

G. V. Mohan and Others. Vs. the State of Andhra Pradesh,

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Court : Andhra Pradesh

Decided On : Oct-08-2010

Judge : N.V. Ramana, J.

Acts : Urban Land Ceiling (ULC) Act - Section 6(1), 8(4), 20(1), 10(5), 10(6), 33, 20(1)(a), 9

Appeal No. : W.P. No. 9198 of 2001 and 26206 of 2009

Appellant : G. V. Mohan and Others.

Respondent : The State of Andhra Pradesh,

Advocate for Pet/Ap. : Sri C.R. Pratap Reddy, Adv.

Judgement :

order:

Since the subject-matter of both the writ petitions is inter-connected, they are heard together and are being disposed of by this common order. For the sake of convenience, the parties shall be referred to by their status in W.P. No. 9198 of 2001.

BRIEF FACTS OF THE CASE IN W.P. No. 9198 of 2001

The petitioners, who are the sons and grand-daughter of one late Sri. G.V.L.S. Sarma respectively, filed writ petition in W.P. No. 9198 of 2001, praying the Court

to grant the following relief: To issue a Writ, order or direction, preferably one in the nature of Writ of Mandamus declaring the orders passed by the 2nd respondent in ULC Appeal No. Hyd. 17/2001 dated 28.04.2001, confirming the order of the 3rd respondent in proceedings No.E2/382/74, dated 08.11.2000, as illegal, void and arbitrary and consequently set aside the same and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Petitioner No.1, who swore to the affidavit filed in support of the writ petition states that his father late Sri. G.V.L.S. Sarma had purchased land in an extent of Acs. 16.23 guntas and 115 Sq. yds., in Sy. Nos. 105, 110, 113, 114 and 149/3 of Yousufguda village, Khairtabad mandal, (Old Golconda Mandal), Ranga Reddy District, corresponding to T.S. Nos. 16/1 and 16/2, in the month of December, 1960, and since then cultivated the same and also raised several structures therein. That after the death of his father and after coming into force of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the ULC Act'), himself and his brother, namely petitioner No. 2, filed declarations in Form-I under Section 6(1) of the ULC Act before respondent No.3, namely the Special Officer and Competent Authority. Respondent No.3 after conducting necessary enquiry, passed orders dated 07.05.1980 under Section 8(4) of the ULC Act. Questioning the said order, petitioner Nos. 1 and 2 filed statutory appeal under Section 33 of the ULC Act before respondent No. 2-appellate authority, who by orders dated 27.01.1997 allowed the appeal and remanded the matter to respondent No.2 for conducting de novo enquiry.

Pursuant to the order of remand, respondent No.3 conducted de novo enquiry, and ultimately, on 08.11.2000, passed orders under Section 8(4) of the ULC Act, declaring petitioner Nos. 1 and 2 to be surplus holders of land to an extent of 23,930.38 Sq. mts. each in T.S.

No. 16/1 and 16/2 of Yousufguda village, in excess of the ceiling limit. Questioning the said order, the petitioners filed statutory appeal, under Section 33 of the ULC Act before respondent No.2, accompanied by stay application. As no orders were passed by respondent No.2 on the stay application pending disposal of the appeal,

and as during the pendency of the appeal, respondent No.3 was taking steps to dispossess them, the petitioners filed writ petition in W.P. No. 3878 of 2001. The said writ petition, having regard to the statement made by the learned Government Pleader for Assignments that possession of the land was already taken on 23.02.2001, this Court by order dated 07.03.2001, while observing that as the notice dated 15.02.2001 under Section 10(5) of the ULC Act was served on the petitioner on 23.02.2001, possession of the land could not have been taken by the respondents before 23.03.2001, disposed of the writ petition, directing maintenance of status quo with respect to possession pending disposal of the appeal by respondent No.2, and further directed that the respondents therein shall not alienate or make any constructions whatsoever on the land in question on the ground that possession had been taken over by them on 23.02.2001. Pursuant to the said order, respondent No.2, vide orders dated 28.04.2001, dismissed the appeal. Questioning the said order, the petitioners filed the present writ petition in W.P. No. 9198 of 2001.

This Court vide orders dated 08.05.2001, while admitting the writ petition, granted status quo with regard to possession of the petitioners. Thereafter, vide orders dated 17.02.2006 passed in W.P.M.P. No. 10042 of 2003, M/s. Sri Lakshmi Co-op. Housing Society Limited (hereinafter referred to as 'the Society'), was ordered to be impleaded as respondent No. 8 in the writ petition, and on the very same day, vide orders passed in W.V.M.P. No. 741 of 2005, the status quo order granted earlier was made absolute.

BRIEF FACTS OF THE CASE IN W.P. No. 26206 of 2009

While the said writ petition is pending, the Society represented by its Secretary, which got itself impleaded as respondent No.8 in W.P. No. 9198 of 2001, filed writ petition in W.P. No. 26206 of 2009, praying the Court to grant the following relief: To issue writ, order or direction, more particularly one in the nature of Writ of Mandamus by declaring the proceedings in Appeal No. Hyd/17/2001 dated 28.04.2001 as abated in pursuance of the repealed Urban Land (Ceiling & Regulation) Act, 1976 came into effect from 27.03.2008 by declaring the land to an extent of 67,173 Sq.mts. in Sy. No. 105, 110, 113, 114 and 149/3 situated at

Yousufguda, Hyderabad, is not attracted by the provisions of the Act and consequently declare that the petitioner has substantial rights over the land to an extent of 67,173 Sq.mts. in Sy. No. 105, 110, 113, 114 and 149/3 situated at Yousufguda, Hyderabad, under agreement of sale dated 09.12.1980 pending adjudication in O.S. No. 118/2003 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, and pass such other order or orders as the Hon'ble Court may deem fit and proper.

The Society states that the Government in G.O. Ms. No. 4270, dated 10.09.1980, framed guidelines for grant of exemption under Section 20(1) of the ULC Act, to vacant lands held by persons who were declared surplus and sought to transfer to registered

Co-operative Housing Societies or Group Housing Co-operative Societies. So as to take advantage of the provisions of the G.O., the Society states that petitioner Nos. 1 and 2 executed agreement dated 09.12.1980 for alienation of the vacant land in question in favour of the Society, with an understanding that regular sale deed would be executed after obtaining necessary exemption under the provisions of the ULC Act. Subsequent to the entering into agreement, the Society states that the Government in supersession of the guidelines framed in G.O. Ms. No.4270, dated 10.09.1980, issued fresh guidelines for processing the exemption applications, in G.O. Ms. No. 136, dated 28.01.1981. In pursuance thereof, petitioner Nos. 1 and 2 and the Society made applications, for grant of exemption, but the same were rejected by the Government vide orders issued in Memo dated 10.02.1983. Questioning the rejection order, the Society filed writ petition in W.P. No. 2658 of 1984, and this Court by order dated 05.04.1989 set aside the said orders and directed the Government to consider the application of the Society on merits in terms of G.O. Ms. No. 4270, dated 10.09.1980 as modified by G.O. Ms. No. 136, dated 28.01.1981. Pursuant to the above order of this Court, the Government took up the application of the Society for grant of exemption. The Society as well as petitioner Nos. 1 and 2 filed their written arguments. As no orders were passed on their applications, the Society filed writ petition in W.P. No. 5609 of 2004, and this Court by order dated 25.03.2004, disposed of the said writ petition directing the Government to pass appropriate orders on the application of

the Society. Thereafter, the Government having considered the applications, vide orders issued in Memo dated 01.03.2005 rejected the claim of the Society and petitioner Nos. 1 and 2. Questioning the said order, the Society filed writ petition in W.P. No. 36281 of 2005, and this Court by order dated 18.09.2006, dismissed the same granting liberty to the Society to enforce their rights, if any, under the agreement in civil suit. The writ appeal in W.A. No. 347 of 2007, filed questioning the order in the writ petition, was dismissed by a Division Bench of this Court vide order dated 06.08.2007.

The Society on coming to know that ULC proceedings in relation to the land in question were being held behind their back and as petitioner Nos. 1 and 2 having executed an agreement in their favour, were acting in detriment to their interests, filed suit in O.S. No. 118 of 2003 against them for specific performance of agreement dated 09.12.1980 and for perpetual injunction. The Society states pursuant to the agreement entered into by them with petitioner Nos. 1 and 2, they carved out plots and allotted them to their members, who are now in possession of their respective plots, and inasmuch as during the pendency of the ULC proceedings between the petitioners and the Government before this Court, the ULC Act has been repealed, and as the members of the Society are in possession of their respective plots, the orders dated 28.04.2001, passed by the Commissioner, Urban Land Ceiling, confirming the orders of the Special Officer and Competent Authority, declaring the petitioners as surplus land holders, from whom the Society purchased the land under agreement, should be declared as abated with a further declaration that the provisions of the ULC Act are not applicable to the land in question.

ARGUMENTS OF THE PETITIONERS

The learned counsel for the petitioners submitted that pursuant to the notice dated 5.02.201 under Section 10(5) of the ULC Act, petitioner No. 1 did not surrender the surplus land on 23.02.2001, on which day he was served with the notice. Petitioner No.1 neither surrendered the land on his behalf nor on behalf of petitioner Nos. 2 and 3, who were not served with notices. He submitted that as per the notice under Section 10(5) of the ULC Act, petitioner No.1 had 30 days

time to surrender the land, and therefore, no possession of the land can be taken before expiry of the statutory period, and if it is taken, the same would be irregular and arbitrary. In support of this argument, the learned counsel placed reliance on the judgment of this Court in Singireddy Narasimha Reddy v. Government of A.P.1. He submitted that when as against the order dated 08.11.2000, passed by the Special Officer and Competent Authority, determining the surplus land, the petitioners preferred appeal along with stay application before respondent No.2-appellate authority. When pending disposal of the appeal, respondent No.3 tried to dispossess, the petitioners filed writ petition in W.P. No. 3878 of 2001, and this Court by order dated 07.03.2001, while observing that possession of the land could not have been taken before expiry of 30 days and that if it is taken it is only on paper and not physical, directed maintenance of status quo with respect to possession, pending disposal of the appeal by respondent No.2 and further directed the respondents therein not to alienate or make any construction therein. Since after disposal of the appeal by respondent No.2, the petitioners filed the present writ petition and obtained status quo order, which is still continuing, and having regard to the fact that the order dated 07.03.2001, passed in W.P. No. 3878 of 2001, attained finality, because the review petition in Rev. W.P.M.P. No. 11732 of 2009 and writ appeal in W.A. No. 340 of 2010, filed by respondent No. 3, were dismissed by a learned single Judge on 18.06.2009 and a Division Bench of this Court on 15.04.2010 respectively, the possession of surplus land cannot be said to have been taken by respondent No.3 from the petitioners.

He further submitted that no final order under Section 10(6) of the ULC Act, having followed the notice under Section 10(5) of the ULC Act, the possession of surplus land, even assuming, is taken by respondent No.3, is irregular and invalid. He denied the contention of respondent Nos. 1 to 3 that petitioner No.1 has himself surrendered the surplus land on 23.02.2001 upon receipt of the notice dated 15.02.2001 under Section 10(5) of the ULC Act, and contended that if petitioner No.1 had himself surrendered the land voluntarily before expiry of 30 days notice period, the petitioners would not have availed the legal remedies available to them against the order of respondent No.3, which the petitioners have availed and are now vigorously prosecuting.

He submitted that respondent No. 3, to overcome the stand taken by them in W.P. No. 3878 of 2001, that "possession of the land in question was taken over on 23.02.2001 itself under a cover of panchanama", have taken contrary stand in the counter filed in the present writ petition that "they have not taken possession of the land, but petitioner No.1 has voluntarily surrendered the surplus land, and since petitioner No.1 had himself surrendered the surplus land voluntarily, even before expiry of the statutory period of 30 days, no panchanama was conducted". He further submitted that merely because petitioner No.1 signed on the sketch map annexed to the alleged panchanama stating "I agree to retain the land existing within the green boundary", it does not mean that he has impliedly consented to surrender the rest of the land, much less on his behalf and on behalf of petitioner Nos. 2 and 3 also. He submitted that respondent No.3 has fabricated the panchanama for the purpose of this case, and the conduct of the panchanama itself is doubtful, because it does not contain the signatures of any of the petitioners, much less petitioner No.1, who is said to have voluntarily surrendered the surplus land.

He further submitted that since the proceedings relating to the order made by the Special Officer and Competent Authority are pending before this Court, having regard to the provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "the Repeal Act"), which are made applicable to the State of Andhra Pradesh w.e.f. 28.04.2008, they stand abated, and in support of this argument, he placed reliance on the judgments of the apex Court in Pt. Madan Swaroop Shrotriya Public Charitable Trust v. State of U.P.², Shanti Bhardwaj v. State of U.P.³, Ghasitey Lal Sahu v. Competent Authority⁴ and Mukarram Ali Khan v. State of U.P.⁵. Hence, he prayed that the writ petition be allowed.

ARGUMENTS OF THE RESPONDENT-GOVERNMENT

Respondent No. 3 filed counter-affidavit in W.P. No. 9198 of 2001 on 21.11.2007, which is sworn to by Sri. Syed Omer Jaleel, the then Special Officer and Competent Officer. Thereafter, respondent No. 3 filed two additional affidavits. The first additional affidavit, which is dated 06.04.2009, is filed by Smt. A. Vani Prasad,

to deny the stand taken by the petitioners that in view of the provisions of Repeal Act, the present proceedings under the ULC Act, would stand abated. While the second affidavit, which is dated 29.05.2010, is filed by Sri. M. Ravinder Reddy, to clarify about the signature of Smt. J. Sudha Rani, the then Special Officer and Competent Authority, on the sketch produced by the petitioners. On behalf of respondent Nos. 1 and 3, counter-affidavit is filed in W.P. No. 26206 of 2009 by the Deputy Secretary to the Government in the Revenue Department.

The learned Special Government Pleader appearing on behalf of respondent Nos. 1 to 5, based on the above counter-affidavits and additional affidavits, advanced his arguments.

He submitted that respondent No.3 served the notice dated 15.02.2001 under Section 10(5) of the Act on petitioner No.1 on 23.02.2001, and as petitioner No.1 had voluntarily surrendered the surplus land on the same day, respondent No.3 took possession thereof from him under a cover of panchanama, and handed over the same to the Deputy Tahsildar, Khairtabad Mandal, who in turn handed over the same to respondent No.6. However, contrary to the submission that possession of land was taken under a cover of panchanama, he submitted that the sub-division record was prepared on 23.02.2001 and as at the time of drawing the panchanama, petitioner No.1 signed on the sketch plan annexed to the panchanama stating that he agrees to retain the land existing within the green boundary, there was no need to conduct panchanama.

He submitted that the petitioners suppressing the factum of voluntary surrender of surplus land by petitioner No.1, and without asserting that they are in possession of the land, filed writ petition in W.P. No. 3787 of 2001 contending that the respondents are trying to dispossess them, and this Court, by order dated 07.03.2001, while disposing of the writ petition, directed status quo with regard to possession be maintained till the disposal of appeal by respondent No.2. He submitted that the surplus land having been surrendered voluntarily, the petitioners cannot claim that they are in possession of the surplus land by taking advantage of the observations made by this Court in W.P. No. 3788 of 2001, dated 07.03.2001, that "the possession, if at all is taken, is only on paper and not

physical possession of the land in question", particularly when the ULC Act does not prescribe the procedure for taking over possession of surplus land, and when in law, there is no such thing like "paper possession", and the Courts have held that "symbolic possession" also meant "taking possession".

He submitted that respondent No.2, by order dated 28.04.2001 dismissed the appeal filed by the petitioners holding "that possession of the land has already been taken on 23.02.2001 and petitioner No.1 has also signed on the sketch plan prepared at the time of taking possession on 23.02.2001", and since the petitioners did not question the said finding, they are not entitled to contend that physical possession of the land has not been taken. He submitted that the stand taken by petitioner No.1 in the writ petition that he is not authorized to surrender any land for and on behalf of petitioner Nos. 2 and 3, itself suggests that petitioner No.1 had surrendered the surplus land, but suppressing the factum of surrender, the petitioners filed the present writ petition. The learned Special Government Pleader though disputed the genuineness of the sub-division sketch produced by the petitioners, but later admitted the signature available on the sub-division sketch dated 02.01.2001 to be that of Smt. J. Sudha Rani, the then Special Officer and Competent Authority, and submitted that the sub-division sketch was prepared by the then Surveyor on 16.12.2000, and the petitioners appear to have obtained copy of the same with the signature of Smt. J. Sudha Rani, the then Special Officer and Competent Authority on 02.01.2001, and since petitioner No.1 had himself surrendered the land on 23.03.2001, the said sub-division sketch produced by the petitioners, would not be of any significance.

He submitted that petitioner No.1 having surrendered the surplus land voluntarily and they not being in possession of the surplus land, and they having not pleaded in the affidavit filed in support of the writ petition that they are in possession of the surplus land, are not entitled to claim the benefit of the Repeal Act, and contend that the ULC proceedings stand abated. Hence, he prayed that the writ petition be dismissed. ARGUMENTS OF RESPONDENT No. 6

Hyderabad Urban Development Authority (Now Hyderabad Metro Development Authority), filed W.P.M.P. No. 30724 of 2001, and got itself impleaded as

respondent No.6 vide orders dated 07.12.2001. Respondent No. 6 filed counters in both the writ petitions. They also filed reply to the additional affidavit filed by the petitioners, and also adopted the stand taken by respondent Nos. 1 to 3.

The learned Attorney General of India, appearing on behalf of respondent No.6 primarily took exception to the manner in which the petitioners advanced arguments on the basis of affidavits and additional affidavits, and submitted that the procedure adopted by the petitioners is irregular. He submitted that respondent No. 3 having served the notice dated 15.02.2001 under Section 10(5) of the ULC Act on petitioner No. 1 on 23.02.2001, took possession of the surplus land on the same day, under a cover of panchanama, and handed over the same to the Deputy Tahsildar, Khairtabad, who in turn handed over the land to respondent No.6, and since then respondent No.6 is in possession thereof. He further submitted that since petitioner No.1 had himself surrendered the surplus land voluntarily upon receipt of the notice dated 15.02.2001 under Section 10(5) of the ULC Act on 23.02.2001, without waiting for the statutory period of 30 days to expire, there was no need for respondent No.3 to pass final order under Section 10(6) of the ULC Act. According to him, the question of passing final order under Section 10(6) of the ULC Act, would arise, only if the declarant or holder of excess vacant land fails to surrender the surplus land within 30 days of receipt of notice under Section 10(5) of the ULC Act.

He submitted that the petitioners having surrendered the surplus land, filed the writ petition in W.P. No. 3878 of 2001 stating that the respondents therein are threatening to dispossess them from the land, pending disposal of the appeal by respondent No.2. Since this Court, based on the submission made by the learned Government Pleader for Assignment, by order dated 07.03.2001, disposed of the said writ petition directing the respondents to maintenance of status quo till the appeal is disposed of, it cannot be said to be an order passed upon adjudication of the merits of the case. Hence, he contends that the petitioners cannot claim to derive any benefit of the observations made therein by this Court, that "possession could not have been taken before 23.03.2001 and possession if any taken is only on paper and not physical", and contend that they have not surrendered the land, and more so when this stand taken by them runs counter to the stand taken by

petitioner No.1 in the affidavit, filed in support of the present writ petition, wherein he has stated that he is not authorized to retain or surrender any land for and on behalf of petitioner Nos. 2 and 3.

He submitted that since the petitioners did not file any counter rebutting the stand taken by respondent No.6 in the implead application in W.P.M.P. No. 30724 of 2001, that "possession of the surplus land was handed over to them by the Revenue Department on 23.02.2001 and since then they are in possession and occupation of the same", it has to be construed that the petitioners have admitted the surrender of surplus land to respondent No.3, under a cover of panchanama. He further submitted that the petitioners also did not file any counter to the application in W.P.M.P. No. 5742 of 2005, filed by A.P. Housing Development and Finance Corporation Limited, Hyderabad, seeking to implead them as respondent No. 7 and also to the vacate stay petition in W.V.M.P. No. 741 of 2005, filed praying to vacate the status quo order, on the ground that the Government sought to transfer the land in question to them by invoking the provisions of the Land Acquisition Act, 1894. He submitted that the said vacate stay petition, by order dated 17.02.2006, was disposed of by this Court, making the interim order absolute on condition that writ petitioners shall not create any third party rights nor raise any construction on the land during the pendency of the writ petition. He further submitted that since the application filed by the petitioners to grant exemption for alienation of land to respondent No. 8 under Section 20(1)(a) of the ULC Act, was rejected by the Government by order dated 20.09.1997, on the ground that the land in question was sought to be transferred to A.P. Housing Development and Finance Corporation, Hyderabad, as communicated to respondent No.8 vide memos dated 31.10.1997 and 01.03.2005, neither the petitioners nor respondent No. 8 can claim that they are in possession of the surplus land, and more so when respondent No.3, having taken possession of the surplus land, handed over the same to the Deputy Tahsildar, Khairtabad, who in turn, had handed over the same to respondent No. 6. He submitted that petitioner No.1 by "agreeing to retain the land bounded in green colour" on the sketch plan annexed to the panchanama dated 23.02.2001, has waived off his right to claim the rest of the land that was determined as surplus, the possession of which was taken over by respondent No.3 and handed over to the Deputy Tahsildar,

Khairtabad, who in turn handed over the same to respondent No.6. He submitted that the petitioners and respondent No. 8, being cautious that if they admit that respondent No.3 has already taken possession of the surplus land on 23.02.2001, the present proceedings under the ULC Act, would not abate, have ingeniously set up the false plea that the petitioners have not surrendered the surplus land, and that they are still in possession thereof, which obviously is to take the benefit of the provisions of Section 4 of the repealed Act. He submitted that if the petitioners did not surrender the land and the petitioners and respondent No. 8 are still in possession of the surplus land, then there is no need for them to seek declaration from this Court that by virtue of Section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, the ULC proceedings stand abated, because if they are in possession, they continue to be in possession, but considering the prayer made by the petitioners and respondent No.8, it is clear that they are seeking the assistance of the Court, to claim possession. He submitted that the petitioners seek to raise serious dispute as to the manner of taking possession of the land. If according to the petitioners, possession of the land is not taken as per the procedure prescribed or is improperly or irregularly taken, then their remedy is to challenge such action of respondent No.3, and they having not questioned such action of respondent No.3, cannot contend that the taking over possession of the surplus land is improper or irregular. Hence, he prayed that the writ petition be dismissed.

ARGUMENTS OF RESPONDENT No. 8

Sri. Laxmi Co-op. Housing Society Limited, which got itself impleaded as respondent No.8, and which filed writ petition No. 26206 of 2009, filed reply-affidavit to the additional affidavit of respondent No.3 in W.P. No. 9198 of 2001 and reply-affidavit to the counter- affidavit of respondent Nos. 1 to 3 in W.P. No. 26206 of 2009. The learned counsel for respondent No.8 submitted that when the authorities seek to take the valuable lands of its citizens in exercise of power conferred upon them by the ULC Act, they have to mandatorily follow the provisions, particularly the provisions of Sections 8, 9 and 10, and failure to do, must render their actions illegal and invalid.

He submitted that as against the order dated 07.05.1980 passed by respondent No.3 initially under Section 8(4) of the ULC Act, the petitioners filed statutory appeal under Section 33 of the ULC Act before respondent No. 2, and while the said appeal was pending, the Government issued G.O. Ms. No. 4270, dated 10.09.1980, providing for grant of exemption of excess vacant land under the provisions of Section 20(1)(a) of the ULC Act, to societies. Respondent No.8 being a society, to take advantage of the exemption provided under the said G.O., entered into agreement of sale with the petitioners on 09.12.1980 for purchase of the surplus land, and on the very same day, the petitioners had also put respondent No.8 into possession, and since then, respondent No.8 is in possession of the surplus land. Thereafter, the Government issued G.O. Ms. No. 136, dated 28.01.1981, prescribing the procedure for processing the exemption applications. In terms thereof, respondent No.8 and petitioners filed applications seeking exemption, but the same were rejected by the Government by order dated 10.02.1983. Questioning the said rejection order, respondent No.8 filed writ petition in W.P. No. 2658 of 1984, and this Court by order dated 05.04.1998, allowed the writ petition and set aside the rejection order. He further submits that when respondent No.3 and his officials tried to interfere with their possession, respondent No.8 filed writ petition in W.P. No. 17409 of 1989 and obtained interim order in W.P.M.P. No. 23059 of 1989 on 14.12.1989. Thereafter, respondent No.8 filed suit in O.S. No. 118 of 2003 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, for specific performance of the agreement of sale. Respondent No. 8 also filed writ petition in W.P. No. 5609 of 2004, which was disposed of. He submits that respondent Nos. 2 and 3 having conducted enquiry also recommended to the Government for grant of exemption in favour of respondent No.8.

He submitted that since respondent No.8 has acquired substantial interest in the land in question by virtue of the agreement of sale dated 19.12.1980 executed by the petitioners in favour of respondent No.8 and they also having been put in possession, respondent No.3 ought to have issued notices to respondent No. 8 while dealing with the matter under the provisions of Sections 8, 9 and 10 of the ULC Act, which are mandatory, but he did not do, and obviously to defeat the valuable rights of respondent No.8. In view of all these proceedings, he further

submitted that it is not open to respondent No.6 to contend that respondent No.8 has no locus standi to file the writ petition. He submitted that the finding recorded by this Court in its order dated 07.03.2001 passed in W.P. No. 3878 of 2001 that "the possession, if at all, is taken, is only on paper and not physical possession", having become final, for the review petition in Rev. W.P.M.P. No. 11732 of 2009, and the writ appeal in W.A. No. 340 of 2010, filed by respondent No. 3, having been dismissed by orders dated 18.06.2009 and 15.04.2010 respectively, it is not open for respondent Nos. 1 to 3 to contend that possession of surplus land was taken from the petitioners, part of possession of which, was delivered to respondent No. 8, pursuant to the agreement of sale dated 09.12.1980. He submitted that in W.P. No. 3878 of 2001, the learned Government Pleader for Assignment, who represented respondent No.3 has taken a stand that "possession of the surplus land has been taken under a panchanama", and now in the counter filed in W.P. No. 9198 of 2001, he has taken a contradictory stand that "petitioner No.1 has voluntarily surrendered the surplus land by signing on the sketch map and agreeing to retain the land bounded in green colour".

He submitted that the panchanama dated 23.02.2001 and the sketch plan annexed thereto, containing the signature of petitioner No.1 agreeing to retain the land bounded in green colour, are fabricated for the purpose of the case, for he contends that the panchanama does not contain the signatures of the petitioners, much less that of petitioner No.1, who is alleged to have surrendered the land. He submitted that merely because in the sub-division sketch map, petitioner No.1 signed agreeing to retain the land bounded in green colour, it does not mean that he has agreed to surrender the rest of the land, much less the land that is in possession of respondent No.8. He submitted that if respondent No.3 had really taken possession of the surplus land, they ought to have mentioned the same in the proceedings dated 26.06.2005, issued by respondent No.1, rejecting the request of respondent No.7 for transfer of the land in question in their favour, but non-mention of the same, clearly suggests that they have not taken over possession of the land. He submitted that respondent Nos. 1 to 3 were bent upon depriving the petitioners and respondent No.8 of the land in question, and to justify this contention, he submitted that according to respondent No.3, the possession of the land was taken over from the petitioners on 23.02.2001, but a day before i.e.

on 22.02.2001, the District Collector, Hyderabad, had addressed letter informing Mandal Revenue Officer, to handover the surplus land to respondent No.6.

He further submitted that possession of the surplus land is still in possession of the petitioners and respondent No.8 and it has not been taken over by respondent No.3 and to support this argument, he relied on the report of the Advocate Commissioner, appointed in the suit O.S. No. 118 of 2003 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, who reported that respondent No.8 is in possession of the land. He also relied on the proceedings dated 26.06.2005 issued by respondent No.1 rejecting the request of respondent No.7 for transfer of land in question in their favour by acquiring the land under the provisions of the Land Acquisition Act, 1894, on the ground that this Court ordered status quo to be maintained with regard to possession in the present writ petition. He submitted that since respondent No.8 is now in possession of the land in question, having regard to the provisions of Section 4 of the Repeal Act, which came into force in the State of Andhra Pradesh w.e.f. 28.04.2008, respondent No.8 is entitled to seek declaration that the ULC proceedings in relation to the surplus land in question, stand abated. He thus prayed that writ petition filed by respondent No.8 be allowed. Heard the learned counsel for the petitioners, the learned Special Government Pleader for respondent Nos. 1 to 5, the learned Attorney General of India for respondent No.6 and the learned counsel for respondent No.8. In the light of the arguments advanced on behalf of the petitioners, respondent Nos. 1 to 3, respondent No. 6 and respondent No.8, the following questions do arise for consideration in these two writ petitions:

1. Whether pursuant to the notice dated 15.02.2001 under Section 10(5) of the ULC Act, respondent No.3 has taken possession of the surplus land from petitioner No.1 under a cover of panchanama or petitioner No.1 has voluntarily surrendered the land on 23.02.2001, and if so, whether taking over possession of the surplus land is valid?
2. Whether respondent No.6, who claims possession through respondent Nos. 1 to 3, can be said to have locus standi to contest the claim of the petitioners, and claim that he got possession of the surplus land lawfully?

3. Whether respondent No.8, who claims to be in vacant possession of the land by virtue of agreement of sale dated 09.12.1980, was entitled to be issued notices under Section 8, 9 and 10 of the ULC Act?

4. Whether respondent No.8 has locus standi to file writ petition to declare the ULC proceedings as having abated in view of the provisions of Section 4 of the Repeal Act?

5. Whether, in the facts and circumstances of the case, and considering the claim of the petitioners and respondent No.8, that they are in possession of the vacant surplus land, by virtue of the provisions of the Repeal Act, the ULC proceedings stand abated?

In re question No.1:

The fact that respondent No.3, namely the Special Officer and Competent Authority, passed an order dated 08.11.2000, under Section 8(4) of the ULC Act, declaring petitioner Nos. 1 and 2 to be holding surplus land in an extent of 23,930.38 Sq. mtrs. each, and questioning the said order, the petitioners preferred statutory appeal on 27.12.2000, as available to them under Section 33 of the ULC Act, before respondent No.2-appellate authority, is not in dispute. As respondent No.2 did not pass any order staying the operation of the order appealed, it appears respondent No.3 took further consequential steps in the matter, and in the process, issued notice dated 15.02.2001 under Section 10(5) of the ULC Act, requiring the declarants to surrender the surplus land within 30 days from the date of its receipt, which admittedly, was served only on petitioner No. 1 on 23.02.2001, even though petitioner No.2 was also declared holding surplus land to an extent of 23,930.38 Sq. mtrs. It is on that day, respondent Nos. 1 to 3 contend that possession of surplus land was taken over from the petitioners.

Whether possession of surplus land was taken on 23.02.2001 by respondent No. 3 under a cover of panchanama or petitioner No. 1 had himself surrendered the surplus land, and if so, whether taking over such possession, is valid, may be considered, in the light of the various contentions raised before this Court by the respective parties. This consideration of this question, requires to go into factual

aspects and decide the matter.

Normally, while exercising the power under Article 226 of the Constitution of India, this Court would be loath to determine the factual aspects of the matter. However, this rule is not of exclusion of jurisdiction, and this is only a rule of discretion which can be exercised in cases where the party seeking relief has to resort to some what lengthy, dilatory and expensive process against a public body and where there is no statutory remedy available to the parties to the litigation.

In *Gulwant Kaur v. Municipal Council, Bhatinda*⁶, the apex Court held as follows:

The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is too discretionary, but the discretion must be exercised on sound, judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition.

In *Century Spinning and Manufacturing Co. Ltd., v. Ullhas Nagar Municipal Council*⁷, the apex Court held as follows: Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

As stated supra, the Urban Land Ceiling Act is repealed by virtue of adoption of repealing Act by the State of Andhra Pradesh. In this writ petition, the order of the Special Court as confirmed by the appellate authority is under challenge, as the Act is repealed, there exists no statutory authority to determine the issues involved in the case. Faced with similar situation, and in the absence of existence of statutory authority to determine the issues involved in the case, the apex Court in *Kishan Lal v. State of M.P.*⁸, remitted the matter to the High Court, to record a finding whether possession of the land has been taken over by the Government or

not.

In view of the above, this Court has no option except to delve into the factual aspects of the matter, more so when the question of fact raised is elementary in nature which can be decided on the basis of material documents available on record. The issue whether the proceedings under the Urban Land Ceiling Act are abated or not is the issue that needs consideration by this Court. As per the provisions of the repealing Act, proceedings which are pending as on the date of adoption of repealing Act, where possession is not taken by the competent authority are abated. As such, for the purpose of determining the issue whether the proceedings in this case are abated or not, this Court has to decide the issue whether possession is taken by the competent authority prior to the adoption of repeal act or not. (A) - EFFECT OF ORDER IN W.P. No. 3878 OF 2001

When respondent Nos. 1 to 3 sought to dispossess the petitioners from the surplus land, the petitioners filed writ petition in W.P. No. 3878 of 2001 on 05.03.2001, seeking directions to respondent No.3 not to proceed to implement the order dated 08.11.2000 passed by him, pending disposal of the appeal preferred by them before respondent No.2. A learned judge of this Court, who heard the writ petition, observed that appeal is a valuable right conferred upon the aggrieved persons and that it is nothing but re-hearing of the original proceedings, and therefore, respondent No.2 ought to have granted stay of further proceedings, including dispossession of the petitioners from the land in question, and as the appeal involved adjudication of valuable rights of the parties, felt that interest of justice required maintenance of status quo in all respects during the pendency of appeal. However, having regard to the stand taken by the learned Government Pleader for Assignment that possession of the land in question was taken on 23.02.2001, disposed of the writ petition, by order dated 07.03.2001, holding as follows:

However, learned Government Pleader for Assignment submits that the respondents have taken over the possession of the land in question on 23.02.2001 under a panchanama to which the petitioner also is a party. Learned counsel for the petitioners rightly invited my attention to the notice under sub-sec. (5) of Sec.

10 of the Urban Land (Ceiling and Regulation) Act, 1976 dated 15-2-2001 requiring the petitioner to surrender/deliver possession of the land to the Deputy Tahsildar within thirty days of the service of the notice. Obviously, the respondents could not have taken possession of the land in question before 15-3-2001. In the circumstances, the possession, if at all is taken, is only on paper and not physical possession of the land in question. In the circumstances, the writ petition is disposed of directing the respondents to maintain status quo with regard to possession of the land in question pending the disposal of the appeal. It is clarified that the respondents shall not alienate or make any construction whatsoever on the land in question on the ground that the possession had been taken over by them on 23.02.2001. Status quo on all respects shall be maintained during the pendency of the appeal. The appeal itself shall be heard and disposed of as expeditiously as possible.

Considering the fact that the notice under Section 10(5) of the ULC Act was dated 15.02.2001, the learned Judge, as can be noticed from the above order, computed the 30 days period mentioned in the said notice from the said day, and held that possession of the land could not have been taken by the respondents therein before 15.03.2001, and further held that "the possession, if at all is taken, is only on paper and not physical possession", and that pending disposal of the appeal by respondent No.2, the respondents therein shall not alienate or make any construction whatsoever on the land on the ground that possession had been taken by them on 23.02.2001. However, respondent Nos. 1 to 3 and 6 contend that once possession is taken under a valid panchanama, the possession should be treated as taken for all purposes, and there is nothing like "paper possession" or "physical possession", and that even "symbolic possession" was treated as "taken possession". At any rate, they contend that since the said order was not upon adjudication of merits of the case, but was based on the statement made by the learned Government Pleader for Assignment, the petitioners cannot not be permitted to take advantage of the observations made therein, and claim that respondent Nos. 1 to 3 did not take possession of the land. This contention of respondent Nos. 1 to 3 and 6 cannot be accepted, because respondent Nos. 1 to 3 did not file any writ appeal questioning the said order immediately. Surprisingly when these two writ petitions came up for hearing before this Court, and when

attaining of finality of the above order was pointed out, respondent Nos. 1 to 3 filed review petition in Rev. W.P.M.P. No. 11732 of 2009, praying to review the order dated 07.03.2001 in W.P. No. 3878 of 2001, which was dismissed by order dated 18.06.2009, and the writ appeal in W.A. No.340 of 2010 filed questioning the said order was also dismissed by a Division Bench of this Court on 15.04.2010. Since the order dated 07.03.2001, passed by this Court in W.P. No. 3878 of 2001, which held that possession of land could not have been taken and ordered maintenance of status quo, had attained finality, it is neither open to respondent Nos. 1 to 3 nor to respondent No.6, who is claiming possession through respondent Nos. 1 to 3, to contend that the petitioners cannot be allowed to take advantage of the observations made therein and contend that possession of surplus land was not taken. Hence, it has to be held that possession of surplus land, as held by the learned Judge of this Court, could not have been taken by respondent No. 3 on 23.02.2001.

(B) - WHETHER POSSESSION OF LAND COULD HAVE BEEN TAKEN BY RESPONDENT No. 3 BEFORE EXPIRY OF 30 DAYS TIME PRESCRIBED UNDER THE NOTICE UNDER SECTION 10(5) OF THE ACT FOR SURRENDER OF SURPLUS LAND

To consider this issue, it would be appropriate, if a reference is made to the provisions of Section 10(5) of the ULC Act, which read as follows: 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 the notice.

From the above, it is clear that where any vacant land is vested in the State Government under Section 10(3), the competent authority, by notice in writing, order the person who may be in possession of it, to surrender or deliver possession to the State Government or to any person authorized by them, "within thirty days of the service of notice". Normally, the period of 30 days notice period has to be computed from the date on which is served on the individual. Admittedly,

the notice under Section 10(5) of the ULC Act is dated 15.02.2001, and it was served on petitioner No.1 on 23.02.2001. In W.P. No. 3878 of 2001, admittedly, the learned Judge of this Court, in his order dated 07.03.2001, had computed the 30 days notice period from 15.02.2001, on which date, it was prepared, and held that possession of surplus land could not have been taken by the respondents before 15.03.2001. Since the notice dated 15.02.2001 under Section 10(5) of the ULC Act was served on petitioner No.1 on 23.02.2001, the petitioners had time till 23.03.2001 to surrender the surplus land. However, even before expiry of the notice period computed by the learned Judge of this Court, respondent No.3 claims to have taken possession of the surplus land on 23.02.2001, which claim cannot be accepted, and even assuming that possession is taken, the same would be invalid, because, the right of respondent Nos. 1 to 3 to take proceedings, subsequent to the notice under Section 10(5) of the ULC Act, would arise only after 23.03.2001, and not before the said date.

This Court in Singireddy Narasimha Reddy v. Government of A.P.⁹, had an occasion to consider the meaning of the phrase "within 30 days of the service of notice" appearing in Section 10(5) of the ULC Act, and having considered the same, held as follows:

The word "within" in its etymological sense, may connote something, which is inside a prescribed perimeter or periphery. However, when it is used in the context of time, given to an individual, to do, or undo a particular thing, it signifies that the recipient of the notice must take necessary steps before expiry of the stipulated time. It also means that, he is at liberty to do so, or undo, even at the last point of time mentioned in the notice. Conversely, the authority or the person, who issues the notice, must desist from taking any action, until the stipulated period expires. It would be nave to assume that the recipient of a notice, in which any time is stipulated, must act instantly, and the issuer of the notice can swing into action, before the expiry of the time limit, on the plea of default. Anyone, who is conversant with the administration, in any Government department, which involves issuance of notices, followed by corresponding actions, would know this as fundamental. Hardly any judicial precedent is needed in this regard. When the petitioners had time till 23.03.2001 or 15.03.2001, as held by the learned Judge of

this Court in his order, it is expected that respondent Nos. 1 to 3, who are statutory authorities, would wait till the said notice period expired, but even before expiry of the notice period, respondent No.3 claims to have taken possession of the surplus land, and to defend their action, respondent Nos. 1 to 3 have taken a stand that petitioner No.1 has himself surrendered the surplus land voluntarily. In *Dahyabhai v. Competent Authority & Addl. Collector, Vadodara*¹⁰, the Gujarat High Court having considered the question as to effect of taking over and vesting of surplus land in the Government under Section 10(3) of the Act, pending appeal under Section 33 of the ULC Act in the light of the provisions thereof, held as follows:

If one reads the provisions of Urban Land (Ceiling & Regulation) Act, 1976 in the aforesaid manner it is very clear that the legislature did provide for an appeal against an order passed by the competent authority under S. 9 of the Act. The right of appeal is not made conditional on the publication or non- publication of the notification under S. 10 of the Act. In a given case the Urban Land Appellate Tribunal may grant stay of further proceedings or may even refuse to grant stay. In cases where stay is not granted at all, the competent authority shall proceed further and notification as provided under S. 10 will be issued and published in the Government Gazette. In such cases it would be absurd to hold that even though the appeal is filed within time, but on account of the fact that during the pendency of the appeal notifications under S. 10(3) and 10(5) have been issued and therefore the appeal has become infructuous. Such can never be the intention of the legislature. Therefore, the last part of the phrase occurring in S. 10(3) of the Act "such land shall deem to have vested absolutely in the State Government" cannot be read so as to defeat the provisions of the Act. If this construction is not adopted the right of appeal can be frustrated by not granting stay of further proceedings or by not registering the appeal immediately.

Such an interpretation would be both absurd and unreasonable. Therefore, it has to be avoided. The only reasonable interpretation that can be given to the provisions of Ss. 10(3) and 10(5) of the Act is that vesting of the land in the Government would be subject to the result of the appeal under S. 33 of the Act. In cases where aggrieved party may succeed in appeal and the final order passed by the competent authority under S. 9 is set aside (or varied or modified), the further

consequential steps under S. 10 also will have to be taken by the Government so as to bring the same in conformity with the final order under S. 9 of the Act. Just as the order under S. 9 is set aside (or varied or modified) by the Urban Land Appellate Tribunal, similarly the subsequent steps under S. 10 of the Act will have to be taken by the Government and it will have either to set aside (or vary or modify) its earlier actions.

Reading both the provisions in the aforesaid manner, the reasoning of the Appellate Tribunal that because notification under S. 10(3) of the Act was issued and therefore the appeal was not maintainable cannot be sustained. The learned counsel for the respondents has not been able to show any provision of law on the basis of which it can be held that once the declaration under S. 10(3) of the Act is published in the official gazette, right to challenge the final order u/s. 9 of the Act passed by the competent authority conferred upon an aggrieved party u/s. 33 of the Act gets extinguished. As stated hereinabove right conferred by statute cannot be extinguished by adopting an unreasonable and unusual manner of interpretation of statute.

In the case on hand, as noted supra, when possession is alleged to have been taken under cover of panchanama, the appeal filed by the petitioners was pending before respondent No.2, and in fact, this Court in W.P. No. 3878 of 2001, by order dated 07.03.2001, had held that possession of land could not have been taken before expiry of 30 days statutory period, and that even if possession is taken, it is only on paper and not physical. That being so, it is hard to believe that petitioner No.1, whose appeal was pending and who had 30 days time to surrender the surplus land as per the notice under Section 10(5) of the ULC Act, would have ventured to surrender the valuable surplus land voluntarily even before the appeal filed by him is disposed of by respondent No.2, and that too on the very same day of service of notice, without having any second thought, not only on his behalf, but also on behalf of petitioner No.2, who was also declared to be holder of surplus land on par with petitioner No.1, but was not served with any notice. Hence, it cannot be believed that respondent No.3 had taken possession of the surplus land from petitioner No.1 even before expiry of the 30 days time prescribed in the notice under Section 10(3) of the Act.

(C) - RULE OF LAW - PROVISIONS UNDER THE ULC ACT HAVE TO BE FOLLOWED BY RESPONDENT No.3

We are a country, governed by "rule of law". It applies equally to all. As rule of law is fundamental in the governance of the country, every authority, exercising his power under a statute, must exercise the power vested in him in accordance with the law framed in the statute and not contrary thereto. Any contravention of the law by the authority, would render his action/s, irregular or illegal. The ULC Act is an Act, to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. Under the ULC Act, respondent No.3, namely the Special Officer and Competent Authority, is vested with the power of determining surplus land of the individuals, issuing notices to the declarants and persons interested in the land in the matter of taking over possession of the surplus land. That being so, when respondent No.3, being a statutory authority under the ULC Act, seeks to deprive the citizens of their right in immoveable property, by way of taking over possession of the surplus land, pursuant to they being declared as surplus holders, he is required to follow the procedure prescribed thereunder, in letter and spirit, and any act of his taking over possession of the land, in deviation or violation thereof, should render his action irregular and illegal.

(D) - WHETHER RESPONDENT No.3 HAS FOLLOWED THE PROCEDURE PRESCRIBED UNDER THE ACT - IN THAT WHETHER HE SERVED NOTICES ON THE PERSONS HAVING INTEREST IN THE LAND

Admittedly, the ULC Act provides issuance of notice and hearing of objections to the declarants and all other interested persons, and such protection, is given to all concerned, at every stage of proceedings. Having regard to the fact that such protection is given by the ULC Act to the declarants as well as persons interested in the land, it may be noticed whether respondent No.3, in his effort to take

possession of the surplus land, has served notices under the ULC Act on the declarants as well as persons having interest in the land. In the acquisition notices dated 18.11.2000, issued by respondent No.3 under Section 10(1) of the ULC Act, published in the official gazette on 21.12.2001, it is stated that the excess vacant land held by Sri. G.V. Mohan, mentioned in the schedule, is to be acquired by the government, and under the heading "particulars of land", in column "name of the owner or regd. holder or other person interested in the land", the name of Sri. G.V. Mohan and G.S. Kumar, GPA given to G.V. Mohan, is mentioned, and called upon all interested persons in such land, to appear in person or by their authorized agents on or before 18.12.2000, give particulars of the nature of interest in such land and their objections, if any.

Though the said notices call upon all persons interested in such vacant land to appear in person or by their authorized agent on or before 18.12.2000, and submit their objections, if any, the fact remains, the said notices, do not mention the name of the interested persons, much less respondent No.8, who claims to have come into possession of the land based on an agreement, said to have been executed by the petitioners. Admittedly, petitioner Nos. 1 and 2, were declared surplus initially by respondent No.3 by order dated 07.05.1981. Against the said order, they preferred appeal before respondent No.2. During the pendency of the said appeal, the petitioners entered into agreement with respondent No.8 or alienation of the land in their favour on 09.12.1980 and also put them in possession. Pursuant thereto, respondent No.8 filed applications under G.O. Ms. No. 4270, dated 10.09.1980 and G.O. Ms. No. 136, dated 28.01.1981, seeking exemption under Section 20(1) of the ULC Act. When the same was rejected, respondent No.8 filed writ petitions before this Court, to which respondent No. 3 is a party. Though respondent No.3 being a party to the litigation initiated by respondent No.8, is aware that respondent No. 8 is claiming right in the land, yet for the reasons, best known to him, did not issue notice to respondent No.8, and on the other hand, got published the said notices in the official gazette on 21.12.2000 i.e. three days after time prescribed in the acquisition notice calling for objections from the declarants and the persons interested in the land. The said acquisition notices, admittedly, were served only on petitioner No.1 and none else.

Thereafter, respondent No.3 issued notice dated 25.01.2001 under Section 10(3) of the ULC Act, to all those concerned stating that the land in question, which was notified under Section 10(1) of the ULC Act, shall w.e.f. 15.02.2001 be deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrances from the said date. Subsequently, the said notice was published in the official gazette on 03.02.2001. Though the notice under Section 10(3) of the ULC Act, puts on notice, all those concerned that the land would be deemed to have been acquired by the State Government and vested absolutely in them free from all encumbrances w.e.f. 15.02.2001, the fact remains, the same was not served on respondent No.8, who is claiming interest in the land. Thus, it is clear that respondent No.3 has not issued notices to all concerned as provided under the ULC Act. Respondent No.3, being a statutory authority under the ULC Act, while dealing with matters relating to taking over possession of surplus land pursuant to orders declaring the declarants as surplus holders, has to deal strictly as per the provisions of the ULC Act, he cannot deal with the rights of the individuals/citizens in a casual and perfunctory manner. Since the provisions of Section 8 and 9 and 10 of the ULC Act and the Rules framed thereunder, provide service of notices on all concerned and persons interested in the land, non-issuance and service of the said notices on respondent No.8, who claims interest in the land, would be fatal to the acquisition/taking over of the surplus land. Further even before issuance of notice dated 15.02.2001 under Section 10(5) of the ULC Act and even before expiry of 30 days time mentioned thereunder for surrender of surplus land, respondent No.3 had issued notice under Section 10(3) of the Act on 25.01.2001, which was subsequently published in the official gazette on 03.02.2001, stating that the land would be deemed to have been acquired and stand vested absolutely in the State Government free from all encumbrances w.e.f. 15.02.2001. This action of respondent No.3, would make it clear that the alleged taking over possession of the surplus land from the petitioners is without following the procedure prescribed by under law.

(E) - CONTRARY STANDS OF GOVERNMENT WITH RESPECT TO TAKING OVER OF POSSESSION OF THE SURPLUS LAND

When the writ petition in W.P. No. 3878 of 2001, was disposed of by this Court in 07.03.2001, the learned Government Pleader for Assignment appearing on behalf of the respondents, had taken a stand that "possession of the land was taken under a cover of panchanama on 23.02.2001 and that petitioner No.1 was a party to it". However, contrary to the said stand, respondent Nos. 1 to 3 in the counter filed by them in the present writ petition, have taken a strange stand that "as petitioner No.1 had voluntarily surrendered the land, no panchanama was conducted". Respondent Nos. 1 to 3 and 6 to show that the possession of the land in question was taken under a cover of panchanama, to which petitioner No.1 is said to be a party, as was submitted by the learned Government Pleader for Assignment in W.P. No. 3878 of 2001, produced a copy of the panchanama dated 23.02.2001 supported by sketch map, conducted by the Enquiry Officer, which reads as follows:

We the above three panchas came to the land in Sy. No..... corresponding to T.S. No.16/1, 16/2, Block-R, Ward No. 7 of Yousufguda village, Khairtabad Mandal, Hyderabad District, on calling us by the Enquiry Officer, Banjara Hills, Zone - II Urban Land Ceiling, Hyderabad and Dy. Tahsildar, Khairtabad Mandal. There we have been informed by the said officers that the land admeasuring 47,860.00 Sq.mtrs. pertaining to Shri. G.V. Mohan and G.S. Kumar which has been declared as surplus under U.L.(C & R) Act, 1976. Out of the land in Sy. Nos. shown above and the possession of said surplus land admeasuring 47,860 Sq.mtrs. is being taken over in their possession of the Enquiry Officer, U.L.C., Hyderabad, as per the orders of the S.O. U.L.C., Hyd. reference No.E2/382/76, dated 15.02.2001 issued under sub-section 6 of Section 10 of the Act. Accordingly, the possession of the surplus vacant land has been taken over by the Enquiry Officer, U.L.C., Hyderabad, and in turn handed over the possession of the same land to the Dy. Tahsildar, Khairtabad Mandal, before as per the sub-division sketch duly got measured.

From a reading of the above panchanama, it is clear that the Enquiry Officer conducted the panchanama in the presence the Deputy Tahsildar, Khairtabad Mandal, and three witnesses, two of whom have appended their signatures and one of them has put his left thumb impression on the panchanama. Though it was

contended that petitioner No.1 was a party to the panchanama, the fact remains, the panchanama neither refers to the presence of the declarants (petitioner Nos. 1 and 2) nor does it contains their signatures nor does it refer to the surrender made by the petitioners of the surplus land, much less by petitioner No.1, pursuant to the service of notice dated 15.02.2001 under Section 10(5) of the ULC Act, on him on 23.02.2001. The panchanama states that possession of the said surplus land admeasuring 47,860 Sq.mtrs. is being taken over in their possession of the Enquiry Officer, U.L.C., as per the orders dated 15.02.2001 passed under sub-section (6) of Section 10 of the ULC Act. The panchanama further contains an endorsement made by the Deputy Tahsildar, Khairtabad Mandal, to the effect that the surplus land taken over from the ULC authorities, admeasuring 47,860.00 Sq. mtrs., has been handed over to the Estate Officer, HUDA, as per the sub-division sketch duly measured.

Though the panchanama, discloses that possession of the land was being taken over by the Enquiry Officer, pursuant to the orders under Section 10(6) of the ULC Act, but admittedly, respondent No.3 did not pass any order under Section 10(6) of the ULC Act, which usually follows the notice under Section 10(5) of the ULC Act, in the event the vacant land holder, does not surrender the land as required by the notice under Section 10(5) of the ULC Act, within 30 days of its receipt. However, respondent Nos. 1 to 3 and 6 contend that that the panchanama wrongly refers to the notice dated 15.02.2001 under Section 10(5) of the ULC Act as an order under Section 10(6) of the ULC Act. If according to respondent Nos. 1 to 3 and 6, possession of the land was taken in the presence of petitioner No.1, then nothing prevented the Enquiry Officer from recording the presence of petitioner No.1 and taking his signature on the panchanama and also recording about the taking of possession of the surplus land from him. In the absence of the panchanama recording the presence of the petitioners, much less petitioner No.1, non-taking of his signatures, non- recording about the factum of surrender made by the petitioners, it can be said that the taking over of possession of the land by the Enquiry Officer, under the panchanama, is invalid and is bad, particularly when the panchanama was not conducted in the presence of the petitioners, but was conducted behind their back.

It is the contention of respondent Nos. 1 to 3 as well as 6, in this writ petition that petitioner No.1 had himself surrendered the land voluntarily. This contention raised by respondent Nos. 1 to 3 and 6, appears to be an afterthought, and obviously to sidetrack the panchanama under which the Enquiry Officer claims to have taken possession of the surplus land, which this Court declared it invalid. As noticed earlier, the petitioners under the notice dated 15.02.2001 under Section 10(5) of the ULC Act, served on petitioner No.1 on 23.02.2001, had 30 days time to surrender, and it is difficult to believe that they would surrendered the surplus land before expiry of the notice period. The fact that petitioners, much less petitioner No.1, would not have surrendered the surplus land voluntarily, can well be demonstrated from the fact that the petitioners have availed the legal remedies available to them under law, in that questioning the order dated 08.11.2000 passed by respondent No.3 determining them to be surplus holders, petitioner Nos. 1 and 2 filed statutory appeal before respondent No.2, and as no stay was granted by him, and as during pendency of the said appeal, respondent No.3 was taking steps to implement the order dated 08.11.2000, they filed writ petition in W.P. No. 3878 of 2001 and obtained status quo order, and immediately after dismissal of the appeal by respondent No.2, they filed the present writ petition and obtained status quo order. The prompt legal steps being taken by the petitioners from time to time, against the order passed by respondent No. 3, determining them to be surplus holders, would clearly suggest that petitioner No.1 did not surrender the surplus land voluntarily, but alleged possession of the land was taken by the Enquiry Officer, behind the back of the petitioners under a cover of panchanama, which is invalid.

(F) - DISCREPANCIES IN PANCHANAMA

In the panchanama, it is stated by the panchas that the Enquiry Officer and the Deputy Tahsildar told them possession of surplus land is being taken over as per the orders of the Special Officer, but the learned Government Pleader for Assignment in W.P. No. 3781 of 2001 has stated that possession of surplus land was taken by respondent No.3 under a cover of panchanama to which petitioner No.1 is a party, and now in this writ petition, respondent Nos. 1 to 3 have taken a stand that petitioner No.1 has himself surrendered the land. Neither petitioner No.1

is a party to the panchanama nor is there any whisper of voluntary surrender by petitioner No.1. If really petitioner No.1 had surrendered the land or he was present at the time of taking over possession of the land, the Enquiry Officer should have recorded the presence or otherwise of petitioner No.1, in the panchanama. But the panchanama does not disclose whether petitioner No.1 was present or not. Further, though respondent Nos. 1 to 3 claim that possession of the land was taken pursuant to notice under Section 10(5) of the ULC Act, but the panchama indicates that the Enquiry Officer, was taking over the surplus land as per the orders of the Special Officer passed under sub-section (6) of Section 10 of the Act, but admittedly, no such order under section 10(6) of the Act, is passed by respondent No.3. While in the report of the Enquiry Officer submitted to respondent No.3, it stated that possession of vacant land was taken over from the declarant and handed over possession to the Dy. Tahsildar, Rajendranagar Mandal. This rules out the possibility that petitioner No.1 has voluntarily surrendered the surplus land pursuant to the notice under Section 10(5) of the ULC Act.

(G) - WHETHER ENDORSEMENT MADE BY PETITIONER No.1 ON THE SKETCH AMOUNTS TO HIS AGREEING TO SURRENDER THE SURPLUS LAND

It is the contention of respondent Nos. 1 to 3 that since petitioner No. 1 signed on the sketch map, annexed to the panchanama dated 23.02.2001, stating "I agree to retain the land existing in the green boundary", such statement should be construed that he has agreed to surrender the rest of the surplus land. This contention of respondent Nos. 1 to 3 is far-fetched. The petitioners denied the sketch map produced by respondent Nos. 1 to 3 and submitted that it does not tally with the original sketch map available with them. Though the learned Special Government Pleader, also disputed the genuineness of the sketch map produced by the petitioners stating that copy of the said sketch map is not available in their records, but respondent No.3, upon verification of the signature of Smt. J. Sudha Rani, the then Special Officer and Competent Officer, filed affidavit on 29.05.2010 stating that "the signature of Smt. J. Sudha Rani dated 02.01.2001 on the Sub-Divisional Sketch produced by the petitioners tallies with signature made by her in

the files while she was working as Special Officer and Competent Authority, Urban Land Ceiling, and that Smt. J. Sudha Rani, retired from service in the year". Respondent Nos. 1 to 3 also did not dispute the fact that the sub-division sketch was prepared by the Surveyor on 16.12.2000, earmarking the retainable area and the rest of the land that is surplus. Thereafter, the sub-division sketch was approved by the Inspector of Survey. The petitioners obtained the sub-division sketch map, which was signed by respondent No.3 on 02.01.2001. As per the provisions of the ULC Act, the surplus land holder, is required to give his option as to which portion of the land he intends to retain. Petitioner No.1, in that process, had signed on the portion of the land bounded in green colour in the sketch map, indicating his intention to retain the said land. Admittedly, the words "surrender" or "taking over of possession" of the surplus land are not found in the sketch map. That being so, merely because petitioner No.1 had agreed to retain the land existing in the green colour boundary, it does not mean that he has impliedly agreed to surrender the surplus land, much less on his behalf and on behalf of petitioner No.2 also, and more so when the endorsement of petitioner No.1 was said to have been taken on sketch map, when it was prepared on 16.12.2000. It is the contention of respondent Nos. 1 to 3 that since the petitioners did not challenge the finding arrived at by respondent No.2 in his order dated 28.04.2001 that "possession of the land has already been taken on 23.03.2001 and petitioner No.1 has also signed on the sketch plan prepared at the time of taking possession on 23.02.2001, it is not open to the petitioners now to contend that respondent No. 3 has not taken physical possession of the surplus land. This contention cannot of respondent Nos. 1 to 3 be accepted, because the petitioners in this writ petition, have questioned the entire order 28.04.2001 of respondent No.2 passed in the appeal, and it is their specific case, that petitioner No.1 did not surrender the land, and that respondent No.3 has taken possession of the land by himself. This apart, then finding recorded by this Court in W.P. No. 3878 of 2001 by order dated 07.03.2001 that "possession, if at all is taken, is only on paper and not physical possession of the land", has attained finality, in that no writ appeal was filed immediately, the Review W.P.M.P. No. 11732 of 2009, filed by respondent Nos. 1 to 3 was dismissed on 18.06.2009 and the writ appeal in W.A. No. 340 of 2010, was also dismissed by a Division Bench of this Court by order dated 15.04.2010.

That being so, it is not open for respondent Nos. 1 to 3 to contend that petitioner No.1 has surrendered the physical possession of the land and that they are in possession thereof.

(H) - POSSESSION OF LAND WAS TAKEN UNDER COMPULSION AT THE INSTANCE OF DISTRICT COLLECTOR, HYDERABAD

The fact that surplus land in question was allegedly taken possession of by the Enquiry Officer by himself and under compulsion under a cover panchanama, and not pursuant to surrender made by the petitioners, much less petitioner No.1, gets fortified from the proceedings dated 22.02.2001 addressed by the District Collector, Hyderabad, to the Mandal Revenue Officers of Asifnagar, Golconda, Nampally, Shaikpet, Ameerpet, Amberpet and Musheerabad, requiring them to take possession of the lands determined as surplus under the ULC, mentioned in the list annexed thereto (which include the land in question), copies of which are marked to the Secretary, HUDA, Special Deputy Collector, Land Protection, Revenue Divisional Officers, Hyderabad/Secunderabad Division. A copy of the said proceedings that was obtained by respondent No.8 from respondent No.6, under the Right to Information Act, which reads as follows:

The Hon'ble Chief Minister had a review on the Urban Land Ceilings subject today i.e. 22.02.2001 and he had directed that the Urban Surplus lands in Hyderabad District which are vacant and without litigation should be handed over to HUDA with immediate effect.

Hence, the Mandal Revenue Officers are requested to handover the possession of the surplus lands as per list enclosed to the nominee of the HUDA duly conducting necessary panchanama and sketch immediately and report compliance along with copy of panchanama and sketch by 23.02.2001 at 5.00 p.m. positively. Any slackness in the matter will be viewed seriously.

As can be seen from the above letter dated 22.02.2001 addressed by the District Collector, Hyderabad, to his subordinates, the Hon'ble Chief Minister, directed that the lands that are vacant and without litigation should be handed over to HUDA. Though the petitioners questioning the order dated 08.11.2000 passed by

respondent No.3 determining the petitioners as surplus holders of land, filed statutory appeal, which was pending before respondent No.2, but notwithstanding the pendency of the appeal, the Enquiry Officer, allegedly took possession of the land of the petitioners, under a cover of panchanama and handed over the same to the Deputy Tahsildar, for handing over the same to HUDA, obviously to report compliance to the District Collector, Hyderabad, along with panchanama and sketch, by respondent Nos. 23.02.2001 at 5.00 p.m. positively, so as to avoid disciplinary action.

If action of respondent No.3, in taking over of possession of the surplus land of the petitioners on the date of service of notice and before expiry of the statutory period of 30 days, is judged in the light of this letter of the District Collector, Hyderabad, it becomes crystal clear that possession of the surplus land taken by the Enquiry Officer, is not by reason of voluntary surrender by the petitioners, much less petitioner No.1, but was the result of compulsive action of respondent No. 3, to honour the directions of the Hon'ble Chief Minister. Hence, it is held that no valid possession of the land was taken on 23.02.2001 from petitioner No.1 by respondent No.3 pursuant to the notice dated 15.02.2001 under Section 10(5) of the Act ULC.

(I) - WHETHER PETITIONER No.1 CAN BE SAID TO HAVE SURRENDERED THE SURPLUS LAND VOLUNTARILY

As against the order dated 08.11.2000 passed by respondent No.3, determining petitioner Nos. 1 and 2 to be holding surplus land, the petitioners filed appeal before respondent No.2. Admittedly, respondent No.2 did not grant any stay of the order dated 08.11.2000. When in pursuance of the notice dated 15.02.2001 under Section 10(5) of the ULC Act, sought to dispossess the petitioners, the petitioners filed writ petition in W.P. No. 3878 of 2001, and this Court by order dated 07.03.2001 granted status quo. If really, petitioner No.1 had surrendered the land voluntarily or respondent No.2 had taken possession of the surplus land from petitioner No.1, then the petitioners would not have filed the writ petition in W.P. No. 3878 of 2001, which they filed contending that respondent No.3 was trying to dispossess them from the land and sought directions to respondents not to

implement the order dated 08.11.2000 and obtained status quo clearly indicates that petitioner No.1 did not surrender the land and that the petitioners will still in possession of the same. The fact that respondent No.3 did not take possession of the surplus land would further become evident from the fact that respondent No.2 by order dated 28.04.2001 dismissed the appeal on merits. If really respondent No.3 had taken possession of the surplus land from petitioner No.1, respondent No.2 would have dismissed the appeal of the petitioners as having become infructuous. This apart, the petitioners questioning the dismissal of the appeal, filed the present writ petition in W.P. No. 9198 of 2001 and obtained status quo order, and is continuing in possession of the land.

In re question No. 2:

Admittedly, the claim of respondent No.6 of the land in question, is based on the letter dated 22.02.2001 addressed by the District Collector, Hyderabad, directing the Mandal Revenue Officers concerned to hand over the vacant surplus urban lands to HUDA, and the endorsement dated 23.02.2001 on the panchanama made by the Deputy Tahsildar, Khairtabad Mandal, handing over the possession of the vacant surplus land admeasuring 47,860 Sq. mtrs. to the Estate Officer, HUDA, as per the sub-division sketch. It is based on this endorsement, respondent No.6 claims that they took possession of the land and since then they are in possession of the land. Except the letter dated 22.02.2001 of the District Collector, Hyderabad, directing the Mandal Revenue Officers concerned to hand over the vacant surplus urban lands to respondent No. 6 and the endorsement of the Deputy Tahsildar, Khairtabad Mandal, handing over possession of the land to respondent No.6, no material whatsoever is placed by respondent No. 6 in support of their claim that they are in possession of the land question. However, the said letter of the District Collector, Hyderabad, and the endorsement of the Deputy Tahsildar, Khairtabad Mandal, handing over possession of the land, have created some interest in respondent No.6 of the surplus land. Hence, respondent No.6 has locus standi to contest the claim of the petitioner. Though this Court negatived the taking over possession of the land by respondent No.3 holding that the panchanama under which it has taken is invalid and that petitioner No.1 did not surrender the surplus land and possession thereof was taken under compulsion, the fact remains, it is

the case of respondent No.6 that since the claim of the petitioners and respondent No.8 for exemption of the surplus land as per the provisions of Section 20(1)(a) of the ULC Act, was rejected by the Government, which was even upheld by this Court by its order dated 18.09.2006 in W.P. No. 6281 of 2005 as confirmed in writ appeal W.A. No. 347 of 2007, dated 06.08.2007, neither the petitioners nor respondent No.8 can claim to be in possession of the land. This contention of respondent No.6 cannot be accepted. Though the claim of the petitioners and respondent No.8 for exemption under Section 20(1)(a) of the ULC Act was rejected by the Government, the fact remains, they continued to be in possession of the land by reason of one or the other order passed by this Court, from time to time. At any rate, unless and until the alleged taking over of possession of the land in question by respondent No.3 pursuant to the notice under Section 10(5) of the ULC Act, is held valid, respondent No.6 cannot claim to derive any benefit from the alleged transfer of the land in question made by the Deputy Tahsildar, Khairtabad Mandal. As this Court declared the alleged taking over possession of the surplus land is not in accordance with the provisions of the ULC Act, respondent No.6 cannot claim to have got possession of the surplus land lawfully. Respondent No.6 to strengthen their submission that they are in possession of the land in question, relied on the stand taken by them in W.P.M.P. No. 30724 of 2001, to the effect that "surplus land has been handed over to them by the revenue authorities on 23.02.2001", and contended that since the petitioners did not file any counter rebutting the said statement, it must be presumed that the petitioners admitted the possession of respondent No.6 of the land in question. This contention of respondent No.6 cannot be accepted for the reason that the petitioners though did not file counter, but disputed the statement made that possession was handed over to them by the Revenue Department. When respondent No.6 filed application in W.V.M.P. No. 741 of 2005 praying to vacate the status quo order dated 08.05.2001, a learned Judge of this Court by order dated 17.02.2005, while refusing to vacate the interim order, made the interim order absolute on condition that the petitioners shall not create any third party rights nor raise any construction in the land during the pendency of the writ petition.

The learned Judge, while allowing the application in W.P.M.P. No. 30724 of 1001 filed by A.P. Housing Development and Finance Corporation Limited seeking to

implead itself as respondent No. 6, by order dated 07.12.2001 held that the said aspect has to be enquired, and further in the vacate stay petition in W.V.M.P. No. 741 of 2005, directed the petitioners not to create any third party rights nor raise any construction in the land during the pendency of the writ petition. This order would make it clear that petitioner Nos. 1 and 2 are in possession of the surplus land by virtue of the interim orders passed at the time of admitting the writ petition.

Be that as it may, since this Court, in the course of enquiry, found that there was no surrender made by the petitioners, much less by petitioner No.1, and the taking of possession of the land, allegedly under a cover of panchanama, has been orchestrated to honour the directions of the Hon'ble Chief Minister, I am of the considered opinion that there being no actual surrender of surplus land by the petitioners, the taking over possession of the surplus land even before expiry of the statutory notice period, is bad in law, and as the taking over of possession, has been held to be invalid and bad in law, the consequential handing over the land to respondent No. 6 by the Deputy Tahsildar, Khairtabad Mandal, also is bad. Hence, respondent Nos. 1 to 3 cannot claim to have got possession of the land in question lawfully.

In re question No. 3:

Petitioner Nos. 1 and 2, initially by orders dated 07.05.1980, passed by respondent No.3 under Section 8(4) of the ULC Act, were declared surplus holders of land in an extent of 66,173.51 Sq. mtrs. Questioning the said order, petitioner Nos. 1 and 2 filed statutory appeal under Section 33 of the ULC Act before respondent No.2, who by order dated 27.01.1997 allowed the appeal and directed conduct of de novo enquiry. During the pendency of appeal, the Government issued G.O. Ms. No. 4270, dated 10.09.1980, framing guidelines for grant of exemption under Section 20(1)(a) of the ULC Act, to surplus land holders if they intended to transfer the surplus land to co-operative societies. With a view to take advantage of the exemption, respondent No.8 claims to have entered into an agreement of sale with the petitioners for purchase of the land in question on 09.12.1980 and that the petitioners also had put them in possession of the vacant land. While so, in supersession of the aforesaid G.O., the Government issued

another G.O. in G.O. Ms. No. 136, dated 28.01.1981, prescribing the procedure for making applications for exemption. Accordingly, in terms of the afore-said G.Os., respondent No.8 states that they along with petitioner Nos. 1 and 2 to respondent No.3 claiming exemption, but the same vide orders passed in Memo dated 10.02.1983 was rejected.

Questioning the said Memo, respondent No.8 filed writ petition in W.P. No. 2658 of 1984, and this Court by order dated 05.04.1989 allowed the said writ petition and directed the Government to consider the application filed by respondent No.8 in terms of the aforesaid G.Os. When respondent No.3 sought to interfere with their possession, respondent No.8 filed writ petition in W.P. No. 17409 of 1989, and this Court by order dated 14.12.1989, while admitting the writ petition granted interim injunction. Thereafter, the writ petition was disposed of directing respondent No.3 to pass orders on the exemption application of respondent No.8 and the petitioners. Pursuant to the said order, respondent No.8 and the petitioners appeared for hearing before respondent No.3 on 29.09.1997. As thereafter, nothing was heard in the matter, respondent No. 8 made representations and ultimately filed writ petition in W.P. No. 5609 of 2004, and this Court by order dated 25.03.2004, disposed of the said writ petition directing respondent No.3 to pass orders on the exemption application and till then to maintain status quo. It appears that the exemption application filed by respondent No.8 and the petitioners was rejected on 31.10.1997 itself, but in pursuance of the orders in W.P. No. 5609 of 2003, the Government issued orders in Memo dated 01.03.2005, communicating the rejection orders dated 31.10.1997. Questioning the said rejection orders, respondent No. 8 filed writ petition in W.P. No. 6281 of 2005, which along with W.P. No. 18211 of 1995, filed by respondent No.8 seeking to declare the articles of agreement dated 24.04.1995 entered by the Government with respondent No.7, in respect of the land in question, in respect of which petitioner No.8 entered into agreement of sale, as arbitrary and illegal and contrary to the provisions of Land Acquisition Act, 1894, were heard and dismissed by this Court by order dated 18.09.2006. Respondent No.6 herein was a party-respondent No.4 in both the writ petitions, and in fact, W.P. No. 18211 of 1995 was dismissed against it for default on 19.07.2000. In fact, this Court, while dismissing the writ petition in W.P. No. 18211 of 1995, by order dated 18.09.2006 placed on record

the submission made by the learned Government Pleader that the Government is not going ahead with the agreement entered into by the Government with respondent No.7 and that the proposal to transfer the land to respondent No. 7 is dropped. Questioning the dismissal of the writ petition in W.P. No. 6281 of 2005, respondent No.8 filed writ appeal in W.A. No. 347 of 2007, which was dismissed by a Division Bench of this Court by order dated 06.08.2007. This apart, respondent No.8 filed suit in O.S. No. 118 of 2003 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioners, for specific performance of the agreement of sale, and as per the report of the Advocate Commissioner, appointed in the suit, respondent No.8 is in possession of the land.

The above proceedings initiated by respondent No.8 clearly go to show that they are making every effort to protect their possession of the land in question by virtue of agreement of sale dated 09.12.1980. Respondent Nos. 1 to 3 cannot dispute the fact that when they seek to take possession of valuable lands of citizens, they are required to follow the due process of law/procedure prescribed by law, and they are required to serve notices on all persons who have interest in the vacant land and also on those who are in possession. As per the provisions of the ULC Act, after passing of final order under Section 8(4) of the ULC Act, respondent No.3 shall while preparing final statement, alter the draft statement, and in doing so, shall cause a copy of the final statement to be served, 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. Thereupon, as required by Section 10(1) of the ULC Act, he shall cause a notification issued calling for the objections and under Section 10(3) of the ULC Act, after considering the claims of the persons interested in the vacant land, shall determine the nature and extent of such claims and pass such orders as he deems fit, and then issue notification under Section 10(3) of the ULC Act, declaring that the land excess vacant land referred to in the notification under Section 10(1) of the ULC Act, shall be deemed to have been acquired by the State Government and vested in them absolutely free from all encumbrances with effect from the date so specified. Even though the afore-mentioned provisions, clearly provide that notice has to be served on persons who are in possession of vacant land, and even though respondent No.3 has knowledge of the various proceedings initiated by

respondent No.8 being a party to them, and knowing very well that respondent No. 8 is claiming possession of the land on the basis of agreement of sale and by virtue of the interim orders passed by this Court from time to time, for the reasons best known to them, they did not serve any such notices. Since respondent No.8 was in possession of the vacant land, they were entitled to be served the statutory notices under Sections 9 and 10 of the Act.

In re question No. 4:

It is the contention of respondent No.6 that since the exemption application filed by respondent No.8 and the petitioners was rejected, and as this Court in W.P. No. 6281 of 2005, filed by respondent No.8 questioning the rejection order, by order dated 18.09.2006 has held that respondent No.8, independent of the landowners, cannot question the rejection orders, and the said order having been upheld by a Division Bench of this Court, vide its order dated 06.08.2007 passed in W.A. No. 347 of 2007, respondent No. 8 cannot claim to have any right over the land, much less to file writ petition, praying to declare the ULC proceedings having abated in view of the provisions of Section 4 of the Repeal Act. But this contention of respondent No.6 cannot be accepted. As noticed in answer to question No.4, respondent No. 8 claims that they entered into agreement of sale in respect of the land in question with the petitioners on 09.12.1980 and that by virtue of the agreement of sale, they were even put in possession thereof. Respondent No.6 along with the petitioners, filed application seeking exemption under Section 20(1)(a) of the ULC Act in terms of G.O. Ms. No. 4270, dated 19.09.1980 and G.O. Ms. No. 136, dated 28.01.1981, and against the orders passed by the Government rejecting them, respondent No. 8 initiated several writ proceedings, and also obtained interim orders from time to time.

Even though the orders passed by the Government, rejecting the exemption application of respondent No.8, was upheld by this Court vide order dated 18.09.2006 passed in W.P. No. 6281 of 2005, which was confirmed by a Division Bench of this Court vide orders dated 06.08.2007 passed in W.A. No. 347 of 2007, the fact remains, the learned Judge, while dismissing the writ petition, held that it was open to respondent No.8 to seek enforcement of their rights, if any, under the

agreement of sale entered into by them with the petitioners. Though the writ petition filed by respondent No.8 questioning the rejection order passed by the Government were dismissed, the fact remains, respondent No.8 contends that by virtue of the orders passed by this Court in the writ petitions filed by him questioning the orders/inaction of respondent Nos. 1 to 3, referred to earlier, he continued in possession of the land, and even now continues to be in possession of the land, and to demonstrate that he is still in possession of the land, relied on the report of the Advocate Commissioner, appointed in the suit in O.S. No. 118 of 2003 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, filed by them against the petitioners, for specific performance of the agreement of sale. Hence, respondent No.8, who claims to be in possession of the land in question, cannot be said to have no locus standi to file the writ petition seeking declaration that in view of the provisions of Section 4 of the ULC Act, the ULC proceedings pending before the Court, shall stand abated.

In re question No. 5:

As noted earlier, ULC Act was enacted to prevent concentration of urban property in the hands of a few persons and to bring about socialization of urban land in urban agglomeration and to secure orderly urbanization. However, considering the public opinion that the ULC Act, failed to achieve what was expected of it, and having regard to the fact that instead of bringing in socialization of urban land, has pushed up land prices to unconscionable levels, practically bringing the housing industry to a stop, which provided opportunity for large-scale corruption, the Government, with a view to revive the stagnant housing industry and provide affordable living accommodation for those who are in a state of under served want and are entitled to public assistance, decided to repeal, and accordingly enacted the Urban Land (Ceiling and Regulation) Repeal Act, 1999. This Repeal Act was made applicable to the State of Andhra Pradesh w.e.f. 28.04.2008. Pursuant thereto, the Government issued instructions in Circular Memo dated 24.04.2008 detailing the cases which stand saved and which stand abated by virtue of the Repeal Act. That being so, it may be noticed whether the petitioners and respondent No. 8 are entitled to claim the benefit of Section 4 of the ULC Act.

As noted in answers to question Nos. 1 to 3 and 5, petitioner Nos. 1 and 2 questioning the order dated 08.11.2000, passed by respondent No.3, determining them to be surplus holders, filed statutory appeal. During the pendency of appeal, respondent No. 3 issued notice under Section 9 of the ULC Act on 18.11.2000 and after issuing notice under Section 10(1) of the ULC Act on 25.01.2001, published the notice under Section 10(3) of the ULC Act, in the official gazette on 03.02.2001, stating that w.e.f. 15.02.2001 the land in question shall be deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrances w.e.f. 15.02.2001. However, the fact remains when respondent No.3 during the pendency of the appeal, sought to take possession of the surplus land, the petitioners filed writ petition in W.P. No. 3878 of 2001, which by order dated 07.03.2001 was disposed of, holding that physical possession of the land could not have been taken by the respondents therein, before expiry of the 30 days notice period and directed status quo to be maintained till the disposal of the appeal. The said order, as noted above attained finality. The fact that the petitioners are still continuing in the land in question by virtue of the status quo orders passed in this writ petition, is further fortified by the fact that the Government, in its order dated 26.06.2005, while admitting the fact that the petitioners obtained status quo order with respect to possession, rejected the request of respondent No.7, for acquisition of land in their favour under the provisions of the Land Acquisition Act, 1894, stating as follows:

The Government have examined the entire issue again. The land in T.S. No. 16/1, 16/2 of Yousufguda has been declared surplus against Srii. G.V. Mohan and G.S. Kumar under the provisions of the Urban Land (C & R) Act, 1976, and that the said surplus land vested in Government with effect from 15.02.2001 as per the notification under 10(3) of the Act published in the A.P. Gazette No.15 (Part- II, Extraordinary) dated 03.02.2001, and the parties have filed W.P. No. 9198/2001, and the High Court in W.P.M.P. No. 11690/2001 ordered to maintain status quo as on 18.05.2001 with regard to possession, and the said W.P. is in pending, and in view of vesting of land in Government, the question of acquisition of same land under the provisions of the Land Acquisition Act does not arise. Further, the Government themselves providing houses to the weaker sections through its organizations such as A.P. Housing Board, A.P. Housing Corporation, HUDCO,

WAMBAY etc. As such, it has been considered that it may not be appropriate to encourage private companies to acquire lands under the provisions of the Land Acquisition Act, 1894 for construction of houses in the name of weaker sections.

Since immediately after disposal of the appeal, the petitioners filed the present writ petition and obtained status quo, which is still continuing, it should be presumed that the petitioners and respondent No.6 are still continuing in the land.

Inasmuch as this Court declared the panchanama conducted by the Enquiry Officer as invalid and held that possession of the land was taken by himself on the very date of service of notice, which could not have been done before expiry of the 30 days notice period, and held that respondent No.3 having taken possession of the land under compulsion, invented the theory of voluntary surrender of surplus land by petitioner No.1, and further held that the petitioners did not surrender the land and the petitioners are still in possession of the land, and since the ULC proceedings in relation to the land in question are subject-matter of these two writ petitions, I am of the considered opinion that the petitioners and respondent No. 8 are entitled to claim the benefit of Section 4 of the Repealed Act. In fact, the Government issued instructions in Circular Memo dated 24.04.2008, detailing the cases which stand saved and which stand abated by virtue of the Repeal Act.

The apex Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P., Shanti Bhardwaj v. State of U.P., Ghasitey Lal Sahu v. Competent Authority and Mukarram Ali Khan v. State of U.P., having regard to the provisions of Section 4 of the Repealed Act, held that where possession of the land has not been taken, and possession of the vacant land still continues to be in possession of the surplus land owners, by virtue of the interim orders passed by the Courts, then the ULC proceedings stand abated. Since in the instant case, proceedings did not reach the stage of Section 10(6) of the ULC Act, and ended at Section 10(5) of the ULC Act, and as the petitioners and respondent No.8 continue to be in possession of the surplus land, having regard to the provisions of Section 4 of the Repealed Act and Cause (c) of the Circular Memo dated 24.04.2008, issued by the Government pursuant to the Repealed Act, which states that all pending cases in different stages i.e., under Section 8(1), 8(4) and notifications 10(1), 10(3) and notice 10(5)

shall abate, I am of the considered opinion that the ULC proceedings in relation to the land in question, which are subject-matter of these writ petitions, stand abated. Accordingly, the writ petitions are allowed. No costs.

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