

**a* THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

+ W.A. Nos.665 AND 670 OF 2022

% Date:14-02-2023

Tahsildar, Balanagar Mandal, Ranga Reddy District
And others.

... Petitioner

v.

\$ M/s.A.P.Electrical Equipment Corporation

... Respondents

! Counsel for the Appellants : Mr. Raju Ramachandran, learned
Senior Counsel for learned Advocate General

^ Counsel for respondents : Mr. V.Ramesh, learned counsel
for Mr. A.Chandra Shaker, learned counsel

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➤ HEAD NOTE :

? CASES REFERRED:

1. (2009) 10 SCC 501
2. (2010) 13 SCC 158
3. (2013) 4 SCC 280
4. (2014) 12 SCC 523
5. (2015) 5 SCC 321

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT APPEAL Nos.665 AND 670 OF 2022

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This judgment will dispose of both writ appeal Nos.665 and 670 of 2022.

2. We have heard Mr. Raju Ramachandran, learned Senior Counsel representing learned Advocate General, State of Telangana for the appellants and Mr. V.Ramesh, learned counsel for Mr. A.Chandra Shaker, learned counsel representing the respondent.

3. Writ appeal No.665 of 2022 arises out of W.P.No.11293 of 2009 filed by the respondent as the writ petitioner, whereas writ appeal No.670 of 2022 arises out of W.P.No.23477 of 2010 also filed by the respondent.

4. For the sake of convenience, we shall refer to the parties as per their status in the writ appeals, i.e., appellants and respondent.

5. At the outset, we may advert to the facts as pleaded in the writ proceedings. Writ petition No.11293 of 2009 was filed by the respondent seeking a declaration that the action of the Tahsildar, Balanagar Mandal in interfering with the peaceful possession and enjoyment of the subject property without any reason or proceeding is arbitrary and highhanded. Consequently, a direction was sought for to the Tahsildar not to interfere with the peaceful possession of the respondent in respect of the property admeasuring 30,181.10 square yards in survey No.76, Fathenagar village, Balanagar mandal in Ranga Reddy district (referred to as 'subject land', hereinafter).

6. In the writ affidavit, respondent stated that it was the owner of the subject land by virtue of sale deed bearing No.1005 of 1965 dated 15.04.1965. After purchase of the subject land, respondent is in possession of the same without any hindrance from any quarter. It was mentioned that respondent is also having property to an extent of 56,730.57 square meters in survey Nos.74/P and 75/P at Sanathnagar, Hyderabad for the purpose of construction of houses for weaker sections under group housing scheme.

In this connection, respondent had entered into a development agreement dated 21.09.2007 with M/s.S.P.Real Estate Developers and M/s.Janapriya Engineering Syndicate Limited. Disputes arose between the respondent and the developers leading to litigation before the city civil court at Hyderabad.

7. In order to protect the subject land from illegal encroachment, respondent decided to fence the same. When the fencing work was going on, the Mandal Surveyor and some local people tried to interfere with the fencing work. Respondent was asked to remove the fence and vacate the premises on the ground that it was in illegal occupation. Mandal Surveyor had directed the respondent to produce relevant documents and materials to show that respondent is the absolute owner and possessor of the subject land. Pursuant to such direction, respondent attended the office of the Mandal Surveyor and furnished documentary evidence. In this connection, respondent also submitted a representation dated 30.05.2009 before the Tahsildar. On being satisfied, Tahsildar gave liberty to the respondent to proceed with the fencing work.

8. When the respondent resumed fencing work, some anti-social elements and a few local political leaders again tried to interfere and threatened officials of the respondent with dire consequences. Respondent approached the Station House Officer, Sanathnagar Police Station for police protection which was granted by the Station House Officer.

9. To the utter dismay of the respondent, officials from the office of Tahsildar again came to the site and asked the respondent to remove the fence and to vacate the subject land.

10. Assailing such action of Tahsildar, respondent had filed the related writ petition being W.P.No.11293 of 2009.

11. This Court while admitting W.P.No.11293 of 2009 on 29.06.2009 had passed an order granting interim injunction.

12. The writ petition was contested by the Tahsildar by filing counter affidavit. Stand taken in the counter affidavit was that respondent had filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976

(briefly, 'the ULC Act' hereinafter) in respect of the following properties at Fathenagar village in Balanagar mandal:

Sy.No.	Extent (Sq.Mt)
74	25,100.00
76	25,230.00
74	23,880.00
75	17,620.00
74	13,760.00
78&79	51,580.00
Total	1,57,170.00

12.1. Respondent had also filed a declaration under Section 21(1) of the ULC Act for utilisation of excess land for construction of dwelling units for accommodation of weaker sections to an extent of 56,730.57 square meters out of the aforesaid land. Accordingly, permission was accorded by special officer and competent authority under Section 21(1) of the ULC Act on 04.02.2001. While according permission, a condition was imposed that construction of the dwelling units for the weaker sections should be completed within five years. It was alleged that respondent had not constructed the dwelling units within the specified period; thus violated the condition imposed while according permission under Section 21(1) of the ULC

Act. However, respondent started fencing in survey No.76 for which no orders were passed by the ULC authority.

12.2. As land in survey No.76 was declared by the respondent under Section 21 of the ULC Act, the competent authority under the said Act had to first decide whether such land was exempted from ceiling or not. Till such time, respondent had no right to fence the land in survey No.76.

12.3. Tahsildar had denied the allegation made by the respondent regarding interference with the peaceful possession by the Tahsildar over the subject land. It was stated that it was the duty of the Tahsildar to protect the property declared under Section 21 of the ULC Act until final orders were passed.

12.4. Reference was made to writ petition No.24373 of 1995 filed by the respondent in the then Andhra Pradesh High Court on the subject matter, exemption of land from ceiling, on the ground that said land was being reserved for providing dwelling quarters to workmen. The said writ petition was disposed of by the Andhra Pradesh High Court

on 07.08.1997 directing the authority to take a decision on the question of exemption. Scheduled Caste, Scheduled Tribe and Backward Class Welfare Sangh had also filed a writ petition being W.P.No.6396 of 2002 in the Andhra Pradesh High Court seeking implementation of the order passed by the special officer and competent authority dated 04.02.2001. Writ petition was disposed of vide the order dated 24.08.2007 giving liberty to the writ petitioner to approach the special officer for necessary redressal.

12.5. Though lands covered by the two writ petitions i.e., W.P.No.24373 of 1995 and W.P.No.6396 of 2002 are situated in survey Nos.74 and 75, the exemption regarding the surplus land in survey No.76 depended upon the conditions imposed regarding utilisation of the land for construction of dwelling units in survey Nos.74 and 75, further contending that respondent had not carried out the conditions mentioned in the order dated 04.02.2001.

13. Respondent had filed writ petition No.23477 of 2010 taking exception to the panchanama proceedings dated 08.02.2008 to show alleged taking over of possession

admeasuring 46,538 square meters in survey Nos.74 to 76 on 08.02.2008 and the attempt by the appellants in trying to physically dispossess the respondent from the aforesaid subject land and the building standing thereon even after repeal of the ULC Act. Such an action has been assailed as being arbitrary and violative of Article 14 read with Article 300A of the Constitution of India as well as provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (briefly, 'the Repeal Act' hereinafter). Further, a direction was sought for to the appellants not to interfere with the possession of the respondent over the subject land and not to make any claim of ownership over the subject land and building standing thereon.

13.1. Respondent stated that it is a company under the Companies Act, 1956 and engaged in the business of manufacture and sale of power transformers and other electrical equipments. For the purpose of setting up its manufacturing unit, respondent had purchased land admeasuring 1,63,764 square yards in survey Nos.74, 75, 76, 78 and 79 situated at Fathenagar village, Balanagar mandal in Ranga Reddy district in the year 1965. Since

then respondent had been in possession and enjoyment of the said land, wherein the manufacturing unit has also been established. After enactment of the ULC Act, respondent filed a statement in the prescribed form under Section 6(1) of the ULC Act which declaration was taken up as C.C.No.10571 of 1976 by the special officer and competent authority of urban land ceiling department. It is stated that respondent was also in possession of certain lands in Visakhapatnam which was also the subject matter of the declaration.

13.2. Lands held by the respondent at Hyderabad are as under:

Survey Nos.78 and 79	-	57,026 Sq. Mtrs.
Survey Nos.74, 75 and 76	-	1,06,511 Sq. Mtrs.
		<hr/>
Total	-	1,63,679 Sq. Mtrs.

13.3. Insofar land in survey Nos.78 and 79 is concerned, Government of Andhra Pradesh had issued G.O. Ms.No.1729 dated 27.11.1982 exempting the entire extent of land i.e., 57,026 square meters on the ground that respondent had constructed a factory premises in the said land. Insofar the remaining land in survey Nos.74, 75 and

76, government in the very same G.O.Ms.No.1729 had exempted land admeasuring 48,859 square meters of land subject to the condition of constructing separate factory and other buildings on such land within the stipulated period. For the remaining 56,730 square meters, respondent was granted exemption under Section 21 of the ULC Act in view of the scheme formulated for construction of dwelling houses and such land meant for the weaker sections of the society.

13.4. It is stated that in respect of land admeasuring 1229 square meters in survey Nos.74, 75 and 76, government had issued G.O.Ms.No.303 dated 07.04.1990 withdrawing the exemption granted earlier under G.O.Ms.No.1729 which is the subject matter of a separate litigation not having any bearing insofar present litigation is concerned.

13.5. First appellant had thereafter computed land holding of the respondent and by order dated 07.04.1992 passed under Section 8(3) of the ULC Act, special officer and competent authority held that respondent was holding 1,01,645 square meters of surplus land. This led to

another round of litigation. Whereafter special officer and competent authority had passed order dated 03.04.2005 under Section 8(4) of the ULC Act computing the holding of the respondent as follows:

		Sq. Meters
(1)	Total extent in Sy.Nos.74/P, 75/P, 76/P, 78 & 79 in Fatehnagar Village	1,63,679.00
(2)	Extent covered by G.V.M.Road in Sy.Nos.78 and 79 in T.S.Nos.3 and 6 of Block A = 5,088.00 Sq.mtrs.	1,63,679-5,088=1,58,591.00
(3)	Extent exempted by the Government in G.O.Ms.No.1729 dt. 23.11.1982 = 51,580.00 Sq.mtrs.	1,58,591-51,580= 1,07,011.00
(4)	Extent exempted u/s 21 under Housing Scheme in Sy.Nos.74/P, 75/P = 56,730 Sq.mtrs.	1,07,011-56,730.57 = 50,280.43
(5)	Extent effected by roads in Sy.Nos.74/P, 75 & 76 as per MCH Plan = 3742.00 Sq.mtrs.	50,280.43 – 3,742= 46,538.43
(6)	Surplus extent in Sy.Nos.74/P, 75/P & 76/P Fatehnagar Village	= 46,538.43

13.6. Aggrieved by the order dated 03.04.2005, respondent had approached the appellate authority by way of an appeal which was disposed of vide the order dated 28.07.2005 confirming the above computation subject to verification by the special officer and competent authority. Thereafter, special officer and competent authority passed the order dated 20.03.2007 computing the surplus holding of the respondent in Hyderabad at 45,538.43 square meters in survey Nos.74/P, 75/P and 76/P in Fathenagar

village after deducing the retainable land of 1,000 square meters.

13.7. After such computation, notification under Section 10(3) of the ULC Act was published in Andhra Pradesh State Gazette on 03.10.2007, wherein an extent of 46,538.43 square meters in survey Nos.74/P, 75/P and 76/P of Fathenagar village in Balanagar mandal was declared to have been acquired by the State Government with effect from 12.07.2007. According to the respondent, this notification failed to note that the surplus land was only 45,538.43 square meters and not 46,538.43 square meters. However, there was no further proceeding and no notice of any kind was issued to the respondent under Section 10(5) of the ULC Act nor was possession of the subject land taken over by the appellants.

13.8. Urban Land (Ceiling and Regulation) Repeal Act, 1999 (already referred to as 'the Repeal Act') was adopted by the State of Andhra Pradesh with effect from 27.03.2008 vide G.O.Ms.No.603 (Revenue) (UCI) Department dated 22.04.2008. Section 3(1)(a) of the Repeal Act provided that

no vesting of any vacant land under sub-section (3) of Section 10 of the ULC Act would come into effect unless possession of the same had been taken over by the State Government or by any person duly authorised by the State Government or by the competent authority. According to the respondent, as possession of the subject land had not been taken over by the government, the entire proceedings under the ULC Act had abated; consequently the subject land would remain with the respondent.

13.9. On 24.02.2009 respondent was served with G.O.Ms.No.1534 dated 20.12.2008 whereby the government had sought to resume surplus land to an extent of 56,730.57 square meters which was covered under the scheme in terms of Section 21 of the ULC Act. Aggrieved by the said G.O.Ms.No.1534, respondent had filed writ petition No.28649 of 2008 before this Court which passed order dated 28.12.2008 staying all further proceedings. It is stated that writ petition No.28649 of 2008 is still pending before this Court. In paragraph 4 of the writ affidavit in writ petition No.28649 of 2008, it is specifically contended that possession of the excess land of

46,538.43 square meters was not taken over by the appellants.

13.10. While the matter stood thus, second appellant i.e., Tahsildar came to the transformer factory of the respondent on 14.09.2010 stating that land admeasuring 46,538 square meters in survey Nos.74, 75 and 76 was required to be handed over to them as land had been declared as surplus land. Respondent was directed to vacate the said land immediately. Respondent had objected to the highhanded action of the appellants more particularly the Tahsildar and had submitted that in view of the Repeal Act, there can be no further taking over of possession of the subject land of the respondent. It was at this stage that the Tahsildar had handed over the panchanama dated 08.02.2008 whereby it was stated that notice under Section 10(5) of the ULC Act was issued on 05.01.2008 and that possession of the subject land was taken over on 08.02.2008 under Section 10(6) of the ULC Act.

13.11. Respondent contended that the period of thirty days as prescribed under Section 10(5) of the ULC Act was not yet complete before alleged possession was taken over. Adverting to the panchanama, it was averred that Section 10(5) notice dated 05.01.2008 was issued by the competent authority to the respondent and the respondent had not delivered possession of the subject land within thirty days. It was alleged that thirty days period would have elapsed on 07.02.2008 whereas the panchanama showed that the order under Section 10(6) was made on 05.02.2008 even before expiry of the thirty days period. That apart, respondent contended that no notice under Section 10(5) of the ULC Act was ever received by the respondent. Contents of the panchanama has also been disputed and denied.

13.12. Elaborating further, it was stated that respondent is running a transformer factory in the alleged surplus land. Entire land is enclosed by way of a compound wall and barbed wire fencing. The factory building is in survey No.75 over an area of 1229.93 square meters. Watchman at the factory gate would not permit any outsider to enter into the factory premises without appropriate permission.

Therefore, question of taking over possession of the subject land under Section 10(6) by the competent authority or by persons authorised by him did not arise. The land claimed by the appellants as surplus vacant land is in fact not so as the respondent is running a factory manufacturing transformers therein. The fact that the transformer factory is operational would be evident from documents issued by various statutory authorities including the central excise authorities. It was asserted that respondent is in absolute possession of the subject land even as on date. Alleged panchanama proceedings dated 08.02.2008 are a made up affair to support the case of the appellants whereas the fact is that there was no transfer of possession from the hands of the respondent.

13.13. Respondent also assailed the panchnama on various grounds such as lack of particulars of the surplus land, identity of the panchas and witnesses etc. Therefore, it is contended that action of the appellants in allegedly taking over possession of the subject land on 08.02.2008 under the cover of the so called panchas is wholly illegal and arbitrary besides being violative of Article 300A of the

Constitution of India as well as provisions of the Repeal Act. It was in that context writ petition No.23477 of 2010 came to be filed before this Court.

14. On 22.09.2010, this Court while admitting writ petition No.23477 of 2010 for hearing had granted interim order of stay. Appellants were restrained from dispossessing the respondent if it was in physical possession of the subject land as on 22.09.2010.

15. Appellants had filed counter affidavit through special officer and competent authority. It was stated that respondent had filed a statement in Form-I under Section 6(1) of the ULC Act declaring the properties held by it. After enquiry, the final holding of the declarant i.e., respondent in Hyderabad Urban Agglomeration was determined as follows:

Sl.No.	Nature of the Property	Location	Total Extent in Sq. Mtrs.
HYDERABAD URBAN AGGLOMERATION – 'B' CATEGORY			
1	Vacant land	Sy.No.78/P, 79/P, T.S.No.3, Fathenagar	500.00
		Sy.No.74/P, 75/P and 76/P, T.S.No.2 & 6	102145.00

15.1. G.O.Ms.No.931 was issued by the Revenue (UC) Department on 12.08.1976 laying down the procedure for industries applying for exemption under the ULC Act. In accordance with G.O.Ms.No.931, respondent had filed representation before the government seeking exemption of its land from the provisions of the ULC Act.

15.2. Government vide G.O.Ms.No.1729 of the Revenue (UC.III) Department dated 27.11.1982 had granted exemption under Section 20 of the ULC Act for the vacant land measuring an extent of 51,580.00 square meters in survey Nos.78 and 79 of Fathenagar to run the existing industry for manufacturing electrical meters and another extent of 48,859.50 square meters in survey Nos.74, 75 and 76 of Fathenagar within Hyderabad Urban Agglomeration for industrial use subject to certain conditions. One of which was that land should be utilised for the purpose for which it was retained within three years from the date of granting exemption, failing which the exemption granted would stand cancelled, whereafter the land would be subject to provisions of the ULC Act.

15.3. Respondent had also filed a representation under Section 21 of the ULC Act to retain an extent of 40,436.00 square yards in survey Nos.74/P, 75/P and 79/P at Fathenagar village for construction of dwelling units to accommodate members of weaker sections. Accordingly permission under Section 21 of the ULC Act was granted to retain the above extent of land vide order dated 12.11.1980. Subsequently, on request of the respondent, the extent of land exempted was revised, whereafter vide order dated 09.12.1981 of the special officer and competent authority, respondent was permitted to retain 56,730.57 square meters in survey Nos.74/P and 75/P of Fathenagar village for constructing dwelling units for weaker sections. Revised order also contained certain conditions. One of the conditions was that the construction of dwelling units should be completed within five years, for which respondent was required to submit quarterly progress reports.

15.4. It was alleged that respondent had not commenced construction of dwelling units, besides respondent had also not submitted quarterly progress reports. Therefore, after

giving show cause notice and personal hearing, orders issued under Section 21 of the ULC Act were revoked by the special officer and competent authority on 03.04.1992. That apart, government had issued G.O.Ms.No.303 dated 07.04.1990 withdrawing exemption granted for running of factory to an extent of 48,859.50 square meters of land in survey Nos.74/P, 75/P and 76/P of Fathenagar village for non-utilisation of the land for the purpose for which exemption was granted. Thereafter, respondent was declared as excess holder to an extent of 46,538.43 square meters vide proceedings dated 20.03.2007 and possession was taken on 08.02.2008. It was asserted that the land exempted under Section 21(1) is different from the land declared as surplus in survey Nos.74/P, 75/P and 76/P.

15.5. It was stated that preliminary orders under Section 8(1) of the ULC Act were issued by the special officer and competent authority on 07.04.1992 provisionally determining the respondent as surplus land holder to an extent of 1,73,167.63 square meters. Respondent raised objection to the draft statement so prepared. Finally, special officer and competent authority issued order under

Section 8(4) of the ULC Act dated 03.04.2005 determining the respondent as excess land holder in Hyderabad Urban Agglomeration in the following manner:

Properties held by the Company at Hyderabad Urban Agglomeration:

		Sq.Mtrs.
(1)	Total extent in Sy.Nos.74/P, 75/P, 76/P, 78 & 79 in Fathenagar Village	1,63,679.00
(2)	Extent covered by G.V.M.Road in Sy.Nos.78 and 79 in T.S.Nos.3 and 6 of Block = 5,088.00 Sq.mtrs.	1,63,679-5,088=1,58,591.00
(3)	Extent exempted by the Government u/s 20(1)(a) vide G.O.Ms.No.1729 dt. 23.11.1982 = 51,580.00 Sq.mtrs.	1,58,591-51,580= 1,07,011.00
(4)	Extent exempted u/s 21 under Housing Scheme in Sy.Nos.74/P, 75/P = 56,730.57 Sq.mtrs.	1,07,011-56,730.57 = 50,280.43
(5)	Total extent exempted i.e., (108310.57 Sq.Mtrs)	
(6)	Extent effected by roads in Sy.Nos.74/P, 75 & 76 as per MCH Plan = 3742.00 Sq.mtrs out of 50283.00 Sq.mtrs	50,280.43 – 3,742= 46,538.43
(7)	Surplus extent in Sy.Nos.74/P, 75/P & 76/P in Fathenagar Village	46,538.43

15.6. Stating that out of 46,538.43 square meters, respondent was eligible to retain 1000 square meters under Section 4(1)(b) of the ULC Act, the balance of surplus vacant hand was estimated at 45,538.43 square meters.

15.7. Aggrieved by the order of the special officer and competent authority, respondent filed appeal before the appellate authority under Section 33 of the ULC Act. Appellate authority vide the order dated 28.07.2005 set aside the order appealed against and remanded the matter

back to the special officer and competent authority. After due enquiry, revised order under Section 8(4) of the ULC Act and final statement under Section 9 of the ULC Act were issued on 20.03.2007. Thus, the surplus land was determined at 46,538.43 square meters which was separate from the land exempted under Section 21 of the ULC Act.

15.8. It is stated that after completion of formalities, notification under Section 10(1) of the ULC Act was issued on 07.07.2007, whereafter declaration under Section 10(3) was made on 24.09.2007 vesting the land with the government free from all encumbrances. Possession of the surplus land admeasuring 46,538.43 square meters forming part of survey Nos.74/P, 75/P and 76/P of Fathenagar, Hyderabad was taken over on 08.02.2008 by following the laid down procedure. Possession of the subject land was taken over much before the Repeal Act was made applicable to the State of Andhra Pradesh on 27.03.2008. Respondent filed an application on 09.07.2007 seeking extension of time by five years for constructing dwelling units for weaker sections. However, the

government decided to resume the surplus land to an extent of 56,730.57 square meters in survey Nos.74/P and 75/P vide the order dated 20.12.2008 directing the special officer and competent authority to take possession of the said land. Accordingly, possession of the said land was taken over on 20.12.2008. However, respondent had filed writ petition No.28644 of 2008 wherein interim directions were issued by this Court restraining dispossession of the respondent from the land admeasuring 56,730.67 square meters in survey Nos.74/P and 75/P. The said writ petition is pending. The said land is different from the land declared as surplus in survey Nos.74/P, 75/P and 76/P to the extent of 46,538.43 square meters of Fathenagar village in respect of which possession was taken over under Section 10(6) of the ULC Act on 08.02.2008.

16. Notice under Section 10(5) of the ULC Act was issued on 05.01.2008 calling upon the respondent to surrender the excess vacant land within thirty days. Since the respondent was under lockout, the said notice was affixed on the main door on 08.01.2008. Time stipulated in the notice expired but the declarant failed to surrender its

land. Hence order under Section 10(6) of the ULC Act was issued on 05.02.2008 authorising enquiry officer to take over possession of the surplus land. Consequently, enquiry officer took over possession of the surplus land on 08.02.2008 to an extent of 46,538.43 square meters in survey Nos.74/P, 75/P and 76/P in Fathenagar village, Balanagar mandal, Ranga Reddy district.

17. Respondent had filed rejoinder to the counter affidavit of the appellants. It is stated that insofar writ petition No.23477 of 2010 was concerned, it is related to land admeasuring 46,538 square meters in survey Nos.74, 75 and 76 in Hyderabad Urban Agglomeration. The lands in Hyderabad Urban Agglomeration was dealt with by the competent authority in his order dated 07.04.1992 under Section 8(3) of the ULC Act which was confirmed twelve years thereafter by the competent authority vide the order dated 03.04.2004 passed under Section 8(4) of the ULC Act.

17.1. The aforesaid order of the competent authority dated 03.04.2004 was challenged before the appellate authority

under Section 33 of the ULC Act. Appellate authority by the order dated 28.07.2005 had set aside the entire order of the competent authority by allowing the appeal. Competent authority was directed to re-compute the excess vacant lands by excluding certain structures and appurtenant area. However, there was no re-computation of the vacant land in the Hyderabad Urban Agglomeration. It is stated that the order of the competent authority on remand dated 20.03.2007 was not in conformity with the order passed by the appellate authority on 28.07.2005. When the order dated 20.03.2007 was not in conformity with the order of the appellate authority, appellants would not be right in contending that they had acquired the excess vacant land and had taken over possession of the same. In this connection, respondent reiterated that it was in possession of the land till the time the ULC Act was repealed and it continued to be in possession thereof till date.

17.2. Claim of the appellants that notice under Section 10(5) was issued on 05.01.2008 was denied by the respondent. 05.01.2008 was a Saturday. It was the duty of the appellants to establish that 05.01.2008 was a working

day and that notice dated 05.01.2008 was despatched from the office on a working day. It is also the duty of the competent authority to establish the exact date of service of notice under Section 10(5) and service on the noticee were conspicuously absent in the counter affidavit. Appellants merely stated that notice under Section 10(5) was issued on 05.01.2008. Since the respondent was under lockout, the notice was affixed on the main door on 08.01.2008. In the absence of despatch of notice by registered post with acknowledgement due, the service would be deemed to be in violation in terms of Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976 (briefly, 'the ULC Rules' hereinafter). That apart, it was reiterated that there was no lockout in the establishment of the respondent at the relevant point of time; rather it was fully operational for which respondent relied upon various documentary evidence including returns filed before the Employees' State Insurance Corporation for the period from 01.10.2007 to 31.03.2008.

17.3. While denying that notice under Section 10(5) was served on 08.01.2008 as claimed by the appellants, it was

averred that the thirty days period mentioned in the said notice to surrender possession voluntarily would have expired only on 07.02.2008. Right of the competent authority to take further action under Section 10(6) would accrue only after 08.02.2008. Therefore, no reliance could be placed on the alleged order dated 05.02.2008 passed under Section 10(6) of the ULC Act. That apart, order dated 05.02.2008 containing more than one date with overwriting did not inspire any confidence at all.

17.4. Further attempt by the appellants to show that they had taken over possession of the excess vacant land on 08.02.2008 by relying on the purported panchanama does not inspire any confidence. It is contended that when the order under Section 10(6) of the ULC Act dated 05.02.2008 was of no legal consequence, the alleged taking over of possession on 08.02.2008 on the strength of the order dated 05.02.2008 would also be of no consequence. Besides, a bare perusal of the panchanama would reveal that it was prepared in a printed format to suit the case of the appellants. A careful reading of the panchanama itself would indicate that it was a fabricated document without

furnishing details of the three panchas, as a result of which the panchas were not identifiable.

17.5. Appellants claimed to have taken over possession of 46,538.43 square meters on 08.02.2008 which included 1000 square meters of land conferred on the respondent under Section 4(1) of the ULC Act. This only goes to show that appellants had not applied their mind and had just produced some documents to show that they had taken over possession.

17.6. Respondent's name was shown as owner in possession and enjoyment of the lands including the excess vacant land in the revenue record which only goes to show possession of the respondent, besides pahanis stand in the name of the respondent in respect of the subject land. Therefore, the theory of possession put forth by the appellants is contrary to the record.

18. Learned Single Judge after narrating the relevant facts and after adverting to the submissions made by learned counsel for the parties had examined various provisions of the ULC Act, more particularly Sections 10(1),

10(3), 10(5) and 10(6) of the ULC Act as well as the Repeal Act which was adopted by the Government of undivided Andhra Pradesh on 27.03.2008 vide G.O.Ms.No.603 dated 22.04.2008. Learned Single Judge examined the claim of the appellants of having taken over possession of the subject land under Section 10(6) of the ULC Act as well as the contents of the panchanama observed that whenever a panchanama is prepared, the same has to be done duly putting the actual owner/interested person on notice; panchas should be reputed and respectable persons of the locality; date and time on which the panchanama was prepared as well as the name, age and address of the panchas should be mentioned in the panchanama. Thereafter, learned Single Judge held that unless and until actual physical possession of the subject land was taken over, the taking over proceedings under the ULC Act would stand abated on coming into force of the Repeal Act. After referring to various decisions, learned Single Judge held that after issuing notice under Sections 10(1) and 10(3) of the ULC Act, competent authority under the said Act would have to issue notice under Section 10(5) directing the party

to surrender possession of the excess land within a period of thirty days. If voluntary possession of the same is not given, then the authorities are under obligation to issue notice under Section 10(6) and thereafter take possession. Mere issuance of notice under Section 10(3) would not automatically entitle the authorities to take over possession of the notified lands; the authorities would have to necessarily issue notice under Section 10(5) of the ULC Act to the land owner or any other interested person. Taking over of possession has to be actual physical possession and not mere *de jure* possession.

18.1. After referring to the alleged anomalies noticeable in Section 10(6) notice, learned Single Judge came to the conclusion that very admission on the part of the appellants that the notice was served on 08.01.2008, whereafter Section 10(6) order was passed on 05.02.2008 would clearly show that the mandatory period of thirty days between the two provisions was not met. Learned Single Judge further noted that there was no explanation forthcoming as to how the date "01.10.2008" appeared in the Section 10(6) notice. Thus, learned Single Judge vide

the judgment and order dated 03.01.2022 came to the conclusion that physical possession of the subject land was still with the respondent. There was no cogent and convincing evidence to show that State Government had taken over physical possession of the subject land. That apart, learned Single Judge found that the panchanama dated 08.02.2008 did not inspire the confidence of the Court. Further, from the documentary evidence, it was proved beyond any doubt that the factory of the respondent was still functional, a number of apartments had been constructed. Therefore, physical possession of the subject land had not been taken over by the government but was still with the respondent. Learned Single Judge also referred to an order of this Court dated 26.10.2009 in writ petition No.3140 of 2009, whereby government sought to resume the surplus land of the respondent by issuing G.O.Ms.No.1534 dated 20.12.2008. In the said order, this Court had set aside G.O.Ms.No.1534 holding that possession of the subject land was not taken over by the government. Accordingly, both the writ petitions were

allowed and the panchanama dated 08.02.2008 was set aside.

19. Mr. Raju Ramachandran, learned Senior Counsel for the appellants submits that learned Single Judge was not at all justified in setting aside the panchanama proceedings dated 08.02.2008 and interfering with the action of the State in taking over possession of the surplus land of the respondent under the ULC Act. In the course of his arguments, learned Senior Counsel for the appellants has placed before the Court a flow chart of land belonging to the respondent covered by the final statement made under Section 8(4) of the ULC Act. He submits that respondent had declared under Section 6(1) of the ULC Act a total of 1,63,679 square meters of land in Survey Nos.74/P, 75/P, 76, 78 and 79. Out of the aforesaid land, 5,088 square meters was covered by GVM Road leaving land to the extent of 1,58,591 square meters. By G.O.Ms.No.1729, an extent of land measuring 51,580 square meters in Survey Nos.78 and 79 was allowed to be retained by the respondent to run the industry for manufacturing electrical meters. Though an extent of land admeasuring 48,859.90

square meters was allowed to be retained by the respondent for establishing fan factory, later on the exemption was withdrawn vide G.O.Ms.No.303. Excluding 51,580 square meters from the total extent of 1,58,591 square meters surplus excess land with the respondent was quantified at 1,07,011 square meters. Out of this extent, 56,730.57 square meters in Survey Nos.74, 75 and 76 was exempted under Section 21 of the ULC Act leaving balance extent of 50,280.43 square meters for computation under Section 8(4) of the ULC Act. After excluding an extent of 3,742 square meters, which was affected by road, the extent of surplus land quantified by the competent authority under the ULC Act was estimated at 46,538.43 square meters as per revised order of the competent authority dated 20.03.2007.

19.1. Because of clerical mistakes, learned Single Judge ought not to have disbelieved the notice issued under Section 10(5) of the ULC Act as well as the order passed under Section 10(6) of the ULC Act, more so when learned Single Judge did not requisition the record. While admitting that appearance of the date "01.10.2008" in the

order dated 05.02.2008 is inexplicable, Mr. Raju Ramachandran, learned Senior Counsel for the appellants submits that that by itself would not justify the conclusion reached by the learned Single Judge that the aforesaid notice and order were antedated and thus discarded. He submits that learned Single Judge was also not justified in disbelieving the panchanama dated 08.02.2008 and thereafter declaring the notices under Section 10(5) and 10(6) as well as the panchanama as *void ab initio*. He further submits that learned Single Judge committed a manifest error in holding that physical possession of the surplus vacant land had not been taken over by the appellants.

19.2. Mr. Raju Ramachandran, learned Senior Counsel for the appellants submits that recording of a panchanama is a recognized mode of taking possession of large tracts of land. In this connection, he has placed reliance on **Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi**¹, which was reiterated in **Omprakash Verma v.**

¹ (2009) 10 SCC 501

State of Andhra Pradesh². Though he has placed reliance on the decisions of the Supreme Court in **State of Uttar Pradesh v. Hari Ram**³ and **Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC)**⁴, he has however placed emphasis on the later decision of the Supreme Court in **State of Assam v. Bhaskar Jyoti Sarma**⁵ wherefrom he submits that Section 10(5) of the ULC Act prescribes an ordinary and logical course of action that ought to be followed before the authorities decide to use force to dispossess the occupant under Section 10(6) of the ULC Act. He, therefore, submits that learned Single Judge had erred on facts as well as in law in interfering with the ULC proceedings initiated by the State for taking over the surplus vacant land of the respondent.

20. *Per contra*, Mr. V.Ramesh, learned counsel for the respondent has meticulously taken the Court to the judgment of the learned Single Judge as well as to the materials on record. He has referred to the notice dated 05.01.2008 purportedly issued by the special officer and

² (2010) 13 SCC 158

³ (2013) 4 SCC 280

⁴ (2014) 12 SCC 523

⁵ (2015) 5 SCC 321

competent authority under sub-section (5) of Section 10 of the ULC Act and submits therefrom that the handwritten endorsement at the bottom of that notice which says that the notice was affixed on the outer door clearly reveals overwriting of the date. While the figure '8' is written in dark ink to mean the date as 08.01.2008, there appears to be another date below the overwritten figure of '8'. Adverting to page 234 of the paper book (W.A.No.670 of 2022), he submits that the order issued under Section 10(6) of the ULC Act does not inspire any confidence. While on the date 05.02.2008, both 5 and 8 appeared to be written twice, if not overwritten; beneath 05.02.2008 the figure '8' is also written. If the notice under Section 10(5) of the ULC Act was pasted on the outer door of the premises on 08.01.2008, the period of thirty days was not over when the order under Section 10(6) of the ULC Act was passed. There is no proof or materials on record to show that the notice dated 05.01.2008 was sent by registered post with acknowledgement due to the respondent. Therefore, no credence can be taken of any suggestion that the notice dated 05.01.2008 was sent to the respondent by registered

post with acknowledgment due on 05.01.2008 itself. That apart, in the body of the order it was mentioned that the thirty days period given in the notice under Section 10(5) of the ULC Act had expired on 01.10.2008. There is no corrigendum or any explanation as to how the date 01.10.2008 appeared in the order dated 05.02.2008.

20.1. Therefore, it was evident that possession of the subject land was not taken over by the appellants. It continued to remain with the respondent. Adverting to the panchanama, he submits that learned Single Judge was wholly justified in disbelieving the contents of the panchanama.

20.2. Learned counsel for the respondent has submitted a compilation of judgments wherefrom he has placed special emphasis on the decision of the Supreme Court in **Hari Ram** (supra). He submits that insofar sub-section (3) of Section 10 of ULC Act is concerned, what is vested is *de jure* possession and not *de facto* possession. Section 10(6) of the ULC Act provides for forceful dispossession in an eventuality where a person refuses or fails to comply with

Section 10(5) of the ULC Act. Since it is a question of divesting a person of his lawful property, it must be done strictly in accordance with law and Article 300A of the Constitution of India. It is in this context that Supreme Court in **Hari Ram** (supra) has made it abundantly clear that requirement of giving notice both under sub-sections (5) and (6) of Section 10 of the ULC Act is mandatory. Adverting to the repeal Act, he submits that mere vesting of the land under sub-section (3) of Section 10 of the ULC Act would not confer any right on the State Government to have *de facto* possession unless there is voluntary surrender. It is the State which has to establish that there had 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 of the ULC Act. If the State fails to establish any of these situations, the landholder or owner can claim the benefit of Section 3 of the Repeal Act.

20.3. He submits that decision of the Supreme Court in **Bhaskar Jyoti Sarma** (supra) is not applicable to the facts of the present case. In fact, the said decision has been

distinguished by the Madras High Court in **Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai v. Assistant Commissioner/Competent Authority, Urban Land Ceiling** (W.A.No.3632 of 2019, decided on 20.01.2020).

Learned counsel has also placed reliance on a Division Bench decision of this Court dated 21.07.2022 passed in W.A.No.1975 of 2017 (**State of Telangana v. M/s. Southern Steels Limited**) which has held that notice under Section 10(5) of the ULC Act as well as order under Section 10(6) of the aforesaid Act are required to be served on the persons who are in possession as well as named in the declaration. If there is non-service of notice, the entire proceedings shall fall through.

20.4. Finally, learned counsel for the respondent has drawn the attention of the Court to relevant portions of the record and points out the inconsistencies therein. Many of the pages, he submits, have got multiple paginations with overwritings. The panchanama at page 235 is in printed form with names filled in with correction in the date. Thus, from a complete analysis of the facts on record he submits that the view taken by the learned Single Judge can only be

the logical view, no other view is possible. Therefore, the appeals filed by the State are liable to be dismissed.

21. Submissions made by learned counsel for the parties have received the due consideration of the Court. Also perused the materials on record.

22. At the outset, we may advert to the relevant provisions of the statute.

23. The ULC Act was enacted to provide for imposition of a ceiling on vacant land in urban agglomerations and for acquisition of such land in excess of the ceiling limit so as to regulate the construction of buildings on such land and for matters connected therewith. The ULC Act sought to prevent concentration of urban land in the hands of a few persons leading to speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to sub-serve the common good.

23.1. Section 6 of the ULC Act more particularly subsection (1) thereof required every person holding vacant

land in excess of the ceiling limit at the commencement of the ULC Act to file a statement within the prescribed period before the jurisdictional competent authority specifying the location, extent, value and such other particulars as may be prescribed of all the vacant land and of any other land on which there is a building and also specifying the vacant land within the ceiling limit which he desires to retain.

23.2. Section 8 deals with preparation of draft statement as regards vacant land held in excess of ceiling limit. As per sub-section (1), on the basis of the statement filed under Section 6 and after such inquiry as the competent authority may deem fit, the competent authority shall prepare a draft statement in respect of the person who had filed the statement under Section 6. As per sub-section (3), the draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of service thereof. In terms of sub-section (4), the competent authority shall duly consider any objection received whereafter the competent

authority may pass such order(s) as it deems fit but after giving the objector a reasonable opportunity of being heard.

23.3. Section 9 provides that after completion of the exercise under sub-section (4) of Section 8, the competent authority shall make the necessary alterations in the draft statement and shall determine the vacant land held by the person concerned in excess of the ceiling limit. A copy of the draft statement as so altered shall be served in the manner referred to in sub-section (3) of Section 8 on the concerned person.

23.4. Section 10 deals with acquisition of vacant land in excess of ceiling limit. Sub-section (1) says that as soon as the service of the statement under Section 9 on the person concerned is carried out, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit, further stating that such vacant land is to be acquired by the State Government and that claims of all persons interested in such vacant land may be made by giving

particulars of the nature of their interests in such land.

Sub-section (3) is relevant which is extracted hereunder:

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

(1) xxx xxx xxx

(2) xxx xxx xxx

(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.

23.5. Thus, what sub-section (3) contemplates is that after publication of the notification under sub-section (1), the competent authority by notification published in the Official Gazette of the concerned State, declare that the excess vacant land referred to in the notification 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 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.

23.6. This brings us to sub-sections (5) and (6) of Section 10 of the ULC Act which are relevant and hence are extracted hereunder:

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

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (4) xxx xxx xxx

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

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

Explanation.- In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to-

- (a) any vacant land owned by the Central Government, means the Central Government;
- (b) any vacant land owned by any State Government and situated in the Union Territory or within the local limits of a cantonment declared as such under Section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.

23.7. Thus, what sub-section (5) provides for is that 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 shall be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of service of the notice. As per sub-section (6), if any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may, for that purpose, use such force as may be necessary.

23.8. As sub-sections (5) and (6) of Section 10 are central to the case, a more detailed analysis is called for.

23.9. Once any vacant excess land is vested in the State Government under sub-section (3) of Section 10, the competent authority under the ULC Act is required to issue a notice in writing calling upon the person in possession of the vested land to surrender or deliver possession to the State Government within thirty days of service of notice. Therefore, first and foremost, there must be vesting of vacant excess land with the State Government under sub-section (3) of Section 10. Thereafter, the competent authority has to issue notice in writing to the person in possession of such land. This notice must be served upon such a person. The person in possession has to surrender or deliver possession of the vacant excess land vested with the State Government to the State Government within thirty days of service of the written notice. Therefore, issuance and service of written notice on the person in possession of the vested land becomes extremely important. This is because property of which land is an important constituent though no longer a fundamental

right is still a valuable constitutional right protected under Article 300A of the Constitution of India. Consequence of non-compliance to sub-section (5) of Section 10 would result in forceful taking over of possession of the vacant excess land vested with the State Government and to handover possession of the same to the concerned State Government for which purpose use of force would be permissible. In other words, if the person in possession of the vacant land refuses to surrender or deliver possession of such land to the State Government, then as per mandate of sub-section (6) of Section 10, the State Government would be entitled to use force to take over forceful possession of such land. Therefore, viewed from the perspective of sub-section (6), requirement of both issuance and service of notice under sub-section (5) assumes critical importance.

24. In exercise of the powers conferred by sub-section (1) read with sub-section (2) of Section 46 of the ULC Act, the Central Government made the Urban Land (Ceiling and Regulation) Rules, 1976 (already referred to as 'the ULC Rules' hereinabove). Rule 5 lays down the particulars to be

contained in the draft statement as regard vacant lands and the manner of service of the same. Rule 5 deals with service of draft statement under sub-section (1) of Section 8 and notice under sub-section (3) of Section 8 on the person concerned. As per Rule 5(2)(b), where the draft statement and the notice are returned as 'refused by the addressee', the same shall be deemed to have been duly served on such person. Further, as per Rule 5(2)(c), if the above method of service is not successful other than refusal by the addressee, then the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which holder of the vacant land or as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

24.1. Rule 6 provides for manner of publication of notification under sub-section (1) of Section 10. In addition to publication in the Official Gazette of the concerned State Government, the notification shall be placed in a conspicuous place in the office of the competent authority

and also in a conspicuous place in the office of the District Collector, Tahsildar and Municipal Commissioner within the local limits of whose jurisdiction the vacant land to which the notification relates to is situated.

24.2. From a thorough examination of the Rules, we do not find any provision therein regarding issuance and service of notice under sub-section (5) of Section 10. The rules are silent as regards issuance or service of notice upon the person in possession of the vacant land under sub-section (5) of Section 10.

25. It may be mentioned that by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (already referred to as 'the Repeal Act' hereinabove), the ULC Act stood repealed. Section 1(2) says that at the first instance, the Repeal Act was applicable to the State of Haryana and Punjab as well as all the union territories. It would apply to such other states which would adopt the Repeal Act by resolution passed in that behalf under clause (2) of Article 252 of the Constitution. While Section 3 is the savings clause which is relevant, Section 4 says that all proceedings relating to any

order made or purported to be made under the principal Act pending immediately before the commencement of the ULC Act before any court, tribunal or other authority shall abate. Section 3 of the Repeal Act reads as follows:

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 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.

25.1. Since in this case, we are primarily concerned with Section 10 of the ULC Act, we will confine the provisions of Section 3 of the Repeal Act to Section 10 of the ULC Act. As per Section 3(1)(a), repeal of the ULC Act would not affect vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or by any person duly authorised by the State Government in this behalf or by the competent authority. Section 3(2)(a) says that where any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the ULC Act but possession of which has not been taken over by the State Government or by any person duly authorised by the State Government in this behalf or by the competent authority, possession of such land would be saved. However, as per Section 3(2)(b), where 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 back to the State Government. The position, therefore, is that if possession has been taken over by the State Government, repeal of the ULC Act would not affect taking over of

possession by the State Government. If on the other hand, possession could not be taken over by the State Government, though the land is deemed to have been vested with the State Government, then such possession of the person concerned would be saved. On the other hand, in such a situation, if any payment has been made by the State Government with respect to such land, unless the payment is refunded to the State Government, there would be no restoration of the land to the person concerned.

26. Having surveyed the statutory framework, let us now advert to the facts of the present case.

27. From the pleadings and materials on record, the following facts are deducible.

27.1. Respondent had filed the statement under sub-section (1) of Section 6 of the ULC Act which was registered as C.C.No.10571 of 1976. After a long *hiatus*, the competent authority prepared the draft statement under sub-section (1) of Section 8 and issued the notice under Section 8(3) of the ULC Act on 07.04.1992. It was thereafter that order under Section 8(4) of the ULC Act was

passed by the competent authority on 03.04.2005, as per which, the vacant excess land was quantified at 46,538.43 square meters in survey No.74/P, 75/P and 76/P at Fathenagar village in Balanagar mandal in the district of Ranga Reddy. It appears that respondent had questioned the aforesaid order before the appellate authority which passed an order on 28.07.2005 calling upon the competent authority to pass fresh order after due verification. It was thereafter that competent authority passed the revised order under Section 8(4) of the ULC Act on 20.03.2007 confirming the extent of vacant surplus land as quantified earlier vide the order dated 03.04.2005. According to the respondent, this quantification is erroneous inasmuch as respondent was entitled to retain 1000 square meters of the said land under Section 4(1)(b) of the ULC Act; thus the balance of surplus vacant land should have been 45,538.43 square meters. Be that as it may, notification under Section 10(1) of the ULC Act was issued on 07.07.2007. Thereafter competent authority issued the notification under Section 10(3) of the ULC Act on 24.09.2007 declaring that the excess vacant land be

deemed to have been acquired by the State Government with effect from 17.07.2007. It was published in the Andhra Pradesh Gazette on 03.10.2007. Be it stated that the excess vacant land was declared at 46,538.43 square meters.

27.2. Till this point of time, there appears to be more or less unanimity in so far the various dates are concerned. It is thereafter that the dates become highly disputed and contentious.

27.3. According to the respondent, on 14.09.2010 a copy of panchanama dated 08.02.2008 was handed over to it, wherefrom it was discernible that notice under Section 10(5) of the ULC Act was issued on 05.01.2008 and possession was allegedly taken over on 08.02.2008 under Section 10(6) of the ULC Act. However, it was the contention of the respondent that actual possession of the excess vacant land was never taken over by the government or by the competent authority. It remained throughout with the respondent. In the meanwhile, G.O.Ms.No.603 dated 22.04.2008 was issued by the

Government of Andhra Pradesh repealing the ULC Act with effect from 27.03.2008. Therefore, it was contended that respondent was entitled to the benefit of Section 3 of the Repeal Act.

27.4. On the other hand, according to the appellants, notice under Section 10(5) of the ULC Act was issued on 05.01.2008. The company i.e. respondent was under lockout. Therefore, the said notice was affixed on the main door on 08.01.2008. Order under Section 10(6) of the ULC Act was issued on 05.02.2008. Enquiry officer took over possession of the excess surplus land on 08.02.2008 which would be evident from the panchanama.

28. Let us now examine relevant portions of the judgment and order of the learned Single Judge.

29. After referring to various provisions of the ULC Act as well as the Repeal Act and the G.O.Ms.No.603, learned Single Judge summed up the legal position as to Section 10(5) and (6) of the ULC Act in the following manner:

21. xxx xxx xxx xxx 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.

29.1. According to the learned Single Judge, after service of notice under Section 10(5) if the land owner fails to surrender the possession of the excess vacant land voluntarily then the procedure contemplated under Section

10(6) would be attracted. 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 of the land on notice. The exercise contemplated under Section 10(6) would have to be done in a cogent and convincing manner duly putting the parties on notice. Learned Single Judge thereafter proceeds to deal with preparation of panchanama. According to the learned Single Judge, while preparing the panchanama in the presence of panchas, the site map also needs to be prepared; both the panchanama as well as the plan would have to be attested not only by the panchas and the person preparing the same but also by the land owner.

29.2. We have already extracted the provisions of sub-sections (5) and (6) of Section 10 of the ULC Act and made an analysis of the same. Section 10(5) contemplates service of notice calling upon the person in possession of the excess vacant land to surrender or deliver possession thereof to the State Government within thirty days of service of notice. If he fails to do so then under sub-section (6) of Section 10, the competent authority may take over

possession of the excess vacant land for which purpose such force as may be necessary may be used. Though issuance and service of notice on the person in possession of the excess vacant land under sub-section (5) of Section 10 is mandatory as held by the Supreme Court in **Hari Ram** (supra) however, sub-section (6) of Section 10 nowhere says that after the period of thirty days of service of notice under Section 10(5), another order has to be passed or another notice has to be given. Question of once again putting the parties on notice at the stage of sub-section (6) of Section 10 is not statutorily provided. Therefore, learned Single Judge fell in error in taking the view that at the stage of Section 10(6), the owner or person in possession of the excess vacant land has to be again put on notice. There is no such legal requirement.

29.3. Insofar preparation of panchanama is concerned, the same is not statutorily provided either in the ULC Act or in the ULC Rules. Therefore, we fail to understand as to how learned Single Judge came to the conclusion that while preparing the panchanama the site map also needs to be prepared and both would have to be attested not only by

the panchas and the person preparing the same but also by the land owner. We are afraid learned Single Judge fell in complete error in coming to the aforesaid conclusion as there is no such statutory prescription. The panchanama comes into the picture at the stage of Section 10(6) when the owner or person in possession of the excess vacant land fails to comply with the notice under Section 10(5). Therefore, to expect such a person to put his signature on the panchanama is wholly unrealistic.

29.4. In fact, in **Sita Ram Bhandar Society, New Delhi** (supra) Supreme Court in the context of the Land Acquisition Act, 1894, after referring to previous judgments held that one of the accepted modes of taking over possession of the acquired land is recording of a memorandum or panchanama by the land acquisition officer in the presence of witnesses signed by them and that would constitute taking possession of the land. It is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchanama in the presence of panchas, taking possession and giving delivery to the beneficiaries which is the

accepted mode of taking possession of the land. While taking possession of a large area of land, a pragmatic and realistic approach has to be taken. One of the methods of taking possession and handing it over to the beneficiary department is the recording of a panchanama which can in itself constitute evidence of the fact that possession had been taken and that the land had vested absolutely in the government.

29.5. This position has been reiterated by the Supreme Court in **Omprakash Verma** (supra). This was a case under the ULC Act. In the facts of that case, Supreme Court reiterated that it is settled law that where possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchanama.

30. Proceeding further, we find that in paragraph 30 of the judgment and order, learned Single Judge once again reiterated that after expiry of the period of thirty days as contemplated under sub-section (5) of Section 10, if voluntary possession of excess vacant land is not handed over then the authorities are obligated to issue notice

under Section 10(6) to the land owner and then take possession. Having held so, learned Single Judge proceeded to frame the question as to whether notifications issued under Section 10(5) and 10(6) by the authorities and the panchanama would stand to legal scrutiny.

30.1. As already discussed above, there is no statutory requirement under sub-section (6) of Section 10 to once again put the defaulting owner or the person in possession on notice. After the thirty days period following service of notice under Section 10(5) of the ULC Act is over, it is open to the authority to take over possession of the excess vacant land forcibly, if necessary even by using force. Therefore, the very basis of the learned Single Judge framing the above question does not stand to legal scrutiny, the same being contrary to the legal requirement which has vitiated the impugned judgment and order.

31. In paragraph 31 of the judgment under appeal, learned Single Judge has mentioned that the notice issued under Section 10(6) of the ULC Act has two dates in it i.e., 05.02.2008 and 08.02.2008. As already mentioned above,

there is no legal requirement for passing any order or issuing further notice under Section 10(6) of the ULC Act. Therefore, the order dated 05.02.2008 at page 234 of the paper book (W.A.No.670 of 2022) is really not material; in fact the same is of no legal consequence. Though below the date 05.02.2008, '08' is written, who has written it is not known. There is also no initial by the side of the figure '08'. But one thing is certain; there is no date '08.02.2008', there being only one date i.e., 05.02.2008. However, what is evident therefrom is that notice under Section 10(5) is dated 05.01.2008. If we contrast this notice at page 234 of the paper book with the order (notice) dated 05.02.2008 at page 334 of the paper book (W.A.No.670 of 2022), there is no figure '08' below 05.02.2008. This is a signed order of the special officer and competent authority which is missing at page 234. Besides, this document is attested by the Special Tahsildar, Urban Land Ceiling (Wing), Medchal Malkajgiri District. Be that as it may, there is one date which has remained unexplained. As a matter of fact, Mr. Raju Ramachandran, learned Senior Counsel for the appellants frankly told the Court that it is inexplicable as

to how the date '01.10.2008' appears in the last paragraph of the order (notice) dated 05.02.2008. Appearance of this date cannot be explained. The last paragraph of the order (notice) dated 05.02.2008 says that thirty days time given in the notice under Section 10(5) expired on '01.10.2008'. As seen from the aforesaid order (notice) itself, notice under Section 10(5) is dated 05.01.2008. As such, there is no question of expiry of thirty days period on '01.10.2008'. In any case, the order or notice dated 05.02.2008 does not have any legal sanction or even necessity as Section 10(6) does not require issuance of a fresh order or a notice before taking forcible possession. Therefore, either the order dated 05.02.2008 can be ignored or if taken at its face value, it does not convey an irregularity or illegality of a magnitude which may render taking over of forcible possession invalid.

32. Again, in paragraph 32 of the judgment, learned Single Judge recorded as under:

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. xxx xxx xxx

32.1. It is not the contention of the appellants that they had sent the notice issued under Section 10(5) dated 05.01.2008 to the respondent through registered post. Therefore, it is not known from where and how learned Single Judge proceeded on the basis that the notice under Section 10(5) was sent through registered post and then observing that even if contention of the appellants that the said notice was sent through registered post is taken to be true, it would take minimum two to three days time to reach the office of the respondent; presuming that the notice reached the respondent through registered post on 08.01.2008, the thirty days period would be over only on 08.02.2008 and therefore, the Section 10(6) notice should be dated 08.02.2008. We are afraid, such conclusions of the learned Single Judge is based entirely on surmises and conjectures without any supporting material. Insofar the

two alleged dates i.e. 05.02.2008 and 08.02.2008 appearing in Section 10(6) notice are concerned, the same has already been discussed above. In fact, there are no two dates. Below the date 05.02.2008, only '08' is scribbled in one version of the document presented by the respondent (page 234 of the paper book (W.A.No.670 of 2022)). On the other hand, even that '08' is not there at page 334 of the paper book (W.A.No.670 of 2022) which is a signed copy of the order (notice) dated 05.02.2008 also attested by the Special Tahsildar.

32.2. Shockingly, learned Single Judge thereafter records as under:

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.

32.3. We fail to understand as to how learned Single Judge could come to such a conclusion that all the notices are backdated and that the person who had prepared the Section 10(6) notice did so after the Repeal Act was enacted. In our considered opinion, there was no material at all to justify such a sweeping conclusion reached by the learned Single Judge.

33. That apart, learned Single Judge in paragraph 34 of the judgment under appeal held that Section 10(5) notice was not served on the petitioner but was affixed on the gate of the factory only on 08.01.2008, further holding that there was no signature on the said notice as to who had received the same except scribbling of a name. Here also it is the case of the appellants that notice under Section 10(5) dated 05.01.2008 was affixed on the outer door of the factory premises on 08.01.2008. When the notice is affixed, there is no question of anyone receiving the same. As we have already discussed above, the ULC Act as well as the ULC Rules are silent as regards service of notice under Section 10(5) of the ULC Act. Therefore, no fault can be found with the service of notice by way of affixture which is an

accepted mode of service of notice. Proceeding further, learned Single Judge then came to the conclusion that the notice under Section 10(6) and panchanama dated 08.02.2008 have to be taken as bogus and fabricated. We are afraid, such a conclusion of the learned Single Judge cannot at all be justified. It is based on a complete misreading of the provisions of the ULC Act and the ULC Rules as well as on surmises and conjectures.

34. Though Mr. Ramesh, learned counsel for the respondent had pointed out certain discrepancies in the record like multiple paginations, use of different inks etc, we are of the view that on the basis thereof, no conclusion can be reached that the notice dated 05.01.2008 and the panchanama dated 08.02.2008 are bogus and fabricated.

35. This brings us as to how learned Single Judge dealt with the panchanama dated 08.02.2008. Learned Single Judge held as under:

34. xxx xxx xxx xxx xxx 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.

35.1. According to the learned Single Judge, the panchanama does not contain the addresses of the

panchas or their description. Affidavits of the panchas were not filed, describing the panchas as so called panchas. Further, according to the learned Single Judge, there was no signature of the land owner in the panchanama. Therefore, such a panchanama would have to be considered having been prepared behind the back of the respondent and in the office of the authorities.

35.2. We have already held that neither the ULC Act nor the ULC Rules provide for the procedure for service of notice under Section 10(5) of the ULC Act. However, as discussed above, it is judicially recognised that taking over of possession of large tracts of land by way of panchanama is an acceptable mode. There is no requirement under the statute for obtaining the signature of the land owner in the panchanama or filing of affidavits by the panchas. Such finding of the learned Single Judge in our considered opinion is not based on any materials on record.

36. Having said so, we may examine the panchanama which is at pages 89 to 91 of the paper book (W.A.No.670 of 2022). While page 89 is the Telugu and original version

of the panchanama, the translation copy thereof is at page 90 and page 91 contains the site plan. A reading of the panchanama would go to show that the same was prepared by the Deputy Tahsildar and Enquiry Officer in presence of three panchas viz., 1) Ramayya, 2) Viswanadham and 3) Jagdish, whose addresses were mentioned in the panchanama. Two persons by name Venkateshwar Rao and Mallayya stood as witnesses. As per the panchanama, notice under Section 10(5) dated 05.01.2008 was served upon the land owner. When possession was not handed over to the Government even after expiry of the time limit, order was passed by the competent authority on 05.02.2008 directing the Deputy Tahsildar and Enquiry Officer to take over possession. Pursuant to such order, the Enquiry Officer had taken over possession of the land to the extent of 46,538.43 square meters on 08.02.2008 after identification and fixation of boundary by the surveyor in presence of the panchas, who certified that the panchanama was prepared in their presence.

37. As already discussed above, there was no requirement of passing an order or issuing further notice under Section

10(6) of the ULC Act. Therefore, the order or notice dated 05.02.2008 is of no legal consequence. But the fact remains that according to the version of the appellants, Section 10(5) notice is dated 05.01.2008 which was affixed at a conspicuous place of the premises on 08.01.2008, whereafter possession was taken over on 08.02.2008 as per the panchanama dated 08.02.2008. Therefore, there was no breach of the thirty days period. To our mind, learned Single Judge committed a manifest error in declaring the notice under Section 10(5) as well as the panchanama as void *ab initio* and *non est* in the eye of law. If the correctness or genuineness of the same were disputed by the respondent, then it would be a case of disputed and contentious facts. A proceeding under Article 226 of the Constitution of India is not the proper forum to adjudicate such disputed and contentious facts. As pointed out by the Supreme Court in **Bhaskar Jyoti Sarma** (supra), such seriously disputed questions of fact would not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction.

38. That being the position, we have no hesitation in our mind that learned Single Judge had erred on facts as well as in law in declaring the notice dated 05.01.2008 under Section 10(5) of the ULC Act as well as the panchanama dated 08.02.2008 being void *ab initio* and *non est* in the eye of law and thereafter in setting aside the panchanama.

39. Consequently, we set aside the judgment and order dated 03.01.2002 and dismiss writ petition Nos.11293 of 2009 and 23477 of 2010.

40. Resultantly, the two writ appeals are allowed. However, there shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

14.02.2023

Note: LR copy be marked.
(By order)
Pln