

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

W.P.Nos.11293 OF 2009 and 23477 OF 2010

COMMON ORDER:

Since the issue involved in both the writ petitions is intrinsically connected, the writ petitions are taken up together and disposed of by this common order.

2. The Writ Petitioner in W.P. No.11293 of 2009 A.P. Electrical Equipment Corporation is a proprietary concern of ECE Industries, petitioner in W.P. No.23477 of 2020.

3. W.P. No.11293 of 2009 is filed questioning the action of the respondents in interfering with the possession and enjoyment of the petitioner - M/s.A.P. Electrical Equipment Corporation in respect of the land admeasuring 30181.10 sq. yards in survey No.76, Fathenagar Village, Balanagar Mandal, Rangareddy District, as illegal and arbitrary.

4. W.P. No.23477 of 2010 is filed aggrieved by the panchanama proceedings dated 08.02.2008 allegedly taking over possession of the land admeasuring 46,538 sq. mtrs. in survey Nos.74 to 76 of Fatehnagar village, Balanagar Mandal, Ranga Reddy District and the attempts of the respondent authorities in trying to physically dispossess the petitioner ECE Industries Ltd forcibly from the land admeasuring 46,538 sq. mtrs. and the buildings thereon even after the Repeal of the ULC Act.

5. For better appreciation and understanding of the case on hand, the facts in W.P.No.23477 of 2010 are narrated before narrating the facts in W.P. No.11293 of 2009.

6. Facts leading to filing of W.P.No.23477 of 2010, in a nutshell, are that ECE Industries Ltd. (in short 'ECE Industries') is

involved in the business of manufacture and selling of power transformers and other electrical equipment. For the purpose of establishing its manufacturing unit, ECE Industries had purchased land admeasuring 57026 sq. mtrs. in survey Nos.78 and 79 and 106511 sq. mtrs. in survey Nos.74, 75 and 76 i.e. total admeasuring 163679 sq. mtrs situated at Fathenagar Village, Balanagar Mandal, Ranga Reddy District, through registered sale deeds in the year 1965 and since then ECE Industries has been in physical possession and enjoyment of the said property and ECE Industries had also established a manufacturing unit in the said property. After enactment of The Urban Land (Ceiling and Regulation) Act, 1976 (in short 'ULC Act'), the ECE Industries had filed a statement in Form I under Section 6 of the ULC Act and the declaration of the ECE Industries was taken up as CC No.10571/76 by the ULC authorities. Insofar as the land in survey Nos.78 and 79 is concerned, the Government had issued G.O.Ms.No.1729 dated 27.11.1982 exempting the entire extent of land in survey Nos.78 and 79 on the ground that ECE Industries had already constructed a factory in the said land. That insofar as remaining land in survey Nos.74, 75 and 76 is concerned, the Government in the very same G.O.Ms.No.1729 dated 27.11.1982 had also exempted an area of 48,859 sq. mtrs., subject to the condition that ECE Industries should construct a separate factory and other buildings on the said land within the time stipulated in the said G.O. For the remaining extent of 56730 sq. mtrs of land also exemption has been granted to ECE Industries in view of the scheme formulated under Section 21 of the Act for construction of houses for weaker sections of the society in the said land. Despite,

ECE Industries having constructed a factory building for manufacturing electrical transformers in land admeasuring about 1229 sq. mtrs., Government has issued G.O.Ms.No.303 withdrawing the exemption granted to ECE Industries under G.O.Ms.No.1729, dated 27.11.1982, in respect of 48859 sq. mtrs. Thereafter, the ULC authorities have conducted an enquiry and after re-computing it was finally held that ECE Industries was having surplus land to an extent of 46538.43 sq. mtrs. in survey Nos.74/P, 75/P and 76/P. The appeal filed by the ECE Industries was also disposed of by the appellate authority confirming the above calculation subject to verification of certain facts. Consequently, the surplus holding of ECE Industries in Hyderabad was computed at 45538.43 sq. mtrs. Thereafter, the notification under Section 10 (3) of the Act was published in State Gazette on 03.10.2007 declaring that an extent of 46538.43 sq. mtrs. belonging to ECE Industries in survey Nos.74/P, 75/P and 76/P of Fathenagar Village, has been acquired by the State Government w.e.f.12.07.2007. That on 24.02.2009, ECE Industries was served with a copy of G.O.Ms.No.1534 dated 20.12.2008 wherein the Government also sought to resume the surplus land to an extent of 56730.57 sq. mtrs. covered under the scheme envisaged under Section 21 of the ULC Act. Questioning the said G.O. Ms. No.1534 dated 20.12.2008, the ECE Company filed W.P. No.28644 of 2008 and the same was disposed of by this Court vide order dated 24.01.2020 on the ground that the said G.O.Ms.No.1534 dated 20.12.2008 was already set aside by this Court *vide* order dated 26.10.2009 in W.P.No.3140 of 2009. While things stood thus, the Tahsildar concerned came to ECE Industries

on 14.09.2010 for the purpose of taking over the possession of 46538 sq. mtrs. of land in survey Nos.74, 75 and 76 on the ground that the same has been declared as surplus land and asked the officials of the ECE Industries to vacate the premises immediately. The said action was resisted by the officials of the ECE Industries on the ground that in view of the repeal of the ULC Act, the question of taking over the possession of the land of ECE Industries does not arise. At that stage, the Tahsildar handed over a copy of the panchanama said to have been conducted on 08.02.2008 which reflects that the notice under Section 10 (5) of the Act was issued to ECE Industries on 05.01.2008 and subsequently possession was taken over under Section 10 (6) of the ULC Act under a cover of panchanama, dated 08.02.2008. Aggrieved by the above action of the authorities, ECE Industries had filed W.P. No.23477 of 2010.

7. On 22.09.2010, this Court while admitting W.P. No.23477 of 2010, had granted interim orders of stay of dispossession of the petitioner Industry, if it is in physical possession of the property, as on that day.

8. The Special Officer & Competent Authority, O/o.Urban Land Ceiling, Hyderabad, filed a counter affidavit in W.P. No.23477 of 2010 stating that pursuant to the issuance of G.O.Ms.No.931, dated 12.08.1976, the ECE Industries had submitted a representation before the Government for exemption of their land from the provisions of the ULC Act and *vide* G.O.Ms.No.1729, dated 27.11.1982, the Government had granted exemption under Section 20 of the ULC Act for the land admeasuring 51580.00 sq. mtrs. in survey Nos.78 and 79 to run the existing industry and

another extent of land admeasuring 48859.50 sq. mtrs. in survey Nos.74, 75 and 76 for establishing a factory subject to certain conditions among which one of the conditions is that the land should be utilized for the purpose for which it is retained within three years from the date of grant of exemption. Thereafter, the ECE Industries had filed a representation under Section 21 of the ULC Act seeking to retain the balance extent of 40,436 sq. yards for construction of dwelling units for accommodation of members of the weaker section. Accordingly, exemption was granted to ECE Industries. Subsequently, ECE Industries had filed a revised proposal to take up the scheme over an extent of 56730.57 sq. mtrs in survey Nos.74 and 75 and the said request was also considered and revised orders were issued imposing certain conditions. As per condition No.3 thereof, the construction of dwelling units shall be completed within a period of five years from the date of declaration. As ECE Industries has not commenced the construction work and also not submitted the periodical reports, after issuing a show cause notice and affording the opportunity of personal hearing, the orders issued under Section 21 of the ULC Act have been revoked vide order dated 08.03.1992. Further more, vide G.O. Ms.No.303, dated 07.04.1990, the Government has also withdrawn the exemption granted for running of factory to an extent of 48859.50 sq. mtrs. on the ground of non-utilization of the land by the ECE Industries. Thereafter, after following due process of law, possession was taken over on 08.02.2008. It is specifically averred that the Government has adopted the Urban Land (C&R) Repeal Act, 1999 w.e.f.27.03.2008 whereas the possession of the surplus land was taken over on 08.02.2008 i.e. before the Repeal

Act came into force. Hence, it is prayed to dismiss the writ petition.

9. A rejoinder has been filed by the petitioner denying the service of notices under Sections 10 (5) and 10 (6) of the ULC Act on the petitioner ECE Industries and also taking possession of the subject land. Further it is stated that even for the sake of argument and admitting for a moment that notice dated 05.01.2008 issued under Section 10 (5) of the ULC Act was served on ECE Industries on 08.01.2008, as claimed by the respondents in the counter affidavit, the thirty days period granted in the said notice would expire only on 07.02.2008. Hence, the right of the competent authority to take further action under Section 10 (6) of the ULC Act would accrue only on or after 08.02.2008. It is further urged that for computing the period of thirty days envisaged in the notice under Section 10 (5) of the ULC Act would accrue only on 07.02.2008 i.e. thirty days from the service of notice on 08.01.2008 and not the date mentioned in Section 10(5) notice i.e. 05.01.2008. Hence, the order passed by the authority under Section 10 (6) of the ULC Act on 05.02.2008 itself is premature one, contrary to the provisions of the Act and liable to be set aside. That the so-called panchanama under which the alleged possession of the subject lands is stated to have been taken is a sham, fabricated and created document. The said panchanama is prepared sitting in the office of the respondent authorities and at no point of time, they have come to the spot. That the name of the petitioner is reflected in the possession and enjoyment columns in respect of the subject lands including the excess vacant land in the revenue records which prove that the

physical possession of the subject land is still with the petitioner. That number of apartments are constructed in part of the subject land and the factory is still running and the entire land is encompassed with a compound wall, secured by a gate and manned by security guards, who are posted there regularly. That the revenue records i.e. pahani stands in the name of the petitioner in respect of various survey numbers, even as on date, therefore the theory put forth by the respondents that they have taken over the possession cannot be believed and the same is contrary to the records. That once the ULC Act itself is repealed, the authorities do not have any jurisdiction to act under the repealed Act.

10. In W.P.No.11293 of 2009, it is the case of the petitioner M/s.A.P. Electrical Equipment Corporation (in short APEEC') that for the purpose of constructing dwelling units, APEEC Company entered into Development Agreement dated 21.09.2007 with M/s.SP Real Estate Developers and M/s.Janapriya Engineering Syndicate Limited. As the said developers did not fulfill the conditions of the agreement, disputes arose between them and cases were filed before the Chief Judge, City Civil Court, Hyderabad. While so, in order to protect the land in survey No.76 from illegal encroachments and grabbing, APEEC Company undertook the work of erection of fencing around the land. While the work was going on, the Mandal Surveyor and local people tried to interfere with the fencing work undertaken by APEEC Company. After examining the documentary evidence, the Mandal Surveyor was satisfied with the title of the petitioner, but however, he again visited the premises of APEEC Company, tried to interfere with the

peaceful possession of the petitioner and asked the officials of the Company to remove the fencing. Aggrieved by the same, APEEC Company left with no other alternative but to approach this Court under Article 226 of the Constitution of India, had filed W.P. No.11293 of 2009.

11. On 29.06.2009, while admitting W.P. No.11293 of 2009, this Court had granted interim injunction.

12. In W.P.No.11293 of 2009, the Tahsildar had filed a counter affidavit stating that exemption was granted by the Government with the condition that construction of the dwelling units shall be completed within five years from the date of proceeding i.e., on or before February, 2005. As the Corporation has not constructed the dwelling units within the specified period and thereby violated the conditions mentioned in the ULC proceedings, the Corporation had no right to enter upon the land. Hence, the petitioner Corporation was restrained from undertaking the fencing work. Therefore, it is prayed to dismiss the writ petition.

13. Heard Sri V. Ramesh, learned Senior Counsel, appearing on behalf of the learned counsel for the petitioners, the learned Advocate General, learned Government Pleader for Revenue and the learned Government Pleader for Home, for the respondents.

14. Learned Senior Counsel appearing on behalf of the petitioners has vehemently argued that the official respondents without following the procedure established under law or the Act have prepared the notices and panchanama showing as if the possession of the subject lands was taken by them. Learned counsel has stated that the so-called panchanama dated 08.02.2008, under which the official respondents are claiming to

have taken the possession of the land admeasuring 46538 Sq Mtrs. in survey Nos.74 to 76 on 08.02.2008, is nothing but a sham, fabricated and bogus document created for the purpose of depriving the petitioner of its lawful right, title, interest and physical possession. Learned Senior Counsel has taken this Court through various documents filed by the petitioner, more particularly the notices under Sections 10 (1), 10(3), 10(5) and 10(6) of the Act, the panchanama dated 08.02.2008, the subdivision sketch prepared at the time of conducting panchanama, the orders of the Special Officer and Competent Authority under ULC, the order dated 28.07.2005 passed by the Court of the Commissioner, Appeals, O/o.The Chief Commissioner of Land Administration, pahanies of the years 2007 to 2010, pattadar passbooks and title deeds issued in favour of the petitioner in respect of the subject lands, Encumbrance Certificate, Returns of the Company filed under Employees Provident Fund, Commercial Tax Assessment Orders, license issued by the Inspector of Factories, Hyderabad, delivery challans of the goods manufactured by the petitioner Company, electricity bills and photographs, which evidence that the subject land in the writ petitions is encompassed with a compound wall and barbed wire fencing along with a gate and a guard room. The other documents relied by the petitioners to show that the so-called panchanama has been created for the purpose of depriving the rights of the petitioner and that the physical possession of the land is still with the petitioner are (1) GHMC Permit to construct dwelling house vide Permit No.144/48, (2) Pahani & Encumbrance Certificates, (3) ESIC Returns of the Company of the year 2007-2008, (4) CST Assessment order with

payments 2008-2009, (5) photographs of the dwelling houses taken in the years 2007, 2010 and 2019, (6) copy of licence dated 17.04.2009, (7) delivery challans dated 26.06.2008 (8) Electricity bills issued by Central Power Distribution Company, and (9) E>Returns of the Company, which clearly establish that the factory is still running and the claim of the official respondents that they have taken possession of the subject property is nothing but a bogus claim.

15. Learned Senior Counsel has also drawn the attention of this Court to the 10 (3) notice dated 03.10.2007, 10 (5) notice dated 05.01.2008, 10 (6) notice dated 08.02.2008 and also the panchanama prepared on the very same day i.e., 08.02.2008. Learned Senior counsel has argued that both the 10 (6) notice and the consequential panchanama dated 08.02.2008 are sham and fabricated documents, which have been prepared after the Repeal of the ULC Act on 27.03.2008. To buttress the said contention, the learned Senior Counsel has drawn the attention of this Court to the panchanama dated 08.02.2008 to show that the date on the said panchanama has been backdated and manipulated, the panchanama does not contain the full details of the panchas, the address of the so-called panchas is not reflected in the said panchanama, except stating that they live in Fathe Nagar. The panchanama is bereft of any details of the panchas and therefore, the same is liable to be rejected. Usually the panchas will be some respectable and well known persons of the locality where the panchanama is prepared but in this particular panchanama, the same is not the case, no details of the panchas are found in the panchanama. Learned Senior counsel has stated that without

serving the notice under Sections 10 (3), 10 (5) and 10 (6), the said panchanama has been prepared sitting in the office of the respondent authorities by back dating the same. Learned Senior Counsel has stated that the entire subject land is encompassed by a compound wall and barbed wire fencing and there is a factory which is running in the subject premises and the same is in physical possession of the petitioner company even as on date. At no point of time, the petitioner was dispossessed and possession taken over by the authorities, as alleged.

16. In support of his submissions, the learned Senior Counsel has relied on the decisions in **Smt. Darothi Clare Parreira and others vs. State of Maharashtra¹, Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad, vs. P.S. Rao², Competent Authority vs. Barangore Jute Factory and others³, State of Uttar Pradesh vs. Hari Ram⁴, Gajanan Kamlya Patil vs. Addl. Collector and Comp. Auth.⁵, Mangalsen vs. State of Uttar Pradesh⁶, State of Tamil Nadu vs. Sumathi Srinivas⁷, The Government of Tamil Nadu vs. M/s.Mecca Prime Tannery⁸, The Principal Commissioner, Commissioner of Land Reforms vs. M. Venkataraman⁹, The Government of Tamil Nadu vs. I.Richardson¹⁰**, order dated 10.06.2022 passed by a Division Bench of Hon'ble Court of Judicature at Madras in W.A. No.1133 of 2002, order dated 26.08.2014 passed by the Hon'ble Court of Judicature at Madras in W.P. No.24528 of 2001, **Smt. Angoori**

¹ AIR 1996 SC 2553

² (2000) 2 SCC 451

³ (2005) 13 SCC 477

⁴ (2013) 4 SCC 280

⁵ 2014 (12) SCC 523

⁶ (2014) 15 SCC 332

⁷ 2015-2-L.W.391

⁸ 2012-4-L.W.289

⁹ 2014 SCC OnLine Mad 4505

¹⁰ 2014-3-L.W. 328

***Devi vs. State of U.P.*¹¹ and *Pt. Madan Swaroop Shrotiya Public Charitable Trust vs. State of U.P.*¹².**

17. Per contra, learned Advocate General/Government Pleader has sought to support to the case of the Government by stating that the official respondents have duly followed the procedure contemplated under the ULC Act and only after the publication of the mandatory notices under Sections 10 (1), 10 (3), 10 (5) and 10 (6) of the Act, the authorities have taken possession of the subject land under the cover of panchanama. That the petitioner cannot question the notices issued under the Act and once the possession is taken by the authorities, the present writ petitions are not maintainable and are liable to be dismissed.

18. Learned Additional Advocate General has relied on the following judgments in support of his submissions:

- 1) ***State of Assam vs. Bhaskar Jyoti Sarma*¹³**
- 2) Un-reported judgment of the erstwhile High Court of Judicature of Andhra Pradesh dated 07.08.1997 passed in W.P. No.24373 of 1995

19. For better appreciation of the case on hand, the relevant Sections of ULC Act i.e., Sections 10(1), 10 (3), 10 (5) and 10 (6) of the ULC Act, and the relevant portion of the Repeal Act, which was adopted by the then Government of Andhra Pradesh on 27.03.2008 vide G.O.Ms.No.603, dated 22.04.2008, are extracted below.

10. Acquisition of vacant land in excess of ceiling limit:-

¹¹ JT 2000 (Suppl.1) SC 295

¹² JT 2000 (3) SC 391

¹³ (2015) 5 SCC 321

(1) As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

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

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

(Emphasis Added)

20. The Urban Land (Ceiling and Regulation) Act, 1999, (in short, the Repeal Act) repealed the Urban Land (Ceiling and Regulation) Act, 1976. Relevant portion of the Repeal Act i.e. Sections 2 and 3 thereof read as under:

2. Repeal of Act 33 of 1976.- The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principal Act), is hereby repealed.

3. Saving.- (1) The repeal of the principal Act shall not affect-

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

(b) the validity of any order granting exemption under, sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary:

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

(2) Where-

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

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

21. A bare reading of the provisions of the ULC Act reveals that after the final statement under Section 9, the competent authority shall give a notification giving particulars of the vacant land whereby the said person who is in excess of the ceiling limit and calling for objections, if any, under Section 10 (1) of the ULC Act.

Thereafter, under Section 10 (2) of the ULC Act, the said objections shall be considered by the said competent authority. Thereafter, under Section 10 (3) of the ULC Act, the competent authority shall notify the excess vacant land, which has been referred to in Section 10(1) of the ULC Act and from the date specified in the said notification, the land is deemed to have been acquired by the State Government and shall be deemed to have vested in the State Government free from all encumbrances. Section 10(4) of the ULC Act postulates that the lands which are notified under Section 10(3) of the ULC Act shall not be transferred either by way of a sale, mortgage, gift, lease or otherwise any excess vacant land and such sale, mortgage, gift etc., shall be deemed to be null and void. After the publication of the notice under Section 10(3) of the ULC Act, the competent authority by notice in writing order any person who may be in possession of the vacant land which has vested in the Government by virtue of sub-section (3) to handover the physical possession of the land, within thirty days from the date of service of notice. After service of the notice under Section 10(5), if the land owner fails to surrender the possession of the land voluntarily, then the procedure contemplated under Section 10 (6) of the Act will be adapted. Section 10(6) postulates that the authorities must go to the land physically and take physical possession of the land duly putting the owner or person in possession on notice. A combined reading of Sections 10(5) and 10(6) makes it abundantly clear that the land holder in possession the vacant land will have to handover the physical possession voluntarily and in case, he fails to do so, the physical possession will be taken forcibly by the authorities. The said exercise of

taking possession under Section 10(6) of the ULC Act has to be done in a cogent and convincing manner duly putting the parties on notice. The panchanama has to be prepared in the presence of the land owner, duly measuring the excess vacant land, which is sought to be taken over, with the help of the Mandal Surveyor or any other competent person in the presence of panchas, and along with the panchanama the site map also needs to be prepared, and both the panchanama as well as the plan shall have be attested not only by the panchas and the person preparing the same but also by the land owner.

22. Even though the word 'Panchanama' is not defined anywhere in law, the Courts, lawyers and the litigant public are well aware of the term panchanama and its significance, more so, in civil and criminal litigations. The panchanama is the document, which is prepared at the subject site in the presence of 3 to 5 persons who are not only independent persons but also well respected in the locality of the subject property. The panchanama is prepared in their presence usually noting down as to why they were called or the purpose for which the panchanama is prepared, recording the events that have taken place in their presence. Usually, the name, address, age and occupation of the panchas is noted down in the panchanama besides noting the date and time and place where the panchanama is prepared and also the purpose for which the panchanama is prepared, what action has been taken. The panchanama will be prepared in the presence of the owners/possessors of the subject site and the panchas. Usually, the panchanama will be accompanied by a site plan, which is prepared either by the person writing the panchanama or by a

competent surveyor, who after surveying, demarcating and measuring the land in question will prepare a rough sketch indicating the subject land in the site plan annexed to the panchanama. After the preparation of both the panchanama and the site plan, the panchas will be read over the contents of the panchanama and the endorsement or signature of the panchas will be taken both on the panchanama and also on the site plan prepared. The person who has prepared the panchanama and site plan will also sign both the documents, so also the signature of the owner/possessor will also be taken on both the documents. The panchanama records what the panchas have seen/observed, the action taken. The primary intention behind the preparation of the panchanama is to safeguard against possible tricks and unfair dealings on the part of the officers, who may indulge in malpractices. In ***Yakub Abdul Razak Memon vs. State of Maharashtra***¹⁴, the Hon'ble Supreme Court has observed that *Panchanama is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime. However, it is not only the recordings of the scene of crime but also of anywhere else which may be related to the crime/offence and from where incriminating evidence is likely to be collected. The document so prepared needs to be signed by the investigating officer who prepares the same and at least by two independent and impartial witnesses called 'Panchas' so also by the concerned party. The witnesses are required to be not only impartial but also 'respectable'. 'Respectable' here would mean a person who is not dis-reputed. One should also check if the witnesses are in*

¹⁴ CDJ 2013SC 230

their senses at the time of panchanama proceedings. Only majors are to be taken as witnesses as minors witness may not withstand the legal scrutiny.

23. The above stated legal position makes it abundantly clear that whenever a panchanama is prepared, the same has to be done duly putting the actual owner/interested person on notice. That the panchas should be of reputed/respectable persons of the locality where the panchanama is being drafted. The date and time on which the panchanama is prepared and the name, age and address of the panchas should be mentioned in the said panchanama. After preparation of the panchanama, if it is prepared by other than one of the panchas, the same should be read over and explained to the panchas, and the signatures of the panchas, the person preparing the panchanama and also the land owner/interested person should be attested at the bottom of the panchanama.

24. This Court as well as the Hon'ble Supreme Court on number of occasions have held that unless and until the actual physical possession of the land has been taken over, the taking over proceedings under the old ULC Act will stand abated on coming into force of the Repeal Act. The Hon'ble Supreme Court in *State of Uttar Pradesh vs. Hari Ram*¹⁵ while interpreting Section 10 (3) of the Act has clearly held as under:

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant

¹⁵ (2013) 4 SCC 280

land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is “peaceful dispossession” and on failure to surrender or give delivery of possession under Section 10 (5), than “forceful dispossession” under sub-section (6) of Section 10.

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

38.....

39. Above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

40....

41. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under

a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

25. In **Mangalsen's case (referred supra)**, the Hon'ble Supreme Court held as under:

“We may add that the manner in which the competent authority and the respondents exercised power under the 1976 Act leaves much to be desired. Till the stage of issuing notification under Section 10(1), the authority concerned had acted with sufficient promptness but, thereafter, everybody went in slumber. The notification under Section 10(3) was issued after a gap of almost 3 years. The notice under Section 10(5) was issued after another 7 months but was not served upon the appellant. The possession certificate was prepared after a time gap of 3 years and 4 months and notice under Section 11(8) was issued after more than one decade. Not only this, the application filed by the appellant under Section 20 was not decided till the filing of the writ petition in the year 2008

26. In **V.Somasundaram and others v. Secretary to Government, Revenue Department, Chennai and others**¹⁶, it is observed and held as follows:

“In view of Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, Competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to

¹⁶ (2007) 1 M.L.J., 750, at Special page 751

any person duly authorized by the State Government, within thirty day's time. Proceedings initiated against the erstwhile owner is non est in law. Non-compliance of Section 11(5) of the Act cannot be rectified at a later stage.

When the alternative remedy of Appeal, is lost due to the enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) repeal Act, 1999 from 16.09.1999, the aggrieved party can maintain a writ petition against the proceedings initiated under Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978."

27. In an unreported judgment in **V.Geetha Lakshmi vs. The State of Tamil Nadu and others** (In W.P.No.24528 of 2001 dated 26.08.2014), the Madras High Court had held as under:

"The words and phrases 'deemed to have been acquired'; 'deemed to have been vested absolutely'; 'acquired'; 'vested' came up for consideration before the Hon'ble Supreme Court in the decision reported in 2013-2-L.W.469 (State of UP v. Hari Ram), dealing with Section 10(3) of the Uttar Pradesh Urban Land (Ceiling and Regulation) Act, 1976 and Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which is pari material of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20/1999). Similar Repealing Act 1999 came into force and similar claim was made by the land owner. The Hon'ble Apex Court, after examining the legal fiction, found that the vacant land was not actually acquired, but deemed to have been acquired and held that acquisition does not take possession unless there was an indication to the contrary and under Section 10(3) what is vested is de jure possession, not de facto and that from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore continues to be with the holder of the land.

The Hon'ble Apex Court in the same decision, further explained in detail as to what is voluntary surrender, peaceful dispossession and forceful dispossession as contemplated under Section 10(3), 10(5) and 10(6) respectively, as per which it is always open to the person to voluntarily surrender and deliver possession under Section 10(3) of the Act. 'Peaceful dispossession' means, when there is no voluntary surrender or delivery of possession under Section 10(3) the Statge Government has to issue notice under Section 10(5) to surrender or deliver possession. 'Forceful dispossession' arises when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Section 10(6) says if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may taken

possession of the vacant land to be given to the State Government and for that purpose, force as may be necessary can be used. Section 10(6) therefore contemplates a situation of a person refusing or fails to comply with the order under Section 10(5), in the event of which, the competent authority may taken possession by use of force. It is categorically observed by the Hon'ble Apex Court in the case cited above that the requirement of giving notice under Sections 10(5) and 10(6) is mandatory and effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 10 is that it might result the land holding being dispossessed without any notice. In order to deny the benefit of Section 3 of the Repeal Act, the State has to establish that there has been either (i) voluntary surrender of vacant land or (ii) peaceful surrender and delivery of possession under sub-section (5) of Section 10 or (iii) forceful dispossession under sub-section (6) of Section 10 and on the failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. In the case in hand, the Apex Court, having found that no documents have been produced by the State to show that the respondents/land owners had been dispossessed in either of the modes before coming into force of the Repeal Act, the land owners were entitled to get the benefit of Section 3 of the Repeal Act, which is pari material of the Repeal Act 20/1999 herein."

28. In ***M/s. Mecca Prime Tannery (referred supra)***, a Division Bench of Hon'ble High Court of Judicature at Madras while interpreting the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999, which are similar to the provisions of the ULC Act, had held as under:

"32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have become into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11(5) and Section 11(6)

of the Act. Section 11(5) contemplates issuance of notice by the State Government or any person duly authorized by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11(6) of the Act.”

29. In ***Principal Commissioner and Commissioner for Land Records vs. B. Bhooshanam***¹⁷, a Division Bench of the Hon’ble High Court of Judicature at Madras, has held as under:

“9. While dealing with the question of vesting of land under Section 10(3) of the Ceiling Act which is *pari materia* to Section 11(3) of the Ceiling Act, the Hon’ble Supreme Court has in various decisions held that vacant land is deemed to have been acquired but acquisition does not mean taking over of the possession of the land. For taking possession of the land, the procedure contained under the sub-Section (6) of Section 10 *pari materia* to Section 11(6) of the Tamil Nadu Act has to be followed. Under Section 11(3) what has vested is *dejurae* possession and not *de facto* possession, Section 11(5) stipulates that 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 within thirty days of the service of the notice. Sub-Section 6 of Section 11 postulates that if a person refuses or fails to comply with an order made under sub-Section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may, and for that purpose, use such forces as may be necessary. The procedure under Section 11(6), therefore, operates when the land owner fails to comply

¹⁷ (2020) SCC Online Mad 152

with the direction issued to him under 11(5) of the Act. Silence on the part of the land owner does not mean that the land owner has given possession and there is no necessity to comply with the procedure under Section 11(6) of the Ceiling Act.

14. A perusal of the above position would show that Section 10(5) postulates that the land owner himself surrenders the possession. If the land owner does not surrender possession, then procedure under Section 10(6) of the Ceiling Act has to be adopted. Section 10(6) of the Ceiling Act, therefore, postulates that authorities must go to the land and take physical possession on the land itself. This procedure cannot be adopted while sitting inside the office of the authorities. Notice under Section 11(5) of the Act was served, on the land owners only by affixture. There is nothing to show where the notice was pasted. There is no witness to show whether there was actual pasting or not. The possession certificate only shows that the land was handed over by the Deputy Tahsildar to the Zonal Deputy Tahsildar. As observed earlier, the words "from the urban land owner" has been struck off. There is nothing on record to satisfy us that the Government took physical possession of the property from the land owners. There are no witnesses to show that the officers went to the land physically and took over possession which is normally done in favour of independent witnesses. It looks as if the entire exercise of affixture and taking over of the possession of the land was done inside the office of the respondents. This Court is of an opinion that there has to be some form of material showing service of notice under Section 11(5) of the Ceiling Act having being done through affixture. There has to be some material to show voluntary surrender of possession. In the absence of any material, it cannot be presumed that there has been a voluntary surrender of the land. In the absence of voluntary surrender of the land, the State Government will have to resort to the procedure under Section 11(6) of the Ceiling Act. Admittedly, Section 11(6) of the Ceiling Act has not been resorted to. The stand of the State Government

that unless there is a physical resistance, Section 11(6) need not be resorted to at all, cannot be accepted.”

30. From the sum and substance of the above said judgments of the Hon’ble Supreme Court and various other Courts, it is clear that the official respondents after issuing notices under Section 10(1) and 10(3) have to issue notice under Section 10(5) directing the party to surrender the possession of the land, within a period of thirty days, and if voluntary possession of the same is not given, then the official respondents are obligated to issue notice under Section 10(6) to the petitioner and then take possession. The above judgments also make it abundantly clear that mere issuance of the notice under Section 10(3) does not automatically entitle the official respondents to take possession of the notified lands, but the authorities have to necessarily issue notice under Section 10(5) to the land owner or any other interested person. The Courts have also held that the taking over of the possession has to be actual physical possession and not mere *de jure* possession. Having regard to the above laid proposition of law, the question now before this Court is to see as to whether the notifications issued under Section 10(5) and 10(6) by the authorities and the panchanama stand to the legal scrutiny of this Court?

31. The documents filed, more particularly, the notice issued under Section 10(6) of the Act reveals that in the said notice, two dates are mentioned i.e. 05.02.2008 and 08.02.2008.

32. Even if the contention of the official respondents that the 10 (5) notice dated 05.01.2008 is sent through registered post is taken to be true, it will take minimum two or three days time for the said notice to reach the office of the petitioner. As per the

requirement of ULC Act, the time period of thirty days is prescribed for issuance of 10 (6) notice after issuance of 10 (5) notice. If that be so, the 10 (6) notice should be dated 08.02.2008. But a perusal of the 10 (6) notice shows that two dates are written on the said notice i.e. the dates of 05.02.2008 and 08.02.2008, which clearly shows that the date 10 (6) notice has been prepared even before the expiry of 30 days. Moreover, in the said notice it is mentioned as under:

“The 30-days time given in the notice U/s 10(5) of the act expired on **01-10-2008** but they failed to deliver possession before the expiry date. Hence Sri S.A. Khader, Enquiry Officer of this office is authorized to take over possession of land in question U/s 10(6) of the Act and hand over the same to the Mandal Revenue Officer concerned and report compliance within one week positively.”

(Emphasis Added)

33. The above extracted portion of the 10 (6) notice clearly reveals that the notices are back-dated for the purpose of preparing the said notice and panchanama. It is beyond comprehension and not understandable as to how the date of 01.10.2008 can be mentioned while calculating the expiry date of thirty days from either 05.01.2008 or 08.01.2008, as the case may be. Evidently the person who was preparing the 10 (6) notice did so after the Repeal Act was enacted and adopted by the then Government of Andhra Pradesh. Even in the counter filed by the Special Officer & Competent Authority, it is stated as under:

“18. A notice U/s.10 (5) of the Act was issued on 5-1-08 asking the declarant to surrender the excess vacant land within (30) days from the date of its receipts. The company was under lockout, hence the notice issued U/s 10(5) of the Act **was affixed on the main door on 8-1-08.**

The time stipulated in the notice expired but the declarant failed to surrender the land. **Hence order U/s 10(6) of the Act was issued on 5-2-08**, authorizing the Enquiry Officer of this office to take over possession of the surplus land and hand it over to the MRO, concerned. The Enquiry Officer of this office took over possession of the surplus land on 8-2-2008 to an extent of 46538.43 sq.mtrs. in Sy.Nos. 74/p, 75/p and 76/p, in Fathenagar Village, Balanagar Mandal and Special Officer, ULC, Visakhapatnam accordingly took over possession of the surplus land to an extent of 8437.48 sq. mtrs. in Sy.No.59/3, Marripalem village, Visakhapatnam on 12-3-2008.”

(Emphasis Added)

34. Even if the above averments made in the counter are taken to be true and correct, the very admission on the part of the official respondents that the notice was served on 08.01.2008 and Section 10(6) notice is issued on 05.02.2008 confirms that the mandatory period of 30 days between Sections 10(5) and 10(6) notices is not met and the same has to be held *void*, illegal and bad. Besides, when pointed out by this Court about the discrepancies with regard to the dates mentioned in the 10 (6) notice and also the non-service of the notice under Section 10 (5) to the petitioner in-person, the learned Special Government Pleader tried to brush out the same as some clerical errors and argued that the same has to be ignored as a minor procedural lapse. The two dates mentioned in 10 (6) notice belie the claim of the official respondents that they have taken over the physical possession of the subject land on 08.02.2008. There is no whisper or explanation forthcoming from the authorities as to how the date of 01.10.2008 is mentioned in the 10 (6) notice while calculating the expiry of 30 days period from either 05.01.2008 or 08.01.2008. Even a perusal of the 10 (5) notice shows that the same has not been served on the petitioner,

but was affixed on the gate of the factory only on 08.01.2008. There is no signature on the said notice as to who has received the same except a name has been scribbled (which is not legible). Having regard to the overwhelming evidence to show that the physical possession of the land is still with the petitioner, this Court is of the considered view that the valuable rights of the parties cannot be allowed to be defeated on the basis of the documents prepared after the Repeal Act has come into force and the stand of the Government that the dates shown in the documents are only clerical errors, cannot be accepted and is hereby rejected. In the absence of any cogent and convincing evidence or document to show that the Government has taken physical possession of the subject land as contended or any other material to show that the notices under Sections 10 (3), 10 (5) and 10 (6) were validly prepared and served on the petitioner, both the Section 10(6) notice and panchanama dated 08.02.2008 have to be taken as a bogus and fabricated one, prepared after the Repeal Act come into force. The material placed before this Court clinchingly establishes that the physical possession of the subject premises has not been taken over by the official respondents as claimed and absolutely there is no material to show that the subject land is in their physical possession even as on date. The panchanama dated 08.02.2008, on which the independent witnesses are stated to have affixed their signatures, relied by the official respondents to substantiate that the officials went to the site and taken physical possession, do not contain either the addresses of the panchas or their description and do not instill any confidence in the Court that they are genuine. The official respondents did not even bother to

file affidavits of the so-called panchas to show that they were present at the site and the panchanama was prepared in their presence. Admittedly, there is no signature of the land owner on the alleged panchanama dated 08.02.2008 or the site map annexed thereto. Even the description of the panchas or their addresses or even their temporary addresses are not shown therein. In the absence of the signatures of the land owner on the panchanama, the panchanama and the site map will have to be considered as having been prepared behind the back of the petitioner and in the office of the authorities. The documents filed by the petitioner establish beyond any doubt that the factory is still running, number of apartments are constructed in part of the land and that the physical possession has not been taken over by the Government, as contended, but the same is still with the petitioner Company. No affidavit of any of the panchas has been filed to show that the authorities have physically gone to the subject land and taken over the possession in the presence of the owner. The entire exercise of affixing signatures and taking over the possession of the land appears to have been done sitting in the office of the authorities and only on paper

35. It is apt to note that the Hon'ble Supreme Court in ***Barangore Jute Factory (referred supra)*** has held that where the Statute requires a particular act to be done in a particular manner, the same has to be done in that manner alone. It is obvious from the record that the official respondents did not follow the procedure contemplated under the ULC Act, but acted contrary to it. Once the ULC Act was repealed by the Central Government and the same has been adopted by the State Government and

physical possession of the land is still with the petitioners, the preparation of notices under Sections 10(5) and 10(6) and the panchanama of taking possession is *void ab initio* and *non est* in the eye of law. The bare perusal of the panchanama, notices under Sections 10(5) and 10(6) of the ULC Act, do not inspire any confidence in the Court, which warrants any indulgence of this Court in favour of the official respondents.

36. In **Bhaskar Jyoti Sarma's case (referred supra)**, the Hon'ble Supreme Court at para 112 held as under:

“11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10, is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression ‘*possession*’ used in Section 3 (supra) has been interpreted to mean “*actual physical possession*” of the surplus land and not just possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.”

37. Relevant portion of **Gajanan's case (referred supra)**, are extracted hereunder:

“12. ...

Voluntary surrender

31. The “vesting” in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in *Maharaj Singh v. State of U.P.* (1977 (1) SCC 155), while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that “vesting” is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in *Rajendra Kumar v. Kalyan* (2000 (8) SCC 99) held as follows: (SCC p. 114, para 28)

“28. ... We do find some contentious substance in the contextual facts, since vesting shall have to be a ‘vesting’

certain. ‘To “vest”, generally means to give a property in.’ (Per Brett, L.J. *Coverdale v. Charlton* (1878) 4 QBD 104 (CA); Stroud’s Judicial Dictionary, 5th Edn., Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorisation cannot however but be termed to be a contingent event. To ‘vest’, cannot be termed to be an executory devise. Be it noted however, that ‘vested’ does not necessarily and always mean ‘vest in possession’ but includes ‘vest in interest’ as well.”

32. We are of the view that so far as the present case is concerned, the word “vesting” takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

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

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression “where any land is vested” under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

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

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of

non-issue of notice under sub-section (5) or sub-section (6) of Section 10 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall”.

13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.”

38. The documents filed by the petitioner clearly establish the fact that the physical possession of the land has not been taken over by the respondents. The photographs filed by the petitioner show that there is a factory in existence, beside number of multi storied residential buildings have already been constructed in a part of the said land, entire land is encompassed with compound wall and gate manned by security guards. In the absence of any material to show that the procedure as contemplated under the ULC Act, more particularly sections 10(1), 10(5) and 10(6) thereof, has been followed in its true letter and spirit, the irresistible

conclusion that can be drawn from the record filed by the petitioner is that the 10(5) and 10(6) notices are backdated and panchanama has been prepared in the office of the authorities after the Repeal Act has come into force and the physical possession of the subject land is still with the land owner only. It is also pertinent to mention that G.O.Ms.No.1534 dated 20.12.2008 wherein the Government sought to resume the surplus land has been set aside by a learned Single Judge of this Court *vide* order dated 26.10.2009 in W.P. No.3140 of 2009. Relevant portion of the said order reads as under:

“.... it is clear that possession was not taken under the Act and proceedings under Section 10 (5) and 10 (6) have not been initiated insofar as the subject land is concerned. Therefore, the impugned order passed by first respondent in directing the Special Officer and Competent Authority to take possession from the first petitioner though the petitioners 2 and 3 are in possession of the subject land is arbitrary and illegal, particularly when the 1976 Act has no application by virtue of Repeal Act, 1999, which was adopted by the State of Andhra Pradesh with effect from 27.03.2008 i.e. much prior to issuance of the impugned G.O.

In view of the above, I am of the opinion that the impugned G.O. is liable to be set aside and accordingly set aside. The writ petition is accordingly allowed. No order as to costs.”

39. Though the learned counsel for the petitioner has argued that after the remand by the Appellate Authority, the Special Officer & Competent Authority, ULC, has not dealt with all the points raised by the Appellate Authority, this Court is not inclined to go into the same as the petitioner has not challenged the order of Special Officer & Competent Authority, ULC, passed after the remand by the Appellate Authority.

40. Even though the learned Advocate General has relied on the Judgments cited supra, the same are not applicable to the facts of present case and are clearly distinguishable.

41. For the above mentioned reasons, both the writ petitions are allowed and the panchanama dated 08.02.2008 is set aside.

Miscellaneous petitions pending, if any, shall stand closed.

A.ABHISHEK REDDY, J

Date : 03-01-2022.

Note: L.R.Copy to be marked
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