
(1996) 12 AP CK 0074
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 918 of 1994

State of A.P. and Others

APPELLANT

Vs

K. Ashok Rao and Others

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 2, 23

Citation : (1997) 1 ALT 761

Hon'ble Judges : Neelam Sanjiva Reddy, J; N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : G.P, for the Appellant; P. Ramachandra Reddy, for the Respondent

Final Decision : Dismissed

Judgement

N.Y. Hanumanthappa, J.—This appeal is directed against the order passed by the learned single Judge of this Court in Writ Petition No. 18385 of 1993 dated 27-7-1994.

2. The ranks of the parties are referred to in this appeal as they were in the main writ petition before the learned single Judge.

3. The petitioners filed the writ petition seeking writ, order or direction in the nature of prohibition or certiorari or Mandamus (i) restraining the respondents from taking any further proceedings in respect of Ac. 525-75 cents in S. No. 83 of Raidurg (Pan Maqta) village, Serilingampalle Mandal, Rangareddi district under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976; (ii) to declare that the land in S. No. 83 of Raidurg (Pan Maqta) village, Serilingampalle Mandal, Rangareddi district is neither urban land nor vacant land within the meaning of the Urban Land (Ceiling and Regulation) Act, 1976 and is not liable for determination or being dealt with under the provisions of the said Act; (iii) if any proceedings are initiated under the 1976 Act the same shall be declared as ab initio void and without jurisdiction; (iv) to direct the first respondent to have the land contained in S. No. 83 of Raidurg (Pan Maqta) village, Serilingampalle

Mandal/ Rangareddi District determined and computed under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 in accordance with law afresh; (v) to declare the fourth respondent's Memo No. G.1/33616/92 dt. 5-8-1993 as ab initio void and without jurisdiction and non-est as also the consequential proceedings of the fifth respondent No. 548/93 dated 3-9-1993 as void and to grant such other relief.

4. A few facts which are necessary to dispose of this appeal are as follows: Originally one Mr. Ruknuddin Ahmed and ten others were the owners and pattadars together owning an extent of Ac.525-75 cents in S. No. 83 of Raidurg (Pan Maqta) village of Rangareddi district. All these owners executed agreements of sale in favour of the sixth respondent and also executed in his favour irrevocable power of attorney. After coming into force of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 with effect from 1-1-1975 hereinafter referred to as the "State Act", the respondent No. 6 filed declarations in respect of entire extent of Ac.525-75 cents of S. No. 83 before the competent authority, which were numbered as C.C. Nos. 629 of 1975 to 640 of 1975. On 12-9-1976 the competent authority determined two out of the eleven declarations (viz. declarations of Mr. Ahmed Abdul Aziz (C.C. No. 632) and Mr. Mohammed Ruknuddin Ahmed (C.C.No.638) as surplus by decision computing the excess area as an extent of Ac.99-17 cents than the permissible ceiling limit. The alleged excess Ac.99-17 cents of land was taken paper possession by the revenue authority on 23-11-1976. The said excess land was given a separate S. No. 83/2 while the land retained with pattadars was numbered as S. No. 83/1.

5. After coming into force of the Urban Land (Ceiling and Regulation) Act 1976, hereinafter referred to as "Central Act", which was given effect from 17-12-1976, the sixth respondent under a bonafide mistake filed declaration u/s 6(1) of the Central Act before the second respondent. When things stood thus, the first respondent issued G.O.Ms. No. 5013 (Revenue U.C.I.) Department dated 19-12-1980 purported to be exercising powers u/s 23 of the Central Act, allotting the said excess land to third parties. Item No. 15 of the annexure to the above said Government Order refers to S. No. 83 of Raidurg showing an extent of 18,94,472square metres. Subsequent to this on 24-1-1981 proceedings u/s 10(3) of the Central Act were issued. The General Power of Attorney filed his objections. Ignoring the same a notification u/s 10(5) of the State (sic. Central) Act was issued on 26-2-1981. Thus the allotment of the lands in S. No. 83 was made prior to proceedings u/s 10(3) and 10(5) of the Central Act.

6. Realising the mistake committed, on 16-7-1980 the sixth respondent filed objections before the authority constituted under the State Act objecting to the determination of the land under the A.P. Act 1973 as surplus by Ac.99-17 cents and requesting to redeliver the same to him. The same was rejected by the primary land Tribunal as not maintainable. The same was challenged before the Land Reforms Appellate Tribunal. The appellate . Tribunal, by order dated 22-9-1984 allowed the said appeal remanding the matter to the primary Tribunal

for determination whether the land in question falls within the Central Act or under the State Act with a further direction that if the Tribunal determines that the land falls within the purview of the Central Act, the lands shall be delivered back to the declarants to enable them to submit themselves to the authorities under the Central Act.

7. On 10-11-1987, the primary Tribunal held that the land in question falls within purview of the Central Act and further held that Ac.99-17 cents in S. No. 83 of Raidurg village which were determined by the Tribunal in the earlier proceedings be delivered back to the owners with a further direction to the Revenue Divisional Officer to redeliver possession. On 25-4-1990 the Mandal Revenue Officer, Serilingampalle redelivered possession of Ac.99-17 cents of land to its owners. On 3-3-1991 the sixth respondent filed objections before the competent authority under Urban Land Ceiling against the proceedings u/s 10(3) of the Central Act contending that Ac.99-17 cents out of S. No. 83 were already taken possession under the State Act and out of the remaining extent of Ac.425-00, an area of Ac.400-00 was the subject-matter of an agreement of sale with Co-operative Housing Society, to which possession was handed over in the year 1974. The Commissioner of Land Reforms and Urban Ceiling also recommended the case of the said Co operative Housing Society to the Government for exemption. Further requested that declarants be allotted 34 units under the Central Act. After redelivery of Ac.99-17 cents under the State Act respondent No. 6 executed sale deeds in favour of the petitioners and some others between January to March, 1991.

8. On 22-12-1992 the second respondent addressed a letter to the first respondent referring to certain correspondence made between the department and the Government level and other earlier proceedings which were pending before the primary Tribunal and the appellate tribunal in respect of S.No. 83, instituted at the instance of the sixth respondent for and on behalf of the society, suggesting the first respondent to reconsider the issue having regard to the rejection of exemption under the Central Act in favour of the Housing Society; the entire surplus land may be taken over by the Government excluding the lands available to the owners under the G.O.Ms. No. 733 dated 31-10-1988. Followed by the same, second respondent in his proceedings H.2/11220/76 dated 8-7-1983 passed orders u/s 45 of the Central Act ordering certain corrections in respect of computation of area followed by drawing up of panchanama as if the land in dispute in S. Nos. 83/1 and 83/2 has been taken over ignoring the earlier order of the primary Tribunal directing S.No. 83/1 to redeliver to the petitioners and which was delivered to the petitioners on 25-4-1990 by the Mandal Revenue Officer.

9. The sale deeds which were executed by the respondent No. 6 were to an extent of Ac. 213-75 cents and in favour of these petitioners the extent of land was Ac.156-11 cents. After entering into agreement of sale, the petitioners filed applications during October 1991 to the third respondent for sanction of two lay-

outs in an area of Ac.67-17 cents for development as plots for residential purposes. On receipt of application, the third respondent by order dated 16-4-1992 informed that already by G.O.Ms. No. 5013 Revenue (U.C.I) Department dated 19-12-1990 an extent of 18,84,477 square metres of surplus land had been allotted to the third respondent. Thus holding returned the said lay-out plans unapproved with an observation that the petitioners have to resubmit for consideration after obtaining the clearance from the Urban Land Ceiling Authority. The same was communicated to the petitioners on 16-4-1993. This was followed by the fourth respondent in his Memo No. G.1 /33616/92 dated 5-8-1993 directing the fifth respondent to cancel the sale deeds and in turn, the fifth respondent in his proceedings No. 548/93 dated 3-9-1993 ordering that the petitioners' sale deeds cancelled.

10. Aggrieved by the same the petitioners filed the writ petition urging the following grounds:

Land in S. No. 83 of Raidurg village was an agricultural land. The names of the original owners were entered in the pattas and other revenue records as pattadars. Raidurg village had become part of the urban agglomeration only by virtue of amendment to the Master plan in September 1980, that is, subsequent to both the notified and appointed date under the Central Act. The Central Act has no application to the land in question. The proceedings dated 5-8-1993 of the respondent No. 4 ab initio void, so also the proceedings of the respondent No. 5 dated 3-9-1993. The orders issued by the first respondent in G.O.Ms. No. 5013 Revenue (U.C.I.) Department dt. 19-12-1990 are void ab initio, that the order passed u/s 23 of the Central Act as illegal as the same not followed by the procedure Under Sections 8, 9, 10 of the Central Act. Proceedings u/s 10(3) and 10(5) of the Central Act which were made subsequent to 19-12-1980 as such not valid. Even the panchanama dated 20-7-1993 showing that possession of Ac.99-17 cents in S. No. 83 has been taken possession only mere paper possession, that neither the petitioners surrendered the said land nor the Central Act had any application. Orders of the respondents in respect of Ac.99-17 cents which were redelivered to the petitioners pursuant to the primary Tribunal's order is quite incorrect. Proceedings of the respondents are contravention of Section 2(o) of the Central Act. All the proceedings initiated by the respondents under the Central Act subsequent to redelivery directed by order of the primary land Tribunal and Mandal Revenue Officer, by exercising powers under the State Act are quite illegal and contrary to the decision of the Supreme Court rendered in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], .

11. On service of notice the respondents put their appearance and filed objections. The stand of the respondents is that the so called sale deeds are not valid as the entire land had vested in the Government as on the date of the alleged sale deeds. Pursuant to the order dated 24-1-1981 petitioners did not choose to file any appeal though notice was served on the General Power of Attorney holder on 3-3-1981. As there was no clearance from the Urban Land

Ceiling Authority the claim of the petitioners could not be considered as they were neither bona fide purchasers nor acquired any legal rights on the land in question. G.O.Ms. No. 5013 Revenue (UCI) Department dated 19-12-1990 is nothing but a reflection of the said position to allot surplus land to the HUDA. In no way the respondents deprived the legitimate rights of the land holders. Sales in question are not valid u/s 5 of the Central Act. When the claim of the society was rejected by the authorities and confirmed by this Court in W.P. No. 16797 of 1992 the benefit under G.O.Ms. No. 733 Revenue dated 31-10-1988 is not available to the petitioners. The land in question was a kacha land on the appointed date and it was fallow for several years before the Act and it was not fit for cultivation. The land was not used for agricultural purposes. The said land was treated as vacant land u/s 2(q) of the Act. The village Raidurg was included in the Urban agglomeration on the very commencement of the Central Act which is clear from the notification in column No. 2 to Schedule I. The principles laid down in At in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], have no application to the facts of this case. The Central Act applies to the case of the petitioners. As the petitioners are not bona fide purchasers they are not-entitled to any relief.

12. In support of rival contentions, arguments were advanced. Both sides plated reliances on some of the provisions of the State Act as well as the Central Act including placing reliance on the decision of the Supreme Court, particularly in interpreting the words "Agriculture land".

13. The learned single Judge after going through carefully the provisions of both the State Act and Central Act (and) the scope of Section 2(h), 2(n), 2(o), 2(q), 10(3), 10(5) and 23 of the Central Act gave a finding that as on the date of coming into force of the Central Act and also on the appointed date the land in Survey No. 83 measuring Ac. 525-75 cents was not included in the Master plan. The learned single Judge by placing reliance on the principles laid down in the case of Smt. Atia Mohammadi Begum, (1 supra) and on unreported decisions rendered by this Court in Writ Petition Numbers 3920 of 1983 and 4502 of 1984 dated 26-8-1993 (and) W.P. No. 15379/92 dated..... held that when the lands which were not in the master plan as on the date of the commencement of the Central Act the authorities cannot convert or include the land into vacant land by the unilater act. Thus the proceedings initiated under the Central Act are null and void.

14. While disposing of the writ petition however, the learned single Judge observed that the said order will not bar the authorities to take action according to law and with a further observation that the writ petitioners shall not alienate the disputed land for a period of three months.

15. Challenging the order of the learned single Judge the learned Additional Advocate General argued as follows: He contended that as on the date of coming into force of the Central Act the land in dispute was situated in an urban agglomeration and it was vacant and urban land included in the master plan,

Hyderabad city. When once it is included in the master plan whether it is vacant or agricultural land the provisions of Central Act are applicable. Any transfer of such land is illegal. The petitioners were fully aware that the land in question was included in the master plan and they filed declaration before the competent authority constituted under the Central Act. When proceedings were going on, with a view to circumvent the provisions of the Central Act they again went before the primary Tribunal constituted under the State Act requesting to redeliver the said land.

16. Even assuming as on the date of coming into force of the Central Act no building activities had taken place on the land in question yet it was capable of being brought for the purpose of constructing dwelling houses. Thus it lost all the characteristics of agricultural land. Suspicions of the way in which the petitioners resorted to commit fraud on the Act, on the basis of some got up documents, a thorough discussion took place at all levels and ultimately a decision was taken to acquire the land which compelled the authorities first to cancel the sale deeds which were executed in favour of the petitioners by the sixth respondent power of attorney holder of the owners. The land in question is situated within the five kilometres of peripheral area of Hyderabad West thus coming within the master plan but the same was not considered by the learned single Judge. Reliance placed by the learned single judge on an earlier decision of this Court in Writ Appeal No. 1220 of 1994 dated 28-10-1994 and dismissal of its review petition on 13-7-1995 is incorrect, as, against the said order an appeal is pending before the Supreme Court wherein the Hon'ble Supreme Court by its order dated 23-2-1996 directed both the parties namely the petitioners therein and the State to maintain status quo. Even if for the sake of arguments it is assumed that as on the date of coming into force of the Central Act the land in question was not included in the master plan, but by way of amendment during the year 1980 the same came to be included in the master plan. As such the Central Act is applicable to the land in question. The finding of the learned single Judge that as on the appointed day the land was an agricultural land and it was not situated within the urban agglomeration area is not proper. The applications filed by the petitioners before the Land Reforms Tribunal under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act 1973 and subsequently before the competent authority constituted under the Central Act go to show that they were quite sure that Central Act applies to the case. According to the learned Additional Advocate General the principles laid down in the case of *Athia Mohammadi Begum v. State of U.P.*, (1 supra) are not applicable. Thus he submitted that appeal be allowed. Or atleast be remanded in order to decide once again whether on the appointed day the land was vacant land situated within urban agglomeration and it was vacant and urban land covered by master plan or not.

17. As an answer to the above contentions Sri Raghuram the learned Senior Advocate took us through the pleadings in the writ petition and also the order of the learned single Judge and some of the provisions of the Central Act. His case

is that the land in question originally belonged to Ruknuddin Ahmed and others who in turn executed power of attorney in favour of the sixth respondent so also sale deeds in his favour. Executing irrevocable power of attorney and executing sale deeds were much earlier to coming into force of Land Reforms Act 1973 which came into force from 1-1-1976. As a law abiding " citizen they filed declarations before the primary Tribunal under the State Act which were numbered as C.C. Nos. 629/75 to 640 of 1975. On scrutiny the primary Tribunal determined two of the said declarants viz., Sri Ahmed Abdul Aziz (C.C. 632 of 1975) and Sri Mohammed Ruknuddin Ahmed (C.C. 638 of 1975) as surplus owners to an extent of Ac.99-17 cents in S. No. 83 of Raidurg village (Pan Maqta), Rangareddi district which was renumbered as S. No. 83/2 and the remaining extent was numbered as S. No. 83/1. The Central Act came into force on 17-2-1976. Under bona fide mistake the sixth respondent filed declaration before the competent authority constituted under the Central Act even though there was no necessity to file such declaration as the land in question was agricultural land situated outside the urban land and not included in the master plan. The competent authority without applying its mind, (i) to the provisions of the Act, (ii) to its jurisdiction to decide the application with reference to the master plan and (iii) to the fact whether the land is question in included in the master plan or not, allotted the holding of surplus land to an extent of 18,94,472 square metres in S. No. 83 by G.O.Ms. No. 5013 Revenue (U.C.-1) even before filing of a surrender statement u/s 10(5) of the Act. However aggrieved by the said notifications the General power of attorney filed his objections. Meanwhile land owners also filed their objections before the primary Tribunal constituted under the State Act seeking redelivery of the land which was rejected by the primary Tribunal. In view of the principles laid down by the Full Bench decision Tumati Rangayya Vs. The State of Andhra Pradesh and Others, an appeal was filed before the Appellate Tribunal. The said appeal was allowed remanding the matter to the primary Tribunal to consider the request of the petitioner to redeliver surplus land which resulted in redelivery on 25-4-1990. Subsequent to redelivery 91 sale deeds were executed in respect of Ac.213-75 cents out of which the writ petitioners purchased Ac.156-11 cents. 18. As on the appointed day the land in question was an agricultural land and, therefore, the sale deeds made in favour of the petitioners are valid. Any annulment could only (be) by the authorities constituted under the Land Reforms Act. But, ignoring the same the Inspector General of Registration and Stamps the 4th respondent directed the fifth respondent viz. the District Registrar of Registration and Stamps, Rangareddi district to cancel the sale deeds in favour of the petitioners which resulted in passing the orders under challenge. The orders of the competent authority determining the holding as vacant land and allotting excess land to the third respondent is ab initio void. Again the acts of fourth and fifth respondents in annulling the sale deeds is illegal and without any authority of law. To show that the land in question was agricultural land on the appointed day the owners of the land produced several documents including revenue records which evidenced that they were the owners in possession of the land and the land was

an agricultural land and the same was not denied by the respondents. The respondents 1 to 5 exceeded their jurisdiction in passing orders against the owners of the land. No fraud or misrepresentation was made at any time by the owners of the land. Declaration, if any, filed before the competent authority constituted under the Central Act was a misconceived one and any action taken basing on such declaration is neither valid nor estops persons interested in the land in question to get their rights determined before some other authority which is really vested with the jurisdiction. In respect of other portion of the same S.No. 83 of Raidurg Village the Division Bench of this Court passed order in favour of the owners and negated the contentions of the State. On the facts the same principles laid down therein are equally applicable to the case on hand. This appeal cannot be allowed unless this division Bench takes a view other than the one already taken by the Division Bench in Writ Appeal No. 1220/94. The facts of Atia Mohammadi Begum case (1 supra) apply to the facts of this case. In order to avoid unnecessary confusion and to see that the authorities constituted under the Central Act while determining the applications time and again the concerned authorities of the Central Government instructed the authorities to follow strictly the principles laid down by Supreme Court in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], advised the Government of India, Ministry of Urban Affairs and Employment (Department of Urban Development) by its letter dated 20-9-1996 how the provisions of the Central Act are to be made applicable and what should be the circumstances in order to make applicable provisions of the Central Act. He lastly contended that the order of the learned single Judge is just one and it is in conformity with the principles laid down by the Supreme Court in Atia Begum case, (1 supra) impliedly agreed on the principles by the Union of India's observations made in the said Judgment and as such no case has been made out to interfere and the appeal be dismissed.

19. The facts as to original pattadars executing sale deeds in favour of the sixth respondent in respect of S. No. 83 of Raidurg Village executing several agreements of sale and later selling the land in bits to the petitioners, filing declaration before the authorities constituted under the State Act and their determination, their filing of declaration before the competent authorities constituted under the Central Act, in between getting redelivery of the alleged surplus land, are not in dispute. The issue involved is whether as on the date of coming into force of the Central Act was it applied to S. No. 83 of Raidurg Village, Serilingampalle Mandal of Rangareddi district or not? The Act in question is applicable to the lands which are situated in Urban Agglomeration, being vacant lands and included in the master plan. The Central Act is a beneficial legislation made to give effect to the object of Directive principles of State Policy.

20. The object of the Central Act as laid down by the Supreme Court in the case of Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others, is to provide for the imposition of ceiling on vacant land in urban agglomerations for the acquisition of such land in excess of the ceiling limit to regulate the

constructions of the building on such land and for matters connected therewith with a view to prevent the concentration of urban land in the hands of a few persons so as to check-mate speculations and profiteering therein on the one hand and to bringing about equitable distribution of land among the urban population i.e. the urban agglomeration to subserve the common good, in furtherance of the Directive Principles of State Policy under Article 39 (b) and (c) of the Constitution of India. Thus the purpose is to distribute the material wealth of the society to subserve common good. The applicability of the provisions of the Central Act is to be understood in the background of the following considerations (1) that the vacant land must be situated in urban area and while giving effect to the object of the Act the procedure to be followed by the authorities shall be beneficial for both sides and it shall not be confiscatory in nature.

21. The Central Act came into force in the State of Andhra Pradesh on 17-2-1976. Section 2(h) of the Act deals about "Master Plan" in relation to area within urban agglomeration. Section 2(1) defines about "to hold" with its grammatical variations in relation to any vacant land means:-

(i) to own such land or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

Section 2(n) deals about "Urban agglomeration"-

(A) in relation to any State or Union territory specified in column (1) of Schedule I means:

(i) the urban agglomeration specified in the corresponding entry in column(2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof, and

(ii) any other area which the State Government may with the previous approval of the Central Government having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that schedule and peripheral area therefore shall be one kilometre;

(B) in relation to any other State or Union territory means any area which the State may with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require by notification in the official gazette declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Schedule I and the peripheral area therefore shall be one kilometre.

Section 2(o): "Urban Land" means-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board of a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation: For the purpose of this clause and Clause (q)

(A) "agriculture" includes horticulture, but does not include

(i) raising of grass,

(ii) dairy farming,

(iii) poultry fanning

(iv) breeding of live-stock and

(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture there is a building which is not in the nature of a farm house, then so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture.

Provided further that if any question arises whether any building is in the nature of a farm house such question shall be referred to the State Government and the decision of the State Government thereon shall be final.

(C) Notwithstanding anything contained in Clause (B) of this explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

Section 2(p) "urbanisable land" means land situated within an urban land;

Section 2(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a "village" in the revenue records) then so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

Section 3 speaks about the persons who are not entitled to hold vacant land in excess of the ceiling limit. Section 4 deals about the ceiling limit. Section 5 speaks about the transfer of vacant land. Section 6 deals about the persons holding vacant land in excess of ceiling limit to file statement, before the competent authority. Section 7 speaks about filing of statements in cases where vacant land held by a person is situated within the jurisdiction of two or more competent authorities. Section 8 deals about preparation of draft statements as regards vacant land held in excess of ceiling limit. Section 9 deals about final statement. Section 10 deals about acquisition of vacant land in excess of ceiling limit. Section 10(3) speaks about publishing of notification declaring about excess of vacant land vested with the State Government free from all encumbrances. Section 10(5) directs the person in possession of excess land which is vested with the State Government to surrender or deliver its possession to the State Government in this behalf. Section 10(6) speaks about how delivery of possession is to be made in case of refusal to surrender.

22. Chapter IV of the Act deals about the regulation of transfer and use of urban property. Section 28 deals about the regulation of registration of documents in certain cases which envisages that any transfer to be registered only after obtaining permission of the competent authority. Section 34 speaks about revisional powers of the State Government. Section 38 of the Act deals about the offences and punishments in case of violation of the Act. Section 45 of the Act deals about the correction of clerical errors.

23. Master plan presupposes that the land in question shall be situated within urban agglomeration prepared pursuant to any law in force or the order made by the State Government for the purpose of development of such area. The land can be held by any person as owner or even as an irrevocable power of attorney holder. Urban agglomeration is the one which is specified in the schedule I and extends its jurisdiction over five kilometres of the peripheral area. Urban land means the land which is situated within the urban agglomeration and finds place

in the master plan. If there is no master plan prepared, the area which is situated within urban agglomeration and situated in the municipal limits will come under the purview of the Central Act. Normally the Act does not apply to the land which is agricultural. The word "agriculture" as defined u/s 2(o) Explanation (A) of the Act includes horticulture but excludes raising of grass, dairy farming, poultry farming, breeding of livestock and any other cultivation excluded by the State. The Central Act applies when the land is not exclusively used for agriculture and does not find place in the revenue or land revenue records before the appointed day as an agricultural one. Thus it is "the science and art of cultivating the soil". Thus every land which is presently or prospectively capable of cultivation can be said to be agricultural land. This has been further explained by this Court in the following cases: Officer-in-charge (Court of Wards) Officer-in-charge (Court of Wards) Paigah, Vicar-ul-umra, Hyderabad Vs. The Commissioner of Wealth-tax, Andhra Pradesh, Hyderabad, , Gayatri Salt Works v. Government of Andhra Pradesh AIR 1975 A.P. 265 wherein it was held as follows:

"If it is shown that the land is actually cultivated either presently or in the immediate past or if it is shown that it is lying fallow, but is capable of being cultivated, so long as the land has not been actually diverted to purposes other than agricultural purposes by construction of building thereon and other operations which render the land itself incapable of being cultivated and without undertaking some other operations for making it fit for carrying on agricultural operations, it can be said to answer the description of agricultural land in its widest significance"

Similar view was taken by Calcutta High Court in the case of Bishnu Kumar Mitra v. Sub Divisional Officer, Howrah AIR 1979 NOC 129.

24. Section 2(q) defines about the vacant land which means the land referred as urban land as mentioned in master plan but it does not include the land which is meant for agricultural purposes. Sometimes the land shown in the agriculture can also be included in the master plan if that land is not shown in the revenue records as an agriculture under cultivation. This is what Section 2(q) of the Act envisages. Vacant land includes the land which on the date of coming into force of the Central Act shown in non-agricultural zone. If it is shown as agricultural zone it excludes from the operation of the Urban Land Ceiling Act.

25. While explaining about the applicability of the Act and effect of the master plan with reference to Explanation (C) of Section 2(o) of the Act the Supreme Court in Atia Mohammadi Begum (1 supra) case held as follows:

"The scheme of the Act supports the construction that the Explanation (C) to Section 2(o) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a

master plan prepared after the commencement of the Act. The plain language of Explanation (C) bears this construction and requires it to be so construed in order to harmonise it with other provisions and scheme of the Act. Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action".

26. With the above information if we examine the nature of the land as on the date of coming into force of the Central Act the conclusion is that the land in question is an agricultural land and not vacant or urban land and situated outside the urban agglomeration set out in Schedule I Column (2) of the Central Act for the reason that as on the date of coming into force of the Act S. No. 83 of Raidurg village of Serilingampalle Mandal of Rangareddi district was outside the Master plan of Hyderabad city. The said survey number was not shown in the master plan. The revenue records, like record of rights and land revenue records for the period from 1970 to 1976 and subsequent period produced, by the petitioners show the land as agricultural land under cultivation. When once there is entry in the revenue records the presumption is, such lands are cultivable and they are agricultural. To deny this no rebuttal evidence was adduced by the State. Any attempt to extend master plan to this survey number by bringing an amendment to the master plan in the year 1980 will not confer any jurisdiction on the competent authority to bring it within the purview of Central Act as the crucial date will be the date on which the Act came into force. Further any amendment shall always be meant as prospective and not retrospective unless it is so intended by the framers of the Act or the makers of the Law. If this land was not an agricultural land the owners of the land having ventured to file declaration before the competent authority constituted under the Central Act would not have later on objected the said competent authority to proceed with enquiry. This shows that the declarants were fully confused as to which Act applies to their case as the land in question is situated nearer to Hyderabad city and Building activities in Hyderabad city were in rapid progress.

27. The declaration filed before the Authority constituted under the Central Act is a misconceived one and any decision taken by the authorities thereon is inconsequential and shall not prevent declarants to get the relief before some other authority ignoring the order passed by such authority, as an order of an authority who has no jurisdiction will be in operative and the same will not act as estoppel or res jtidicata to seek relief before some other authority who has jurisdiction as held by the Supreme Court in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, the same principle followed subsequently in the case of Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, .

28. The decision taken by the authorities to allot excess land of 18, 94, 472 square metres to the third respondent was illegal and without jurisdiction as on the day no vacant or urban land was available in this survey number. Further

such allotment could not have been made even before making of notification and filing of surrender statements u/s 10(3) and 10(5) of the Central Act. It shows arbitrariness and misuse of powers on the part of the authorities i.e. the fourth and fifth respondents, in passing orders to cancel sale deeds on the basis of the discussion which took place among the respondents 1 to 5 thus making the orders illegal and without jurisdiction because it is not shown that under what law the respondents 4 and 5 ordered to cancel the sale deeds. The actions of the authorities in passing orders clearly demonstrate that they are unilateral, out come of abuse of power, without any authority of law and in disregard to the principles of natural justice. If there was proper application of mind to the nature of the land whether it was shown in the schedule and covered in the master plan it would not have resulted in illegal orders passed by them which are confiscatory in nature. At no time the concerned authorities took steps to disprove the entries made in the revenue and land revenue records as to nature and possession of the land. It is not the case of the authorities that during the period in question round about the land in question developmental activities took place. They should have noticed that the extent of the area shall not be a reason to decide the same as vacant land in their anxiety to acquire and distribute. Any order shall be in consonance with the provisions of the Act and its violation renders it illegal and unconstitutional. Examining the nature of the remaining land in the same survey number and applicability of the Central Act the Division Bench of this Court in Writ Appeal No. 1220/94 dated 28-10-1994 held that as on the appointed day the land in the said survey number was agricultural land and not included in the Master plan and not vacant or urban land. Further not included in the master plan to attract the provisions of the Central Act.

29. None of the grounds urged by the learned Advocate General persuaded us to take a view other than the one already taken by the Division Bench in Writ Appeal No. 1220/94. His alternative submission is that if for any reason the Court feels that the proceedings initiated by the authorities constituted under the Central Act are illegal then the case may be remanded for fresh enquiry does not stand to reason. No purpose will be served now by remanding this matter to the concerned authorities for fresh determination when the material available before us is sufficient to hold that as on the appointed day the land, in question was purely agricultural land not a vacant or urban land and also not included in the master plan. Further the acts of the authorities run contra to the advice rendered by the Government of India, Ministry of Urban Affairs and Employment (Department of Urban Development). It is useful to extract one such letters produced by the Counsel for the petitioners and additional material object by the other side.

"The following key aspects may be kept in view before applying the provisions of the Act to any land as is evident from various Supreme Court judgments:

(i) Whether the land in question falls within the territorial jurisdiction of an urban agglomeration specified in Schedule I to the Act? If not, the Act shall not apply to

such land. The peripheral area of urban agglomeration will be covered only if there was a master plan for such area.

(ii) Whether the land falling within the territorial jurisdiction of an urban agglomeration specified in Schedule I to the Act is "Urban Land" in terms of Section 2(o) read with Section 2(h) of the Act? If such is not "urban land" the Act shall not apply, and

(iii) Whether the "urban land" within the territorial jurisdiction of an urban agglomeration is the land mainly used for the purpose of agriculture on the appointed day? If yes, the Act shall not apply to such land:

30. No infirmities are shown in the order passed by the learned single judge. The learned single Judge while allowing the writ petitions had rightly declared the proceedings taken under the Central Act in respect of the land in question as null and void. However he further observed that the matter will not bar the authorities from taking action according to law.

31. From the above discussion and in view of the conclusions reached on all the points we do not find any good ground to interfere with the order passed by the learned single Judge.

32. Hence this writ appeal is dismissed. There is no order as to costs.