted to the learned single Judge. The present writ petition was filed challenging the Notifications published under Sections 10(1) and 10(3) of the Act as contrary to the earlier Memorandum issued by the Government on 19.05.1989.

This Court while admitting the writ petition on 01.06.2006 granted interim stay for a period of six weeks.

Initially a counter affidavit was filed by the respondent. The above facts were admitted, but it was stated that originally Guttala Begumpet Village was situated in Fathenagar Gram Panchayat, which was a notified Gram Panchayat and fell within the core area of Hyderabad Urban Agglomeration. The Government of India clarified in their letter, dated 23.09.1993 that any area already included in the agglomeration will continue to form part of the agglomeration irrespective of the fact of increase or decrease of municipal limits. Hence, the constitution of a new Gram Panchayat of Madapur did not materially alter the situation. In view

of the same, the Government issued another memo No.18927/UC.II(2)/97-3, dated 20.11.1997 withdrawing the general exemption granted in G.O.Ms.No.733, dated 31.10.1988. In view of the same, the case of the declarant was processed upto 10(3) stage and the declaration was published in A.P.Gazette. The counter affidavit mentions about an order, dated 18.04.2006 passed in W.P.No.29926 of 1995, wherein it was stated that the area upto 5 kilometers from the limits of Municipal Corporation of Hyderabad is also treated as Urban Agglomeration and in view of the same, the proceedings of the Government at the stage of Sections 10(1) and 10(3) of the Act have become final and the writ petition was dismissed. It was also stated that 42 applications in terms of G.O.Ms.No.455, dated 29.07.2002 were received in respect of the present case of declarant and they were inquired and six proposals were submitted to the Government vide respondent's reference dated 22.05.2006. It was also stated that the other applications could not be processed due to interim stay granted in the present writ petition.

After taking up the writ petition for hearing, an Additional Counter Affidavit is filed stating that at the stage of filing earlier counter affidavit, the proceedings were at the stage of Section 10(3) of the Act, and therefore, a notice was issued under Section 10(5) of the Act to the declarant on 26.09.2005 to surrender surplus land within thirty days from the date of service of notice. The said notice was served on the declarant on 03.10.2005 and in view of the same, the death of the declarant on 18.06.2006 has no consequence since the declarant failed to comply with the notice issued under Section 10(5) of the Act, and the proceedings under Section 10(6) of the Act were issued on 05.01.2008 authorising the enquiry officer to take possession of the surplus land. Accordingly, the enquiry officer had taken over possession of the land on 08.02.2008 by conducting Panchanama. Thereafter, the Urban Land Ceiling Repeal Act

came into force with effect from 27.03.2008 by which time, the proceedings under Section 10(6) of the Act were concluded and attained finality. Thus, the proceedings are saved by Repeal Act under Section 3(1)(a) of the Act.

A reply affidavit was filed by the petitioner to the original counter as well as to the additional counter and it was stated that after granting exemption in respect of the excess land, by order dated 19.05.1989, the respondent lacked jurisdiction to take up further proceedings under Urban Land Ceiling Act subsequent to the date of exemption. Hence, all subsequent proceedings are without jurisdiction. In the reply filed to the original counter it was stated that the proceedings under Sections 10(5) and 10(6) of the Act were not taken and in view of coming into force of Repeal Act with effect from 27.03.2008, all proceedings stood abated. When Additional Counter Affidavit is filed, a reply affidavit is filed stating that the proceedings under Section 10(6) of the Act should be preceded by a valid notice under Section 10(5) of the Act and it was held to be mandatory by the Supreme Court. The petitioner stated that no notice was issued to her at any point of time under Section 10(5) of the Act and nowhere in the counter affidavit, it is stated that it was issued to the persons in possession of the land. The alleged panchanama conducted on 08.02.2008 is false, baseless and invalid being contrary to the provisions of Urban Land Ceiling Act. It is further stated that pursuant to the application filed under the Right to Information Act on 04.08.2008, the entire Note File relating to the land was furnished and the endorsement stopped at page 59, wherein it was mentioned that possession was not taken and fresh proceedings under Section 10(6) of the Act was proposed to be served on the Enquiry Officer on 05.01.2008 and thereafter, there are no endorsements, which clearly falsify the stand of the respondent that

possession was taken on 08.02.008. The mode of service of notice under Section 10(5) of the Act is also kept secret.

The learned counsel for the petitioner submitted that in view of the information available in the Note File obtained under the Right to Information Act, the alleged possession taken on 08.02.2008 was a paper possession and no actual possession was taken since the petitioner is in possession of the land. He further submitted that there is no evidence of service of notice under Section 10(5) of the Act on the declarant also as could be seen from the address available on the notice and consequently the alleged possession becomes invalid. He further submitted that the respondent ought not to have taken further proceedings under the Act after granting exemption on 19.05.1989 and sale of the land to various purchasers. He relied on an unreported decision of this Court in W.P.No.19652 of 2007, dated 29.04.2011, which is affirmed by the Division Bench of this Court on 06.09.2013 in W.A.No.494 of 2013 and by the Supreme Court in S.L.P.No.15388 of 2015, dated 02.07.2015.

The learned Government Pleader produced the record relating to the case before this Court in view of the documents filed by the petitioner obtained under the Right to Information Act and submitted that since possession was already taken, the case of the petitioner is liable to be dismissed.

In the light of the above facts, the following points arise for consideration in the present writ petition.

1. Whether the respondent is correct in proceeding further under the provisions of the Act, consequent to the declaration of excess land by the declarant even after issuing a Memo, dated 19.05.1989, granting exemption in favour of the declarant?
2. Whether the respondent has followed the procedure under Sections 10(5) and 10(6) of the Act while taking possession of the land?

3. Whether the proceedings under the provisions of the ULC Act abated in the instant case in view of Repealing Act?

There is no dispute that the vendor of the petitioner was declared as surplus landholder to an extent of 16,288.61 square meters in Survey No.45 of Guttala Begumpet Village, Serilingampally Mandal, Ranga Reddy District. She applied for exemption under the provisions of the Act and the same was granted on 19.05.1989 stating that in view of G.O.Ms.No.733, Revenue Department, dated 31.10.1988, the excess vacant lands upto 5 acres lying in peripheral areas of Urban Agglomeration can be exempted from the provisions of the Act for sale of the land as house site plots and it was stated that the Survey No.45 situated at Guttala Begumpet village of Hyderabad Agglomeration is within the peripheral area of Hyderabad Urban Agglomeration and hence, there was no need to issue a separate orders exempting the land to the extent covered by G.O.Ms.No.733, Revenue Department, dated 31.10.1988. The said exemption order has not been rescinded at any point of time before the Repealing Act came into force. On the basis of said exemption order, the original declarant obtained a layout from the Hyderabad Urban Development Authority, sold the land to different purchasers and they were put in possession. The petitioner is one among them, having purchased the plot of land in 1990 under the registered sale deed. The petitioner is not aware of the subsequent proceedings issued under Sections 10(1), 10(3), 10(5) and 10(6) of the Act and no possession was taken from her. The sale of the land in favour of the petitioner cannot be held to be contrary to the provisions of the Act as the same was made pursuant to exemption granted on 19.05.1989 and after obtaining due permission from the Hyderabad Urban Development Authority.

In the circumstances, this Court is of the opinion that the respondent ought not to have taken subsequent proceedings behind the

back of the petitioner without rescinding the Memo, dated 19.05.1989, which enabled the original declarant to sell the land to various purchasers. The respondent is estopped from taking further steps and accordingly it is held that the subsequent proceedings taken in the name of the declarant behind the back of the petitioner are not binding on the petitioner.

Sections 10(5) and 10(6) of the Act read as follows:

“(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

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

Explanation.—In this Section, in sub-section (1) of Section 11 and in Sections 14 and 23, “State Government”, in relation to—

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in the Union Territory or within the local limits of a cantonment declared as such under Section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.”

A perusal of the record produced before this Court showed that after the proceedings dated 26.06.1982 issued under Section 8(4) of the Act, a declaration under Section 10(3) only is available in the file and the same was published in the Andhra Pradesh Gazette dated 28.07.2005 under the heading Visakhapatnam Urban Agglomeration without clearly specifying whether the notification relates to Hyderabad Urban Agglomeration or not. No copy of notification under Section 10(1) is available.

The notice under Section 10(5) of the Act, which was available in the file, shows that it was addressed to the declarant's address at Machilipatnam, and was dispatched on 04.10.2005. It was endorsed that it was served on 03.10.2005, which does not appear to be probable. An

inserted panchanama copy with struck off serial page No.37, and serial page No.20 is found place in the file stating that the notice under Section 10(5) of the Act was issued to the declarant on 05.01.2008 and since the possession was not handed over, an order was passed on the same day in pursuance of which, possession was taken on 08.02.2008 of the total extent of 17355.47 square metres. The endorsement of the Mandal Revenue Inspector shows that the possession of surplus land with permanent structures and roads was taken over by him as per panchanama on 16.05.2008. There are no corresponding entries in the note file. As per the last endorsement in the note file on 06.03.2007, the served copy of the notice under Section 10(5) of the Act was found to have been not available in the file, and it was directed to put up 10(6) notice if the served copy was available. Thereafter, on 08.06.2007 an endorsement was made in the note file stating that the served copy was available, and accordingly, orders under Section 10(6) of the Act were passed. The subsequent note says that, though proceedings under Section 10(6) of the Act were issued on 10.06.2007, it was not served for taking possession, and fresh proceedings under Section 10(6) of the Act were directed to be issued. Thereafter, there is no endorsement of issuing notice under Section 10(6) of the Act to the E.O. or taking over possession. The date of expiry of time for surrender was left blank. Thereafter, another proceedings was issued by another Special Officer with the same blank of expiry of time for surrendering the land under Section 10(5) of the Act.

There cannot be any notice under Sections 10(5) and 10(6) of the Act to the declarant on the same day on 05.01.2008. The entire file is cooked up in order to deprive the declarant of the benefit of the provisions of the repealing Act. In any event, no notice under Section 10(5) or 10(6)

was issued to the petitioner who is in possession of the plot of land purchased by her or to the declarant.

In **Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority**¹ the Supreme Court held that when possession of the land was not taken on coming into force of the 1999 Act, the Repeal Act comes into force and the proceedings under the 1976 Act stands automatically abated.

In **State of Uttar Pradesh v. Hari Ram**² the effect of surrender of land pursuant to the notice under Section 10(6) of the Act was considered. In the said case, Hari Ram was the respondent. He filed a statement on 28.09.1976 under Section 6 of the Act. A draft statement was prepared under Section 8(3) of the Act on 13.05.1981 calling for objections to the draft statement and when no objections were preferred, it was declared that he was holding excess land measuring 52,513.30 square metres and an order was passed under Section 8(4) of the Act on 29.06.1981. A notification was issued under Section 10(1) of the Act on 12.06.1982 and the same was published in the Gazette. The competent authority issued a notification on 22.11.1997 stating that the land shall be deemed to have been vested in the Government from 12.06.1982 free from all encumbrances. A notice was issued under Section 10(5) of the Act on 19.06.1999 directing the respondent to handover possession of the land declared as surplus to a duly authorized person. Challenging the same, the respondent preferred an appeal before the District Judge under Section 33 of the Act stating that no notice was served on him under Section 8(3) of the Act and the order passed under Section 8(4) of the Act was bad. The appeal was allowed by the Court on 14.12.1999. Challenging the same, the Government preferred a Writ Petition before

¹ (2012) 4 SCC 718

² (2013) 4 SCC 280

the High Court of Allahabad, and the High Court took a view that subsection (3) of Section 10 does not envisage taking physical and de facto possession of the surplus land, for which proceedings under subsection (5) of Section 10 should be followed. Accordingly, the Writ Petition was dismissed. In those circumstances, when the case went to Supreme Court, the Court examined the provisions of the Act elaborately, including the expressions “deemed to have been acquired”, “deemed to have vested absolutely”, and the words “vest” or “vesting”. Ultimately, the Supreme Court held that the requirement of giving notice under subsections (5) and (6) of Section 10 is mandatory and though the word “may” has been used therein, it should be understood as “shall”. It was held that action under subsection (3) of Section 10 of the Act only gives de jure possession, but not de facto possession. It further held that mere vesting of the land under subsection (3) of Section 10 of the Act 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. It was held that the State has to establish that there has been a voluntary surrender of vacant land or surrender and deliver peaceful possession under subsection (5) of Section 10 or forceful dispossession under subsection (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.

In view of the above enunciation of the law by the Supreme Court, in the facts of the present case, it is clear that there was no voluntary surrender of the land by the declarant. Except the panchanama, which is an inserted document, there is no forceful dispossession of the land under Section 10(6) of the Act. So, the petitioner is entitled for the benefit of Section 4 of the Repeal Act, which came into force in the State of Andhra Pradesh with effect from 27.03.2008.

Hari Ram's case (supra) was followed in **Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC)**³, wherein with regard to forceful dispossession, while extracting the relevant portion of the order in **Hari Ram's** case (supra), the Supreme Court observed as follows:

“Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of “possession” which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, “peaceful dispossession” and on failure to surrender or give delivery of possession under Section 10(5), then “forceful dispossession” under sub-section (6) of Section 10.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall.”

12. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since

³ (2014) 12 SCC 523

there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.”

There is yet an unreported decision of this Court in W.P.No.19652 of 2007 arising out of identical circumstances, but the present case stands on a better footing. In the said case, after publication of the draft statement and final statement, when a Notification was published under Section 10(1) of the Act, the declarant filed objections and without considering those objections, when a Notification was published under Section 10(3) of the Act stating that the lands stood vested with the Government, the writ petition was filed. In the said case also, the person who filed objections, was the purchaser. In the said case, the petitioner purchased the land covered by Section 2(o) Certificate and after purchase, the land was converted as non-agricultural land and several plots were sold to the members of the petitioner Association. This Court framed the following issues:

“1. Whether the sale of the land in question, made by the original pattedar in favour of a person other than the one in whose name is mentioned in the Certificate obtained by the original pattedar, under Section 2(o) of the ULC Act, is bad and invalid in law?

2. Whether the respondents were justified in including the land purchased and held by the petitioner society into the holding of the original pattedar for the purpose of determining the excess land holding?

3. Whether the provisions of Chapter – III of the ULC Act, much less the provisions of Section 6(2) read with Sections 2(q) and 2(o) of the ULC Act, are attracted to the land purchased and held by the petitioner society and whether the petitioner society was required to obtain exemption under Section 20 of the ULC Act before purchasing the land in question?

4. Whether before taking possession of the surplus land, the respondents were under an obligation to issue notices to the

petitioner society and their members under the provisions of the ULC Act, who claim to be in possession and persons interested in the land? If so, then what would happen to the orders passed by respondent No.2 under the provisions of the ULC Act? and

5. Whether the impugned proceeding dated 07.09.2007 of respondent No.1, which confirmed the orders dated 04.06.2005 of respondent No.2, and the proceedings that preceded their issuance in relation to the land in question, stand abated and are liable to be set aside, in view of the Repeal Act, which came into effect in the State of Andhra Pradesh, w.e.f. 27.03.2008?"

All the points were held in favour of the petitioner. In the said case also, the petitioner obtained information under the Right to Information Act and the information furnished to the petitioner did not contain the fact of taking possession. This Court in the facts of the case observed as follows and those observations are equally applicable in the instant case also:

"In the case on hand, though respondent Nos.1 and 2 produced the record to show that notice under Section 10(5) of the ULC Act was served and possession of the land was taken by passing an order under Section 10(6) of the ULC Act, the fact remains, a perusal of the record would prove otherwise. In fact, the petitioner society through one of their members sought information under the Right to Information Act, 2005 with respect to the declaration filed by the declarant, and responding to such request, respondent No.5 on 27.08.2007, supplied copies of the file, numbering pages 1 to 18, and a perusal of same would disclose that the file was processed up to the stage of draft notice under Section 10(5) of the ULC Act, and it was put up for approval on 04.10.2005. Even though respondent No.2 contends that the file was further processed and order under Section 10(6) of the ULC Act was passed on 11.01.2006 and possession of the land taken on 30.01.2006, the fact that remains is, if really order under Section 10(6) of the ULC Act, was passed on 11.01.2006 and possession of the land in question was taken on 30.01.2006, and if really the said orders were available in the record, nothing prevented respondent No.2 from furnishing copies of the same also to the applicant when he was furnished copies of the record numbering pages 1 to 18 to the on 27.08.2007. Respondent Nos.1 and 2 filed detailed counters in the writ petition on 16.06.2010 and 04.06.2010, but there is no whisper made by them in the counters with respect to passing of order dated 11.01.2006 under Section 10(6) of the ULC Act and taking over possession of the surplus land on 30.01.2006. If really, the above orders were available in the file, respondent No.2 would certainly have furnished the same to the applicant, who sought information under the Right to Information Act, and in fact, would have adverted to them in the counter. But, for the reasons best known to him, as noted above, respondent No.2, did not furnish them to the applicant and on the other hand, furnished the record numbering pages 1 to 18 only. Further, the additional file, which is appended to the original record, is not in continuity, but they are added as additional sheets, to the original file. However, respondent No.2 sought to justify the same contending that the original file was sent to the Government for considering the applications made by the members of the petitioner society for regularisation, and therefore,

they have opened a separate file, containing additional sheets, and that as the original file contained only pages numbering 1 to 18, they furnished only that record to the applicant. This stand taken by respondent Nos.1 and 2 does not appeal to the Court. If really, the original file was sent to the Government, for considering the applications of the members of the petitioner society, for regularization of their plots, nothing prevented respondent No.2 from informing the same to applicant who sought information under the Right to Information Act, that the copies of the record which they are furnishing, does not constitute the entire file, but constitutes only a part of it. In fact, respondent No.2 sought to give this explanation for the first time to this Court, even though he filed counter on 04.06.2010, i.e. much after passing the alleged order under Section 10(6) of the ULC Act on 11.01.2006 and taking over possession of the surplus land on 30.01.2006. Though respondent No.2 has taken this stand, the fact remains, as noted supra, when one of the members of the petitioner society made application under the Right to Information Act, seeking copies of the file relating to ULC proceedings in question, respondent No.2 furnished copies of the file relating to the ULC proceedings in question, numbering 1 to 18 only. This makes it clear that when respondent No.2 furnished the information to the applicant under the Right to Information Act, the file relating to the ULC proceedings in question, contained only page Nos.1 to 18, while the extra pages which respondent No.2 now sought to produce, to justify their action of taking over possession of the land allegedly from the original pattedar, were not available and, in fact, not in existence in the file. Be that as it may, even assuming that the extra pages were available in a separate file, as on the date when respondent No.2 furnished information to one of the members of the petitioner society on his request under the Right to Information Act, yet respondent No.2 cannot be said to have taken possession of the surplus land validly, for the reason that a perusal of the record produced by respondent Nos.1 and 2, inclusive of the appended extra pages, shows that notice under Section 10(5) of the ULC Act, was issued only to the original pattedar and not to the petitioner society and their members, who admittedly, are in possession of the surplus land, and in fact, only draft under Section 10(6) of the ULC Act, was put up for approval, as is evident from the extra pages appended to the file.

Hence, it is held that the petitioner society and their members, who were in possession of the land and persons interested therein, were entitled to issuance of notices under the provisions of the ULC Act, and taking over possession of the land, without notices to them, violates the principles of natural justice, and as such, the orders passed by respondent Nos.1 and 2, affecting the rights of the petitioner society and their members in the land in question, cannot be sustained and are liable to be set aside."

Ultimately, this Court held that the proceedings stood abated in view of the Repeal Act. The said decision of the learned single Judge was challenged in W.A.No.494 of 2013 by the Government and the appeal was dismissed on 06.09.2013. The SLP No.15388 of 2015 was also dismissed by the Supreme Court at the admission stage on 02.07.2015.

In view of the above position of law and facts of the case, this Court is satisfied that further proceedings ought not to have taken by the respondent as against the original declarant after granting exemption on 19.05.1989 without rescinding the same. In view of valid purchase of land by the petitioner and continuing in possession, any action under Section 10(5) and 10(6) of the Act without notice to her is invalid. The alleged paper possession is not binding on her and it is not a de facto possession as held by the Supreme Court.

The writ petition is accordingly allowed by holding that the proceedings against the petitioner cannot be taken in view of Repealing Act and they stood abated. Miscellaneous petitions, if any pending, in the writ petition shall stand closed.

14.07.2017
pln



A.RAMALINGESWARA RAO, J