

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

***HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

***HON'BLE MS. JUSTICE J. UMA DEVI**

+W.P.No.34575 of 2014

% Date: 17-07-2018

#Between:

Tiebeam Technologies India Private Limited,
(formerly Solix Systems Private Limited),
Represented by its Director Mr. Prmelatha Gundavelli
Office at Door No.1486 (12-13-522), Lane-13,
Street-14, Tarnaka, Secunderabad,

... Petitioner

And

The State of Telangana, represented by its
Secretary, Revenue Department, Secretariat,
Hyderabad and 12 others

... Respondents

!Counsel for the Petitioner : Mr. B. Vijaysen Reddy,

^Counsel for Respondents : G.P. for Revenue (Telangana)
Mr. T. Surya Satish,
Mr. A. Venkatesh

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? Cases referred

- 1) 2014 (5) ALT 678
- 2) (2013) 4 SCC 280

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.34575 of 2014

ORDER: *(per V. Ramasubramanian,J)*

The petitioner has come up with the above writ petition, challenging an order passed by the Competent Authority under the Urban Land Ceiling Act, directing the Deputy Director to make corrections in the revenue records and to deliver possession of the lands originally declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976, (ULC Act) to the erstwhile owners, who filed declarations under the Act.

2. We have heard Mr. B. Vijaysen Reddy, learned counsel appearing for the petitioner, the learned Government Pleader for Revenue (Telangana), Mr. T. Surya Satish, learned counsel appearing for the respondents 7 to 12 and Mr. A. Venkatesh, learned counsel appearing for the 13th respondent.

3. The pleadings with which the petitioner has come up with the above writ petition, in brief, are as follows:

- i) the petitioner company purchased land of a total extent of Ac.4.26 guntas in Survey Nos.56, 57 and 59 of Madinaguda village, Serilingampalli Mandal, Ranga Reddy District, under 11 different sale deeds, respectively dated 28-02-1998, 16-03-1998, 17-07-1998, 18-07-1998, 18-07-1998, 31-07-1998,

31-07-1998, 15-04-1999, 15-04-1999, 29-10-1999 and 29-10-1999;

- ii) that the writ petitioner's vendors purchased the said land, under 7 different sale deeds, respectively dated 29-04-1993, 24-01-1998, 23-03-1992, 12-05-1993, 14-07-1993, 14-07-1993 and 18-05-1998, from a lady by name Hari Kaur Pershad;
- iii) that the previous owner Hari Kaur Pershad and her joint pattedar Mrs. Champa Devi earlier filed a statement under Section 6 (1) of the ULC Act, in respect of the lands that they held in Survey Nos.54/B, 55, 56, 57, 59, 60 and 64 of Madinaguda village;
- iv) that after conducting an enquiry, the Competent Authority (Urban Land Ceiling) issued a draft statement under Section 8 (1) of the ULC Act, declaring an area of 1,18,790.6 sq.mtrs. as surplus;
- v) that a notice under Section 8 (3) of the ULC Act was issued, objections were filed on 24-07-1985, final statement under Section 9 of the ULC Act was issued on 20-08-1985 and the declarations under Sections 10 (1) and 10 (3) of the ULC Act were issued and a consequential orders were passed under Section 10 (6) of the Act;
- vi) that by a Panchanama dated 20-06-1998, it was recorded as though possession was taken;

- vii) that the ULC proceedings became the subject matter of several rounds of litigation and every order passed by the Competent Authority was set aside by the Appellate Authority and the matter got remanded at least thrice;
- viii) that by successive orders of remand and re-enquiry, the ULC proceedings were kept alive and burning until the Act was repealed and the Repeal Act was adapted by the State of Andhra Pradesh on 27-03-2008;
- ix) that thereafter persons claiming to be the family members of the original owner Hari Kaur Pershad filed an application on 14-08-2008 for redelivery of possession;
- x) that by the order dated 09-11-2010, the Competent Authority (ULC) directed redelivery to the legal heirs of the persons who originally filed declarations under Section 6 (1) of the ULC Act (namely the descendants of the Pershad family); and
- xi) that since the petitioner purchased the property in question from persons to whom Hari Kaur Pershad herself had alienated the same, the question of redelivery to the original owners would not arise and that therefore, the petitioner was compelled to file the writ petition challenging the order dated 09-11-2010.

4. The grounds on which the petitioner challenges the impugned order are:

- i) that as against an order dated 06-11-2006 passed under Section 8 (4) of the ULC Act, two sets of appeals came to be filed, one by persons claiming to be protected tenants in respect of Survey Nos.54 and 55 and another by the petitioner herein in respect of the lands in Survey Nos.56, 57, 59, 60 and 64 and the appeals were allowed in the very presence of those who filed declarations under Section 6 (1) of the Act and hence, they cannot today seek delivery of the property;
- ii) that in the order dated 18-01-2007 passed by the Chief Commissioner of Land Administration (Appellate Authority under the Urban Land Ceiling Act) under Section 33 of the Urban Land Ceiling Act, it was clearly recorded that the petitioner herein filed a separate declaration claiming exemption in terms of G.O.Ms.No.733, Revenue (UC.I) Department, dated 31-10-1988 and that the same was accepted by the Appellate Authority in the previous round of proceedings;
- iii) that the 13th respondent, who now claims title to the lands, by virtue of an unregistered sale deed dated 15-04-2006, cannot claim any right as the property had already been sold to the petitioner; and
- iv) that the very claim that possession was taken from the protected tenant on 20-06-1988, shows that the lands in Survey Nos.56, 57, 59, 60 and 64 could not have been

covered by those proceedings, in view of the fact that the protected tenant claimed a right only over the lands in Survey Nos.54 and 55 and that therefore, the direction issued under the impugned order to hand over possession to the legal heirs of the original owner is unlawful.

5. The respondents 7 to 12 are persons in whose favour the impugned order has been passed, but they claim to have sold the land in question to the 13th respondent and hence, the case is contested seriously, only by the 13th respondent.

6. The 13th respondent has filed a counter affidavit contending, *inter alia*, that the final statement under Section 8 (4) of the ULC Act was challenged by way of statutory appeals by two sets of persons, namely (1) the protected tenant and his legal heirs in respect of the lands in Survey Nos.54 and 55 and (2) by the petitioner herein in respect of the lands in survey nos. 56, 57, 59, 60 and 64; that as against the very same impugned order, the legal heirs of the protected tenant and those who purchased the lands from them filed W.P.No.29293 of 2010 and got an interim order; that the said interim order was restricted only to the lands in Survey Nos.54 and 55; that therefore, the Competent Authority (ULC), by proceedings dated 21-06-2013 directed the District Collector to restore the entries and to deliver possession; that in compliance of the said directions, the District Collector issued instructions on 10-01-2014 following which possession was handed over to the 13th respondent on 04-02-2014; that possession has now become the subject matter of the dispute

between the parties in separate proceedings in two suits O.S.Nos.71 of 2014 and 809 of 2015 and that therefore, nothing survives for adjudication in the above writ petition.

7. We have carefully considered the rival contentions.

8. Before proceeding further, we must bring on record one development that took place about six months before the final hearing of the writ petition. The prayer with which the writ petitioner originally came up with the above writ petition comprised of two parts, namely (i) to set aside the order of the Competent Authority under the ULC Act dated 09-11-2010 in so far as it related to the land in Survey Nos.56, 57 and 59 and (ii) to direct the respondents to deliver physical possession of the said land to the petitioner.

9. But later, the petitioner filed a WPMP.No.2464 of 2017 seeking to withdraw the second part of the prayer, which related to delivery of physical possession. The main reason why the writ petitioner sought to withdraw prayer (b) relating to possession, was that the order impugned in the writ petition was *non est* in the eye of law and that the petitioner was always in physical possession of the land and that the question as to possession has become the subject matter of dispute in two independent civil suits and that therefore, the petitioner cannot be taken to have been dispossessed at any point of time. On these grounds, the writ petitioner sought to withdraw the prayer for a direction to the respondents to deliver physical possession.

10. The application for withdrawal of relief (b) was stoutly opposed by the 13th respondent on the ground that after having stated on oath in the last line of the para 6 of the affidavit in support of the writ petition that possession was taken on 20-06-1998 and after having raked up a serious dispute before the Civil Court as to who is in possession, the writ petitioner should not be allowed to withdraw prayer (b), as the same would pave the way for multiplication of litigation before the Civil Court.

11. However, we allowed WPMP.No.2464 of 2017 on the ground that an application for amendment stands on a different footing than an application for giving up a relief. We pointed out that giving up of a relief would not tantamount to erasing any of the averments contained in the affidavit. So long as no liberty is sought to come up with a fresh proceeding, a prayer for withdrawal of a relief cannot be rejected. Therefore, we allowed the application by order dated 14-09-2017. As a consequence, the writ petition now contains only one prayer and the same relates to the validity of the order dated 09-11-2010 passed by the Competent Authority under the ULC Act, who is the 3rd respondent herein.

12. The main contention of Mr. B. Vijaysen Reddy, learned counsel for the petitioner is that once it is found that the lands never vested with the Government under Section 10 (3) of the ULC Act and no proceeding under Section 10 (5) of the Act for surrendering possession was validly initiated, the impugned order directing redelivery and mutation in the records became redundant. In this

connection, the learned counsel relied upon a decision of the Division Bench of this Court ***Dasamma v. Bharani Mutually Aided Cooperative Housing Society Ltd.***¹ and the decision of the Supreme Court in ***State of Uttar Pradesh v. Hari Ram***².

13. It is true that the possession of the surplus lands can be taken by the competent authority only in a manner prescribed by sub-sections (5) and (6) of Section 10 of the Act after following the procedure prescribed by the previous sub-sections. The manner in which possession is said to have been taken and the person from whom the possession is said to have been taken, are all not reflected clearly from the records placed before us. Though Mr. A. Venkatesh, learned counsel appearing for the 13th respondent, relied upon the entries in the Inward Register to show that a notice under Section 10 (5) was issued on 04-08-1997 and an order under section 10 (6) was passed on 23-05-1998, these notices were obviously issued in the name of Champa Devi and Hari Kaur Pershad, one of whom was already dead. The petitioner had also purchased the land in question, under 8 different sale deeds of the years 1998 and 1999 from persons who purchased the lands from the original owners in the years 1990 to 1993. The Competent Authority under the ULC was fully aware the claim made by the petitioner to have purchased and to be in possession of the land, since the petitioner herein also filed appeals against the final statement under Section 9 of the Act.

¹ 2014 (5) ALT 678

² (2013) 4 SCC 280

14. As pointed out by the Division Bench of this Court in **Dasamma**, in the absence of any notice under Section 10 (5) and Section 10 (6) of the Act, to parties entitled to the said notice, possession cannot be said to have been taken.

15. In **Hari Ram**, the Supreme Court pointed out the distinction between *de jure* possession and *de facto* possession.

Paragraphs 35, 36 and 37 of the said decision read as follows:

“35. If *de facto* possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression “where any land is vested” under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

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

39. Above-mentioned directives make it clear that sub-section (3) takes in only *de jure* possession and not *de facto* possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.....”

16. According to the Competent Authority under the ULC, possession was taken on 20-06-1998. But after 20-06-1988, the entire proceedings were tossed between the Competent Authority and the Appellate Authority under the ULC Act several times. As

seen from the order of the Chief Commissioner of Land Administration dated 18-01-2007, two sets of appeals were filed as against the entire proceedings including the final statement under Section 9 and the possession notice under Section 10 (6) dated 20-06-1998. One set of appeals was by the legal heirs of the protected tenant in respect of the lands in Survey Nos.54 and 55. Another appeal was by the petitioner herein (it must be pointed out at this stage that the petitioner was formerly known as The Beam Technologies India Private Limited and was later renamed as Solix Systems Private Limited and now known as Tiebeam Technologies India Private Limited). The appeals were allowed by the order dated 18-01-2007 by the Chief Commissioner of Land Administration. In the said order, the Chief Commissioner of Land Administration pointed out the following sequence of events:

- i) The petitioner herein filed an appeal in the year 2001. The appeal was allowed on 21-04-2003 and the matter remanded back to the competent authority, to re-compute the holdings, after duly giving the benefit of exemption under G.O.Ms.No.733, Revenue, dated 31-10-1988;
- ii) The Competent Authority again passed revised orders on 03-05-2005 under Section 8(4) of the Act. As against the said order, a fresh appeal was filed and the same was allowed by the Appellate Authority by a fresh order dated 02-03-2006 and the matter again remanded back;

- iii) The competent authority passed a fresh order on 06-11-2006, which was challenged by the petitioner herein once more before the Appellate Authority and the Appellate Authority passed a fresh order dated 18-01-2007 once again remanding the matter back to the Competent Authority; and
- iv) when the proceedings were pending before the Competent Authority, the Repeal Act was notified in the State of Andhra Pradesh on 27-03-2008.

17. Therefore, it is clear that the steps taken under Sections 10 (5) and 10 (6) of the Act did not stand and they were set aside. Once they had been set aside, no one can rely upon the alleged possession taken on 20-06-1998. If all proceedings including those under Sections 10 (5) and 10 (6) had gone, the claim that possession was taken should also go. If no one can fall back upon the taking over of possession on 20-06-1998, the question of redelivery of possession by the order impugned in the writ petition would not arise.

18. Having settled the question of validity of the impugned order directing redelivery, we shall now take the claim of the 13th respondent that they have been put in possession by order dated 05-02-2014. We do not know how far the 13th respondent can rely upon the redelivery. When the original proceedings by which possession was allegedly taken over on 20-06-1998, did not survive in view of the successive orders passed by the Appellate Authority, first on 21-04-2003, then on 02-03-2006, later on 06-11-2006 and

finally on 18-01-2007, before the Act itself got repealed, the question of the competent authority directing the revenue officials to hand over possession and the revenue officials acting on the same, would not arise. The order dated 05-02-2014 is a structure whose very foundation was shallow. Therefore, the 13th respondent cannot rely upon the said proceeding.

19. More over the claim of the 13th respondent to title is little sketchy. According to the 13th respondent, they purchased the land in question in Survey Nos.56, 57, 59 and 64, from the original owner through their G.P.A. holder under a sale deed dated 15-04-2006. According to the writ petitioner, this sale deed was an unregistered document. The 13th respondent does not deny the same. But the 13th respondent claims that this sale deed was validated by the District Registrar on 02-04-2011.

20. But the 13th respondent has not placed before us either the sale deed or the alleged validation. On the contrary, the writ petitioner has produced a Ratification Deed dated 22-12-2014 executed by the family members of the original owner in favour of the 13th respondent and 2 others. This ratification deed is a registered document. It is stated in the ratification deed that the sale deed dated 15-04-2006 was registered on 02-04-2011. There is no way an unregistered sale deed can be ratified after 5 years. In fact in the proceedings before the Chief Commissioner of Land Administration (Appellate Authority under the ULC Act), Champa Devi and Hari Kaur Pershad were parties. They never made a

mention about the sale dated 15-04-2006. On the contrary, the claim made by the writ petitioner that they had purchased the property and they are entitled to exemption in terms of G.O.Ms.No.733, dated 31-10-1988, was accepted by the Appellate Authority not once, but three times successfully from the year 2001 up to the year 2007. The last of these orders was dated 18-01-2007. During the pendency of proceedings under the ULC Act, 13th respondent could not have purchased the very same land, about which the petitioner was agitating before the Appellate Authority. Therefore, the claim of ownership made by the 13th respondent is not based upon any valid document and hence, he is not entitled to claim possession.

21. Before concluding we should point out that as against the very same impugned order dated 09-11-2010, passed in respect of the lands in Survey Nos.54 and 55, the legal heirs of the protected tenants and their alienees have come up with a writ petition in W.P.No.29293 of 2010. By a separate order passed today, we have actually dismissed the writ petition, in view of the long history of the litigation between the protected tenants and a Cooperative Housing Society. We are making a mention of this fact, with a view to highlight as to what impelled us to take a different view in W.P.No.29293 of 2010, arising out of the very same impugned order. In W.P.No.29293 of 2010, we did not adjudicate the correctness of the order dated 09-11-2010 impugned in the writ petition. This is for the reason that we found the protected tenant and the family members of the original owner Hari Kaur Pershad

guilty of collusion and fraud. Therefore, we refused to go into the question of validity of the very same proceedings in W.P.No.29293 of 2010 filed by the protected tenant. But the petitioner in this writ petition is not claiming under the protected tenant and the property covered in this writ petition is different from the property covered in W.P.No.29293 of 2010.

22. Therefore, in the light of the above, the writ petition is allowed and the impugned order is set aside. There will be no order as to costs.

23. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.



V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 17-07-2018

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