

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NOs: 24851 and 20563 of 2015

WRIT PETITION NO: 24851 OF 2015

Between:

Smt. C. Upadesh Kumari, W/o C. Ramesh Kumar, Age 65 years, Occ Retired
Central Government Employee, R/o H.No.14-3-324, Goshamahal, Hyderabad
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...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue, Secretariat Buildings, Hyderabad.
2. The District Collector, Hyderabad District, Hyderabad.
3. The Tahsildar, Saidabad, Hyderabad.
4. The Special Officer, ULC, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of writ of certiorari calling for all the connected records including the impugned proceedings No.J2/9225/76, dated 05.09.2007 and Panchanama dated 08.02.2008 of the 4th respondent and the quash the same as illegal, improper, unjust, violation of Section 10(5) of the ULC Act and Article 300A of the Constitution of India and further declare that the Petitioner is entitled for the land in Plot No.2, admeasuring 620 Square Yards, in Survey No.212, situated at Vinay Nagar Colony, on Champapet Road, Saidabad Mandal, Hyderabad under Ward No.17 Block No.1.

I.A. NO: 1 OF 2015(WPMP. NO: 32272 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 2nd & 3rd not to proceed with the construction forthwith in Plot No.2, admeasuring 620 Square Yards in Survey No.212 situated at Vinay Nagar Colony on Champapet Road, Saidabad Mandal, Hyderabad, under Ward No.17 Block No.1 pending disposal of the above writ petition.

I.A. NO: 2 OF 2015(WPMP. NO: 35672 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the office to post the above writ petition under the caption 'For being Mentioned' for rectification of the error that occurred in the last line of the order as "Petitioners" instead of "Respondents" in the order in W.P.M.P No.32272 of 2015 in W.P.24851 of 2015, dated 10-08-2015.

I.A. NO: 1 OF 2016(WPMP. NO: 26199 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to raise the additional grounds in the interest of justice.

**Counsel for the Petitioner: SRI K.G.KRISHNAMURTHY, FOR
SRI K.RAMAMOCHAN**

Counsel for the Respondents: SRI CHALAPATHI RAO, GP FOR ASSIGNMENT

WRIT PETITION NO: 20563 OF 2015

Between:

Smt.C.Upadesh Kumari W/o C.Ramesh Kumar, age 65 years, Occ Retired
Central Government Employee, R/o H.No.14-3-324, Goshamahal, Hyderabad
- 12

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue, Secretariat Buildings, Hyderabad.
2. The District Collector, Hyderabad District, Hyderabad.

3. The Tahsildar, Saidabad, Hyderabad.
4. The Special Officer, ULC, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the 3rd respondent in proceeding with the construction in Plot No.2, admeasuring 620 Square Yards in Survey No.212 situated in Vinay Nagar Colony on Champapet Road, Saidabad Mandal, Hyderabad as illegal, unjust, arbitrary and further declare that the action of the respondents No.1 to 4 in not considering my application for regularization of the plot though the proposals have been submitted twenty three months back by paying an amount of Rs.16,30,200/- as illegal, unjust, arbitrary and contrary to law and consequently direct the Respondents No.1 to 4 to consider the proposal submitted by the petitioner for regularization of the plot No.2, admeasuring 620 Square Yards in Survey No.212 situated at Vinay Nagar colony on Champapet Road, Saidabad Mandal, Hyderabad, as per the policy decision of the Government in G.O.Ms.No.747, Revenue Department, dated 02.05.2015.

I.A. NO: 1 OF 2015(WPMP. NO: 26486 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 2nd & 3rd not to proceed with the construction in Plot No.2, admeasuring 620 Square Yards in Survey No.212 situated at Vinay Nagar Colony on Champapet Road, Saidabad Mandal, Hyderabad, forthwith pending disposal of the above writ petition.

I.A. NO: 3 OF 2015(WPMP. NO: 28043 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd respondent to stop the construction in Plot No.2 in Survey No.212 situated at Vinay Nagar Colony on Champapet Road, Saidabad Mandal, Hyderabad till the application for regularization is disposed of.

**Counsel for the Petitioner: SRI K.G.KRISHNAMURTHY, FOR
SRI K.RAMAMOCHAN**

Counsel for the Respondents: SRI CHALAPATHI RAO, GP FOR ASSIGNMENT

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION Nos.24851 and 20563 of 2015

COMMON ORDER:

The petitioner and the respondents in these two writ petitions are one and the same and the issue involved in both these writ petitions arises out of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') and in respect of the same property, hence, they are being disposed of by this common order.

2. WP.No.20563 of 2015 is filed to declare the action of the respondent No.3 - Tahsildar, Saidabad, Hyderabad, in proceeding with the construction in Plot No.2, admeasuring 620 sq. yards in Sy.No.212, Vinayak Nagar Colony, Champapet Road, Saidabad Mandal, Hyderabad (subject property) as being arbitrary and illegal and to declare action of the respondents No.1 to 4 in not considering the application of the petitioner for regularization of the plot in terms of G.O.Ms.No.727 Revenue (UC-1) Department dated 18.06.2008, though proposals have been submitted twenty three months back and even after payment of regularization amount of Rs.16,30,200/- as being arbitrary and illegal.

3. WP.No.24851 of 2015 is filed to call for records relating to the impugned proceedings No.J2/9225/76 dated 05.09.2007 and panchanama dated 08.02.2008 of the respondent No.4 in respect of the subject property and quash the same as illegal, improper and

violative of Section 10(5) of the Act and Article 300-A of the Constitution of India.

4. The petitioner claims to be the owner of the subject property having purchased the same under registered sale deed bearing document No.1401/1978 dated 17.05.1978 from the Government Press Employees Co-operative House Building Society (hereinafter referred to as 'Housing Society') and since then, the petitioner had been in possession of the subject property. The Housing Society purchased the property from the original owners/pattadars. The petitioner applied for building permission in the year 2010 with the Municipal Corporation of Hyderabad. The corporation insisted the petitioner to get NOC from the Revenue Authorities. In the year 2011 when application was filed before the respondent No.2 for grant of NOC, for the purpose of building permission, it was processed by the respondent No.3 and proposal dated 17.01.2011 was sent to the District Collector stating that the subject land is a private patta land. Thereafter, the respondent No.2 issued endorsement No.E2/50/2011 dated 28.02.2011 informing the petitioner that subject property is surplus land and therefore, the application of the petitioner is rejected by the concerned committee. The respondent No.2 also informed the GHMC that the subject plot is declared as surplus and directed them not to issue building permission to the petitioner.

5. It is submitted that the Government issued G.O.Ms.No.747 dated 18.06.2008 for regularization of surplus ceiling land in occupation of third parties on collection of market value of the land. In terms thereof, the petitioner submitted application dated 05.09.2013 by duly paying Rs.16,30,000/- through DD No.066827 dated 05.09.2013 drawn on ICICI Bank towards regularization charges. The respondent No.4 acknowledged the application of the petitioner and submitted proposals to the Government. In the meanwhile, the respondent No.3 tried to occupy the subject property and the petitioner approached the Hon'ble Minister for Revenue, on 24.01.2014, who made an endorsement directing the respondent No.2 to stop construction activity pending consideration of regularization application under G.O.Ms.No.747 dated 18.06.2008. The respondent No.2 also directed the respondent No.4 to place the matter in the next meeting in his endorsement dated 27.01.2014. The respondent No.2 further directed the respondent No.3 not to take up any construction work. As there was no information regarding the petitioner's regularization application, a representation dated 18.06.2014 was submitted by the petitioner to the Government to direct the respondent No.2 to stop the construction activity. Thereafter, another representation was made to the District Collector, Hyderabad, on 04.08.2014.

6. It is stated that counter was filed by the respondents No.2 and 3 in WP.No.20563 of 2015 wherein it is contended that the possession of the subject land was taken under Section 10(6) of the Act under the cover of panchanama dated 08.02.2008. Hence, Section 10(6) notice dated 05.09.2007 and panchanama dated 08.02.2008 are challenged in WP.No.24851 of 2015.

7. In the separate counters filed by the respondents No.3 and 4 in WP.No.24851 of 2015, it is contended that the petitioner, having filed regularization application accepting the ownership of the Government, cannot challenge the proceedings in CC.No.J/9225/76. The writ petition is liable to be dismissed in limine. The possession of the surplus land was taken by completing the formalities under the Act. One Sama Bal Reddy was the owner and the declarant of the land in Sy.Nos.212, 213 and 214 of Saidabad Village. He filed declaration under Section 6(1) of the Act and he was determined as surplus land owner to an extent of 6416.96 sq. meters of land in Sy.Nos.212, 213 and 214. The surplus land was taken over under the cover of panchanama on 08.02.2008 pursuant to Section 10(6) notice. The subject property of the petitioner is part of the surplus land. The alleged sale deed executed in favour of the petitioner in the year 1978 is void under Sections 5(3) and 10(4) of the Act.

8. In the counters, it is further submitted that the regularization application filed by the petitioner under G.O.Ms.No.747 dated 18.06.2008 is under consideration. The land vested with the State. The application for grant of NOC submitted by the petitioner for building permission was rejected. The writ petitioner is a stranger and she is not entitled to challenge the ULC proceedings against Sama Bala Reddy. The petitioner is trying to make unlawful claim over the subject property taking advantage of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. The subject property has been reserved for public purpose i.e. construction of office building of the Tahsildar, Saidabad Mandal, as per the District Collector Proceedings No.A5/8759/2013 dated 19.06.2013. The petitioner submitted regularization application subsequent to allotment of the subject property for public purpose. The construction of the Tahsildar office was also commenced and completed.

9. Mr. K.G. Krishnamurthy, learned senior counsel, appearing on behalf of Mr. K. Ramamohan Mahadeva, learned counsel for the petitioner, submitted that the impugned ULC proceedings are null and void as they are issued against a dead person. The possession of the surplus plan was not taken over in accordance with the Act. Notice to the possessor is mandatory under Section 10(5) of the Act. The petitioner purchased the subject property under sale deed dated 17.05.1978. The petitioner was not issued any notice.

Thus, the subject property is saved in terms of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which came into effect in the State of Andhra Pradesh from 27.03.2008.

10. Mr. Chalapathi Rao, learned Government Pleader for Assignment, submitted that the petitioner is stranger to the ULC proceedings in CC.No.J2/9225/76, which were declared by Sama Bal Reddy. The alleged sale deed of the petitioner executed in the year 1978 is hit by Section 5(3) and Section 10(4) of the Act. The petitioner does not have locus stand to challenge the ULC proceedings. The petitioner admitted ownership of the Government and vesting of land in the Government by filing regularization application under G.O.Ms.No.747 dated 18.06.2008. The land was allotted for construction of Tahsildar Office and the construction is completed. Presently, the Tahsildar Office is being run in the subject property.

11. Heard learned senior counsel for the petitioner and learned Government Pleader for Assignment.

12. On a perusal of the record, it appears that the statement in Form I under Section 6(1) of the Act was filed by Sama Bal Reddy declaring an extent of 6120.89 sq. meters in Sy.Nos.212 to 214 to Saidabad Village and Mandal and an extent of 1296.05 sq. meters in Vacant Plot in Ward-17, Block-2, Madannapet Village,

total extent of 7416.94 sq. meters. The draft statement under Section 8(1) of the Act was prepared and notice under Section 8(3) dated 03.10.1978 of the Act was stated to have been issued to the declarant. As objections were not filed by the declarant within thirty days, final statement under Section 9 of the Act dated 24.12.1980 was issued and thereafter, notices under Section 10(1), 10(3), 10(5) and 10(6) were issued on 06.03.1986, 06.05.1986, 29.05.1986 and 16.07.1986 respectively. As per the orders of the appellate authority dated 26.12.1996 in C.No.UC1/2011/86, the final statement under Section 9 of the Act and notices under Section 10(1), 10(3) 10(5) and 10(6) of the Act have been set aside and respondent No.4 was directed to issue speaking order under Section 8(4) of the Act after fresh examination. Thereafter, the respondent No.4 has taken up the matter for fresh personal hearing by issuing notices to the declarant fixing the date of hearing on 20.03.2006. The said notice was stated to have been served on the brother of the declarant, Sri Damodar Reddy on 17.03.2006. Further, when the matter was taken up for hearing on 20.03.2006, nobody was present.

13. It is stated that the respondent No.4 was informed by the Enquiry Officer that the declarant died and his son, Sri Narasimha Reddy, refused to take notice and as such, the notice was affixed on the door of the declarant on 25.03.2006. The case was called on

27.03.2006. There was no representation and the matter was adjourned to 12.04.2006 but no one was present on behalf of the declarant on the said date. The notice of hearing was once again served on the brother of the declarant apart from affixing it on the door of the residential premises of the legal representative of the declarant, as the legal representative refused to take the notice in spite of intimation of hearing. Despite the same, they have not represented the case. Thus, the matter was decided on the material available on record.

14. By order dated 21.08.2006 passed under Section 8(4) of the Act, it was held that the declarant had landed property to an extent of 6120.89 sq. meters in Sy.Nos.212 to 214, Saidabad Village and vacant plot to an extent of 1296.05 sq. meters in Ward No.17, Block-2, Madannapet village, total admeasuring 7416.94 sq. meters; the two villages are situated in the core area of Hyderabad Urban Agglomeration and the declarant is entitled to retain an extent of 1000 sq. meters under Section 4(1)(b) of the Act; since the declared expired, his legal representatives were brought on record for the purpose of service of notice and orders etc.; after allowing 1000 sq. meters retainable land, Sama Bal Reddy, died per LR, was declared as surplus holder for the balance area of 6416.94 sq. meters under Section 8(4) of the Act and final notice was issued to the declarant.

15. The primary contention of the learned senior counsel for the petitioner is that the notice under Section 9 of the Act, after Section 8(4) order dated 21.08.2006 was passed, was not served on the legal representatives of the declarant. The order dated 21.08.2006 was passed against a dead person. The respondent No.4 was very much aware that the declarant Sama Bal Reddy died before Section 8(4) order was passed.

16. It is evident from the order dated 21.08.2006 that the respondent No.4 was informed by the Enquiry Officer that the declarant died. It is stated in the said order that notice (notice of hearing after remand) was sought to be served on the legal representatives of the declarant and the brother of the declarant, Damodar Reddy. Though the order dated 21.08.2006 says that the legal representatives of Sama Bal Reddy are brought on record, there is no evidence to that effect. In the copy of order dated 21.08.2006 annexed to the counter affidavit of the respondent No.4 in WP.No.24851 of 2015, there are no names of the legal representatives of the declarant shown. The service of notice under Section 9 on the legal representatives of Sama Bal Reddy does not appear to have been made. The copy of the order dated 21.08.2006 is shown to have been marked to "*Sri Sama Bal Reddy, Declarant (died) per LR's, R/o Champapet, Hyderabad.*"

17. Upon the respondent No.4 knowing that the declarant died, necessary enquiry should have been made and all the legal representatives should have been brought on record. The enquiry before Section 8(4) of the Act (surplus determination is done) cannot be an empty formality. After remand of the matter, as stated in para 12 above by the appellate authority by order dated 26.12.1996, notice of hearing ought to have been issued to the legal heirs of the original declarant in the manner provided under the Act. The purpose of issuing notice to the declarant and legal representatives was to enable them to file objections to Section 8(1) draft order and resist declaration of land as surplus. The manner in which the draft statement under Section 8(1) of the Act has to be served is provided under Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976, which reads as under:

5. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same. -

(1) Every draft statement prepared under sub-section (1) of Section 8 shall contain the particulars specified in Form III.

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

- (i) the holder of the vacant lands, and
- (ii) all other persons, so far as maybe known, who have, or are likely to have, any claim to, or interest in the ownership or possession or both, of the vacant lands-

by sending the same by registered post addressed to the person concerned-..

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of Section 6, and

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

...

18. It is pertinent to note that in the instant case, the notice, which was sought to be served on the legal representatives of the declarant and the brother of the declarant, is notice of hearing and not notice under Section 8(3) of the Act for service of order under Section 8(1) of the Act. Assuming that compliance of service of notice of hearing was not required to be done in the manner provided under Section 8(3) read with Rule 5 of the Rules, it is

relevant to note that service of final statement under Section 8(4) in terms of Section 9 of the Act was to be made in the manner provided under Section 8(3) of the Act. Section 9 of the Act reads as under:

"9. After the disposal of the objections, if any, received under subsection (4) of section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

19. It is clear from the Rule 5 of the Rules that draft statement under Section 8(1) of the Act shall be served to the holder of the vacant land or all other persons interested, and having claim over the land in terms of Section 8(3) of the Act by sending the same through registered post to the persons concerned to the address given in Section 6(1) declaration or last known address. As per Rule 5(2)(b), if the notice is returned, then it is deemed to have served. Rule 5(2)(c) provides that if notice of draft statement cannot be served, then it should be served by affixing a copy of the same in conspicuous part of the house of the declarant or person interested. The respondent No.4 did not adhere to the procedure contemplated

under Rule 5 of the Rules. It is not stated in the counter affidavit whether notices were sent through registered post to the legal representatives of the declarant. It is merely stated that notices were affixed on the door of the declarant (house), as his son, Narasimha Reddy, refused to take notice. That the notice was served on the brother of the declarant by affixing it on the door of the legal representative of the declarant for two times.

20. The appropriate step that should have been taken by the respondent No.4 was to bring the legal representatives of the declarant on record in CC.No.J2/9225/76 and thereafter, serve notices in the manner provided under Rule 5 of the Rules. Without issuing notice through registered post, as required under Rule 5(2)(a)(i) and (ii), the respondent No.4 resorted to serve notice by affixing it on the residence of the legal heir of the declarant, as per Rule 5(2)(c). It is not known how many legal heirs the declarant had. It is not the case of the respondents that Narasimha Reddy was the only legal heir of the declarant. The service of notice on the brother of the declarant, Damodar Reddy, is of no use and relevance. Apart from violation of the above procedure regarding service of notice of hearing, there is no averment regarding service of notice of final statement under Section 8(4) of the Act in terms of Section 9 of the Act to all the legal representatives of the declarant as required under Rule 5(2)(a)(ii). The counter affidavits

filed by the respondents No.3 and 4 are silent regarding service of notice under Section 9 of the Act to the legal representatives of the declarant.

21. This Court in **MARABOINA YADIAH V. STATE OF A.P.**¹ held as under:

"9. A conjoint reading of Rule 5(2)(a) and sub-clauses therein makes it very clear that notices should be issued to the declarant through registered post to the address given by him or last known address. Thus, it was imperative for the authorities to find out proper address of the declarants. Service of notice at the residential address of the declarants was mandatory. Mere affixture of notice on the compound wall of the subject property would not meet the requirement of the above provisions. Even affixture of notice should have been on the conspicuous part of the house and not any other place. Only if the respondents were able to point out that even after finding out proper address of the declarants, service of notice through registered post was not possible, the next step was to serve notice by affixture. However, without resorting to proper procedure as mandated under Rule 5(2), the respondents, allegedly, sent notice under Sections 6(2) and orders under Section 8(1) and 8(4) of the Act to the declarants by affixture on the wall of the subject property, which is not in accordance with law."

22. The Allahabad High Court in **LALLAN V. STATE OF UP**² held as under:

"7. In Paragraph 8 of the counter affidavit the contents of Paragraph 10 of the writ petition have been denied and it has been asserted that the service was by affixation. There

¹ 2023 (4) ALT 414

² 1988 SCC OnLine All 186

is no specific averment with regard to the contention of the petitioner that no notice was served through registered post. The bare reading of Rule 5 quoted above would indicate that the authorities should take recourse to service through registered post first and if that attempt fails, the service by affixation may be resorted to. Since the deponent of the counter affidavit has not categorically denied the allegations of the petitioner that no service was effected upon the petitioner through registered post, I think that the impugned order contained in Annexure-I has been passed against the petitioner by the competent authority without affording reasonable opportunity to the petitioner. Therefore, the aforesaid order is in clear contravention of the principles of natural justice and deserves to be quashed.

8. The appellate authority has also confirmed the judgment of the competent authority and on the question of service of the draft statement on the petitioner it has made the following observation: —

.....The provisions of Rule 5 are directory. In accordance with the requirements of the said Rule, the notice was sent to the appellant by registered post and it was only by abundant caution that the second notice was given to him. The contention regarding the notice has lost all force and significance in view of the fact that the appellant filed an objection dated March 27, 1982 before the competent officer and challenged the notice under Section 10(5) and Section 11(8) of the Act....."

9. To my mind, the appellate court has wrongly assumed that the notice was sent to the petitioner by registered post and it was only by abundant caution that the second notice was given to him. The averments in Paragraph 8 of the counter affidavit indicate that no notice was sent by registered post. It appears that the assertion was made in

the counter affidavit to that effect but it was second out later on. Therefore, it is apparent that no notice was sent by registered post.

10. The bare perusal of Rule 5(c) would indicate that the service of the notice by affixation can be resorted to only when an attempt for serving the person concerned through registered post had failed. The observation of the lower appellate court that Rule 5 is directory in the facts and circumstances of the present case appears to me patently erroneous. Since the notice upon the petitioner as contemplated by Section 8(3) of the Act has not been served strictly in accordance with law, therefore, the impugned judgment contained in Annexure-I attached with the writ petition deserves to be quashed. The judgment of the appellate court contained in Annexure-II attached with the writ petition has also proceeded on wrong assumption that the requisite notice was served upon the petitioner by registered post, therefore, the impugned judgment of the appellate court also deserves to be quashed."

Section 8(4) order and Section 10(5) notice were issued in the name of dead person:

23. As pointed out in the preceding paragraphs Section 8(4) order dated 21.08.2006 was passed in the name of Sama Bal Reddy, who died by then. However, it is stated in the order as under:

"... Since the Declarant Late Sri Sama Bal Reddy expired his LR's are brought on record for the purpose of service of Notices and orders etc.

In view of the above, Late Sri Sama Bal Reddy died per LR is allowed to retain 1000 Sq. Mts. U/s.4(1)(b) of the Act and the balance area of 6416.94 (7416.94 - 1000 = 6416.94) is

determined as excess land held by the Declarant U/s.8(4) of the Act.

Accordingly, final notice U/s.9 of the Act is issued to service on the Declarant (died) per LR's.

Sd/-
Special Officer & Competent Authority,
Urban Land Ceiling, Hyderabad.

To
Sri Sama Bal Reddy, Declarant (died) per LR's.
R/o. Champapet, Hyderabad.

24. Copy of Section 10(5) notice dated 06.11.2006 filed by the respondent No.4 along with the counter affidavit in WP.No.24851 of 2015 shows that notice was served on one Vamshidar, S/o. Narasimha Reddy S/o. Bal Reddy. There is an endorsement "*served on the grandson of Sama Bal Reddy*" by the Enquiry Officer dated 05.12.2006. The notice dated 06.11.2006 is in the name of Sama Bal Reddy, who expired even before Section 8(4) order dated 21.08.2006 was passed. Though the respondent No.4 made it appear that order dated 21.08.2006 was passed after brining LR's on record, on a closer scrutiny of the order dated 21.08.2006, it is evident that the LR's were not brought on record. Merely by mentioning in the order that Sama Bal Reddy through LR's (whose details are not known), it cannot be said that the LR's were brought on record. The record reveals that essentially the order dated 21.08.2006 was passed in the name of dead person. It is not only that the legal representatives were not brought on record in Section

8(4) proceedings, even in the subsequent proceedings i.e. Section 10(5) dated 06.11.2006 and Section 10(6) dated 05.09.2007, the notices were issued in the name of dead person. This Court in WP.No.12798 of 2021 dated 13.04.2022 held as under:

"13. As pointed out by the learned counsel for the petitioners, it is clearly shown in the order passed under Section 8(4) order dated 29.04.1987 that Smt. Habeebunnisa Begum expired. The notice under Section 10(5) of the Act dated 03.01.2007 was issued in the name of Smt. Habeebunnisa Begum, who was dead by then. Section 10(5) of the Act mandates that notices should be given to the land owner and person in possession of the property. This Court in **STATE OF A.P., REVENUE DEPARTMENT v. SMT. A. BHARATHI** [2002 (4) ALT 334 (DB)] held as under:

"... Even otherwise it was brought to our notice that the statutory notices under the Act were issued in the name of dead person which is non est in the eye of law ..."

The legal heirs of the declarant were parties to Section 8(1) and Section 8(4) proceedings. The respondent No.3 was well aware of the death of Smt. Habeebunnisa Begum. However, for the reasons best known, the respondent No.3 has chosen to issue notice under Section 10(5) to Smt. Habeebunnisa Begum (dead person). Thus, the notice under Section 10(5) and consequential order under Section 10(6) are vitiated and held to be void. Further, proceedings of taking over possession under the guise of panchanama dated 12.03.2007 is nonest in the eye of law."

25. The further illegality committed by the respondents is non-service of notice under Section 10(5) of the Act to the persons interested. Section 10(5) of the Act mandates notice to be served not only to the declarant or persons interested but also to the persons in possession of the surplus land. The petitioner claims to have purchased the subject property under registered sale deed bearing document No.1401/1978 dated 17.05.1978. The said deed shows that the petitioner was inducted into possession of the subject property. The petitioner filed regularization application under G.O.Ms.No.747 dated 18.06.2008. As the petitioner is an interested person, the petitioner also should have been served with notice under Section 10(5) of the Act, which is mandatory as held in the following decisions.

26. The Supreme Court in **STATE OF UTTAR PRADESH v. HARI RAM**³ held as under:

"Peaceful dispossession"

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under

³ (2013) 4 SCC 280

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

Forceful dispossession

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

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

27. In the recent decision of the Supreme Court in **A.P. ELECTRICAL EQUIPMENT CORPORATION v. TAHSILDAR**⁴, it was held as under:

"**28.** A close reading of the above judgment more particularly the dictum laid therein lays down that though Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1978 (Central Act), which is *pari-materia* to Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Ceiling Act), provides that the vacant land is deemed to be acquired, yet it does not mean that the possession of the land has been taken over. This Court has categorically stated that the procedure contained under sub-sections (5) and (6) of the Act, 1976 must be scrupulously followed. This Court was of the view that Section 10(5) of the Act, 1976 which is *pari-materia* to Section 11(5) of the Ceiling Act stipulates that any vacant land even if vested in the State under sub-section (3), the competent authority has to by notice in writing order any person who may be in possession of it to surrender or deliver possession of the land to the State Government within thirty days of the

⁴ 2025 SCC OnLine SC 447

service of notice. If the landowner fails or refuses to do so, then the State Government has to follow the procedure under sub-section (6) of Section 10 or Section 11 as the case may be, and take forcible possession.

29. Thus, the dictum, as laid in *Hari Ram* (supra), is that where the possession of the subject land has not been taken over by the State Government or by any person duly authorised by the State Government in this behalf or by the competent authority, the proceedings under the Act would not survive and mere vesting of the vacant land with the State Government by operation of law, without actual possession, is not sufficient. To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal.

...

37. Sub-section (5) of Section 10 talks of "possession" which says where any land is vested in the State Government under subsection (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

38. If *de facto* possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested." under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be

voluntary so that the person may get the compensation as provided under Section 11 of the Act, 1976 early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under subsection (5) to Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

39. The mere vesting of the land under subsection (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.03.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under subsection (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 3 of the Repeal Act, 1999. In the case on hand, the State Government has in our considered view not been able to establish any of those situations and hence the learned Single Judge was right in holding that the appellant herein is entitled to get the benefit of Section 3 of the Repeal Act, 1999."

28. In **P. VIJAYA JYOTHI V. STATE OF ANDHRA PRADESH**⁵, the High Court of Judicature, Andhra Pradesh, held as under:

"**16.** In the case of *Kothuru Babu Surendra Kumar (died) and others v. Special Officer and Competent Authority, ULC, Vijayawada and others* (supra), this Court at Paragraph 28 held as under:

⁵ 2014 (3) ALD 655

"28. What is culled out from the above discussion is that the competent authority who has finalised the statement under Section 8(4) of the Act and final statement under Section 9 and notification issued under Section 10(1), 10(3) and Section 10(5) of the Act failed to follow the mandatory provisions by issuing notice to the persons likely to be affected viz.; the petitioners, who are purchasers of the above lands and it is also within their knowledge; and the records also reveal that Smt. Tulsamma, the 4th and 5th respondent in the writ petitions admitted that she has no interest in the above lands as she has sold the same to the society and the same was also discussed by the competent authority in his earliest proceedings dated 28.5.1984. In view of the same non-issuance of notice and its service upon the interested persons is fatal and the entire proceedings and the final statement under Section 8(4) of the Act; and the proceedings of the second respondent dated 12.4.1990 and the consequential orders of the first respondent under Section 8(4) and Section 9 of the Act dated 9.2.1991 and the notification issued under Section 10(1), 10(3) and 10(5) of the Act are all of no consequences and consequently they are declared as non est. The writ petitions are accordingly allowed. There shall be no order as to costs."

17. This Court, when the similar question fell for consideration, passed an order in WP No.4064/2010, dated 4.3.2010, holding that the order passed against a dead person is *non est* and does not give rise to any legal consequences. In the case of *Y. Sri Rama Krishnaiah v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada and others* (supra), this Court held that the notification issued under Section 10(3) without notice to

the interested persons is not a valid one and that the proceedings issued without adherence to the mandatory requirement under Rule 5(2) are invalid and illegal. In the case of *M/s. L.S. & Co. v. State of A.P.* (supra), this Court categorically held that the service of notice upon the interested persons is mandatory.

In **BHEL (R&D) EMPLOYEES' COOPERATIVE HOUSING SOCIETY LTD. HYDERABAD V SPECIAL OFFICER AND COMPETENT AUTHORITY, URBAN LAND CEILING, HYDERABAD**⁶, the High Court of Judicature, Andhra Pradesh, held as under:

"10. The material brought on record clearly established that the petitioner Society was in occupation of Acs.7.30 guntas as on the date of *suo motu* enquiry conducted by the 1st respondent. The 1st respondent without issuing any such notice as required under Sections 8(1) and 8(3) of the Act has issued a final statement under Section 9 of the Act. Similar issue came up for consideration before a Single Judge of this Court in WP No. 19652 of 2007, wherein it has been held that the petitioner Society and their members, who were in possession of the land and persons interested therein, were entitled to issuance of notices under the provisions of the Act, and taking over possession of the land, without notices to them, violates the principles of natural justice, and as such, the orders passed by respondent Nos.1 and 2, affecting the rights of the petitioner Society and their members in the land in question, cannot be sustained and are liable to be set aside. Similar view has been taken by another Single Judge of this Court in *Singireddy Narasimha Reddy's* case (supra).

⁶ (2012) 5 ALD 325

29. So far as locus standi of the petitioner is concerned, the petitioner, being in possession of the subject property and being interested person as discussed in the preceding paragraphs and in the light of the principle of law laid down in the aforesaid decisions, is entitled to institute the instant writ petitions, more particularly, in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1976.

30. It may be noted that at the time of passing of interim order dated 31.08.2015, it was informed to this Court that the subject property is being used for construction of office of the Tahsildar, Saidabad. The said order was passed by this Court permitting the respondents to construct the office subject to further orders in the writ petition with a rider that no equities shall be claimed by the parties.

31. In the light of the above observations, WP.No.24851 of 2015 is allowed and the proceedings in CC.No.J2/9225/76 dated 05.09.2007 are declared as void and unenforceable against the petitioner and accordingly set aside. The respondents are directed to hand over the possession of Plot No.2, admeasuring 620 sq. yards in Sy.No.212, Vinayak Nagar Colony, Champapet Road, Saidabad Mandal, Hyderabad along with the building constructed therein to the petitioner. Consequently, WP.No.20563 of 2015 is

disposed of directing the respondents to return the amount of Rs.16,30,200/-, paid towards regularization, to the petitioner within a period of three (3) weeks from the date of receipt of a copy of this order.

The miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

//TRUE COPY//

SD/- N.SRIHARI
DEPUTY REGISTRAR
SECTION OFFICER

**One Fair Copy to the Hon'ble SRI JUSTICE B.VIJAYSEN REDDY
(For His Lordships Kind Perusal)**

To,

1. The Principal Secretary, Revenue, Secretariat Buildings, Hyderabad, State of Telangana.
2. The District Collector, Hyderabad District, Hyderabad.
3. The Tahsildar, Saidabad, Hyderabad.
4. The Special Officer, ULC, Hyderabad.
5. 11 LR Copies
6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
7. The Secretary, Telangana Advocates Association, Library, High Court Buildings, Hyderabad.
8. One CC to SRI K.RAMAMOHAN, Advocate [OPUC]
9. Two CCs to GP FOR ASSIGNMENT, High Court for the State of Telangana at Hyderabad [OUT]
10. Two CD Copies

BSR

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HIGH COURT

DATED: 15/04/2025

COMMON ORDER

WP.Nos.24851 and 20563 of 2015



**ALLOWING THE W.P.No.24851 of 2015 &
DISPOSING OF THE W.P.No.20563 of 2015,
WITHOUT COSTS**

(24) m.T
29/4/25