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**(2000) 12 AP CK 0079**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 4921 of 1997**

Jana Nagamallayya

APPELLANT

Vs

State of A.P.

RESPONDENT

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**Date of Decision :** 12-12-2000

**Acts Referred:**

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10, 5

**Citation :** (2001) 1 ALD 257 : (2001) 1 ALT 340 : (2001) 1 APLJ 26

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** Mr. V.L.N.G.K. Murthy, for the Appellant; Government Pleader for Land Reforms, for the Respondent

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## Judgement

1. In this revision u/s 21 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1975 (hereinafter called "the Act") the declarant is the petitioner. He is aggrieved by the order of the Land Reforms Appellate Tribunal ("Appellate Tribunal" for brevity) dated 4-7-1997 in LRA No.34 of 1996. By the said order, the Appellate Tribunal dismissed the appeal of the petitioner filed against the order dated 24-9-1996 of the Land Reforms Tribunal ("Primary Tribunal" for brevity) in LCC No.1073, 797, 959/RZO of 1975.

2. The petitioner fought the litigation under the Act up to the Supreme Court and it was finally determined that he holds 1.5802 standard holdings in excess of the ceiling limit. The petitioner, therefore, proposed to surrender an extent of Ac. 1-32 cents i.e., Ac 0-19 cents in RS No.463/1A, Ac.0-55 cents in RS No.462/5, Ac.0-20 cents in RS No.460/1, Ac 0-05 cents in RS No.713/2 and Ac.0-33 cents in Rs No.795/1B, of Sakhinetiipalli Village, East Godavari district. However, the lands were not accepted for the purpose of surrendering excess by the primary Tribunal on the ground that there is terraced building, church building and ZP school on the land which are constructed subsequent to 1-1-1975 and, therefore, the petitioner was directed to surrender some other lands. Aggrieved by the said

order, the petitioner approached the Appellate Tribunal.

3. The contention of the learned Counsel for the petitioner is that there were structures and buildings in the land proposed to be surrendered even prior to 1-1-1975. The Appellate Tribunal relied on the report of the Mandal Revenue Officer dated 17-9-1996 and disbelieved the petitioner's contention that there were buildings and structures even prior to 1-1-1975 and accordingly held that the petitioner is liable to surrender some other land. The petitioner's contention that no notice was issued to him before refusing to accept the surrendered land was also rejected by the Appellate Tribunal in furtherance of their reasonable reading of sub-section (5) of Section 10 of the Act. In this revision petition, the petitioner contends that even if there are no buildings or structures prior to 1-1-1975, the Appellate Tribunal erred in placing burden on this aspect on the petitioner and that the prescribed procedure u/s 10 of the Act was not followed. It is also contended that the primary Tribunal ought to have issued a notice to the petitioner before refusing to accept the surrendered land.

4. The points that arise for consideration are whether there are grounds for exercising power u/s 21 of the Act and whether notice is required to be given to the petitioner before refusing to accept the surrendered land.

5. The procedure for surrendering the holding of a person in excess of the ceiling area is adumbrated u/s 10 of the Act. Sub-section (5) of Section 10 of the Act, which starts with a non-abstante clause, gives absolute power to the Tribunal to refuse or to accept the surrender of any land. The Tribunal may refuse any land surrendered if there is a dispute as to the title, if there is encumbrance on the land, or if the land is in possession of any person or if the land becoming inaccessible by reason of its severance from the remaining part of the holding. The circumstances under which the Tribunal may refuse to accept the surrender mentioned in sub-section 5(a) (ii) of Section 5 are only illustrative and they are not in any way take away the absolute power of the Tribunal to refuse the surrender of any holding in excess of the ceiling area. The non-obstante clause makes this very clear. In view of this, it is not possible to accept that a pre-decisional notice should be read into the statutory provisions and compel the primary Tribunal to issue a notice before refusing surrender. That would amount to harming the very spirit of sub-section (5) of Section 10 of the Act. The view of the Division Bench of this Court in *K.S. Vijaya Gopala Raju v. The Authorised Officer (LR), Visakhapatnam* 1988 (1) APLJ 49 (NRC), supports this view. The Division Bench while interpreting the word "encumbrance" used in sub-section (5) of Section 10 of the Act observed as under:

"Under Section 10(5) it is not obligatory on the part of the Tribunals to accept every land that is surrendered, even though it is computed to his holding and it is open to them to refuse to accept the land in the possession of third parties, though it can be computed in his holding under the other provisions of the Land Ceiling Act. The word "encumbrance" used in Section 10(5) takes in a lease or tenancy. When the land vests in the Government and purpose of the Act is to

distribute for house-sites and other purposes, that purpose gets frustrated if any other further steps are needed for evicting the occupants. It is precisely for this reason, the authorities are vested with the discretion to accept or reject."

6. It is very seriously disputed by the petitioner/declarant that there were buildings even prior to 1-1-1975. As a fact finding body, the primary Tribunal as well as the Appellate Tribunal recorded a finding that the structures and buildings came into existence subsequent to 1-1-1975. The same being a pure question of fact, the jurisdiction of this Court u/s 21 of the Act cannot be invoked. Indeed in State of Andhra Pradesh Vs. Vatsavyi Kumara Venkata Krishna Verma, , the Supreme Court categorically held that in exercise of power u/s 21 of the Act, the Court cannot interfere with the finding of fact recorded by the Tribunal under the Act.

7. In the result, the CRP fails and the same is dismissed without costs.