

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.26261 OF 2008

ORDER:

Heard learned counsel for petitioners and learned Government Pleader for respondents.

The first petitioner is a Public Limited Company registered under the provisions of the Companies Act, 1956 and engaged in manufacture and sale of Cold Rolled Steel Strips and Box Strappings. It is the absolute owner and possessor of industrial land of an extent of Ac.13.70 cents situated in Survey No.367/1 in Moulali, Industrial Area, Hyderabad. The said land was initially allotted by the Government in 1970 for the purpose of establishing the manufacturing unit under the Agreement, dated 13.04.1970. Subsequently, the Government through its nodal agency, Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC), executed a sale deed on 01.11.1974 under document No.2540 of 1974. Since the said land fell within the Hyderabad Urban Agglomeration, the first petitioner submitted an application to the first respondent on 03.09.1976 seeking exemption under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act', for brevity). The Government issued orders in G.O.Ms.No.671, Revenue Department, dated 01.06.1977 in exercise of powers conferred under clause (a) of sub-section (1) of Section 20 of the Act exempting the land admeasuring 40,000 square meters in Survey No.367/1 from the provisions of the Act. A compound wall was constructed at the time of initial purchase itself and the first petitioner has been running the manufacturing unit.

The first petitioner filed a statement under Section 6(1) of the Act and the second respondent issued a draft statement under Section 8(1) along with a notice under Section 8(3) of the Act calling for objections on 07.01.1982. While issuing the draft statement, the second respondent considered the earlier exemption granted in respect of 40,000 square meters and prepared a

draft statement taking into consideration 15,039 square meters. The first petitioner filed a declaration under Section 21 of the Act and expressing its intention to utilize the land of an extent of 14,039 square meters for construction of dwelling houses for the accommodation of weaker sections of the society and the second respondent permitted the same by order, dated 19.02.1982. Since the first petitioner could not construct the dwelling units, the orders were cancelled subsequently on 12.01.1990. Ultimately, the second respondent passed an order, on 22.11.1990 under Section 8(4) of the Act determining an extent of 14,039 square meters as excess land. Challenging the said order, the first petitioner preferred an Appeal before the Commissioner, Appeals, Urban Land Ceiling and the Appellate Authority by its order, dated 27.06.2002, dismissed the appeal confirming the orders of the second respondent. Even after dismissal of the appeal, no proceedings were taken in respect of the said land and the first petitioner continued to be in possession and enjoyment of the entire extent of Ac.13.70 cents. However, the second respondent issued a notice on 25.08.2008 calling upon the first petitioner to make an application for regularization of its possession over the land admeasuring 14,039 square meters on or before 30.08.2008. In those circumstances, the present writ petition was filed challenging the said notice as *ultra vires* the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 as adopted by the State of Andhra Pradesh in G.O.Ms.No.603, dated 22.04.2008.

There is no dispute with regard to the above facts.

In the counter affidavit filed by the second respondent, it was stated that after disposal of the Appeal, a declaration under Section 10(3) of the Act was issued on 03.09.2002 and the same was published in Gazette dated 07.09.2002. Thus, the lands stood vested with the Government with effect from 03.09.2002. An additional counter affidavit was filed on 25.02.2015 stating that since there was no stay, a notice under Section 10(5) of the Act

was issued on 22.02.2007 and order under Section 10(6) of the Act was passed on 11.03.2008. The possession of the surplus land was taken over by the Enquiry Officer on 12.03.2008. Since the exemption was granted under Section 20 of the Act, the said proceedings are saved by the Repealing Act. It is further stated that the first petitioner filed an application for alienating the land of an extent of Acs.6.00 cents to the third party industry and when the request is under examination, the present writ petition was filed.

This Court, by order, dated 02.12.2008 directed the respondents not to interfere with the possession and enjoyment of the petitioners and the writ petition was admitted on 29.04.2009 and the interim direction as prayed for was granted.

When the matter was taken up for consideration on 07.04.2015, this Court passed the order for filing additional counter affidavit, with the following observations.

Learned Assistant Government Pleader submits that though the note file records issuance of 10(5) and 10(6) proceedings under the Act and taking possession, the relevant copies of proceedings of issuance of notice under Section 10(5) and taking physical possession by issuing orders under Section 10(6) and panchanama conducted are not available in the record. There is a gap of continuous pagination. There is no answer as to how this record was misplaced and action taken against persons responsible. However, the note file disclosed than steps were taken at various stages including issuance of notice under Section 10(5) and 10(6) order for taking compulsory possession. The record produced also contains the scanned copies of orders passed on 22.11.1990, evidence of issuance of notice under Section 10(5) on 22.02.2007 and order under Section 10(6) on 11.03.2008.

It appears that no effort is made to trace the record or trace the link of such notices, more particularly when it is specific case of the petitioners that 10(5) and 10(6) notices/orders are not served and possession was not taken from the petitioners and property is still in possession of the petitioners.

As seen from the endorsement made in 10(6) order, the copies were marked to Sri R.Satya Babu, Enquiry Officer of U.L.C., Hyderabad, to the District Collector, Hyderabad/Ranga Reddy District and to the Mandal Revenue Officer of Malkajgiri for taking necessary action.

Under the supervision of Mandal Revenue Officer, Malkajgiri, panchanama was recorded. Efforts ought to have been made to trace these

documents from the respective offices. The Inward and Outward Registers of the Special Officer as well as District Collectors' Officers and other Officers mentioned therein should disclose the correspondence emanating from the Office of U.L.C.

The Additional counter affidavit was filed stating as follows.

"CNF Page No.23 of CC No.F2/3142/76

Para(114) Ref.Gazette No.167 dated 07-09-2002.
Kindly peruse the Gazette cited. Wherein declaration U/s.10(3) has been issued and published.

If agreed notice U/s.10(5) of the Act, may be issued.
Draft notice U/s.10(5) of the Act is put to subject to approval please.

Sd/-24.9.02 Sd/-25.9.02 Sd/-26/9 Sd/-26/9 Sd/-26/9
ST.III ASO.II S.O.& C.A.

CNF page 25

Para (123)

Submitted

10(5) notice issued on 26-09-2002. In which said 26-09-2002 wherein OC not available in said file (5) years ago in this file. Hence if agreed 10(5) notice issued to the declarant.

Para (124) Accordingly, the 10(5) notice Office Copy & Fair Copy are / A pleased below for appl.

(A) may be approved & report to Govt. due may be sent if agreed

Sd/-22.2.07 Sd/-22.2.07 Sd/-22.2.07 Sd/-22/2 Sd/-22/2
Supdt. ST.III SDC S.O & C.A.

Para (125) 10(5) is issued on 22.2.2007, it is under service, soon after its service & completion of statutory period, 10(6) orders will be submitted.

Submitted for perusal pl.

Sd/-10/3 Seen
Sd/-2/3
S.O & C.A

Para (126) In this file 10(5) notice was issued on 22.2.2007. Therefore 10(6) may be issued. If agreed draft 10(6) proc. is put up subject to appl Sir.

Sd/-10/3 Sd/-11.3.08 Sd/-11/3
J.O. S.O. & C.A.

CNF page 26

Para (132) After due verification, the declarant company has determined as holder of the land to an extent of 55,039 Sq.Mtrs. and after deletion of area exempted to an extent of 40,000 vide G.O.Ms.No.436, dt.25-4-1986 declared as

surplus to an extent of 14039.00 Sq. Mtrs. and the case has been processed upto 10(6) stage and possession taken over on 12-03-2008.

CCLA pending Ref.No.4

Para No.(136)

Land possession taken on 12.3.2008	14,039 Sq.Mts.
Land exempted G.O.No.671 dt.1-7-1977	40,000 Sq.Mts.

W.P. filed for entire procds.
PWRs to be prepared

He filed application seeking permission
to sell land dt.31.12.96

Report to be sent to Govt.
E.O. may be asked to furnish ground status

Sd/-
J.O.

Yes
Sd/-20/1
S.O. & C.A.”

Even as per the recordings made in the note file, the date of service of notice under Section 10(5) and taking possession under Section 10(6) of the Act are not available. The respondents might have taken paper possession and recorded in the records. In **State of Uttar Pradesh v. Hari Ram¹** and **Gajanan Kamliya Patil v. Additional Collector and Competent Authority (ULC)²**, the procedure with regard to dispossession and the effect of Repeal Act was considered. Now the law is well settled that the notice under Section 10(5) as well as 10(6) of the Act should be served on the persons who are in possession as well as in the declaration. There is no proof of service of such notice. On the other hand, the present Notice, dated 25.08.2008 was issued without application of mind, stating that the petitioner is in illegal occupation of the land and the present notice was issued in a proforma. In the said notice, it was also observed that a major portion of the above land is under illegal occupation of the third parties who have constructed houses unauthorisedly over the said surplus land.

¹ (2013) 4 SCC 280

² (2014) 12 SCC 523

The case of the first petitioner is that he is continuing the manufacturing activity in the land originally purchased by it and there cannot be any illegal occupation by third parties when the land is covered by compound wall. It is a total non-application of mind by the second respondent. In the absence of proof of service of notice under Section 10(5) and 10(6) of the Act, and also in view of coming into force of Urban Land (Ceiling and Regulation) Repeal Act, 1999, all the proceedings against the petitioners stood abated and the impugned notice is set aside.

The writ petition is accordingly allowed. Consequently, miscellaneous petitions, pending if any, shall stand closed.

18.07.2017
pln



A.RAMALINGESWARA RAO, J