

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO

WRIT PETITION Nos.39437 & 39438 of 2013, W.A.Nos.453 & 675
of 2008 and W.A.Nos.153 & 154 of 2015

W.P.No.39437 of 2013

Between:

Majeti Sambrajjam
W/o. Late Veeranjeaneyulu,
Hindu, Aged 80 years,
R/o 49233 Lalitha Nagar,
Visakhapatnam City & Two others.

...Petitioners

Versus

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Department of Revenue,
Secretariat Buildings,
Hyderabad & Four others

...Respondents

Counsel for petitioners : Mr. Balaji Medamalli

Counsel for respondents : Additional Advocate General
Andhra Pradesh

W.P.No.39438 of 2013

Smt. Chittoori Kanakadurga Lakshmi Devi
W/o Late Shanmuka Swamy,
Aged 70 years,
R/o. D.No.13 24/75, Karthik Towers,
Opp. Viswasanthi Talent School, Kamakoti Nagar,
Vijayawada & six others.

...Petitioners

Versus

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Department of Revenue,
Secretariat Buildings,
Hyderabad & Six others

...Respondents

Counsel for the 1 st petitioner	: Mr. S. Raja Sekhar Kashyap
Counsel for petitioners 2 to 7	: Mr. Balaji Medamalli
Counsel for respondents	: Additional Advocate General Andhra Pradesh

W.A.No.453 of 2008

Sri V. V. Chalapathi Rao,
6S/o Late Venkatarao, V A O,
R/o. Vijayawada,
Krishna District & Thirty Four others.

... Appellants

Versus

Tadikamalla Ramaiah
S/o. Venkata Subba Rao, Hindu,
Vidhyadharapuram,
Vijayawada & Twenty one others.

...Respondents

Counsel for appellants 1, 34, 35.	: Mr. M.V. S. Suresh Kumar
Counsel for appellants 2, 6, 8 to 33	: Mr. S. Raja Sekhar Kasyap
Counsel for appellants 3, 4, 5 & 7	: Mr. G. Pedda Babu, learned counsel appearing for Mr. Rama Chandra Rao Gurram

Counsel for respondents : Mr. D.V. Seetharam Murthy
1 to 10

Counsel for respondents : Learned Government Pleader
11 & 12 for Revenue

Counsel for respondents : Mr. S. S. Bhatt
13 to 22

W.A.No.675 of 2008

Tadikamalla Ramaiah,
S/o. Venkata Subba Rao, Hindu,
Petty Employee in Cloth Shop Cultivation,
Vidhyadharapuram,
Vijayawada & Nine others.

... Appellants

Versus

The District Collector,
Krishna, Machilipatnam,
R/o Vijayawada, Krishna District,
C/o. M.R.O Urban & Forty Four others.

...Respondents

Counsel for appellants : Mr. G. Pedda Babu, learned
1 & 2 counsel appearing for Mr. Rama
Chandra Rao Gurram

Counsel for appellants : Mr. Tota Tejeswara Rao
3, 8 & 10

Counsel for appellants : Mr. V. S. R. Anjaneyulu
4, 5, 6, 7 & 9

Counsel for respondents : Government Pleader for
1 & 2 Revenue

Counsel for respondents : Mr. M.V.S. Suresh Kumar
3 to 36

Counsel for respondents : Mr. S. S. Bhatt
36 to 45

W.A.No.153 of 2015

Between:

Majeti Sambraajyam,
W/o Late Veeranjanyulu,
Hindu, Aged 80 years,
R/o.49233, Lalitha Nagar,
Visakhapatnam City & Two others.

...Appellants

Versus

Tadikamalla Ramaiah,
S/o Venkata Subba Rao,
Hindu, Vidhyadharapuram,
Vijayawada & Forty Six others.

...Respondents

Counsel for the appellants	: Mr. Balaji Medamalli
Counsel for respondents 1 to 10	: Mr. N. Ashwani Kumar
Counsel for respondents 11 & 12	: Government Pleader for Revenue
Counsel for respondents 13 to 45	: Mr. M.V. S. Suresh Kumar
Counsel for respondents 46 & 47	: Mr. G. Pedda Babu, learned counsel appearing for Mr. Rama Chandra Rao Gurram

W.A.No.154 of 2015

Smt. Chittoori Kanakadurga Lakshmi Devi
W/o. Late Shanmuka Swamy, Aged 70 years,
R/o. D.No.13 24/75, Karthik Towers,
Opp. Viswasanthi Talent School, Kamakoti Nagar,
Vijayawada & Nine others.

... Appellants

Versus

Tadikamalla Ramaiah,
S/o Venkata Subba Rao, Hindu,

Vidhyadharapuram,
Vijayawada & Forty Six others.

...Respondents

Counsel for appellants 1 to 7	: Mr. Balaji Medamalli
Counsel for appellants 8 to 10	: Mr. V. S. R. Anjaneyulu
Counsel for respondents 1 to 10	: Mr. N. Ashwani Kumar
Counsel for respondents 11 & 12	: Government Pleader for Revenue
Counsel for respondents 13 to 45	: Mr. M.V. S. Suresh Kumar
Counsel for respondents 46 & 47	: Mr. G. Pedda Babu, learned counsel appearing for Mr. Rama Chandra Rao Gurram

Dt.: 03.11.2023

COMMON JUDGMENT:

(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri Balaji Medamalli, Mr. S. Raja Sekhar Kashyap, Mr. M.V.S. Suresh Kumar & Sri G. Pedda Babu, learned counsel appearing on behalf of Sri G. Ramachandra Rao, learned counsel for the petitioners/appellants and Sri D.V. Seetharam Murthy, Sri S.S. Bhatt, learned Government Pleader for Revenue & Additional Advocate General, appearing for the respondents.

2. The Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') came into effect on 17.02.1976. By that date, one Sri M.Venkata Subba Rao was the owner of Ac.2.00 of land and Smt. M. Sambraijyam was the owner of Ac.1.00 cents of land in Survey No.7 of Vidyadharapuram, Vijayawada Municipal area. They had filed applications, for exemption under Section 20 of the Act, from the provisions of the Act on 21.05.1979. While these petitions were pending, both Sri M.V Subba Rao and Smt. M. Sambraijyam were declared to be holding excess land to an extent of 6218 sq.mts in CC.B1-337/1976 and 2547 sq.mts in CC.B1-285/1976 respectively. In the case of Sri M.V. Subba Rao, the proceedings under Section 10(1) of the Act on 21.09.2018 was published in the Gazette dated 20.11.1998, the proceedings under Section 10(3) of the Act on 17.12.1983 was published in the Gazette dated 26.12.1983. Subsequently, notice under Section 10(5) of the Act is said to have been sent by registered post with acknowledgement due, on 13.04.1984 to Sri M.V. Subba Rao. It is claimed that notices were served on Smt. M. Sambraijyam, by the surveyor.

3. Sri M.V. Subba Rao moved the erstwhile High Court of Andhra Pradesh, by way of W.P.No.8797 of 1984, contending that the Urban Land Ceiling Authorities cannot take possession of the

6218 sq.mts, declared as excess land, until his application for exemption is disposed of. The learned Single Judge of the Hon'ble High Court by an order dated 20.06.1984 had directed Sri M.V. Subba Rao should not be evicted from his land till further orders. Subsequently, the writ petition was allowed on 09.11.1984 directing that Sri M.V. Subba Rao should not be evicted from the land until his exemption application is disposed of. Sri M.V. Subba Rao passed away on 01.07.1985 and this fact was intimated to the authorities by his widow who informed the authorities that the authorities should take note of the legal heirs of late Sri M.V. Subba Rao being herself and their five sons and five daughters. The application for exemption is said to have been rejected by the authorities on 01.10.1994 by way of a memo 66547/NC.I/1(89-12).

4. In the case of Smt. M. Sambraiyam, exemption application was filed on 21.05.1979 and 10(1) notification dated 29.09.1980 was published in the Gazette dated 20.11.1980, 10(3) proceedings dated 17.12.1983 published in the Gazette dated 26.12.1983. The 10(5) notice is said to have been served on the declarants through a special surveyor on 13.04.1984. Be that as it may, Smt. M. Sambraiyam filed W.P.No.13136 of 1984, before the high court, for stay of dispossession till her application for

exemption was disposed of. An interim direction, staying dispossession was granted on 18.09.1984 and the writ petition was allowed on 07.07.1988 directing stay of further dispossession of Smt. M. Sambrajiyam till her application for exemption was disposed of. The exemption application was rejected by way of Memo 1868/UC.I(1)/84-10 dated 26.07.1994. Smt M. Sambrajiyam and legal heirs of Sri M.V. Subba Rao contend that these orders of rejection were not served on them at all and they had no knowledge of these proceedings until the rejection proceedings were produced in the course of hearing of W.P.No.35416 of 2013.

5. The Special Officer and competent authority Urban Land Ceiling is said to have authorised the Special Deputy Tahsildar No.2 to take over possession of the excess land held by Sri M.V. Subba Rao and Smt. M.Sambrajiyam and possession is said to have been taken over by the Special Deputy Tahsildar No.2 on 22.12.1994 and 30.12.21994 respectively. The declarants deny any notice of taking over of the land and contend that they have remained in possession of the land till now.

6. The declarants, in both cases, having come to know that the excess land of the declarants have been allotted to the

revenue employees, by the Mandal Revenue Officer, in RC.H.1749/90 dated 05.01.1996 had approached this Court, by way of W.P.No.35416 of 2013 contending that land cannot be allotted to any third party while their application for exemption is pending. At that stage, the declarants were informed about the rejection of their applications for exemption and the writ petition was dismissed giving liberty to the declarants to question the memo of rejection. Thereupon, the declarants filed W.P.No.39437 and 39438 of 2013 respectively, challenging the said rejection of the exemption applications. Subsequently, the prayer was amended in both petitions for a declaration that the proceedings under the Act, 1976 had abated in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

7. At that stage, certain third parties, claiming to be in possession of the land initially as tenants and subsequently in their own right had approached the erstwhile High Court of Andhra Pradesh by way of W.P.No.15732 of 1996 contending that they were the owners of the land on account of an award rendered by arbitrators and which had been made the rule of the Court in O.P.No.70 of 1995 on the file of Principal Subordinate Judge, Vijayawada, on 24.03.1995, and that the allotment of land in favour of the employees of the revenue department apart from

land allotted in favour of the Fire Service department and Income Tax Department is invalid and should be set aside. This writ petition was partly allowed on 24.01.2008. The learned Single Judge held that the land stood vested in the State on account of proceedings under Section 10(3) of the Urban Land Ceiling Act and that the claim of the third party tenants over the land, on the basis of an order of the civil Court, after the vesting of the land in the State is of no consequence and cannot be accepted. The learned Single Judge also held that the allotment of the land to the employees of the revenue department, who were arrayed as respondents 3 to 35 in the said writ petition is also not in accordance with law including G.O.Ms.No.840 dated 16.06.1982 and set aside the allotment of land in favour of the employees of the Revenue Department.

8. Aggrieved by the above judgment, respondents 3 to 35 in W.P.No.15732 of 1996 filed W.A.No.453 of 2008. The third party tenants, who had filed W.P.No.15732 of 1996 filed W.A.No.675 of 2008. Smt. M. Sambrajyam and her children filed W.A.No.153 of 2015 with leave of the Court, which was granted. The legal heirs of Sri M.V. Subba Rao filed W.A.No.154 of 2015 with leave, which was granted.

9. A conspectus of the above facts would show that all the Writ Appeals relate to the order and the learned Single Judge in W.P.No.15732 of 1996 leaving aside W.P.Nos.39437 and 39438 of 2013 which have been filed, challenging the orders of rejection of applications filed for exemption under the Urban Land Ceiling Act.

10. There was no representation for the appellants in W.A.No.675 of 2008.

11. Sri G. Pedda Babu, learned counsel appearing for Sri G.Ramachandra Rao, learned counsel appearing for the declarants in W.P.No.39437 and 39438 of 2013 and W.A.Nos.153 and 154 of 2015 submits as follows:

A) The application for exemption had been filed on the ground that the land was being used mainly for agricultural purpose and the findings of the authority that the land was not being used for agricultural purposes is without any basis; the applications for exemption were given in the year 1979 and were rejected in 1994 on the basis of certain reports sent by the Special Officer and Competent Authority dated 06.09.1991 setting out the situation as of 1991; considering the application of 1979 on the basis of fact situation of 1991 is on the face of it arbitrary and illegal; the rejection of the exemption

application on the ground of alleged allotment of land to employees of the Revenue Department is arbitrary as the said allotment itself is without authority and jurisdiction;

B) The Government should have taken into account subsequent events relating to the issue of G.O.Ms.No.733 dated 31.10.1988, granting a general exemption of Ac.5.00 cents of land, situated in peripheral areas of Urban Agglomerations which would effectively exempt the entire extent of land owned by the declarants;

C) Sri G. Pedda Babu apart from raising the above two grounds has raised an additional ground relating to the effect of the Repeal Act 15 of 1999 on the present case. He contends that the Urban Land Ceiling Authorities did not take possession of the excess land of the declarants and the proceedings being produced by the Urban Land Ceiling Authorities to claim that such possession has been taken is not in accordance with law and have to be ignored. He contends that the method of taking possession of the excess land under Section 10(5) or (6) of the Act requires notice to be given to the declarants and the land has to be taken possession by way of a proper panchanama by the Urban Land Ceiling Authorities. In the present case no

notices, under either sub section, was given to the declarants when possession of the land is said to have been taken under Section 10(6) on 22.12.1994 in the case of Sri M.V. Subba Rao and 30.12.1994 in the case of Smt. M. Sambrjayam and consequently, the claim of the Urban Land Ceiling Authorities that they have taken possession of the excess land would have to be negatived. He would further contend that the declarants losing land are to be compensated under section 11 of the Act and no compensation has been offered till today because the excess land is still with the declarants.

12. The learned Government Pleader in the office of the learned Additional Advocate General contends that the proper procedure required for taking possession of the excess land had been adhered to; the proceedings in relation to the taking of the possession of the excess land have been placed before this Court by way of a memo; the panchanamas and notices produced under this memo would make it very clear that possession of the land was taken with due notice to the declarants and by recording necessary panchanamas; the rejection of the exemption applications of the declarants is in accordance with law and in any event the declarants do not have any vested right to claim

exemption and the declarants cannot insist that exemptions have to be granted for the asking. It would be the prerogative of the State to determine whether such exemptions ought to be granted or not and the discretion to decide such issues would always remain vested with the State; the application for exemption was made on the ground that the said land was being used as agricultural land. However, by the time the application came to be disposed of, the very nature of the land had changed and houses were being constructed in the entire area. In such circumstances, the question of treating the land as agricultural land and granting exemption would not arise.

13. Sri S. Raja Sekhar, learned counsel appearing for the appellants in W.A.Nos.453 of 2008 would contend that the appellants are persons who are Class-IV employees and would definitely fall within the ambit of the persons who are eligible for allotment of excess land under the Urban land Ceiling Act. He would rely upon G.O.Ms.No.840 dated 16.06.1992 to contend that they would fall within the ambit of Clause I of he said G.O which authorises allotment of land to Cooperative Housing Societies consisting of Class-IV employees as well low income and middle income groups. He would further submit that the learned Single Judge, in his judgment dated 24.01.2008 in W.P.No.15732 of

1996, having held that the writ petition itself is not maintainable as the petitioners therein had no right over the land, ought not to have gone into the merits and demerits of the allotment of the excess land, in favour of the appellants in W.A.No.453 of 2008.

14. Sri G. Pedda Babu in reply to these contentions would submit that the disposal of vacant land acquired under the Act is governed by Section 23 of the Act. This provision empowers the State Government to allot, by order, any excess vacant land acquired by the State Government. In the present case, the land is said to have been allotted to the appellants in W.A.No.453 of 2008 by the Mandal Revenue Officer, on the basis of certain recommendations said to have been made by the District Level Committee. Neither the District Level Committee nor the Mandal Revenue Officer can be treated as the Government as “The Government” under Section 23 of the Act and the entire allotment itself is wholly without authority of law or jurisdiction. In the circumstances, the question of such allotment being permitted does not arise and this Court has ample power to reject any such attempt of allotment of land by an incompetent authority.

CONSIDERATION OF THE COURT:

15. The effect of the repeal of the Urban Land Ceiling Regulation Act, 1976 may be dealt with first.

16. The Urban land (Ceiling and Regulation) Act, 1976 was repealed by way of the Urban land (Ceiling and Regulation) Repeal Act, 1999 which came into effect to the State of Andhra Pradesh on 27.03.2008. Section 3(2) of the Repeal Act reads as follows:

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.

17. The Hon'ble Supreme Court in **State of U.P. vs. Hari Ram**,¹ had held, on this issue, in the following manner:

Effect of the Repeal Act

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.

¹ (2013) 4 SCC 280

42. The mere vesting of the land under sub-section (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 sub-section (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.

Accordingly, the holders of excess vacant land, under the Urban Land (Ceiling and Regulation) Act 1976 are entitled to continue as owners of the said land if possession of the said land had not been taken from them by the Urban Land Ceiling Authorities before the Repeal Act came into force. The question that would arise for consideration is whether possession of the land had been taken by the Urban Land Ceiling Authorities, as required under the provisions of the Urban Land Ceiling Act, prior to 27.03.2008 when the Repeal Act came into force.

18. The scheme of the Urban Land Ceiling Act is that the determination of the vacant land held in excess of ceiling limit is

done in accordance with the procedure set out in Section 6 to 9 of the Act. After such determination, the acquisition of the excess vacant land is to be done in accordance with Section 10 and 11 of the Act. Initially, a notification is issued under section 10(1) giving the particulars of the vacant land held by the declarant in excess of the ceiling limit with a statement that the said land is to be acquired by the concerned State Government and claims of any persons interested in such vacant land may be placed before the Government. The Government, after considering such claims, if any, by interested persons, under Section 10(2) shall determine the nature and extent of such claims and pass necessary orders. Thereafter, the Government, under Section 10(3) would publish a notification in the official gazette of the State declaring that the excess vacant land set out in the notification published under sub section (1) shall be deemed to have been acquired by the State Government with effect from the date that may be specified in the declaration. Upon such publication, the land shall be deemed to have vested absolutely in the State Government free from all encroachments with effect from the date specified in the declaration. Section 10(4) states that any transfer, of the excess land, done during the period between the publication under sub Section 1 and the date specified in sub section 3 would be treated

as a null and void transfer. After completion of these steps, the Government would take steps for taking possession of the land. The procedure for taking possession of the land is set out in section 10(5) and 10(6) which are extracted below:

10(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 authorised by the State Government in this behalf within thirty days of the service of the notice.

10(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.

Explanation: -----

19. Under section 10(5) the competent authority Urban Land Ceiling of the said Urban Agglomeration would have to issue a notice in writing to the person in possession of the excess land to surrender or deliver possession of the said land to the Government or to any person authorized by the State Government without 30 days from the date of service of the notice on the person in possession of the land. In the event of the

person not handing over the land in compliance of the notice issued under Section 10(5), the competent authority can take possession of the vacant land and are caused it be given to the Government or a person authorized by the Government and for such purpose use necessary force to take over the land.

20. The requirement under these two provisions is that there should be a notice to the persons in possession of the land before taking possession of the land. In the present case, it would have to be seen whether such notice has been issued under Section 10(5); whether any further notice has to be issued under Section 10(6); what would be the consequences if such notices have not been issued prior to taking possession; what is the method of taking possession and the consequences if such methods have not been followed.

21. The Competent authority, Urban Land Ceiling, Vijayawada has filed counter affidavits in W.P.Nos.39437 and 39438 of 2013.

22. In the counter affidavit filed in W.P.No.39437 of 2013, it is contended that possession of the excess land was taken on 28.06.1984. The documents filed along with this Counter contains a notice said to have been issued under Section

10(5) of the Act, on 14.11.1983. However, there is no endorsement of receipt by any person to show that the notice has been served on the declarant Smt. M. Sambrajjam. Further, Smt. Sambrajjam approached the High Court for protection of her possession till her application for exemption is disposed of, by way of W.P.No. 13136 of 1984 and stay of dispossession was granted by the High Court on 18.09.1984 and the writ petition came to be allowed on 07.07.1988, directing the authorities not to dispossess the declarant till the disposal of the exemption application, which came to be disposed only on 26.07.1994. The competent authority never challenged the orders of the High Court nor was the fact of taking possession of the land placed before the High Court, during the four years the writ petition was pending. Another factor that needs to be noticed is that the notice under section 10(5) of the Act was served on the other declarant Sri M.V. Subba Rao, by registered post while the notice was said to have been served on Smt. Sambrajjam, by a special surveyor who does not obtain any acknowledgement of service of notice. The 2nd Respondent has also placed a copy of the report of the special deputy Tahsildar, dated 28.08.1984, before this Court. This report is to the effect that the special deputy tahsildar has taken possession of the excess land from Smt. Smabrajjam.

23. The 2nd Respondent also states that the possession of the land was taken again from Smt. Sambrajjam and her family members in the year 1994. This can only mean that the authorities were not in possession of the excess land in 1994. A conspectus of all these facts can only give rise to the conclusion that the authorities neither served any notice under section 10(5) of the Act nor had taken possession of the land under section 10 (6) of the Act from Smt. Sambrajjam.

24. In the Counter affidavit filed in W.P.No. 39438 of 2013, the notice under Section 10 (5) of the Act was said to have been served under registered post to Sri M.V. Subba Rao, on 13.04.1984, and the same is accepted by the petitioners in this writ petition. However, the 2nd respondent does not claim to have taken possession of the excess land in the year 1984 and states that possession of the land was taken in 1994.

25. Coming to the proceedings initiated for taking possession of the land of the declarants in 1994, the following facts are pleaded and documents in support of these pleadings are placed before this Court.

26. In W. P. No. 39437 of 2013, a memo dated 23.11.1994 has been produced. In this memo, the Special Deputy

Tahsildar-II in the office of the competent authority is reminded that he was directed to file a report about the status of the excess land on 26.09.1994 and calls on him to complete the task immediately. This memo also strengthens the contention of the declarants that the authorities were not in possession of the land till then. In any event, the next document produced by the 2nd respondent is the panchanama , dated 30.12.1994, under which the special deputy tahsildar is said to have taken possession of the excess land. There is no pleading or material placed before this court to state that a notice was issued either under section 10(5) or 10 (6) of the Act, prior to taking possession of the excess land. In this case there is no notice issued either in 1984 or in 1994 under section 10(5) or 10(6) of the Act, before the panchanama of 30.12.1994 was prepared.

27. In W.P. No. 39438 of 2013, a proceeding of the competent authority, dated 17.10.1994, authorizing the Special Deputy Tahsildar No. II to take possession of the excess land, under section 10 (6) was produced before this court. The panchanama, dated 22.12.1994, recording that possession of 6218 square meters of land had been taken has been produced. In this case also no notices under section 10 (5) or 10(6) issued in 1994 have been produced.

28. The Petitioners, in both writ petitions, submit that they are still in possession of the land. The question that would still remain is whether the competent authority took possession of the land and whether such possession is in accordance with the provisions of the Act.

29. The records produced by the Competent Authority show that there are proceedings, recording the taking of possession by the Deputy Tahsildar in December, 1994. The further proceedings of allotment of land to the appellants, in W.A. No. 453 of 2008, indicate that the competent authority had taken steps for taking possession of the property. The question of whether these proceedings were mere paper proceedings or whether actual physical possession was taken cannot be decided by this court, on the basis of the material produced by either side.

30. There is no record or pleading that notices, under section 10(5) or (6), had been served on the declarants, in either writ petition, in 1994, prior to the possession proceedings in 1994. Notice under section 10 (5) was served on the declarants in W.P.No.39437 of 2013, in 1984. The contention that Notice was served under section 10(5) of the Act, on the declarants in W.P.No. 39438 of 2013, in 1984, is not supported by any record

and the copy of the notice produced by the Competent authority does not inspire confidence.

31. The scheme of the Act set out in section 10(5) and (6) has been explained by the Hon'ble Supreme Court in **State of U.P. vs. Hari Ram**², in the following manner:

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 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. forcible 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.

² (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583 : 2013 SCC OnLine SC 213 at page 297

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

32. A notice, under section 10 (5), had been given to the declarants, in W.P.No. 39438 of 2013, in the year 1984. Whether that notice can be treated as compliance of the requirement of section 10 (5) and (6), in the year 1994, remains to be answered. The purpose of a notice under section 10 (5) is to give an opportunity to the declarant to surrender the excess land peacefully and to receive the compensation payable under section 11 of the Act. It is only when the declarant refuses to hand over the land, that the coercive action of forceful dispossession, under section 10(6), can be undertaken. This would mean that a reasonable opportunity should be given to the declarant, to surrender the excess land voluntarily, before forceful dispossession is taken up. A notice issued in 1984 after which there was continuous litigation for 10 years, cannot be treated as

sufficient notice under section 10 (5) of the Act. It is also the case of the declarants that they were unaware of the rejection of their applications for exemption, which would mean that there was no opportunity for the declarants to hand over possession. As held by the Hon'ble Supreme Court , in the judgement extracted above, these provisions are mandatory. Consequently, dispossession without issuance of such notices would render the said act non est.

33. In a similar situation, a Division Bench of the Hon'ble High Court at Hyderabad for the states of Telangana and Andhra Pradesh took a similar view in the case of **Tiebeam Technologies India Private Limited vs. State of Telangana**³. The relevant passages read as follows:

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

Therefore, it is clear that the steps taken under section 10(5) and 10 (6) of the Act did not stand and they were set aside. Once they had been set aside, no one can rely upon the alleged possession taken on 20-06-1998. If all the proceedings including those under section 10(5) and 10 (6) had gone, the claim that possession was taken should also go. If no one can fall back upon the taking

³ (2018) 5 ALD 239 (DB)

over of possession on 20-06-1998, the question of redelivery of possession by the order impugned in the writ petition would not arise.”

34. In view of the above discussion, as no notices under section 10(5) or (6) had been given to the declarants in both cases, prior to taking steps for taking over possession of the excess lands of the declarants, it must be held that the Competent authority has not taken possession of the excess land of the declarants in both cases and they are entitled to the benefit of section 3 and 4 of the Urban land (Ceiling and Regulation) Repeal Act, 1999.

35. Consequently, W.P.No. 39437 and 39438 of 2013 are allowed holding that the proceedings in CC No. B1-337/76 and CC.B1-285/1976 before the Special Officer and Competent Authority, Vijayawada stand abated and the rights of the petitioners in W.P.No. 39437 and 39438 of 2013, in the land which has been declared as excess land in the above proceedings, shall stand restored.

36. In view of the above finding and declaration, W.A. No.453 of 2008 and W.A.No.675 of 2008 shall stand dismissed and W.A.No.153 and 154 of 2015 shall stand disposed of, in terms

of the Judgment in W.P.No.39437 and 39438 of 2013. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R.RAGHUNANDAN RAO, J

RJS

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO

**WRIT PETITION Nos.39437 & 39438 of 2013, W.A.Nos.453 & 675
of 2008 and W.A.Nos.153 & 154 of 2015**

(per Hon'ble Sri Justice R.Raghunandan Rao)

Dt: 03.11.2023

RJS