

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1257 of 2010

ORDER :

The petitioner had purchased an extent of Ac.6.31 gts in Sy.No.11 of Premavatipet Village, Hyderabad Taluq, Hyderabad District under registered sale deed dt.15-04-1966. She was residing at house No.10-3-686 (149-3 RT), Vijayanagar Colony in 1980.

2. After the advent of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), she filed statement in Form-I under Section 6(1) of the Act before the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (3rd respondent herein). She declared the above land which is equivalent to 27,417.50 sq. m. under the Act and also the above house property in the said declaration.

3. The 3rd respondent vide proceedings D1/7/81 dt.07-09-1981 provisionally declared that she was a surplus holder to an extent of 26,637.50 sq. m. and issued draft statement under Section 8(1) of the Act inviting objections from the petitioner.

4. The petitioner received the draft statement under Section 8(1) of the Act on 08-09-1981.

5. On 09-09-1981, she filed objection to the draft statement stating that she had entered into an agreement of sale with Lord Venkateswara Cooperative Housing Society on 29-06-1981 and 03-08-1981, that original affidavits were submitted to the Secretary to

Government, Revenue Department and exemption under Section 20(1)(a) of the Act be granted to her.

6. Thereafter the 3rd respondent passed orders under Section 8(4) of the Act in proceedings No.D1/7/81 dt.23-09-1981 confirming that she was a surplus holder to the extent of 26,637.50 sq. m.

Original prayer in the Writ Petition

7. This Writ Petition was filed originally on 27-01-2010 alleging that she applied on 12-01-1981 for permission to sell the land, that by letter dt.29-06-1981; she had sought exemption under Section 20(1)(a) of the Act in terms of G.O.Ms.No.136, Revenue (UC.II) Department dt.28-01-1981; that her husband till 1990 was in touch with the officials but later he could not pursue the matter because of ill-health; that she came to know from some of the residents of the layout in 2007 that there was a visit by 4th respondent; that he had affixed a notice on the Vijayanagar Colony house already sold by her long back; that she then contacted the Office of 3rd respondent, she was informed about G.O.Ms.No.747 Revenue (UC.I) Department dt.18-06-2008 which enabled regularization of excess land declared and taken possession under the provision of the Act and allotment of the same; and that she then made an application dt.11-01-2000 to regularize excess land of extent 9,197 sq. m. and also deposited a sum of Rs.5,28,750/- by way of Bankers cheque. She contended that the respondents could not have taken possession of the land without

passing any orders on her application under Section 20(1)(a) of the Act.

8. She sought a Writ of Mandamus to consider the application dt.11-01-2010 made by the petitioner under G.O.Ms.No.747 Revenue (UCI) Department dt.18-06-2008 for regularization in terms of G.O.Ms.No.456 dt.29-07-2002 and questioning the action of the respondents in seeking to take over possession of her land of extent Ac.6.31 gts in Sy.No.11 of Premavatipet Village, Hyderabad Taluq, Hyderabad District without considering her application for exemption as illegal, arbitrary and unconstitutional.

W.P.M.P.No.1672 of 2010 in W.P.No.1257 of 2010 – Interim order dt.28-01-2010

9. She also filed W.P.M.P.No.1672 of 2010 in W.P.No.1257 of 2010 to direct the respondents not to take over possession of 26,637.50 sq. m. in Sy.No.11 of Premavatipet Village, Rajendra Nagar Mandal, Ranga Reddy District pending disposal of the Writ Petition.

10. On 28-01-2010, this Court granted the said interim order but enjoined the petitioner from making any construction over the land without permission of the Court.

W.P.M.P.No.10024 of 2014 and W.P.M.P.No.10025 of 2014-Amendment applications.

11. W.P.M.P.No.10024 of 2014 was filed seeking amendment of prayer in the Writ Petition by adding the prayer of declaration that the

proceedings determining that she is a surplus holder under Section 8(4) and Section 9, publication in Gazette No.131 dt.25-11-1982 under Section 10(1) and further proceedings under Section 10(3) and (5) of the Act are illegal, *ab initio* void and consequently to direct the respondents to refund the amount of Rs.5,28,750/- paid by her along with her application dt.11-01-2010.

12. She also filed W.P.M.P.No.10025 of 2014 seeking amendment of the affidavit filed in support of the Writ Petition by adding paras-6-A to 6-F.

13. In these two applications she contended that she obtained further legal advise and thereupon applied to the 4th respondent in 2013 under the Right to Information Act, 2005 about the various proceedings under the Act including the note file; that the same were supplied by the 4th respondent in November, 2013 and February, 2014; that the record so furnished to her revealed several glaring infirmities committed by the respondents in the various proceedings under the Act; there was non-service of Section 8(4) order and final statement under Section 9; that such final statement under Section 9 was not even prepared etc;. and therefore she should be allowed to add certain paragraphs in the affidavit filed in support of the Writ Petition as well as amend the prayer in the Writ Petition.

14. The learned Government Pleader stated that he had no objection for allowing of both the above applications and they were accordingly ordered on 10-07-2015.

15. Counter-affidavit was filed by the 3rd respondent on 25-01-2017 to the amended Writ Petition affidavit.

Contentions of counsel for petitioner

16. Sri V.Ravinder Rao, learned Senior counsel appearing for Sri D.Jaipal Reddy, learned counsel for petitioner contended that petitioner did not receive the order dt.23-09-1981 under Section 8(4) of the Act or the subsequent final statement under Section 9 of the Act; that in response to an application dt.17-12-2013 made by her under the Right to Information Act, 2005, order dt.23-09-1981 under Section 8(4) of the Act was furnished to her along with certain other proceedings under the Act in November, 2013 and February, 2014, but the final statement prepared under Section 9 of the Act was not supplied to her; that there is also no evidence furnished by the 3rd respondent of service of the final statement under Section 9 of the Act on her; and therefore the 3rd respondent is deemed to have not issued any final statement under Section 9 of the Act.

17. He contends that notification under Section 10(1) of the Act was published in the A.P. Gazette No.131 dt.25-11-1982 as per the note file furnished under the Right to Information Act, 2005 and that the provisions of Section 10(1) of the Act do not contemplate any such publication without service of final statement under Section 9 of the Act.

18. He contended that notice required to be issued under Section 10(3) of the Act, as per the record made available to petitioner by the

respondents under the Right to Information Act, 2005, reveals that it was initially prepared on 06-07-1983, a copy of the same was prepared again on 22-12-2006, and in the meantime proceedings under the Act were kept pending for one reason or another; that there is no material placed on record that the notice under Section 10(3) of the Act was served on her; and in spite of a specific request to furnish copy of such documents, respondents did not provide it to petitioner.

19. Learned counsel for petitioner contended that in 1991-92, petitioner's husband lost his eye sight and as they found it difficult to live in the independent house in Vijayanagar Colony, Hyderabad, they alienated it and shifted to Ameerpet to reside with their daughter; that her husband died on 30-03-1999; and after more than 23 years, the 3rd respondent attempted to serve notice dt.10-01-2007 under Section 10(5) of the Act at Vijayanagar Colony residence which had already been sold long back by her. He referred to the report submitted by the Enquiry Officer, Urban Land Ceiling (4th respondent) on 20-01-2007 and pointed out that respondents were aware that petitioner had alienated the house at Vijayanagar Colony 22 years back, but they did not make any effort to know her present residential address or take care to publish the notice/final order through news papers.

20. According to him, the record furnished to petitioner shows that the Enquiry Officer prepared a report along with panchanama dt.13-02-2007 affixing the notice under Section 10(5) of the Act on the house No.10-3-686 (106/307), Vijayanagar Colony which had

already been sold by the petitioner recording that the petitioner was not residing in the said address; that notice under Section 10(6) of the Act was issued on 16-03-2007 taking over possession of the land and without proper service of notice under Section 10(5) of the Act, the panchanama taking over the property in Sy.No.11 of Premavatipet Village of extent 26,637 sq.m was prepared. He contended that any such panchanama prepared without service of notice under Section 10(5) of the Act on her is invalid and void and that respondents prepared the panchanama in their office.

21. He contended that petitioner had alienated part of the land after converting it into plots and another part was gifted/surrendered on 21-06-1991 to the Municipal Corporation for sanction of a layout, that some of the purchasers of the plots in the layout are in actual possession of their respective plots and have constructed houses therein and if really the panchanama was conducted at the site, the panchas would have noticed the presence of buildings in occupation of third parties and would have recorded the same in the panchanama and possession could not have been taken without notice to the occupants of the plots.

22. He contended that the respondents were aware that there was a proposal to adopt the Urban Land Ceiling Repeal Act, 1999 in the combined State of Andhra Pradesh and just prior to such repeal w.e.f. 28-03-2008, the 3rd respondent manufactured the record to show that possession of the surplus land of the petitioner was taken.

23. He contended that the provisions of the Act are expropriatory in nature, that they should be strictly construed, that the procedure contemplated thereunder is mandatory and non-compliance of the same renders all proceedings under the Act null and void. He relied on **DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and others¹**, **State of Maharashtra and another Vs. B.E. Billimoria and others²** and **Kothuru Babu Surendra Kumar (died) and others Vs. Special Officer and Competent Authority, ULC, Vijayawada and others³**.

24. He also contended that the record does not show when order under Section 8(4) was dispatched to the petitioner, though it shows that final notification under Section 9 was dispatched, there is no evidence of its service on the petitioner. He therefore contended that non-service of order under Section 8(4) and final statement under Section 9 of the Act by the respondents vitiates the entire proceedings under the Act and render them null and void. He pointed out that the alleged panchanama conducted on 16-03-2007 by the respondents is a fabricated panchanama prepared in the office of the 3rd respondent, that the Act itself was repealed w.e.f. 27-03-2008, and therefore all proceedings under the Act lapsed.

25. He also pointed out that the record reveals that Section 8(4) order and Section 9 final statement were sought to be served after publication of Section 10(1) notification on 25-11-1982, that Gazette

¹ (2003) 5 SCC 622

² (2003) 7 SCC 336

³ 2000 (4) ALT 694

publication of Section 10(3) notification was on 27-12-2006, 23 years after it was prepared on 06-07-1983, that notice under Section 10(5) was not served on the petitioner, and that there is no date when the panchanama was prepared and when it was affixed.

26. He stated that since petitioner was not certain about the status of the Urban Land Ceiling proceedings, she made application for exemption under Section 20 of the Act and even the application made by petitioner on 11-01-2010 for regularization did not mention when order under Section 8(4) of the Act was passed (since she was not aware of it), that there can be no estoppel against a statute or any waiver by petitioner of her rights under the Act.

27. He therefore prayed that the Writ Petition be allowed and all proceedings under the Act initiated in respect of the petitioner's land of 26,637.50 sq. m. in Sy.No.11 of Premavatipet Village, Rajendranagar Mandal, Ranga Reddy District be declared as null and void and unenforceable and to direct the respondents not to interfere with the possession of the said land apart from refunding the amount of Rs.5,28,750/- paid by petitioner along with application dt.11-01-2010 seeking regularization of the land.

Contentions of the respondents

28. In the counter-affidavit filed by 3rd respondent, firstly it is contended that the amendment sought and carried out by petitioner is beyond the scope of the original Writ Petition. According to the respondents once petitioner applied for regularization, she is deemed

to have accepted ownership and title of the Government and cannot question proceedings under the Act.

29. The Government Pleader contended that there was no plea in the affidavit filed in support of the Writ Petition originally that order under Section 8 (4) of the Act was not served on the petitioner, that the subsequent amendment sought by the petitioner is an after thought, that application for amendment of contents of affidavit and prayer were sought five years after filing of the Writ Petition and were not *bona fide*. He contended that a statutory right can also be waived and when no appeal was preferred against the 8 (4) order by petitioner under Section 33 of the Act, petitioner cannot be granted any relief in the Writ Petition. He also contended that the amendment sought by the petitioner was outside the scope of the prayer in the original Writ Petition.

30. It is stated that petitioner had not challenged proceedings under Section 8(4) of the Act issued on 23-09-1981 by way of filing appeal under Section 33 of the Act within the time prescribed by law and therefore the Writ Petition should be dismissed as not maintainable and not *bona fide*.

31. It was specifically asserted that orders under Section 8(4) of the Act as well as final statement under Section 9 of the Act were served on the petitioner though no material in proof of such service was annexed to the counter-affidavit.

32. It is stated that the petitioner submitted objections to the Section 8(4) orders passed on 23-09-1981.

33. It is stated that though petitioner requested for exemption under Section 20(1)(a) of the Act, the 1st respondent-Government had rejected the same on 27-06-1983 and that the act of entering into agreement of sale with Lord Venkateswara CMS Limited by petitioner violates Section 5(3) and Section 10(4) of the Act.

34. It is admitted that notification under Section 10(1) of the Act was published in the Gazette on 25-11-1982 and that notification under Section 10(3) of the Act was published 24 years later in the Gazette on 27-12-2006.

35. It is also admitted that notice dt.10-01-2007 under Section 10(5) of the Act could not be served on the petitioner as she was not residing at the address furnished by her to the 3rd respondent, that petitioner did not give her new address to 3rd respondent and so panchanama was conducted and a notice was affixed on conspicuous place on the surplus land.

36. It is stated that as per latest judgment of Apex Court (no citation mentioned or furnished), service of notice under Section 10(5) of the Act is not mandatory and such non-service on declarant would not vitiate proceedings.

37. It is stated that proceedings under Section 10(6) were issued on 16-03-2007 and possession of the surplus land was taken on

04-02-2008 under cover of panchanama and the same was saved as per Section 3 of Urban Land (Ceiling and Regulation) Repeal Act, 1999.

38. Learned Government Pleader for Assignment relied upon the judgment of the Supreme Court in **Mahalaxmi Motors Ltd. Vs. Mandal Revenue Officer and others⁴**, **Omprakash Verma and others Vs. State of Andhra Pradesh and others⁵** and **The District Collector, Mahabubnagar Vs. R.Venkataswamy Goud, S/o.Achanna Goud (died) and another⁶**.

POINTS FOR CONSIDERATION

39. In view of the rival submissions of the parties, the following points arise for consideration in the Writ Petition:

(a) *Whether this Court was right in law to permit amendment of the affidavit filed in support of the Writ Petition as well as prayer in the Writ Petition in its order dt.10-07-2015 in W.P.M.P.No.10024 of 2014 and 1025 of 2014?*

(b) *Whether order dt.23-09-1981 passed under Section 8(4) of the Act and final statement under Section 9 of the Act were served on the petitioner, and if so, what is the consequence of such non-service?*

(c) *Whether filing of application for regularization on 11-01-2010 by the petitioner under G.O.Ms.No.747 Revenue (U.C.I) Department dt.18-06-2008 estops the petitioner from contending that proceedings under the Act are vitiated or is there a waiver by the petitioner of her rights under the Act?*

⁴ (2007) 11 SCC 714

⁵ (2010) 13 SCC 158

⁶ 2012 (1) ALT 212

(d) *To what relief?*

Point (a):-

40. It is not in dispute that originally the petitioner only sought consideration of the application for regularization dt.11-01-2010 made by her under G.O.Ms.No.747 Revenue (U.C.I) Department dt.18-06-2008 and questioned the action of the respondent in seeking to take possession of the extent of 26,637.50 sq. m of land in Sy. No.11 of Premavathipet village, Rajendranagar Mandal, Ranga Reddy District.

41. It is her specific pleading in the affidavit filed in support of the Writ Petition that her husband was looking after her affairs, that he suffered ill-health from 1990 and he lost his eye sight during 1991-92, that he died on 30-03-1999 and that she had sold her house No.10-3-686 (149-3RT), Vijayanagar Colony in 1991-92. She specifically pleaded that notice under Section 10 (3) of the Act was published in the Gazette dt.27-12-2006 and thereafter notice dt.10-01-2007 under Section 10 (5) of the Act was sought to be served on her at the house No.10-3-686, Vijayanagar Colony, Hyderabad which had already been sold by her long back; when the 4th respondent visited the premises, she was not available there; and a panchanama was allegedly conducted and the notice was affixed to the door of that house.

42. In the amendment applications, she stated that she sought further legal advise in the matter, that she was advised to apply for the

entire record relating to her declaration under the Act under the Right to Information Act, 2005 and the documents including the note file were made available to her in November 2013 and February 2014 and on perusing the same, she thought it fit to raise additional grounds and also seek amendment of prayer.

43. It is pertinent to note that the final statement under Sec.9 was not furnished to petitioner by the respondents even under the Right to Information Act, 2005 though the same is found in the record produced by the Government Pleader. No reason is furnished by the Government Pleader why it was not furnished under the said Act to petitioner.

44. When the petitioner contends that the order dt.23-09-1981 passed under Section 8 (4) of the Act and final statement under Section 9 of the Act were not served by the 3rd respondent (and this allegation is found true as will be shown in the discussion under Point (b) below), she is entitled to seek amendment not only of the prayer in the Writ Petition but also contents of the affidavit filed in support of the Writ Petition raising additional grounds attacking the action of the respondents under the Act.

45. This is because, as will be explained below, there is a statutory obligation cast on the 3rd respondent to serve on petitioner order dt.23-09-1981 passed under Section 8 (4) of the Act and final statement under Section 9 of the Act.

46. The respondents cannot take the plea that the petitioner should ask for the said proceedings and that the petitioner cannot amend her pleadings or prayer because she did not ask for the same since it was the statutory obligation of 3rd respondent to serve the said proceedings on her.

47. It is settled law that statutory authorities cannot be allowed to take advantage of their own default in acting in accordance with their mandatory statutory duty.

48. In **Kusheshwar Prasad Singh Vs. State of Bihar and others**⁷, the Supreme Court declared:

“ 12.So far as the contention of the appellant that the proceedings had been initiated in 1973-1974 and final order was passed on 7-1-1976 is not disputed and cannot be disputed. If it is so, submission of the appellant is well founded that final statement as required by sub-section (1) of Section 11 ought to have been issued and effect ought to have been given to the final order. Admittedly, no appeal was filed. Nor the order was challenged by any party. The appellant is right in contending that final statement ought to have been issued immediately or in any case within “reasonable time”. The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final statement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well founded.

13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly,

⁷ (2007) 11 S.C.C. 447

Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

*14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in **Mrutunjay Pani v. Narmada Bala Sasmal**⁸ wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim **commodum ex injuria sua nemo habere debet** (no party can take undue advantage of his own wrong).*

*15. In **Union of India v. Major General Madan Lal Yadav**⁹ the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:*

“It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

⁸ AIR 1961 S.C. 1353

⁹ (1996) 4 S.C.C. 127

49. It is also settled law that the purpose of seeking amendment of pleadings or prayer is to avoid multiplicity of proceedings. So instead of filing a fresh Writ Petition, if the petitioner sought amendment of the instant Writ Prayer and affidavit, the respondents are precluded from opposing the same.

50. There is no merit in the contention of the respondents that amendments sought by petitioner are outside the scope of the pleadings in the Writ petition as originally filed. That an amendment sought should be only within the scope of the original prayer in a proceeding, is not the law. Law permits even a suit for injunction on basis of a plaintiff's possession to be converted into a suit for recovery of possession (see **Sampath Kumar v. Ayyakannu and another**¹⁰).

51. In **Shanti Kumar R. Canji v. Home Insurance Co. of New York**¹¹, the Supreme Court held:

“ 20. ... In exceptional cases an amendment has been allowed where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, because the court found that consideration of lapse of time is out weighed by the special circumstances of the case. (See Charan Das v. Amir Khan¹²)

52. Having regard to the conduct of the respondents, I am satisfied that the petitioner was justified in seeking amendment of the pleadings as well as prayer and that the instant case would clearly fall in the category of exceptional cases even where the effect is to take away

¹⁰ (2002) 7 SCC 559

¹¹ (1974) 2 SCC 387

¹² AIR 1921 PC 50

from the respondents any legal right which has accrued to them by lapse of time.

53. In any event, the Government Pleader had stated that he had no objection for allowing the applications for amendment of prayer as well as pleadings. Therefore it is not open to the respondents to contend that the pleadings raised by the petitioner were an after thought or not *bona fide* or were outside the scope of the original prayer in the Writ Petition and that since the applications were filed four years after the filing of the Writ Petition, they could not be allowed.

54. Point (a) is answered accordingly that this Court was right in law to permit amendment of the affidavit filed in support of the Writ Petition as well as prayer in the Writ Petition in its order dt.10-07-2015 in W.P.M.P.Nos.10024 of 2014 and 1025 of 2014.

Point (b):

55. I will now consider the question whether order dt.23-09-1981 passed under Section 8(4) of the Act and final statement under Section 9 of the Act were served on the petitioner or not, and if not served, what is the consequence of such non-service.

56. In this context, it is to be noted that as per the scheme of the Act, persons holding vacant land in excess of ceiling limit have to file a statement under Section 6 of the Act; on that basis, under sub-Section (1) of Section 8 of the Act, a draft statement is to be prepared

after enquiry by the competent authority containing the particulars mentioned in sub-Section (2) of Section 8; and thereafter under sub-Section (3) of Section 8, such draft statements have to be served on the declarant together with a notice stating that any objection to the draft statement should be preferred within (30) days of the service thereof. On receipt of the same, objections if any, may be submitted by the declarant and thereafter, the competent authority is required under sub-Section (4) of Section 8 to consider any objection received *and* he shall, after giving the objector a reasonable opportunity of being heard, pass such orders as he deems fit.

57. Thus, not only should objections be invited and considered, if submitted, *but also an opportunity of hearing should be provided to the declarant* and thereafter only orders have to be passed.

58. Section 9 of the Act mandates that the competent authority *after disposal of the objections*, if any received under sub-Section (4) of Section 8 should make necessary alterations in the draft statement *in accordance with the orders passed* on the objections and shall determine the vacant land held by the declarant in excess of the ceiling limit *and cause copy of the draft statement so altered to be served on the declarant in the manner referred to in sub-Section (3) of section 8 on the person concerned.* The manner of service of draft statement is laid down in Rule 5(2) of the Rules. It contemplates service by registered post/affixture on conspicuous place in office of

competent authority and also on conspicuous part of house of holder of the vacant land.

59. Only after service of final statement under Sec.9, a notification under Section 10(1) of the Act is to be issued; claims, if any, of persons interested in the vacant land will be considered under Section 10 (2); and thereafter notification should be published in the Official Gazette declaring that the excess vacant land is deemed to have been acquired by the State Government. Only then such land would vest in the Government free from encumbrances. Notice to surrender possession can then be issued under sub-Section (5) of Section 10 and if the person who is served such notice refuses, then the competent authority may dispossess him.

60. Thus, the decision under sub-Section (4) of Section 8 is in the nature of adjudication i.e., a judgment in a suit; drafting of final statement under Section 9 of the Act is akin to drafting of a decree; and proceedings under Section 10 are in the nature of execution proceedings in a Civil Court in a civil suit.

61. Without serving copy of the judgment in a civil suit, there cannot be drafting of a decree or execution of the said decree. In my considered opinion, on the same analogy, without serving copy of an order under sub-Section (4) of Section 8, there cannot be a final statement under Section 9 or any acquisition of the declarant's land / dispossession of the declarant under Section 10.

62. It cannot be disputed that the Act is a piece of expropriatory legislation and therefore has to be strictly construed (see **B.E.Billimoria** (2 supra)).

63. In **Vipinchandra Vadilal Bavishi & Ors v. State of Gujarat & Ors.**¹³, the Supreme Court held:

“From perusal of the Urban Land (Ceiling and Regulation) Act, 1976 (in short “the Ceiling Act”), the provisions contained in Sections 8, 9 and 10 have to be mandatorily complied with before the land is declared in excess of the ceiling limit.”

64. So the procedure for depriving a citizen of property by the State as prescribed therein ought to be mandatorily followed. Non-compliance with the procedure prescribed in the Act would be fatal and would vitiate all the subsequent proceedings rendering them wholly without jurisdiction, null and void.

65. In **Kothuru Babu Surendra Kumar** (3 supra), the Court held that issuance and service of notice as contemplated under sub Rule (2) of Rule 5 of the Rules is mandatory and that statement prepared under Section 10 of the Act without following the mandatory requirement under Rule 5 (2) is clearly invalid and illegal. It held that it is necessary to serve notice of orders under Section 8 (4) and Section 9 final statement not only on the declarant but also on the purchasers from the declarant, as they were also interested parties. It held:

“18. Coming to the facts of the present cases that though Smt. Tulsamma filed a declaration in the year 1982 and she has clearly stated in her statement that this land i.e., Ac. 1-54 cents which is an agricultural land, she sold to the

¹³ (2016) 4 SCC 531

*society and no notice as contemplated under Section 8(3) of the Act and Rule 5 of the Rules were ever issued either to the society or to its members. This Court in **Y.S.R. Krishnaiah v. Spl. Officer, Urban Land Ceiling**¹⁴, held that only the person, who filed the declaration under Section 6 of the Act, is a person aggrieved within the meaning of Section 33(1) of the Act and he alone can prefer an appeal; and this Court further held that issuance and service of notice as contemplated under sub-section (2) of Rule 5 of the Rules is mandatory. Therefore, the statement prepared under Section 10 of the Act without following the mandatory requirement under Rule 5(2) is clearly invalid and illegal. In the above case, when the appellate order itself mentions that the authorities have prior knowledge that the declarant has major son and they have not issued any notice, Under those circumstances, the order under Section 10(3) and under Section 8(4) of the Act are quashed.*

*19. Similarly, this Court in **M/s, L.S. & Co. v. State of A.P.**¹⁵ considered the issue of draft statement and final statement under Section 8(4) and Section 9 of the Act and the effect of Rule 5 of the Rules and while considering the same, this Court held as follows:*

"....The scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statements and all other interested persons. The Act gives such protection to all the concerned at every stage of the proceedings. After all any decision of the Special Officer and Competent Authority under the provisions of the said Act are fraught with serious consequences in respect of the urban property. Rights in immovable properties cannot be allowed to be adjudicated by the quasi-judicial authorities like the Special Officer and Competent Authority in a casual and perfunctory manner. The scheme of the Act and particularly Sections 8 and 9 of the Act and the rules framed thereunder would show that the procedure to be adopted by the Special Officer and competent authority is to be reasonable and fair. The scheme of the Act ensures an elaborate hearing by the Special Officer and competent authority in adjudication of the

¹⁴ 1989 (1) ALT 48

¹⁵ 1995 (2) APLJ 325

statements filed by the persons holding the vacant land. Any deviation in this regard would have to be viewed very seriously".

20. In the above case, notice to all the interested persons was not issued. This Court quashed all consequential proceedings, including one under Section 10(1) and 10(3) of the Act.

.....

28. What is culled out from the above discussion is that the competent authority who has finalised the statement under Section 8(4) of the Act and final statement under Section 9 and notification issued under Section 10(1),10(3) and Section 10(5) of the Act failed to follow the mandatory provisions by issuing notice to the persons likely to be affected viz., the petitioners, who are purchasers of the above lands and it is also within their knowledge; and the records also reveal that Smt Tulsamma, the 4th and 5th respondent in the writ petitions admitted that she has no interest in the above lands as she has sold the same to the society and the same was also discussed by the competent authority in his earliest proceedings dated 28-5-1984. In view of the same non-issuance of notice and its service upon the interested persons is fatal and the entire proceedings and the final statement under Section 8(4) of the Act; and the proceedings of the second respondent dated 12-4-1990 and the consequential orders of the first respondent under Section 8(4) and Section 9 of the Act dated 9-2-1991 and the notification issued under Section 10(1); 10(3) and 10(5) of the Act are all of no consequences and consequently they are declared as non est. The writ petitions are accordingly allowed."

66. The Government Pleader for Revenue does not dispute that both order under Section 8(4) and final statement under Section 9 are required to be served on the petitioner under the Act and Rule 5 (2) of the Rules framed under the Act.

67. He stated that in the counter affidavit filed by 3rd respondent the petitioner's allegation about non-service on her of order dt.23-09-1981 under Section 8(4) and final statement under Section 9, is denied and it is specifically asserted that both were served on the petitioner.

68. No material document was filed along with the counter affidavit by 3rd respondent in support of its plea.

69. The record produced by the learned Government Pleader does not show that order dt.23-09-1981 under Section 8 (4) of the Act was dispatched to the petitioner. Though it shows that final statement under Section 9 was dispatched to the petitioner, there is no evidence that it was served on the petitioner.

70. In contrast, the record reveals that statement under Section 8 (1) was served on the petitioner at her residence in Vijayanagar Colony on 08-09-1981 and an acknowledgement was obtained from her representative one Devaiah. If this can be served on petitioner, why the order dt.23-09-1981 under Section 8 (4) of the Act and final statement prepared on 17-11-1981 under Section 9 of the Act could not be served on her, is not explained by the learned Government Pleader.

71. As already stated, the final statement under Sec.9 was not supplied to petitioner even though she sought it's copy also under the

Right to Information Act, 2005 leading the petitioner to believe that such an order was not even passed.

72. Therefore the plea of the 3rd respondent in the counter affidavit that both the above proceedings were served on the petitioner is a false plea and appears to have been made to mislead this Court.

73. In **Prabin Ram Phukan and another v. State of Assam and Others**¹⁶, the Supreme Court held:

“25. In our considered opinion, there lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of non-service is proved whereas in the case of latter category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action “illegal” whereas in the case of latter, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making service of such notice on him.”

74. Since admittedly there is no evidence adduced by the respondents to prove service of order dt.23-09-1981 under Section 8 (4) of the Act or the final statement under Section 9 of the Act, all the subsequent proceedings taken under Section 10 of the Act including the alleged panchanama are null and void.

75. Point (b) is answered accordingly.

¹⁶ (2015) 3 SCC 605

Point (c)

76. Under this point I will discuss whether filing of application for regularization on 11-01-2010 by the petitioner under G.O.Ms.No.747 Revenue (U.C.I) Department dt.18-06-2008 estops the petitioner from contending that proceedings under the Act are vitiated or can be construed as a waiver by the petitioner of her rights under the Act.

77. It is settled law that there is no estoppel against law/a statute. **(Electronics Corporation of India Ltd. & Ors. v. Secy. Revenue department, Govt. of A.P. & Ors.¹⁷)**

78. In view of this principle, once it is established that there is violation of mandatory procedure prescribed under the Act by the respondents (i.e., service of orders under Sec.8(4) and final statement under sec.9 of the Act), they cannot raise the plea that petitioner is estopped by her act of seeking regularization of her possession under the G.O.Ms.No.747 Revenue (U.C.I) Department dt.18-06-2008. In these facts, the principle of estoppel will not operate.

79. Also in the case of waiver of any provisions of the statute it is necessary to prove that there was conscious relinquishment of the advantage of such provisions of the statute. **(Pulin Behari Lal v. Mahadeb Dutta & Ors¹⁸.)**

¹⁷ (1999) 4 SCC 458

¹⁸ (1993) 1 SCC 629

80. It was held in **Motilal Padampat Sugar mills Ltd. V. State of U.P. & Ors**¹⁹ that waiver must be an intentional act with knowledge.

81. This was reiterated in **State of Punjab v. Davinder Pal Singh Bhullar & Ors etc.**²⁰ in the following terms:

“ 41. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them.”

82. There is no evidence of any conscious abandonment of her rights by the petitioner since from the beginning her attempts were to retain her land by seeking exemption under Section 20 of the Act. There is no evidence that the petitioner was fully informed as to her rights and with full knowledge about the same, she intentionally abandoned them.

83. The Government pleader for Revenue cited the following passage in **Mahalaxmi Motors Ltd. (4 supra)**:

“ 51.The application filed by the appellant before the State Government for regularisation of the land although may not be determinative of the issue as to whether it is a land grabber or not could be taken into consideration for a limited purpose, namely, admission or acknowledgement on its part in regard to the title of the State. It was possible for the appellant to file an application for regularisation of land without prejudice to its rights and contentions in the pending proceedings, but having regard to the decisions rendered by

¹⁹ AIR 1979 SC 621

²⁰ (2011) 14 SCC 770

the Andhra Pradesh High Court in two writ petitions, it would be fair to presume that the appellant filed the said application knowing fully well as to where it stood. Once it had taken a specified stand knowing fully well that it had no right, title and interest in or over the land in question, it cannot in law turn round and contend that the same was not binding on it. Doctrine of estoppel in a situation of this nature, in our opinion, would squarely apply. An abstract belief on the part of the appellant that its vendor had a marketable title and it was getting a good title to the land is not decisive. Whether any action was taken by the authorities of the State in regard to the possession of Ramender Reddy or the appellant, in our opinion, is wholly irrelevant inasmuch as Ramender Reddy and consequently the appellant had no title over the property nor acquired any title by prescription. Law does not contemplate any vacuum in the title. Either the State had the title or the appellant and its predecessor.”

84. The above case arose under the A.P.Land Grabbing (Prohibition) Act, 1982. A suit filed under the said Act by the Revenue Department of the State Government before the Special Court for eviction of the appellant was decreed. This was confirmed by the High Court in a Writ Petition filed challenging the said judgment. The plea of the appellant that it had title to the land was negated. Unlike the instant case, there was no violation of mandatory provisions of an expropriatory statute by the State in that case. The observations referred to above therefore have to be confined to facts of that case and cannot help the respondents.

85. For the same reasons, the decision in **District Collector, Mahbubnagar** (6 supra) which relied on the decision in **Mahalaxmi Motors Ltd** (4 supra) will not apply.

86. The learned Government Pleader then sought to rely on the following passage in **Omprakash Verma** (5 supra) :

“ 40.The above factual details with clear-cut materials cannot be assailed. All those dates and events are available in the various documents filed by all the parties. Those particulars also show that only when possession of the said 99.17 acres of land was returned to the owners in 1990, then the owners for the first time sought to take the plea that the declaration made by them under the ULC Act was a mistake and hence proceedings under the ULC Act were void. As rightly pointed out, the owners having taken part, all the declarations filed by them under Section 6 of the ULC Act to recover lands admeasuring 99.17 acres surrendered under the provisions of the Land Reforms Act. Either the appellants or anybody claiming through them are estopped from assailing the legality or validity of the declaration made by the owners under Section 6 of the ULC Act on the principle that a person cannot approbate and reprobate in respect of the same transaction.”

87. This decision also does not apply because in that case initially the land was declared as surplus land and taken possession by the State under the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The appellant contended that the land is Urban Land covered by the Urban land (Ceiling and regulation) Act, 1976 and got it released from the authorities under the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. In the meantime, proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 had been initiated and the State also took possession of the land. The appellant then questioned the same stating that by mistake they had filed declaration under the Urban land (Ceiling and Regulation) Act, 1976. In that context the above observation was made. In the instant case,

the facts are totally different and the evidence is conclusive that there was a gross violation of mandatory provisions of the Act by the respondents.

88. I therefore hold on point (c) that filing of application for regularization on 11-01-2010 by the petitioner under G.O.Ms.No.747 Revenue (U.C.I) Department dt.18-06-2008 does not estop the petitioner from contending that proceedings under the Act are vitiated and also cannot be construed as a waiver by the petitioner of her rights under the Act.

Point (d):

89. Once it is proved that the order dt.23-09-1981 under Section 8 (4) of the Act is not served on the petitioner as is mandated by the Act and the Rule 5 (2) of the Act, the question of the petitioner availing remedy of appeal under Section 33 of the Act does not arise. This is because without knowing the contents of the order, which the respondents are obligated under the Act to serve on the petitioner, the petitioner will be disabled from availing the remedy of appeal under Section 33 of the Act.

90. It is admitted by the respondents that notification under Section 10(1) of the Act was published in the Gazette on 25-11-1982 and that notification under Section 10(3) of the Act was published 24 years later in the Gazette on 27-12-2006. The proceedings under the Act are required to be completed with reasonable expedition and this abnormal delay in issuing notification under Section 10(3) also

vitiates the proceedings. If there is long delay in completing the proceedings under the Act, a party is entitled to proceed on the premise that all proceedings against her/her land had been abandoned by the respondents. It thus causes serious prejudice to petitioner.

91. It is also admitted that notice dt.10-01-2007 under Section 10(5) of the Act could not be served on the petitioner as she was not residing at the address furnished by her to the 3rd respondent. When the respondents delayed the conclusion of proceedings by 24 years, a party cannot be expected to await indefinitely and is entitled to arrange her affairs to suit her convenience. She therefore cannot be blamed for selling the house property at Vijayanagar Colony in 1992 and moving to another place.

92. Admittedly the State of A.P had adopted the Urban Land (Ceiling and Regulation) Repeal Act,1999 vide G.O.Ms.No.615 Revenue (UC.I) Department dt.26.4.2008 w.e.f 27.3.2008. Therefore no fresh opportunity can be given to the respondents to undo the wrongs they had done earlier as pointed out above.

93. For all the above reasons, the Writ petition is allowed with costs of Rs.5,000/- and a Writ of Mandamus is issued declaring all proceedings initiate against the petitioner in respect of her land of extent 26,637 sq.m in Sy.No.11 of Premavatipet Village, Rajendranagar Mandal, Ranga Reddy district including order Ref.No.D1/7/81 dt.23-09-1981 under Sec.8(4) of the Act, Final statement issued under Sec.9 of the Act on 17-11-1981, Sec.10(1)

notification published in the A.P.Gazette No.131 dt.25-11-1982, Sec.10(3) notification published in the A.P.Gazette No.424 dt.27-12-2006, Sec.10(5) notice dt.10-01-2007, Sec.10 (6) proceedings dt.16-03-2007 and panchnama allegedly conducted on 04.02-2008 are all set aside as illegal, arbitrary and violative of Article 14, Article 300-A of the Constitution of India and the provisions of Urban Land (Ceiling and Regulation) Act, 1976 and the respondents are directed restore to the petitioner the above land belonging to her and are further directed not to interfere with the possession of the petitioner of the said land. They shall also refund the sum of Rs.5,28,750/- paid by the petitioner along with her application dt.11-01-2010 seeking regularization within 4 weeks from date of receipt of copy of this order.

94. As a sequel, miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-04-2017

Vsv/Kvr