

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

* * * * *

WP Nos.21580 of 2008 and batch

Between:

N. Linga Rao, S/o.N. Ramaiah (died) per LRs.
and others

...Petitioners

AND

The Government of Andhra Pradesh, rep by its
Secretary, Revenue Department, Hyderabad and another

...Respondents

DATE OF JUDGMENT PRONOUNCED: 28-03-2017

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

*THE HON' BLE SRI JUSTICE A. RAJASHEKER REDDY

+ WP Nos.21580 of 2008 and batch

%28-03-2017

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VERSUS

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...Respondents

< GIST:

> HEAD NOTE:

! Counsel for Petitioners: Sri B. Vijaya Sen Reddy

^Counsel for Respondents: Government Pleader for Assignment

? Cases referred

1. 2013 (4) SCC 280
2. 1976 (1) SCC 700
3. 2014 (2) ALD 125
4. 2014 (12) SCC 523
5. 2004 (3) ALT 410
6. 1992 (2) ALD 473
7. 2012 (5) ALD 54
- 8.2011 (5) SCC 394
9. 2015 (5) SCC 321
10. 2002 (5) ALD 779 (DB)

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.21580 of 2008, 6879 & 6878 of 2011, 23535, 29244, 20996, 20047, 16450, 18463, 20053, 22525, 22045, 21720, 21658 of 2009; 1367 of 2010, 25230 of 2010, 18805 of 2011, 4189 of 2010, 3649 of 2010, 19926, 21012, 3053, 8886, 33227, 1111, 3940, 11201 of 2011; 34100, 21487, 24560, 5915, 5101, 28858 of 2012; 3777 of 2010; 2554 of 2011; 4598 of 2010; 17533 of 2011 17150 of 2011, 22117 of 2010; 11892 of 2011; 18001 of 2012; 35263 of 2012; 32909 of 2011, 24308 of 2010, 21999 of 2009; 25724 of 2009; 20112, 18877, 9647, 33105, 33144, 9536 of 2011, 35158, 19235, 17455, 17456 of 2012; 33020 of 2011, 7726 of 2011, 24582 of 2009, 19992 of 2009, 25429 of 2010, 26795 of 2010, 16218, 32435, 32939, 22557 of 2011, 24145 of 2012, 16635 of 2011, 33416 of 2012; 33019 of 2011, 17142 of 2012, 33097 of 2011, 18039 of 2012, 19595 of 2012, 23675 of 2009, 5341 of 2012, 32831 of 2011, 32775 of 2012, 32914 of 2011, 29235 of 2009, 7205 of 2012, 18851 of 2012, 28320 of 2009 & 29045 of 2009

COMMON ORDER:

All these batch of writ petitions raises a common question of law and fact and hence, they are clubbed, heard together and being disposed of by this common order. It would suffice to take WP No.21580 of 2008 as lead case as the writ is filed by the declarants and covers the *lis* in other writ petitions as well.

WP No.21580 of 2008 is filed seeking to issue a writ of mandamus to invalidate the proceedings issued under Sections 8 (1),

8(4), 10 (1), 10 (3) and 10 (5) of the Urban Land (Ceiling and Regulation) Act, 1976, (for short, 'the ULC Act') and the panchanama dated 04-03-2008 in CC No.F1/9875/76 on the file of 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, and for issuance of appropriate consequential directions, in the interest of justice.

2. Case of the petitioners is that N. Linga Rao, 1st petitioner (since deceased) *per* LRs, petitioners 2 and 3 (sons) and a pre-deceased son by name N. Krishna Rao constituted hindu un-divided family. That the joint family of N. Linga Rao owned and possessed several extents of lands in Kukatpally, Moosapet, Kondapur and Kothaguda villages in Ranga Reddy District. N. Linga Rao had filed a declaration for computation of holding in CC No.F1/9875/76 before the 2nd respondent giving details of the vacant lands held by him in excess of the ceiling limit prescribed under the ULC Act, as required under Section 6 of the ULC Act. Notices in relation to that computation were issued on 04-

09-2008 by the office of the 2nd respondent to the petitioners and to their tenants requiring them to submit applications for regularization of the lands in question in Sy. Nos.394 part, 395, 396, 423, 429, 406, 427, 428, 430 and 643 of Kukatapilly village. It was informed to the petitioners and their tenants that lands in question in the said survey numbers were declared as surplus lands under Section 10(6) of the ULC Act and vested with the Government having taken possession thereof and if regularization of the said lands is not availed, in terms of GO Ms.747, dated 02-06-2007, action will be taken against to evict them from the said lands.

3. That after receipt of notices dated 04-09-2008, the petitioners enquired in the office of the 2nd respondent, and were informed that order dated 31-07-1982 was passed under Section 8 (1) of the Act and consequential order under Section 8 (4) of the Act was passed against 1st petitioner-N. Linga Rao declaring him as surplus holder of lands in an extent of 55,915.37 sq. mts. and thereafter notices under Section

10(1) was issued on 25-09-1982, under Section 10(3) was issued on 26-03-2001 and under Section 10 (5) was issued on 17-10-2003 to take over possession of the alleged surplus lands in question and the 2nd respondent claims to have taken possession of the lands in question by conducting panchanama on 04-03-2008. Emphatic case of the petitioners is that no notices were issued to them before or after passing of orders under Sections 8(1) and 8 (4) of the ULC Act muchless issuance of any notices under Section 10(1), 10(3) and 10(5) of the ULC Act. Petitioners have not received any communication from the 2nd respondent-authorities at any point of time, from the date of submitting declaration by the 1st petitioner-N. Linga Rao. Petitioners obtained certified copies of all the relevant proceedings alleged to have been issued by the 2nd respondent under Right to Information Act and were surprised to note that all the orders were passed *ex-parte* without any notice to them. Petitioners categorically deny neither they nor their father 1st petitioner-N. Linga Rao have filed any written statement

or affidavit giving consent or no objection to take possession of the surplus lands determined under Section 8(1) of the ULC Act.

4. As the proceedings were conducted and concluded behind the back of the petitioners, the proceedings right from the stage of Section 8(1) till Section 10(6) of the ULC Act and the consequent so called panchanama alleged to have been conducted on 04-03-2008 are illegal and void.

5. Petitioners and their family members are in physical and actual possession of the lands admeasuring Ac.9.18 gts. in Sy. Nos. 424, 425, 326, 427, 428, 429, 430 & 431 of Kukatpally village, after sale of lands in other survey numbers. That the claim of the 2nd respondent that they have taken over possession of vacant lands to an extent of 52,480.48 sq. mts. under the impugned proceedings is false and as a matter of fact, such vast extent of vacant land is not available. That most part of the subject lands in question have been sold to third parties and as on date, third parties are in physical possession of the lands

purchased by them. That lands in question are joint family lands of the petitioners and are in joint possession and enjoyment, therefore, without demarcating the lands, it would not have been possible to take possession of the lands of which the 1st petitioner-N. Linga Rao had 1/4th share and that 1/4th share is not divided by metes and bounds and therefore taking possession of the lands cannot be resorted to without issuing notices to the other family members and persons in actual possession of the lands in question. Hence, this writ petition.

6. Counter affidavit is filed by the 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, on his behalf and also on behalf of the 1st respondent, wherein, *inter alia*, it is stated that 1st petitioner-N. Linga Rao and his son N. Sreepathi Rao-2nd petitioner have filed declarations under Section 6(1) of the ULC Act, declaring the properties held by them at Kukatpally, Moosapet, Kothaguda and Kondapur villages within Hyderabad urban agglomeration and the same were registered as CC No.F1/9875/76 and

CC No.F1/493/82 respectively. After due enquiry, draft statements under Section 8(1) of the ULC Act were issued on 31-07-1982 determining the declarants as surplus land holders provisionally to an extent of 55,915.37 sq. mtrs each. That in response to the draft statement issued, the 1st and 2nd petitioners have submitted reply on 03-08-1982 stating that they are cultivating the land to an extent of 12,698.18 sq. mtrs. in Kukatpally village in Sy. Nos.423 to 431, Sy.Nos.174, 175, 176/2 and 178 of Moosapet village, to an extent of 6221.97 sq. mtrs. in Sy. Nos.60, 71 to 77 of Kondapur village and that the same will not be converted for non-agricultural purpose. That the petitioners have entered into an agreement with Pushpakh Co-operative Housing Society for selling an extent of 7924.87 sq. mtrs in Sy. Nos. 394, 395 & 396 of Kukatpally village along with other co-owners and requested the Government for exemption of the said land under the provisions of the ULC Act. Further petitioners have also filed affidavits on 03-08-1982 stating that they have no objection for the determination of surplus lands and accordingly orders under Section

8(4) and statement under Section 9 of the ULC Act was issued on 04-08-1982. No appeal is preferred against the orders issued under Section 8(4), hence order issued under Section 8(4) attained finality. Thereafter notification under Section 10(1) of the ULC Act was issued on 25-09-1982 and the same was published in A.P. Gazette No.130, dated 24-11-1982.

7. Similar draft statement under Section 8(1) of the Act was issued on 31-07-1982 vide CC No.F1/493/82 pertaining to the 2nd petitioner and declared him as surplus land holder to an extent of 55,915.37 sq. mtrs. in Sy. Nos.15, 391/P, 392, 432 to 441, 396 of Kukatpally village, Sy.Nos.174, 175, 176/2, 178 of Moosapet village and Sy. Nos.5 to 10, 13, 15, 16, 19, 60, 71 to 77 of Kondapur village. That in response to the same, the 2nd petitioner has submitted an affidavit dated 03-08-1982 stating that he has no objection with regard to determination of surplus lands and accordingly orders under Section 8 (4) and statement under Section 9 of the UCL Act were issued on 04-08-1982. Subsequently,

notification under Section 10(1) of the Act was issued and published in A.P. Gazette No.130, dated 24-11-1982 and declaration under Section 10(3) of the ULC Act was also published in A.P. Gazette No.24, dated 14-06-2001. But the case of the 2nd petitioner has not come upto to the stage of 10(6) of the ULC Act in the view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, (for short, 'the Repeal Act'), the proceedings abated in respect of the 2nd petitioner.

8. After publication of notification, under Section 10 (1) and 10 (3) of the ULC Act, notice under Section 10(5) of the ULC Act was issued on 17-10-2003 and the same has been acknowledged on 12-11-2003. Since the 1st petitioner failed to surrender the surplus lands, orders under Section 10(6) of the ULC Act were passed authorizing the enquiry officer to take over the possession of the lands. Accordingly possession of surplus lands had been taken over by the enquiry officer on 04-03-2008 through Panchanama. As such, the action taken by the authorities is well within the purview of the provisions of the ULC Act.

9. Reply to the counter affidavit is filed by the 2nd petitioner admitting initiation of proceedings under Section 8(1) of the ULC Act in CC No.F1/9875/1976 and CC No.F1/493/1982, in respect of the 1st petitioner-N. Linga Rao and himself and the orders passed on 04-08-1982 under Section 8(4) of the ULC Act. It is also admitted that orders issued under Section 8 (4) of the ULC Act were not challenged by the 1st petitioner, but contend that notification under section 10(3), the notices under section 10(5) of the Act were not issued to the 1st petitioner who is the declarant in CC No.F1/9875/1976. Though orders under Section 8 (4) of the Act have been passed and the same were not challenged by the 1st petitioner-N.Linga Rao, the files in CC No. F1/9875/1976 and CC No.F1/493/1982 were tagged on to the file in CC No.5316/1976 which is the declaration filed by one N Narsing Rao, elder brother of the 1st petitioner and paternal uncle of the 2nd petitioner. The proceedings in CC No.F1/5316/1976 were quashed in WP no.17882 of 2008 vide order dated 08-01-2013 by following the judgment in *Atiya Mohammadi Begum vs State of Uttar Pradesh*

reported in 1993(2) SCC 546 and thus the authorities did not initiate any action later pursuant to Section 8(4) in CC No. F1/9875/1976, which is evident from the fact that though Section 8(4) orders were passed on 04-08-1982, there is no action taken until the alleged Section 10(5) notice was issued on 17-10-2003. It is denied that section 10(5) notice dated 17-10-2003 was sent through registered post with acknowledgment due and the same was acknowledged by the 1st petitioner on 12-11-2003. Serving of notice under Section 10(6) and taking of possession on 04-03-2008 is denied.

10. As per the normal procedure, pursuant to the order under Section 10(6) of the ULC Act, lands have to be handed over possession to the concerned Tahsildar. The panchanama dated 4-3-2008, as is evident from the certified copy, is a printed form, and only paper-possession is taken. It has been the practice in revenue proceedings either relating to ceiling cases, or under Recovery Act or Land Acquisition Act that the officer concerned who goes to the land for taking possession, prepares a

sketch of the land by duly giving the particulars of nature of the land, boundaries of the land by specifically pointing out whether there are standing crops or the land is vacant or covered by any structures, and then panchanama is drawn by writing with hand. That the question of taking possession under a printed panchanama would not arise as the authorities who go to the land do not anticipate what would be the actual scenario when they visit the spot for taking possession of the land and that the very action of the respondents claiming to have taken possession under a printed form, is baseless and unsustainable.

11. That the subject lands covered under four villages of Kukatpally, Moosapet, Kothaguda and Kondapur, fall in different survey numbers and not contiguous to each other, therefore taking over possession of the lands to the extent of 54,480.48 square meters under a single panchanama, is impracticable. That in the panchanama dated 04-03-2008, blanks are filled up by showing Balanagar mandal and villages as Kukatpally, Moosapet and Kothaguda. But, Kothaguda village does

not come under Balanagar mandal but comes under Serilingampally mandal. That the authorities claimed to have gone to the lands in survey no. 394, 395, 396, 423, 425, 426, 427, 428, 429 and 430 of Kukatpally village, though the area of the said lands in Kukatpally is 16,897.12 square meters, the authorities claimed to have taken possession of 54,480.48 square meters. That apparently it is a fraudulent and sham panchanama which is prepared in order to drive the declarants/original owners and third party purchasers to get their lands regularized under GO Ms no. 747, Revenue Department dated 18-06-2008.

12. In the instant case there are no documents to show that the land was measured and sub-division sketch was prepared to identify the surplus land, and further to demarcate the retainable land of the declarant and surplus land. Thus the contention of the respondent-authorities that possession is taken, is untenable and without any legal basis.

13. Heard Sri B. Vijaya Sen Reddy, learned counsel for the petitioners and the learned Government Pleader for Assignment.

14. Learned counsel for the petitioners strenuously contended that though proceedings under Section 8 (1) and 8 (4) of the ULC Act were issued, notification under Section 10 (3) and notices under Section 10 (5) of the ULC Act were not served on the petitioners. It is also contended that no orders under Section 10 (6) were served on them and the alleged panchanama said to have been conducted on 04-03-2008 is sham as it was prepared by filling the printed blanks without specifying the material details in relation to the lands in question. Learned counsel further contends that taking possession of several extents of lands of the petitioners situate in Kukatpally, Moosapet, Kondapur and Kothaguda villages in Ranga Reddy District, in one day, on 04-03-2008 under single panchanama, without issuing notice to the petitioners or the persons in possession, is impracticable and such a plea is taken to show that the lands in question vests with the Government before the crucial

date of coming into effect of the Repeal Act on 27-03-2008 and to compel the petitioners to get the lands regularized in terms of GO Ms.

No.747, dated 18-06-2008. It is also contended by the learned counsel

that when once the respondent-authorities failed to take physical

possession of the lands under Sections 10 (5) and (6) of the ULC Act,

in view of the Repeal Act, the entire proceedings under the ULC Act

got lapsed. Learned counsel submitted that petitioners are entitled for

exemption to an extent of Ac.5-00 of land in terms of GO Ms.No.733,

dated 31-10-1988 automatically without there being an application

made in that behalf. In support of his contentions, learned counsel

relied on the decisions reported in *STATE OF UP vs. HARI RAM*,¹

BALWANT NARAYAN BHAGDE vs. M.D. BHAGWAT,² *RAJ*

KUMAR SURANA vs. GOVERNMENT OF ANDHRA PRADESH,³

GAJANAN KAMLYA PATIL vs. ADDL. COLLECTOR &

¹ 2013 (4) SCC 280

² 1976 (1) SCC 700

³ 2014 (2) ALD 125

***COMPETENT AUTHORITY⁴ & LAKSHIMI CONSTRUCTION, A
PARTNERSHIP FIRM REP. BY ITS MANAGING PARTNER vs.
GOVERNMENT OF AP,⁵ NALLA YAKOOB vs. THE
GOVERNMENT OF ANDHRA PRADESH⁶ & KAUSHALYA S.
KEWAL RAMANI vs. GOVERNMENT OF ANDHRA PRADESH⁷***

15. *Per contra*, learned Government Pleader for Assignment contended that draft statements under Section 8 (1) in respect of petitioners 1 and 2 were issued on 31-07-1982 and the petitioners were declared surplus land holders to an extent of 55,915.37 sq. mtrs. each and the petitioners have also filed affidavit dated 03-08-1982 expressing no objection with regard to determination of surplus land. It is stated that in so far as the computation in respect of the lands of the 2nd petitioner, the proceedings stood abated in view of coming into force of Repeal Act, but so far as the 1st petitioner, notification under Section 10 (1) of the ULC Act was published in AP Gazette No.130,

⁴ ***2014 (12) SCC 523***

⁵ ***2004 (3) ALT 410***

⁶ ***1992 (2) ALD 473***

⁷ ***2012 (5) ALD 54***

dated 24-11-1982 and the declaration under Section 10 (3) of the ULC Act was published in AP Gazette No.24, dated 14-06-2001, notice under Section 10 (5) was issued on 17-10-2003 and since the 1st petitioner failed to surrender the surplus lands, orders under Section 10 (6) were passed authorizing the enquiry officer to take over the possession of the lands and the enquiry officer has taken possession of the lands on 04-03-2008 through panchanama. Hence, the proceedings issued under the Act are well within the provisions of the ULC Act and, therefore, the writ petition is liable to be dismissed. In support of his contentions, learned Government Pleader relied on the decisions in ***BANDA DEVELOPMENT AUTHORITY, BANDA vs. MOTI LAL AGARWAL***,⁸ ***STATE OF ASSAM vs. BHASKAR JYOTHI SARAM***⁹ & ***ZARINA vs. SPECIAL OFFICER AND COMPETNET AUTHORITY, VIJAYAWADA, KRISHNA DISTRICT***.¹⁰

⁸ ***2011 (5) SCC 394***

⁹ ***2015 (5) SCC 321***

¹⁰ ***2002 (5) ALD 779 (DB)***

16. In view of the rival contentions, the germane point that arises for consideration in this case is whether possession of the lands of the petitioners in question had been taken over by the respondent-authorities before the Repeal Act came into force ?

17. At the out set, it is trite to refer Section 3 of the Repeal Act.

The Repeal Act came into effect in the State of Andhra Pradesh *w.e.f.*

27-03-2008 in terms of a resolution adopting the Repeal Act under

Clause (2) Article 252 of the Constitution. Section 3 of the Repeal Act

reads thus:

“3. Saving. – (1) the repeal of the principal Act shall not affect –

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where –

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which

has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

18. A reading of the above provision of law, it is understood that repeal of the ULC Act does not affect the vesting of any vacant land under sub-section (3) of Section 10, in cases where possession has been taken over by the State Government or any person duly authorized by the State Government in that behalf or by the competent authority.

19. The case of the petitioners in this case is that they received proceedings under Section 8 (1) and 8 (4) of the ULC Act, but have not received any notices under Section 10 (1), 10 (3), 10 (5) and 10 (6) of the ULC Act and disputes the conduct of panchanama said to have been conducted on 04-03-2008. In *HARI RAM's case* (1 supra), it is observed by the Supreme Court that the requirement of giving notice under Section 10 (5) and 10 (6) of the ULC Act is mandatory and though the language used in Section 10 (5) speaks of “possession” and says that where any land is vested in the State Government under Section 10 (3) of the ULC Act, the competent authority may, by notice

in writing, order any person, who may be in possession of it to surrender possession to the State Government or to any other person duly authorized by the State Government. 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 10 is that it might result the land holder being dispossessed without notice, therefore, the word ‘may’ has to be read as ‘shall’. In *M.D. BHAGWAT’s case* (2 Supra), the Supreme Court, in a matter which arises under the Land Acquisition Act held as follows:-

“In a proceeding under the Act for acquisition of land all interests are wiped out. Actual possession of the land became necessary for its use for the public purpose for which it has been acquired. Therefore, the taking of possession under the Act cannot be “symbolical” in the sense as generally understood in Civil Law. Surely it cannot be a possession merely on paper. What is required under the Act is the taking of actual possession on the spot. In the eye of law the taking of possession will have the effect of transferring possession from the owner or the occupant of the land to the Government.”

20. It is the contention of the petitioners' counsel that possession of the such vast lands of the petitioners in question had not been taken by the respondent-authorities. Taking possession of the lands, as per the normal procedure, requires making survey and taking measurements and preparing a sketch of the lands that are to be taken possession. In the instant case, a procedure is prescribed under Section 17 of the ULC Act r/w. Rule 5 of the Rules under which, before taking possession under Section 10 (6), sub-division sketch of the surplus lands which are sought to be taken over has to be prepared by making survey and taking measurements of the lands so as to identify the surplus land and to demarcate the retainable land of the declarant and the surplus land. In ***BANDA DEVELOPMENT AUTHORITY's case*** (8 supra) the Supreme Court to a question framed as to what should be the mode of taking possession of the land acquired under the Land Acquisition Act, after referring to catena of decisions, observed that there is no hard and fast rule that can be laid down as to what act would constitute taking of possession of the acquired land. It was further observed that if the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchanama will ordinarily be treated as sufficient to constitute taking of possession. But that was a decision

rendered in a matter which arouse under the provisions of the Land Acquisition Act. In the instant case, a procedure is prescribed under Section 17 of the ULC Act, r/w. Rule 5 of the Rules. Requirement of invoking urgency clause under the provisions of the Land Acquisition Act to take possession of the lands for public purpose, cannot be equated with taking possession of the surplus lands determined under the provisions of the ULC Act, therefore the decision in ***BANDA DEVELOPMENT AUTHORITY's case*** (8 supra) cited by learned Government Pleader for Assignment is not applicable to the facts of the present case. Admittedly, the subject lands are covered under four villages of Kukatpally, Moosapet, Kothaguda and Kondapur, fall in different survey numbers and are at distance of 4 to 6 kilometers to each other. Therefore taking over possession of the lands to the extent of 54,480.48 square meters under a single panchanama, dated 04-03-2008 without making any survey and taking measurements of the lands which are situated in two mandals of Balanagar and Serilingampally would not have been possible and irresistibly it has to be concluded that the authorities have prepared the panchanama in a place other than the actual site and the possession of the lands, what they claim to be taken, on the day when they alleged to have conducted panchanama is

not physical possession. There is no document to show that the lands were measured and sub-division sketch was prepared to identify the surplus lands and retainable lands of the declarants-petitioners. There is no material even to establish taking possession of the vacant land either voluntarily or by way of forceful dispossession. In **HARI RAM's case** (1 supra) it was observed by the Supreme Court that the authorities of the State have to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession or forceful dispossession and on failure to establish any of those situations, the petitioners are entitled to the benefit of Section 3 of the Repeal Act. The order at para 42 of the judgment is as follows:-

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

21. The decision in ***HARI RAM's case*** (1 supra) was not overruled in ***BHASKAR JYOTHI SARMA's case*** (9supra) as contended by the learned Government Pleader. In the instant case, there is no material placed to show that the lands were measured and sub-division sketch was prepared to identify the surplus lands and retainable lands of the declarants-petitioners. Sub-division of lands moreso became necessary in this case, as the lands in question are joint family lands and proceedings as against petitioner no.2 were dropped and pursuant thereto, admittedly there is no demarcation of land in question. In those circumstances taking of possession of land cannot be believed.

22. In ***STATE OF ASSAM vs. BHASKAR JYOTHI SARMA***, (9 supra), the Supreme Court, considering the fact that the actual physical possession of the land was taken over from the erstwhile land owner on 7-12-1991, any grievance based on Section 10 (5) of the ULC Act, ought to have been taken within reasonable time of such dispossession; and if the owner did not do so, forcible taking over of

possession would acquire legitimacy by sheer lapse of time. The decision in ***BHASKAR JYOTHI SARMA's case*** (9 supra) cited by the learned Government Pleader has no application to the facts of the present case as direction was sought in that case for restoration of possession, after long lapse of time, but in this case, writ petition is filed in the year 2008 when possession was alleged to have been taken in the year 2008. Here in this case what is the extent of surplus land is not identified and there is no proof of taking possession of the surplus land by the respondent-authorities. In ***RAJ KUMAR SURANA vs. GOVERNMENT OF ANDHRA PRADESH*** (3 supra), having considered the ratio laid down in ***Hari Ram's case*** (1 supra), with regard to taking physical possession, para 24 it is held as follows:-

“As held by the Supreme Court in Hari Ram's case (supra), the Repeal Act will save only in such cases where the de facto possession (physical possession) was taken and mere vesting of the land under Section 10 (3) of the Act or symbolic possession on part would not save the proceedings under the Act as and when the same is adopted by the respective State Legislatures.”

23. In **GAJANAN KAMLYA PATIL vs. ADDL. COLLECTOR & COMPETENT AUTHORITY's case** (4 supra), the Supreme Court held that even if there is no voluntary delivery of possession of the surplus lands by the declarant, even for take forcible possession certain procedure has to be followed. The Supreme Court at para 12 held as follows:-

“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 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 MMRDA, 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.”

24. In ***LAKSHIMI CONSTRUCTION, A PARTNERSHIP FIRM REP. BY ITS MANAGING PARTNER vs. GOVERNMENT OF AP's***

case (5 supra) this Court observed that without there being survey and fixation of boundaries, the persons who are in possession of land cannot be dispossessed just like that. On the basis of the outcome of the survey, necessary steps are to be taken to recover possession in accordance with law and howsoever, authentic the survey may be, it cannot provide a ground in favour of any one including any government Department, to dispossess a person from any land.

25. The contention of the learned counsel for petitioners that petitioners are entitled for exemption under the provisions of the ULC Act to an extent of Ac.5-00 in terms of GO Ms.No.733, dated 31-10-1988 cannot be countenanced as such a plea is not raised in the pleadings and the learned Government Pleader for Assignment disputes

that the subject land does not fall under urban agglomeration, to get the benefit of exemption as stipulated in the said GO.

26. The decision in ***ZARINA vs. SPECIAL OFFICER AND COMPETNET AUTHORITY, VIJAYAWADA, KRISHNA DISTRICT's case*** (10 supra) relied on by the learned Government Pleader has no application to the facts of the case on hand, as in this case there is no material of conducting survey and demarcation and then determination of any surplus land. The determination of surplus land in respect of 1st petitioner is on hypothetical basis.

27. From the above analysis and also on the facts pleaded by both sides, it becomes crystal clear that there was no demarcation and division of the lands of the petitioners, which admittedly are joint family properties, and there is no material to show that the possession of the surplus land was taken before repeal Act came into force in the State *i.e.* on 27-03-2008, and therefore, the impugned proceedings initiated against the petitioners under the ULC Act lapsed in view of Section 3 of the Repeal Act.

28. In the result, the impugned proceedings initiated by the 2nd respondent are quashed and the writ petition no.21580 of 2008 is allowed.

29. In respect of other writ petitions the lands in question situated in Kukatpally, Moosapet, Kothaguda and Kondapur villages are the same lands covered by writ petition no.21580 of 2008 filed by the declarants, and that writ petition being allowed and held that the ULC proceedings initiated in respect of lands covered by writ petition no.21580 of 2008 have lapsed as the respondent-authorities failed to take physical possession and of the subject lands as on the date on which the Repeal Act was adopted as such, there is no need for the petitioners to seek regularization of their possession over the subject lands. As held by this Court in **RAJ KUMAR SURANA vs. GOVERNMENT OF ANDHRA PRADESH** (3 supra), the petitioners in other writ petitions who have paid part or full amounts for regularizations, if any, are entitled for refund of the same as the proceedings initiated under the Urban Ceiling Act are quashed, and that the subject lands are no longer surplus lands. Consequently, WP Nos. 6879 & 6878 of 2011; 23535, 29244, 20996, 20047, 16450, 18463,

20053, 22525, 22045, 21720, 21658 of 2009; 1367 of 2010, 25230 of 2010, 18805 of 2011, 4189 of 2010, 3649 of 2010, 19926, 21012, 3053, 8886, 33227, 1111, 3940, 11201 of 2011; 34100, 21487, 24560, 5915, 5101, 28858 of 2012; 3777 of 2010; 2554 of 2011; 4598 of 2010; 17533 of 2011 17150 of 2011, 22117 of 2010; 11892 of 2011; 18001 of 2012; 35263 of 2012; 32909 of 2011, 24308 of 2010, 21999 of 2009; 25724 of 2009; 20112, 18877, 9647, 33105, 33144, 9536 of 2011, 35158, 19235, 17455, 17456 of 2012; 33020 of 2011, 7726 of 2011, 24582 of 2009, 19992 of 2009, 25429 of 2010, 26795 of 2010, 16218, 32435, 32939, 22557 of 2011, 24145 of 2012, 16635 of 2011, 33416 of 2012; 33019 of 2011, 17142 of 2012, 33097 of 2011, 18039 of 2012, 19595 of 2012, 23675 of 2009, 5341 of 2012, 32831 of 2011, 32775 of 2012, 32914 of 2011, 29235 of 2009, 7205 of 2012, 18851 of 2012, 28320 of 2009 & 29045 of 2009 are disposed of with above directions to authorities to refund the amounts paid on the applications for regularization. Other miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 28 -03-2017

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WP Nos.21580 of 2008, 6879 & 6878 of 2011, 23535, 29244, 20996, 20047, 16450, 18463, 20053, 22525, 22045, 21720, 21658 of 2009; 1367 of 2010, 25230 of 2010, 18805 of 2011, 4189 of 2010, 3649 of 2010, 19926, 21012, 3053, 8886, 33227, 1111, 3940, 11201 of 2011; 34100, 21487, 24560, 5915, 5101, 28858 of 2012; 3777 of 2010; 2554 of 2011; 4598 of 2010; 17533 of 2011 17150 of 2011, 22117 of 2010; 11892 of 2011; 18001 of 2012; 35263 of 2012; 32909 of 2011, 24308 of 2010, 21999 of 2009; 25724 of 2009; 20112, 18877, 9647, 33105, 33144, 9536 of 2011, 35158, 19235, 17455, 17456 of 2012; 33020 of 2011, 7726 of 2011, 24582 of 2009, 19992 of 2009, 25429 of 2010, 26795 of 2010, 16218, 32435, 32939, 22557 of 2011, 24145 of 2012, 16635 of 2011, 33416 of 2012; 33019 of 2011, 17142 of 2012, 33097 of 2011, 18039 of 2012, 19595 of 2012, 23675 of 2009, 5341 of 2012, 32831 of 2011, 32775 of 2012, 32914 of 2011, 29235 of 2009, 7205 of 2012, 18851 of 2012, 28320 of 2009 & 29045 of 2009

Date: 28-03-2017

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