

APHC010499892024

**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

[3483]



WRIT APPEAL NOS: 165, 167 & 216 of 2025

WRIT APPEAL NO: 165/2025

Between:

M/s Bhiragacha Finance Company Private Limited,

...APPELLANT

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.A CHANDRA SHAKER

Counsel for the Respondent(S):

1.GP FOR LAND CEILING

WRIT APPEAL NO: 167/2025

Between:

M/s ECE Industries Limited

...APPELLANT

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.A CHANDRA SHAKER

Counsel for the Respondent(S):

1.GP FOR REVENUE

2.THE ADVOCATE GENERAL

WRIT APPEAL NO: 216/2025**Between:**

Pydi Varahamma Died and Others

...APPELLANT(S)

AND

The Government Of Ap and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.A PRABHAKAR SARMA

Counsel for the Respondent(S):

1.A CHANDRA SHAKER

2.GP FOR REVENUE

3.V SANTHISREE

CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR**SRI JUSTICE RAVI CHEEMALAPATI****RESERVED ON: 30.01.2026****PRONOUNCED ON: 09.04.2026****UPLOADED ON: 10.04.2026****COMMON JUDGMENT:**

(Per Sri Justice Ravi Cheemalapati)

Challenging the common order dated 04.02.2025 passed by a learned Single Judge in W.P.Nos.8716 of 2008, 12390 & 21393 of 2012, the appellants who were the petitioners in the said writ petitions, preferred these intra Court appeals under Clause 15 of the Letters Patent.

2. Inasmuch as these appeals stem out of a common order, they were heard together and are being disposed of by this common judgment.

3. The facts that led to filing of these writ appeals are summarized hereunder:

(a) Originally, Sri Pydi Appana & Sri Pydi Krishna Sarma are the absolute owners of the land admeasuring Ac.3.52 cents in Sy.No.59/3 situated in Marripalem village, Visakhapatnam (herein after referred to as 'subject property') and they have executed a registered lease document No.1138/1964 dated 22.04.1964 in favour of M/s A.P.Electrical Equipment Corporation Ltd., Visakhapatnam (herein after referred to as 'Company') for a period of 99 years and the said Company established its unit for manufacturing of electrical transformers, etc. It appears that, after the Urban Land (Ceiling and Regulation) Act, 1976 (for short, Act,1976) came into force, the Company, being the lease holder of the subject property, filed a declaration under Section 6(1) of the Act, 1976 in respect of properties owned and possessed by it within the Urban Agglomeration of Hyderabad and Visakhapatnam. In the said declaration, apart from the land owned by it in Hyderabad, Visakhapatnam and other places, the subject property in Sy.No.59/3 was shown as leased lands with structures in its occupation claiming exemption under Section 4(1) of the Act, 1976. In the course of time, the Company became defunct and was closed w.e.f. January, 2000.

(b) After the demise of Sri Pydi Appana & Sri Pydi Krishna Sarma, *Smt Pydi Varahamma and her two sons*, succeeded the ownership of the subject property and filed O.S.No.516 of 2005 seeking eviction of the Company from the subject property, which was decreed on 11.04.2007. The appeal, which was preferred by the Company, was allowed setting aside the eviction orders on 07.09.2007 and the said order was questioned by way of filing second appeal vide S.A.No.1212 of 2007 which is pending consideration.

(c). While so, the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad (*2nd respondent in W.P.No.8716/2008*) passed final orders dated 03.02.2004 under Section 8(4) of the Act, 1976 holding that the Company is the surplus holder of land to an extent of 39559.83 Sq.mts wherein Sy.No.59/3 (subject property) was shown as exempted under Section 4(11) of the Act, 1976. Against the said order, the Company preferred an appeal wherein the appellate authority has observed that, the surplus land held by the Company would be 48527.13 Sq.mts not 39559.83 Sq.mts and remanded the matter for reconsideration. It appears that, even in the revised order dated 20.03.2007, the subject property with structures, roads, etc., were exempted under Section 4(11). Thus, the exemption of subject property under Section 4(11) attained finality.

(d). The Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad, issued a notification dated 07.07.2007 under Section 10(1) of the Act, 1976 proposing to take over the entire surplus lands of Company and

called for objections including the subject property. The said Section 10(1) notification was published in Gazette on 12.07.2007. Thereupon, *Smt Pydi Varahamma* made representations to the Special Officer & Competent Authority, Urban Land Ceilings, Visakhapatnam, apprising that the subject property was exempted under Section 4(11) of the Act, 1976, as such the question of surrender does not arise. The said authority has addressed a letter to the Special Officer, Hyderabad to rectify the said mistake committed in the notification dated 07.07.2007 but the authority concerned, without considering the same, issued proceedings No.G1/10571/76 dated 05.02.2008 for taking over possession of lands in Sy.No.59/3, Marripalem (subject property). Questioning the said notification dated 07.07.2007 and the notice dated 05.02.2008 issued under Section 10(6), *Smt Pydi Varahamma and her two sons*, being the absolute owners of the subject property, filed **W.P.No.8716/2008** arraying APEECL (Company) as 5th respondent to the lis, wherein the Hon'ble court has granted stay of all further proceedings by order dated 16.04.2008 in W.P.M.P.10798/2008. Later, due to repeal of the Act, 1976 in A.P., on 22.04.2008, the said order has become *non-est*.

(e). It appears that, in view of Repeal Act, *Smt Pydi Varahamma and her sons* have cancelled the lease deed dated 22.04.1964 made with the APEECL. Later, it appears that, the APEECL has changed its name to M/s ECE Industries limited. Thereupon, M/s Bhiragacha Finance Company Private Limited and M/s ECE Industries Limited have purchased Ac.2.00 cents

and Ac.1.00 cents in Sy.No.59/3 from *Smt Pydi Varahamma*, respectively through registered sale deeds in the year 2011. While so, the Tahsildar & Executive Magistrate, Visakhapatnam, by virtue of panchanama dated 12.03.2008, filed a complaint against the said companies, stating that, they have trespassed the Government land and trying to grab the same. Questioning the said panchanama dated 12.03.2008, M/s Bhiragacha Finance Company Private Limited had filed **W.P.No.21393 of 2012** and M/s ECE Industries Limited had filed **W.P.No.12390 of 2012**.

(f). All the three writ petitions, being connected, were heard together and disposed by a common order dated 04.02.2025. The Learned Single Judge has dismissed those writ petitions on the ground that, the respondent authorities concerned have took the possession of the subject property under a valid panchanama dated 12.03.2008 by following the due procedure, as such the same needs no interference.

(g). Impugning the said common order dated 04.02.2025, the appellants herein (petitioners in the said writ petitions) have preferred these Intra Court appeals.

4. Heard Sri V.Ramesh, learned counsel appearing for Sri A.Chandra Shaker, learned counsel for the appellants in W.A.Nos.165 & 167 of 2025; Sri A.D.Rama Ratna Sarma, learned counsel representing Sri A.Prabhakara

Sarma, learned counsel for the appellants in W.A.No.216 of 2025 and Smt S.Pranathi, learned Special Government Pleader for Land Ceiling.

5. Learned counsel for the appellants while reiterating the contents of the writ affidavits and the grounds of the appeal, in one voice, submitted that, once a particular land is declared as 'exempted land' under Section 4(11) of the Act, 1976, no notification under Section 10(1) and notices under Section 10(5) & 10 (6), could be issued with regard to exempted land, as they stand outside the purview of the Act, 1976. They further submitted that, even otherwise, the notice issued under section 10(5), dated 05.01.2008 directing the landowners to surrender the excess vacant land, was not served as mandated under Rule 5, since the company was locked out, it was stated to be affixed on the main door on 08.01.2008, which is not a proper mode of service. They further submit that, in the absence of dispatch of notice by registered post with acknowledgment due, the service cannot be said to be in compliance of the Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976. They further submitted that, the notice under Section 10(5) gives 30 days' time to hand over the possession, if not, the authorities can invoke Section 10(6) and take over the possession of the property. They further submitted that, in the present case, the Section 10(5) notice was deemed to be served on 08.01.2008 and the Section 10(6) was given on 05.02.2008 wherein it was stated that 30 days time was expired on 01.10.2008. They further submitted that, the 30-day period mentioned in the said notice to

surrender possession voluntarily would have expired only on 07.02.2008 and the right of the competent authority to take further action under Section 10(6) would accrue only after 08.02.2008 but the authorities alleged to have been given Section 10(6) notice on 05.02.2008 at a premature stage, which shows that, the authorities have not complied with the mandatory 30-day period prescribed under the Act, 1976. They further submit that, basing on the said Section 10(6) which is fabricated, it cannot be accepted that the respondent authorities have taken possession over the subject property.

(b) Learned counsel for the appellants would further submit that, when the appellants are in the possession of the subject property and were operating its manufacturing units, basing on the panchanama dated 12.03.2008, the respondent authorities have filed a complaint against them stating that appellants have trespassed the subject property, as if possession of the subject property was taken over by the respondent authorities. They further submits that, the said panchanama, on which the witnesses are stated to have signed and which is relied by the official respondents to substantiate that the officials went to the subject property and taken physical possession, do not contain either the addresses of the panchas or their description. Admittedly, there is no signature of the appellants on the alleged panchanama dated 12.03.2008 or the site map annexed thereto. It was further submitted that, in the absence of the signatures of the land owners/appellants on the panchanama, it can be said that the said panchanama was prepared behind

the back of the appellants, and basing on the same, the authorities cannot take or said to have taken the possession over the subject property. In the said circumstances, it can be clearly said that the authorities have prepared the documents (Section 10(6) notice and panchanama) to overcome the Repeal Act, 1999 that came into force on 27.03.2008.

(c) It was further submitted that, the learned single judge has failed to appreciate all the said facts while dismissing the writ petitions. It was further submitted that, the learned single judge failed to appreciate the dictum laid down in ***Hariram Vs State Of Uttar Pradesh***¹ and ***Gajanan Kamlya Patil Vs Addl. Collector and competent authority and others***². Accordingly prayed to allow the writ appeals.

6. On the other hand, learned Special Government Pleader for official respondents contended that, since the company was locked out on that date and when the respondent authorities tried to serve notice on the declarant, they have refused the same, as there was no other go, the said notice was affixed on the main door of the subject property, which is a deemed service and the possession was taken by recording panchanama. She further submits that, Rule 5 and 6 of the Urban Land (Ceiling and Regulation) Rules, 1976 recognize affixation as a valid mode of service. It is further submitted that, it is a settled principle of law that possession of a land can be taken over by execution of a proper panchnama or memorandum, since the panchnama

¹ 2013 (4) SCC 280

² 2014 (12) SCC 523

is evidence in itself that possession has been taken over and from then, land vests in the government absolutely. She further submitted that, in the present case, the possession of the subject property was already taken by the tahsildar, Visakhapatnam by conducting panchanama on 12.03.2008 in the presence of independent witnesses and, by virtue of it, the subject property vests with the Government only and the tahsildar, being the custodian of the subject property, has taken steps for eviction of encroachments.

(b) It is further submitted that, the possession of the subject property has been validly taken by the Respondents by issuing proper notices under Section 10(5) and Section 10(6) of the Act, 1976 prior to the coming into force of the Repeal Act. She further submits that, the learned single judge has rightly dealt with the case and held that, the respondent authorities concerned have taken the possession of the subject property under a valid panchanama dated 12.03.2008 by following the due procedure, as such the same needs no interference and thereby dismissed the writ petitions. The appellants have not made out any grounds warranting the interference of this court and thus, the Appeals deserves to be dismissed being meritless.

7. In reply, learned counsel for the appellants submitted that, in fact, the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad (2nd respondent in *W.P.No.8716/2008*) has issued notice to the APEECL dated 05.01.2008 to deliver the possession of the surplus land with regard to properties situated in Sy.Nos.74/p, 75/p, 76/p in Fathenagar village, Balanagar

Mandal, Rangareddy District, Hyderabad also, besides the subject property. They further submitted that, when the Urban Land ceiling authorities sought to take possession of the land situated at Fathenagar village in the year 2010, the APEECL filed writ petitions before the High Court of the Unified State of A.P., and the said writ petitions were allowed by the learned Single Judge vide common order 03.01.2022 and has set aside the panchanama dated 08.02.2008. The State, being dissatisfied with the said judgment of the learned single judge, preferred two writ appeals vide W.A.Nos.665 & 670 of 2022 before the Division Bench of High Court of State of Telangana and the Division Bench has allowed both the appeals filed by the State and thereby set aside the common order passed by the learned Single Judge. Thereupon, the APEECL, filed civil appeals before the Apex Court vide Civil Appeal Nos.4526 & 4527 of 2024 and the Apex Court was pleased to allow the appeals by setting aside the common judgment of the Division Bench and upheld the orders of the learned single judge. Further, the review petitions filed by the State were dismissed by the Hon'ble Supreme Court under its order dated 22.07.2025. They further submitted that, since the subject matter also falls under the same footing under the very same notices, the present appeals may be considered and orders may be passed in the similar lines.

8. Perused the record and considered the submissions made by respective learned counsel.

9. Before advertizing to the rival submissions canvassed on either side, we must look into Sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively which read as under:-

“10. Acquisition of vacant land in excess of ceiling limit—

(5) Where any vacant land is vested in the State Government under sub-section(3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of notice.

(6) If any person refuses or fails to comply with an order made under sub section(5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary”.

10. On a plain reading of the aforesaid provisions, it is apparent that the statute contemplates giving an opportunity to the landholder or any person in possession of excess vacant land to surrender or deliver possession thereof to the State Government and for this purpose provides for giving notice in writing, ordering such person to surrender or deliver possession of such land. It is only when pursuant to such notice, such person refuses or fails to comply with an order under sub-section (5) within a period of thirty days of the service of notice, that the competent authority is required to take over possession of the vacant land and for that purpose may use force, if necessary. Therefore, the provisions of sub-section (6) are to be resorted to only when there is refusal or non-compliance of an order under sub-section (5) of Section 10 of the Act, 1976 within the prescribed period.

11. Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976 which are relevant for adjudicating the cases read as under:

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

(1) Every draft statement prepared under sub-section (1) of Section 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 3, 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.

12. The above provision pertains to the mode of service of notices and draft statements issued by the competent authority to landowners regarding excess land. It would indicate that draft statements and notices regarding excess land must be served to the land holder and interested persons via *registered post*. This ensures proper notification before taking possession, often in conjunction with Section 10(5) of the Act, 1976.

13. Few relevant provisions of the Repeal Act, 1999 which are also relevant for the purpose of deciding the present Appeals read as under:

“Section 3. Savings—

(1) The repeal of the principal Act shall not affect—

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

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

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

(2) Where— (a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

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

Section 4. Abatement of legal proceedings:*—All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate.*

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.”

14. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not,

assumes great significance after the coming into force of the Repeal Act, 1999, inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10(3) of the Act, 1976 would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land.

15. In the present case, the version of the State is that, a notice U/s. 10(5) of the Act, 1976 was issued on 05.01.2008 asking the declarant (APEECL) to surrender the excess vacant, land within (30) days from the date of its receipts. The company was under lockout, hence the notice issued U/s 10(5) of the Act, 1976 was affixed on the main door on 08.01.2008. Since the declarant had failed to surrender the land within the stipulated time, a notice U/s 10(6) of the Act, 1976 was issued on 05.02.2008, authorizing the Enquiry Officer (Tahsildar) to take over possession of the surplus land and hand it over to the MRO, concerned. The Tahsildar, Visakhapatnam, took over possession of the surplus land to an extent of 8437.48 sq. mtrs. in Sy.No.59/3, Marripalem village, Visakhapatnam (subject property) on 12.03.2008 by executing a panchanama.

16. As could be seen from the record, the Section 10(5) notice is dated 05.01.2008. Even from a bare perusal of the purported Section 10(5) notice, it is clear that the same has not been served on the company in any manner

whatsoever. The signature and name of the person, who has affixed the same, is not at all legible, in the said notice. Even otherwise, if the company was locked out, the respondent can send the notice u/s 10(5) through a registered post by virtue of Rule 5 of Urban Land (Ceiling and Regulation) Rules, 1976. It is relevant here to note that, Section 27 of the General Clauses Act, 1897 envisages that, where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. There was no material to show that the respondents have sent the notice u/s 10(5) through registered post; without resorting to such an option, affixing the notice on the main door cannot be said to be the compliance of mandatory requirement of issuance of notice under section 10(5) of the Act, 1976.

17. However, the service of affixture (or 'substitute service') is used when the addressee refuses to accept it or cannot be located after reasonable diligence. It involves pasting a copy of the notice on the door or conspicuous part of the person's house or workplace in which the addressee ordinarily resides or carries on business or personally works for gain, and shall then

return the original to the authority concerned from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the premises was identified and in whose presence the copy was affixed. In the present case, the section 10(5) notice was affixed on the main door of the company with just a signature, which is not at all legible and the name and address of the person, by whom, the notice was affixed and premises was identified and in whose presence the copy was affixed was not all mentioned. As such, the said notice cannot be said to be affixed by following the procedure laid down by law.

18. The notice under Section 10(6) is reproduced herein below:

***“PROCEEDINGS OF THE SPECIAL OFFICER & COMPETENT AUTHORITY
URBAN LAND CEILING, HYDERABAD***

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

Procgs.No.G1/10571/76

Dated:05.02.2008

*Sub: Urban Land (Ceiling & Regulation) Act, 1976 –HUA- Statement in Form No.I
U/s 6(1) of the Act filed by M/s A.P.E.E.C.L., Fathenagar, Balanagar Mandal,
RR Dist., -Taking over possession of Surplus land.*

Read: Notice U/s 10(5) of the Act dated; 5-1-2008.

ORDER:

Notice U/s 10(5) of the Act was issued to the M/s A.P.E.E.C Fathenagar Balangar Mandal, RR Dist., asking them to deliver the possession of the following surplus land within 30 days from the date of the service of notice under Section 10(5) of the Act.

<i>Sl.No.</i>	<i>Description of the property</i>	<i>Location</i>	<i>Extent in Sq.mtrs</i>
<i>1.</i>	<i>Sy.Nos.74/p, 75/p, 76/p</i>	<i>Fathenagar vg., Balanagar Mandal, Ranga Reddy district</i>	<i>46538.43 Sq.Mtrs</i>

	Sy.No.59/3	Marripalem village, Visakhapatnam District	8437.48 Sq.mtrs (B- Category) equivalent to 12656.22 Sq.mtrs (C- category)
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The 30-days time given in the notice U/s 10(5) of the Act expired on 01- 10-2008 but they failed to deliver possession before the expiry date. Hence Sri S.A.Khader. Enquiry officer of this office is authorized to take over the possession of land in question U/s 10(6) of the Act and hand over the same to the Mandal Revenue Officer concerned and report compliance within one week positively.

*Special Officer & Competent Authority
Urban Land Ceiling, Hyderabad”*

19. Pertinently, the respondents (the State) were unable to explain the date of “01.10.2008” which was mentioned in the Section 10(6) notice dated 05.02.2008 and also why they have not sent the notice Section 10(5) through the registered post. Further, it states that, the 30-day time given in the Section 10(5) notice expired on 01.10.2008 i.e., after the enforcement of the Repeal Act, which is completely incomprehensible.

20. According to the respondents, the enquiry officer in pursuance of the order dated 05.02.2008 took over the actual physical possession of the surplus Subject vacant land on 12.03.2008 by way of a panchanama. It is the case of the Respondents that the panchanama was prepared by the Deputy Tahsildar in the presence of five panchas and the said possession was taken over by drawing a valid panchanama.

21. Admittedly, there is no signature of the land owner on the alleged panchanama dated 12.03.2008 or the site map annexed thereto. Even the descriptions of the panchas or their addresses or even their temporary addresses are not shown therein. In the absence of the signatures of the land owner on the panchanama, the panchanama and the site map will have to be considered as having been prepared behind the back of the appellants and in the office of the authorities. Moreover, the State was not able to give any satisfactory reply as to on what basis it says that at the relevant point time the company was closed/locked out and there was not a soul in site and therefore, the officials were left with no other option but to affix Section 10(5) notice outside the premises. This is something which is absolutely disagreeable.

22. In the ***Hari Ram (supra1)*** case, the Hon'ble Apex Court dealt with the very same issue i.e. deemed vesting of the surplus land under Section 10(3) of the Act, 1976. The matter was from Allahabad. The Apex Court explained the concept of voluntary surrender, peaceful dispossession and forceful dispossession. The relevant observations are quoted under:-

"24. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of "vesting" on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in Customs and Excise Commissioners v. Zielinski Baker and Partners Ltd. [(2004) 1 WLR 707 : (2004) 2 All ER 141 (HL)] , All ER at para 11 described as "heroic piece of deeming".

25. The word “vest” or “vesting” has different meanings. *Legal Glossary*, published by the Official Language (Legislative) Commission, 1970 Edn. at p. 302: “Vest.—(1) To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, (2) To become legally vested; (TP Act) Vesting order.—An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;”

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28. “Vest”/“vested”, therefore, may or may not include “transfer of possession”, the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.

29. What is deemed “vesting absolutely” is that “what is deemed to have acquired”. In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land are pitted against a statutory hypothesis. Possession, there is an adage is “nine points of the law”. In *Beddall v. Maitland* [(1881) 17 Ch D 174 : (1881-85) All ER Rep Ext 1812] Sir Edward Fry, while speaking of a statute which makes a forcible entry an indictable offence, stated as follows: (Ch D p. 188) “... This statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession he may use force to keep out a trespasser; but, if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance.”

30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words “acquired” and “vested” have different meaning and content. Under Section 10(3), what is vested is *de jure* possession not *de facto*, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

31. The “vesting” in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in *Maharaj Singh v. State of U.P.* [(1977) 1 SCC 155], while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that “vesting” is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in *Rajendra Kumar v. Kalyan* [(2000) 8 SCC 99] held as follows: (SCC p. 114, para 28) “28.... We do find some contentious substance in the contextual facts, since vesting shall have to be a ‘vesting’ certain. ‘To “vest”, generally means to give a property in.’ (Per Brett, L.J. *Coverdale v. Charlton* [(1878) 4.

32. We are of the view that so far as the present case is concerned, the word “vesting” takes in every interest in the property including *de jure* possession and, not *de facto* but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act. 33. Before we examine sub-section (5) and subsection (6) of Section 10, let us examine the meaning of sub-section

(4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section 3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in subsection (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

34. Sub-section (5) of Section 10, for the first time, speaks of “possession” which says that 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 authorised by the State Government.

35. If *de facto* possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression “where any land is vested” under sub-section (5) of Section 10. Surrendering or transfer of possession under subsection (3) of 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) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while subsection (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of “possession” which says, if any person refuses or fails to comply with the order made under subsection (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 to only in a situation which falls under sub-section (6) and not under sub-section (5) of 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), then “forceful dispossession” under sub-section (6) of Section 10.

37. The requirement of giving notice under subsections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the subsections 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 subsection (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall”. "

23. In the very same judgment, the effect of the Repeal Act, 1999 has also been discussed. Paragraphs 41 and 42 respectively read as under:-

"41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. 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 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under subsection (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."

24. Thus, the dictum, laid down in Hari Ram (supra¹), is that where the possession of the subject land has not been taken over by the State Government or by any person duly authorized 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 act has come into force.

25. In ***Raghubir Singh Sehrawat v. State of Haryana***³, the Apex Court has held that the proposition of law that mere paper possession is not sufficient to vest the land in the State. That was a case under the Land Acquisition Act, 1894. The Apex Court, while allowing the appeals and declaring the acquisition illegal, observed that the taking of possession means the actual possession. Paper possession is not sufficient to vest the land in the State. It was noticed various revenue entries recorded in the revenue records which showed that the crops were grown on the different acquired land said to have been taken over. The Apex Court noticed that the State had not questioned the genuineness and correctness of the entries contained in the revenue records. This Hon'ble Court also took notice of the fact that it was neither pleaded nor any evidence had been produced before the Court to show that the occupant of the land had unauthorisedly taken possession of the land after its acquisition.

26. Under Sections 10(5) and 10(6) of the Act, 1976 the State is required to take over physical possession of vacant land in a cogent and convincing manner. As per the decisions of this Court in ***Hari Ram (supra 1)*** and ***Gajanan Kamlya Patil vs. Additional Collector & Competent Authority (ULC) and Ors (supra 2)*** respectively, unless actual physical possession of the Subject property is taken over prior to the Repeal Act, 1999 all proceedings shall stand abated upon its enactment. Mere issuance of a notice

³2012 AIR SCW 240

under Section 10(3) of the Act, 1976 does not automatically entitle the officials of the Respondents to take possession. The requirement of giving notice under Sections 10(5) and 10(6) of the Act, 1976 respectively is mandatory.

27. In the absence of any cogent and convincing evidence or document to show that the Government has taken actual physical possession of the Subject Land as contended or any other material to show that the notices under Sections 10(5) and 10(6) respectively were validly prepared and served on the Appellants, both the order under Section 10(6) and the panchanama have to be treated as bogus and fabricated. In other words, prepared after the Repeal Act, 1999 came into force. Even taking the Respondents' case at the highest, the very admission on the part of the official respondents that the notice was served on 08.01.2008 and Section 10(6) notice is issued on 05.02.2008 confirms that the mandatory period of 30 days between Sections 10(5) and 10(6) notices is not met and the same has to be held void, illegal and bad in law. Moreover, as stated supra, there is no whisper or explanation forthcoming from the authorities as to how the date of 01.10.2008 is mentioned in the 10(6) notice while calculating the expiry of 30 days period from either 05.01.2008 or 08.01.2008 of the said notice and as to who has affixed the notice.

28. The respondent state proceeds further saying that, as there was no voluntary surrender of the excess land within thirty days from the date of affixation, it had to invoke Section 10(6) of the Act, 1976 and accordingly took

over the possession. It is extremely hard to believe that when such a large parcel of land is being taken over, the signature of the landowner(s) was not obtained in the panchnama so as to attach sanctity and authenticity to such exercise of taking over of actual possession. Therefore, from the above circumstances, it can be clearly said that, both the panchanama and Section 10(6) notice dated 05.02.2008 were fabricated and created, after the repeal act has come into force, for the purpose of the case.

29. Further, there is no material to show that the subject property is in the physical possession of the respondent authorities. In the absence of the same, this Court is of the considered view that, the valuable rights of the parties cannot be allowed to be defeated, on the basis of the documents prepared after the Repeal Act has come into force. However, the learned single judge has miserably failed to look into the said aspects while dismissing the writ petitions.

30. It is relevant to mention here that, admittedly, common notices under Section 10 (5) & 10(6) were issued to APEECL with regard to two properties, one in Hyderabad and another in Visakhapatnam (A.P.). APEECL filed two writ petitions before the High Court of the Unified State of A.P., in relation to the property situated at Hyderabad. The said writ petitions were allowed by the learned Single Judge of High court of Telangana vide common order 03.01.2022 wherein it was observed that, the panchanama is the document, which is prepared at the subject site in the presence of 3 to 5 persons who are

not only independent persons but also well respected in the locality of the subject property. The panchanama is prepared in their presence usually noting down as to why they were called or the purpose for which the panchanama is prepared, recording the events that have taken place in their presence. Usually, the name, address, age and occupation of the panchas is noted down in the panchanama besides noting the date and time and place where the panchanama is prepared and also the purpose for which the panchanama is prepared, what action has been taken. The panchanama will be prepared in the presence of the owners / possessors of the subject site and the panchas. Usually, the panchanama will be accompanied by a site plan, which is prepared either by the person writing the panchanama or by a competent surveyor, who after surveying, demarcating and measuring the land in question will prepare a rough sketch indicating the subject land in the site plan annexed to the panchanama. After the preparation of both the panchanama and the site plan, the panchas will be read over the contents of the panchanama and the endorsement or signature of the panchas will be taken both on the panchanama and also on the site plan prepared. The person who has prepared the panchanama and site plan will also sign both the documents. The panchanama records what the panchas have seen/observed, the action taken.

31. However, as the authorities have not followed the above said process while recording panchanama dated 08.02.2008 with regard to the property

situated in Hyderabad, the learned Single judge of State of Telangana has found fault with the said panchanama and has set aside the same. Aggrieved by the order of the learned single judge of State of Telangana, the State preferred two writ appeals vide W.A.Nos.665 & 670 of 2022 before the Division Bench of High Court of State of Telangana. The Division Bench has allowed both the appeals filed by the State and thereby set aside the common order passed by the learned Single Judge. Thereupon, the APEECL, filed civil appeals before the Apex Court vide Civil Appeal Nos.4526 & 4527 of 2024 and the Apex Court was pleased to allow the appeals by setting aside the common judgment of the Division Bench and restored the orders of the learned single judge. Further, the review petitions filed by the State were dismissed by the Hon'ble Supreme Court under its order dated 22.07.2025.

32. Though the two properties were dealt under the very same 10 (5) & 10(6) notices, after bifurcation of the States, the subject property in Visakhapatnam was dealt separately in the High Court of A.P. before the learned single judge wherein the writ petitions preferred by the appellants were dismissed under a common order dated 04.02.2025.

33. In the present case also, the State has prepared the panchanama dated 12.03.2008 in the same way, in the which the State has prepared a panchanama with regard to the Hyderabad property dated 08.02.2008. The only difference is that the panchanama with regard to subject property was prepared under the manuscript and the panchanama with regard to

Hyderabad property was in printed form. As such, the said panchanama dated 12.03.2008 is liable to be set aside.

34. Since, the issue dealt by Apex court with regard to Hyderabad property in Civil Appeal Nos.4526 & 4527 of 2024 is similar to that of the case on hand with regard to subject property, this court, should, invariably hold that the said notices and the panchanama with regard to the subject property also are bad in law. Therefore, we are of the considered opinion that there was good reason for this Court to interfere with the judgment rendered by the learned Single Judge and that the impugned common order is liable to be set aside in all aspects.

35. In the result, all the appeals are **allowed**. The impugned judgment and order passed by the learned single judge dated 04.02.2025 in W.P.Nos.8716 of 2008, 12390 & 21393 of 2012 is hereby set aside. Consequently, the said writ petitions are allowed setting aside the Section 10(6) notice dated 05.02.2008 and the panchanama dated 12.03.2008. There shall be no orders as to costs.

Miscellaneous applications, pending if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

RAVI CHEEMALAPATI, J
BRS