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**(1999) 11 AP CK 0055**

**In the Andhra Pradesh High Court**

**Case No : WA No. 438 of 1999 and Batch**

Government of Andhra Pradesh and another

APPELLANT

Vs

M. Krishnaveni

RESPONDENT

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**Date of Decision : 18-11-1999**

**Acts Referred:**

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47, 48

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 2(1), 20(1), 4(7), 6

**Citation : (2000) 1 ALD 357 : (2000) 1 ALT 138**

**Hon'ble Judges : N.Y. Hanumanthappa, J;A.S. Bhate, J**

**Bench : Division Bench**

**Advocate : A.G, for the Appellant; Mr. Raghavachari for Mrs. G. Padmaja, for the Respondent**

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## **Judgement**

N.Y. Hanumanthappa, J

1. All these appeals are directed against a common order dated 15-2-1999 passed by the learned single Judge of this Court in Writ Petition Nos.28157, 28158, 28292, 28390, 28491 and 28874 of 1998.

2. Writ Appeal No.438 of 1999 is filed against the order passed in WP No.28157 of 1998. Writ Appeal No.439 of 1999 is filed against the order passed in WPNo.28491 of 1998. Writ Appeal No.440 of 1999 is filed against the order passed in WPNo.28158 of 1998. Writ Appeal No.441 of 1999 is filed against the order passed in WP No.28390 of 1998. Writ Appeal No.442 of 1999 is filed against the order passed in WP No.28874 of 1998. Writ Appeal No.443 of 1999 is filed against the order passed in WP No.28292 of 1998.

3. The reliefs sought by the petitioners in each writ petition read as follows :

The reliefs sought in WP No.28157 of 1998 are to declare the order dated 23-7-1979 passed by the 2nd respondent u/s 8(4) of the Urban Land (Ceiling

and Regulation) Act, 1976, the notification dated 11-10-1979 issued u/s 10(3) of the said Act and the notice dated 23-11-1979 issued u/s 10(5) of the said Act passed in CC Nos.E 1/9274/76, EI/9275/76, EI/9276/76 and EI/9278/76 as illegal and to direct the 2nd respondent to compute the holding of the petitioner afresh.

The reliefs sought in WP No.28158 of 1998 are in the above writ petition.

The reliefs sought in WP No.28292 of 1998 are as in the above two writ petitions. In addition to seeking a relief to pass a consequential order directing the 2nd respondent to compute the holding of the petitioner in terms of G.O. Ms. No.733, dated 31-10-1988 and G.O. Ms. No.289, MA, dated 1-6-1989 afresh.

The reliefs sought in WP No.28390 of 1998 are as in the above writ petitions.

The reliefs sought in WP No.28491 of 1998 are as in the above writ petitions.

The reliefs sought in WP No.28874 of 1998 are as in the above petitions.

4. The learned single Judge after hearing both sides, allowed all the six writ petitions and consequently quashed the order dated 23-7-1979 passed by the 2nd respondent by exercising powers conferred u/s 8(4) of the Act together with the notification dated 11-10-1979 issued u/s 10(3) of the Act and the notice dated 23-11-1979 issued u/s 10(5) of the Act and remanded the cases to the Special Officer-cum-competent authority, Urban Land Ceiling, Hyderabad, for fresh disposal i.e., CC Nos.9274 to 9279 of 1976 and also to cause an independent enquiry into the claims of all the declarants. Further gave liberty to the petitioner in WP No.28292 of 1998 to file a fresh declaration before the competent authority in respect of the land which she is entitled under the family arrangement dated 13-11-1970, within, one week from the date of the order. The Special Officer-cum-competent authority is directed to complete the enquiry and to dispose of the cases within six weeks from the date of receipt of the order.

5. Aggrieved by the common order passed by the learned single Judge, respondent Nos.1 and 2 in the writ petitions have filed these appeals. Since the questions of facts and law involved in these appeals are common that too these appeals are filed challenging the common order, they are clubbed and disposed of by this common judgment.

6. In these appeals, the rank of the parties is mentioned as they were on writ side.

7. Before advertng to the grounds urged in the memorandum of writ appeals and supporting the same by advancing arguments by the learned Advocate-General, it is proper to refer hereunder a few facts, which gave rise to these proceedings.

8. One late T. Chinna Seetharamaiah was the husband of Smt. T. Ramathulasamma and father of other writ petitioners. T. Chinna Seetharamaiah was an agriculturist by profession. He was owning agricultural lands in Kondamudi village of Tenali taluk. With a view to settle in Hyderabad, he sold his

properties situated in the said village. Out of the said amount, he purchased the lands bearing S.Nos.68/1, 68/2, 214/1, 214/2 and 214/3 measuring Ac.23.24 guntas situate at Kondapur village, Hyderabad West taluk, Hyderabad district, under a registered sale deed bearing document No.1269/61, dated 18-4-1961. Subsequent to this, T. Chinna Seetharamaiah purchased some more lands measuring Ac.95.24 guntas in S.Nos.209 to 213 of the same village under a registered sale deed bearing document No.664/61, dated 21-8-1961 for valid consideration. According to the averments in the writ petitions, T. Chinna Seetharamaiah purchased the said lands after obtaining necessary permission as required under Sections 47 and 48 of the Andhra Pradesh (Tclangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "1950 Tenancy Act"). Thus, he became the absolute owner and possessor and cultivator of Ac.119.08 guntas. After purchasing Ac. 119.08 guntas, T. Chinna Seetharamaiah effected a family arrangement dated 13-11-1970 among himself, his wife and his children viz., daughters and sons.

9. With effect from 17-2-1976 the Central Act known as Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as " 1976 Act") came into force in the State of Andhra Pradesh. As on that day, T. Chinna Seetharamaiah was mentally incapacitated, his wife Smt. T. Rama Thulasamma had on behalf of her husband and their three sons and two daughters excluding one of the daughters viz.. Smt. K. Prawila Rani, the petitioner in Writ Petition No.28292 of 1998 filed their declarations u/s 6 of the Act on 15-9-1976 declaring their holdings as under:

| SI. No. | WP No.      | Declaration                                                                                                                                               | CC No. | E-1               | Age as on 15-9-76 | Name of the party | Extent Ac.gts. | Sy. No. | Remarks |
|---------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------|-------------------|-------------------|----------------|---------|---------|
| 1.      | 2.          | 3.                                                                                                                                                        | 4.     | 5.                | 6.                | 7.                | 8.             |         |         |
| 1.      | 9274/96     | Sri T. Chinna Seetharamaiah, T. Rama Thulasamma                                                                                                           | 12.11  | 68/1, 68/2, 214/2 |                   |                   |                |         |         |
| 2.      | WP 28157/98 | 9279/76 16 yrs Smt. M. Krishna Veni (married on 10-6-1974)                                                                                                | 20.05  | 209               |                   |                   |                |         |         |
| 3.      | WP 28158/98 | 9277/76 22 yrs Smt. P. Rukmini (married on 9-6-1974)                                                                                                      | 15.36  | 208               |                   |                   |                |         |         |
| 4.      | WP 28292/98 | Not filed 29 yrs K. Pramila Rani (married on 21-8-1964) (To succeed the share of T. Chinna Seetharamaiah, as per family arrangement as per 1997 Circular) |        |                   |                   |                   |                |         |         |
| 5.      | WP 28390/98 | 9276/76 21 yrs T. Sri Rammohan (S/o late T. Chinna Seetharamaiah)                                                                                         | 23.09  | 210, 211          |                   |                   |                |         |         |
| 6.      | WP 28491/98 | 9278/76 18 yrs T. Satishchandra (S/o late T. Chinna Seetharamaiah)                                                                                        | 25.31  | 212, 213          |                   |                   |                |         |         |
| 7.      | WP 28874/98 | 9275/76 14 yrs T. Sai Kumar (S/o late T. Chinna Seetharamaiah)                                                                                            | 21.31  | 213, 214/1        |                   |                   |                |         |         |

10. It was their case that equal shares were given to the three daughters at the time of their marriages as Pasiipu Kumkuma as per the age-old custom and tradition among the community, to which they belong and such an allotment was approved by this Court and the Supreme Court. Smt. M. Krishna Veni, the petitioner in WP No.28157 of 1998, was a minor, but she was already married by then and as such her husband signed the declaration on her behalf. Another son by name T. Sai Rumor, the petitioner in the Writ Petition No.28874 of 1998 was also a minor on the date of filing declarations and as such his mother filed the same. The petitioner in WP No.28158 of 1998 by name P. Rukmim was out of station on that day and hence her brother signed the declaration on her behalf. According to the petitioners, each one of them is claiming to be in peaceful and separate possession and enjoyment of their respective extents. While so, they found that some officials of the State Government were moving around the land, claiming that possession of the land was taken over by the State of Andhra Pradesh under the provisions of the Act, which made them to cause enquiry and learnt about the impugned orders, notifications and notices referred to above. Hence the writ petitions.

11. According to the petitioners, before deciding the holdings of the petitioners under the provisions of 1976 Act, no individual notices were served on the petitioners. The authorities could not have computed the holdings of the petitioners in the holding of their mother, as their father T. Chinna Seetharamaiah was mentally incapacitated. The provisions of 1976 Act had no application to the lands of the petitioners situate at Kondapur village as this Court in the case of Sandamma and others Vs. State of A.P. and others, , held that the lands situated at Kondapur village were not covered under the Urban Agglomeration as they were situated outside the Urban Agglomeration. Further the master plan was not extended. The lands in question were all agricultural lands. Though the declarations were filed on compulsion and misrepresentation, the authorities could not have computed the said lands as surplus, which were all agricultural lands. The authorities committed mistake in including the holdings of the lands of the daughters, which were given to them towards Pasupu Kumkuma by the parents. When the claim of each declarant was different and under the provisions of the Act particularly as per Sections 2(i), 2(f) and 4(7) of the 1976 Act, the authorities could not have clubbed all the declarations and held that the holdings of the declarants as surplus. Even if it is assumed that the authorities have right in holding enquiry under the provisions of 1976 Act, they should have noticed that the declarants are entitled to retain a portion of their holding and in case any lay out is to be formed as proposed by them, then they will be entitled for a little more margin for such retention. According to them, such an exemption has been given by the State of Andhra Pradesh by its G.O. Ms. No.733, dated 31-10-1988 to an extent of Ac.5.00, where the land is likely to be used for non-agricultural purposes and situated within the peripheral area. Such an exemption of an extent of Ac.5.00 shall be after excluding 40% of the area to be set apart as per the lay out Rules of Urban Development Authorities/ Municipalities/

Municipal Corporations for the purpose of laying of roads and other public purposes, as per G.O. Ms. No.289 MA, dated 1-6-1989. The petitioners contended that the lands of the petitioners-declarants were not covered by the master plan of Hyderabad Municipal Corporation on 28-1-1976 or 17-2-1976, as such the principles laid down by the Supreme Court in the case of Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , are helpful to the petitioners. According to the petitioners, they are entitled to seek relief in view of the law laid down by the Supreme Court in the case of State of Andhra Pradesh v. K. Ashok Rao, 1997 (1) ALD 790, and also this Court in Sandamma's case (supra) and thus entitled for exemption u/s 20(1)(a) of the Act on the ground that the benefits conferred in the G.O. Ms. Nos.773 and 289 referred to above relate back to the date of the Act. Thus, they urged that the petitions be allowed and the reliefs sought be granted.

12. The respondents filed their counter-affidavits resisting the claim of the petitioners. The main attack was that the writ petitions are barred by time as the same are filed after long delay from the date of the proceedings, which were concluded on 23-7-1979 and 9-10-1979. Secondly, the petitioners are not entitled for any relief as some of the declarants gave a joint petition on 27-8-1979 stating that they have no objection for declaring the excess land. Accordingly, the holding was declared as surplus and the possession of surplus land was taken over in the year, 1980. Thus, the lands in question have been vested in the State Government. It is also alleged that some of the petitioners have received compensation i.e., 25% in cash and 75% in bonds. The table hereunder shows the relevant CC Nos. of each petitioner together with the extent of their holdings and survey numbers.

| Sl. No. | CC No. | Name of the declarant | Description of the property | Location | Sy. No. | Extent | Ac. gts. |
|---------|--------|-----------------------|-----------------------------|----------|---------|--------|----------|
|---------|--------|-----------------------|-----------------------------|----------|---------|--------|----------|

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
|---|---|---|---|---|---|---|

|    |         |                        |                                  |                       |          |                        |
|----|---------|------------------------|----------------------------------|-----------------------|----------|------------------------|
| 1. | 9274/76 | Smt. T. Ramathulasamma | W/o late T. Chinna Seetharamaiah | Dry agricultural land | Kondapur | 68/1, 2 214/2, 3 12-11 |
|----|---------|------------------------|----------------------------------|-----------------------|----------|------------------------|

|    |         |                        |                                                       |      |       |                  |
|----|---------|------------------------|-------------------------------------------------------|------|-------|------------------|
| 2. | 9275/76 | Smt. T. Ramathulasamma | on behalf of T. Sai Kumar S/o T. Chinna Seetharamaiah | -do- | ? do? | 213, 214/1 21-31 |
|----|---------|------------------------|-------------------------------------------------------|------|-------|------------------|

|    |         |                     |                             |      |       |               |
|----|---------|---------------------|-----------------------------|------|-------|---------------|
| 3. | 9276/76 | Sri T. Sriram Mohan | S/o T. Chinna Seetharamaiah | -do- | ? do- | 210 211 23-09 |
|----|---------|---------------------|-----------------------------|------|-------|---------------|

|    |         |                     |                              |      |      |           |
|----|---------|---------------------|------------------------------|------|------|-----------|
| 4. | 9277/76 | Sri T. Sriram Mohan | on behalf of Smt. P. Rukmini | -do- | -do- | 208 15-36 |
|----|---------|---------------------|------------------------------|------|------|-----------|

|    |         |                       |                             |      |       |               |
|----|---------|-----------------------|-----------------------------|------|-------|---------------|
| 5. | 9278/76 | Sri T. Satish Chander | S/o T. Chinna Seetharamaiah | -do- | ? do? | 212 213 25-37 |
|----|---------|-----------------------|-----------------------------|------|-------|---------------|

|    |         |                   |                      |      |      |           |
|----|---------|-------------------|----------------------|------|------|-----------|
| 6. | 9279/76 | Sri M. Mohan Rao. | S/o Venkata Subbaiah | ?do? | -do- | 209 20-05 |
|----|---------|-------------------|----------------------|------|------|-----------|

13. The surplus holding declared by the authorities is as under :

Sl. No. CC No. Name of the declarant Location Sy. No. Extent declared surplus in Sq.mts.

1. 9274/76 Smt. T. Ramathulasamma T. Saikumar (minor) his share clubbed to his mother Kondapur 68/1,2 214/1,2,3, 208 to 213 2,40,940.58

2. 9276/76 Sri T. Sri Rammohan ? do? ? do? 1,19,621.78

3. 9278/76 Sri T. Satish Chander -do- ?do- 1,19,621.78

It is stated in the counter-affidavit that the petitioners were given an opportunity to file objections. Some of them filed objections, then only proceedings were concluded. They voluntarily surrendered the excess land. The said surplus land was taken possession on 18-7-1980 and it was allotted to the Social Welfare Department for starting a Multi Stream School vide G.O. Ms. No.3072, Revenue, dated 14-7-1980. The respondents have denied the existence of family arrangement on 13-11-1970 among the sons and late T. Chinna Seetharamaiah and the entitlement of the three daughters for separate share by way of Pasupu Kumkuma. The respondents asserted that the lands in question were situated within the limits of Hyderabad Urban Agglomeration and a map was also prepared in accordance with the requirements of Section 2(n) of the Act and the same is confirmed in G.O. Ms. No. I196, Revenue, dated 7-7-1978. The G.O. Ms. No.733, dated 31-10-1988 does not apply to the case of the petitioners as the proceedings were concluded in the year 1979 and the possession was taken in the year, 1980. According to them, the applicability of the above GOs., are prospective and not retrospective. They maintained that the existence of the master plan is not a sine qua non for applicability of the provisions of 1976 Act. It is averred that the principles laid down in Alia Mohammadi Begum's case (supra) are not helpful to the case of the petitioners.

14. On the basis of the above pleadings, the learned single Judge raised the following six points for consideration :

1. When the petitioners filed individual declarations, was it not necessary to issue notice to each of them and enquire into their respective claims and if so, whether individual notices to each of them were issued ?

2. The nature of the property comprising of all survey numbers admeasuring Acres 119.09 guntas being joint family property of Hindu undivided family; whether the marriage of daughters (petitioners in WP Nos.28157 of 1998 and 28158 of 1998) is a bar to claim rights under the family arrangement dated 13-11-1970 or to claim the land gifted to them towards Pasupu Kumkuma ?

3(a) Whether all the declarations viz., father, sons and daughters filed a joint petition on 27-8-1979 and if so what is its effect ?

3(b) Whether clubbing of the declarations of father and two major sons is proper; if otherwise, what is the effect ?

4. Whether the subject lands are situated within the Hyderabad Urban

Agglomeration so as to attract the provisions of the Act ?

5. Whether the subject lands are not covered by the master plan of Hyderabad Municipal Corporation as on the appointed day and if so, whether the ratio in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , is applicable ?

6. Whether (he petitioners are entitled for the benefit of G.O. Ms. No.733, Revenue, dated 31-10-1988 and G.O. Ms. No.289, MA, dated 1-6-1989 ?

15. The learned single Judge found that late T. Chinna Seetharamaiah had purchased the lands in question after obtaining necessary prior permission under Sections 47 and 48 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. From the records available to him, he found that six declarations were filed before the competent authority as required u/s 6 of the Act. He gave his careful thought that how far that plea of Pasupu Kumkuma be held as valid and also took into consideration the effect of the family arrangement dated 13-11-1970. In Para 2 of the counter-affidavit, he found that the respondents themselves have admitted that the parties have filed six declarations in CC Nos.9274/76 to 9279/76. From the records made available, the learned single Judge has found that the notice icgarding an enquiry was only served on T. Chinna Setharamaiah though there were six declarations. The said notice purported to be served on T. Chinna Seeiharamaiah was addressed to Smt. Tliota Rama Thulasamma and it bears the acknowledgment of some, one who has signed it for T. Ch. Seeiharamaiah on 21-1-1977. Likewise, the notices addressed to Thota Sai Kumar and Thota Sri Rammohan in CC Nos.9275 and 9276/1976, dated 21-1-1977 are not served on them, but they bear the signature of some one as for T. Ch. Seeiharamaiah. So is the case in respect of other declarants in CC Nos.9277 of 1976, 9278 of 1976 and 9279 of 1976 viz, Thota Rammohan, Satish Chandra and Madasu Mohan Rao respectively. Thus, the individual notices were not served on all the declarants calling upon them to file their objections. Serving notice to each declarant and hearing is a must. The learned single Judge found that the joint letter dated 27-8-1979 does not contain the names of the daughters of late T. Chinna Seeiharamaiah, who have filed separate declarations. The daughters were not parties to the so called enquiry. Having found the mistakes in service of notices and the irregularity and illegality in holding the enquiry, the learned single Judge proceeded further to consider that how far the daughters are entitled to make a claim for separate shares on the basis of allotment of the said lands by way of Pasupu Kumkuma by their parents. The learned single Judge took into consideration the following decisions relied on by the petitioners viz., Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, , G. Thimma Reddy and Others Vs. The Special Tahsildar, Land Reforms and Others, and Yerra (Varre) Ramachandraiah (Died) and Others Vs. Mamidala Rambai alias Rambayyamma, . The learned single Judge upheld the custom and usage in the community of the petitioners in allotting land by way of Pasupu Kumkuma to the daughters which need not be evidenced by a registered

document. For this proposition, the learned single Judge took support from the judgment rendered in *G. Thimma Reddy v. Special Tahsildar* (supra), wherein it is held as follows :

"From the very nature of the caste traditions and the lands being the only prime properties in agricultural communities, the usage of the tradition of allotting land by way of "Pasupu Kumkuma" to the daughters at the time of marriages was well recognised. The same need not be evidenced through a registered document. Even though there is no document if the evidence reveals and there was in fact such an allotment to the daughters at the time of their marriages as "Pasupu Kumkuma", the same should be deleted from the holding of the father."

The learned single Judge agreed that a gift by parents to the daughter at the time of marriage as Aranam or Pasupu Kumkuma does not require to be written on a stamped paper and registered as held in the judgment *Yerra (Varre) Ramachandraiah (died) v. M. Rambai alias Rambayamma* 's case cited (supra). Learned single Judge observed that daughters are entitled to claim their separate shares. He also held that it was wrong to club all the declarations to decide holdings. But proceedings are vitiated for want of service of notice on all the declarants.

16. Regarding Point No.3(a) that there was a paper publication in English daily newspaper *Deccan Chronicle* on 25-12-1974 to the effect that T. Chinna Seetharamaiah was mentally incapacitated. When such was the case to hold that there was joint statement dated 27-S-1979 by Chinna Seetharamaiah, his wife and daughters difficult to believe. The learned single Judge on verifying the so-called joint statement found that the same cannot be accepted as correct for the reasons that there are several irregularities including the absence of names and the signatures of the daughters on the said joint statement.

17. Regarding Point No.3(b), the learned single Judge found that the competent authority should not have clubbed the declarations of late Chinna Seetharamaiah and his two major sons. The provisions of Sections 2(i), 2(f) and 4(7) of the Act suggest that a "person" includes an individual, as well as a family and the definition "family" means the individual, the wife, or husband, as the case may be, of such individual and their unmarried minor children. He agreed with the learned Counsel for the petitioners that the shares of individual members of Hindu undivided family should not have been aggregated for the purpose of computation. As per Section 4(7) of the Act, which contemplates notional partition among the members of Hindu undivided family, the learned single Judge observed that the computation of holdings of major son is required to be done separately and independently. Accordingly, the learned single Judge held that clubbing of declarations of major sons with that of the father on the one hand and not serving individual notices on the declarants and computing the holdings of the daughters in the holding of others as incorrect.

18. Regarding Point No.4, the learned single Judge took into consideration the

arguments advanced and also the factual location of the land and the applicability of the Government orders, then satisfied that an extent of Ac. 1911.29 cents covering all the survey numbers in full except Survey Nos.218/6 partly and 218/7 situated at Kondapur village were not included within the Hyderabad Urban Agglomeration. The State also did not produce any map or records maintained by the competent authority to show that the lands in question were situated within the Hyderabad Urban Agglomeration. According to him, the decision rendered in Sandamma's case (supra) holding that the lands in question are not situated within the Urban Agglomeration of Hyderabad, as correct.

19. Regarding Point No.5, the learned single Judge referred to the enquiry report prepared by K. Kishan Kao, Special Tahsildar, in CC Nos.9274 of 1996 and 9279 of 1996 which was available at pages 1 to 3 of the file bearing R.Dis.No.H2/9274 to 9279 of 1976, wherein it is stated that the subject lands are situated outside the master plan. The learned single Judge agreed with the petitioners that the ratio in Atiya Mohammadi's case (supra) is applicable to the case on hand and the parties are entitled to claim benefits thereunder.

20. Regarding Point No.6 that how far the benefits under G.O. Ms. No.733, Revenue, dated 31-10-1988 as well as G.O. Ms. No-289, Municipal Administration, dated 1-6-1989 are applicable to the case of the petitioners concerned, this Court in the case of P.S. Rao Vs. Special Officer and Competent Authority, Urban Land Ceiling, Hyd. and Another, , held as follows :

"Section 10 falls within Chapter III of the Act. On that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O. is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as he has assailed the validity of the action taken u/s 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once a statutory authority by exercise of its delegated power frames Rules or issues notifications exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself. Therefore, the stand taken by the Government and reiterated by the learned Government Pleader for Revenue is not well-founded for the reasons stated supra."

The learned single Judge held that the above said GOs., are helpful to the petitioners. Having thus observed, the learned single Judge held that each declarant is entitled for Ac.8.33 cents of land from out of their holdings.

21. Regarding the claim of the petitioner in WP No.28292 of 1998 who is the eldest married daughter of late Chinna Seetharanmiah concerned, the learned single Judge held that she is entitled for filing a fresh declaration seeking for a separate share.

22. Regarding the delay in approaching this Court, the petitioners case is that in

writ proceedings, there is no such applicability of Limitation Act. What is required is whether the petitioner approached the Court within a reasonable time. What is reasonable time is again depends upon facts and circumstances involved in that particular case. They contended that they have made out a positively good case. Hence the delay, if any, has to be condoned and necessary reliefs have to be given to the petitioners. A Full Bench of the Patna High Court in *Dr. Jagannath Mishra Vs. State of Bihar and Others*, , held as follows:

"Coming to the next point argued by the learned Addl. Advocate-General that the writ petition should be thrown out on account of laches this too has to be rejected as the Supreme Court in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , has laid down as follows:

"..... this rule of laches or delay is not a rigid rule which can be cast in a straight jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interference and grant relief to the petitioner."

In *Narayan Devi Kliaitan v. State of Bihar*, CA No.140 of 1964 decided by the Supreme Court on 22-9-1964; (reported in 1964 SC (Notes) 259), it was laid down that "no hard and fast rule can be laid down as to when High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches."

In *P.B. Roy Vs. Union of India (UOI)*, , the Supreme Court itself had laid down that the "delay in filing the petition under Article 226 may be overlooked on the ground that, after the admission of a writ petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is "positively good".

In my view the writ petition having been admitted, and the case of the petitioner being "positively good" as it is squarely covered by the decision of the Supreme Court itself (Annexure 3) and the respondents being bound by that judgment ought to have given a notice to the petitioner. I accordingly overrule the second contention of the learned Addl. Advocate-General also.

The said decision has been followed by the Division Bench of this Court in *Dr. K. Subramanyam Reddy v. Sri Venkateswara University*, 1995 (3) ALD 430. In *Anthony Animal v. Union of India*, 1997 (1) ALD 664, while dealing with that statutory order, the learned single Judge found that an application u/s 20 of the Act for exemption of the land was rejected about seven years prior to the writ petition, but the order was not communicated to the petitioner. As such this Court held that the dismissal of such writ petition on the ground of laches as incorrect. The relevant portion of the said judgment is extracted hereunder:

"From a perusal of the above order it is very clear that no reason whatsoever is given for rejection of the application of the petitioner. It is well-settled that where quasi-judicial order is being passed it must contain reasons. An order without

any reason is no order in the eye of law. If an authority is needed, we may refer to the judgment of the Supreme Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, wherein the Supreme Court laid down :

"It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons."

It is further held therein that the rule requiring reasons to be given in support of an order was, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. In view of the authority of the Apex Court, I have no option but to quash the impugned order. However, it would be open to the respondents to give opportunity to the petitioner of being heard and dispose of the application u/s 20 of the Act in accordance with law."

23. Similar was the view in the case of *N. Balakrishnan Vs. M. Krishnamurthy*, where the Supreme Court held that it is the duty of the Court to see that substantial justice is done. The length of delay is of no matter. On the other hand, accepting of explanation shall not be only a criteria. The relevant portion is extracted herein :

"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court. (Para 9)

The reason for such a different stance is thus:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. (Para 10)

Rules of limitation are not meant to destroy the rights of parties. They are meant

to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. (Para 11)

A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, . (Para 12)

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant, the Court shall compensate the opposite party for his loss."

24. On verification of the file maintained by the competent authority, namely R.Dis.No.H2/9274 to 9279/76, the learned single Judge found that no individual notice was served on the declarants and the daughters. The declarants went on making claim for exemption of their holdings, the same noted in the concerned file which was closed only on 21-3-1998. The record further disclosed that a petition tiled by three sons, namely, Thota Sri Rani Mohan, Thota Satish Chandra and Thola Sai Kumar, claiming exemption of various moieties u/s 20 of the Act, is still pending. According to the learned single Judge, the case of the petitioners is positively good case, as such their request shall not be rejected on the ground of these laches. Having observed so, the learned single Judge quashed all the

proceedings and directed the competent authority to reconsider the case of the petitioners including the declaration filed by the petitioner in Writ Petition No.28292 of 1998.

25. Learned Advocate-General argued that the common order passed by the learned single Judge is quite incorrect. The writ petitions should not have been entertained as there was an inordinate delay in approaching the Court seeking reliefs. There is no illegality in computing the holdings. Notices were served on the parties and then the proceedings were completed. No illegality in clubbing all the applications and deciding the holdings as they all belong to Hindu undivided family. Pursuant to the notices issued, some of the petitioners filed their joint statement stating that they have no objection for declaring the excess land and subsequently they surrendered the surplus extent by taking 25% of the compensation in cash and the remaining in bonds. The (heory of Pasupu Kumkuma and the entitlement of the daughters for separate shares on the basis of allotment of the said lands is not correct. The principles laid down either in Sandamma's case (supra) or in Atiya Mohammadi 's case (supra), have no application to the case on hand. The G.O. Ms, N'os.733 and 289 referred to above are not helpful to the case of the petitioners as they are prospective and not retrospective. It is further urged that the surrender of the lands was made on 18-7-1980 and the Government has allotted the excess vacant land to the Social Welfare Department on 14-7-1979. The Social Welfare Department is not only put in possession, but it is in enjoyment of the entire extent of land by constructing houses and buildings. The petitioners are aware of these acquisitions. Cut they have approached this Court only to grab the land, as such the writ petitions be dismissed.

26. As an answer to these contentions, Sri K. Raghavachari, learned Counsel for t!ie petitioners again urged some more contentions, which were canvassed before the learned single Judge. According to him, the entire proceedings were vitiated for various reasons, namely, no notice was served on the declarants. Even though each one of the declarants filed individual declarations, the second respondent failed to issue notice to each of them, clubbed all the applications computing the holdings of all as one and then issuing a notification u/s 10(3) of the Act which is quite illegal. The question of delay or laches cannot deprive petitioners right and interest in the property. The theory of statement and surrender cannot be accepted. Accepting of compensation at 25% in cash and the remaining in bonds by some declarants was under a bonafide mistake. The same does not weaken the case of the petitioners. Each petitioner is entitled for separate share as per family arrangement. The daughters are also entitled for their separate share by virtue of gift to them at the time of their marriages as Pasupu Kumkuma. Further the proceedings are vitiated because the claim of the daughters was not considered though they were entitled for the same by way of Pasupu Kumkuma. The provisions of 1976 Act have no application to the lands of the petitioners. The Master Plan of Hyderabad Municipal Corporation was not extended to these lands. There should not have any determination of holdings of

the petitioners under the provisions of 1976 Act. G.O. Ms. Nos.733 and 289 referred to above are helpful to the case of the petitioners. The orders passed by the competent authority are not supported by reasons. Lastly, he" contended that the order passed by the learned single Judge is based on proper appreciation of facts narrated and supported by law laid down on different aspects. As such no interference is warranted.

27. There is no dispute that T. China Seetharamaiah was the resident of Kondamudi village of Tenali taluk, Guntur district. After selling his properties situated at Kondamudi village, he purchased Ac.119.08 guntas situated in different survey numbers, namely S.Nos.68/1, 68/2, 214/1, 214/2, 214/3 and 208 to 213 of Kondapur village, Hyderabad district, after obtaining necessary permission as required under Sections 47 and 48 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. At the time of purchase, they were all agricultural lands. At the time of purchase and subsequent to that his family consisting of himself, his wife Ramathulasamma and other petitioners who are sons and daughters were holding the property. Late Chinna Seetharamaiah effected a family arrangement on 13-11-1970 among himself, his wife and his children viz., daughters and sons whereby the entire extent was allotted to all the members of the family. There was a paper publication in English daily newspaper, viz., Deccan Chronicle on 25-12-1974 to the effect that T, Chinna Seetharamaiah was mentally incapacitated. The parties belong to Kapu community. There is a custom in the community that the girl of the family is given some properties towards Pasupu Kumkuma at the time of the marriage.

28. To resolve the dispute in question it is better to refer to some of the provisions of the Act 1976 and how far they are helpful to the case of the petitioners herein.

29. Sections 2(i), 2(f) and 4(7) of the Act 1976 deal that a "person" includes an individual, as well as a family and the definition "family" means the individual, the wife, or husband as the case may be, of such individual and their unmarried minor children. As per the provisions of 1976 Act, each major son is entitled for a separate share. When each individual is entitled for separate share, there cannot be joint applications. If there are separate applications giving details as to the holdings, the same shall be determined separately and not by way of clubbing them. The determination of surplus land will have a bearing on the holding of a person. Arbitrary determination will deprive a person's right over the property. As such, it is mandatory that before deciding such applications, the person shall be heard in the matter. Failure to do so will be non-compliance of principles of natural justice. In the case on hand, the competent authority without serving notices on each of the petitioner and only on the strength of the receipt of notices by some persons, held enquiry and determined the excess holding of land, that too incorrectly including the holding of their mother and sisters which is impermissible. Distribution of shares under family arrangement and entitlement of daughters for separate share by virtue of gift at the time of their

marriages as Pasupu Kumkuma has been approved by judicial pronouncements in the case of Bhubaneswar Naik Santoshrai and Vs. The Special Tahsildar Land Reforms Tekkali and Others, and also in the case of Sarupuri Narayanamma and Others Vs. Kadiyala Venkatasubbaiah and Others, . The customary usage of allotting land by way of Pasupu Kumkuma to the daughters, and that the same need not be evidenced through a registered document, has been held as correct in the case of G. Thimma Reddy v. Special Tahsildar (supra) and also in the case of Yerra (Varre) Ramachandraiah (died) v. M. Rambai alias Rambayamma (supra).

30. How far (he provisions of 1976 Act are applicable to the case of the petitioners has to be redetermined in the light of the principles laid down by this Court and the Supreme Court referred to above on various points involved.

31. In Sandamma's case (supra), this Court had held that village Kondapur is outside the purview of Urban Agglomeration. As such the provisions of 1976 Act have no application. An attempt to include the land snowing in the said village by extending the master plan by way of amendment was held as incorrect by the Supreme Court in Atiya Mohammadi "s case (supra). It is the case of the petitioners that though they were not bound to file declarations as the lands were situated outside the limits of Urban Agglomeration, but by a bonafide mistake they filed their declarations. At the time of filing of the declaration, T. Chinna Seelharamaiah was mentally incapacitated and as such on his behalf, his wife filed separate declaration. She also tiled declaration on behalf of her minor son. The other two sons filed their declarations as they attained majority. Like the two daughters at the time of their marriage filed their declarations whereas another daughter namely, P. Rubnini was unable to file her declaration as she was away from Hyderabad. However, later she sought to file the declaration. Even assuming that Act 1976 was applicable to the holding of the petitioners but under G.O. Ms. No.733, dated 31-10-1988, they are entitled to retain an extent of Ac.5-00 of land and a further extent of Ac.3.33 guntas of land under O.O. Ms.No.2S9, dated 1-6-1989. The exemption granted under the above said two GOs. has been upheld by this Court in the case of P.S. Rao v. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (supra) and in WA No.I696 of 1998, dated 8-9-1999 (DB). As per the said GOs., each declarant is entitled for retention of Ac.8.33 guntas of land. On filing of declarations, it was the duty of the competent authority to see firstly whether the Act 1976 applies to the lands in question or not; secondly whether the declarants are entitled for exemption; thirdly whether the declaration are required to be decided independently or required to be clubbed. In the matter of this nature to decide as to the holding of each declarant, clubbing of all claims is incorrect and each declarant"s claim has to be decided separately. As observed above, before passing an order, it is mandatory on the pail of the authorities to issue notices to all the declarants calling upon the applications of all the declarants and pass common order. The decision of the final order was not communicated to the declarants. The declarants went on corresponding with the Department, but the

request of the petitioners was not materialised. They were not informed. The compensation that was paid to some of the declarants was not just and adequate one. They were not informed about the allotment of entire extent of Ac.119.08 guntas of land to the Social Welfare Department and subsequently to the A.P. Special Force, 8th Battalion to construct houses for its personnel. There is no information as to who surrendered the land and how possession of the land was taken from all the declarants. When G.O. Ms. Nos.733 and 289 were issued even assuming that the declarants' holding at the time of filing of declarations was excess and the statutory provisions of the Act 1976 were applicable to their holding, but they are entitled for general exemption to an extent of Ac.5.00 excluding 40% of the area to be set apart as per Lay Out Rules of the Urban Development Authorities for purpose of laying roads and other purposes which comes to Ac.8.33 guntas. As per the decision of this Court in P.S. Rao's case (supra) and in WA No. 1696 of 1998, dated 8-9-1999 they have retrospective effect provided the proceedings in respect of the holding are not completed under Chapter III of the 1976 Act. Allotment of shares to the daughters at the time of their marriage towards "Pasupu Kumkuma" has been recognised in the State. Even no partition was taken into consideration, the daughters would have been entitled for a separate share of Ac.8.33 guntas each. This has been further made clear by the Government of India in their circular dated 21-5-1997 informing the concerned that the married daughters are also entitled for their share in the property. Thus they are entitled for an independent holding. The said circular also made clear that in case of delay in filing the declarations, the same to be viewed liberally. The object for issuing such a circular is to see that the women shall not be deprived of their legitimate right to have a separate holding. Therefore, a right shall not be deprived of on technicalities.

32. As far as delay is concerned, it is seriously contended on behalf of the State that even if the proceedings under challenge are irregular, the claims of the petitioners do not deserve to be considered in view of the inordinate delay on their part in approaching the Court for the relief. We do not like to agree to this contention. The procedure followed by the Competent Authority to determine the surplus lands, not serving notices on the declarants, not deciding the each declaration separately and not considering the separate share in respect of the three daughters by virtue of gift at the time of their marriages towards Pasupu Kumkuma, vitiated the proceedings. The case of the petitioners is that throughout they were unaware of the proceedings. They are right to make this submission. Their further case is that they have made out a positively good case as such the delay, if any, has to be condoned. The said contention stands to reason by virtue of the principles laid down in the following cases, viz., Jagannatha Mishra v. State of Bihar, (supra); Dr. K. Subramanyam Reddy v. Sri Venkateswara University, (supra); Anthony Animal v. Union of India, (supra) and N. Bala Krishnan v. Krishna Murthy, (supra). Though there is a delay on the part of the petitioners in approaching this Court, the same does not come in their way to seek the reliefs.

33. Sri Raghava Chait, learned Counsel appearing for the petitioners submitted that the so-called firing range has been shifted to Premavathi Pet, Rajendernagar Mandal, Ranga Reddy District where the A.P. Police have their own lands and all arrangements for firing activities are provided there. Initiation of proceedings under the 1976 Act allotting the lands in question to the Social Welfare Department and in turn to the A.P. Special Police appear to have been acted on hastily. Before allotting the lands to the Social Welfare Department, the authorities should have noticed whether the entire land is available for allotment or only a portion of the land. Because even 1976 Act was applicable, the vesting should have been a portion of Ac.119.08 gts. and not the entire extent.

34. During the course of the arguments, the controversy was brought to the notice of the Court as to the existence of the vacant land out of Ac.119.08 guntas. On behalf of the State, it was contended that the possession of the entire extent of land has been taken and buildings were constructed or land is under use. Whereas, the learned Counsel for the petitioners submitted that the entire area is not in occupation of the allottee to whom State allotted but only a portion is in its occupation. To know the actual existence of vacant land, we directed both the parties to produce the map showing the extent belonging to the petitioners with different survey numbers and how much land is vacant. Accordingly, they produced two separate maps. According to the map produced by the petitioners, the area shown in Rose colour in different survey numbers has been notified as in occupation of A.P.S.P. Battalion and A.P.S.P. Hospital for different purposes and the extents Ac.57.07 guntas, whereas, the area shown in green colour measuring about Ac.63.05 guntas in different survey numbers shows the vacant land available. The petitioners have also produced a map showing the area occupied and the same is also taken on record. From the two maps produced, it is clear that in S.No.208 there is a vacant land of Ac.12.30 guntas, in S.No.209 there is a vacant land of Ac.20.05 guntas; in S.No.210 there is a vacant land of Ac.10.25 guntas; in S.No.211 there is a vacant land of Ac. 11.09 guntas; in S.No.212 there is a vacant land of Ac.6.20 guntas, again in S.No.212 there is another vacant land of Ac.1.36 guntas. However, in the sketch produced by the State, in the S.No.209 it is shown that some portion has been utilised by it for the purpose of Gas godown, lavatory, water house, kitchen, Mess Short firing Range and firing line. But they comprise only a portion and not the entire survey number.

35. Though two sketches were produced by both sides giving the details as to the land under use and vacant land in different survey numbers, but the controversy still existed. As such we felt that it is better to appoint an officer of the Department of Survey and Land Records to visit the disputed lands and submit his report as to the area that is in use by the Andhra Pradesh Special Police, Kondapur and how much land is vacant. Accordingly on 10-11-1999, we directed the Director of Survey and Land Records to depute one of his officers to inspect the disputed lands and submit his report. Accordingly one Mohd Iqbal Ahmed, Assistant Director of Survey and Land Records on deputation by the

Director of that Department visited the lands in question on 13-11-1999 at 11.00 a.m. He caused execution of the warrant in the presence of both the Counsel on that day, measured the lands in question in their presence. As the work was not completed on that day, he continued his work of execution on 14-11-1999 also. After completion of the work, he appeared before this Court on 16-11-1999 and submitted his report in respect of survey numbers in question along with sketch. The same was taken on record.

36. In the map submitted by the said Officer, namely Mohd Iqbal Ahmed, he has shown the constructions already taken, type of construction, the area occupied by such constructions and the vacant land available in each survey number. According to him the area shown in red colour in the map (sketch) is covered by structures and they are under use which measures Ac.78.06 guntas. The area shown in blue colour is a vacant land, unused which measures Ac.41.03 guntas. The said officer appeared before the Court and described whether the red relates to the buildings already under construction are used by the concerned allottee. From the above map, it is clear that the area which is vacant and un-used in different survey numbers as shown in blue colour is detailed as under:

survey No.    Extent

6811 .. Ac.1.20 guntas

Ac.2.20 guntas

210 .. Ac.10.08 guntas

211 .. Ac. 9.15 guntas

209 .. Ac. 10.00

208 .. Ac. 6.20 guntas

The said report and the map (sketch) are signed by the Commissioner as well as both the Counsel.

37. The joint statement alleged to have been made by the three declarants including surrender difficult to believe because it is stated that the declarant surrendered the land on 18-7-1980 whereas the State allotted the land in dispute to the Social Welfare Department on 14-7-1979 which was one year earlier to surrender. The question of allotment arises only when the land is vested with the State. Vesting takes place when Gazette Notification is issued declaring a particular area as surplus culling the concerned parties to surrender the said excess land preceded by a notice informing that what is the area that person concerned is going to surrender. If there is any refusal to surrender the alleged excess land, then the State can take steps to take possession of the said excess land by resorting to oilier modes contemplated under the provision of the Act and Rules. If one takes that there was surrender by three declarants pursuant to the joint statement made by them, the Competent Authority could not have computed the holdings of the following persons:

Name of the petitioner Extent & S.No. WP No.

Smt. M. Krishna Veni (Declarant in Case No. 9279/76) Ac.20.05 gts S.No.209  
WP 28157/98

Smt. P. Rukmini (Declarant in Case No. 9277/76) Ac.15.36 gts S.No.208 WP  
28158/98

Smt.K.Pramila Rani (Claiming her share on the ground that she is entitled to  
succeed to the share of her father as per family agreement) Ac.12.11 gts S.Nos.  
68/1, 68/2, 214/2 and 214/3

38. The lands held by the above persons were neither subject-matter of the alleged statement nor there was valid surrender. The total extent measures Ac.48.12 gunlas. The Government cannot make any claim on this extent of land when there is no valid determination as excess land or its surrender. The question of delay and laches alleged have been answered by the learned single Judge that when a positive case is made out and demonstrated that the order under challenge is vitiated, such order is the result of non-service of notice on the person concerned and hearing him in the matter, such delay or laches be ignored that too when a case is admitted. If for the sake of arguments that all the declarations filed by the petitioners were considered under the provisions of 1976 Act, while computing the holding some portion should have been deducted in case of each declarant as per the GOs. and the decisions referred earlier. When all these circumstances support the case of the petitioners we cannot subscribe to the view expressed by the learned Government Pleader that the order of the learned single Judge directing to hold fresh enquiry is incorrect.

39. Orders under challenge in the writ petition were quite illegal and quashing the same by the learned single Judge is quite correct. The petitioners are entitled if not for the entire extent of land but at least an extent of Ac.8.33 guntas each. The learned single Judge while allowing the writ petition it would have been more helpful if he had directed the parties to place material as to the extent of land in use by the allottee and what is the area unused. The same required to be clarified by the authority to whom now the writ petitions are remitted. Accordingly, we direct the authority to whom the matter is remitted shall redecide the declarations filed by the petitioners and shall take into consideration the area covered by structures and used by the Government and the area that is vacant in different survey numbers" after service of notice to the petitioners-declarants and hearing them in the matter. The authority concerned shall note while considering declarations that the petitioners are entitled for Ac.53.00 roughly if the provisions of 1976 Act are applicable, but as per the report of the Assistant Director of Survey and Land Records dated 16-11-1999 the total area unused and lying vacant in different survey numbers is Ac.41.03. When the respondents are in occupation of the rest of the area either by putting up constructions or utilising for other purposes required by them, it may not be proper to direct the Government to restore the balance of Ac.12.00 out of the

portion in use and occupation of the Government as the same is neither prudent nor practicable. The Government shall allot the balance of Ac.12.00 of vacant land situated in different survey numbers of Kondapur village or in some other area with same potentialities.

40. Sri K. Raghavachari, learned Counsel appearing for the petitioners made a fair submission that his clients though entitled for the entire extent of land i.e., Ac.119.08 guntas, they will be contended if whatever vacant land is available in different survey numbers be allotted to them to use and enjoy and for remaining area to allot them the land in other survey numbers of Kondapur village or similar land or even Government land with some potentiality. In our view, the said offer is most reasonable. Since it is ordered each petitioner is entitled for vacant land a minimum at Ac.8.33 guntas whatever vacant land now available as shown in the report of the Officer, we hope the same be allowed to be used by the petitioners instead of once again putting them to face another legal battle as they have been deprived of their legitimate claim for all these years. This observation is subject to the result of enquiry and decision to be taken by the Competent Authority.

41. In our view, the above arrangement will safeguard the interest of the Government and also the petitioners.

42. With the above observations, these writ appeals are disposed of and the respondents are directed to comply with the order passed by the learned single Judge forthwith. Till then, the land shown in the Map produced by the Assistant Director, Survey and Land Records in Blue lines shall not be altered, alienated, encumbered or disposed of by the allottee, viz., the A.P. Special Police Force 8th Battalion, who is claiming under the State, to others. There shall be no order as to costs.