

(2017) 02 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1974 Of 2012

T. Muralidhar Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 23-02-2017

Acts Referred:

Urban Land (Ceiling And Regulation) Act, 1976 — Section 10(1), Section 10(3),
Section 10(3), Section 10(5), Section 10(6), Section 10(6), Section 10(i), Section 20,
Section 5(3), Section 8(4), Section 8(4), Section 9

Citation : (2017) AIRCC 1833 : (2017) 3 ALT 389 : (2017) 3 AndhLD 706

Hon'ble Judges : Sri M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : Sri B. Nalin Kumar, Advocate, for the Petitioner; Government Pleader
for Assignment, for the Respondent

Final Decision : Disposed Off

Judgement

Sri M.S. Ramachandra Rao, J.—The petitioner challenges the proceedings in CC.No.G-1/4271/76 of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (2nd respondent herein) as without jurisdiction, null and void and violative of Articles 14 and 300-A of the Constitution of India, and the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act) and seeks a consequential direction to restrain the State of Andhra Pradesh (1st respondent) and the Special Officer and Competent Authority, Urban Land Ceiling Authority from interfering with their possession and enjoyment over the Plot Nos.351 and 320 in Sy. Nos.96 & 97 at Block No.13, Gokul Nagar, Marriguda, hamlet of Mallapur Village, Uppal Mandal, Rangareddy District.

2. One Mohd. Rehman Ali and Mohd. Ali were the owners and possessors of an extent of Ac.24-345 guntas in Sy. Nos.96 & 97 of Marriguda Village, Uppal Mandal, Hyderabad. On 18.3.1967 they executed a registered sale deed for this entire land in favour of one Yelamachili Nageswara Rao and five others. Later, they divided the land into plots, after obtaining layout permission from the Gram

Panchayat.

3. Out of the above land, 5074 sq. yards comprised in Plot Nos.361, 358, 359, 360, 371, 372, 380, 320 and 351 was sold under Registered Sale Deed dated 26.9.1967 by Y. Nageswara Rao to Mrs. Bandhakavi Suguna Rama Rao, W/o. B.V. Rama Rao (for short, Suguna Rama Rao).

4. After the Act coming into force, B.V. Rama Rao, husband of Suguna Rama Rao filed Statement under Section 6 of the Act declaring the above land in their family holding.

5. On 9.1.1978 draft statement under Section 8(1) of the Act was prepared showing that 4242.47 sq. yards of land in the hands of B.V. Rama Rao was surplus land. This was served on the declarant under Section 8 (3) of the Act, but the declarant did not choose to file any objections to the draft statement prepared by the 2nd respondent. Thereafter, no specific order under Section 8 (4) of the Act was passed by the 2nd respondent.

6. But noting was made in the file that the draft statement prepared under Section 8 (1) of the Act was confirmed. Thereafter, final statement under Section 9 of the Act was issued to the declarant on 24.1.1981. This was followed by notification under Section 10 (1) of the Act on 31.12.1982 in the name of Sri B.V. Rama Rao for acquiring extent of 4242.47 sq. yards.

7. In the mean time, the State Government, in exercise of its power under Section 20 (1) (a) of the Act issued G.O.Ms. No.733, Revenue (UC.II) Department, dated 31.10.1988. It accorded:

(a) exemption of the vacant land or the agricultural land and which is likely to be used for non-agricultural purposes at the option of the holder thereof, or both, to a maximum extent of five acres situated within the peripheral area as specified in Column (3) of Schedule-I to the Urban Land (Ceiling & Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Agglomerations in excess of the ceiling limit, from the provisions of Chapter-III of the said Act; and

(b) permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, the extent of five acres of land in excess of ceiling limit, excluding the area required for roads, hospitals and for other public use.

8. Having regard to the above G.O.Ms.No.733, dated 31.10.1988, wife of the declarant Smt. B. Suguna Rama Rao executed Registered Sale Deed dated 28.5.1998 selling plot Nos.320 and 351 admeasuring 874 sq.yards in favour of Smt.Y.Sharada Devi. Clause (10) of the said Sale Deed clearly recited that the vendor owned land admeasuring 5074 sq. yards in the peripheral area of Hyderabad Urban Agglomeration, that after issue of G.O.Ms.No.733, dated 31.10.1988 and availing of exemption granted therein, she had thus transferred 873 sq. yards through Registered Sale Deed dated 28.5.1998.

9. On 12.12.2007, Smt. Y. Sharada Devi executed a Registered Agreement of Sale-cum-General Power of Attorney with Possession in favour of one Sri V. Sanjeeva Reddy.

10. On 22.04.2008 the first respondent issued G.O.Ms.No.603, Revenue (UC.I) Department dated 22.04.2008 bringing into force Urban Land (Ceiling and Regulation) Repeal Act, 1999 in the State of Andhra Pradesh with effect from 27.3.2008.

11. Thereafter, Smt. Y. Sharada Devi, through her General Power of Attorney-holder, executed two separate Sale Deeds on 22.08.2009 selling Plot No.320 to an extent of 416 sq. yards and Plot No.321 admeasuring 458 sq.yds. in favour of the petitioners.

12. The petitioners then made an application on 28.6.2010 to the Section Officer, Urban Land Ceiling, Hyderabad for issuance of ULC Clearance Certificate to enable them to make an application for obtaining sanction for construction. They had also applied for regularization of unapproved plots under Andhra Pradesh Regulation and Penalisation of Unapproved and Illegal Layout Rules, 2007. Regularization under the said scheme was granted by the 1st respondent on 8.12.2011. On 10.1.2012 they also secured Building Permit Order vide Permit No.7739/DC/EZ/C-1/2012, from the Greater Hyderabad Municipal Corporation.

The contentions of petitioners :

13. The petitioners contended that the 2nd respondent did not give them any clearance certificate under the Act, but orally informed that the land purchased by the petitioners was already declared as excess land under the Act and that the proceedings under the Act had also culminated. The petitioners claim to have made enquiries under Right to Information Act, 2005 and secured the copies of proceedings. They state that the 2nd respondent furnished such information on 2.1.2012, but did not furnish information regarding proceedings under Section 8 (4) and Section 10 (6) of the Act. The petitioners then filed the present Writ Petition raising the following contentions:

(a) No final statement or order was passed under Section 8 (4) of the Act and so also all consequential proceedings taken under Section 10 of the Act are null and void being without jurisdiction.

(b) Once G.O.Ms.No.733, dated 31.10.1988 was issued granting exemption of holding of vacant land to an extent of five acres in peripheral area as specified in Column (3) of Schedule-I to Act, 1976 from Chapter-III of the Act and also permitting transfer of any such land, and since it is not disputed that the plots purchased by the petitioners fall within the peripheral area, after issuance of G.O.Ms.No.733 dated 31.10.1988, the 2nd respondent could not have continued any proceedings under Chapter-III of the Act, particularly when there is no such provision under the G.O.Ms.No.733, dated 31.10.1988 permitting the 2nd respondent either to initiate or continue to such proceedings under Chapter-III of

the Act with respect to the land covered therein.

(c) The petitioners were in effective and physical possession of the plots on 27.3.2008 when the Urban Land (Ceiling and Regulation) Repeal Act, 1999 was brought into force in the State of Andhra Pradesh vide G.O.Ms.No.603 Revenue (UC.I) Department dated 22.4.2008, and as such, the proceedings under Chapter-III of the Act became null and void, non-est in law and ineffective.

(d) Though the documents furnished by the 2nd respondent show that panchanama was drawn upto 15.2.2006 purporting to take over possession of an extent of 4242.47 sq. yards of land, the said panchanama itself reflects that the land has been made into plots and structures exists on it; and in particular in Plot Nos.359 and 360 which were also sold by Smt. B. Suguna Rama Rao in favour of third parties, a building having Door No.3-13-140/1 was located having been constructed long before and a Gas Agency by name Madhu Gas Agency was supplying HP Gas therefrom; and therefore the proceedings purporting to take possession are only on paper, that on the site no proceedings were conducted and the petitioners did not deliver possession to any of the State Authorities nor did the State Authorities approach them or took possession of the land.

14. Counsel for petitioners contended that the statutory general exemption granted under G.O.Ms. No.733 dated 31.10.1988 would operate even without necessity of making an application and so the proceedings under the Act could not have been continued after it came into operation and all proceedings under the Act would lapse. According to him, though Section 10 (1) notification was issued on 31.12.1982, exemption under G.O.Ms. No.733 would continue to operate from 31.10.1988, and it cannot be said that after issuance of Section 10 (1) notification, exemption would not operate. He contended that there is no vesting in Government of 874 sq.yards purchased by the petitioners by 31.10.1988, that their vendor was in possession of the land which was below five acres in a peripheral area, that Smt. B. Suguna Rama Rao, the declarant herself availed of the exemption under G.O.Ms. No.733 dated 31.10.1988 and sold the property to petitioners vendor, and since exemption would operate even after excess land has been declared and vested under Section 10, the respondents cannot interfere and seek to dispossess the petitioners.

15. He stated that the respondents, in their counter affidavit, admitted that the petitioners were in possession, though they stated that it was not valid in law, and in view of the said admission, on coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 w.e.f. 27.3.2008, all proceedings under the Act lapse and the respondents, therefore, cannot take any action against petitioners under the act or dispossess the petitioners from the subject land.

16. He contended that the petitioners were not aware of the proceedings under the Act, and since the very action of the respondents in issuing proceedings under the Act after coming into force of G.O.Ms. No.733 dated 31.10.1988 is

without jurisdiction, when such illegal orders are sought to be enforced against the petitioners, the petitioners have locus to question the same. Apart from this, he also contended that the petitioners are the purchasers under valid Sale Deed and step into shoes of the declarant and they would have locus to file the writ petition.

17. He also stated that there is no entry in any record about the respondents taking possession of the land and no notice was issued and only when the petitioners applied for clearance to the 2nd respondent, documents were furnished in January, 2012 and they filed Writ Petition and therefore it cannot be thrown out on the ground of laches.

18. Counsel for the petitioners relied upon on the following judgments, viz., Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad v. P.S. Rao AIR 2000 SC 843=(2000) 2 SCC 451; Nalla Yakoob v. The Govt. of A.P. 1992 (2) ALT 473,; Govind Singh v. Principal Secretary to Government 2008 (1) ALT 593; D. Appa Rao v. Special Officer and Competent Authority, ULCA 2007 (4) ALT 476; and P. Dhana Laxmi v. Special Officer, Urban Land Ceiling, Warangal 2001 (3) ALT 492.

Contentions of The Government Pleader

19. The Government Pleader for Revenue (Assignments) appearing for the State of Telangana, the successor-in-interest to the 1st respondent refuted the above contentions.

20. He contended that the petitioners have no locus standi to question ULC proceedings since they were neither declarants nor legal representatives of the declarants.

21. According to him, the Act came into force on 17.2.1976 and any sale subsequent thereto is void under Section 5 (3) of the Act and therefore Sale Deed dated 28.5.1998 executed by Smt. B. Suguna Rama Rao in favour of Smt.Y. Sharada Devi was void.

22. Relying upon a decision in Parchuri Ratnakar Rao v. State of Andhra Pradesh 2006 (6) ALT 671 (D.B), he contended that only declarant can avail the benefit of G.O.Ms.No.733, dated 31.10.1988 and purchaser of land from the declarant cannot avail the said benefit and therefore the petitioners cannot be allowed to contend that in view of G.O.Ms.No.733, dated 31.10.1988 the sale in their favour is valid.

23. He contended that the notice under Section 10 (1) of the Act has been issued on 31.12.1982 and thereafter Smt. Y. Sharada Devi on 28.5.1998 purchased two plots in question, and even though under Section 10 (3) notice was issued in the name of Smt. B. Suguna Rama Rao on 14.5.1999, this was not challenged by Smt. Y. Sharada Devi or by the writ petitioners.

24. His contention is that no order under Section 8 (4) of the Act is necessary

since no objections were filed to the draft statement under Section 8 (1) by the declarant and it was permissible for the 2nd respondent to take further steps such as issuing final statement under Section 9 or initiating the proceedings under Section 10, even without an order passed under sub-section (4) of Section 8 of the Act.

25. He contended that the petitioners cannot be allowed to canvass this point since the petitioners have no locus to challenge the proceedings under the Act initiated against the declarant, when the declarant did not question this.

26. According to him, notwithstanding G.O.Ms.No.733, dated 31.10.1988, permitting transfer of land within five acre limit in peripheral area, No Objection under Section 26 (1) of the Act from the Competent Authority under the Act before making transfer was necessary, and since no such notice was issued in the present case, the sale by Smt. B. Suguna Rama Rao in favour of Smt. Y. Sharada Devi, and the subsequent sale in favour of the petitioners on 22.8.2009 are not valid.

27. According to him, the petitioners are guilty of laches and, therefore they should be denied the relief.

28. He, however, admitted that as stated in the counter-affidavit, the petitioners were still in possession of the land though such possession is not in accordance with law. He relied upon the decisions in *Zarina and others v. Special Officer and Competent Authority* 2002 (5) ALD 779 (DB), *State of Assam v. Bhaskar Jyoti Sarma* 2015 ALT (Rev.) 60 (SC) , and *Omprakash Verma v. State of A.P.* 2010 (13) SCC 158, .

The Points for consideration :

29. The following points arise for consideration in view of the above pleadings of the parties:

(a) Whether passing of an order under sub-Section (4) of Section 8 of the Act is mandatory to initiate further steps under Section 10 of the Act ?

(b) Whether the petitioners who are purchasers from the declarant and declarants vendor can place reliance upon G.O.Ms. No.733, dated 31.10.1988?

(c) Whether the petitioners have locus to file the writ petition?

(d) Whether the petitioners should be denied the relief on the ground of laches? and

(e) To what relief?

Point (a) :

30. I shall first consider the question Whether passing of an order under sub-Section (4) of Section 8 of the Act is mandatory to initiate further steps under Section 10 of the Act ?.

31. It is the specific contention of the petitioners that the 2nd respondent had not passed any order under sub-Section (4) of Section 8 of the Act and that the consequent proceedings of the 2nd respondent are null and void.

32. This contention was not adverted to by the respondents in the counter-affidavit filed initially, but in the subsequent additional counter-affidavit filed by them on 27.01.2017 it is stated as under :

It is submitted that 8(1) Draft Statement prepared by the 2nd respondent Competent Authority was served on the declarant U/s.8(3) of the Act. However declarant had not chosen to file any objections to the Draft Statement prepared by the 2nd respondent. As such draft statement prepared U/s.8(1) is confirmed and the same was recorded in the file. As a consequence of confirmation of draft statement final statement U/s.9 of the Act was issued to the declarant on 24.01.1981. As such as stated in the main counter total extent of 4242.47 square meters was declared as surplus and same was taken possession under cover of Panchanama on 05.02.2006. As the declarant had not filed any objections to the draft statement prepared U/s.8(1) of the Act by the respondent No.2 there is no need to pass separate orders U/s.8(4) of the Act.

(emphasis supplied)

33. In this context, it is to be noted that as per the scheme of the Act, persons holding vacant land in excess of ceiling limit have to file a statement under Section 6 of the Act; on that basis under sub-Section (1) of Section 8 of the Act, a draft statement is to be prepared after enquiry by the competent authority containing the particulars mentioned in sub-Section (2) of Section 8; thereafter under sub-Section (3) of Section 8, such draft statements have to be served on the declarant together with a notice stating that any objection to the draft statement should be preferred within (30) days of the service thereof. On receipt of the same, objections if any, may be submitted by the declarant and thereafter, the competent authority is required under sub-Section (4) of Section 8 to consider any objection received and he shall, after giving the objector a reasonable opportunity of being heard, pass such orders as he deems fit.

34. Thus, not only should objections be invited and considered, if submitted, but also an opportunity of hearing should be provided to the declarant and thereafter only orders have to be passed.

35. Section 9 of the Act mandates that the competent authority after disposal of the objections, if any received under sub-Section (4) of Section 8 should make necessary alterations in the draft statement in accordance with the orders passed on the objections and shall determine the vacant land held by the declarant in excess of the ceiling limit and pass copy of the draft statement so altered to be served on the declarant.

36. It is only thereafter that notification under Section 10(1) of the Act is to be issued, claims, if any, of persons interested in the vacant land be considered

under Section 10 (2), and thereafter notification should be published in the Official Gazette declaring that the excess vacant land be deemed to have been acquired by the State Government. Only then such land would vest in the Government free from encumbrances. Notice to surrender possession can then be issued under sub-Section (5) of Section 10 and if the person who is served such notice refuses, then the competent authority may dispossess him.

37. Thus, the decision under sub-Section (4) of Section 8 is in the nature of adjudication i.e., a judgment in a suit; drafting of final statement under Section 9 of the Act is akin to drafting of a decree; and proceedings under Section 10 are in the nature of execution proceedings in a Civil Court in a civil suit. Without there being any judgment in a civil suit, there cannot be drafting of a decree or execution of the said decree. In my considered opinion, on the same analogy, without passing of an order under sub-Section (4) of Section 8, there could not have been a final statement under Section 9 or any acquisition of the declarants land / dispossession of the declarant under Section 10.

38. It cannot be disputed that the Act is a piece of expropriatory legislation and therefore has to be strictly construed (*State of Maharashtra v. B.E. Billimoria* 2003 (7) SCC 336). In *Vipinchandra Vadilal Bavishi v. State of Gujarat* 2016 (4) SCC 531, the Supreme Court held:

From perusal of the Urban Land (Ceiling and Regulation) Act, 1976 (in short the Ceiling Act), the provisions contained in Sections 8, 9 and 10 have to be mandatorily complied with before the land is declared in excess of the ceiling limit.

39. So the procedure for depriving a citizen of property by the State as prescribed therein ought to be mandatorily followed. Non-compliance with the procedure prescribed in the Act would be fatal and would vitiate all the subsequent proceedings rendering them wholly without jurisdiction, null and void.

40. In *N. Komurraiah v. Special Officer and Competent Authority, Urban Land Ceilings, Warangal* 1998 (3) ALT 471, and *P. Dhanalaxmi and others v. Special Officer, Urban Land Ceilings, Warangal and another* 2001 (3) ALT 492, this Court has taken the view that passing of an order sub-Section(4) of Section 8 of the Act is mandatory and if not, all further proceedings are illegal.

41. In *N. Komurraiah* (12 supra), notice under sub-Section (3) of Section 8 of the Act dated 20.09.1977 was served on the declarant to which he filed objections on 26.12.1977, but without passing any order under sub-Section (4) of Section 8 of the Act, final statement under Section 9 was served on the declarant by the Competent authority. Later notice under sub-Section (5) of Section 10 was also issued to the declarant on 29.08.1981. The declarant filed a Writ Petition to declare the action of the competent authority of the Act proceeding further in the matter of the declarant without passing an order under sub-Section (4) of Section 8 of the Act as illegal, arbitrary and without jurisdiction and to restrain him from proceeding further in the matter. The Court noted that in the counter-

affidavit filed by the competent authority, there was no indication that any order was passed under sub-Section (4) of Section 8 of the Act. It held that without such order being passed, notice under sub-Section (5) of Section 10 could not have been issued. It held that even assuming that objections were filed by the declarant beyond time to the notice under sub-Section (3) of Section 8 of the Act, the competent authority might not consider the said objections, but it is not absolved of the duty to pass an order under sub-Section (4) of Section 8 and issue final statement under sub-Section (1) of Section 9. It categorically held that passing of an order under sub-Section (4) of Section 8 is mandatory before proceeding further. It allowed the Writ Petition and set aside proceedings of the competent authority issued under sub-Section (5) of Section 10 and directed the competent authority to pass order under sub-Section (4) of Section 8 and also issue final statement under sub-Section (1) of Section 9 and proceed further, according to law.

42. In *P. Dhanalaxmi* (13 supra), this principle was reiterated. In that case also draft statement under sub-Section (3) of Section 8 of the Act was served on the declarant on 14.11.1977 calling for objections to be filed within (30) days. Objections however were not filed. Therefore, as in the instant case, final statement under Section 9 was issued on 17.12.1977, notification under Section 10 (1) was issued on 28.08.1980, notification under Section 10(3) was issued on 03.09.1981 and notice under Section 10(5) was issued on 28.10.1981. Appeal filed under Section 33 of the Act before the Commissioner, Land Revenue, Urban Land Ceiling, Andhra Pradesh, Hyderabad was dismissed on 21.04.1984. It was contended before this Court that without passing an order under sub-Section (4) of Section 8 of the Act, subsequent proceedings could not have been initiated under Section 10. The Government Pleader contended that once objection was not filed by the declarant, there is no question of giving reasonable opportunity of being heard as contemplated by the 2nd part of sub-Section (4) of Section 8. This contention was rejected. The Court held that there is a statutory duty cast on the competent authority to give a reasonable opportunity of being heard, whether or not objections are filed, and then only pass order under sub-Section (4) of Section 8. It held that proceedings under sub-Section (3) of Section 8 contemplate only a draft statement, and if objections are filed, the competent authority cannot pass orders without hearing the objector. It held that a declarant had got two opportunities (a) to file objections, and (b) avail reasonable opportunity of being heard before passing of order under sub-Section (4) of Section 8 of the Act. The Court held that without there being any final order passed under sub-Section (4) of Section 8, issuance of final statement under Section 9 (1) of the Act does not arise. It observed as under :

The objections can be in writing to be filed within 30 days from the date of service of the draft statement under Section 8(3) or oral objections pursuant to the notice issued under Section 8(4) before passing the final order. Section 8(4) contemplates the objections to be filed by the declarant, i.e., in writing within 30 days from the date of receipt of a draft statement under Section 8(3) as well as

the objections to be submitted personally pursuant to the notice issued under Section 8(4) before passing of the final order. Second part of the Section 8(4) clearly contemplates that the Competent Authority after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit. After disposal of the objections submitted pursuant to the reasonable opportunity of being heard is given to the declarant under Section 8(4), orders have to be passed under Section 8(4) and then only the Competent Authority shall determine the vacant land by final statement under Section 9(1) of the Act.

43. It therefore held that orders passed by the competent authority under Sections 9 and 10 of the Act without passing order under sub-Section (4) of Section 8 are illegal and unsustainable. The Court allowed the Writ Petition and permitted the competent authority to take action and pass orders under sub-Section (4) of Section 8 after giving a reasonable opportunity of being heard to the petitioners therein and then to pass orders.

44. In view of the principles laid down in the decisions of the Supreme court and this Court, since it is not in dispute in the instant case that no order under sub-Section (4) of Section 8 has been passed by the 2nd respondent, it has to be held that the final statement under Section 9 of the Act as well as all subsequent proceedings under Section 10(1), 10(3), 10(5) as well as 10(6) of the Act are null and void and are wholly without jurisdiction. There is no possibility in the instant case of giving an opportunity to the 2nd respondent to now pass orders under sub-Section (4) of Section 8 of the Act since admittedly vide G.O.Ms. No.603 Revenue (UC-I) Department dated 22.04.2008, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 was enforced in the State of Andhra Pradesh w.e.f. 27.03.2008. Therefore, the notification under sub-Section (1) of Section 10 issued on 31.12.1982, the notice under sub-Section (3) of Section 10 issued on 14.05.1999, the notice under sub-Section (5) of Section 10 issued on 29.09.2004 as well as the Panchanama allegedly prepared on 15.12.2006 taking over possession of the land, are declared null and void and wholly without jurisdiction.

45. Though the learned Government Pleader raised a contention that the petitioners who are not declarants cannot raise the above issues, the said contention has no merit since the petitioners are successors-in-interest of the declarant, having purchased from Smt. Y. Sharada Devi, who purchased from the declarant. So they step into the shoes of the declarant and are entitled to raise this issue since they may be dispossessed by the respondents of the subject land.

46. Consequently, since admittedly the possession of the Writ Petitioners on the subject land is not denied by the respondents, and since such possession cannot be said to be illegal or contrary to the Act, and in view of the repeal of the Act, the proceedings in C.C.No.G-1/4271/76 of the 2nd respondent are declared as without jurisdiction, null and void and violative of Articles 14 and 300-A of the Constitution of India.

Point (b):

47. Now I shall consider the issue whether the petitioners, who are purchasers from the declarants vendor can place reliance upon G.O.Ms. No.733, dated 31.10.1988.

48. This issue, though not in my opinion, strictly necessary to be decided in view of my finding on the point (a), since it was argued at length, I also propose to consider it.

49. For the sake of better understanding, the relevant portion of G.O.Ms. No.733, dated 31.10.1988 is extracted again. It states:

6. Now, therefore, in exercise of the powers conferred under Section 20 (1) (a) of the Urban Land (Ceiling & Regulation) Act, 1976 and of all other powers hereunto enabling and in supersession of all other orders issued previously in this behalf from time to time, the Government of Andhra Pradesh hereby accord:

(a) Exemption of the vacant land or the agricultural land and which is likely to be used for non-agricultural purposes at the option of the holder thereof, or both, to a maximum extent of five acres situated within the peripheral area as specified in Column (3) of Schedule-I to the Urban Land (Ceiling & Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Agglomerations in excess of the ceiling limit, from the provisions of Chapter-III of the said Act; and

(b) permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, the extent of five acres of land in excess of ceiling limit, excluding the area required for roads, hospitals and for other public use.

50. A reading of the above Government Order indicates that the holders of land up to five acres in peripheral area as specified in column (3) to Schedule-I of the Act of Hyderabad Urban Agglomeration in excess of ceiling limit were exempted from the provision of Chapter-III of the Act and permission was given by the Government to transfer such land to third parties also.

51. In Nalla Yakoob (2 supra), a learned Single Judge of this Court held that the exemption contained in G.O.Ms. No.733 dated 31.10.1988 is a general exemption and it is not necessary to seek permission for exemption provided two conditions (a) that the land is in peripheral area, and (b) that it is of extent of five acres exclusive of land set apart towards roads, open spaces, school and hospital, are fulfilled.

52. This judgment was reiterated in Govind Singh (3 supra) and D. Appa Rao (4 supra).

53. The Supreme court of India has held, in regard to exemption notifications, that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the

same, the exemption notification should be construed liberally. It held that no condition should be read into it when there is none. If a person is entitled to the benefit thereof, the same should not be denied. (see CST v. Amara Raja Batteries Ltd. 2009 (8) SCC 209, CST v. Industrial Coal Enterprises 1999 (2) SCC 607, and G.P. Ceramics (P) Ltd. v. CTT 2009 (2) SCC 90).

54. In the present case, it is not disputed by respondents that the subject land is located in a peripheral area and the land held by the declarant Sri B.V. Rama Rao / Smt. B. Suguna Rama Rao was less than five acres in extent.

55. In the instant petition, Smt. B. Suguna Rama Rao, wife of the declarant sold Plot Nos.320 and 351 admeasuring 874 sq. yards in favour of Smt. Y. Sharada Devi under Registered Sale Deed, dated 28.5.1998 i.e., after G.O.Ms.No.733 dated 31.10.1988 came into force.

56. It is an admitted fact that the Sale Deed dated 28.5.1998 contained a recital in clause (10) thereof that Smt. B.Suguna Rama Rao, the vendor, was owning vacant land admeasuring 5074 sq. yards in the peripheral area of Hyderabad Urban Agglomeration and that after issuance of G.O.Ms.No.733, dated 31.10.1988 and after availing exemption granted therein, she is transferring 874 sq. yards to Smt. Y. Sharada Devi. Thus it was declarant who availed exemption under G.O.Ms.No.733, dated 31.10.1988 and obviously by virtue of the permission granted under clause (b) of Paragraph-6 of the said G.O. transfer was effected by the declarant in favour of Smt. Y. Sharada Devi.

57. So the learned Government Pleader is not correct in contending that petitioners are availing the exemption under G.O.Ms.No.733. The petitioners are only contending that the declarant availed of it and sold the land to Smt.Y. Sharada Devi, so that sale deed was valid in law. Since valid title was conveyed to Smt.Y.Sharada Devi, she was entitled to sell to the petitioners and they also got good title.

58. Even otherwise, I see no merit in his contention that as a matter of law, the petitioners are availing benefit under G.O.Ms.No.733 and that they cannot do so since they are not declarants. If the declarant is exempted from provisions of Part III and is specifically permitted to sell the land in the peripheral area of extent upto Ac.5.00 as per G.O.M.s.No.733 dated 31.10.1988 issued under Section 20 of the Act by the Government, and quoting the said provision, the declarant did sell the land as in the instant case, to hold that the purchaser from him or a purchaser from the purchaser cannot be allowed to plead that the sale is valid quoting the said G.O, is, in my considered opinion, illogical. If the declarant is exempted and is permitted to sell, the sale by him after coming into force of the said G.O.Ms.733 dated 31.10.1988 would be valid and consequently any subsequent sale by the purchaser to petitioners would also be valid.

59. Also once the declarant is exempted from provisions of Part III and is specifically permitted to sell the land in the peripheral area of extent upto Ac.5.00 as per G.O.M.s.No.733 dated 31.10.1988 issued under Section 20 of the

Act by the Government, the proceeding, if any, pending under the Act before the Competent Authority, in so far as such land is concerned, ought to abate, since it is not disputed that the exemption under the G.O.Ms.No.733 is automatic.

60. The contention of the learned Government Pleader that it was incumbent upon on the part of the original declarant to challenge the subsequent proceedings under Section 9 or section 10 (1), 10(3) and 10(5) of the Act cannot be countenanced because if such challenge is required, then exemption under G.O.Ms.No.733, dated 31.10.1988 would not be automatic and would only be at the discretion of the 2nd respondent.

61. Merely because the Competent authority continued the proceedings against the declarant even after the said G.O came into effect, and even after the declarant sold the property taking benefit of the said G.O, without closing the proceedings under the Act as abated, he issued notification under Section 10(3), Section 10(5) and conducted panchnama also, it cannot be said that such proceedings are valid in law.

62. In fact after reading the G.O.Ms.No.733 dated 31.1.10.1988, any declarant would feel that there is no need for him to bother about proceedings being continued against him in respect of the land in peripheral area below the extent of Ac.5.00 and that they would automatically abate. To expect the declarant to again challenge the continuation of proceedings against him after he availed the exemption under the said G.O.Ms.No.733 and sold the land, as the learned Government Pleader sought to contend, goes against normal course of human conduct. For, no man who has sold the land under the bona fide belief that he is exempted from the provisions of the Act, would bother to question proceedings still being continued against him after he ceased to be owner thereof and had transferred valid title to a third party. Nor will the purchaser bother about verifying about pendency of the proceedings under the Act since he would also feel that his vendor, having been exempted from the provisions of Part III of the Act by the G.O, was competent to sell and proper title passed to him (the purchaser) and proceedings under the Act, pending against his vendor, would abate.

63. The proposition that exemption under G.O.Ms.No.733 dated 31.10.1988 is automatic notwithstanding vesting of surplus land in the Government, if the proceedings under Chapter-III of the Act remained inconclusive by 31.10.1988, the date of issuance of G.O.Ms.No.733, is accepted even in the Division Bench of this Court in Parchuri Ratnakar Rao (6 supra) cited by the learned Government Pleader, at paragraph-42.

64. The facts in that case reveal that the purchase by the appellants in that case was on 26.8.1997 but long prior thereto notice under Section 10 (5) had been issued on 17.6.1992 and proceedings under Section 10 (6) directing the field staff to take possession were issued on 27.3.1993, though physical possession was actually taken on 16.11.1998. Therefore, the Division Bench in paragraph-42

stated that if statutory proceedings become final and conclusive, in the absence of any statutory appeal or objection by the original owner, the purchaser, under a null and void sale cannot challenge such proceedings, and in paragraph-43 further clarified that since the appellants therein purchased the property after the Act and after the proceedings under Section 10 (6), they cannot challenge earlier statutory proceedings on the strength of their purchase which is null and void.

65. But the Bench then made an observation that preponderance of judicial opinion was that any sale of the surplus land after the Act is null and void and it is only the original holder who can seek exemption under G.O.Ms. No.733 and not any purchaser after the Act. The learned Government Pleader places strong reliance on this passage of the judgment.

66. The Division Bench noticed clause (b) of paragraph-6 of G.O.Ms. No.733 in paragraph-12 of its judgment which specifically stated that the Sate also accorded permission for transfer of land which is exempted under clause (a), but the Bench did not consider the implication of clause (b) anywhere in its order.

67. The principle of per incuriam explained in *Mamleshwar Prasad v. Kanhaiya Lal* 1975 (2) SCC 232, in the following terms:

7. Certainty of the law, consistency of rulings and comity of courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission.

(emphasis supplied)

68. This was reiterated by the Constitution bench in *A.R. Antulay v. R.S. Nayak* 1988 (2) SCC 602 as follows :

42. It appears that when this Court gave the aforesaid directions on 16-2-1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions or law and the decision in *Anwar Ali Sarkar* case . See *Halsburys Laws of England*, 4th Edn., Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; *Dias on Jurisprudence*, 5th Edn., pages 128 and 130; *Young v. Bristol Aeroplane Co. Ltd.* 1944 (2) AII ER 293, 300. Also see the observations of Lord Goddard in *Moore v. Hewitt* 1947 (2) AII ER 270, 272-A and *Penny v. Nicholas* 1950 (2) AII ER 89, 92-A . Per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See *Morelle v. Wakeling* 1955 (1) AII ER 708, 718-F. Also see *State of*

Orissa v. Titaghur Paper Mills Co. Ltd. 1985 Supp SCC 280 . We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong.

69. Again in State of U.P. v. Synthetics and Chemicals Ltd. 1991 (1) KB 718, the Supreme Court reiterated:

40. Incuria literally means carelessness. In practise per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The quotable in law is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority. (Young v. Bristol Aeroplane Co. Ltd. 1944 (1) KB 718). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey AIR 1962 SC 83, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsburys Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

70. In my opinion, the Division benches decision in Parchuri Ratnakar Rao (6 supra) was rendered oblivious of clause (b) of para (6) of Parchuri Ratnakar Rao (6 supra), that the said clause itself permitted a declarant to alienate land in peripheral area upto Ac.5.00, and had the Bench noticed it, it would not have held that it is only the original holder who can seek exemption under G.O.Ms.No.733 and not any purchaser after the Act. In my view, the decision of the Division Bench is thus per incuriam. Therefore it cannot be a binding precedent.

71. If a declarant of vacant urban land under the Act is not only entitled to exemption thereof, if it is located in the peripheral area of Hyderabad Urban Agglomeration and is of extent less than five acres, but he is also permitted to transfer the same and he exercises such option and transfers the land after G.O.Ms. No.733, dated 31.10.1988 came into operation, (particularly when such exemption is automatic without even any application), I am of the opinion that not only the declarant but purchaser from the declarant would be entitled to contend , relying on G.O.Ms. No.733, that the sale is valid. If the contention of the learned Government Pleader that the purchaser from the declarant cannot plead the benefit under G.O.Ms.No.733 is accepted, then the permission accorded by the Government permitting the declarant to sell the land subject to conditions specified therein, in clause (b) of paragraph-6 would become otiose. Merely because the authorities under the Act ignored the effect of G.O.Ms.No.733 and continued the proceedings under the Act against the declarant under Section 9 or Section 10(1) or Section 10(3) or Section 10(5), all such proceedings would be null and void.

72. In support of its view that purchaser from the declarant cannot seek

exemption under G.O.Ms. No.733, the Division Bench relied upon the observation of the Supreme Court of India in *Special officer and Competent authority, Urban land Ceiling v. P.S.Rao* 2000 (7) SCC 213, at para 39 of its order and quoted that in the said decision, the Supreme Court referred to its own earlier order and held that it would be open to the owner of the land, whose land was vested in the Government to seek exemption under the Act.

73. In my opinion, the Supreme Court, in that case, had not gone into the issue whether a purchaser can seek benefit under G.O.Ms. No.733. The facts in that case are set out in the decision of the single Judge of this court in *P.S.Rao v. Special officer and Competent Authority, Urban land ceiling* 1998 (4) ALD 697, and it clear that there was no sale by the petitioner P.S.Rao in that case and he only pleaded exemption under G.O.Ms.No.733 and alleged that proceedings under Section 10 (5) initiated against him are liable to be quashed. In that case, even prior to the coming into operation of G.O.Ms.No.733, vesting under section 10 (3) had taken place and the Court was considering the question whether after such vesting also, the owner can seek exemption from the provisions of the Act. So it cannot be construed that use of the words owner of the land by the Supreme Court in its order meant that only owner of land/declarant can seek benefit under the G.O.Ms.No.733 and not purchaser from him. It is settled law that a decision of a Court is only an authority for what it decides but not for what may even logically flow from it. [*State of Orissa v. Sudhanshu* AIR 1968 SC 647, *ITC Ltd. V. CIT (TDS)* 2016 (6) SCC 652].

74. Though reference is made by the Division Bench in *Parchuri Ratnakar Rao* (6 supra) to the decision of the Single Judge in *Anne Ramachandra Rao v. Government of A.P.* 2000 (4) ALD 377, also in support of the proposition that a purchaser cannot claim benefit of Section 20 and only original owner can seek exemption thereunder, it is important to note that in *Anne Ramachandra Rao* (33 supra), the learned Single Judge had taken the view that the exemption under G.O.Ms.No.733 was not automatic, but the Division Bench did not accept this view in paragraph-42 of its order. Also in *Anne Ramachandra Rao* (33 supra), the notification under Section 10 (3) of the Act dated 1.5.1981 was published on 5.3.1981 and order under Section 10 (5) of the Act was passed on 20.10.1986. This was questioned by the declarant in W.P.No.1934 of 1987 which came to be dismissed on 19.12.1989.

Moreover, in the said Writ Petition, the transfer by the declarant was held invalid and that order had become final. Therefore, the said judgment in *Anne Ramachandra Rao* (33 supra) also cannot be the basis for the Division Bench in *Parchuri Ratnakar Rao* (6 supra) to come to conclusion that benefit of G.O.Ms.No.733 can be claimed only by declarant and not a purchaser from the declarant.

75. Reliance placed by the learned Government Pleader on the decision of another Division Bench in *Zarina* (7 supra) to contend that a purchaser cannot invoke G.O.Ms.No.733 is also untenable for the reason that G.O.Ms.No.733 did

not fall for consideration by the Division Bench which decided the said case and the observation in the said case to the effect that under Section 5 (3) of the Act, no person holding vacant land in excess of ceiling limit immediately before the commencement of the Act shall transfer any such land or part thereof by way of sale . would not apply, if the land is exempted under G.O.Ms.No.733 and the sale is expressly permitted thereunder.

76. Therefore, transferee from such declarant after the Act came into force and after issuance of G.O.Ms.No.733, dated 31.10.1988 cannot be said to be an illegal purchaser or that sale in his favor is void because by virtue of clause (a) of paragraph-6 of G.O.Ms.No.733, the operation of Section 5 (3) of the Act is excluded.

77. The further contention of the learned Government Pleader that notice under Section 26 of the Act ought to have been issued by the declarant before selling the land to Smt. Y. Sharada Devi, the predecessor-in-title of the petitioners is concerned, is also untenable. This is because if in clause (b) of paragraph-6 of G.O.Ms.No.733, the State Government had already accorded permission for sale of the land in the peripheral area, it would be absurd to insist on the declarant again applying to the State Government for No Objection Certificate under Section 26 of the Act to sell the land to third parties.

78. Point (b) is answered accordingly against the respondents and in favour of the petitioners.

Point (c):

79. In the instant case, by the date the sale was effected by Smt. B. Suguna Rama Rao of the two plots in favour of Smt.Y. Sharada Devi by 28.5.1998, proceedings under Section 10 (1) alone had been issued on 31.12.1982. Notice under Section 10 (3) of the Act came to be issued on 14.5.1999. Therefore, sale by the declarant Smt.B.Suguna Rama Rao in favour of Smt. Y. Sharada Devi on 28.5.1998 was before the conclusion of proceedings under Chapter-III of the Act and such sale was exempted and permitted by G.O.Ms. No.733, dated 31.10.1988.

80. I have already noted that the sale deed dated 28.5.1998 contains specific recital in clause (10) that the vacant land admeasuring 5074 sq. yards purchased by the declarant Smt. B. Suguna Rama Rao was in the peripheral area under G.O.Ms.No.733 dated 31.10.1988 and hence availing exemption granted therein she already sold 3900 sq. yards to others and through this sale deed dated 28.5.1998, she was transferring 874 sq.yards to Smt. Y. Sharada Devi. As stated above, in P.S. Rao (28 supra), the Supreme Court held that as long as proceedings under Chapter-III of the Act are pending, the landholder can avail the exemption under Section 20 of the Act, even after vesting and the exemption would have the effect of taking the land out of the purview of the Act. Therefore, the said Sale Deed dated 28.5.1998 cannot be said to be null and void and consequently the Sale Deed in favour of the petitioners executed on 22.8.2009

also cannot be said to be null and void.

81. In view of the above finding, I hold that the petitioners would certainly have locus to file the Writ petition when the petitioners were informed that the subject land was declared as surplus land under the Act.

82. Point (c) is answered in favour of petitioners and against the respondents.

Point (d) :

83. The contention of the Government Pleader that petitioners are guilty of laches and are not entitled to any relief is equally without merit.

84. The petitioners were admittedly not given any notice at any time of proceedings under the Act. When the petitioners asked the 2nd respondent for clearance under the Act, he did not give them any clearance certificate under the Act, but orally informed that the land purchased by the petitioners was already declared as excess land under the Act and that the proceedings under the Act had also culminated.

85. The petitioners claim to have made enquiries under Right to Information Act, 2005 and secured the copies of proceedings. They state that the 2nd respondent furnished such information on 2.1.2012, but did not furnish information regarding proceedings under Section 8 (4) and Section 10 (6) of the Act. The petitioners then filed the present Writ Petition.

86. When the petitioners were not aware of proceedings taken by 2nd respondent under the Act and they came to know of the same in 2012, they cannot be held to be guilty of laches. Point (d) is answered accordingly in favour of petitioners.

Point (e) :

87. It is not in dispute that the petitioners are in possession of the subject land as on the date of filing of the Writ petition notwithstanding the alleged panchanama drawn upon 15.12.2006 by the officials of the respondents. This itself establishes that there was no physical dispossession of the petitioners.

88. The said panchanama itself reflects that the land has been made into plots and structures exist on it. It is not disputed by respondents that in Plot Nos.359 and 360, which were also sold by Smt. B. Suguna Rama Rao in favour of third parties, a building having Door No.3-13- 140/1 was located having been constructed long before and a Gas Agency by name Madhu Gas Agency was supplying HP Gas therefrom.

89. Therefore the proceedings/panchanama purporting to take possession cannot be accepted as evidence of dispossession of petitioners, and it has to be held that on the site, no proceedings were conducted, that the petitioners did not deliver possession to any of the State Authorities, nor did the State Authorities approach them or take possession of the land.

90. Therefore, in view of repeal of Act w.e.f. 22.4.2008 by virtue of adoption of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 by the State of Andhra Pradesh vide G.O.Ms.No.603, Revenue (UC-I) Department, dated 22.04.2008, no further steps can be initiated under the said Act to dispossess the petitioners or interfere with their possession and enjoyment of the subject land.

91. For the aforesaid reasons, the Writ petition is allowed with costs of Rs.5,000/-; the proceedings in CC.No.G-1/4271/76 of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (2nd respondent herein) are declared as without jurisdiction, null and void and violative of Articles 14 and 300-A of the Constitution of India, and the provisions of Urban Land (Ceiling and Regulation) Act, 1976; and a consequential direction is issued restraining the State of Telangana, the successor of the State of Andhra Pradesh (1st respondent) and the Special Officer and Competent Authority, Urban Land Ceiling Authority (2nd respondent), Hyderabad from interfering with their possession and enjoyment over the Plot Nos.351 and 320 in Sy. Nos.96 & 97 at Block No.13, Gokul Nagar, Marriguda, hamlet of Mallapur Village, Uppal Mandal, Rangareddy District.

92. As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.