

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.31183 of 2011

ORDER:

This writ petition is filed questioning the high handed dispossession of the petitioner from the retainable land and order under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act') dated 29.09.1988 in file C.C.No.G1/128/1987 and consequential proceedings to the extent of showing the surplus land as 25062.95 sq. meters, ignoring Section 10(1) notification whereunder surplus land was shown as 11572.95 sq. meters by the respondent No.2.

2.1 It is claimed that originally land in Sy.Nos.55, 56, 98, 99, 100, 106, 114, 650, 651 situated at Vampuguda, Keesara Mandal, R.R. District belonged to one Balaiah and Sivaiah, who are the ancestors of the petitioner. The sons of Balaiah were treated as 'A' branch and the sons of Sivaiah were treated as B branch by the ceiling authorities. The said Balaiah had three sons, namely, (1) Pedda Ramaiah (2) China Ramaiah and (3) Reddaiah. The petitioner is the son of Reddaiah. After dividing the land as per their respective shares, all the family members have filed their respective declarations before the respondent No.2. So far as declaration of the petitioner is concerned, it was numbered as C.C.No.G1/128/1987 and an extent of 46190.95 sq. meters was

treated as vacant land in Sy.Nos.55, 56, 60, 650 and 651. After deleting 1000 sq. meters, for which the petitioner was entitled to, the respondent No.2 declared an extent 45190.95 sq. meters as vacant land. The declaration of the mother of the petitioner, namely, Narsamma, was dealt with separately and the vacant land was determined as 15396.97 sq. meters in file C.C.No.G1/129/1987.

2.2 It is stated that after identifying the vacant land as 45296.95 sq. meters, upon the objections made by the petitioner, the respondent No.2 further enquired into the matter. The petitioner applied to the respondent No.1 for grant of exemption under G.O.Ms.No.733 dated 31.10.1988. By memo No. 10847/UC.II/2/ 1989-2 dated 03.04.1989, the respondent No.1 issued orders granting exemption to an extent of Ac.5.00 guntas. According to the petitioner, the exemption granted for Ac.5.00 guntas should be after excluding the roads and open areas. The respondent No.2 issued Section 8(4) orders on 29.09.1988. But the record of the respondent No.2 shows that note file has been prepared from 18.01.1990 onwards to finally determine the surplus land. On 20.03.1990 the respondent No.2 prepared the note file. In para 28, the respondent No.2 referred to the permission granted by the respondent No.1 in memo No.10847 on 03.04.1989 for an extent of Ac.5.00 guntas and determined the surplus land as

25062.95 sq. meters. In para 33, the respondent No.2 referred to the earlier orders issued under Section 8(4) of the ULC Act and recorded that *"as the land is situated in peripheral area the declarant has approached the Government and the Government had granted exemption as per G.O.Ms.No.733"*.

2.3 It is stated in para 34, the respondent No.2 had recorded, after excluding the Ac.5.00 guntas of land from 45296.95 sq. meters in Sy.Nos.55, 56, 60, 650 and 651 what is permissible area. In para 37, the respondent No.2 recorded a finding that, all the survey numbers are held jointly by other declarants and the surplus land of Peesari Mallaiah i.e. petitioner has to be identified first on the spot while making a sketch. In para 43, the respondent No.2 recorded that HUDA has approved the draft layout in respect of land covered in Sy.Nos.60(P), 650(P) and 651 of Kapra Municipality with certain conditions. In para 44, the respondent No.2 recorded a finding that SDR prepared by this office Survey Department is verified with the draft layout approved by HUDA and they are not tallying. In para 46, the respondent No.2 recorded that the petitioner was declared as excess land holder of 45296.95 sq. meters and that Peesari Mallaiah made a representation that Government had permitted his surplus land in G.O.Ms.No.733 and requested for giving amendment. In para 69 and 70, the respondent No.2 recorded that in view of the orders of State

Government the declarant is entitled to Ac.5.00 guntas exemption exclusive of plotted area required for roads and open spaces etc which comes to 33724.00 sq. meters and the balance area i.e. 11572.95 sq. meters will become surplus land out of 45296.95 sq. meters. In para 72 and 73, on 05.11.1992 it was decided to surrender only 11572.95 sq. meters and hence, the office may be requested to prepare SDR (Sub Division Record) in the light of above direction of the Government, with the consent of declarant to show the retainable area on the spot. Subsequently, on 24.11.1992 a detailed note was made and sketches were prepared by showing the details of a surplus land.

2.4 It is submitted after passing Section 8(4) orders on 29.09.1988 the respondent No.1 accorded permission through Memo no.10847/UC-II/1989 dated 03.04.1989 granting exemption for an extent of Ac.5.00 guntas excluding roads and open areas. Therefore, in view of the changed position, the respondent No.2 ought to have passed a revised order under Section 8(4) of the ULC Act. But the respondent No.2, basing on the note file and sketches prepared by them in the year 1992, issued a revised notification under Section 10(1) of the Act on 22.12.1992 showing the surplus land as 11572.95 sq. meters instead of passing revised order under Section 8(4) of the ULC Act and took possession of the same from the petitioner. Earlier to that, the respondent No.2, basing on his

previous Section 8(4) order, issued 10(1) notification on 08.01.1989 showing the surplus land as 45296.95 sq. meters. The respondent No.2, without passing a revised order under Section 8(4) of the ULC Act, issued a revised notification under Section 10(1) of the ULC Act on 22.12.1992 notifying the surplus land as 11572.95 sq. meters. Since the same was acceptable to the petitioner and as the possession was taken, he did not further pursue the matter. But to the surprise of the petitioner, the respondent No.2 passed orders under Sections 10(5) and 10(6) of the ULC Act on 31.01.1994 and 13.05.1994 respectively. A copy of the order under Section 10(6) of the ULC Act was not marked to the petitioner. The orders under Sections 10(5) and 10(6) of the ULC Act are contrary to the revised notification determining the surplus land as 11572.95 sq. meters issued under Section 10(1) of the Act on 22.12.1992.

2.5 It is stated that on 27.10.2011 at 10 A.M., the respondent No.3 brought JCB to demolish the compound constructed by the petitioner long back enclosing the entire retainable area. The petitioner had already developed the entire retainable land into house plots by laying roads. Again on 15.11.2011 at 10.30 A.M., the respondent No.3 came to the land of the petitioner and demolished the compound wall highhandedly, alleging that the petitioner is in possession of surplus land. According to the

petitioner, the surplus land of 11572.95 sq. meters is beyond the compound wall.

2.6 It is also stated that the respondents have not taken possession of the alleged surplus land before the ULC Act was repealed in the State of Andhra Pradesh i.e. 27.03.2008 and actual attempt was made to take possession of the land from the petitioner on 15.11.2011, which is illegal. The respondents have to confine their claim to the surplus land for an extent of 11572.95 sq. meters only but not for 25062.95 sq. meters.

3.1. In the initial counter filed by the respondent No.2, it is stated that the writ petition is filed more than 25 years after Urban Land proceedings culminated into taking over of the surplus land on 20.05.1994 by the Enquiry Officer as per the directions of the respondent No.2 and the same was handed over to the Mandal Revenue Officer for safe custody. The writ petition is barred doctrine of *laches*. The proceedings in CC.No.G1/28/87 have become final as there was no appeal or writ petition filed. The petitioner filed declaration in Form-I under Section 6(1) of the ULC Act declaring the following lands:

Sl.No.	Nature of the property /location	Sy.No.	Total Area	Plinth Area	Appt. Land	Addl. Appt. Land	Area protected U/s.11	Vacant land
1	Vacant Land Vampuguda H/o.Khapra Village	55	6829.02					6829.02

		56	11286.94					11286.94
		60	11286.94					11286.94
		650	10243.57					10243.57
		651	6544.48					6544.48
Building Area		H.No. 3-15	106.0	106.00			106.00	
		Total	46296.95	106.00			106.00	46296.95

3.2. It is stated that other members of the same family also filed declarations and they were also numbered and decided as per the procedure prescribed under the ULC Act. (1) Smt. P. Venkatamma filed declaration and numbered as CC.No.G1/148/87, (2) Sri. Somaiah filed declaration and numbered as CC.No.G1/132/87, (3) Sri P. Yadaiah filed declaration and numbered as CC.No.G1/131/87, (4) Sri P. Sathaiah filed declaration and numbered as CC.No.G1/131/87, (5) Smt P. Narsamma, W/o. Late. Reddaiah filed declaration and numbered as CC.No.G1/129/87.

3.3 After receiving the declarations a draft statement under Section 8(1) and notices under Section 8(3) of the ULC Act were issued on 29.09.1988 calling for the objections if any from the declarants. In reply to the draft statements declarants have filed common written statements on 14.07.1988 stating that they have no objections as far as the surplus area declared. They have also stated that they intend to apply before the Government in terms of G.O.Ms.No.1106 Revenue dated 25.11.1987. In order to afford an opportunity of personal hearing before passing Section 8(4) orders the cases were taken for hearing and posted on 23.08.1988,

on 23.08.1988 the declarants were present and stated that they have no objection for the land to be declared as surplus. As the declarants had no objection to the area determined as surplus held by each declarant, the orders under Section 8(4) of the ULC Act was issued on 29.09.1988 without any alteration.

3.4 All the declarations were processed combinedly and surplus areas were decided accordingly. The Government issued orders vide Memo.No.10847/UC-II(2)89-2 dated 02.03.1989 that according to the orders issued in G.O.Ms.No.733 dated 31.10.1988 the excess vacant land up to 5.00 acres laying in peripheral areas of Hyderabad Agglomeration have been exempted from the Urban Land (Ceiling & Regulation) Act, 1976. As the land admeasuring 306960.63 sq. meters in Sy.Nos.61, 68/1, 649, 652, 55, 56, 650, 651 situated at Vampuguda H/o. Khapra Village is within peripheral area of Hyderabad Urban Agglomeration, there is no need to issue separate orders exempting the land from the provisions of ULC Act. Subsequently the Govt. issued another order vide Memo.No.10847/UC-I(2)/89-2 dated 03.04.1989 stating that Sri. Peesari Mallaiah is eligible to sell Ac.5.00 guntas of land exclusive of the area required for roads, open space etc. out of the land measuring 45.926.98 sq. meters declared in excess of the ceiling limit in Sy.Nos.55, 56, 60, 650 & 651 situated at Vampuguda, H/o Khapra Village. Accordingly, the petitioner was

declared as holder of surplus land to an extent of 25062.95 sq. meters out of an extent of 45296.95 sq. meters after excluding the area 20234.30 sq. meters as per the G.O.Ms.No.733, Revenue dated 31.10.1988. Consequently the notice under Section 10(1) of the ULC Act was issued on 16.07.1993 and published in the A.P. Gazette No.31 dated 05.08.1993 and Section 10 (3) was issued and published in A.P. Gazette No.44 dated 04.11.1993 and Section 10(5) of the ULC Act was issued on 31.01.1994 and served to the declarants on 14.02.1994 and the possession of the said surplus land was taken into Government custody on 20.05.1994 under cover of panchanama and handed over the same to the Mandal Revenue Officer, Keesara- respondent No.3 herein for safe custody.

4.1. The respondent No.2 filed additional counter affidavit stating that the note file submitted as material papers in this writ petition is the internal discussion of the ceiling case and the petitioner has chosen to pick up certain paragraphs from the note file convenient to them. The note file on the basis of which the petitioner is contending that there is revision of Section 10(1) order are only expression of views in the notings and no orders were passed by the competent authority. The Government functions by taking decision on the strength of views and suggestions expressed by the various officers at different levels. Ultimately, the final decision is taken by the competent authority. Conflicting opinions, views and

suggestions would have emanated from various officers at the lower level. The expression or opinion in the internal files is for the use of the department and not for outside exposure or for publicity. Accordingly draft statement under Section 8(1) and notices under Section 8(3) of the ULC Act were issued on 19.03.1988 calling for the objections, the declarants filed common written statement on 14.07.1988 stating that they have no objection for the surplus area declared and they intend to apply to the Government in terms of G.O.Ms.No.1106, Revenue dated 25.11.1987.

4.2. It is stated that no revised orders passed by the respondent No.2. The subordinate officers, without thoroughly verifying the facts, wrongly proposed for revised order under Section 10(1) of the ULC Act, the same was not approved the competent authority. Meanwhile, representations were received from other share holders contending that they also have share in the land in Sy.No.650 of Vampuguda. As such, the petitioner cannot surrender his surplus land without their consent. In the instant case, as all the share holders have been given notional shares, as such the land, for which draft layout was approved, cannot be deleted at Ac.5.00 guntas. The remaining left over is only to adopt Ac.5.00 guntas of land as general exemption. As the lands were not partitioned by metes and bounds and it is being objected by the others share holders, an extent Ac.5.00 guntas or 20,234 sq. meters,

was adopted for exemption and it was decided that surplus land to be surrendered by the declarant will be 25062.95 sq. meters. To obtain consent and no objection from the declarant, notices were issued by the Inspector of Survey, ULC vide C.C.No.G/128/87 dated 05.06.1993 to the declarant, petitioner and other declarants and L.Rs of the declarants.

4.3. The petitioner attended the Sub-Division work and gave his consent to surrender the surplus land 25062.95 sq. meters. So also consent was given by the other declarants and their legal representatives. Accordingly, the ceiling case was processed further and the notice under Section 10(1) of the ULC Act was issued on 16.07.1993, Section 10(3) was issued and published in A.P Gazette No.44 dated 04.11.1993, notice under Section 10(5) of the ULC Act was issued on 31.01.1994 and served on the declarants on 14.02.1994. Thereafter, orders were issued under Section 10(6) of the ULC Act was issued on 17.05.1994 and possession of the said surplus land taken into Government custody on 20.05.1994 under cover of Panchanama and handed over the same to Mandal Revenue officer-respondent No.3 herein for safe custody.

5. Mr. K.V. Bhanu Prasad, learned senior counsel for the petitioner, placed heavy reliance on the file notings in the original

record. It is contended that the impugned proceedings issued by the respondents and taking over possession of the alleged surplus land to an extent of 25062.95 sq. meters is contrary to the revised Section 10(1) notification.

6. Learned Government Pleader for Assignment submitted that the file notings are made for internal administration. The declarant in CC.No.G1/28/87 has given consent for taking over possession of surplus land. Final determination of surplus land to an extent of 25062.95 sq. meters after granting exemption under G.O.Ms.No.733 dated 31.10.1988 has not been questioned by the declarant. Learned Government Pleader further submitted that alleged revised Section 10(1) notification is not signed by the Special Officer and Competent Authority.

7. Heard Mr. K.V. Bhanu Prasad, learned senior counsel appearing for the petitioner and learned Government Pleader for Assignment and perused the record.

8. It is borne out from the record that Section 10(1) notification dated 24.12.1992 whereunder the surplus holding of the declarant was revised does not contain signature of the Special Officer and Competent Authority. The initial Section 10(1) notification is dated 18.01.1989 whereunder P. Mallaiah, declarant in CC.No.G1/28/87 was declared surplus to an extent of 45190.95 sq. meters.

Subsequently, another Section 10(1) notification dated 16.07.1993 was put up for approval whereunder the surplus land shown was 25062.95 sq. meters.

9. In the file noting dated 21.12.1992 it is recorded as follows:

" In view of the above orders and as per the SDR prepared by the I.O.S for the surplus land after allowing Ac.5.00 allotted area draft 10(1) notification for an extent of 11,579.95 sq. mts is placed below for approval.

Revised 10(1) may be issued."

In the file noting dated 24.12.1992 it is recorded as follows:

"The revised SDR has been prepared as per changed situation.

I have personally briefed the whole matter to the S.O & CA during the course of discussion on 21.12.92 by showing the 8(1) order, 8(4) orders and subsequent development after exemption given by Govt and the S.O. was convinced and passed order at Para 85 NF to take possession of excess land. He has once issued 10(1) order in the light of earlier 8(4) order on 18.1.89 which needs to be revised as per changed position after ... Govt general exemption of 5 acres plotted area.

In view of the above revised 10(1) put up for approval."

10. It is evident from the file at Sl.No.98 at page No.57, the declarant Sri P. Mallaiah is holding land over and above Ac.5.00 and a memo was issued to him and other co-owners calling upon them to file sketch plan showing the area to be retained as per

G.O.Ms.No.733 and the area to be surrendered by them. It appears the delcarants have not responded to the memo. Thereafter, as per file notice at Sl.No.101 it was noted that memo dated 25.01.1993 intended to be served on Sri P. Mallaiah neither contained despatch seal nor the section ensured its service. In the absence of such action no such exparte action is advisable. In the file noting at Sl.No.102, it was stated that *"in compliance with the above endt it is submitted that the memo dt 25-1-93 has been got served though the chainman or E.O. Sri P. Mallaiah and the objection petitioners have acknowledged on the memo as token of service. However, it is for orders whether to issue another memo or to ask the I.O.S. to prepare the SDR duly service another memo fixing the date on which the SDR work is going to be taken place on the site"*.

11. As seen from the noting at Sl.No.102, in compliance of file noting at Sl.No.101, memo dated 25.01.1993 has been served to Mallaiah through Chainman or EO and the same was acknowledged on the memo in token of service. As per file noting at Sl.No.114 dated 28.06.1993 *"the EO has visited site in Sy.Nos.56, 60, 650 and 651 situated at Vampuguda H/o Kapra Village and met with the declarants and all other share holders of the above survey numbers and asked them to give consent to prepare sub-division work in surplus land of Sri P. Mallaiah. Sri P. Mallaiah and other share holders of the said survey numbers have agreed and submitted the*

sketch showing the land pertaining to the declarant from which the surplus land has to be taken and they have signed on the sketch also since the entire land of the said survey numbers are not partitioned. I also obtained written statement of "No-objection" to take surplus land from the area of the declarant including Sri P. Mallaiah declarant ... The sub-division sketch along with the sketch submitted by the declarant and all other share holders and non objection statements of the other share holders and Sri P. Mallaiah declarant are placed below for kind perusal and further action".

12. The above file notings and consequential proceedings, which culminated in preparation of sub-division sketch on the no objection given by Mallaiah and other share holders resulted in issuance of Section 10(1) notification dated 16.07.1993 wherein surplus land was shown as 25062.95 sq. meters. Thereafter, notice under Section 10(5) of the ULC Act was issued on 31.01.1994 and served on the declarant on 14.02.1994 and possession of the surplus land to an extent of 25062.95 sq. meters was taken on 20.05.1994 under the cover of panchanama.

13. The Supreme Court in **PMPRI CHINCHWAD NEW TOWNSHIP DEVELOPMENT AUTHORITY v. VISHUDEVE**

COOPERATIVE HOUSING SOCIETY¹ dealt with the evidentiary value of the file notings and held as follows:

"**35.** The question is whether the order dated 10-6-2004 passed by the then Revenue Minister directing release of the acquired land in question has the attributes of an order within the meaning of Section 48 of the Act or, in other words, whether the order in question created any right in favour of the landowners so as to enable them to claim mandamus for enforcement of such order against the State.

36. Our answer to the question is "no". It is for the reasons that: first, a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity; second, once the decision on such issue is taken and approved by the competent authority empowered by the Government in that behalf, it is required to be communicated to the person concerned by the State Government. In other words, so long as the decision based on such internal deliberation is not approved and communicated by the competent authority as per the procedure prescribed in that behalf to the person concerned, such noting does not create any right in favour of the person concerned nor it partake the nature of any legal order so as to enable the person concerned to claim any benefit of any such internal deliberation. Such noting(s) or/and deliberation(s) are always capable of being changed or/and amended or/and withdrawn by the competent authority.

¹ (2018) 8 SCC 215

The Supreme Court in **MAHADEO v. SOVAN DEVI**² held as under:

"15. This Court in *Municipal Committee v. Jai Narayan & Co.*⁷ held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual. It was held as under:

"16. This Court in a judgment reported as *State of Uttaranchal v. Sunil Kumar Vaish*, (2011) 8 SCC 670 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:

"24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the

² 2022 SCC OnLine SC 1118

court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See *State of Punjab v. Sodhi Sukhdev Singh* AIR 1961 SC 493, *Bachhittar Singh v. State of Punjab*, AIR 1963 SC 395, *State of Bihar v. Kripalu Shankar* (1987) 3 SCC 34, *Rajasthan Housing Board v. Shri Kishan* (1993) 2 SCC 84, *Sethi Auto Service Station v. DDA* (2009) 1 SCC 180 and *Shanti Sports Club v. Union of India* (2009) 15 SCC 705)."

17. Thus, the letter seeking approval of the State Government by the Deputy Commissioner is not the approval granted by him, which could be enforced by the plaintiff in the court of law."

14. In the instant case, it is not in doubt as contended by the learned senior counsel for the petitioner that initially as per the file noting dated 22.12.1992, out of 45190.95 sq. meters, after giving exemption of land of Ac.5.00 under G.O.Ms.No.733 dated 31.10.1988, 11572.95 sq. meters was held to be surplus and decision was also taken to issue Section 10(1) notification. But the record discloses that Section 10(1) notification dated Nil.12.1992 was not signed and the same is not disputed by the learned senior counsel, Mr. K.V. Bhanu Prasad. It is revealed that the enquiry was conducted as to the retainable and surplus lands of the declarant Mallaiah and others. They were also directed to select the retainable and surplus land by notice dated 05.06.1992 by duly showing the surplus land as 25062.95 sq. meters, which was served on them and later they signed letters dated 18.06.1993

stating that they do not have objection for taking over possession of 25062.95 sq. meters, which is tallying with the extent shown under Section 10(1) notification dated 16.07.1993. Later, Section 10(3) notice was issued and published in A.P Gazette No.44 dated 04.11.1993, notice under Section 10(5) of the ULC Act was issued on 31.01.1994 and served on the declarants on 14.02.1994. Thereafter, orders were issued under Section 10(6) of the ULC Act on 17.05.1994 and possession of the said surplus land taken into Government custody on 20.05.1994 under cover of Panchanama.

15. Though it is contended by the learned senior counsel for the petitioner that Section 10(1) notification is dated 22.12.1992, it needs to be emphasized that there is no date. It is indicated as Nil.12.1992. The date 22.12.1992 at the bottom of Section 10(1) notification, which is being referred to by the learned senior counsel, is below the description 'Special Officer-cum-Competent Authority', which shows that it was inserted by the Section Officer/Sub-ordinate Officer and not approved by the Special Officer.

16. It would also be relevant to point out that a writ Court exercising power of judicial review cannot act as appellate authority and sit over administrative/quasi judicial decisions unless such decisions/actions are not in accordance with law. The procedure

contemplated under the provisions of the ULC Act has been duly followed by the respondent authorities. Though there is variation in the surplus extent as evident from the file notings, the same did not culminate into statutory orders and proceedings. On the other hand, as per the subsequent file notings, Section 10(1) notification was issued on 16.07.1993, based on which proceedings under Section 10(5) and Section 10(6) of the ULC Act were issued and possession was taken.

17. In this factual background, this Court cannot hold that there is accrual of rights in favour of the petitioner on the strength of file notings and it has to be held to the contrary. A Court exercising writ jurisdiction can only enforce the rights, which have accrued in accordance with law and not otherwise.

In the light of the above observations, the writ petition is dismissed. The miscellaneous applications, pending if any, shall stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J

July 18, 2023

Note: LR copy to be marked,
(**B/o**) DSK