

***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**

**+C.R.P.Nos.4935 and 5807 of 2008 and CRPSRNos.28487 and
33779 of 2008, C.R.P.No.949 of 2010, CRPSR.Nos.5175, 5181,
5187, 6844, 7883, 7889, 7905 of 2011,**

Date: 17-07-2018

C.R.P.No.4935 of 2008

#Between:

1. Mantrigari Narayangoud, S/o. Late Lingamaiah Goud, R/o. 18-6-639, Outside, Lal Darwaja, Hyderabad.
2. G. Shobanadri S/o. Sri Krishna Murthy, R/o. Flat No.204, Saisadan Apartment, Balkampet Road, S.R. nagar, Hyderabad-500 038.
(transposed as petitioners vide order in I.A.No.1 of 2018)

... Petitioners

And

The Joint Collector-I, Ranga Reddy District,
Khairthabad, Hyderabad and 7 others

... Respondents

C.R.P.No.5807 of 2008

#Between:

K. Rajeswara Rao, S/o Kasinath Raod,
Aged about 38 years, Occ: Business, resident
of H.No.1-80, Narsingi, Ranga Reddy District
and 2 others

... Petitioners

And

The Joint Collector-I, Ranga Reddy District,
Khairthabad, Hyderabad and 52 others

... Respondents

C.R.P.(SR)No.28487 of 2008**#Between:**

K. Mallesh, S/o K. Subramanyam, aged
About 46 years, resident of H.No.10-289,
Vinayaknagar, Balanagar, Hyderabad and
14 others

... Petitioners

And

The Joint Collector-I, Ranga Reddy District,
Khairthabad, Hyderabad and 40 others

... Respondents

C.R.P.(SR)No.33779 of 2008**#Between:**

D. Venkateswara Rao, S/o D. Appa Rao,
Aged about 58 years, resident of G-C,
Sai Mathur Apartments, H.No.6-3-609/33,
Anandanagar Colony, Hyderabad and 2 others

... Petitioner

And

The Revenue Divisional Officer, Chevella Division,
At Attapur, Hyderabad and 51 others

... Respondents

C.R.P.(SR)No.5175 of 2011**#Between:**

Ganga Joshna, D/o G. Rama Rao, aged
about 41 years, resident of Flat No.103B,
Ramsai Apartments, Saidabad, Hyderabad

... Petitioner

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.5181 of 2011**#Between:**

Ganga Jyothi, D/o G. Rama Rao, aged
about 43 years, resident of Flat No.103B,
Ramsai Apartments, Saidabad, Hyderabad

... Petitioner

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.5187 of 2011**#Between:**

A. Krishna Kumari, W/o A. Venkata Narayana,
aged about 56 years, Household, resident of S2/C14,
Sachivalaya Nagar, Vanastalipuram, Hyderabad.

... Petitioner

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.6844 of 2011**#Between:**

V.V. Subba Rao, S/o Ramachander, aged
78 years, Occ: Retd. Govt. Servant, resident of
3-971, Vanasthalipuram, Hyderabad.

... Petitioner

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.7883 of 2011**#Between:**

A. Shivaji Prasad, S/o Nagappa, aged about 65 years,
Occ: Retd. Govt. Servant, r/o 7-5-63 (21B),
Venkateswara Colony, Mahabubnagar

... Petitioner/third party

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.7889 of 2011**#Between:**

Y. Narayana Reddy, S/o Narayana Reddy, aged
About 66 years, Occ: Retd. Govt. Servant,
Resident of 6-3-105/1/A, Khairatabad, Hyderabad

... Petitioner/third party

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.(SR)No.7905 of 2011**#Between:**

A. Bhola Shankar, S/o Buchaiah, aged about 57
Govt. Servant, r/o 181/C, HUDA Colony,
Vanastalipuram, Hyderabad.

... Petitioner/third party

And

Vigneswara Colony Welfare & Development
Society, represented by its General Secretary,
Sri L.V. Ramanujam and 54 others

... Respondents

C.R.P.No.949 of 2010**#Between:**

Sri Raj Kishenji Pershad, 60 years, Business,
R/o 1-35-462/1, BHEL Colony, Rasoolpura,
Secunderabad and 5 others

... Petitioners

And

Swaroop Dhupar, W/o Sri S.P. Dhuparm,
Aged about 55 years, Occ: Household,
R/o Plot No.54, Gun Rock Enclave, Phase-I,
Gate-3, Secunderabad and 5 others

... Respondents

! Counsel for the Petitioners :

^ Counsel for Respondents :

<GIST:

> HEAD NOTE:

? Cases referred

1. (1985) 2 SCC 670
2. (1997) 3 SCC 681
3. (1998) 3 SCC 573
4. (2018) 6 SCALE 213,
5. (1994) 1 SCC 1
6. (2011) 8 SCC 383
7. (2005) 6 SCC 149
8. 2013(4) ALD 725
9. (2004) 11 SCC 364
10. (2005) 7 SCC 605
11. (2017) 4 SCC 1





HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

**C.R.P.Nos.4935 and 5807 of 2008 and CRPSRNos.28487 and
33779 of 2008, C.R.P.No.949 of 2010, CRPSR.Nos.5175, 5181,
5187, 6844, 7883, 7889, 7905 of 2011**

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

All these Civil Revision Petitions are filed under Section 91 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, challenging an order passed by the Joint Collector, under Section 90(1) of the Act.

2. We have heard Mr. Shanmuga Sundaram, learned senior counsel, Sri C. Raghu, Mr. Syed Yasar Mamoon Mr. D. Hanumantha Rao and Mr. D. Jagan Mohan Reddy, learned counsel appearing for the petitioners and Mr. M.V.S. Suresh Kumar, learned senior counsel appearing for some of the respondents, Mr. E. Ajay Reddy, learned counsel appearing for some of the respondents and Mr. Vijay B. Paropakari, learned counsel appearing for the impleaded parties.

3. The case on hand has a chequered history with litigation multiplying at every opportunity and the parties on all sides competing with each other to reach the peak of unscrupulousness.

4. As if to add more complexity to the facts as well as the legal issues into this already complicated litigation, all the parties to this litigation, without exception, have come out only with half facts.

Therefore, to the extent possible, we have put together the bits and pieces that are scattered around and have attempted to draw a full picture of the background facts. It is as follows:

Background Facts:

5. According to the contesting respondents, the land of a huge extent in Survey Nos.31, 51, 54, 55 etc., in Madinaguda Village belonged to the family of one Raja Jagannath Pershad. Unfortunately, none of the parties to this litigation have taken care either to find out or to disclose the genealogy tree with the dates of death of each member of the family and the number of legal heirs left behind by every deceased member of the family. Though the learned counsel for the contesting respondents produced a genealogy tree, the correctness of the same is questioned by the others. In any case, the death certificates as well as the legal heirship/succession certificates of the deceased are not furnished, leaving us in wilderness. Therefore, the background facts that we would narrate here may not really be fully accurate, but the advantage that we have here, is that none of the parties to this litigation can challenge its accuracy, as none of them is in possession of the whole information.

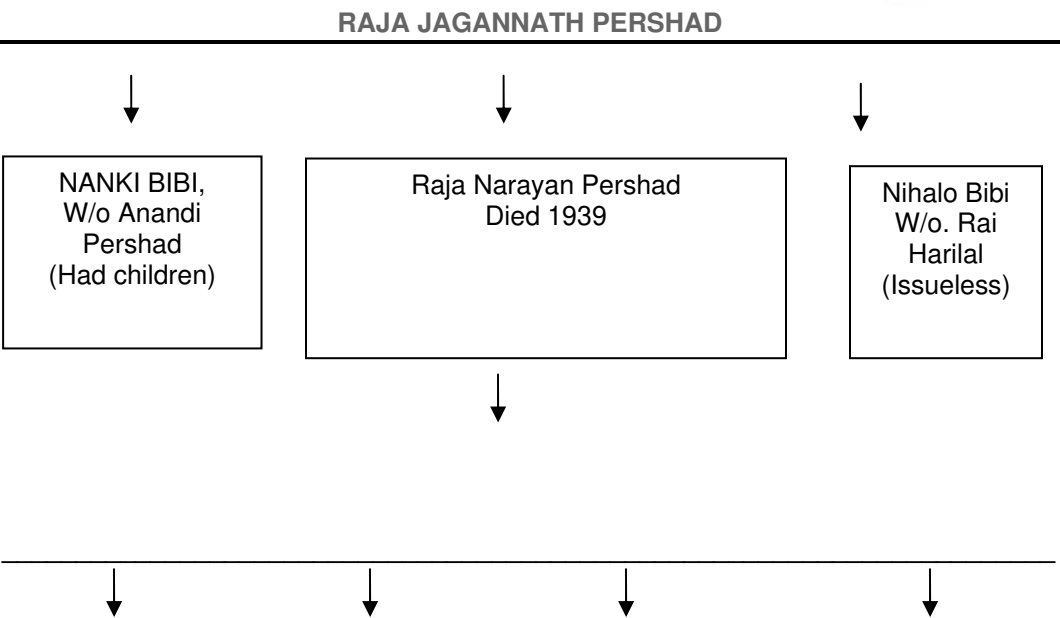
6. Therefore, from the information made available to us, it appears that the aforesaid landed property stood in the name of one Nehalo Bibi, wife of one Rai Harilal, who was also the daughter and common ancestor to Raja Jagannath Pershad. It must be recorded at this stage that no document of title is produced before

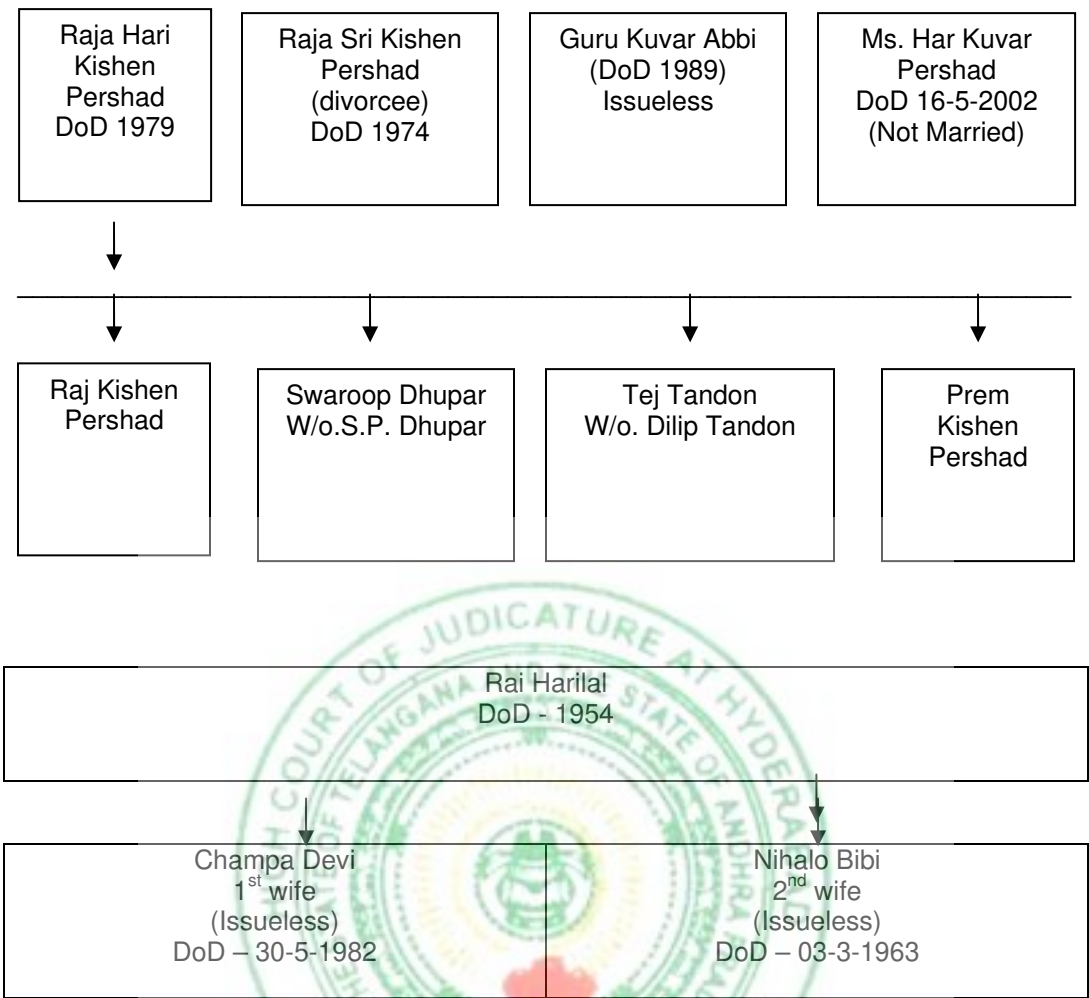
us to show that Nehalo Bibi was owner, but her name was shown as the landholder in the Protected Tenancy Register.

7. It appears that the name of one Kurma Komriah was also shown as a tenant in the Protected Tenancy Register.

8. According to the contesting respondents, Nehalo Bibi's husband died in the year 1954 and she herself died on 03-3-1963, without leaving any Class-I heirs. But the respondents claim that Rai Harilal had another wife by name Champa Devi and that therefore upon the death of Nehalo Bibi, mutation was effected in favour of Champa Devi and one Ms. Har Kuvar Pershad. This Har Kuvar Pershad is stated to be one of the four children of one Raja Narayan Pershad, the brother of Nehalo Bibi.

9. To have a better understanding of the so-called devolution of title (in support of which no death certificates and no legal heirship certificates are produced), the genealogy tree furnished by one of the contesting respondents is reproduced as follows:





10. Since we are not dealing with a title suit and also since none of the parties could challenge the correctness of the above genealogy tree, we have reproduced the same as the basis, at least for the purpose of narration of the background facts.

11. It appears that in terms of Rule 4(1) of the Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973, a provisional list containing the extent of lands held or deemed to be held by protected tenants and the extent of land held by the land owners on the date notified under Section 38E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 was published on 24-02-1975. On the ground that

no objections were received to the provisional list, a final list under Rule 4(3) was also published in March, 1975.

12. Thereafter, a certificate of ownership under Section 38E of the 1950 Act read with Rule 5(1) was issued on 15-5-1975 in favour of one Kurma Komriah. The lands in respect of which the said certificate was issued, were – (i) Ac.8-39 guntas in Survey No.31 and (ii) Ac.11-18 guntas. in Survey No.54 of Madinaguda Village.

13. Simultaneously, with the issue of certificate of ownership under Section 38E in favour of Kurma Komriah in respect of the above two pieces of land, a notice under Rule 5(2) was also served on Smt. Nihalo Bibi calling upon her to file an application for the determination of reasonable price of her interest in the lands. It is relevant to note that the parties to this litigation referred to the said person as Nehalo Bibi, but the records of the Department show her name as Nihayan Bibi.

14. On the ground that Smt. Nihayan Bibi, the land owner, failed to respond to the notice dated 15-5-1975 for the determination of a reasonable price, another notice was issued after six years, on 31-8-1981, fixing 30-9-1981 as the date for personal hearing. A copy of this notice was also sent to Kurma Komriah, as well as to other protected tenants to whom certificates were issued in respect of certain other lands, which do not form part of the present dispute.

15. Even in the notice of enquiry dated 31-8-1981, Kurma Komriah was shown to be the protected tenant in respect of the land

of the extent of Ac.8-39 gts. in Survey No.31 and Ac.11-18 gts. in Survey No.54.

16. It appears that the reasonable price for both the parcels of land was fixed at Rs.549/- out of which the protected tenant Kurma Komriah paid Rs.517/- and sought time to make payment of the balance of Rs.32.40 by way of instalments.

17. After nearly 21 years of the publication of the final list under Rule 4(3) of the Rules issued under Section 38E and after 15 years of the determination of the reasonable price, Kurma Komriah, is stated to have made a representation to the Revenue Divisional Officer, Chevella Division, on 07-3-1996, claiming that he was actually the protected tenant in respect of three parcels of land, in Survey Nos.31, 54 and 55 and that while issuing a certificate under Section 38E, the land in Survey No.55 measuring about Ac.31-13 gts. was omitted to be included. Therefore, he sought the inclusion of the land in survey no. 55 also in his certificate.

18. On the representation dated 07-3-1996 so filed by the protected tenant Kurma Komriah seeking the inclusion of the land in Survey No.55 in the certificate already issued under Section 38E, the Revenue Divisional Officer ordered an enquiry and directed Kum. Har Kaur Pershad to appear for a personal hearing on 11-4-1996. As we have indicated earlier, Smt. Nihayan bibi had died way back on 03-3-1963 and yet the draft notice under Rule 4(1) and final notice under Rule 4(3) for the issue of a certificate under Section 38E were never served on the legal heirs of Nihayan Bibi.

Even the notices for determination of the reasonable price, issued on 15-5-1975 as well as on 31-8-1981 were sent to Smt. Nihayan Bibi despite the fact that she had died way back in 1963. In other words, the final list under Rule 4(3) published on 15-5-1975 as well as the determination of reasonable price on 30-9-1981 were all done after serving notices on a dead person viz., Smt. Nihayan Bibi.

19. As a consequence, even the notices of enquiry sent on 26-3-1996 on the representation given by Kurma Komriah dated 07-3-1996 for including the land in Survey No.55, was served only on one person by name Har Kaur Pershad. Nobody knows as to how Har Kaur Pershad was fixed as the only legal heir left behind by Nihayan Bibi. As a matter of fact, none of the parties hereto has any dispute about the fact that Smt. Nihayan Bibi was only the second wife of one Rai Harilal and that Nihayan Bibi predeceased the first wife Champa Devi. This Champa Devi was alive when a draft notice under Rule 4(1) was published in February, 1975 and a final notice under Rule 4(3) was published in May, 1975 and when an enquiry was held under Rule 5(2) for the fixation of a reasonable price in September, 1981. Champa Devi died on 30-5-1982. But she was not issued with any of the notices even in the proceedings under Section 38E.

20. Be that as it may, a notice of enquiry was issued only to Ms. Har Kaur Pershad, taking her to be the only legal heir of Nihayan Bibi. Interestingly, this Har Kaur Pershad appeared before the Revenue Divisional Officer in the enquiry and submitted a joint

petition along with the protected tenant Kurma Komriah praying for the issue of a sale certificate in respect of the property measuring Ac.21-30 gts. in Survey Nos.54 and 55. In the joint petition so filed by Har Kaur Pershad and Kurma Komriah, it was stated that Kurma Komriah was in possession of agricultural lands measuring Ac.8-17 gts. in Survey No.54 and Ac.13-13 gts. in Survey No.55 and that Har Kaur Pershad and her aunty Smt. Champa Devi were the joint pattadars and that after Champa Devi died, Har Kaur Pershad became the sole legal heir to succeed to the property and that Har Kaur Pershad agreed to sell her interest in the lands in Survey Nos.54 and 55 to Kurma Komriah for a sale consideration of Rs.3,00,000/-. It was also claimed that Kurma Komriah had already paid an amount of Rs.50,000/- by way of a cheque dated 27-4-1996 and cash of Rs.50,000/- leaving the balance of Rs.2,00,000/- to be deposited before the Authority in the course of the proceedings.

21. It appears that Har Kaur Pershad also filed a sworn Affidavit attested by a Notary. It was stated in the Affidavit that she and her aunty Champa Devi were the joint pattadars; that Smt. Champa Devi died issueless on 30-5-1982 leaving behind her as the sole successor; that Kurma Komriah had been a protected tenant in respect of the lands in Survey Nos.54 and 55; that after the issue of a certificate under Section 38E on 15-5-1975 in respect of the lands in Survey Nos.31 and 54, the protected tenant wanted to purchase the land in Survey No.55; that the protected tenant also entered into an oral agreement in the year 1980 itself and paid

an advance of Rs.25,000/-; that on 30-4-1996, the protected tenant entered into an agreement with her; that she and her aunty had not filed a declaration under the Urban Land Ceiling Act and that the full consideration under the agreement of sale dated 30-4-1996 had been received.

22. There are certain interesting aspects to the Affidavit filed by Har Kaur Pershad before the Revenue Divisional Officer. While the joint petition filed by Har Kaur Pershad and Kurma Komriah were dated 25-5-1996, the Affidavit filed by Har Kaur Pershad was dated 06-7-1996. The joint petition does not disclose any oral agreement between the protected tenant on the one hand and Champa Devi and Har Kaur Pershad on the other hand in the year 1980. But such an oral agreement is set up in the Affidavit subsequently filed. The joint petition dated 25-5-1996 states that an advance of Rs.50,000/- was paid by way of a cheque leaving the balance of Rs.2,00,000/- to be paid before the Authority in the course of the proceedings. But the Affidavit of Har Kaur Pershad states that an advance of Rs.25,000/- was paid to Har Kaur Pershad and her aunty Champa Devi in 1980. Contrary to the plea in the joint petition to pay the balance of sale consideration of Rs.2,00,000/- before the Authority in the course of the proceedings, the Affidavit states that the full sale consideration has been received.

23. Adding another twist, a copy of the agreement of sale dated 30-4-1996 was also produced. This agreement was entered into between Har Kaur Pershad and Kurma Komriah and it is stated

therein that Har Kaur Pershad was the daughter of Raja Narayan Pershad and that Champa Devi was the sister of Har Kaur Pershad and that Champa Devi remained unmarried till her death. But in the joint petition as well as in her own Affidavit, Har Kaur Pershad claimed that Champa Devi was her paternal aunty. Under this agreement of sale, an advance of Rs.50,000/- alone had been paid though as per the joint petition, a sum of Rs.1,00,000/- had been paid as on the date of execution of the agreement of sale.

24. In yet another twist to the story the death certificate of Champa Devi produced by Har Kaur Pershad before the Authority showed that she was the wife of one Rai Harilal and that therefore the claim of Har Kaur Pershad in the agreement of sale as though Champa Devi was unmarried was a completely false statement.

25. By the time a representation was made on 07-3-1996 by Kurma Komriah to include Survey No.55 in the certificate under Section 38E and by the time Kurma Komriah and Har Kaur Pershad made a joint petition on 25-5-1996 and filed Affidavits before the Revenue Divisional Officer, two crucial developments had taken place, which had a direct impact upon the proceedings initiated under the 1950 Act. These two crucial events were –

(i) The Urban Land (Ceiling and Regulation) Act, 1976 came into force on 17-02-1976. Immediately, Champa Devi and Har Kaur Pershad, through their General Power of Attorney Holder Indrajit Singh filed a joint statement under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 before the Special Officer and

Competent Authority declaring the lands in Survey Nos.54/B, 55, 56, 57, 59, 60 and 64 in Madinaguda Village in Hyderabad Urban Agglomeration. The statement was filed in Form-I in the year 1981 and the Enquiry Officer submitted a verification report on 06-4-1981. Thereafter, a draft statement under Section 8(1) of the ULC Act was issued on 30-11-1983. Objections were filed by Indrajit Singh, the GPA Holder of Champa Devi and Har Kaur Pershad, on 24-7-1985 and a personal hearing was held on 08-8-1985. Thereafter, the Competent Authority passed an order dated 20-8-1985 declaring the land of an extent of 1,18,798.60 square metres as excess land and accordingly issued a final statement under Section 9 of the Urban Land Ceiling and Regulation Act, on 20-8-1985. One of the objections filed by Har Kaur Pershad in the course of the enquiry under Section 8(3) of the ULC Act was that her power agent had entered into an agreement with one Vigneswara Cooperative House Building Society Limited, registered under the Andhra Pradesh Cooperative Societies Act, 1964, on 31-10-1980 and that therefore, Champa Devi and Har Kaur Pershad had already applied for exemption through their GPA under Section 29(i)(a) of the ULC Act, 1976. In his order dated 20-8-1985, the Competent Authority under the Urban Land Ceiling rejected this objection on the ground that though the application for exemption may be pending, there was no bar for passing final orders under Section 8(4) of the ULC Act.

(ii) The second development that took place before the initiation of the proceedings under Section 38(1) of the 1950

Tenancy Act in March, 1996, was that admittedly Champa Devi and Har Kaur Pershad executed a deed of GPA on 09-6-1980 in favour of one Indrajit Singh in respect of the land of an extent of Ac.23-10 gts. in Survey Nos.54/B, 55 and 60. The power agent entered into an agreement with one Vigneswara Cooperative House Building Society Limited, which was registered as a Cooperative Housing Society under the Andhra Pradesh Cooperative Societies Act, 1964, on 31-10-1980. In fact, based upon the agreement, Hyderabad Urban Development Authority had issued a certificate of usage of land to the cooperative society on 13-11-1981 and the society also applied for sanction of layout on 06-02-1982. Pursuant to the same, the GPA Holder of Champa Devi and Har Kaur Pershad executed five sale deeds dated 26-6-1982, 29-6-1982, 02-7-1982, 05-7-1982 and 08-7-1982 registered as Document Nos.5469, 5524, 5606, 5658 and 5676 of 1982, in respect of the lands in Survey Nos.54/B measuring an extent of Ac.8-27 gts. and Survey No.55 measuring an extent of Ac.31-49 gts. The Hyderabad Urban Development Authority by its proceeding dated 02-4-1983 sanctioned the layout over Survey Nos.54/B, 55 and 60 in favour of Vigneswara Cooperative House Building Society Limited.

26. But unfortunately, the aforesaid two developments that took place during the period from 1981 to 1985 were omitted to be taken note of by or suppressed before the Revenue Divisional Officer, in his proceedings under the Tenancy Act, 1950 initiated on the representation of the protected tenant Kurma Komriah, dated 07-

3-1996. Har Kaur Pershad who jointly filed a petition along with the protected tenant Kurma Komriah on 25-5-1996 and who also filed a Notarised Affidavit on 06-7-1996, deliberately withheld information about – (i) the proceedings under ULC Act and (ii) the plea taken under the ULC Act that the property had already been sold to a cooperative society and an exemption under Section 20(i) was sought under the ULC Act. Interestingly, this Har Kaur Pershad was an Advocate by occupation as seen from her Sworn Affidavit dated 06-7-1996. In fact, the legal heirs of the protected tenant were also equally guilty of suppression, since they filed an appeal against the final statement ordered under Section 8(5) of the Urban Land Ceiling Act on 20.08.1985 by the competent authority. From the final statement ordered to be issued on 20.08.1985, there were three rounds of litigation, traveling up and down from the competent authority to the appellate authority, viz., the Chief Commissioner of Land Administration and the issue of urban land ceiling, was kept alive till the Repeal Act was adapted by the Government of Andhra Pradesh in the year 2008 and the proceedings abated.

27. Therefore, blissfully ignorant of – (i) the final statement issued under Section 8(4) of the ULC Act, 1976 and (ii) the sale of the property by Har Kaur Pershad and Champa Devi to Vigneswara Cooperative House Building Society Limited, the Revenue Divisional Officer passed an order dated 20-7-1996 directing the issue of a sale certificate in favour of Kurma Komriah for the land of the extent of Ac.8-17 gts. in Survey No.54/AA and the land of an extent

of Ac.13-13 gts. in Survey No.55 under Section 38(1) of the A.P. Tenancy Act, 1950.

28. Upon coming to know of the said order of the Revenue Divisional Officer dated 20-7-1996, Vigneswara Cooperative House Building Society Limited filed an appeal before the Joint Collector under Section 90 of the A.P. (TA) Tenancy and Agricultural Lands Act, 1950. But the said appeal was dismissed by the Joint Collector by an order dated 13-4-1998.

29. Challenging the order of the Joint Collector dated 13-4-1998, passed on the appeal filed under Section 90, Vigneswara Cooperative House Building Society Limited filed a statutory revision before this Court in C.R.P.No.2092 of 1998, under Section 91 of the Act. The said civil revision was taken up by a learned Judge of this Court along with a civil miscellaneous appeal arising out of the dismissal of an application for interim order of injunction in a civil suit filed by the cooperative society as against the protected tenant. By an order dated 10-02-2000, a learned Judge of this Court dismissed C.R.P.No.2091 of 1998. The special leave petition filed by Vigneswara Cooperative House Building Society Limited in SLP (Civil) No.11319/2000 was dismissed *in limine* by an order dated 01-12-2000 by the Supreme Court.

30. Thereafter, a few members of the Vigneswara Cooperative House Building Society Limited formed themselves into a welfare society by name Sri Vigneswara Colony Welfare and Development Society. The said Society filed a fresh writ petition in W.P.No.19307

of 2006 on the file of this Court seeking to cancel the sale certificate issued on 20-7-1996 in favour of Kurma Komriah (protected tenant) by the Revenue Divisional Officer. The said writ petition was dismissed *in limine* by a learned single Judge of this Court by an order dated 20-9-2006 with an observation that the Society ought to have worked out its remedies by way of an appeal under Section 90. The learned Judge did not take note of the previous litigation.

31. Taking advantage of the observation made by the learned single Judge in his order in W.P.No.19307 of 2006, Sri Vigneswara Colony Welfare and Development Society filed a statutory appeal under Section 90 before the Joint Collector, challenging the sale certificate issued on 20-7-1996 by the Revenue Divisional Officer. When the said appeal was pending, two sons of one Hari Kishan Pershad, who was the brother of Har Kaur Pershad independently filed an appeal. Four plot owners filed another appeal and two plot owners filed an independent appeal.

32. In other words, four appeals came to be filed in the year 2007-08, one by Sri Vigneswara Colony Welfare and Development Society, another by the nephews of Har Kaur Pershad and two by the owners of 4 different plots allotted by the cooperative society.

33. During the pendency of these appeals, persons in whose favour the Cooperative House Building Society had allotted individual plots of lands pursuant to the sanction of the layout way back in the year 1982, filed impleading applications and got impleaded in two of the appeals.

34. But by an order dated 16-8-2008, the Joint Collector dismissed all the appeals. Therefore, aggrieved by the said order, the appellants before the Joint Collector as well as those who got impleaded as respondents in the appeals before the Joint Collector have come up with the above civil revision petitions.

Grounds of challenge

35. The main grounds on which the impugned order of the Joint Collector, dated 16-8-2008 and the order of the Revenue Divisional Officer, dated 20-7-1996 are challenged, are:

(i) that the order dated 20-7-1996 directing the issue of a sale certificate in favour of the protected tenant Kurma Komriah in respect of the land in Survey No.55 in terms of Section 38(1) was completely vitiated by fraud and collusion;

(ii) that the order dated 20-7-1996 was passed on a representation submitted by the protected tenant Kurma Komriah on 07-3-1996, for an amendment of the certificate issued under Section 38E of the Tenancy and Agricultural Lands Act, 1950, 20 years ago on 15-5-1975;

(iii) that by the time Kurma Komriah made the representation dated 07-3-1996 for an amendment of the certificate issued under Section 38E way back on 15-5-1975, much water has flown under the bridge viz., that the land came under Urban Land Ceiling proceedings and a sale had also taken place in favour of the Cooperative House Building Society; and

(iv) that technicalities such as delay, laches, finality to litigation, *res judicata* etc., should not obstruct the stream of justice from flowing in the righteous direction, especially when the proceedings had been brought forth by fraud and collusion between a member of the family who owned the lands and the person who claimed to be the protected tenant on one hand and the officials of the Revenue Department on the other hand.

36. But the revisions are opposed by the contesting respondents both on maintainability and on merits. The contentions of the contesting respondents, in brief, are:

(i) that only one Association by name Sri Vigneswara Colony Welfare and Development Society filed an appeal before the Joint Collector, taking advantage of an observation made by a learned single Judge of this Court in a writ petition W.P.No.19307 of 2006, but several persons have now come up with revision petitions either on the ground that they also filed appeals taking advantage of the liberty granted to the Society or on the basis that they got impleaded in the appeal filed by the Society and hence they have a right to challenge the impugned order of the Joint Collector;

(ii) that even the appeal filed by Sri Vigneswara Colony Welfare and Development Society before the Joint Collector was not maintainable in law, since the said Society is nothing but a different avatar of the original House Building Cooperative Society which challenged the order of the Revenue Divisional Officer, dated 20-7-1996 and lost up to the Supreme Court;

(iii) that once a cooperative society unsuccessfully challenged an order, the members of the Society are bound by the outcome and they cannot claim an independent right to re-litigate the matter;

(iv) that in any case, all the four appeals including the one filed by the Welfare Society, on which the order dated 16-8-2008 impugned in these petitions was passed by the Joint Collector, were hopelessly barred by limitation and laches, as a period of nearly 11 years had already passed by the time the appeals were filed;

(v) that in any case, persons who claim to have purchased plots of land from the Cooperative House Building Society, could not have acquired a valid title, as the sale deed in favour of the Cooperative House Building Society was executed by the GPA of two persons by name Champa Devi and Har Kaur Pershad, one of whom viz., Champa Devi was no more when the sale deeds were executed in favour of the Cooperative Society;

(vi) that at any rate, the rights of a person whose name was recorded a protected tenant from the year 1951 cannot be defeated by any amount of transactions entered into by the pattadar and

(vii) that therefore, the impugned order of the Joint Collector cannot be assailed even on merits.

37. We have carefully considered the above submissions. Before dealing with these submissions, we would like to bring on record an important fact. The present revisions are filed not only by persons who filed appeals before the Joint Collector and got an order of dismissal, but also by persons who were only impleaded

respondents in those appeals. A couple of revisions are filed by persons who were neither appellants nor respondents before the appellate authority. Therefore, in many of these revisions, there were (i) applications for leave to challenge the impugned order; (ii) applications for condonation of delay in filing the revisions; and (iii) applications for impleading. Since the very maintainability of the revisions is also challenged on the grounds of (i) locus (ii) long delay; and (iii) finality to litigation, the learned counsel for the respondents agreed that the applications by third parties for leave to file the revisions and the applications for condonation of delay in filing the revisions could be allowed, without prejudice to their rights to raise all these objections in the main revisions. Therefore, all the miscellaneous petitions were allowed and the main revisions are taken up for disposal.

Issues of maintainability and locus

Maintainability issue 1

38. Since very strong issues of maintainability and locus are raised by the contesting respondents, we cannot proceed to deal with the grounds of challenge to the impugned order, before testing the very maintainability of the revision petitions. Therefore, we shall first take up the issues of maintainability and locus.

39. The first ground on which the maintainability of the revisions is questioned, is that what is sought to be agitated now was already agitated by Sri Vigneshwara Cooperative House Building Society Limited unsuccessfully up to the Supreme Court

and that therefore, the members of the very same society either individually or coming together in the form a new society, cannot re-agitate the very same issue.

40. We have carefully considered the issue. On facts there is no dispute about the fact –

i) That the order of the Revenue Divisional Officer dated 20.07.1996 directing issue of a sale certificate under Section 30(1) of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 in favour of the Protected Tenant Kurma Kumaraiah in respect of the land in Sy.No.54/AA to the extent of Ac.8.17 gts., and in Sy.No.55 to the extent of Ac.13.13 gts., was challenged by Sri Vigneshwara Cooperative House Building Society Limited, by way of a statutory appeal under Section 90 of the Act before the Joint collector;

ii) That the Joint Collector dismissed the appeal filed by the Vigneshwara Cooperative House Building society Limited, by an order dated 13.04.1998;

iii) That the said order of the Joint Collector was challenged by Vigneshwara Cooperative House Building Society Limited by way of a statutory revision in C.R.P.No.2092 of 1998 under Section 91 of the A.P. (T.A) Tenancy & Agricultural Lands Act, 1950;

iv) That the said civil revision petition C.R.P.No.2092 of 1998 was dismissed by a learned Judge of this Court by an order dated 10.02.2000;

v) That the Special Leave Petition in S.L.P.(Civil).No.11319 of 2000 filed by Vigneshwara Cooperative House Building Society

against the order of this Court was dismissed by the Supreme Court in limine on 01.12.2000;

vi) That the members of the very same Cooperative Society, who were allotted and sold different plots of land, came together and formed a new society under the name and style of Vigneshwara Colony Welfare and Development Society;

vii) That the only difference between Vigneshwara Cooperative House Building Society and Vigneshwara Colony Welfare and Development Society was perhaps the fact that the former was registered under the A.P. Cooperative Societies Act while the later was registered under the Societies Registration Act;

viii) That the present revisions are filed both individually by the members of the very same cooperative society and collectively through a newly formed society, viz., Vigneshwara Colony Welfare and Development Society, challenging the very same original order of the Revenue Divisional Officer dated 20.07.1996 as confirmed by the Joint Collector in a different proceeding.

41. The admitted facts listed above are sufficient, at least *prima facie* to throw the civil revision petitions out without any further enquiry. As rightly contended by Mr. M.V.S. Suresh Kumar, learned Senior Counsel appearing for the contesting respondents in some of the revision petitions, a member of a cooperative society does not have an independent right, since the cooperative society of which he is a member, is a body corporate, having perpetual succession and common seal. Section 9 of the Act confers the status of a corporate

body to a cooperative society. Therefore, it was held by a Constitution Bench of the Supreme Court in **Daman Singh v. State of Punjab**¹, relied upon by Mr. M.V.S. Suresh Kumar, learned Senior Counsel, that once a person becomes a member of a cooperative society, he loses his individuality qua the society and that he has no independent right except those given to him by the statute and the bylaws. Following the said decision in *Daman Sing*, another Bench of the Supreme Court held in **State of U.P. v. C.O.D Chheoki Employees' Cooperative Society**² that a member of the society has no independent right qua the society and it is the society that is entitled to represent as a corporate aggregate.

42. Therefore, on first principles, there can be no escape from the conclusion that once a cooperative society had taken appropriate legal steps for defending their title to the property in dispute and had lost the battle, the individual members of the very same cooperative society cannot be permitted to agitate the very same issues. The same would tantamount to re-litigation or repeated litigation which is condemned by the Hon'ble Supreme Court in **K.K. Modi v. K.K. Modi**³.

43. But the aforesaid first principle is not without exceptions and even in cases where it applies, certain conditions are required to be satisfied.

¹ (1985) 2 SCC 670

² (1997) 3 SCC 681

³ (1998) 3 SCC 573

44. Whenever a cooperative society acquires a vast extent of land for the purpose of development of the land into house sites, the right, title and interest of the society in the land, is singular and unitary in character. But the moment the land is developed into a conglomeration of house sites and individual house sites are allotted to members, the allottees also acquire an independent right to property which is both a constitutional right under Article 300A and a human right. It is no doubt true that in any litigation concerning the ownership of the whole extent of land, the cooperative society represents the interests of the members. If the cooperative society loses the battle, their ownership of the whole of the disputed property itself will be in jeopardy and the allotment by the cooperative society of individual plots of land to its members will be vitiated on the basis of the Latin Maxim "*nemo dat quod non habet*: (no one can confer a better title than what he himself has).

45. But there is a difference between (i) an argument that the rights and interests of the individual members got extinguished due to the defeat of the Co-operative Society and (ii) the argument that the members do not even have an independent right to agitate. While it may be very difficult to find an answer to the first argument, it is not so with regard to the second argument. The second argument of the individual members that they have an independent right, can possibly be defeated only by invoking the principles of *res judicata* and not otherwise.

46. That takes us to the question whether the fresh round of litigation initiated by the individual members was barred by *res judicata*. The argument of Mr. M.V.S. Suresh Kumar, learned Senior Counsel for the contesting respondents is that if a fresh round of litigation by the cooperative society itself may be barred by *res judicata*, it is equally so in respect of a fresh litigation by the individual members.

47. But there are two difficulties in accepting the above contention. The concept of *res judicata* incorporated statutorily in Section 11 of the Civil Procedure Code was based upon the English Common Law doctrine of finality to litigation, founded upon public policy. The full Latin Maxim from which expression *res judicata* is derived is "*res judicata pro veritate accipitur*". Again this doctrine is based upon three other doctrines of public policy, viz., (1) no one should be vexed twice over the same cause; (2) it is in the interest of the State that there should be an end to litigation; and (3) a judicial decision must be accepted as correct.

48. But there are certain prerequisites to be satisfied before the doctrine of *res judicata* can be invoked. They are – (1) there must be a final judgment; (2) the judgment must be on merits; (3) the claims must be the same in the first and second suits; and (4) the parties in the second action must be the same as those in the first.

49. In a very recent decision in **Canara Bank v. N.G. Subbaraya Setty**⁴, the Supreme Court traced the origin of this doctrine to Roman law and after pointing out that this doctrine is almost universal in all ancient laws including ancient Hindu texts, the Supreme Court pointed out that there are certain notable exceptions to the applicability of this doctrine. One well known exception pointed out by the Supreme Court in para-5 of its decision in *Canara Bank* was that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of the Court. Likewise, an erroneous judgment on the question of law which sanctions something that is illegal cannot also be allowed to operate as *res judicata*.

50. Therefore, the questions that we should address ourselves to are:

- a. Whether Section 11 of the CPC or at least the principles analogous thereto, are applicable to the proceedings under the A.P. (TA) Tenancy and Agricultural Lands Act, 1950?
- b. Whether in the event of the principles of *res judicata* being applicable to these proceedings, the present proceedings are barred?

51. The answer to the first question is not very difficult to be found. Section 141 of the Civil Procedure Code declares that the procedure prescribed in the Code in regard to suits, shall be followed, so far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Though the Revenue Divisional Officer,

⁴ (2018) 6 SCALE 213,

who acted as the original authority and the Joint collector, who acted as appellate authority are not Courts of civil jurisdiction, they are conferred with the powers of a civil Court by Section 89(2) of the A.P. (TA) Tenancy and Agricultural Lands Act, 1950. Section 89(2) states that for the purpose of any enquiry, the Tahsildar, the Tribunal and the Collector may exercise all or any of the powers conferred on civil Court by the Code of Civil Procedure, including the power to award costs. Therefore Section 11 CPC or at least the principles analogous to those contained in Section 11 CPC are certainly applicable to the proceedings under the 1950 Act.

52. That takes us to the second question whether in the facts and circumstances of the case on hand, the present proceedings were barred by *res judicata*. The answer to this question has to be found out from three different perspectives, viz., (1) whether the parties to both the proceedings were the same; (2) whether the matter directly and substantially in issue in both the proceedings were the same; and (3) whether the case will fall under any one of the two exceptions pointed out by the Supreme Court in *Canara Bank v. N.G. Subbaraya Setty*, viz., that it was an erroneous decision on the jurisdiction of a Court or an erroneous judgment on a question of law which sanctions something that is illegal.

53. In the case on hand we shall take it (despite our own reservations) that the parties to the previous proceeding (by the cooperative society) are the same as the parties to the present proceeding (by its individual members independently or collectively

through a subsequently formed society). Therefore the first of the three questions, viz., whether the lis is between the same parties can be answered against the revision petitioners. That takes us to the second question whether the matter directly and substantially in issue in both proceedings were just the same.

54. To recollect the facts, the Revenue Divisional Officer passed an order on 20.07.1996 on an application filed by the protected tenant and on which the land owner gave her consent, leading to the issue of a sale certificate. But by the time the Revenue Divisional Officer passed the order dated 20.07.1996, on the application of the protected tenant dated 07.03.1996, the property had been sold to the Cooperative House Building Society under five different registered documents dated 26.06.1982, 29.06.1982, 02.07.1982, 05.07.1982 and 07.07.1982. The original authority, viz., Revenue Divisional Officer was not even informed of this sale.

55. Similarly, the original authority, who passed the order dated 20.07.1996, was also not aware of a series of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, starting with a statement filed by the power agent of the land owners under Section 6(1) of the ULC Act in the year 1981, an enquiry conducted by the enquiry officer on the said statement, a report submitted by the enquiry officer on 06.04.1981, a draft statement issued on 30.11.1983 under Section 8(1) of the Act, objections filed by the land owners to the draft statement on 24.07.1985, a personal hearing that took place on 08.08.1985 and a final order passed on 20.08.1985

under Section 8(4) leading to the issue of a final statement under Section 9.

56. In fact, the revenue records contained the names of two ladies by name Champa Devi and Harkuwar Pershad as the land owners and they were represented before the competent authority under the ULC Act through their general power of attorney holder Inderjit Singh. In order to avoid the acquisition of the surplus land under the ULC Act, the land owners as well as the protected tenant sought shelter under the sale made in favour of the cooperative society and the exemption available under Section 20(1)(a) of the ULC Act, 1976 in view of the sale to a co-operative society.

57. But one of the registered land owners, viz., Champa Devi died on 30.05.1982 even before a final order under Section 8(4) of the ULC Act was passed on 20.08.1985. Still the sale in favour of the cooperative society was relied upon before the Competent Authority under the ULC Act, by both the surviving land owner Har Kuwar Pershad, who was also an advocate, and the legal heirs of the protected tenant, to avoid the surplus land taken over under the ULC act.

58. In the context of these two facts, one relating to the sale in favour of the cooperative society and another relating to the urban land ceiling proceedings, not being brought to the notice of the original authority (RDO), the appellate authority, viz., the Joint Collector, when confronted with these two facts, framed the following points for his consideration:

1. Whether the Revenue Divisional Officer is competent to issue sale certificate?
2. Whether the status of respondent NO.3 in respect of the lands under appeal (respondent No.3 Kurma Komariah)?
3. Whether the lands under appeal are agricultural lands or not?
4. whether the sales executed by the G.P.A. are valid.
5. Whether the sale certificate issued by the Revenue Divisional Officer is valid or not?

59. Normally when an appellate authority is confronted with facts, which were not before the original authority, especially on account of the non-impleadment of necessary parties before the original authority, the duty of the appellate authority is to remit the matter back to the original authority. But the appellate authority under Section 90 of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 Act, took upon itself the task of recording findings on all the above five points for determination, as though he was the original authority. All the five points for determination were answered by the appellate authority in favour of the land owner and the protected tenant and against the cooperative society.

60. Therefore without going into the correctness of the order dated 13.04.1998 passed by the Joint Collector (appellate authority), it has to be accepted that the matter in issue directly and substantially in those proceedings were just the same as the matters in issue in the present proceedings. Hence the second aspect of res judicata has also to be answered in favour of the respondents.

61. That leaves us with the last aspect of res judicata, viz., whether the case on hand would fall under one of the two exceptions

to the doctrine of *res judicata* pointed out in para-5 of the recent decision of the Supreme Court in *Canara Bank*.

62. Point No.3 framed by the appellate authority for determination was whether the lands under appeal were agricultural lands or not. This point was raised by the appellate authority in the context of the pleading made by the cooperative society that the lands had already been converted into house sites and that they were no more agricultural lands. In fact, the land owner Har Kuwar Pershad stated in her affidavit before the original authority that she had not filed any declaration under the ULC Act. This was obviously a false statement, since a declaration had been filed in 1981, a draft statement under Section 8(1) of the ULC Act was issued on 30.11.1983, objections were filed by the G.P.A of the land owners on 24.07.1985 and a final statement under Section 9 was issued on 20.08.1985, long before Har Kuwar Pershad filed the affidavit before the Joint Collector in the year 1996.

63. Therefore, the Joint Collector ought to have framed the question as to whether the lands were agricultural lands or not, in the context of the proceedings that were pending at that time under the ULC Act. It must be remembered that the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 is a State enactment, intended to regulate the relations of landholders and tenants of agricultural land and the alienation of such land (as per the preamble). The ULC Act is a Central enactment and it was subsequent in point of time to the State enactment of the year 1950. The expression "Urban Land" was

defined in Section 2(o) of the ULC Act, but it excluded from its purview, any land mainly used for the purpose of agriculture. The word “agriculture” used in Section 2(o) was also defined in the Explanation under Section 2(o). The State of A.P. was one of the States in which the provisions of ULC Act came into force at once, by virtue of Section 1(3). Therefore on and from the commencement of the ULC Act, no person in the State of A.P. was entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applied. In fact, the prohibition under Section 3 of the ULC Act, 1976 is not with regard to “ownership” of vacant land in excess of the ceiling limit. The prohibition was in respect of “holding” and not ownership.

64. Therefore, ***the provisions of the ULC Act, 1976 will naturally prevail over the provisions of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950, on account of – (1) the former being a central enactment and the later a State enactment; (2) the former being a latter enactment than the later; and (3) the prohibition under Section 3 of the ULC Act being on “holding” rather than on ownership.*** Therefore even assuming for a minute that Kurma Komaraiah continued to be a protected tenant in respect of the land in question, he was also covered by Section 3 of the ULC Act, 1976. The law is now well settled by a Division Bench judgment of this court in ***Gadda Balaiah v. Joint Collector, Ranga Reddy District.***

65. Section 8 of the ULC Act prescribed the procedure for preparation of a draft statement as regards vacant land in excess of ceiling limit. Therefore, if a person claimed that the vacant land held by him was an agricultural land not to be included in his holding, he was entitled to file objections under Section 8(3). The competent authority under the ULC Act was entitled to consider those objections and pass an order under Section 8(4), based upon which a final statement could be issued under Section 9.

66. Therefore, on and after the commencement of the ULC Act, 1976, the question whether a land located within the urban agglomeration is an agricultural land or not, is a question that fell exclusively within the jurisdiction of the competent authority under the ULC Act, 1976. This position in law was accepted even by the protected tenant and hence his legal heirs filed appeals after appeals against the final statement made under section 9 of the ULC Act. In essence, a question that fell entirely within the jurisdiction of the competent authority under the ULC Act, 1976, could not have been decided by the Joint Collector in an appeal under Section 90 of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950. In other words point No.3 framed by the Joint Collector for determination and answered in favour of the protected tenant and the land owner in his order dated 13.04.1998 was wholly without jurisdiction. As a consequence, the order dated 13.04.1998 passed by the Joint Collector falls within one of the two exceptions to the rule of *res*

judicata. Hence the present proceedings, cannot be thrown out as not maintainable, solely on the ground of *res judicata*.

67. Apart from the fact that the order of the Joint Collector dated 13.04.1998 cannot operate as *res judicata* as it was an order passed without jurisdiction, there is also one more fact that vitiates the said order. The land owner Har Kuwar Pershad, who was an advocate and who consented to a sale being made in favour of the protected tenant Kurma Komaraiah, had obviously played a huge fraud upon (1) the cooperative society; (2) the competent authority under the ULC Act; and (3) the Revenue Divisional Authority under the 1950 Tenancy Act. She had taken a stand before the competent authority under ULC Act that the lands had already been sold in favour of the cooperative society and that therefore she was entitled to exemption under Section 20(1)(a) of the ULC Act, 1976. After taking such a stand and repeatedly litigating under the ULC authorities, the land owner Har Kuwar Pershad filed a joint application and a consent affidavit before the Revenue Divisional Officer in May, 1996 for the sale of the land to the protected tenant suppressing all the above. The Revenue Divisional Officer, who passed the order dated 20.07.1996 was not aware of (1) the proceedings under the ULC Act; (2) the stand taken by the land owner in the proceedings under the ULC Act; and (3) the sale in favour of the cooperative society. In fact, it was not only the land owner Har Kuwar Parshad, who suppressed the proceedings that went on before the competent authority under the ULC Act, right

from the year 1981 up to the year 2007, but also the protected tenant, who suppressed the same before the Revenue Divisional Officer in the proceedings under the ULC Act, 1976. The protected tenant was also contesting the order dated 20-08-985 passed under Section 8(5) of the ULC Act in series of appeals. There were other persons, who had purchased certain other lands from the land owner and all of them kept the litigation under the ULC Act alive from the year 1985 up to the year 2008 when the Act was repealed in the State of Andhra Pradesh. But all of them kept the competent authority under the Tenancy Act, 1985 in dark about these proceedings.

68. The facts suppressed before the competent authority are very very material facts, which if disclosed, could have persuaded the Revenue Divisional Officer not to encroach into a territory reserved exclusively for the competent authority under the ULC Act. Therefore, the suppression of these two material facts, tantamounted to a clear fraud perpetrated by the land owner. That fraud vitiates of solemn facts, is now too well settled for any case law to be cited. Hence we refrain from referring to various decisions of the Apex Court on this aspect.

69. Har Kuwar Pershad seems to have adopted a very clever device (1) by appearing in person before the Revenue Divisional Officer in the proceedings under the 1950 Tenancy Act and by appearing through the G.P.A. holder in the proceedings under the ULC Act; and (2) by pleading before the Joint Collector that the deed

of power of attorney executed by herself along with Champa Devi got terminated with the expiry of Champa Devi. The appellate authority, viz., the Joint collector, who passed the order dated 13.04.1998 unfortunately fell into this trap by holding on issue No.4 that the sales executed by the G.P.A holder were invalid on account of the death of one of the principals.

70. First of all the Joint Collector had no jurisdiction to declare a sale invalid. Even in cases where certain transfers made with a view to defeat the rights of the beneficiaries, are declared invalid by statute, it is the civil Court, which is entitled to declare the alienation as void. {please refer ***Gangadhar Vishwanath Ranade vs., Income Tax Officer 1998 (234) ITR 188 (SC)***} Therefore, even on point No.4, the Joint Collector assumed in his order dated 13.04.1998, a jurisdiction not vested in him in law.

71. In any case, every general power of attorney need not necessarily expire with the death of the principal. Whenever a power is coupled with interest, the power may survive despite the death of the principal. In any case, even assuming without admitting that the G.P.A lapsed due to the death of Champa Devi, it is not the same insofar as the power given by Har Kuwar Pershad is concerned. If two persons jointly execute a deed of power of attorney, the same cannot be taken to have expired upon the death of one of the principals.

72. Therefore, the question whether the sales made by the G.P.A of Champa Devi and Harkuwar Pershad in favour of

cooperative society were valid or not, could not have been decided by the Joint Collector in his order dated 13.04.1998, as he did not have jurisdiction to decide the same. For this reason also, the case on hand falls within the exceptions carved out to the doctrine of res judicata. Hence the first ground of attack to the maintainability of above civil revision petitions, on the ground of res judicata has to be rejected.

Maintainability issue 2

73. The next ground of challenge by the contesting respondents to the very maintainability of some of the revisions revolves around the locus of some of the revision petitioners. The argument of the respondents is that though Sri Vigneswara Colony Welfare and Development Society alone filed a writ petition in WP No. 19307 of 2006 and got liberty to file a statutory appeal against the original order of the RDO dated 20.07.1996, many individual members also filed appeals, taking advantage of the liberty granted in favour of the society. The appeals filed by the individual members, on the basis of the liberty granted in favour of the society, according to the contesting respondents, were not maintainable and hence their revision petitions are also not maintainable.

74. It is also the contention of the contesting respondents that a few individual members even got impleaded in the appeal filed by the society and taking advantage of that impleadment, they have also come up with revisions. Persons who were only respondents in an appeal, cannot challenge the dismissal of the appeal.

75. As a corollary to the above two contentions, it is also argued by the learned senior counsel for the contesting respondents that a few revisions are filed by persons who are not even parties, either as appellants or as respondents before the Appellate Authority and that they have no locus to challenge the order of the Appellate Authority.

76. In order to understand the scope of the above contentions, we must point out here that the revisions on hand are filed by four different categories of persons, namely (i) the society which filed an appeal after getting liberty from this Court and whose appeal was dismissed by the order impugned in the revisions; (ii) individuals who also filed separate appeals, by taking advantage of the liberty granted in favour of the society and whose appeals were also dismissed by the common order impugned in these revisions; (iii) individuals who got impleaded as respondents in the appeal filed by the society and who are now aggrieved by the dismissal of the appeal filed by the society and (iv) individuals who were neither appellants nor respondents before the Appellate Authority.

77. The objection of the contesting respondents, is to the locus of the 2nd, 3rd and 4th categories of persons. The argument of the contesting respondents is that individual members could not have filed an independent appeal, based upon the liberty granted to the society; that those who got impleaded as respondents in the appeal filed by the society could not also have come up with

revisions and that the cases of those who were neither appellants nor respondents before the Appellate Authority were still worse.

78. We have no difficulty in sustaining the objection relating to the locus of the 2nd, 3rd and 4th categories of persons. But this will not advance the cause of the respondents. The dismissal of the revisions filed by the 2nd, 3rd and 4th categories of persons will not result in the automatic dismissal of the revision filed by the society. But on the contrary, the dismissal of the revision filed by the society will result in the automatic dismissal of the revisions filed by the other three categories of persons even on merits.

79. In contrast, if the revision filed by the society is allowed and the order of the appellate authority is set aside, the benefit of the same will accrue to all the individual members, even if their revisions are dismissed on the ground of locus. Therefore the question of locus of a few persons, to challenge the order of the Appellate Authority, will not lead us anywhere, except for statistical purposes, especially when we also have on hand, a revision filed by the society itself.

Maintainability issue 3

80. The next ground on which the maintainability of the revision petitions is questioned, is limitation. The order impugned in the revisions were filed under Section 90 of the 1950 Act. Section 93 prescribes a period of limitation of 60 days. The original order of the RDO against which an appeal was filed by the society, was dated 20.07.1996. The appeal was filed in the year 2007. Therefore the

contention of Mr. M.V.S Suresh Kumar, learned senior counsel for the contesting respondents is that the appeal filed by the society after more than 11 years was hopelessly barred by limitation and that even the liberty granted by this court in WP No 19307 of 2006 cannot save limitation for the society.

81. It is true that the liberty granted by this court to the society to go before the Appellate Authority cannot be construed as having an overriding effect on Section 93 of the 1950 Act. No court can grant liberty to do something not permitted by law.

82. But unfortunately for the respondents, the appeal of the society was not dismissed on the ground of delay. It can be seen from the order of the Appellate Authority dated 16.08.2008 that the appeals were dismissed on four grounds, namely (i) that the order of the original authority, having already been confirmed upto the Supreme Court, had attained finality; (ii) that it was not the welfare society that purchased the lands in question and hence they have no right to challenge the original order; (iii) that the sale certificate issued under Section 38(1) of the Act has made the land a private land, taking it out of the purview of the Joint Collector to deal with the same and (iv) that in view of the repeal of the Urban Land Ceiling Act, the proceedings before the Competent Authority got abated.

83. In other words limitation was not a ground on which the appeal of the society was dismissed. In any case if certain proceedings are vitiated by fraud, persons who are guilty of such

fraud are not entitled to take advantage of limitation. Judicial and quasi judicial proceedings cannot become machinations of fraud at the hands of unscrupulous elements.

84. As we have pointed out earlier, the land owner Har Kuwar Pershad, who was also an advocate, had clearly taken everyone for a ride. Through her GPA she defended the proceedings under the ULC Act, on the ground that the property had been sold to a co-operative house building society and that therefore the lands were exempt under Section 20(1)(a) of the ULC Act. Even while doing so, she entered into an agreement with Kurma Komaraiah and sold it by using the office of the RDO under Section 38(1) of the Tenancy and Agricultural lands Act, 1950. In the proceedings before the competent authority under the ULC Act, she did not take a plea that there was a protected tenant whose rights cannot be affected. In the proceedings before the RDO under the 1950 Act she did not make a mention (i) either about the final statement made under Section 9 of the ULC Act; (ii) or about the sales in favour of the cooperative house building society.

85. If Har Kuwar Pershad had brought to the notice of the RDO the factum of (i) the pendency of the proceedings under the ULC Act and (ii) the sale in favour of the cooperative society, the RDO would have and should have abandoned the proceedings, as it was within the exclusive jurisdiction of the Competent Authority under the ULC Act to see if a land is used for agriculture so as to fall outside the purview of excess vacant land and urban land.

Alternatively the RDO would have at least heard the cooperative society before approving the sale under Section 38(1).

86. The land owner, clearly in collusion with Kurma Komaraiah, had taken (i) the Competent Authority under the ULC Act; (ii) the RDO under the 1950 Act and (iii) the cooperative society, for a royal ride, by defending or processing parallel proceedings, showing different faces to each one of them and keeping everyone of them in dark about the whole facts.

87. Therefore persons claiming under such persons cannot set up the plea of limitation to retain the benefit of their fraudulent actions. Hence we do not accept the challenge to the maintainability of the above revisions on the ground of limitation.

88. Thus all the three grounds on which the very maintainability of the revision petitions is questioned, are liable to be rejected. Once the issue of maintainability of the revision petitions is answered in favour of the revision petitioners, the Court will have to next go to the merits of the case.

Merits of the case:

89. As we have indicated in paragraph 35 of this order, the revision petitioners challenge the impugned order of the Joint Collector dated 16-08-2008 and the original order of the Revenue Divisional Officer dated 20-07-1996 on the following grounds:

- (i) fraud and collusion;
- (ii) a Certificate issued under Section 38E of the Tenancy Act of 1950 on 15-05-1975, cannot be sought to be amended by the

protected tenant, after a lapse of 20 years, by making a representation on 07-03-1996;

(iii) by the time the protected tenant made a representation dated 07-03-1996 for amendment of the certificate issued on 15-05-1975 under Section 38E, the land had already come under the purview of the Urban Land Ceiling proceedings and had also been sold in favour of a Cooperative Housing Society.

90. Before considering the above grounds of attack to the impugned proceedings, we feel it necessary to look into the historical background of the Tenancy Act of 1950, in order to understand the actual benefits conferred upon tenants. Unless this is understood, it may not be possible to see whether the orders of the R.D.O. and the Joint Collector were in accordance with the provisions of the Act or not.

Historical background of the Tenancy and Agricultural Lands Act, 1950:

91. The Hyderabad Region in the Deccan Plateau was founded as a State way back in 1713 and from 1724 it was ruled by the Asaf Jahi Dynasty. The Rulers had the title of Nizam and Asaf Jahi entered into an agreement with the British in 1798, which entitled them to British protection. When India gained independence in 1947, the British gave the rulers of the Princely States, the choice to join either of the two countries, India or Pakistan or to remain independent. On 11-06-1947 the Nizam declared his unwillingness to participate in the Constituent Assembly of both the countries. On

13-09-1948 "Operation Polo" by the Indian Army commenced and on 17-09-1948, the Nizam surrendered. Therefore, the Hyderabad State was incorporated into the Union of India and one Mr. M.K. Vellodi was appointed as Senior Civil Servant of Nizam on 26-01-1950. The first Legislative Assembly Elections for the Hyderabad State were held in 1952 and an elected Government came to power.

92. Immediately thereafter, the State of Andhra Pradesh was formed in the year 1953 from out of the erstwhile Madras Presidency and the Telangana region of the erstwhile Nizam's Hyderabad State was merged into the State of Andhra Pradesh and a composite State was born on 01-11-1956. Until both the regions came together to form part of the Indian Union, the erstwhile Andhra State was directly under the British Rule while Telangana region was under the rule of the Nizams. Therefore, in the Andhra region, the Zamindari, the Ryotwari and the Inamdari systems prevailed, while in the Telangana region, the Jagirdari and Diwani systems prevailed. But despite these different nomenclatures, all of them were only intermediaries.

93. The lands in the erstwhile Hyderabad State (part of which has now become Telangana), were broadly divided into two groups namely (1) lands under the direct management of the Government, the revenue from which went to the Government treasury (these lands were called Diwani or Khalisa lands); and (2) the lands, the revenue of which was wholly or partially assigned for some special purpose.

94. The lands of the second category were further sub-divided into (i) Sarf-e-Khas lands, which formed part of the Nizam's property and which merged in Diwani in February, 1949 and (ii) lands that were the subject of State grants and the revenue from which has been assigned wholly or partially as Jagir or Inam in favour of some persons.

95. The Andhra region was known for its unbridled feudal oppression, which came to be accompanied by forced labour. Therefore, with the launching of the non-cooperation movement against the Imperial British, struggles against the feudal system also commenced in the Andhra region, first in the districts of Guntur, Krishna and Godavari in 1953. It is recorded that the first Andhra Provincial Ryot Sangam was set up in 1928, followed by the formation of Andhra Provincial Zamindari Association in 1959, for the proper implementation of the Madras Estate Abolition Act, 1908. A conference of the peasants/protected tenants was held in Tenali in 1931 for the first time in India, demanding a moratorium for all agricultural debts. Kisan Committees were set up under the leadership of N.G. Ranga. All India Kisan Sabha also played a role immediately after the Congress came to power in the State of Madras in 1937. After a series of historical events, the Madras Government passed an Act known as Madras Estate (Abolition and Conversion into Ryotwari) Act, to abolish the Zamindari system in 1948.

96. In the Telangana region, a Mahasabha was organized in 1928 and it came to be known as Andhra Jana Sangam in 1930. The Mahasabha conducted militant struggles from 1944. At its peak was a fight by a washer-woman by name Ailamma, who was a worker of Andhra Jana Sangam and who was prevented from protecting the harvest of her land. A procession organized to protest against the Deshmukh jargon culminated in the martyrdom of one Doddi Komaraiah in 1956. This sparked armed resistance by peasants in the entire area of Nalgonda, Khammam and Warangal, which even spread to parts of Medak, Adilabad, Karimnagar, Mahbubnagar and Hyderabad. It appears that about 4,000 villages came under the Communist party which established parallel administration. This necessitated the Government to take up Land Reforms, through legislations.

97. To begin with, the Revenue Department, requested the Government to appoint a committee to investigate into the conditions of tenants and to suggest measures for their relief and protection. The Government appointed a Committee under the Chairmanship of Mr.S.M.Bharucha, Additional Revenue Secretary. The Committee submitted a report recommending that the Bombay Tenancy Act could be the best model to follow. The Committee also framed a Draft Bill. Accepting the recommendations of the Tenancy Committee and adopting the Draft Bill submitted by them, the Government enacted The Hyderabad Asami Shikmis Act 1945.

98. The Asami Shikmis Act of 1945 recognized two categories of tenants namely those who cultivated land personally for a period of less than six years during the Fasli 1342 to 1352 and those who have not. The former became protected tenants. But the working of the Act was found to be unsatisfactory. In order to overreach the provisions of the Act, the landlords created short term leases leading to insecurity of tenure.

99. In the meantime, on the lines of the Madras Estate (Abolition and Conversion into Ryotwari) Act, 1949, the State of Hyderabad also enacted the Hyderabad (Abolition of Jagirs) Regulation Act, 1949. But the 1949 Act did not provide solace to the peasants and the working of the Asami Shikmis Act was also found to be unsatisfactory. Therefore, an Agrarian Reforms Committee was set up in 1949 to examine the problem and to suggest remedies.

100. Tracing the history of tenancy under various tenures, Agrarian Reforms Committee noted in Chapter-III of its report that Raiyatiwari tenure was the most important tenure which brought the State into direct relationship with the cultivators of land without the intervention of any intermediary. But ironically the cultivators themselves, over a period of time became intermediaries by resorting to absentee landlordism and tenancy-forming. It was during this time that both at the National and International level, land became a commodity of value to be bought and sold in the market as any other commodity. Since land, apart from having an

economical value, always had social and political value of its own and hence non-cultivating classes like money lenders also started acquiring lands.

101. The Agrarian Reforms Committee made its recommendations, which were accepted by the Government headed by Mr. M.K. Vellodi and an Act known as Hyderabad Tenancy and Agricultural Lands Act, 1950 was passed. This Act was described by some economists and policymakers as having taken the lead in Land Reforms in independent India. According to a research paper titled **“Impact of the Neo Liberal Economic Policies on the Indian Peasantry; A comparative study of Andhra Pradesh and Kerala 1990-2002”**, authored by Krishnan of the School of International Studies, Jawaharlal Nehru University, from chapter 5 of which, the aforesaid history has been traced, the 1950 Act resulted in the conferment of protection to nearly 6.00 lakhs tenants with over 70.00 lakhs acres under their possession constituting 33% of the total cultivated area.

102. But it must be noted that the 1950 Act was not an Act of the Parliament or even the State Legislature. There was no State Legislature in 1950 in the Hyderabad State and this 1950 Act was also not an Act of Parliament.

103. The Hyderabad Tenancy and Agricultural Lands Act, 1950, was actually enacted after the Constitution of India came into force. But it was not reserved for consideration of the President as required by Article 31 (3) of the Constitution, since Hyderabad State

had not become part of India at that time. Therefore, the 1950 Act received the assent of HEH the Nizam of the Hyderabad State. Even without the assent of the President, the Act was implemented and several amendments were also made, none of which, except the 3rd Amendment was reserved for the consideration of the President. The 3rd Amendment to the 1950 Tenancy Act introduced Section 38E and reenacted the whole of Section 38. When the Government issued a notification on 26-07-1955 (before the formation of the State of Andhra Pradesh), choosing Khammam District for the operation of Section 38E, certain orders were passed by the District Collector in favour of the tenants. The orders of the Collector were challenged before the High Court in which an argument was raised that the 1950 Act was ineffective as it was not passed in the manner indicated by Article 31 (3) of the Constitution. By a decision in ***Inamdars of Sukhnagar Colony v. State of Andhra Pradesh AIR 1969 AP 523***, a Division Bench of the A.P. High Court held the 1950 Act to be inoperative, in as much as the Act was not reserved for the consideration of the President and assented to by him. An argument was raised before the Division Bench that the 3rd Amendment to the Act had received the assent of the President and hence, Section 38E can survive. But the Division Bench declared that this section can have no independent life, as it was bound with the other provisions of the Act.

104. Thereafter the Legislature enacted the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act,

1961 retrospectively validating the 1950 Act together with the amendments thereto. This validating Act of 1961 received the assent of the President and was placed in the 9th Schedule of the Constitution by virtue of the Constitution (17th Amendment) Act, 1964.

105. Thereafter the Government issued a notification in G.O.Ms. No.1081 dated 3-10-1967 under Section 38E (1), for 8 Districts of Telangana except Warangal and Khammam which were covered by an earlier notification.

106. Immediately, the validity of the validating Act 1961 was questioned in a batch of writ petitions. By a decision in ***Mohammed Shoukath Khan v. State of Andhra Pradesh ILR 1970 AP 1151***, a Division Bench of this Court struck down Section 38E though the other provisions were upheld. This judgment was delivered on 25-06-1969, without noticing the fact that the self-same Section 38E had been upheld by Supreme Court by a judgment rendered just 10 days earlier on 15-04-1969 in ***Venkat Rao v. State of Bombay AIR 1970 SC 126***.

107. Therefore, the Legislature again stepped in and passed Amendment Act 15 of 1971, reframing Section 38E together with a proviso and an Explanation. After the Amendment Act, the Government issued G.O.Ms.No.3 dated 01-01-1973 notifying all the Districts in Telangana under Section 38E for the purpose of statutory transfer of ownership to protected tenants.

108. Questioning the amendment of Act 15 of 1971, fresh writ petitions were filed but the writ petitions were dismissed based upon the decision of the Supreme Court in *Venkat Rao v. State of Bombay*.

109. But a fresh batch of writ petitions were filed questioning Section 38E. Though a learned judge of this Court dismissed the writ petitions, a Division Bench of this Court allowed the appeals in ***Chinnaboini Narasaiah v. Tahsildar, Mahaboobabad 1979 (1) ANWR 23***. Primarily the view taken by the Division Bench in this case was that it is not within the province of the Tahsildar to restore possession. Therefore, the Legislature came up with yet another amendment under A.P. Act, 2 of 1979, by which the proviso under sub-section (2) was replaced and sub-section (5) was added. The challenge to these amendments was rejected in ***G.Chennaiah vs. State of A.P. AIR 1983 A.P. 34***

110. A conflict arose between the decision in *Chinnaboini Narasaiah* rendered before the Amendment Act 2 of 1979 and *Chennaiah's* case rendered after the amendment. In *Chinnaboini Narasaiah*, the Court took the view that the ownership certificate issued to a protected tenant under Section 38E when he was not in possession of the lands on the date of the notification was invalid. But in *Chennayya's* case, the Court held that the certificate issued to the protected tenant even if he was out of possession and even if possession was not restored, was valid and its validity cannot be challenged at the stage of delivery of possession.

111. This conflict was referred to a Full Bench in ***Sada v. Tahsildar, Utnoor AIR 1988 AP 77***. The Full Bench overruled Chinnaboini Narasayya's case and approved the ratio in Chennayya's case.

112. Thus the working of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, was plagued by lot of legal controversies. Keeping this long history of legal entanglements into which the Statute was caught, let us now see what were the benefits conferred by the Act upon protected tenants. Unless we understand the nature and extent of the benefits conferred upon protected tenants, it may not be possible to appreciate the scope of the controversies raised in these revisions.

Nature and extent of the benefits conferred by the 1950 Act:-

113. The broad features of the 1950 Act were as follows:-

- a) In the first instance the Act empowered the Government under Section 4 to determine the area of a family holding;
- b) The Act imposed a prohibition under Section 6 upon the creation of any tenancy, after the expiry of three years from the commencement of the Act, save as otherwise provided in Section 7;
- c) Section 7 indicated special cases in which leases are permitted de hors under Section 6;
- d) Since the prohibition was only for the creation of tenancy after the expiry of three years of commencement of the Act, a land owner was free to create tenancies within three years of

commencement of the Act. But Section 8 imposed a restriction to the effect that such leases shall be for a period of 10 years. Section 9 required the copy of such leases to be filed with the Tahsildar within 30 days of creation of the lease;

- e) The Collector was empowered under Section 10 to summarily evict any person in possession of the land under a lease which is not in conformity with the provisions of the Act;
- f) Section 11 imposed the limits of maximum rent payable by the tenant. Section 14 prohibited the receipt of rent in terms of labour or service and Section 15 entitled the tenant to refund of the excess amount, if any, recovered as rent;
- g) Section 19 provided for the termination of tenancy before the expiration of the period of lease, under certain contingencies;
- h) Sections 20 to 22 provide for protection to tenants in occupation of a dwelling house on a site belonging to his land holder and also conferred a right of first option upon the tenant to purchase the site. Sections 27 & 28 stipulated the procedure to be followed for ejectment of a tenant pursuant to termination of tenancy and the remedies available to a tenant against such termination.
- i) Section 29 created a presumption of payment of rent and Section 30 prohibited sub-division and subletting by a tenant.
- j) Section 31 barred the attachment or sale in execution of a decree, of the interest of a tenant in any land held by him.

- k) Section 34 defined who a protected tenant is. Section 35 provides for the determination of claims of persons to be protected tenants.
- l) Section 38 enumerates the rights of protected tenants to purchase the land.
- m) Section 40 declares the rights of a protected tenant to be heritable. Section 43 entitles a protected tenant to mortgage or create a charge on his interest in the land as security for a loan.
- n) Section 44 confers a limited right upon the land holder to terminate protected tenancy. Section 48A enables the Tahsildar to take over a land, the right of ownership of which was acquired by a protected tenant, if the protected tenant transfers such land within 8 years of such acquisition. The land will then rest with the Government;
- o) Chapter-VI of the Act contains provisions from Sections 51 to 53, dealing with the management or acquisition of uncultivated or surplus land.
- p) Chapter-VII contains provisions for the prevention of fragmentation and consolidation of holdings.
- q) Chapter-VIII contains provisions for cooperative farming from Sections 66 to 86.
- r) Chapter-XI contains provisions for the constitution of Tribunals and constitution of land commission, procedure and powers at inquiries and appeals and revisions.

- s) Chapter-X contains provisions relating to offences and penalties.
- t) Section 97 conferred rule making power upon the Government and Section 99 barred the jurisdiction of a civil Court to settle or decide or deal with any question which is required to be settled by the Tahsildar, Tribunal or Collector or Board of Revenue or Government.

114. Having seen the broad features of the 1950 Act, let us now take a look at the rights conferred upon protected tenants by Sections 38, 38-A to 38-E.

115. Section 38 enables a protected tenant to purchase the land holders interest in the land held by the former as a protected tenant. Sub-sections (2) to (8) of Section 38 prescribe the procedure for the exercise of the right conferred upon the protected tenant to purchase the land holders interest in the land.

116. Sub-section (7) of Section 38 circumscribes the right of the protected tenant to purchase the land holders interest, by imposing certain conditions. The conditions, by which the right of a protected tenant to purchase are circumscribed, under sub-section (7) of Section 38, are as follows:

- (i) The extent of land that can be purchased by a protected tenant, shall be limited to the extent of the area of a family holding.
- (ii) If the protected tenant already holds any land as a land holder, his right of purchase will be limited to such area, which

together with the other land held by him as a land holder, will make the total area that will be held by him equivalent to the area of a family holding.

(iii) The extent of the land that is left with the land holder, after allowing the protected tenant to purchase the land, shall not be less than twice the area of a family holding for the local area concerned.

117. But the restrictions imposed under sub-section (7) of Section 38 will not apply to a sale by the land holder to a protected tenant by mutual consent, provided the price payable therefor is agreed to between them. This is by virtue of Section 38A of the act. In other words, section 38A makes the restrictions imposed under Section 38 (7) inapplicable to cases of sale by mutual consent between the land holder and the protected tenant.

118. Similarly, the restrictions contained in Section 38(7) will not apply even to a case of relinquishment of his rights by the land holder in favour of the protected tenant, even if such relinquishment is without any consideration. This is by virtue of Section 38B.

119. But to make Section 38(7) inapplicable to a sale under Section 38A, two conditions are to be satisfied, viz., – (a) that the extent of land retained by the land holder shall not be less than the area of a basic holding for the local area; and (b) that the right of the protected tenant under Section 38A shall be limited to the extent of three family holdings in the local area.

120. Similarly, for the invocation of Section 38B (in cases of relinquishment of rights by the land holder free of cost in favour of the protected tenant) two conditions are to be satisfied, viz., – (a) that the right of the protected tenant shall be limited to the extent of three family holdings; and (b) that wherever the land holder retains some land, the extent of the retained land shall not be less than the area of a basic holding.

121. Sections 38C and 38D may not be of any relevance to the case on hand. But it is necessary to take note of the scheme of Section 38E, as the genesis of the entire dispute on hand is the order passed way back in the year 1976 under Section 38E.

Scheme of Section 38E:

122. Under Section 38E, the Government is empowered to declare, by notification in the Government Gazette in respect of any area and from such date as may be specified therein, that the ownership of all lands, held by the protected tenants which they are entitled to purchase from their land holders, stand transferred to and vest in the protected tenants. But this is subject to the conditions laid down in sub-section (7) of Section 38. In cases of this nature, it is up to the Tribunal, by virtue of sub-section (3) of Section 38E, to determine the price of the land holders' interest in the land which stands transferred.

Interplay of Sections 38, 38A, 38B and 38E: -

123. We have seen the broad features of Sections 38, 38A, 38B and 38E in the preceding paragraphs. Now we shall present in

a tabular column sub-sections (1) and (7) of Section 38 on the left hand side and Sections 38A, 38B, and sub-section (1) of Section 38E on the right hand side.

Sub-sections (1) & (7) of Section 38	Sections 38A, 38B and sub-section (1) of Section 38E
(1) Notwithstanding anything to the contrary in any law, usage or contract, and subject to the provisions of sub-section (7), a protected tenant shall at any time after the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954, be entitled to purchase the landholder's interest in the land held by former as a protected tenant. (7) The right of a protected tenant under this Section to purchase from his landholder the land held by him as a protected tenant shall be subject to the following conditions, namely, – (a) If the protected tenant does not any land as a landholder the purchase of the land held by him as a protected tenant shall be limited to the extent of the area of a family holding for the local area concerned. (b) If the protected tenant holds any land as a landholder, the purchase of the land held by him as a protected tenant shall be limited to such area as long with other land held by him as a landholder will make the total area of land that will be held by him as a land holder equal to the area of a family holding for the local area concerned: Provided that the land remaining is more than the land which the protected tenant is entitled to purchase under this section, the first preference to purchase the said land, as the prevailing market price in the local area, shall vest in the protected tenant; Provided further that in the case of purchase by any person other than the protected tenant, the rights and interests of the said tenant in the lease land, shall continue as before. (c) The extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or	Section 38A: If in respect of a land held by a protected tenant the landholder consents to sell his interest in the land to the protected tenant and the reasonable, price payable therefor by the protected tenant is agreed to between them, the provisions of sub-section (7) of Section 38 shall not apply to such sale, and either the landholder or the protected tenant or both jointly, may apply to the Tribunal and thereupon all the provisions of sub-sections (5), (6) and (8) of that section shall apply mutatis mutaudis to such application :- Provided that the reasonable price so agreed to by the parties themselves shall be deemed to be the reasonable price determined by the Tribunal for the purchases of the said-sections (5), (6) and (8): Provided further that if the landholder does not sell the whole of the land held by him but retains some land with him, the extent of the land remaining with him after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than the area of a basic holding for the local area concerned: Provided also that the right of the protected tenant shall be limited to the extent of three family holdings in the local area concerned including the land, if any, owned by the protected tenant. Section 38B: If in respect of a land held by a protected tenant, the landholder concerned intends to relinquish his interest in the land without receiving any consideration therefor, the provisions of sub-section (7) of Section 38 shall not apply to such a case and the landholder may apply to the Tribunal and thereupon the Tribunal

otherwise, shall not be less than two times the area of a family holding for the local area concerned.	shall issue to such protected tenant a certificate so far as may be as provided for in sub-section (6) of Section 38. Provided that the right of the protected tenant and the grant of the certificate shall be limited to the extent of the three family holdings in the local area concerned including the land, if any, owned by the protected tenant and that any excess over such extent shall vest in the Government free of all right of the said protected tenant; Provided further that if the landholder does not relinquish the whole of the land held by him but retains some land with him, the extent of the land remaining with him after the relinquishment, whether to cultivate its personally or otherwise, shall not be less than the area of a basic holding for the local area concerned. Sub-section (1) of Section 38E: Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by notification in the Andhra Pradesh Gazette, declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands; Provided that where in respect of any such land, any proceeding under Section 19 or Section 32, or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.
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124. From a careful study of Sections 38, 38A, 38B and 38E, we can deduce the following principles:

- (i) If the Government, by way of a notification issued under Section 38E and published in the Andhra Pradesh Gazette, had made a declaration in respect of any area, the ownership of all the lands held by the protected tenants, which they are entitled to purchase from their land holders, will stand transferred to and vest in the protected tenants. But it will be subject to the conditions laid down in sub-section (7) of Section 38.
- (ii) In respect of all other areas, which had not been notified by the Government under Section 38E, the ownership of the lands held by the protected tenants will not stand transferred to and vest in the protected tenants automatically. Therefore, in cases where there is no notification in terms of Section 38E, the protected tenants will have to follow, the procedure prescribed under Section 38, for the purchase of the land holders interest.
- (iii) The distinction between Section 38E and Section 38 is that under Section 38E, the ownership of the land is automatically transferred, but only to the extent of land that the protected tenant is entitled to purchase and it shall also be subject to the conditions prescribed in Section 38(7). On the contrary there is no automatic transfer and vesting of ownership under Section 38(1). Another important distinction is that the entitlement of the protected tenant to purchase under Section 38(1) is only "the land holders' interest".

(iv) Section 40(4) makes it clear that the interest of a protected tenant in the land held by him as a protected tenant shall form 60%.

(v) A uniform feature that could be noticed in Sections 38, 38A, 38B and 38E is that both Sections 38 and 38E are applicable subject only to the conditions laid down in Section 38(7). Though Sections 38, 38B make Section 38(7) not applicable to a case of sale by mutual consent or to a case of relinquishment of right by land holder free of cost, these two sections contain provisos which restricts the total extent of land that the protected tenant will be entitled to get either by mutual consent or by way of relinquishment.

125. Therefore, it is clear that all the above provisions ensure two things, viz., – (a) that the protected tenant does not get enriched unjustly; and (b) that the land holder is not deprived of his livelihood. Sub-section (7) of Section 38, which is also made applicable to Section 38E as well as the provisos to Sections 38A and 38B impose restrictions upon (1) the total extent of land that will eventually go to the protected tenant; and (2) the total extent of land that will ultimately remain with the land owner. ***The object behind this provision is not to make a prince a pauper and vice versa. The object of this provision is not even to create a neo proletariat and neo nobles.*** The extent to which Sections 38, 38A, 38B and 38E would operate, is restricted by (1) the extent of land that could be purchased by the protected tenant; and (2) the extent

of land that will be eventually left with the land owner. By way of comparison, we may note the essential features of Sections 38, 38A, 38B and 38E as follows:

Features	Section 38	Section 38A	Section 38B	Section 38E
Nature of the right conferred on the protected tenant	Right to purchase the land holder's interest in the land held by the protected tenant.	Sale by land owners to the protected tenant by mutual consent at a price agreed between them.	Relinquishment of the land holders' interest free of cost in favour of the protected tenant.	Automatic transfer and vesting of the ownership of the land held by the protected tenant, if the land is in an area notified by the Government in the Government Gazette.
Limitations imposed upon the right.	1) If the protected tenant does not own any land, his right to purchase is limited to the extent of the area of a family holding. 2) If the protected tenant holds any land as a land holder, the extent of land that could be purchased under Section 38 is limited to the difference between the family holding and the land already held as land holder, so that the total extent of both does not exceed a family holding. 3) The land remaining with the land holder after the purchase by the protected tenant under this section, shall not be less than twice the area of a family holding.	1) The extent of land remaining with the land holder, after the sale by mutual consent, should not be less than the area of a basic holding for the local area. 2) The extent of land which the protected tenant can purchase by consent under this Section is restricted to three times the family holdings in the local area.	1)The extent of land that the protected tenant can take by way of relinquishment is limited to the extent of three family holdings. 2) The extent of land retained by the land holder after relinquishment, shall not be less than the area of a basic holding.	Same as in the second column relating to Section 38. In other words, the conditions imposed by sub-section (7) of Section 38 will apply.

Recap of the facts of the case:

126. Since we have left the facts of the case far behind, in order to undertake a journey into the difficult terrain of law, it may be necessary to recapitulate a few essential facts before we consider the contentions raised in these civil revision petitions. These facts are as follows:

- i) By proceedings dated 15.05.1975, a certificate of ownership of lands was issued in favour of the protected tenant Kurma Komraiah, under Section 38E of the Act. The certificate related to two parcels of land, one measuring Ac.8.39 gts., in Sy.No.31 and another measuring Ac.11.18 gts., in Sy.No.54, both of Madinaguda Village.
- ii) After 21 years of the issue of the certificate under Section 38E, the protected tenant made a representation to the Revenue Divisional Officer, on 07.03.1996, claiming that he was actually the protected tenant not only in respect of the lands in Sy.Nos.31 and 54 but also in respect of the land in Sy.No.55 and that there was an omission at the time when the certificate was issued under Section 38E.
- iii) Though what was sought by the protected tenant Kurma Komraiah in his representation dated 07.03.1996, was an amendment to the certificate issued under Section 38E, so that the land in Sy.No.55 could also be included in the certificate, the Revenue Divisional Officer proceeded under

Section 38(1), and issued notice only to one Har Kuvar Pershad, without taking any effort to find out whether there were other legal heirs to the original land owner. This Har Kuvar Pershad, appeared before the Revenue Divisional Officer and agreed to the issue of a sale certificate, upon receipt of the sale consideration of Rs.3,00,000/- mutually agreed to between them. On the basis of the said consent supported by the copy of an agreement of sale, an affidavit filed by Har Kuvar Pershad and a joint petition, the Revenue Divisional Officer passed an order dated 20.7.1996 directing the issue of a sale certificate in favour of Kurma Komraiah, for the land of the extent of Ac.8.17 gts., in Sy.No.54/AA and for the land of an extent of Ac.13.13 gts., in Sy.No.55.

- iv) But by the time such a certificate was issued, the land in question had come under Urban Land Ceiling and hence with a view to avoid the excess land being taken away by the Government, the land owners effected a sale in favour of a Cooperative Housing Society. But these facts were suppressed before the Revenue Divisional Officer.
- v) Therefore, the Cooperative Housing Society filed an appeal against the order of the Revenue Divisional Officer, dated 20.07.1996, to the Joint Collector. But the Joint Collector dismissed the appeal by an order dated 13.04.1998.
- vi) Challenging the Joint Collector's order dated 13.04.1998, the Society filed a Civil Revision Petition in C.R.P.No.2092 of

1998. But the same was dismissed by this court by an order dated 10.02.2000. The Special Leave Petition filed by the Society as against the said order was dismissed by the Supreme Court on 02.12.2000.

vii) But another society came up with a writ petition in W.P.No. 19307 of 2006 challenging the entire proceedings. Even while dismissing the writ petition at the admission stage, this court pointed out that the appropriate course of action for the petitioner, was to file a statutory appeal.

viii) Therefore, the society filed an appeal before the Joint Collector. Other parties also appeals. All the appeals were dismissed by order dated 16-08-2008. The present revision petitions challenge the said order.

Keeping this sequence of events in mind, let us now look at the grounds on which the original order of the Revenue Divisional Officer dated 20.07.1996, the order of the Appellate Authority dated 13.04.1998 and the second order of the Appellate Authority dated 16.08.2008 are challenged in these revisions.

127. The main ground on which the entire proceedings commencing from the order of the original authority dated 20.07.1996 are challenged, is that they are vitiated by fraud and collusion. It is needless to point out that if the land owner and the protected tenant were guilty of fraud and collusion, all the proceedings will crumble like a pack of cards and they cannot be sustained even by technicalities such as res judicata, limitation etc.

Therefore, let us see whether all the proceedings were vitiated by fraud and collusion.

128. At the out set, it should be pointed out that the original order dated 20.07.1996 was passed purportedly in terms of Section 38(1) of the 1950 Act. But as we have pointed out earlier, the right of a protected tenant (1) either to purchase the land holders' interest under Section 38(1); (2) or to have the ownership automatically transferred and vested in him by operation of law under Section 38E, is made subject to the restrictions contained in sub-section (7) of Section 38. The restrictions imposed by Section 38(7) are both in respect of (1) the extent of land to be purchased by the protected tenant; and (2) the extent of land that will eventually be retained by the land owner.

129. The order dated 20.07.1996 purportedly passed under Section 38(1) does not state even as a matter of formality, the extent of land that the protected tenant was entitled to purchase and the extent of land that will be left for the land owner.

130. It must be remembered that the earliest order to be passed, was under Section 38E and it was passed on 15.05.1975. Under Section 114 of the Indian Evidence Act, 1872, there is a presumption that official acts have been regularly performed. Illustration (e) under Section 114 states that judicial and official acts may be presumed by the Court to have been regularly performed.

131. Therefore, we are obliged to presume that while issuing a certificate under Section 38E on 15.05.1975, the competent

authority would have followed the procedure prescribed therein. Under Section 38E(1) what is transferred automatically in favour of the protected tenant and vested in him, is “the ownership of all lands held by the protected tenant, which he is entitled to purchase”: The mercy of the land owner is not required, since the transfer and vesting contemplated under Section 38E is automatic in respect of the ownership of “all the lands held by the protected tenant”. This is subject only to the restrictions contained in Section 38(7). Therefore, the presumption arises in terms of Section 114 of the Indian Evidence Act, – (1) that the competent authority carried out the exercise to find out the extent of all the lands held by the protected tenant; (2) that the competent authority applied the restrictions imposed by Section 38(7); and (3) that the lands not covered by the certificate under Section 38E were either not held by the protected tenant or they were in excess of the limitations stipulated in Section 38(7).

132. ***Once it is presumed that the order dated 15.05.1975 passed under Section 38E, was actually passed after the competent authority followed the procedure prescribed therein, it would follow as a corollary that what remained with the land owner was the minimum that is to be left with him and what was transferred to the protected tenant was the maximum that he was entitled to.*** If this is so, there would have been no land left for the land owner to transfer either under Section 38(1) or under Section 38A by way of mutual consent. There would also have been

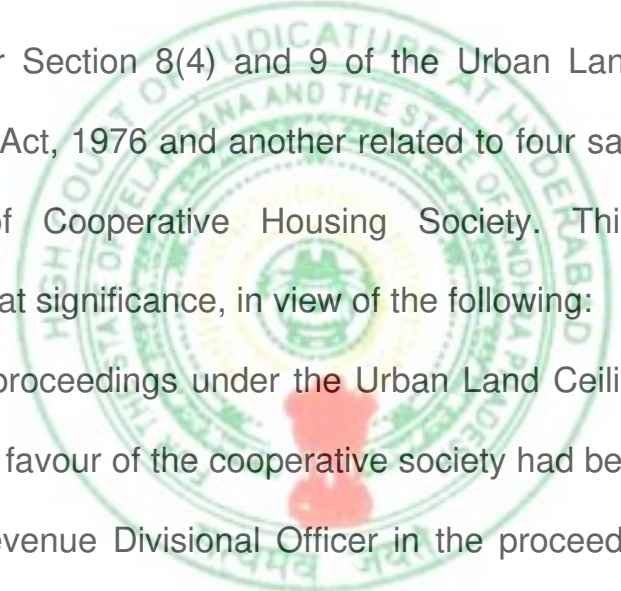
no more land that the protected tenant will be entitled either to purchase under Section 38(1) or to have vested in him under Section 38E.

133. Once the above position is understood, it will become clear that the application purportedly made on 07.03.1996 (after 21 years of the issue of the certificate under Section 38E), by the protected tenant for the amendment of the certificate under Section 38E could not have been maintained. In fact, the application made by the protected tenant on 07.03.1996, seeking the amendment of the certificate issued on 15.05.1975 under Section 38E, did not even state what his family holding was and how the limitations imposed by Section 38(7) were satisfied. Very curiously the application filed by the protected tenant on 07.03.1996, for the amendment of the certificate, was under Section 38E. But the Revenue Divisional Officer proceeded under Section 38(1), recorded the consent of one of the land owners and directed the issue of a separate certificate under Section 38(1).

134. One may ask whether the presumption under Section 114 of the Indian Evidence Act raised in respect of the certificate dated 15.05.1975 should not be raised in respect of the certificate issued on 20.07.1996. But the answer is too obvious. Once a presumption is raised in respect of the certificate dated 15.05.1975, the upper limits fixed by sub-section (7) of Section 38 is reached. Thereafter, nothing is available for a fresh proceeding, especially after 21 years. Therefore, no presumption can be raised in respect of

the order dated 20.07.1996, as the order itself does not indicate the family holdings of the protected tenant and of the land owner after the purchase.

135. As we have indicated in the first paragraph of this order, the only land owner Har Kuvar Pershad, who was also a lawyer, who appeared before the Revenue Divisional Officer in the proceedings under the 1950 Act, suppressed two vital information before the Revenue Divisional Officer. One related to a final statement already issued under Section 8(4) and 9 of the Urban Land (Ceiling and Regulation) Act, 1976 and another related to four sale deeds made in favour of Cooperative Housing Society. This suppression assumes great significance, in view of the following:

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- (i) If the proceedings under the Urban Land Ceiling Act and the sale in favour of the cooperative society had been disclosed to the Revenue Divisional Officer in the proceedings under the 1950 Act, there was no option for the Revenue Divisional Officer but to take his hands off. This is for the reason that the jurisdiction to decide whether it is a land to be excluded from the total holding of urban land, (on account of being an agricultural land) vested only with the Competent Authority under the urban land ceiling Act. All the distinction between the land owner, protected tenant or unprotected tenant, disappeared after the advent of the Urban Land Ceiling Act, if the land in question was an urban land within the meaning of the said expression. Therefore, the suppression by Har Kuvar

Pershad before the Revenue Divisional Officer was one that related to the very jurisdiction of the Revenue Divisional Officer, which went into the root of the matter.

- (ii) If the sale in favour of the society had been disclosed to the Revenue Divisional Officer, the Revenue Divisional Officer would have at least issued notice to the Cooperative Society before passing an order. This opportunity that was lost for the Cooperative Society was not a mere formality. Since an order under Section 38(1) or 38E is to be restricted to a particular extent of family holdings under Section 38(7), the Revenue Divisional Officer would have been obliged to find out these limitations, if the Cooperative Society had been made a party.
- (iii) In fact, the land owner escaped from the clutches of the Urban Land Ceiling Act, only by showing the sale made in favour of the Cooperative Society and dragging on the proceeding till the Act was eventually repealed, by showing their entitlement to exemption under Section 20 of the Urban Land Ceiling Act in view of the sale to a Cooperative Society.
- (iv) To escape from the clutches of the Urban Land Ceiling Act, the land owner sold the lands to the Cooperative Society and pleaded the same before the Competent Authority under the Urban Land Ceiling Act. Similarly, they suppressed the factum of the sale before the Revenue Divisional Officer under the 1950 Act, so that one more sale of the same land could be effected for another amount of sale consideration. The land

owner did not apprise the Competent Authority under the Urban Land Ceiling Act, about the proceedings under the 1950 Act. Similarly, they did not apprise the Revenue Divisional Officer in the proceedings under the 1950 Act, about the proceedings under the Urban Land Ceiling Act.

- (v) As a matter of fact, the draft notice under Rule 4(1) and the final notice under Rule 4(3) for the issue of a certificate under Section 38E, were issued in the name of Nihayam Bibi, long after her death on 03.03.1963. Therefore, the authorities under the 1950 Act were blissfully ignorant of the death of the pattedar, viz., Nihayam Bibi, even when a certificate under Section 38E was issued. But when a revision was made by the protected tenant on 07.03.1996 for amendment of the certificate, notices were issued only to Har Kuvar Pershad, ignoring the existence of the other legal heirs. Admittedly, after the death of Nihayam Bibi, the pattas stood in the name of Champa Devi and Har Kuvar Pershad. Champa Devi Died on 30.05.1982. This fact was taken advantage of by the persons claiming under the protected tenant to contend that the sale in favour of the Cooperative Society (after her death) by the G.P.A holder of Champa Devi and Har Kuvar Pershad was invalid. Therefore, by the same logic, the non-service of notice on the legal heirs of Champa Devi in the proceedings of the year 1996, especially by a person, who had knowledge of the same, could be nothing but deliberate. In paragraphs 21 to 27

of this order, we have narrated huge contradictions, which cannot be brushed aside as accidental or insignificant. They appear to be deliberate showing thereby that there was fraud and collusion in the entire proceedings initiated on the basis of the representation of the protected tenant dated 07.03.1996.

136. At the cost of repetition, we should point out that during the period between the date on which the protected tenant was issued with a Certificate dated 15-5-1975 under Section 38E of the Tenancy Act, 1950 and the date on which the protected tenant made an application on 07-3-1996 for amendment of the said Certificate, two important events had taken place to the knowledge of the land owner Har Kuvar Pershad. The Power Agent of Har Kuvar Pershad and Champa Devi (Joint Pattadars) filed a statement under Section 6(1) of the Urban Land Ceiling Act in the year 1981, an enquiry was conducted on the said statement, a report was submitted by the Enquiry Officer on 06-4-1981, a draft statement was issued on 30-11-1983 under Section 8(1) of the Urban Land Ceiling Act, objections were filed by the land owner to the draft statement on 24-7-1985, a personal hearing was held on 08-8-1985 and a final order passed on 20-8-1985 under Section 8(4) leading to the issue of a final statement under Section 9 of the Urban Land Ceiling Act. One of the joint pattadars viz., Champa Devi also died in the year 1982. This is one set of facts suppressed by the land owner Har Kuvar Pershad while participating in the enquiry before the Revenue Divisional Officer under the 1950 Act in the year 1996.

137. Similarly, another important event that had happened was the execution of 5 sale deeds by the GPA Holder of the joint pattadars on 26-6-1982, 29-6-1982, 02-7-1982, 05-7-1982 and 08-7-1982 in favour of Vigneswara Cooperative House Building Society Limited. It is only by showing the sale deeds in favour of the Cooperative Society that the land owner was seeking exemption under Section 20 of the Urban Land Ceiling Act and warding off the takeover of the surplus land. The land owner, the protected tenant and the alienees of some other lands from the owner, managed to keep the proceedings under the Urban Land Ceiling Act alive, till the Act was finally repealed.

138. We should point out at this stage that the present set of 12 Civil Revision Petitions covered by this order, were part of a batch that covered one City Civil Court Appeal, and three Writ Petitions. The City Civil Court Appeal arose out of a suit for partition between the legal heirs of the original owner. One writ petition was by two members of the land owners' family challenging the very same proceedings that are assailed in this batch of 12 Civil Revision Petitions. One writ petition was by a company who had purchased from the land owner some other lands (which is not the subject matter of the present civil revision petitions). Another writ petition W.P.No.29293 of 2010 was by the legal heirs of the protected tenant as well as by persons who purchased the properties in Sy.No.54 and 55 from the protected tenant, challenging an order passed by the competent authority under the Urban Land Ceiling Act directing

redelivery of the surplus land to the family of the land owners. In this writ petition W.P.No.29293 of 2010 filed by the legal heirs of the protected tenant, they have made averments indicating that the final statement made under the ULC Act on 20.08.1985, became the subject matter of appeals, both by the protected tenant as well as by the original owners. It is clear from the said writ petition that the sale of the land in favour of the Cooperative Society way-back in the year 1982 was the crux of the issue before the Competent Authority under the ULC Act and the protected tenant was aware of the sale in favour of the Co-operative Society through those proceedings. Yet the protected tenant chose to file an application on 07.03.1996 before the Revenue Divisional Officer under the Tenancy Act, 1950, without informing the Revenue Divisional Officer about the sale in favor of the Cooperative Society. It is seen from the affidavit in support of W.P.No.29293 of 2010 filed by the legal heirs of the protected tenant, which is also corroborated by an order dated 18.01.2007 passed by the Chief Commissioner of Land Administration under the ULC Act, that as against the final statement prepared on 20.08.1985 and the series of steps taken thereafter including the step for possession, the protected tenant as well as the alienees filed appeals. The appeals were allowed first on 21.04.2003 remanding the matter back to the competent authority. The competent authority again passed orders under Section 8(4) on 03.05.2005. The land owner as well as the protected tenant again filed appeals. These appeals were allowed on 02.03.2006 and the

matter once again remanded. Again the competent authority passed an order dated 06.11.2006. Again the same was set aside by order dated 18.01.2007 by the appellate authority and the matter was remanded back. But before the competent authority could pass a fresh order, the Repeal Act was adapted on 23.07.2008 by the State of Andhra Pradesh. Therefore, these proceedings abated. In all these proceedings right from the year 1985 up to the year 2007, the sale in favour of the cooperative society was brought to the fore. But the protected tenant as well as the land owner suppressed (1) the information about the ULC proceedings; and (2) the information about the sale in favour of the Cooperative Society, in the proceedings under the Tenancy Act, 1950.

139. The suppression of both the above facts by the land owner before the Revenue Divisional Officer in the proceedings under the 1950 Tenancy Act was very serious in nature. If this is one set of fraud perpetrated by the land owner, another set of fraud committed by the protected tenant was to seek amendment of the Certificate issued under Section 38E, but getting an order under Section 38(1) without any enquiry as to how the conditions stipulated in sub-section (7) of Section 38 stood satisfied. Once all the lands held by the protected tenant as on the date of Notification under Section 38E(1) stood transferred and vested in him, subject to the restrictions contained in Section 38(7), nothing was left for the protected tenant to seek amendment, especially after 21 years. The only ground on which the protected tenant could have sought

amendment of the Certificate issued on 15-5-1975 under Section 38E, was to point out that he did not get adequate family holding as per Section 38(7). But the application of the protected tenant dated 07-3-1996 did not proceed on this basis. Unfortunately, the Revenue Divisional Officer did not even make an attempt to verify whether the limits prescribed in Section 38(7) had reached or not. Therefore, there was a clear case of collusion and fraud between the Revenue officials, the land owner and the protected tenant.

140. The manner in which the proceedings under the Tenancy Act of 1950 proceeded, demonstrates the collusion between the Revenue officials and the parties. At the time when the original Certificate under Section 38E was issued in favour of the protected tenant on 15-5-1975, the patta stood in the name of one Nihayan Bibi. After her death, the names of Champa Devi and Har Kuvar Pershad were reflected in the patta. Champa Devi died on 30-5-1982. Therefore, when the protected tenant made an application on 07-3-1996 for the amendment of the Certificate issued under Section 38E, 21 years earlier, the Revenue Divisional Officer conveniently chose to issue notice of enquiry only to Har Kuvar Pershad. There was not even an attempt to find out who are the other legal heirs. Therefore, Har Kuvar Pershad appeared before the Revenue Divisional Officer and submitted a joint petition along with the protected tenant. In the joint petition, both of them stated that the protected tenant was in possession and that the protected tenant agreed to purchase the land. The purchase of this nature is not

covered by Section 38E. The discrepancies between the contents of the joint petition filed by them, the agreement of sale produced by them and the Affidavit sworn to by Har Kuvar Pershad are all highlighted by us in paragraphs-20 to 23 of this order.

141. Apart from the fact that a sale by mutual consent is not covered by Section 38E, the Revenue Divisional Officer did not even venture to apply the limitations under Section 38(7) before passing the order. At the cost of repetition, we should point out that the application filed by the protected tenant was under Section 38E, but the order passed was under Section 38(1). Both these provisions do not apply to a sale by agreement between the land owner and the protected tenant at a mutually agreed price. A sale by consent at a mutually agreed price is covered by Section 38A. Let us keep aside all these technicalities. Even then, if it was an application under Section 38(1) or Section 38E, the limitations of Section 38(7) should have been applied. If it was treated as an application under Section 38A, the limitations stipulated in the provisos thereto should have been applied. But none was applied. Such a total abdication of statutory duties itself is a pointer to the fact that there was nothing but collusion.

142. It is too late in the day to cite any authority for the proposition that fraud vitiates all solemn acts. Even if the Court at some point of time had granted its seal of approval to the fraud, the same cannot cloth the fraud with any legality.

143. As observed by Justice Edward Coke 3 centuries ago, which was also quoted by the Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath**⁵, fraud avoids by judicial acts, ecclesiastical or temporal. In the same decision, the Supreme Court pointed out that fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss.

144. As pointed out by the Supreme Court in **Meghmala v. G.Narasimha Reddy**⁶, fraud and justice will never dwell together.

145. In **State of Andhra Pradesh v. T.Suryachandra Rao**⁷, the Supreme Court highlighted that the present day concept of fraud on Statute has veered round abuse of power or *mala fide* exercise of power. The colour of fraud in public law or administrative law assumes different shades, one of which strikes at the root of the jurisdiction exercised by an authority, on the basis of incorrect facts deliberately posted before him".

146. As we have pointed out in more than one place, the Revenue Divisional Officer assumed a jurisdiction under the Tenancy Act of 1950, on the application made by the protected tenant on 07-3-1996, without being posted with the information relating to the pending Urban Land Ceiling proceedings. In **Gadda Balaiah v. Joint Collector, Ranga Reddy District**⁸, a Division Bench of this Court has already held that the provisions of the Urban

⁵ (1994) 1 SCC 1

⁶ (2011) 8 SCC 383

⁷ (2005) 6 SCC 149

⁸ 2013(4) ALD 725

Land Ceiling Act particularly in view of Section 28 of the Ceiling Act would prevail over the Tenancy Act and that even a protected tenant is covered by the Ceiling Act. This is why the protected tenant as well as the land owner conveniently suppressed this information and made the Revenue Divisional Officer exercise a jurisdiction which he otherwise could not have exercised. This is why the suppression assumed the proportion of a fraud. That suppression may tantamount to fraud, is settled by the Supreme Court in a number of cases including ***Commissioner of Customs v. Essar Oils Ltd.***⁹ and in ***Bhaurao Dagdu Paralkar v. State of Maharashtra***¹⁰.

147. In fact, in a recent decision in ***Nidhi Kaim v. State of Madhya Pradesh***¹¹, the Supreme Court stated in paragraph-81 of the report as follows:

“However, stated simply, nothing nothing and nothing, obtained by fraud, can be sustained, as fraud unravels everything.”

148. In fact, the individual members of the Cooperative Society, who are before us either as petitioners in these revisions or as impleaded respondents in these revisions, are senior citizens, who became members of the Cooperative Society about 36 years ago and got small plots of land allotted to them by the Cooperative Society. All that these senior citizens have gained out of the investment of their hard earned salaried income, was only a rich experience in litigation. But unfortunately their plight and their cry for

⁹ (2004) 11 SCC 364

¹⁰ (2005) 7 SCC 605

¹¹ (2017) 4 SCC 1

justice got mired in huge technicalities in the past, which had actually blurred the vision of justice. The reason is mostly due to the fact that none of the parties to the litigation, like the four blind men who were asked to describe an elephant, brought a full picture to the Court in the past. The full picture that has now emerged shows clearly that the proceedings, that the protected tenants, their alienees and the alienees from the original land owners are now taking advantage of, were vitiated by the fraud and hence it is the duty of the Court to deny those persons the benefits of such fraud.

149. Therefore, the entire proceedings commencing from the order of the Revenue Divisional Officer dated 20-7-1996 and culminating in the order of the Joint Collector dated 16-8-2008 are liable to be set aside and the civil revision petitions challenging these orders are liable to be allowed.

150. In the result, all the civil revision petitions are allowed and the entire proceedings that commenced with the application of the protected tenant dated 07-3-1996 and the order of the Original Authority dated 20-7-1996 are set aside. There will be no order as to costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

17th July, 2018.
Ksn/Js/Ak
L.R. Copy to be marked.

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI**

**C.R.P.Nos.4935 and 5807 of 2008 and CRPSRNos.28487 and
33779 of 2008, C.R.P.No.949 of 2010, CRPSR.Nos.5175, 5181,
5187, 6844, 7883, 7889, 7905 of 2011**
(Common Order -- per VRS, J.)



**17th July, 2018.
(Js)**