

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.32663 of 2010

ORDER:

The matter arises under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act').

2. It is claimed that the petitioners No.1 and 2 have jointly purchased the immovable property comprising of old structure known as 'Vijaya Talkies', admeasuring 7073 sq. feet bearing Municipal No.7-1-620 along with appurtenant open land, totally admeasuring 4,685 sq. yards, in Sy.No.26 of Ameerpet Revenue Village, Ameerpet, Hyderabad, within the limits of Greater Hyderabad Municipal Corporation, under registered sale deed bearing document No.2031 of 2010 dated 04.08.2010.

3. It is stated that the predecessor-in-title, late Sri. Mohd Hyder Ali Khan, was the owner and possessor of lands in (1) Premises No.7-1-620, Sy.Nos.25, 26 and 30, T.S.No.8 of Ameerpet to an extent of 2285.86 sq. meters, (2) land in Sy.No.52 (T.S.No.12) to an extent of 107.00 sq. meters, (3) land in Sy.No.41, T.S.No.24 of Ameerpet to an extent of 430.00 sq. meters and (4) land in Sy.No.22/3 of Yellareddyguda (T.S.No.17 & 13/6) of Gudimalkapur. Hyder Ali Khan died on 01.03.1998 leaving behind Smt. Fathima Khatoon, Mohd Mukther Ali Khan and Mohd Murtuza

Ali Khan, who are vendors of the petitioners. During lifetime of Hyder Ali Khan, declaration was filed under Section 6(1) of the Act before the respondent No.1-Special Officer and Competent Authority, Urban Land Ceiling. The respondent No.1 issued provisional statement and the delcarants submitted objections. The respondent No.1 passed final order under Section 8(4) of the Act dated 30.04.1993 determining Hyder Ali Khan as surplus land holder in an extent of 18,752.90 sq. meters. Aggrieved by the said order, the delcarants filed an appeal before the appellate authority and the appeal was allowed vide proceedings No.ULC Appeal No.Hyd/44/2001 dated 11.01.2002 remanding the case to the respondent No.1 with a direction to re-compute the holding and revise final order keeping in view the observations made therein. It is stated that the order passed in the appeal is *non-est* since it was passed after the death of declarant, without bringing the legal representatives on record.

4. It is stated that after remand of the matter, the respondent No.1 passed order in Proceedings No.B1/11799/76, B1/11951/76 to 11958/76 & 2254, 2255 & 12253/76 dated 15.03.2004 determining Hyder Ali Khan as surplus land holder for an extent of 18,752.90 sq. meters. By the time, the aforesaid order was passed, Hyder Ali Khan died and order was passed against a dead person, which is *non-est* in the eye of law. Subsequently, the respondent No.1

issued notice under Section 10(5) of the Act dated 30.09.2005 to the delcarants calling upon them to deliver possession of the surplus land within thirty days. The respondent No.1 appointed one Mr. Rameswara Rao, as Enquiry Officer, authorizing him to take over the possession of the land in question under Section 10(6) of the Act. It is stated that even today the respondent authorities did not take possession of the land. The subject land has been acquired by HUDA for development and construction of commercial buildings but the said purpose has not been served due to non-viability and the Government of Andhra Pradesh vide G.O.Ms.No.288 dated 15.07.2010 de-notified the subject land by withdrawing the land from acquisition proceedings. It is submitted that the subject land is in physical possession of the petitioners from the date of purchase.

5. Counter affidavit has been filed by the respondent No.2 initially and subsequently, additional counter affidavit was filed.

6. It is, *inter alia*, stated that Hyder Ali Khan and others filed a declaration under Section 6(1) of the Act for the following properties:

Sl.No.	Village	Mandal	Sy.No	Extent
1	Gudimalkapur	Asifnagar	297/1/1 297/2/1 297/3/1 298/1 294/1 Part	7 acres
2	Ameerpet	Ameerpet	Vijaya Talkies	4000 Sq. Yds

The said declaration was dealt in ceiling cases B1/11799, 11951 to 11958 & 2254, 2255 & 12253/76. That the enquiry officer submitted his report dated 06.07.1989. Based on the said report order under Section 8(1) and notice under Section 8(3) of the Act were issued on 14.06.1990, showing the vacant land as follows:

Sl. No.	Description of the land	Total Extent
1	Vacant land in Premises No.7-1-621/B, Ameerpet	2785.86
2	Vacant land in Tennis Court, T.S.No.8, Ameerpet	499.58
3	Vacant land in S.No.52, Ameerpet Village	168.42
4	Vacant land in Sy.No.41, Ameerpet Village	368.57
5	Vacant land in Sy.No.22/3, Yellareddyguda	6.48
6	Vacant land in Pre.No.16-4-777, Malakpet	701.33
7	Vacant land in Sy.No.297/1/1 etc, T.S.No.17 & 13/6, Gudimalkapur Village	26501.58
TOTAL = 31,031.82		

7. It is stated that the declarant holds 31,031.82 sq. meters, out of which he was allowed to retain 1,000 sq. meters under Section 4(1)(b) of the Act and he was declared surplus land holder to an extent of 30,031.82 sq. meters. Hyder Ali Khan filed objections dated 04.02.1991 and after considering the objections, Section 8(4) order and statement under Section 9 dated 30.04.1993 were communicated to him as under:

Sl. No.	Description of the Property	Total area	Plinth area	Appt. land	Appt.Addl Appt.land	Area protected	Vacant land
1	Vacant land in Pre.No.7-1-629 in Sy.No.25, 26 and 30, T.S.No.8 of	2285.86	-	-	-	-	2285.80

	Ameerpet Vg						
2	Vacant land in Sy.No.42, T.S.No.12, Ameerpet	168.42	-	-	-	-	168.42
3	Vacant land in Sy.No.41, T.S.No.24, Ameerpet	368.57	-	-	-	-	368.57
4	Vacant land in Sy.No.22/3 of Yellareddyguda T.S.No.4	6.48	-	-	-	-	6.48
5	Vacant land in Sy.No.297/1/1 T.S.No.17 & 13/6, Gudimalkapur Vg	15,923.57	-	-	-	-	15,923.57
6	Land with building No.16-4-777 of Malakpet Vg	1,001.90	149.68	598.70	-	333.33	1,001.90
TOTAL		19,834.80	149.68	598.70	-	333.33	1,081.90

8. That out of the total areas of 19,834.80 sq. meters, the declarant was allowed an extent of 1,081.90 sq. meters towards protected area under Section 4(11) of the Act and he was finally determined as surplus land holder for an extent of 18,752.90 sq. meters. One U. Shiva Rama Raju filed an appeal under Section 33 of the ULC Act vide ULC Appeal No.Hyd/44/2001 against the order dated 21.12.1994 of the Special Officer and Competent Authority, ULC, Hyderabad, in B1/2254, 2255, 12253/76 under Sections 8(4) and 9 of Act adding Mohd Sardar Ali Khan, one of the declarants as respondent No.2. The appellant claimed that he purchased 716 sq. meters through agreement of sale dated 18.05.1995 and requested to treat the same as non-vacant land. The appeal was admitted and remanded to the Special Officer and

Competent Authority, ULC, Hyderabad, vide order dated 11.01.2002 for fresh enquiry and to dispose of the same on merits as per law.

9. It is stated that revised final order under Section 8(4) and statement under Section 9 of the Act were issued on 15.03.2004 in compliance with the order in ULC Appeal dated 11.01.2002 and determined the declarants as surplus land owners to the extent shown against each of them in the table, as under, in respect of land situated at Ameerpet Village:

Sl. No.	Declarant	C.C.No.	Description of land at Ameerpet	Allowed to retain	Determined surplus
1	Mohd. Ameer Ali Khan	11799/76	Sy.No.25, 26 & 30	-	1165.00 Sq.Mtrs
			Sy.No.52	214.00	-
			Sy.No.41	770.88	89.12 Sq.Mtrs
Total				1000.00	
2	Sardar Ali Khan	2254, 2255 & 12253/76	Sy.No.25, 26 & 30	-	499.58
			Sy.No.52	-	-
			Pre.No.7-1-621 of Ameerpet	-	-
3	Hyder Ali Khan	11800/76	Sy.No.25, 26 & 30	-	2285.86
			Sy.No.52	-	107.00
			Sy.No.41	-	430.00
4	Mustafa Ali Khan	-	Sy.No.41	-	430.00
			Sy.No.25, 26 & 30 Pre No.7-1-621 Ameerpet	-	1037.00
			Sy.No.52	-	107.00
			Sy.No.52	-	107.00
5	Farooq Ali Khan		Sy.No.52	-	107.00
			Sy.No.41	-	430.00
			Sy.No.25, 26 & 30		

			Pre No.7-1-621, Ameerpet	-	1037.00
6	Aziz Khatoon	11954/76	Sy.No.25, 26 & 30 Pre No.7-1-621, Ameerpet	-	605.00
	Zahra Khatoon	11957/76	Sy.No.25, 26 & 30	-	53.50
	Saheba Khatoon	11956/76		-	215.00
	Sultana Jeevan Khatoon	11955/76	Pre No.7-1-621 Sy.No.52	-	822.41
	Rabiya Khatoon	11958/76	Sy.No.41 Sy.No.25, 26 & 30	-	
7	Habeeba Khatoon	-	Sy.No.25, 26 & 30	-	822.41
			Sy.No.52	-	53.50
			Sy.No.41	-	215.00

10. It is stated that subsequently notice under Section 10(1) of the Act was published in the A.P. Gazette No.133 dated 25.06.2004 and declaration under Section 10(3) of the Act was published in the A.P. Gazette No.161 dated 21.07.2004. Thereafter, common notice under Section 10(5) of the Act dated 01.01.2005 was issued to the declarants duly mentioning all the properties with a direction to deliver possession of the surplus land determined within 30 days from the date of receipt of a copy of this order. When the declarants failed to deliver the possession, proceedings under Section 10(6) of the Act dated 30.09.2005 were issued to take over possession of the surplus land. The possession of the land was taken over on 30.09.2005 and all the surplus land vested with the State free of all encumbrances.

11. It is stated that the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the Repeal Act') was adopted in the

State of Andhra Pradesh with effect from 27.03.2008. In the instant case, the ULC proceedings under Section 10(6) of the Act were concluded and possession was taken much prior to coming into force of the Repeal Act. Therefore, the petitioners are not entitled to re-adjust the surplus land as the State has become absolute owner of the land.

12. Mr. B. Mayur Reddy, learned senior counsel for the petitioners, submitted that the proceedings under Section 10(5) and Section 10(6) of the Act were issued to a dead person. The predecessor-in-title of the petitioners, Hyder Ali Khan, died on 01.03.1998 as evident from the Family Members Certificate dated 24.04.1998 issued by the Mandal Revenue Officer, Amberpet Mandal (Ex.P3). The respondent authorities had knowledge of the death of Hyder Ali Khan. He further submitted that the revised order under Section 8(4) of the Act was passed on 15.03.2004 and the declarant, Hyder Ali Khan, died by that time and thus, Section 8(4) order dated 15.03.2004 is a nullity. The entire proceedings beginning with determination of surplus land and consequential proceedings under Sections 10(5) and 10(6) of the Act are vitiated. There is no evidence to prove that possession of the subject land was taken on 30.09.2005. The land was no more a surplus by the time the petitioners purchased the same under registered sale deed

dated 04.08.2010, as they are saved by virtue of Sections 3 and 4 of the Repeal Act and ULC proceedings are abated.

13. On the other hand, learned Government Pleader for Assignment submitted that the writ petition is not maintainable. The ULC proceedings including Section 8(4) and Sections 10(5) and 10(6) of the Act cannot be challenged by the petitioners, who are third parties. The purchase of the land by the petitioners under registered sale deed dated 04.08.2020 is null and void under Section 5(3) read with Section 10(4) of the Act. Section 8(4) order has attained finality. The possession of the subject land was taken over much prior to 27.03.2008, when the Repeal Act came into force in the State of Andhra Pradesh. Section 10(3) notification was issued on 21.07.2004, Section 10(5) notice dated 01.05.2005 was served on one person, who received notice on behalf of all the declarants and none of the family member including the vendors of the petitioners raised any objection. The original declarant Ameer Ali Khan died and his wife, Rahmath Khatoon and four sons including Hyder Ali Khan were brought on record. Initially, Section 8(4) order was passed on 30.04.1993, revised order was passed on 15.03.2004 and at no point of time, objection was filed on behalf of Hyder Ali Khan by his legal heirs nor his death disclosed.

14. Learned senior counsel for the petitioners submitted that in view of the objection raised by the learned Government Pleader for Assignment about maintainability of the writ petition and the locus of the petitioners, as a precautionary measure, the vendors of the petitioners, who are legal heirs of Hyder Ali Khan, were brought on record as petitioners No.3 to 5 by order dated 10.07.2023 in IA.No.1 of 2023.

15. During the hearing, learned Government Pleader for Assignment produced records. I have perused the records with the assistance of the Deputy Tahsildar, who was present in the Court. Copy of panchanama dated 20.10.2005 was shown to this Court. However, it pertains to other declared lands in Gudimalkapur Village. On specifically enquiring with the learned Government Pleader for Assignment about the panchanama regarding subject lands in Ameerpet, the learned Government Pleader requested time. It is represented to the Court that there is no record to show that panchanama was conducted in proof of taking over possession of the subject land at Ameerpet. Learned Government Pleader was suggested by this Court to take written confirmation in that regard so that the record is kept straight.

16. Learned Government Pleader for Assignment placed on record Letter No.B/1346/76 dated 02.09.2023 that panchanama

copy of Ameerpet Village in C.C.No.B/1346/82, 11799, 11951 to 11958/76, 22545 & 2253/76, 12253/76 is not available. However, learned Government Pleader submitted that the petitioners are third parties and strangers to the litigation. The substantive order under Section 8(4) of the Act has attained finality. The procedure for taking over possession under Section 10 of the Act is only ministerial in nature and even if physical possession of the land is not taken, in respect of the subject property at Ameerpet, symbolic possession is deemed to have been taken as held in **FRANCIS JOSEPH FERREIRA v. ADDITIONAL COLLECTOR AND COMPETENT AUTHORITY**¹ and **STATE OF ASSAM v. BHASKAR JYOTI SARMA**².

17. Learned senior counsel for the petitioners strenuously contended that Section 10(4) of the Act cannot be read in isolation to other provisions of the Act. Not only are the proceedings issued against a dead person including notices under Section 10(5) and 10(6) of the Act, the possession, admittedly, is not taken in respect of the subject property at Ameerpet and thus, it cannot be contended that the petitioners, who purchased the subject land in the year 2010, have violated the provisions of the ULC Act, which was repealed with effect from 27.03.2008. Even otherwise the legal representative of the declarant and who are the vendors

¹ (2010) (7) Mh.L.J 474

² (2015) 5 SCC 321

of the petitioners were brought on record as a precautionary measure and thus, the writ petition is maintainable.

18. Learned senior counsel for the petitioner relied on the following decisions:

STATE OF UTTAR PRADESH v. HARI RAM³; GAJANAN KAMLYA PATIL v. ADDITIONAL COLLECTOR AND COMPETENT AUTHORITY (ULC)⁴ and N. LINGA RAO v. GOVERNMENT OF ANDHRA PRADESH⁵.

19. Learned Government Pleader for Assignment relied on the following decisions:

FRANCIS JOSEPH FERREIRA's case (1 supra); BHASKAR JYOTI SARMA's case (2 supra); OM PRAKASH VERMA v. STATE OF ANDHRA PRADESH⁶; STATE OF UTTAR PRADESH v. SURENDRA PRATAP⁷; RITESH TEWARI v. STATE OF UTTAR PRADESH⁸; STATE OF UTTAR PRADESH v. ADARSH SEVA SAHKARI SAMITI LIMITED⁹; and STATE OF UP v. EHSAN [Civil Appeal No.5721 of 2023 dated 13.10.2023].

³ (2013) 4 SCC 280

⁴ (2014) 12 SCC 523

⁵ (2017) 6 ALD 270

⁶ (2010) 13 SCC 158

⁷ (2016) 12 SCC 497

⁸ (2010) 10 SCC 677

⁹ (2016) 12 SCC 493

20. The High Court of Bombay in **FRANCIS JOSEPH**

FERREIRA's case (1 supra) held as under:

"9. We have heard the learned counsel for the parties. In our opinion, the petition does raise disputed questions of fact. No doubt there are instructions issued in the matter of taking possession by drawing up of panchanama. The procedure for drawing up the Panchanama is not pursuant to any provisions of the Act. The procedure being followed is merely pursuant to the administrative instructions. In such circumstances, the party complaining that the procedure was not followed will have to establish that by not following the procedure prejudice was occasioned to the petitioners. In the absence of establishing serious prejudice, it will not be possible to held if in fact possession had been taken that failure to comply with the procedure would result in that act becoming illegal. In *National Thermal Power Corporation Limited v. Mahesh Dutta*, (2009) 8 SCC 339 on which reliance was placed on behalf of the petitioners, the Supreme Court in para 39 has held that merely because there is a disputed question of fact, in the absence of oral evidence being required to be taken, the Court is not precluded from entertaining and deciding disputed question of fact. In our opinion, in the facts of the present case where the stand on behalf of the respondents was that the possession was taken and stand on behalf of the petitioners was that the possession has not been taken, a disputed question of fact arises, where oral evidence will have to be led as to who is in possession. Insofar as the matter of *Tamil Nadu Housing Board v. A. Viswam (Dead) by LRs.*, reported in (1996) 8 SCC 259 : AIR 1996 SC 3377 is concerned, the provision of the Land Acquisition Act and rules made thereunder, themselves provide for the manner of taking possession by

panchanama. Even otherwise on a consideration of the ratio in *Tamilnadu Housing Board* (supra), it has not been laid down that on failure to comply with the procedure of taking possession that would amount to failure to take possession.

The Supreme Court in **BHASKAR JYOTI SARMA's** case (2 supra) held as under:

“15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his

dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure."

The Supreme Court in **OM PRAKASH VERMA's** case (6 supra) held as under:

"79. Inasmuch as the writ petitions having been dismissed, the orders passed under the ULC Act have attained finality. The declarations which had been made and statements filed on 6-9-1976 and 25-7-1977 stand till today and these declarations are not even sought to be withdrawn. In those circumstances, as rightly contended by the learned Senior Counsel appearing for the respondents, the prayer on the part of the owners in WP No. 4141 of 2006 made for the

first time in 2006 after 32 years of filing of the statements under Section 6 and after 26 years of the conclusion of the ULC proceedings was completely misconceived and was rightly rejected."

The Supreme Court in **SURENDRA PRATAP**'s case (7 supra) held as under:

"7. We have heard Mr Irshad Ahmad, learned Additional Advocate General for the State in support of the appeal and Mr Aaroohi Bhalla, learned Advocate for Respondents 1 and 2. The record indicates that the Notification under Section 10(3) of the Act was published in the Official Gazette on 29-4-1986 and an appropriate notice under Section 10(5) of the Act was issued by the competent authority on 31-3-1993. These aspects of the matter are not disputed by Respondents 1 and 2 but in their submission, despite such notice under Section 10(5) of the Act, the possession was never taken over. The factum about taking over the possession finds clear mention in the possession certificate dated 20-8-1994. Further, the objections preferred by Respondents 1 and 2 were dismissed vide order dated 30-6-1995 which order also records the fact that possession of the land already stood taken over. In the premises, all requisite actions contemplated under the Act were taken in accordance with law well before the enactment of the Repeal Act and the surplus vacant land stood vested with the State Government of which the possession was also taken over. The writ petition preferred in the year 2005, therefore, had no statable claim and the High Court was completely in error in accepting the submissions advanced on behalf of Respondents 1 and 2.

8. Moreover, in *State of U.P. v. Adarsh Seva Sahkari Samiti Ltd.* [*State of U.P. v. Adarsh Seva Sahkari Samiti Ltd.*, Civil

Appeals Nos. 369-70 of 2016, decided on 19-1-2016 (SC)] , this Court has observed that after the vesting of the surplus land with the State Government under Section 10(5) of the Act, if any transfer of the property in question is effected, such transfer would be void ab initio and the transferee would not be entitled to challenge the alleged inaction on part of the State Government or the competent authority in not taking possession in compliance with the provisions under Section 10(5) of the Act."

The Supreme Court in **RITESH TEWARI's** case (8 supra) held as under:

"17. The ex parte orders of assessment of surplus land against the original tenure-holders have been placed on record. Admittedly, the said assessment orders had not been challenged by them and attained finality. In view of the provisions of Sections 5 and 10 of the 1976 Act, transfer of such land by them in favour of anyone was not only prohibited but null and void.

18. Section 5(1) of the 1976 Act provided that transfer of vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person.

19. Section 5(3) provided that transfer of vacant land or part thereof effected by a recorded tenure-holder having land in excess of the ceiling limit subsequent to the commencement of the 1976 Act by way of sale, mortgage or lease until he had furnished a statement under Section 6, and a notification under Section 10(1) has been published would be deemed to be *null and void*.

20. Section 10(4) of the 1976 Act reads as follows:

*"10. Acquisition of vacant land in excess of ceiling limit.— * * **

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)—

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be *null* and *void*; and

(ii) no person shall alter or cause to be *altered the use* of such excess *vacant land*."

(emphasis added)

21. The High Court after considering the said statutory provisions and taking note of the fact that the appellants did not disclose the date of notification under Section 10(1) of the 1976 Act, nor annexed the copy of the same and further presuming that the said notice must have preceded the notice under Section 10(3) of the 1976 Act, reached the conclusion that the transfer which had been effected by the recorded tenure-holders in favour of Mayur Sahkari Awas Samiti on 20-4-1982 was deemed to be *null* and *void* by operation of law under Sections 5(3) and 10(4) of the 1976 Act. We do not see any cogent reason to take a contrary view.

...

...

30. This Court in *State of Maharashtra v. Prabhu* [(1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116] considered the scope of equity jurisdiction of the High Court

under Article 226 of the Constitution and pointed out as follows : (SCC p. 486, para 5)

"5. ... It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good."

31. The present appeal does not present any special feature warranting exercise of equitable discretionary jurisdiction in favour of the appellants. The equity jurisdiction is exercised to promote honesty and not to frustrate the legitimate rights of the other parties.

32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (*Vide Upen Chandra Gogoi v. State of Assam* [(1998) 3 SCC 381 : 1998 SCC (L&S) 872] ; *Satchidananda Misra v. State of Orissa* [(2004) 8 SCC 599 : 2004 SCC (L&S) 1181] and *SBI v. Rakesh Kumar Tewari* [(2006) 1 SCC 530 : 2006 SCC (L&S) 143] .)

The Supreme Court in **ADARSH SEVA SAHKARI SAMITI**

LIMITED's case (9 supra) held as follows:

"4. We have examined this aspect. Having regard to the undisputed fact that the respondent has purchased the property from the declarant which is vested with the State Government under Section 10(5) of the Act in terms of Section 10(3) notification, therefore, the transfer of property

in favour of the respondent, who is claiming its interest in the said property is void ab initio in law. On this ground alone, the order passed by the High Court cannot be allowed to sustain."

POSSESSION NOT TAKEN IN THE INSTANT CASE:

21. The ratio laid down in the **FRANCIS JOSEPH FERREIRA's** case (1 supra) and **BHASKAR JYOTI SARMA's** case (2 supra), on which heavy reliance is placed by the learned Government Pleader, cannot be applied to the facts of the present case. By dealing with the aspect of taking over possession it was held that the aggrieved person has to prove that prejudice is caused to him for non-compliance of administrative instructions for taking over possession (para 9 of **FRANCIS JOSEPH FERREIRA's** case (1 supra)) and cannot find fault with his dispossession on the ground that notice under Section 10(5) of the Act was not issued (para 15 of **BHASKAR JYOTI SARMA's** case (2 supra))

22. It is pertinent to note that in **BHASKAR JYOTI SARMA's** case (2 supra) and **FRANCIS JOSEPH FERREIRA's** case (1 supra) it was held that possession was taken over, but in the instant case, admittedly, there is no proof that possession of the subject land was taken over from the declarants/LRs. The record discloses that the respondents have taken possession of other lands in

Gudimalkapur under panchanama dated 20.10.2005 but not the subject lands in Ameerpet.

LACHES:

23. On the point of delay in filing the writ petition by the petitioners/third parties when Section 10(5) notice was issued on 01.01.2005 and Section 8(4) order was passed on 15.03.2003, the learned Government Pleader for Assignment relied on the decisions of the Supreme Court in **OM PRAKASH VERMA's** case (6 supra) and **SURENDRA PRATAP's** case (7 supra).

24. In **OM PRAKASH VERMA's** case (6 supra), it was held that once vesting of land takes place under Section 10(3) of the Act the State has absolute title and ownership over it (para 53). It was observed that the proceedings under the Act attained finality and were not challenged at any stage as provided under the Statute (para 52). The owners cannot be permitted to reopen the chapter (proceedings) after 25years (para 83); the panchanama has not been questioned in any proceedings by any of the appellants (para 86); the possession of the surplus lands has been taken on 20.07.1993 and panchanama was executed showing that the possession has been taken (para 85).

25. In **SURENDRA PRATAP's** case (7 supra) it was held that possession of surplus land was taken over on 20.08.1994 and writ

petition was filed in the year 2005. As stated above, in the present case possession of the subject lands was not taken. Section 10(5) notice was issued on 01.01.2005 and Section 10(6) order was passed on 30.09.2005 and possession of the subject lands was never taken. Thus, the contention of the learned Government Pleader that there are laches in filing the writ petition cannot be sustained.

Whether the petitioners have locus standi and sale deed of the petitioners is void:

26. Learned Government Pleader for Assignment vehemently contended that the petitioners are third parties. The purchase of the subject land by the petitioners is in violation of Section 5(3) read with Section 10(4) of the Act. The petitioners do not have any title to the subject property. A stranger/third party cannot be permitted to challenge the ULC proceedings. The sale deed of the petitioners bearing document No.2031 of 2010 dated 04.08.2010 is void. Assuming that possession is not taken under the Act, the petitioners/third parties do not have any right to challenge the impugned proceedings and it is only the declarants or their legal heirs, who are entitled to challenge the impugned proceedings. In that regard reliance is placed on **RITESH TEWARI's** case (8 supra) and **ADARSH SEVA SAHKARI SAMITI LIMITED's** case (9 supra).

27. As noted above in para 14, the original writ petitioners have impleaded the petitioners No.3 to 5, who are the legal heirs of the declarant, vide order dated 10.07.2023 in IA.No.1 of 2023.

28. Learned Government Pleader for Assignment submitted that the legal heirs of the declarant were brought on record after 43 years from the date of filing of declaration and 13 years from the date of filing of the writ petition and the same is hit by laches. The petitioners cannot escape from the defect/irregularity committed at the time of filing the writ petition. Merely because, at later point of time, the petitioners have brought on record the legal heirs of the declarant, the lapses committed by the petitioners cannot be condoned.

29. The sale deed of the petitioners is dated 04.08.2010. The ULC Repeal Act, 1999 was adopted by the then State of Andhra Pradesh with effect from 27.03.2008. Sections 3 and 4 of the Repeal Act read as under:

3. **Savings:** (1) The repeal of the principal Act shall not affect-

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

(b) the validity of any order granting exemption under 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 authorised by the State Government in this behalf or by the competent authority; and

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

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

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

30. It is clear from Section 4 of the Repeal Act that ULC proceedings would abate if possession of the land has not been taken. In none of the judgments relied upon by the learned Government Pleader for Assignment, there was any issue relating to possession not taken over. In **RITESH TEWARI's** case (8 supra) and **ADARSH SEVA SAHKARI SAMITI LIMITED's** case (9 supra), the declarants sold the surplus land during the pendency of the ULC proceedings. However, in the instant case, the sale deed (bearing document No.2031 of 2010 dated 04.08.2010) is much later to the Repeal Act coming into force. By the time the sale deed was executed, the subject land has become freehold property by virtue of Section 4 of the Repeal Act. Thus, the petitioners have valid title to the land in question and they have *locus standi* to challenge the impugned proceedings. Even if the petitioners have not impleaded the legal heirs of the declarant, the writ would be maintainable. In any case, the petitioners, as a precautionary measure, brought on record the legal heirs of the declarant, (which in the opinion of this Court was not necessary), the lacuna, whatsoever pointed out, stood rectified.

31. The further contention of the learned Government Pleader for Assignment that Section 8(4) order has attained finality and thus, proceedings under Section 10(1) of the Act are ministerial/procedural is unsustainable. The provisions of the Act including

Section 10 and sub-sections therein are mandatory in nature. Such contention is contrary to the object and mandate of the ULC Repeal Act, 1999, more particularly, Section 4 of the Act, which says that the ULC proceedings would abate in respect of surplus lands, possession of which is not taken.

32. Learned senior counsel for the petitioners submitted that Section 8(4) order, Section 10(5) notice and Section 10(6) order were served on a dead person. It is stated that the declarant, Mohd Hyder Ali Khan, died on 01.03.1998 (Ex.P3) and the revised Section 8(4) order was passed on 15.03.2004 and subsequently, Section 10(5) notice and Section 10(6) order were issued, all against dead person. Thus, the entire ULC proceedings from Section 8(4) till Section 10(6) and subsequent proceedings are vitiated.

33. However, in the light of the observations made above that possession of the subject lands was not taken, the point regarding proceedings/notices issued to dead person would be superfluous and insignificant. The judgments cited by the learned senior counsel for the petitioners are not referred to as the possession of the subject lands in the instant case was not taken and the petitioners stand on a better footing than the parties in the cases cited.

In view of the above observations, the writ petition is allowed as prayed for. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J

October 31, 2023

Note:

1. LR copy to be marked
2. Issue CC in two (2) days
(B/o) DSK