

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.16605, 16927
and 17076 of 2008

COMMON ORDER:

Heard Sri G.Prasen and Sri K.V. Rusheek Reddy for petitioners in W.P.Nos.16605, 16927 and 17076 of 2008, Government Pleader (Revenue) for respondent Nos.1 to 4 and Sri V.Narasimha Goud, Standing Counsel for Hyderabad Metropolitan Development Authority/respondent No.3.

The prayers in these two writ petitions are similar and relate to proceedings No.G1/4301/2006 under the Urban Land (Ceiling and Regulation) Act 1976 (for short "the Act"). Hence, they are heard together and disposed of by this common order.

The prayers in the writ petitions respectively read as follows:

"...."Writ of Mandamus" declaring the proceedings initiated and conducted by the 1st respondent under the Urban Land Ceiling and Regulation Act in respect of the petitioners land in Sy.Nos. 284, 285, 201 to 205 and 361/2 of Thumkunta Village, Shamirpet Mandal, Ranga Reddy District by purporting to act under Section 6(1) declaration filed by third parties and in declaring the petitioners land as an excess land in File Proceedings No. G1/4301/2006 including the section 8(1) computation, Section 8(3) notice, Section 9 final statement section 10(1) notification, Section 10(3) declaration, Section 10(5) notice and Section 10(6) orders as illegal, arbitrary unconstitutional and set aside the said action and the proceedings and direct the respondents not to interfere with the petitioners rights over the said land in any manner in pursuance to the ULC proceedings conducted by the 1st respondent in File No. G1/4301/06 ..."

"....nature of Mandamus declaring the action of the 1st respondent in declaring the Agricultural land of the petitioners admeasuring Ac. 2.35 gts. situated in Sy.No. 284 of Thoomkunta Village, Shameerpet Mandal, Ranga Reddy District as Surplus land under Urban Land (Ceiling & regulation) Act, 1976 without there being any declaration under Section 6 by initiating proceedings in File N. G1/4301/06 and the further Proceedings / Notificatrion

issued under Sections 8(1), 8(4), 9, 10(1), 10(3), 10(5) and 10(6) of Urban Land (Ceiling & Regulation) Act, 1976 as illegal, arbitrary, violative of principles of natural justice and offending Art. 14 and 300A of the constitution of India and consequentially to direct the respondents not to interfere with the ownership rights of the petitioners including peaceful possession and enjoyment over the land admeasuring Ac.2.35 gts. situated in Sy.No. 284 of Thoomkunta Village, Shameerpet Mandal, Ranga Reddy District ...”

“....writ of mandamus declaring the proceedings initiated and conducted by the 1st respondent under the Urban Land (Ceiling and Regulation) Act in respect of the petitioners land admeasuring to an extent of Ac.3.00 gts i.e.Ac.1.20 gts each in Sy.No.284 of Thumkunta village, Shamirpet mandal, Ranga Reddy District by purporting to act as under section 6(1) declaration filed by third parties and in declaring the petitioners land as an excess land in File No.G1/4301/2006 dated 5.5.2007 including the Section 8(1) computation, Section 8(3) notice Section 9 final statement, Section 10(1) notification Section 10(3) declaration, Section 10(5) notice and Section 10(6) orders as illegal, arbitrary, unconstitutional and set aside the said proceedings and direct the respondents not to interfere with the petitioners right in any manner in pursuance of the ULC proceedings conducted by the 1st respondent in File No.G1/4301/2006”

Averments in W.P.No.16605 of 2008:

The petitioners claim to be owners of land in Survey Nos.284, 285, 201 to 205 and 361/2 of Thumkunta Village, Shamirpet Mandal, Ranga Reddy District. The details of the properties held by the petitioners are stated thus:

Sl. No.	Name of the petitioner	Sy.No.	Extent
1.	Samala Shankar Reddy	284	Ac.1.20 gts.
2.	Samala Yadi Reddy	284	Ac.2.00 gts.
3.	Samala Narsimha Reddy	284	Ac.1.00 gts
4.	SamalaDasharath Reddy	284	Ac.2.00 gts
5.	Sarbani Tandon	284	Ac.0.20 gts
6.	Chukkapalli Renuka	284	Ac.1.00 gts
7.	Manne Venkatamma	201 to 205	Ac.0.27 gts
8.	G.Nagulu	201 to 205	Ac.0.27 gts
9.	Manne Balaiah	201 to 205	Ac.0.09 gts
10.	Manne Mallesh	201 to 205	Ac.0.09 gts
11.	Manne Chandraiah	201 to 205	Ac.0.09 gts
12.	Manne Ramulu	285, 361/2	Ac.2.28 ½ gts
13.	G.Vijayalakshmi	284, 285	Ac.5.09 gts
14.	S.Mamatha Reddy	361/2	Ac.1.00 gts

The petitioners acquired right, title and claim possession of the properties described above through following registered sale deeds:

Sl. No.	Name of the petitioner	Vide Registered Sale Deed Number
1.	Samala Shankar Reddy	744 /78
2.	Samala Yadi Reddy	-do-
3.	Samala Narsimha Reddy	-do-
4.	Samala Dasharath Reddy	-do-
5.	Sarbani Tandon	1669/05
6.	Chukkapalli Renuka	4589/02
7.	Manne Venkatamma	1542/92
8.	G.Nagulu	1543/92
9.	Manne Balaiah	1541/92
10.	Manne Mallesh	-do-
11.	Manne Chandraiah	-do-
12.	Manne Ramulu	Through inheritance (grand son of Manne Sataiah)
13.	G.Vijayalakshmi	3306 02
14.	S.Mamatha Reddy	Ide AGPA No.6302 2004

The petitioners allege that on 16.11.2006 Ch.Narsimhulu and K.Adarsh Kumar claiming right and ownership in an extent of Acs.4.00 in Sy.No.361/2 filed statement under Section 6 (1) of the Act. The declaration, dated 16.11.2006 confined to an extent of Acs.4.00 of land only. Respondent No.1 had taken declaration filed by Ch.Narsimhulu and K.Adarsh Kumar on File No.G1/4301/2006, draft declaration under Section 8 of the Act is stated to have been served on Ch.Narsimhulu and K.Adarsh Kumar on 16.07.2007, notices under Section 10(1) of the Act and likewise on 17.08.2007, 24,09,2007 were issued and steps under Sections 10 (3) and 10 (5) of the Act were stated to have been taken. The grievance of petitioners is that the subject matter of the writ petitions was not part of the declaration filed by Ch.Narsimhulu and

K.Adarsh Kumar. The respondents on the strength and by referring to orders passed from Section 8(1) up to Section 10 (6) of the Act, are threatening to dispossess the petitioners from the subject matter of the writ petitions and the threatened actions are illegal and unconstitutional. The petitioners principally raise the following legal objections against the proceedings impugned in the writ petition.

- (a) that the proceedings now relied on by the respondents have nothing to do with the petitioners or the land purchased by them under registered sale deeds.
- (b) neither the petitioners nor their predecessors-in-interest were parties to the proceedings in File No.G1/4301/2006; and
- (c) the declaration was filed under Section 6 of the Act for an extent of Acs.4.00 of land in Survey No.361/2. The lands claimed by petitioners, much less the survey numbers, are not part of the declaration filed by Ch.Narsimhulu and K.Adarsh Kumar. The inclusion of more extent and proceeding to pass orders under Section 8 (1) to Section 10 (5) of the Act is illegal, unconstitutional and unsustainable.

Briefly stated, the petitioners complain that their right, title and possession of the subject matter of the writ petition cannot and could not be disturbed by referring to various orders in File No.G1/4301/2006. Hence, the writ petition.

The panchanama, dated 08.02.2008, is not legal and the respondents cannot claim possession of subject matter of writ petitions through the said panchanama.

Averments in W.P.No.17076 of 2008:

The subject matter of the present writ petition is an extent of Acs.3.00 of land in Sy.No.284 of Thumkunta

Village, Shamirpet Mandal, Ranga Reddy District. The petitioners claim right, title and possession through registered sale deed Nos.4794/05 and 4793/05 for an extent of Ac.1.20 guntas of land each. The petitioners allege that their vendor purchased the subject matter through registered sale deed Nos.4184/89, dated 12.06.1989 from different individual owners.

Averments in W.P.No.16927 of 2008:

The subject matter of the writ petition is Acs.2.35 guntas of land in Survey No.284 of Thumkunta Village, Shamirpet Mandal, Ranga Reddy District. The petitioners claim to have purchased the property through registered sale deed, dated 10.01.1991 from Manne Sathaiah and others. The petitioners claim to have got their names mutated in revenue records and are in physical possession and enjoyment of subject matter of the writ petition.

The legal objections on the mode and manner of passing orders by respondents are substantially same and similar to the objections raised in W.P.No.16605 of 2008. Hence, the objections are not stated once again.

Respondent No.1 through Special Deputy Collector, Office of Urban Land Ceiling filed counter-affidavit and the gist of the reply reads thus:

The writ petitioners are neither owners of the land nor filed statement under section 6(1) of the Act and hence they have no locus standi, as they purchased the land after the

commencement of the Act which is null and void under sections 5(3), 7 & 10 of the Act.

The family members of original pattadar Sri M.Shivaiah converted the land into house site plots and sold the property to various persons. This Court in case of **S.Sulakshana Bai v. State of Andhra Pradesh** in W.P.No.10103 of 1985 dated 18.04.2006 held that it would not be treated as urban land so long as it was mainly used for the purpose of agriculture but when once the usage is changed, it would automatically become vacant land within the meaning of section 2(q) of the Act. Further, the legal representatives of deceased pattadar did not file statement under Section 6(1) of the Act and sold the property by converting the land into house site plots. Hence, notice under Section 6(2) of the Act was issued on 08.08.2006 to file statement under Section 6(1) of the Act. After enquiry order under Sections 8(1), 8(4) and 9, notification under Sections 10(1), 10 (3), notice under 10(5) and 10(6) of the Act were issued which are well within the provisions of the Act.

The writ petitioners have purchased the land after the commencement of the Act without obtaining permission under Section 26 of the Act which is null and void. The enquiry reveals that Sri Manne Shivaiah who was the original pattadar died and the property was transferred in

the name of his eldest son Sri M.Ailaiah and there are two other younger sons namely M.Mallaiah and M.Narsimha who also have got equal shares in the property. Later, M.Mallaiah and M.Narsimha also expired after the Act, and hence their legal representatives are brought on record for the purpose of service of notice. As they have not filed statement under Section 6(1) of the Act, enquiry was conducted and after enquiry, final orders under Section 8(4) of the Act were issued on 30.06.2007 declaring declarants as surplus land holders.

The lands situated in Tumkunta Village of Shamirpet Mandal fall in the peripheral area of HUDA. Hence, each of the pattadar is entitled for 1000.00 square mtrs., of clear vacant land under Section 4(1) (b) of the Act and Ac.5.00 of land as per G.O.Ms.No.733 dated 31.10.1988. Draft statement under Section 8(1) and notice under Section 8(3) of the Act were issued on 05.05.2007 with directions to file objections, if any, within 30 days from the date of its receipt, but the declarants did not file objections within the stipulated time and hence order under Section 8(4) and final statement under Section 9 of the Act were issued on 30.06.2007 confirming the draft statement issued under Section 8(1) of the Act without any alterations. After publication of notification under Section 10(1) of the Act, declaration under Section 10(3) of the Act was issued on 17.08.2007 vesting the land with the Government free from

all encumbrances with effect from 14.08.2007 and the same was published in A.P. Gazette No.250, dated 21.08.2007.

Notice under Section 10(5) of the Act was issued on 24.09.2007 asking the declarants to surrender the land to the Enquiry Officer within 30 days from the date of service i.e. 05.02.2008. As the declarants failed to surrender the land within the stipulated time, order under Section 10(6) of the Act was issued on 11.01.2008 authorizing the Enquiry Officer to take over possession of surplus land and the Enquiry Officer took over possession of the surplus land on 08.02.2008. Further, the Government vide G.O.Ms.No. 976 Revenue (UC-I) Department, dated 02-08-2008 have issued orders to allot an extent of 1,11,636 sq.mtrs., of surplus land in C.C.No.G/4301/06 in Sy.Nos. 201 to 205, 238, 251, 282/A, 284, 299, 238, 361/1 of Thumkunta Village, Shamirpet Mandal, Ranga Reddy District in favour of HUDA for public purpose. The land was handed over to HUDA on 06.08.2008.

A notification under Section 10 (1) of the Act was issued and got published in A.P. Gazette No.214, dated 17.07.2007 calling for objections from the interested persons, but the petitioners failed to avail the opportunity. Moreover, purchase of land by the writ petitioners without obtaining permission under Section 26 of the Act is null and void and the petitioners cannot be permitted to challenge the service of draft statement under Section 8(1)

of the Act and notice under Section 10(5) of the Act, as this Court in its judgement dated 19.12.2008 in W.P.No.26416/08 held that petitioners purchased surplus land after coming into force of the Act and purchased schedule land after coming in force of the Act and as per 5(2) of the Act sale of urban vacant land, after 14.02.1975 (in State of Andhra Pradesh) is null and void and the petitioners cannot seek declaration in respect of transaction which is null and void, especially when the competent statutory authority declared the surplus land and took possession of the same. Further, this Court in W.A.Nos.1336 and 1338 of 2005 dated 07.06.2006 held that any sale of the surplus land after the commencement of the Act is null and void and it is only the original owner who can seek exemption under G.O.Ms.No. 733. If the statutory proceedings became final and conclusive, in the absence of any statutory appeal or objections by original owner, the purchaser cannot challenge such proceedings, which are null and void.

The counsel contend that by referring to the orders passed either in File.No.4301/06 or in file No.930, the proceedings could not be enforced vis-à-vis the property claimed by the petitioners. According to them, the respondents did not issue notice to the petitioners or afford opportunity of hearing at any of the stages from Section 8(1) up to Section 10(3) of the Act. Therefore, the claim of

respondents viz., that the subject matter of writ petitions stood vested in Government is illegal, untenable, contrary to the Act and Article 300-A of the Constitution of India. The contention is explained with the illustration that if extents and survey numbers could be added to a declaration at the stage of Section 8 (4) of the Act, then the respondents can claim vesting any property in Government and such assertions of respondents negates rule of law, procedural safeguards under the Act and also Article 300-A of the Constitution of India. The petitioners rely on the decisions in ***Sri Rama Krishnaiah v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada and Others***¹ and the Common Order in W.P.Nos.12701 and 12717 of 2008 dated 04.08.2008, ***Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and Others***², ***Vipinchandra Vadilal Bavishi v. State of Gujarat and Others***³, ***L.S. & Company v. State of Andhra Pradesh***⁴, ***David Mantosh v. Apollo Gleneagles Hospital Ltd.***⁵, ***Vijayawada Urban Zilla Weaker Section v. Dhulipala Kishore Kumar and Others***⁶ and ***State of Uttar Pradesh v. Hari Ram***⁷ for the proposition that the petitioners are owners of subject property. The properties are acquired through registered documents and entitled for notice in the

¹ (1989 (1) ALT 48)

² (2014(12) SCC 523)

³ (2016(4) SCC 531)

⁴ (1995 (3) ALD 216)

⁵ (2014 (1) CHN (CAL) 1)

⁶ 1995 (3) ALD 101 (D.B)

⁷ (2013) 4 SCC 280

proceedings initiated before the 1st respondent. As per the Enquiry Officer's report, the original owner and his immediate successors were no more and also that the subject matter of the declaration was already sold in favour of third parties. Therefore, to satisfy the requirement, as per Rule 5 of the Urban Land Ceiling Rules, a notice should have been issued to person interested in the property dealt with by respondents. The steps taken *prima facie* are not binding and if they are allowed to affect the proprietary rights of petitioners, the same will be contrary to Article 300-A of the Constitution of India. The learned counsel contends that the 1st respondent is authorized to take surplus ceiling land in accordance with the provisions of the Act, but not otherwise. The declaration by Ch.Narsimhulu and Adarsh Kumar is for an extent of Acs.3.00. Now, orders under Sections 8(3), 8(4) of the Act and notices under Sections 10(1) and 10(3) of the Act were issued for an extent of Acs.44.26 guntas. The argument of respondents, if accepted, that notices are given to declarants, the statement is untenable, for the land owners died. The record does not show to whom notices are issued. The counsel after going through the original record vehemently contend that the files speak for itself about the manner and mode of passing orders viz., in haste and trying to divest the property of petitioners, which is

impermissible in law and pray for setting aside the proceedings impugned in the writ petition.

Mr.Durga Reddy, learned Government Pleader, contends that the petitioners are all purchasers of agricultural land after the Act has come into force, the stand of petitioners vis-à-vis the procedural aspects under the Act is no more *res-integra* and the transactions relied on are *void ab-initio*. The first respondent has rightly ignored the persons or standing of the petitioners vis-à-vis the subject matter. Even assuming no notice to the petitioners herein is issued, still the proceedings are taken up and concluded right from Section 8(1) of the Act stage upto 10 (6) of the Act, cannot be examined at the instance of petitioners. He places reliance on ***State of Assam v. Bhaskar Jyoti Sarma and others***⁸, ***Parchuri Ratnakar Rao v. State of Andhra Pradesh and others***⁹, ***Zarina and others v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada***¹⁰ and ***Omprakash Verma and others v. State of Andhra Pradesh and others***¹¹ and prays for dismissing the writ petitions.

I have taken note of the contentions of counsel appearing on either side, perused the record i.e. record in writ petitions and also the original record in File

⁸ (2015) 5 SCC 321

⁹ 2006 (5) ALD 132

¹⁰ (2002 (5) 779

¹¹ (2010) 13 SCC 158

No.G1/4301/06 and in the considered view of this Court, the following points are framed for consideration.

(1) Whether the proceedings:

- (a) dated 05.05.2007 issued under Section 8(1) of the Act;
- (b) dated 16.07.2007 issued under Section 10(1) of the Act and
- (c) dated 11.01.2008 issued under Section 10 (6) of the Act are valid or not?

(2) Whether the petitioners are entitled for notice or opportunity of hearing in the proceedings in File No. G1/4301/06 pending before the 1st respondent before passing orders and claiming vesting of property in Government?

(3) to what relief?

Points 1 and 2:

The respondents produced File No.G1/4301/2006 for inspection of the Court. Before advertng to the contentions of counsel appearing for the parties, the following dates and events, as noted from the file, are stated:

Notice under Section 6 (2) of the Act is stated to have been issued by respondent No.1 to Manne Allaiah, S/o.Sivaiah in File No.G1/903/ORR/06, dated 08.08.2006. Details of vacant land for which the notice dated 08.08.2006 issued covers Sy.Nos.282/P, 284, 285 and 361/2 of Thumkunta Village (Page Nos.125 of original file). The notice is addressed to one Manne Allaiah. The record

does not disclose service of notice to petitioners or other owners of various extents held by them and covered by the notice. Ch.Narsimhulu and K.Adarsh Kumar filed declaration under Section 6 (1) of the Act on 22.03.2007 in response to notice dated 08.08.2006. The total extent of land covered by notice dated 08.08.2006 is Ac.44.05 guntas and the declaration under Section 6(1) of the Act filed by Ch.Narsimhulu and K.Adarsh Kumar covers an extent of Ac.4.00 cents in Sy.No.361/2. Enquiry report is submitted to Special Officer, Urban Land Ceiling. The relevant portion of the report is excerpted:

“As per verification our office records there is no declaration was filed by Sri Manne Ailaiah or his L Rs. The declarant in this O.C. M.G/4301/06 has filed a copy of Judgement and Decree delivered by the Addl Sub-ordinate Judge R.R. District at Saroor Nagar – in OS No. 143/85 Dt: 7-8-1986. As per the above Judgement it is evident that Sri Manne Shivaiah was the sole owner and exclusive possessor of the above landed property. The said late Sivaiah died about (30) Years back i.e., at the time of filing OS No. 143/85 leaving behind him three sons Mane Ailaiah, Mane Mallaiah and Manne Narsimha.

Sri Manne Ailaiah also expired leaving behind two sons by name Manne Sathaiah Age about (62) years and Sri Manne Yallaiah age about (57) years. Sri Manne Mallaiah expired leaving being Sri Manne Ramulu age about (58) years. As per local enquiry it is revealed that Sri Manne Narsimha expired leaving behind one daughter Smt Manne Yettamma W/o Late Sailu. Age about (55) years.

After the death of Sri Manne Sivaiah who is original pattadar of entire lands, the lands were transferred and registered in the name of his elder son Sri Manne Ailaiah under Hindu Succession Act reserving the shares of younger brothers as Sikiri. Therefore it is a fact that Sri Late Ailaiah late Mallaiah and Late Narsimha are equal share holders among the entire property received through their father late Sivaiah. The above lands are apportioned individual shares and entitlement as under:

Sy.No.	Total Ext Acs – Gts	Total ext Sq.Mters	1/3 share of late Aliaiah LPS 1. Sathial 2. Yellaiah	1/3 Share of Late Mallaiah LR Sri Ramulu	1/3 share of Late Narsimha LR Smt Yettamma W/o Sailu
195	1-30	7081.90	2360.63	2360.63	2360.63
201	0-10	1011.70	372.23	372.23	372.23
202	0-72	708.19	236.06	236.06	236.06
203	0-08	809.36	269.78	269.78	269.78
204	0-13	1315.21	438.40	438.40	438.40
205	0-19	1922.23	1922.23	1922.23	1922.23
238	0-05	505.85	168.61	168.61	168.61
251	0-02	202.34	67.44	67.44	67.44
282/A	0-27	2731.59	910.53	910.53	910.53
284	16-04	65153.48	21717.82	21717.82	21717.82
285	10-11	41580.87	13860.29	13860.29	13860.29
296	0-24	2428.08	809.36	809.36	809.36
299	0-05	505.85	168.61	168.61	168.61
338	0-02	202.34	67.44	67.44	67.44
361	17-03	69099.11	23033.03	23033.03	23033.03
28	0-12	1214.04	404.68	404.68	404.68
	48-29	1,96,576.95	65,525.65	65,525.65	65,525.65

On 04.04.2007, File No.G1/4301/2006 was circulated for orders to issue proceedings under Section 8(1) of the Act. On 09.04.2007, the note file recommendation was accepted by respondent No.1. Declaration filed for an extent of Acs.4.00 in Sy.No.361/2 was expanded to cover and take within the fold of orders under the Act for an extent of Acs.48.29 guntas on 05.05.2007 in File No.G1/4301/2006 and objections under Section 8 (3) of the Act were called for within 30 days therefrom. The proceedings, dated 05.05.2007, are addressed to Ch.Narsimhulu, K.Adarsh Kumar, Manne Sathaiah and others.

From the note file, it shows that on 30.06.2007, the following endorsement was made.

“submitted. In the instant case, Section 8(1) Provisional orders served on 07.05.2007, but no

objections were received. Hence, if agreed, final orders under Section 8(4) may be issued.”

Subject to note approval, draft final orders under Section 8(4) of the Act along with statement under Section 9 of the Act is placed below for kind approval. Pl.....

On 30.06.2007, the same is approved.

What is important at this juncture of narration is that the objections were called for through proceedings dated 05.05.2007 and on 07.05.2007 the notices are noted to have been served on the addressees. Further, the endorsement dated 07.05.2007 by one addressee belies the truth in the office note that notice is served on all the persons interested in the land covered by notice dated 05.05.2007. On 07.05.2007, it appears K.Adarsh Kumar, one of the declarants in file No.G1/4301/2006 has received notice. What is important to be noted in the decision making process of respondents is, notice under Section 6(2) of the Act has been issued in G1/903/Corr/06. Nothing is on record to show the steps taken by respondents for service of notice under Section 6(2) of the Act on all the persons interested, if notices on persons interested were served and that they failed to respond by filing the declaration etc. On 16.07.2007, the file is again moved for further orders and it refers to service of orders under Section 8(4) of the Act on the declarants. Except the assertions in the note file, there is no material or evidence to show that the orders under Section 8(4) of the Act have been served on the declarants or persons interested in the

property covered by Section 8(4) orders. On 16.07.2007 notice under Section 10(1) of the Act is issued for all the survey numbers covered by the provisional order dated 05.05.2007. The operative portion of the notice reads thus:

PARTICULARS OF LAND

State	District	Taluk	Name of the owner or registered holder or other person interested with land	Description of the land	Extent in Sq.Mts.
(1)	(2)	(3)	(4)	(5)	(6)
Andhra Pradesh.	Ranga Reddy District	Shamirpet Mandal	Sri Ch. Narasimulu and K.Adarsh Kumar, 2. Sri Sri Manne Sathaiah and other R/o. Thumkunta Village. Shamirpet Mandal. Ranga Reddy District.	Vacant land in Sy.Nos. 195, 201, 202, 203, 204, 205, 238, 251, 282/A, 284, 285, 296, 299, 338, 361/2 situated at Thumukunta Village	20355.65 44290.65 44290.65 Sq.Mtrs.

Special Officer & Competent Authority
Urban Land Ceiling, Hyderabad

On 10.08.2007, the file is moved with the following endorsement:

“Kindly peruse the reference cited, wherein the Government have published Section 10(3) notification vide Gazette No.214 dated 17.07.2007. Hence, if agreed, the case may be processed sic under Section 10(3) stage. “

Subject to note approval, draft covering letter to the Commissioner, Printing and Press along with Section 10(3) declaration is placed below for kind approval. On 10.09.2007, it is noted that publication under Section 10(3) of the Act is also completed, therefore, necessary orders for proceeding under Section 10(5) of the Act may be approved.

Next endorsement in the note file is important and which reads as follows:

Submitted: Ref: A.P. Gazette No. 250 dated: 21-08-2007.

17) 16) Kindly peruse the reference cited. Where in the Government have published 10 (3) Gazette vide No. 250, dated 21-08-2007. Hence if agreed the case may be processed to 10 (5) stage.

18) 17) Subject to note approval, draft o/c and F/C 10 (5) notice is place before for kind approval.

10/9/2007.

Submitted:

19) 18) The proceedings issued U/s. 8(1) & 8 (4) are required to be issued in the name of L.Rs. of the original owner (who expired). Instead the proceedings issued in the name of the subsequent purchases viz. Ch. Narimhulu and K.Adarsh Kumar which needs rectification U/s 45 of the Act.

20) 19) Further for the /DD. U/s notices published U/s 10 (1) & 10 (3) are also required rectification by issuing errata.

20) In the above event further orders are solicited on N.F. paras 18 and 19 above.

21) Submitted:

In this case 10 (5) notice issued on 24/9/07 handed over to EO. But the served copy not yet received. Hence, if agreed the case may be processed to 10 (6) stage.

22) Subject to note approval, draft o/c and F/c 10(6) proceedings are placed below for kind approval.

11/1/2008.

Ref: U.O. Not No. A4/RTI/3259/08 dt : -07-08 of A4 Section (RTI).

24) Kindly peruse in U.O note cited if agreed the C.S. file bearing No. G1/4301/06 may be handed over to A4 (RTI Section) for issue of notice, which is requested by the applicant.

Submitted for orders.

14.07.2008”

For completing the narration and to appreciate the laconic procedure followed under Section 10 of the Act, it is noted that even after noting the mistake in the representation of declarants, L.Rs or purchasers, still the respondents have proceeded to refer to the names of Ch.Narsimhulu, Adarsh Kumar and Manne Sathiah for service etc. One of the notifications published is excerpted here under:

DECLARATION**NOTICE UNDER SUB-SECTION (3) OF SECTION 10 OF THE URBAN LAND
(CEILING & REGULATION) ACT, 1976**

No. G1/430/2007- Notice is hereby given to all those concerned, that the land mentioned in the below given schedule, which was already notified and published in A.P. Gazette No.214, Dated 17-7-2007 Part-II Miscellaneous Notification of interest to the public under sub-section (1) of section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 shall w.e.f. 14-8-2007 be deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrances w.e.f. 14-8-2007.

PARTICULARS OF LAND

Sate	District	Mandal	Name of the owner or registered holder or other person interested with land	Description of the land	Extent in Sq.Mtrs
(1)	(2)	(3)	(4)	(5)	(6)
A.P.	R.R. District	Shamirpet Mandal	Sri Ch.Narasimulu and K.Adarsh Kumar, 2. Sri Sri Manne Sathaiah and others R/o. Thumukunta Village, Shamirpet Mandal, Ranga Reddy District.	Vacant land in Sy.Nos 195, 201, 202, 203, 204, 205, 238, 251, 282/A, 284, 285, 296, 299, 338, 361/2 situated at Thumkunta Village	23055.65 44290.65 44290.65 Sq.Mtrs.

SYED OMER JALEEL,
Special Officer and Competent Authority
Hyderabad, Urban Land Ceiling,

Hyderabad.

17-8-2007.

**PROCEEDINGS OF THE SPECIAL OFFICER & COMPETENT
AUTHORITYURBAN LAND CEILING, HYDERABAD**

PRESENT : SRI SYED OMER JALEEL, I.A.S.,

Procgs.No.G1/4301/06

Dated : 11-01-2008

Sub:- Urban Land (Ceiling & Regulation) Act, 1976 – HUA – Statement in Form No. I U/s 6 (1) of the Act filed by Sri Ch. Narasimulu and K.Adarsh Kumar, 2. Sri Manne Sathiah and others R/o Thumkunta Village, Shamirpet Mandal, Ranga Reddy District. - Taking over possession of Surplus land u/s. 10 (6) of the Act.

Read: Notice U/s 10 (5) of the Act dated 24-09-2007.

ORDER:

Notice U/s 10(5) of the Act was issued to the declarant Sri Ch.Narasimulu and K.Adarsh Kumar. 2. Sri Manne Sathiah and others R/o Thumkunta village, Shamirpet Mandal, Ranga Reddy district asking them to deliver the possession of the following surplus land within thirty (3) days from the date of service of notice U/s 10 (5) of the Act.

<u>Sl.No.</u>	Description of the property	Location	Extent in Sq. Mtrs.
1	Vacant land in Sy.No. 195, 201, 202, 203, 204, 205, 238, 251, 282/A, 284, 285, 296, 299, 338, 361/2	Thumakunta Village, Shamirpet Mandal, Ranga Reddy District.	1,11,636.95 Sq.Mtrs

The 30-days time given in the notice U/s 10(5) of the act expired on 23.10.2007. but they failed to deliver possession before the expiry date. Hence, **Sri S.A. Khader**, Enquiry Officer of this office is authorised to take over possession of land in question U/s 10(6) of the Act and hand over the same to the Mandal Revenue Officer concerned and report compliance.

Special Officer & Competent Authority
Urban Land Ceiling, Hyderabad.

This order is passed authorising the Enquiry Officer to take over possession of lands covered by order under Section 10(3) of the Act. Thereafter, panchanama dated (238) 08.07.2008 is stated to have been recorded evidencing taking over of possession of ceiling surplus land from petitioners.

The counsel for the petitioners contend that the proceedings impugned in the writ petition are *prima facie* illegal, arbitrary and unconstitutional. The petitioners have purchased the land covered by writ petitions through registered sale deeds, their names are mutated or entered in revenue records. According to petitioners, the subject land remains agricultural land, therefore, the Act has no application, much less an objection to file a declaration under Section 4(1) of the Act. The respondents could have

taken notice under Section 6(2) of the Act to its logical end, and pass orders to the extent of subject matter covered by declaration, but cannot include new survey numbers and increase the extent in the declaration filed by Ch.Narsimhulu and Adarsh Kumar.

Briefly discussed, the 1st respondent in File No.G1/903/Corr/06 issued notices under Section 6(2) of the Act to several persons, including the successors-in-interest of the original owner i.e. Manne Sivaiah. In response to several notices issued by 1st respondent, Ch.Narsimulu and Adarsh Kumar filed declaration and the same is taken on file as G1/4301/06. Through Enquiry Officer's report dated 23.02.2007, it is brought to the notice of the Special Officer and competent authority that in the same neighbourhood, several extents held by the predecessor-in-interest are required to be taken care and necessary orders are passed. It is on this recommendation, the provisional order under Section 8 (1) of the Act dated 05.05.2007 was passed for an extent of Acs.48.29 gts. This Court examines or juxtaposes details furnished in the notices issued under Section 6(2) of the Act and the persons to whom the provisional orders dated 05.05.2007 are communicated and compelled to conclude that notices to all the persons who are stated to have interest in the property were not sent, much less served. The first respondent is consistent on the details of owners or declarants of the total

extent of Acs.48.29 gts. In spite of information on a few declarants viz., died, still the 1st respondent continued to pass orders either on dead persons or against persons who do not have interest in the subject matter of the writ petitions.

The other side of the contention is that the orders are not communicated to the persons who have interest in the property. The analysis of various stages excerpted from file concludes that the 1st respondent did not exercise the jurisdiction or power he has under the Act, as prescribed or provided by the scheme of the Act. The case of the petitioners is that they are the persons interested in the subject matter of the writ petition. Therefore, they are entitled for notice in a proceeding initiated or taken up under the Act. Further, the respondents have not discharged the onus of having jurisdiction to expand the scope of enquiry to more survey numbers and individuals than what is declared by Ch.Narsimulu and Adarsh Kumar. They rely on decisions in **Sri Y.Rama Krishnaiah's** case (1 supra) and the common order in W.P. Nos.12701 and 12717 of 2008 and the operative portion of the writ petition read thus :

“The original owners sold the land in an extent of Acs. 15.24 gts. in sy. No. 8 to their vendors, who subsequently sold an extent of Acs. 4.32 gts. to their vendors. The said land having been further divided into small bits, was sold to several persons, including the petitioners. Since the land purchased by the petitioners, was from out of the land in an extent of Acs. 4.32 gts., sold by the original owners to their

vendors. The said land having been alienated as agricultural land by the original owners to their vendors, and the said land being less than Acs. 5-00, the petitioners and their predecessors-in-title, are certainly entitled to the benefit of G.O. Ms. No. 733, dated 03.10.1988, which provided for holding of Acs. 5-00 of land in urban agglomeration. The land purchased by the petitioners being from out of the land, covered by the ceiling limit, the petitioners, are entitled to retain the same. In the result, the writ petitions are allowed. The various notices, orders and notifications, issued by the Special Officer and Competent Authority, under the various provisions of the ULC Act, impugned in the writ petitions, are liable to be set aside, and they are accordingly set aside, and as a consequence thereof, the land extents of lands purchased by the petitioners in Sy. No. 8 of Kondapur village, Serilingampally Mandal, Ranga Reddy District, shall stand excluded from the surplus determination of the original owners, made by the Special Officer and Competent Authority, and the respondents are directed to restore the possession thereof to the petitioners forthwith. No costs. “

The point formulated by this Court in common order dated 04.08.2008 reads as follows :

No.2: 'whether the petitioners, who purchased the land in question, from their predecessors-in-title, who purchased the same from the original owners, are persons interested in the property, if so, whether they are entitled to be issued notices in relation to the proceedings under various provisions of the ULC Act, passed by the Special Officer and Competent Authority, and if so, what would be the effect of non-service of such notices on them?

The point is answered as follows:

“The ratio laid down by in the above case, was quoted with approval by this Court in **K.B. Surendra Kumar v. Special Officer, Urban Land Ceiling** (2 supra). Since the petitioners, having purchased the land from the predecessors-in-title who purchased the same from the original owners, and they having come into possession and enjoyment of the same from the date of purchase, and much less before passing the impugned orders, are certainly persons interested in the land, and having regard to the provisions of Rule 5 of the ULC Rules, and the law laid down by this Court in the above referred cases, I am of the considered opinion that the petitioners were entitled to issuance of notices before any orders under the ULC Act were passed by the Special Officer and Competent Authority, and more so when the land purchased by them was sought to be determined as surplus holding of the original owners.

In that view of the matter, it is held that non-service of notices on the petitioners, including on their predecessors-in-title, vitiated the entire proceedings under the ULC Act, particularly in relation to the land purchased by them from their predecessors-in-title, which were determined to be surplus land held by the original owners, and as such, are liable to be set aside.”

In **Y.Sri Rama Krishnaiah’s** case (1 supra), this Court has considered the requirements of Rule 5 of the Rules and has held as follows:

“Rule 5: - Particulars to be contained in draft statement as regards vacant lands and manner of service of the same: (1) Every draft statement prepared under sub-section (1) of Section 1 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served together with the notice referred to in sub-section (3) of Section 8 on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant lands by sending the same by registered post addressed to the person concerned.”

6. A reading of the above Rule provides that if the competent authority has got prior knowledge that all or any other person known to him who have or are likely to have any claim to, or interest either in the ownership or possession or both of the vacant land, notice is mandatory as their interest or claim is likely to be affected. Issuance and service of notice as contemplated under sub-rule (2) of Rule 5 of the Rules is mandatory. Therefore, any statement prepared under Section 10 without following the mandatory requirement under Rule 5(2) is clearly invalid and illegal. The appellate order itself mentions that the authorities have prior knowledge that the declarant has major son. Under those circumstances, the order under Section 10(3) as well as the order under Section 8(4) of the Act are quashed. The matter is remitted to the Special Officer & Competent Authority. The Special Officer & Competent Authority is directed to issue notice to the petitioner as well as to the other son and daughter of the declarants and consider their objections and then pass appropriate orders after following the procedure prescribed under the Act.”

This Court holds that the petitioners are interested persons and proceedings behind their back cannot be put against them to non-suit the petitioners.

The counsel for petitioners contend that the possession claimed by the 1st respondent through panchanama dated 08.07.2008 is illegal and cannot be put against the petitioners. The petitioners place strong reliance on the decisions of Apex Court reported in ***Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and others, Vipinchandra Vadilal Bavishi vs. State of Gujarat and others (2 and 3 supra)*** and the operative portions of the orders respectively reads thus:

(2014) 12 SCC 523 S(2 supra):

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

12. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, Page 17 17 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 MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.

13. The Appeals are, accordingly, allowed. However, there shall be no order as to costs.

(2016) 4 SCC 531: (3 supra)

27. The submission of the learned counsel appearing for the respondent-State that the writ petition is barred by *res judicata* is also not sustainable in law. In our considered view, question as to whether the appellants landholders were dispossessed from the land in question and the effect of the Repeal Act on this was not the issue in the earlier writ petition and, therefore, it cannot be held that the instant writ petition is barred by *resjudicata* or constructive *resjudicata*.

28. For the aforesaid reasons this appeal is allowed and the impugned judgment passed by the High Court is set aside. Consequently, it is held that the appellants landholders are entitled to retain possession of the land comprised within Plot Nos. 36-43, Survey No.71 in village Nana Mauva in the District of Rajkot, Gujarat, as the same is not vested in the State. 29. So far the contention made by respondent no.3 - Cooperative Society is concerned, we have examined their case and found that the Division Bench rightly set aside the finding of the learned Single Judge so far it related to the Co-operative Society.

The effect of not following the procedure under sub-sections 10(3) to 10(6) of the Act is no more *res-integra* and this Court had an occasion to consider the ratio in the decision reported in ***P.Laxmi Kantha Rao and others v. Government of A.P. and others***¹² and for brevity the same analogy is not reiterated. In the total analysis of the issues, what presents for decision of this court is whether this Court approves the alleged vesting of subject property in

¹² 2015 (3) ALD 248

respondents under the Act or not. Precisely stated, the answer is no.

From the above discussion and after perusing the record produced by respondents, the claim of respondents that orders under the Act have been passed, communicated and possession taken from the petitioners, is untenable, illegal and unsustainable. The points are answered accordingly.

The writ petitions are allowed as prayed for. No costs.

Miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

Date: 22.09.2017
KLP/KDL



S.V. BHATT, J