

(1995) 08 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 455, 456, 457, 611, 1047, 1048, 840, 959 and
1076 of 1994

Vijayawada Urban Zilla Weaker Section and Economically
Backward Classes Society

APPELLANT

Vs

Dhulipalla Kishore Kumar and others

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 2(3), 230, 3(2)
Transfer of Property Act, 1882 — Section 54
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 2, 20, 20(1), 21
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 5(2)

Citation : AIR 1996 AP 80

Hon'ble Judges : M.N. Rao, J;B. Sri Atchutananda Swamy, J

Bench : Division Bench

Advocate : A.G. A.P. Hyderabad, Government Pleader, for Revenue, Mr. B.V. Subbaiah, Mr. P.M. Gopal Rao, Mr. N.V. Ramakrishna, Mr. M.C. Poorniah, for the Appellant;

Judgement

B. Sri Atchuthananda Swamy, J.—These inter connected Writ Appeals were filed against the common order dated 1-4-1994 passed in Writ Petition Nos. 7996/ 93 and batch by our learned brother Justice Immaneni Panduranga Rao (as he then was). All the cases arise under the provisions of the Urban Land (Ceiling and Regulations) Act, 1976, hereinafter referred to as "the Central Act".

2. A cursory glance at the affidavits filed in support of the Writ Petitions will reveal that a sustained effort is being made by the land-holder Sri Dhulipala Pardhasaradhi, hereinafter referred to as "the declarant", by himself and through his proxies to save an extent of Ac 3.30 in N.T.S. No. 42, Ac. 0.89 cents in N.T.S. No. 43 and Ac. 0.87 cents in R.S. No. 21/5 in all Ac, 5.06 cents of land situated in Mogalrajapuram, Vijayawada town from the purview of the provisions of the Central Act. All these Writ Petitions sprang subsequent to filing of the declaration u/s 6(1) of the Central Act by the declarant as Kartha of Hindu Joint Family

consisting of himself, his spouse, minor children and one Kishore Kumar, who attained majority by the time of the filing of the declaration.

3. Before advertng to the points raised by the parties concerned in the various Writ Petitions, it is necessary to set out the facts in brief, for better appreciation of the questions involved for adjudication.

4. After the Central Act came into force on 17-2-1976, the declarant filed declaration in Form No. 1 on 15-9-1976. Under para 5 he has not only furnished the particulars of the members of the family as defined in Section 2(f) of the Central Act, but also stated in para 14 that his major son Kishore Kumar is entitled to 1/3rd coparcenary share in the Properties held by him as manager of the Hindu Undivided Family. In Column No. 13 of Annexure "A", while furnishing the particulars of the vacant land that was transferred after 17-2-1975, it was clearly stated that the declarant is a coparcenary owner and in Column No. 14, it was reiterated that the major son Kishore Kumar is entitled to 1 / 3rd of the coparcenary share. In Annexure "H", while furnishing the particulars of the properties disposed of between 17-2-1975 and 20-8-1976, the date on which the Act came into force, the declarant mentioned that an extent of Ac. 5.06 cents of land situated in N.T.S. Nos. 42 and 43 and R.S. No. 21/5 was sold to Sri Durga Building Co-operative Society, Vijayawada, hereinafter called as "Durga Society" under an agreement of sale. Conspicuously, neither any mention was made with regard to the date in which the land was sold nor about the delivery of possession to Durga Society. Subsequently, on 7-6-1977, the declarant filed an application before the Government seeking exemption to the above extent of land u/s 20(1)(b) of the Central Act on the ground that the said extent of land was sold to Durga Society at the rate of Rs. 42,000/- per acre and having received advance consideration of Rs. 12,000/- possession was delivered to the Durga Society and since then the latter was in possession and enjoyment of the said land. Conspicuously, this application also does not specify the date on which the agreement of sale was entered into. While the said application was pending before the Government, the competent authority prepared a draft statement in respect of the lands held by the declarant u/s 8(3) of the Central Act and served the same on him on 14-4-1978 inviting objections, if any, to the draft statement. In the draft statement, the competent authority allowed one unit to the declarant and another unit to his major son Kishore Kumar. The subsequent events indicate that the declarant filed his objections as to the computation of the land. At that stage, the declarant repudiated the agreement of sale in favour of Durga Society.

5. From the record, it is evident that the competent authority gave a personal hearing to the declarant on two occasions i.e., on 28-11-1980 and 15-7-1981 and before orders were passed on the objections filed, the declarant filed another application before the Government on 21-5-1981 u/s 20(1)(b) of the Cenral Act seeking exemption of the land on the ground that the same is being used for agricultural operations. But the Government seemed to have not passed any orders on the applications filed by the declarant seeking exemption of the land in

question. On 7-8-1982, the competent authority passed orders u/s 8(4) of the Central Act wherein the excess vacant land to be surrendered was determined at 20,477 Sq. yards. After some time, the competent authority passed final orders on 18-7-1986 determining the excess land to be surrendered and thereafter caused a notification on 21-8-1987 giving particulars of the lands held by the declarant in excess of the ceiling area. For reasons best known to the declarant, nearly two years thereafter, he filed one more application before the Government seeking exemption of the land on the ground that the land is under his cultivation.

6. Having waited for some time and having failed to obtain favourable orders from the Government, he seemed to have filed an appeal before the Commissioner u/s 33 of the Central Act only on 17-9-1990 and the same was dismissed on 23-3-1991. Thereafter, the competent authority got a notification u/s 10(3) of the Central Act published in the official Gazette on 10-4-1991 stating that the excess land will vest in the Government on 30-4-1991.

7. Questioning the said orders, the declarant filed Writ Petition No. 5699 of 1991 on 18-4-1991 on the file of this Court and this Court passed interim orders staying the notification except with regard to 1255 sq. metres covered by agreement, in W.P.M.P. No.7102/91 dated 19-4-1991. Nearly after a decade, Durga Society filed Writ Petition No. 11806/91 questioning the action of the competent authority in passing orders on the objections filed by the declarant on 7-8-1982 u/s 8(4) of the Central Act without giving notice to it as required under Rule 5(2) of the Urban Land Rules, 1976, hereinafter referred to as "the Rules" as the Society is interested in the land by virtue of its possession under an agreement of sale and sought for a declaration that the subsequent orders passed by the authorities under the Act are illegal. In the said Writ Petition, the Society filed W.P.M.P. No. 15032/91 and this Court granted interim suspension of the notification on 13-9-1991.

8. At this stage, on the applications filed by the declarant on 25-1-1981 and 13-1-1989 seeking exemption were rejected by the Government in Memo No. 5047/UC.I/90-6 dated 6-5-1991, holding that the land in question is earmarked for residential purposes as per the master plan and no agricultural operations are going on in the adjoining lands apart from the direction of the Government not to allow agricultural operations within the municipal limits as it would cause unhygienic conditions. Questioning the said orders, the declarant got Writ Petition No. 9331/91 filed by his second son who is an Advocate by profession. Subsequently, on the basis of the recommendations of the State Level Allotment Committee constituted for allotment of surplus land vested with the Government to various requisitionists in 5 urban agglomerations, at its meeting held on 17-7-1991, the Government issued G. O. No. 1156 Revenue (UCI) Department, dated 20-12-1991 assigning in extent of 20,477 Sq. metres to Vijayawada Urban Zilla Weaker Sections and Economically Backward Classes Society, Vijayawada, hereinafter called as "the EBC Society", to enable them to divide the same into

200 plots and allot them to 200 houseless members. Questioning the said orders of the Government, Durga Society filed Writ Petition No. 372/92 on the file of this Court and this Court suspended the order of allotment in WPMP No. 394/92 dated 21-1-1992.

9. While the proceeding under the Act were going on in this manner, perhaps with a view to strengthen their case and emboldened by some of the decisions rendered by this Court, Durga Society filed a suit O.S. No. 208/91 for specific performance of agreement of sale dated 14-7-1976 executed by the 1st defendant therein in favour of the Society on the file of Sub-Court, Vijayawada and the said suit was decreed on 4-11-1991 directing the declarant to execute a proper sale deed in favour of the society after obtaining necessary permission for the same under the Central Act 33 of 1976 and the defendants were directed to apply for permission within 15 days, failing which, Durga Society is entitled to get a sale deed executed either by the Court or by the defendants after getting a receiver appointed to get necessary permission for exemption from the provisions of the Central Act etc. From the record, it is evident that the defendant did not apply for permission for exemption of the land and Durga Society got an Advocate-Commissioner appointed by the Court, who in turn filed an application before the Government seeking exemption for the land in question from the provisions of the Central Act on 13-3-1992. Apart from the said application, Durga Society also filed an application before the Government for the same relief on 11-3-1992. The Government rejected both the applications in its Memo No. 22256/UCI(i) 92-1 dated 18th July, 1992 having categorically held that in view of the provisions of Section 42 of the Central Act, the decree of the Sub-Court is a nullity in the eye of law. Questioning these orders, Durga Society filed Writ Petition No. 9864/92 on the file of this Court and obtained interim suspension of the rejection order in W.P.M.P. No. 12354/92 dated 6-8-1992.

10. While all the above Writ Petitions filed either by the declarant or Durga Society were pending adjudication on the file of this Court, Mr. Kishore Kumar, the major son of the declarant for the first time after a lapse of 11 years filed Writ Petition No. 7996/93 on the file of this Court questioning the orders of the competent authority passed u/s 8(4) of the Central Act on 7-8-1982 on the ground that no notice was given to him as required under Rule 5(2) of the Rules, on the draft statement prepared by the competent authority and sought for a declaration that all the proceedings thereafter were vitiated.

11. As all the above Writ Petitions are interconnected, they were heard together and disposed of by our learned brother Justice Immaneni Pandurangarao (as he then was) by a common order dated 1-4-1994.

12. Now, we advert to each of the Writ Petitions filed by the parties, the orders passed by the learned Judge and the Writ Appeals filed by the aggrieved parties. Writ Petition No. 5699/91 was filed by the declarant himself questioning the findings of the competent authority as well as the appellate Authority with regard to items 1 and 4 as erroneous. Item 1 relates to an extent of 2822.67 Sq.

metres of land with a building which was given on lease to Vani Maha Vidhyala for purposes of running a school and on which the management raised seven temporary sheds within that premises. The contention of the declarant that the authorities under the Central Act ought to have allowed 500 Sq. metres of appertenant land for each of the seven temporary sheds was found favour with the learned Judge and accordingly the learned Judge directed exclusion of the vacant land covered by the play ground and the vacant site surrounding seven sheds while determining the holding of the declarant. With regard to item No. 4 the major son contended that the property belonged to his grand mother and the declarant got the same under a Will after the death of his grand mother in the year 1985 and as such, the same should not have been included in the holding of the declarant. On the other hand, the declarant contended that the land admeasuring 1255 Sq. metres covered by item No. 4 was sold to one Anne Koteswara Rao under an unregistered agreement of sale dated 16-8-1971. The contentions of both the declarant and his major son were rejected by the learned Judge holding that the authorities rightly computed the land in the holding of the declarant. With regard to item No. 6, the contention of the declarant that an extent of 421 Sq. metres of land covered by poultry farm shed and a residential house with 30 Sq. metres should have been excluded from the computation of the vacant land for arriving at the ceiling limit, did not find favour with the learned Judge and accordingly the said claim was rejected. Aggrieved by the above finding, while the declarant filed Writ Appeal No. 611/94 in so far as the order relates to item No. 4 only, but he did not question the finding of the learned Judge on item No. 6; the E.B.C. Society and the State filed Writ Appeal Nos. 457/94 and 1047/94 respectively questioning the finding of the learned Judge insofar as it relates to item No. 1 of the draft statement.

13. In Writ Petitions Nos. 11806/91 and 7996/93 the contentions raised by Durga Society and the major son of the declarant Mr. Kishore Kumar that from the stage of passing of the orders by the competent authority u/s 8(4) of the Central Act dated 7-8-1982 were vitiated for want of notice to them as they are "persons interested" in the land as required under Rule 5(2) of the Rules were accepted by the learned Judge and he declared that the orders passed u/s 8(4) of the Central Act and subsequent proceedings of the competent authority without issuing notice to them are illegal. Aggrieved by the orders in Writ Petition Nos. 11806/91, the Special Officer filed Writ Appeal No. 840/94 and questioning the orders passed in Writ Petition No. 7996/93 filed by Kishore Kumar, the E.B.C. Society filed Writ Appeal No. 455 of 1994 and the Special Officer filed Writ Appeal No. 1076/ 94.

14. Writ Petition No. 8331/91 filed by the declarant questioning the orders of the Government dated 6-8-1991 rejecting his request to exempt the lands from the provisions of the Central Act was dismissed by the learned Judge as the exemption sought by him was to retain the land for the purpose of cultivation while he categorically admitted in the counter filed in Writ Petition No. 372/92 that Government permission is needed for transferring the land in favour of the

Society in pursuance of the decree for specific performance of the agreement of sale passed in O.S. No. 208/91 and the same was held to be not permissible by the Supreme Court in *S. Vasudeva Vs. State of Karnataka and others*, . Aggrieved by the said orders, no Writ Appeal was filed either by the declarant or by his major son for the reasons best known to them.

15. With regard to Writ Petition No. 9864/92 filed by Durga Society questioning the orders of the Government dated 18-7-1992 rejecting its request for exemption of the land, the learned Judge held that Section 21 of the Central Act does not empower a third-party to seek exemption even assuming that the excess vacant land is intended to be utilised for construction of the dwelling units. Having stated so, the learned Judge dismissed the Writ Petition, Aggrieved by that, Durga Society preferred Writ Appeal No. 959/ 94 on the file of this Court.

16. With regard to Writ Petition No. 372/ 92 filed by Durga Society questioning the allotment made in favour of EBC Society, the learned Judge held that in the light of the orders passed by this Court on 19-4-1991 staying the operation of the notification issued by the competent authority u/s 10(3) of the Central Act dated 10-4-1991, which was subsequently made absolute by the order dated 19-8-1991, the orders of the Government were held to be clearly illegal and so did not go into the second objection that EBC Society not being a Co-operative Society is not eligible for assignment of the land. Aggrieved by the said orders, while the EBC Society filed Writ Appeal No. 456/94, the Special Officer filed Writ Appeal No. 1048/ 94.

17. All the above Writ Appeals came up-for final hearing before us and elaborate arguments were addressed.

18. First, we will take up Writ Appeal No. 455/94 filed by the EBC Society and Writ Appeal No. 1076/94 filed by the Special Officer against the orders of the learned single Judge in Writ Petition No. 7996/93 wherein the learned Judge held that non-service of notice on the persons interested under Rule 5(2)(a) of the Rules on draft statement prepared by him as regards the vacant land is fatal and all proceedings subsequent thereto are nullity in law. Sri B. V. Subbaiah, the learned counsel for the EBC Society and the learned Government Pleader contended that the declaration was filed by the declarant as a Kartha of Hindu Joint Family in a representative character. In fact, the competent authority allowed one unit in favour of the major son, as such the interests of the major son were protected and no injustice was done to him. Hence, no separate notice need be given to the major son. It was further urged on their behalf that the draft statement was prepared by the competent authority way back on 14-4-1978 and final orders were passed u/s 8(4) of the Central Act on 7-8-1982 having heard the declarant in person on 28-11-1980 and on 15-7-1981 on the objections filed by him on the draft statement. Now for the first time, the petitioners in the above Writ Petitions approached this Court after a lapse of more than 10 years and the Writ Petitions have to be dismissed on the ground of laches as they cannot unsettle the settled things.

19. Countering the above arguments, Sri P. Srinivas appearing for the major son vehemently argued that non-issuance of notice to his client on the draft statement prepared by the competent authority u/s 8(3) of the Central Act is fatal to the case and he relied on the decision of this Court in *V. Srirama Krishnaiah v. Spl. Officer and competent authority, Urban Land Ceilings, Vijayawada* 1989 (1) ALT 48 and another unreported decision of this Court in Writ Petition No. 6855/84 dated 26-8-1989 in support of his contention.

20. With regard to the first submission, the learned Government Pleader as well as Sri Subbaiah have taken us through the relevant portions of the declaration filed by the declarant to show that the declaration was filed by the declarant as Kartha of Hindu Undivided Family, but not as a "person" defined under the Central Act and claimed share on behalf of his major son. In column No. 14 of the declaration, the declarant categorically stated that he is having one major son and he is entitled to 1/3rd of the coparcenary share in the properties held by the declarant as manager of the Hindu Undivided Family. Further, in Annexure "A", with regard to the lands transferred etc., after 17-2-1975 till the Act came into force in column No. 13 about the nature of the interest in the land, the declarant categorically declared that he is a coparcenary owner and in column No. 14 dealing with other persons having interest in the lands and the nature of such interest, it was mentioned that major son Kishore Kumar is entitled to 1/3rd coparcenary share in the properties. As a matter of fact, on the basis of the information furnished by the declarant, the competent authority allowed an extra unit to which the major son is entitled to under the provisions of the Act as he was specifically excluded from the definition of the family.

21. These facts clinchingly establish that the declaration was filed in a representative capacity and it is not the case of the petitioner that his interests were not properly protected by his father and thereby he suffered any injustice worth the name to mention. In fact, at the Bar when we have questioned repeatedly how the interests of the major son were affected by not giving any notice to him, the counsel for the petitioner except stating that he would have offered some other lands, did not pinpoint the injustice done to him. From the record, it is seen, that except the property in question, the declarant alienated all other properties. Hence, there is no force in the contention of the major son.

22. Here, it is worth mentioning about the proceedings initiated by Durga Society seeking decree for specific performance by filing O.S. No. 208/81 on the file of Prl. Sub-Court, Vijayawada. As stated supra, the suit was instituted by Durga Society against the declarant on 20-4-1981 and the declarant filed his written statement on 22-8-1981 disputing the claim of the society on all possible pleas. Nearly after 8 years, the major son along with his brother and sisters got themselves im-pleaded as defendants 2 to 7 in the above suit as per the orders of the Court in I. A. No. 1508/87 dated 12-6-1989. Thereafter, they filed their written statement contending that they are not aware of the suit agreement of sale said to have been executed by their father, the price offered by the Society

is far lower than the prevailing market rate, possession of the land was not delivered to the plaintiff-Society and they have been in physical and exclusive possession and enjoyment of the plaint schedule property. The 2nd defendant i.e., the major son never consented or approved the suit agreement of sale. During the course of trial, the declarant has taken a complete "U" turn and just nodded his head in the witness box to the claim of the plaintiff-Society. On the basis of the admissions made and concessions given by the declarant in the witness box, the suit was decreed by the Prl. Subordinate Judge on 4-11-1991. In fact, on behalf of the defendants only the declarant was examined as D.W. 1 and he did not even speak of the repudiation of the contract by him and the applications filed on 21-5-1981 and 13-1-1981 before the Government seeking exemption of the lands in question from the provisions of the Central Act on the ground that the land is under his cultivation, in supercession of the application filed by him on 7-6-1987 wherein he sought exemption of the land on the ground that the land in question was sold to Durga Society. But the major son did not choose either to contest the suit or file an appeal against the judgment and decree of the Court below. The declarant in the witness box categorically stated that he sold the land to the plaintiff-Society as manager of the joint family for the benefit of the family and in fact the major son having seen the draft agreement of sale approved the same. This very fact itself proves that the major son had complete knowledge of the proceedings that are going on from time to time before various authorities under the Central Act. At no point of time, he ever made any attempt to come on record and participate in the enquiry, if he was of the opinion that his father was not able to safeguard his interests effectively. In fact, in the affidavit filed in support of the Writ Petition, he categorically stated that he is aged about 39 years on the date of filing of the Writ Petition and he is an employee of Andhra Bank. In para-6 of the affidavit he categorically stated that he was in service for the last 15 years. On his own admission, it is rather difficult to believe that he has no knowledge of these proceedings. No reasonable explanation is forthcoming from the petitioner for approaching the Court belatedly and on that ground itself the Writ Petition filed by the major son is liable to be dismissed.

23. Nextly, u/s 8(3) of the Central Act the draft statement shall be served on the person concerned, but not on all the persons interested. Section 8(3) of the Central Act is extracted below:

"The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof."

24. As such, the Rule making authority in exercise of the delegated powers cannot enlarge the scope of the enquiry by directing the competent authority to give notice to every person who is having an interest in the property under Rule 5(2) of the Rules which is extracted below:

"Rule 5. Particulars to be contained in draft statement as regards vacant lands

and manner of service of the same.

(1) xxx xxx xxx xxx

(2)(a) The draft statement shall be served, together with the notice referred to in sub- section (3) of S. 8, on -

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in, the ownership, or possession, or both, of the vacant lands,

by sending the same by registered post addressed to the person concerned;

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-sec. (1) of S.6, and;

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain".

25. Hence, a harmonious construction has to be given to R. 5(2) of the Rules by interpreting the same that the notice contemplated under this Rule is intended to a person whose interests are in conflict with the interests of the declarant. More so, in the light of S.4(4)(a) of the Central Act, which says that any transfer between 17-2-1975 and the appointed day have to be ignored for computing the excess vacant land held by the declarant. Section 4(4)(a) of the Central Act is extracted hereunder.

"Section 4(4)(a): In any State to which this Act applies in the first instance, if, on or after the 17th day of February, 1975, but before the appointed day, any person has made any transfer by way of sale, mortgage, gift, lease or otherwise (other than a bona fide sale under a registered deed for valuable consideration) of any vacant land held by him and situated in such State to any other person, whether or not for consideration, then, for the purposes of calculating the extent of vacant land held by such person the land so transferred shall be taken into account, without prejudice to the rights or interests of the transferee in the land so transferred :

Provided that the excess vacant land to be surrendered by such person under this Chapter shall be selected only out of the vacant land held by him after such transfer.

26. Under S. 5(1) of the Central Act, the excess vacant land to be surrendered by the declarant will be selected out of the vacant land held by the transferee, if the declarant is not having sufficient land to surrender. Section 5(1) of the Central Act is as follows:

"5. Transfer of vacant land -- (1) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purpose of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees".

27. As such, it has to be held that notice under R. 5(2) of the Rules is contemplated to such of the alienees, whose interests are in conflict with the declarant, but not to a person who is sailing with the declarant and who has no adverse interest to that of the declarant. If the Rule is not construed in that manner, the Rule is directly in conflict with S. 8(3) of the Central Act and the same is liable to be struck down.

28. The issue may be examined from another angle. The Rule says that notice has to be given to all the persons who are having claim or interest in the ownership etc. If the contention of the petitioner is to be accepted, then the wife and minor children of the declarant who are also included in the definition of the family will also be entitled for a notice as they are also having interest in the ownership and possession of the vacant land. As a matter of fact, while computing the vacant land not only the land held by the declarant but also of his/her spouse and the minor children from whatever source they claim their rights of the ownership, have to be computed. Hence, a notice is also to be given to these persons who are included in the definition of the family, and such a situation is not contemplated either by the Central Act or the Rules made thereunder.

29. Coming to the principal argument of the major son that this Court held that notice under Rule 5(2) of the Rules is mandatory and non-issuance of the notice is fatal to the subsequent proceedings as decided in Srirama Krishnaiah's case 1989 (1) ALT 48 (supra), we are inclined to think that he was wrongly inspired to file the present writ petition. We have gone through the judgment carefully and we are of the view that it is distinguishable on facts and the principle enunciated therein cannot be applied to the facts of the present case. In that case, the declarant's son having come to know of the orders passed by the competent authority through notification issued under S. 10(3) of the Central Act filed an appeal before the Appellate Authority under Sec. 33 of the Central Act and the same was dismissed by the Appellate Authority holding that the appeal was not maintainable.

30. After examining the scheme of the Act, the learned Judge expressed the view that the expression "person aggrieved" in S. 33(1) of the Central Act should be understood as the person holding vacant land in excess of the ceiling limit and non-filing of a statement in that regard before the competent authority for computation of the excess limit so held by such a person would be in contravention of the very scheme and the provisions of the Act. As the petitioner in the writ petition, the son of the declarant, did not admittedly file a declaration under SLV. 6(1) of the Central Act, he was not competent to file the appeal and, therefore, the order of the Appellate Authority holding that the appeal was not maintainable was sustained by the learned Judge. Having held that the declarant's son was not a person aggrieved the learned Judge while examining the contention advanced in the context of failure of the authority to issue notice under R. 5(2) of the Rules came to the conclusion that as the authorities had prior knowledge that the declarant had a major son, failure to issue notice to him under Rule 5(2) of the Rules was a vitiating factor and in that view set aside the appellate order and remitted the matter to the competent authority with a direction to issue fresh notices to the two major sons and daughter of the declarant, consider their objections and pass appropriate orders in accordance with law. With great respect to the learned Judge, we are unable to agree with the view that if a person could not be said to be an aggrieved person under S. 33(1) of the Central Act, he would still be entitled to notice under R. 5(2) of the Rules. The requirement of notice under R.5(2) of the Rules must be tested with reference to the nature of the adverse interest the person has, who is required to be given notice. Stated differently, if a person has no adverse interest vis-a-vis that of the declarant, he is not entitled to notice. A major of a Hindu Undivided Family, who is not required to file a declaration and who is entitled to one unit for himself u/s 4(7) of the Central Act, cannot be treated as a person with interest adverse to that of his father, the declarant. If any other interpretation is to be given, the very purpose and object of the Central Act would be defeated resulting in unending litigation. Further, the learned Judge does not give any indication whether an extra holding was given to the major son by the authorities concerned. We, therefore, with great respect to the learned Judge, hold that

Srirama Krishnaiah's case (2 supra) 1989 10 ALT 48 was not correctly decided.

31. The petitioner relied on another un-reported decision of this Court in Writ Petition No. 6855/84 in support of the same proposition. In that case, admittedly the declarant after filing the declaration died and after preparation of the draft statement, notice was given to his wife, who in turn stated that the major son of the declarant is entitled to a share in the property. From this it is evident that the competent authority did not allow one unit as contemplated u/s 4(7) of the Central Act to the major son. Further, in a Hindu coparcenery when the kartha of the family died, notice must go to the person who steps into the shoes of the kartha. Admittedly, till the estate is partitioned, the eldest male member of the coparcenery will automatically become the kartha of the family and in that sense also, the major son is entitled to a notice under Rule 5(2)(a) of the Rules. But without giving notice to the major son the competent authority chose to give notice to the wife of the declarant and as the major son is entitled to another unit even under the Act, his interest in the property to that extent was adverse to that of the mother. Hence, the learned Judge rightly held that a notice has to be given to the major son. As the facts of the present case are altogether different from the facts of the above case, the petitioner cannot take the aid of the said decision.

32. Coming to the question of laches on the part of the petitioner, a reading of the affidavit filed by the major son shows that he is, fully aware of the proceedings that are going on under the provisions of the Central Act and if he is really interested in safeguarding his interests independent of his father, nothing prevented him to come on record and put forth his case. On the other hand, in the suit filed by Durga Society, a semblance of protest was raised by him to show to the authorities that his interests are adverse to that of the interests of his father. But during the trial, he did not take any steps to prove his case or confront his father with his case when he was in the witness box, and when he was giving evidence contrary to the written statement filed by him. Further, the very conduct of the major son in not preferring an appeal against the judgment and decree of the Sub-Court and the decision of the learned single Judge in Writ Petition No. 8331/91 wherein the order of rejection of the application of the declarant seeking exemption was confirmed, itself speaks about the conduct and bona fides of the petitioner. During the course of the arguments, the learned counsel could not point out anything to show that the declarant (father) did not protect the interests of the major son.

33. The question can be viewed from another angle also. u/s 6(1) of the Central Act, every person holding vacant land in excess of the ceiling limit at the commencement of the Central Act is under an obligation to file a statement before the competent authority as required under the Central Act and the Rules made thereunder. If such a person fails to file a declaration as contemplated u/s 6(1) of the Central Act, the competent authority may serve a notice upon such person requiring him to file a statement referred in sub-section (1) within such

period as may be specified in that notice under Section 6(2) of the Central Act. So even if a notice was given by the competent authority directing the major son to file a statement on the basis of the information furnished by the declarant, the major son would not and could not have filed a declaration as he did not know to what extent and which land that would come to his share as he is a member of Hindu Undivided Family at the commencement of the Act. Further, after allowing two units -- one to the declarant and the other to his major son -- no land other than the one now under dispute was available for surrender. That being the factual position, insistence upon notice to the major son is nothing but futile exercise and a device to drag on the proceedings without any finality.

34. For all these reasons, we are of the opinion that no separate notice is necessary to the major son under Rule 5(2) of the Rules. Accordingly, Writ Petition No. 455/94 and 1076/94 are allowed and the order of the learned single Judge in Writ Petition No. 7996/93 is set aside.

35. The other Writ Appeal No. 840/94 was filed by the Special Officer aggrieved by the orders of the learned single Judge in Writ Petition No. 11806/91 wherein the learned Judge held that the Society falls in the category of "person interested", which is likely to have a claim or interest in the ownership of the land. The learned Government Pleader and the learned counsel for the E.B.C. Society contended that the Seamed Judge was simply carried away with the judgment and decree in O.S. 208/91 on the file of Sub-Court, Vijayawada in coming to the conclusion that the Society is entitled to a notice under Rule 5(2) (a) of the Rules without reference to the provisions of the Central Act. They have also pointed out that the society came into existence for the first time with 13 members on 18-11-1975 under Regd. No. G.2509 on the file of Deputy Registrar, Co-operative Societies, Vijayawada and the society passed a resolution on 7-12-1975 to purchase the land in question. Thereafter, the society entered into an agreement with the declarant to purchase the land on 14-1-1976 on a stamp paper of Rs. 5/- which was purchased by a person unconnected with the transaction on 22-6-1975. In other words, the agreement was entered into by the parties within a period of less than one month before the Central Act came into force to defeat the provisions of the Act, if possible. As per the terms of the agreement, the extent of Ac. 5.06 cents of land in the heart of Vijayawada town was sold for a paltry consideration of Rs. 42,000/- per acre and the purchase to become effective on condition that the declarant should obtain necessary permission under A. P. Vacant Lands (Prohibition and Alienation Act), 1972. As the declarant failed to obtain such a permission as per the terms of the contract itself the agreement is unenforceable. Further, even at the rate at which the land was sold, clause 3 of the agreement says that the declarant delivered possession of the land to the society on receiving advance consideration of Rs. 12,000/- whereas the value of the land works out to Rs. 2.25 lakhs, which again establishes that it is a collusive transaction intended to avoid the provisions of the Act.

36. On the other hand, the learned counsel for Durga Society contended that the society is not only an agreement holder, but also in possession of the property under the agreement. The society comes under the category of "person interested" and as such non-issuance of notice to the society is fatal. Hence, all the proceedings subsequent to Section 8(3) notification are liable to be set aside. In support of this contention, he relied on several decisions which we shall advert, to a little later.

37. The records maintained by the society show that initially the society was registered with 13 members on 18-11-1975 and on 7-12-1975 a resolution was passed by the Managing Committee to purchase the land in question. Subsequently, 17 persons were admitted as members of the society on 9-12-1975. Out of the total 30 members, only 6 members contributed Rs. 2,000/- each to pay Rs. 12,000/- as advance to the declarant at the time of entering into agreement. Thereafter, the activities of the society were dormant till they decided to file a suit referred above in April, 1981 except alleging that the president of the society addressed a letter to the declarant in 1979 to obtain exemption from the Government and to complete the transaction. But at the same time, the letter does not contain any date and there is no evidence whether the letter was received by the declarant or not.

38. Further, the declarant has shown the land with building which was given on lease to Vani Vidyalayam in 1974 in Annexure "A" to the declaration and Annexure "H" relates to the lands that were disposed of on or after 17-2-1975 and before commencement of the Central Act i.e., 28-1-1976. It is seen that while 3 items of the property were sold under registered sale deeds, the land in question and another extent of 1255.195 sq. meters were shown as disposed of under agreement of sale. But the Annexure does not disclose when the land was sold to Durga Society and when possession of the land was delivered to Purga Society. The Annexure further shows that all these lands were sold for family necessities, whereas the children of the declarant having got themselves impleaded as party defendants in O.S. No. 208.91 categorically stated that the lands were not sold for the benefit of the joint family. Likewise, in the application filed by the declarant on 7-6-1977 before the Government seeking exemption of the lands in question from the provisions of the Central Act, he did not specify the date on which the lands were sold under agreement of sale. Evidently, the agreement of sale was brought into existence on an ante dated stamp paper with a view to see that the lands are taken away from the purview of the provisions of the Central Act.

39. Now, coming to the suit filed by the society, from the documents marked in the suit on behalf of the society, the president of the society addressed a letter to the declarant in 1979 which was marked as Ex. A.4 in the suit to intimate them whether the declarant obtained permission from the competent authority under the Central Act for selling the said property to them and if the permission is not obtained till then, the declarant was requested to obtain the same expeditiously.

But no evidence is forthcoming when this notice was sent to the declarant, whether the declarant received the said notice or not, whether he sent any reply or not. After a lapse of two years from the date of the alleged notice, the suit was instituted by the society on 25-4-1981. Perhaps after receipt of suit summons, the declarant filed an application before the Government on 21-5-1991 seeking exemption of the land from the provisions of the Act for agricultural purposes. The declarant filed a written statement on 22-8-1991 resisting the suit on all possible grounds. He not only denied the receipt of the alleged notice, but also contended that the land was under occupation of a tenant by name Srimati Chekuri Jayalaxmi. He also pleaded that the agreement of sale was obtained by fraud and he is under no obligation to apply for exemption of the land. But, a look at the evidence given in the suit will clearly indicate that he simply supported the case of the plaintiff i.e.. Durga Society which resulted in the passing of the decree against him. From the record, it is now evident that while he was trying to obtain exemption of the lands from the Government for his own use since 1981 after repudiating the contract with Durga Society in 1978 itself and having gone to the extent of pleading fraud in the written statement, he did not put up even a semblance of resistance to the suit claim by the society when he was in the witness box. It is further interesting to note that the children of the declarant including Sri Kishore Kumar, the major son having come on record on their own in 1989 and having filed a written statement stating that the declarant entered into the agreement without their knowledge and consent and the alienation is not for the benefit of the family, as such they are not bound by the actions of the declarant and no decree for specific performance can be granted against them, did not even choose to come to the witness box to putforth their case. They did not file appeal against the suit and allowed the decree to become final. The conduct of all the parties involved in the suit leads to irresistible conclusion that the society was brought into existence by the members of the declarant's family with their own supporters only to obtain exemption from the provisions of the Central Act in respect of the excess land held by the family.

40. Coming to the legal position, transfers effected between 17-2-1975 and the appointed day will be taken into account for computing the extent of the vacant land held by the declarant as specified in Section 4(4)(a) of the Central Act which was already extracted above. u/s 5(1) of the Act, excess land will be selected from out of the vacant land held by the transferor and if it is found to be not sufficient, the balance will have to be selected from the land held by the transferee. Section 5(2) of the Act lays down that the transfer of the excess vacant land so selected shall be deemed to be null and void. The provisions of the Central Act were, given overriding effect u/s 42, which is extracted below:

"42. Act to override other laws:-- The provisions of this Act shall have effect notwithstanding anything inconsistent there with in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority."

41. From this, it is evident that the land in question was sought to be transferred after 17-2-1975 under an unregistered ante dated agreement of sale which cannot create any right or interest in favour of the alleged transferee-Society. Further, even the agreement under which the land was transferred clearly states that the transfer is subject to obtaining necessary permission under the A.P. Vacant Land (Prohibition and Alienation) Act, 1972. Admittedly, no permission was obtained under the said Act and as such the agreement is enforceable in law and it cannot confer any rights on the vendee.

42. In view of the legal position stated above, Durga Society cannot take shelter under the decree of the Civil Court in O.S. No. 208/91 and the land covered by the agreement of sale is liable to be computed in the holding of the declarant for the purpose of arriving at the excess vacant land held by the declarant and the decree is non est to that extent.

43. The learned counsel for the petitioner relied on an unreported judgment of this Court in C.R.P. No. 2938/81 dated 21-6-1992. The matter related to Specific Performance of an agreement and the question for consideration was whether the judgment debtor could raise a plea that the decree of the Civil Court is inexecutable as the agreement of sale dated 19-7-1975 was hit by Section 4 of the State Act as contended by him. The learned Judge having taken the view that by the time of the agreement, the Central Act came in to force and Section 4(4) (a) of the Central Act would prevail over the State Act and the Decree Holder is entitled to take the benefit of the said provision. By relying on Section 54 of the Transfer of Property, the learned Judge held that agreement of sale cannot be treated as transfer of interest as it does not create any interest or charge and any transfer of immovable property should be by way of a regular conveyance but not by mere agreement between the parties.

44. The above judgment is of no help to the Durga Society as it was claiming interest in the property as an agreement holder by which no title was conveyed to it.

45. It is pertinent to note that the learned Judge relied on a decision of the Supreme Court in State of A.P. v. Mohd Ashrafuddin AIR 1992 SC 913 (sic), the relevant portion of which is as follows:

"It is by now well settled that a person in possession pursuant to a contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor The High Court, therefore, erred in holding that the land in possession of the transferee cannot be taken to be a part of the transferor-respondent."

46. The above judgment makes the legal position explicit. Though the transferee gets into possession of the land under an agreement of sale as no valid deed of

title is executed in his favour, the ownership will remain with the transferor and the land in possession of the transferee has to be computed in the holding of the transferor-declarant. In fact, u/s 5(1) of the Central Act, if any vacant land in excess of the ceiling limit was transferred by executing a regular conveyance deed between 17-2-1975 and 17-2-1976 when the Central Act came into force, the land so transferred shall also be taken into account in calculating the excess vacant land held by the declarant and if no vacant land held by the transferor is available for surrender, the entire excess vacant land shall be selected out of the vacant land held by the transferee, that is to say, even if the transfer of immovable property is by executing a regular conveyance deed, the transfer is subject to the provisions of the Central Act with regard to the rights of the Government vis-a-vis the transferee under the provisions of the Central Act.

47. The learned counsel for the Society nextly relied on another decision in *Swaran Singh and others Vs. State of Punjab and others*, . The matter arose under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (1948). The question that arose for consideration before their Lordships of the Supreme Court was whether the tenant of an agricultural land can be a "party interested" and can claim notice to appear and opportunity to be heard in proceedings u/s 42 of the Central Act before the Government. In that case, there was a title dispute between the persons claiming to be owners and the Gram Panchayat. In that context, their Lordships of the Supreme Court held that as a result of the order to be passed u/s 42 of the Central Act, there is a likelihood of the tenant being dispossessed and as such the tenant would be a "party interested" as he is likely to be affected by the decision or result of the proceedings. As such, the tenant would be a "party interested" and so entitled for a notice.

48. The above decision of the Supreme Court be applied to the facts of the case as Durga Society in the present case alleged that it came into possession of the land under an agreement of sale, but no valid deed of title was executed in its favour. Assuming for a moment that a suit for specific performance is maintainable against the declarant, the same is non est in law in view of Section 42 of the Central Act and even as per the judgment of the Supreme Court in *Mohd Ashrafuddin's case* AIR 1992 SC 913 (sic) (supra), the land in possession of the transferee is liable to be computed in the holding of the declarant.

49. Another decision relied on by the society is *The Nullimarla Jute Mills Co. Ltd. Vs. Sree Mahaveer Rice and Oil Mills*, . In the said case, a Division Bench of this Court considered the question whether the transfer of a building with open space would fall u/s 5(3) or Section 27 of the Central Act and held that the transfer was covered by Section 27 of the Central Act. This ruling in no way advances the case of the Durga Society.

50. The next decision relied on is *Shah Jitendra Nanlal Vs. Patel Lallubhai Ishverbhai*, . The question that arose for consideration of the Court in that case was whether in view of the provisions of the Central Act, prohibiting transfer of

surplus land u/s 5(3), any transfer made in-contravention of the said provisions shall be null and void and whether a decree for specific performance could be granted in a case where the suit was pending on the date of commencement of the Act. The Gujarat High Court taking into consideration the power vested in the Government to exempt any vacant land from the purview of the Central Act, held that a conditional decree for specific performance can be granted by the Civil Court subject to exemption being obtaining u/s 20 of the Central Act. In that case, the agreement of sale was dated 4-7-1966, much earlier to the coming into force of the Central Act.

51. It is pertinent to note that in Smt. Meera Gupta Vs. State of West Bengal and others, , their Lordships of the Supreme Court while considering the question whether the land on which construction commenced on or after the appointed day is covered by the expression "any other land" occurring in Section 4(9) of the Act held:

"..... in the sequence would thus mean any other built-upon land except the one excluded from the expression "vacant land" on account of it being occupied by a building which stood constructed, or was in the process of construction, on the appointed day. If such interpretation is not given the concept on the appointed day and the gap period would be rendered otiose."

In reaching the said conclusion their Lord- ships drew support from Section 5 of the Central Act. In para 13 of the judgment it was observed:

"Such interpretation of ours finds support from S. 5 of the Act which pursues and does not leave alone transfer of vacant land m the gap period. It provides as follows:

"5. TRANSFER OF VACANT LAND-

(1) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person.

XXX XXX XXX XXX XXX

(2) Where any excess vacant land is selected out of the vacant land transferred under subsection (I), the transfer of the excess vacant land so selected shall be deemed to be null and void.

XXX XXX XXX XXX XXX

The underlining is reflective of the scheme of the Act inasmuch as transfers of vacant land within the gap period are ignorable, and likewise, in our view, vacant land brought under construction of building by a person within the gap period is also ignorable for the purposes of calculating the extent of vacant land, so that

the provisions of law are not defeated by human ingenuity."

52. For all the above reasons, when a transfer covered by Section 4(4)(a) of the Central Act is liable to be ignored for purposes of the Act, the Society cannot contend that it is entitled for a notice as required under the Rules as a "person interested".

53. Coming to the alleged possession of the society over the land way back on 21-5-1981, the declarant categorically stated in his application seeking exemption of the lands that he is in possession of the land and the same position was reiterated till the end of the proceedings under the Central Act. Further, while the proceedings were going on under the Act, on the representation made by the EBC Society, the Government called for reports from the lower authorities and in the reports submitted, nowhere it was stated that the land was in possession of Durga Society. In fact, during the course of arguments, to the repeated queries raised by us whether the society is having any documentary evidence to show that the lands are in its possession, the counsel for the society could not give any answer. From the above facts, it is highly difficult to believe that the land in question is in possession of Durga Society.

54. Further, in the instant case, the draft statement u/s 8(3) of the Central Act was prepared way back on 14-4-1978 and Durga Society having claimed that notice was given to the declarant in January, 1979 and having filed O.S. No. 208/91, cannot plead ignorance of the proceedings before the competent authority or the appellate authority. For the first time, Durga Society filed the Writ Petition in question only in 1991 contending that non-issuance of notice on the draft statement prepared by the competent authority is fatal to the proceedings. On the ground of laches, also, the claim of the society is liable to be rejected.

55. For all these reasons, we hold that Durga Society cannot claim notice under Rule 5(2) of the Rules as a "person interested" and accordingly, we allow Writ Appeal No. 480/94 filed by the Special Officer and set aside the order of the learned single Judge in Writ Petition No. 11806/91.

56. In the light of the view taken by us with regard to the locus-standi of the Durga Society in claiming notice under Rule 5(2) of the Rules, Writ Appeal No. 959/94 filed by the Society against the judgment in Writ Petition No. 9864/92 must fail.

57. But the learned counsel for Durga Society relying on certain decisions, seeks a direction to the Government from this Court to consider the application filed by it seeking exemption of the lands in question from the purview of the provisions of the Central Act.

58. He tries to distinguish the decision of the Supreme Court in *S. Vasudeva Vs. State of Karnataka and others*, by stating that their Lordships of the Supreme Court dealt with an application filed u/s 20(1)(b) of the Central Act wherein the

landholder sought exemption of the lands by Contending that undue hardship is being caused to him, whereas the Durga Society filed an application u/s 20(1)(a) of the Central Act and the Government is bound to consider the application in public interest and exempt the land in question. It is a fact that the Advocate-Commissioner appointed in the suit O.S. No. 208/91 filed an application u/s 20(1)(a) of the Central Act and we have gone through the contents of the said application. Except stating that the land was purchased under an agreement of sale and the society obtained a decree for specific performance, no whisper was made anywhere in the petition, what is the public interest involved in the case for seeking exemption.

59. Firstly, under the provisions of the Act, the excess land vested with the Government has to be disposed of by the State Government to sub-serve the common good on such terms and conditions as the State Government may deem fit to impose u/s 23(4) of the Act. In fact, on the basis of the guidelines given by the Government of India for disposal of the vacant land vested in the Government in exercise of its powers u/s 36 of the Act, G.O. Ms. No. 840 Revenue (UC. II) Department, dated 16-2-1992 was issued by the State Government prescribing priorities for allotment of the excess vacant land. Under clause (i) land can be allotted to Co-operative Housing Societies in which not less than 75% of the members belong to weaker sections, Class IV, low income and middle income groups in the order of priority to the extent of 75% of the available excess land. But as per the admission register, out of the 30 members of the society as on the date of the purchase of the land, 20 members belong to Kamma Community, two members belong to Kapu Community one Muslim and two persons belonging to Dhobi community, while the identity of 6 other members caste-wise is not available in the admission register. All of them without exception are engaged in gainful employment like service in Government or Banks, business and agriculture etc. From this, it is evident that the members of the society do not fall under any of the eligible categories and so they are not eligible for allotment of the land by the Government.

60. The learned counsel for Durga Society relied on an unreported decision rendered by a Division Bench of this Court in Writ Appeal No. 12/ 89 dated 7-3-1995 (Govt. of A.P. v. Secunderabad wholesale Cloth Merchants Association). In the said case, exemption was sought by the wholesale Cloth Merchants Association, which entered into an agreement of sale on 13-12-1979 with the landholders to purchase the land in question for purpose of shifting the wholesale, cloth business to the site in question as the present Textile Market in Secunderabad was located in a very congested locality with no transport facilities either for ingress or egress of vehicular traffic. As the Government did not consider the matter from that aspect, this court directed the Government to consider the question of grant of exemption keeping in view the requirements of Section 20(1)(a) of the Central Act. In the instant case, the facts and circumstances set out in the application seeking exemption do not warrant consideration of the application in the "public interest". In fact, we have already

recorded a finding that Durga Society is not entitled for allotment of the excess land vested in the Government.

61. The learned counsel for Durga Society relied on another decision of the Supreme Court in *Bai Dosabai Vs. Mathurdas Govinddas and Others*, . In the said decision, though the suit filed by the lessee against the lessor for specific performance was dismissed by the trial Court, the appellate Court reversed the judgment and decreed the suit holding that the lessor should sell the land in question in public auction under ordinary law and several conditions were imposed in that judgment with which we are not concerned. The High Court also confirmed the decree. Ultimately, in the Supreme Court having failed in all his contentions, the counsel for the lessor contended that the contract became impossible of performance as a result of enactment of the Central Act. Rejecting the said contention, their Lordships of the Supreme Court held that the Act came into force subsequent to passing of the decree by the High Court.... The rights obtained by a party under a decree cannot be allowed to be defeated by delay in the disposal of the appeal against the decree, if it is possible to save the decree by moulding it to confirm to the statutes which came into force subsequently. Having taken such a view their Lordships modified the order of the High Court to bring it in conformity with the provisions of the Central Act and a direction was issued for appointment of a Receiver to take all necessary steps to seek exemption from the operation of the Act by taking the help of an organiser and/or builder to built residential premises for weaker sections of the society, and/or by joining with the Co-operative Society in applying for an exemption under the said Act..... Their Lordships of the Supreme Court while giving such a direction took necessary care to see that the decree obtained by the lessee is not frustrated and at the same time the provisions of the Central Act are not defeated and a direction was given to obtain exemption for construction of residential premises for weaker sections of the Society in consonance with the scheme of the Act. That is not the case in the instant case and the said judgment is of no help to the appellant.

62. Another decision relied on by Durga Society is *Muthulakshmi Achi Vs. Meenakshi Achi and Others*, wherein their Lordships of the Supreme Court directed the Government to grant exemption u/s 20 of the Act to the extent of the building and land that was permitted to be sold in favour of the appellant by the Supreme Court after recording a finding that the said property is being sold to discharge the debts due by the estate including tax arrears. In that case also a decree was obtained by several creditors of the landholder in O.S. No. 49/67 on the file of the Court of Subordinate Judge, Devakottah long prior to the Central Act came into force. At the same time, their Lordships of the Supreme Court made it very clear that such unusual direction is being given by the Supreme Court in the peculiar facts and circumstances of the case with a view to do complete justice between the parties. Hence, the said judgment will not be of any help to Durga Society.

63. Next, the learned counsel contended that right to seek exemption is dormant till the Government passed an order u/s 10(3) of the Central Act and relied on *Shah Jitendra Nanalal Vs. Patel Lallubhai Ishverbhai*, . We have absolutely no quarrel with the principle laid down in the above decisions and on that ground the Durga Society cannot seek exemption of the lands alleged to have been purchased by it under an unregistered agreement of sale.

64. Another decision that was relied on by the Society is *Katya Co-operative Building Society Limited and Others Vs. Government of Andhra Pradesh and Others*, . In the said judgment a Division Bench of this Court was considering the validity of G.O.Ms. No. 964 dated 27-6-1983 wherein a decision was taken by the Government to reject all applications for exemption. A reading of the entire judgment reveals that this Court held that the rejection of the applications seeking exemption enblock is bad and in contravention of the guidelines given by the Central Government u/s 36 of the Central Act for carrying out the purpose of the Central Act. The principle laid down in the said judgment is of no avail to the appellant-Society in the light of the view we have already taken to the effect that the Society cannot fall in any of the eligible cooperative societies enumerated in G.O.Ms. No. 840.

65. On the other hand, a Division Bench of this Court in *Spl. Officer and Competent Authority, Urban Land Ceiling and Another Vs. P. Ramanamma*, upheld the orders of rejection passed by the Government on the applications filed by the holder of surplus vacant land to sell a portion of the excess vacant land to a Co-operative Society.

66. For all these reasons recorded above, none of the judgments relied upon by Durga Society are applicable to the facts of the case. Hence, Writ Appeal No. 959/94 filed by Durga Society against the orders of the learned single Judge in Writ Petition No. 9864/92 fails and accordingly it is dismissed.

67. We now come to Writ Appeal No. 456/94 filed by EBC Society and Writ Appeal No. 1048/94 by the Special Officer against the orders of the learned single Judge in Writ Petition No. 372/92 setting aside the orders of the Government issued in G.O.Ms. No. 1156 Revenue (UC.I) Department dated 20-12-1991 assigning the lands in question to EBC Society on the ground that the assignment was made in violation of the interim order granted by this Court in W.P.M.P. 7102/91 dated 19-4-1991 while admitting Writ Petition No. 5699/91, which was made absolute on 19-8-1991. The learned Government Pleader and Sri Subbaiah the learned counsel appearing for the Society tried to sustain the order of the Government by contending that the above orders were issued pursuant to the recommendations of the State Level Committee at its meeting held on 17-7-1991 and the order categorically states that the possession of the land has to be handed-over to the Society after taking possession from the declarant. In fact, in the said G.O. as many as 22 applications including the application of the EBC Society was considered and orders were passed on the basis of the recommendations of the State Level Committee. Hence, neither any

illegality nor any irregularity was committed by the Government in issuing the said orders and Durga Society cannot question the allotment of the land in its favour as it is a stranger to the proceedings and the collusive decree obtained by Durga Society in O.S. No. 208/91 is non est in law and the same is unenforceable as the very transaction is hit by Section 4(4)(a) as well as Section 42 of the Central Act. On the other hand, Durga Society strenuously contended that the action of the Government in assigning the land to EBC Society is vitiated by mala fides and that president of the EBC Society tried to grab the land in question and was also able to get favourable reports from the officers concerned and drew our attention to the endorsement made by the Prl. Secretary to Revenue, which is filed as a material paper at page 76 of the paper book. The endorsement of the Prl. Secretary is at page 82 to the effect "we may dispense with the procedure of placing it before the State Level Committee. However, we should ensure about the eligibility of the Society and its members. We may call for a report from the District Collector." It is further contended that as per the guidelines issued by the Government in G.O.Ms. No. 840 dated 16-6-1982 with the approval of the Government of India, only Co-operative Societies in which the members belonging to weaker sections are more than 75% are eligible for assignment of the excess land vested in the Government as per the priorities indicated therein. But in the instant case, the EBC Society is not registered under the provisions of the Co-operative Societies Act, but only under the provisions of the Societies Act and none of its members belong to weaker sections of the society. On this ground also, the orders of the Government are vitiated. Apart from that, after this Court passed interim orders staying the notification issued u/s 10(3) of the Central Act on 19-4-1991, the declarant filed another Writ Petition No. 8331/91 questioning the rejection orders passed by the Government on the application filed by the declarant seeking exemption of the lands in question from the purview of the Central Act and obtained interim orders on 5-7-1991. Thereafter, EBC Society got itself impleaded in both the Writ Petitions and filed vacate stay petitions in both the Writ Petitions, which were disposed of by a common order of this Court on 19-8-1991 whereunder the interim stay granted earlier was made absolute. In fact, the society carried the matter in appeal by filing at Writ Appeal and the same was dismissed. He also tried to draw our attention to various proceedings to show that there is a scramble for possession. It was contended that for all the above reasons, the order of the Government cannot be sustained.

68. In this Writ Appeal, we are not inclined to adjudicate the dispute between the two societies and decide whose actions are legal and whose actions are illegal. It is suffice to say that in the teeth of the various orders referred to above, the Government's order cannot be sustained in law. Further, as rightly contended by Durga Society, the Government can allot excess land vested in it only to a Co-operative Society mainly formed with persons belonging to weaker sections of the society. Admittedly, the EBC society was registered only under the provisions of the Societies Act and none of its members belong to weaker sections or Class

IV or low income groups and it is not the case of the Government that in Vijayawada town there are no eligible persons belonging to weaker sections to assign the land for construction of dwelling houses. On the basis of the record, it is evident that the land in question is in the heart of Vijayawada town and the members of Durga Society as well as the EBC Society, who are influential persons are trying to over reach each other and hectic efforts are being made to take possession of the land circumventing the provisions of the Central Act, and defeating the very laudable objectives underlying this welfare legislation. Accordingly, we hold that the members of both the societies are not eligible for assignment of the excess land vested in the Government as per the guidelines issued in G.O.Ms. No. 840 dated 16-6-1982. Accordingly, while setting aside the orders of the Government issued in G.O.Ms. No. 1136 dated 20-8-1991, we direct the authorities concerned to make a thorough investigation about the eligibility of the persons applying for assignment of the land in question and try to assign the land in the order of priority indicated in the above G.O. after the excess land is vested in the Government, if the same is not required for any public purpose.

69. As far as the merits of the case are concerned, while the EBC society and Special Officer filed Writ Appeal Nos. 457/94 and 1047/94 respectively aggrieved by the orders of learned single Judge to the extent of allowing 500 sq. metres for each of the seven asbestos sheds that were raised by the Management of Vani Vidyalayam in the premises bearing D. No. 29-29-69 in ward No. 26 of Vijayawada town, admeasuring 2822.67 sq. metres which was taken on lease by the Vani Vidyalayam with the main building standing on the land in question, the declarant filed Writ Appeal No.611/94 against the orders of the learned single Judge in not excluding 838 sq. metres of land with a residential building in N.T.S. No. 791 by accepting the plea of the declarant that the same belongs to his mother.

70. Now, we take up Writ Appeal Nos. 457/94 and 1047/94. The learned counsel for both the Special Officer and EBC Society strongly contended that the teamed. Judge went wrong in allowing 500 sq. metres for each of seven sheds and the Central Act contemplates exclusion of 500 sq. metres of land along with the land occupied by the building and the same is not proper. On the other hand, the counsel for the declarant tried to sustain the order of the learned Judge by relying on the decision in *Agra Concrete Pipe Co. Vs. Competent Authority, Agra and Another*, whereunder a Full Bench of that Court excluded the appurtenant land admeasuring 500 sq. metres for each of the tanks located in a factory.

71. Section 2(g) of the Central Act is extracted hereunder:--

"2(g) "land appurtenant", in relation to any building, means -

(i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square metres; or

(ii) in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by the building.

and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii), as the case may be;

72. From this it is seen that while computing the excess vacant land held by the declarant, the land occupied by the building and appurtenant land up to a maximum extent of 500 sq. metres shall be excluded. Admittedly, on the appointed day, Vijaya-wada was a municipality and governed by Building Rules framed by the Government, u/s 230 of the A.P. Municipalities Act which are incorporated in Schedule III. Building is defined in Section 2(3) of the A.P. Municipalities Act as follows:

"(3) "building" means any structure constructed of any materials for any purpose, and includes a house, out-house, shop, stable, latrine, shed, hut, wall (other than boundary wall not exceeding two metres in height), or any part of such building".

73. Under Rule 1(ii) of the Building Rules, "dwelling house" means,

"a house designed or intended to be used wholly or principally for human habitation together with such out-buildings, latrines, and other erections as are ordinarily used or intended to be used therewith."

74. Rule 9(2)(ii) of the Building Rules is as follows:

"Where a site is away from any street, the front set back shall be equal to half the height of the building and shall in no case be less than 4.0 metres in depth.

75. Rule 9(4) is as follows:

"Between the rear boundary of every building site and the building itself, there shall be an open space exclusively belong to such building and extending laterally throughout the width of the site to a depth of not less than 3 metres:

Provided that where this depth cannot be obtained throughout the entire width of the site by reason of the exceptional shape of the site or other exceptional circumstances, it shall suffice if the mean depth is not less than three metres.

76. Rule 9(7) is as follows:

"Buildings wholly or partly intended for human habitation or to be used as offices, schools, factories, workplaces and the like where human being work for considerable part of the day, except the buildings to be solely used as shops, godowns or warehouses, shall not cover more than two thirds of the area of the site and the remaining one-third, area of the site shall be kept as vacant space open to sky.

77. Rule 9(8) is as follows:

"The open space required to be left in and around a building under sub-rules (2), (4), (5) and (7) shall be measured at the level of the proposed construction, reconstruction, conversion or addition or alteration proposed on any floor other than the ground floor, being taken to be the line along that floor vertically above the boundary line on the ground."

78. Rule 9(9) of the Building Rules is as follows:

"No construction, reconstruction or addition for a building shall be allowed if such work operates to reduce an open space of any other adjoining building to the same owner to an extent less than what is prescribed by this rule or to reduce further such open space if it is already less than that prescribed."

79. The entire premises was assessed to tax under the Municipal Door No. 29-28-69. In the light of these rules, the Municipality could not have treated the sheds as independent buildings and accorded permission, since the sheds put up were resting on the compound wall of the building.

80. Further, during the course of the arguments, we have perused the lease agreement entered into between the parties and under the said agreement, the declarant while leasing out the premises gave permission to the lessee to raise temporary sheds for the purpose of running the school. The temporary sheds raised by the lessee for the purpose of running the school cannot be considered as independent buildings as defined under A.P. Municipalities Act. They can at best be treated as out-houses which are included in the definition of the building. As such, the declarant is entitled to claim exemption for the land occupied by the building and an appurtenant land of 500 sq. metres only, but not more. But the learned counsel for the declarant by relying upon the decision of the Full Bench of Allahabad High Court in *Agra Concrete Pipe Co. Vs. Competent Authority, Agra and Another*, wherein the learned Judges allowed 500 sq. metres for each of the three tanks located in the business premises of the petitioner-company, which was constructed for curing the cement pipes contended that for each of the asbestos shed, an appurtenant land of 500 sq. metres should be left while computing the excess vacant land held by the declarant.

81. We have considered very carefully the Allahabad Full Bench decision. With great respect to the learned Judges of that Court, the ratio decidendi laid down in that case cannot be applied to the facts of the present case. Firstly, the learned Judges considered in their judgment about the appurtenant land that can be claimed for the tanks constructed for curing the concrete cement pipes in the premises of the petitioner-company. Secondly, there is no material before the learned Judge that whether the 3 tanks in question form part of a larger tank or not. Thirdly, the learned Judges having extracted the scheme of the Act in question as reported in *State of Uttar Pradesh and Others Vs. L.J. Johnson and Others*, straightway allowed exemption.

82. Keeping the philosophy underlying the provisions of the Central Act, it is not possible for us to hold that the declarant can claim the appurtenant land of 500 sq. metres for each of the sheds in question Further, in paragraph 8 of the judgment, the learned Judges negated the similar claim of the petitioner-company for the sheds, which is as follows:

"This takes up to the next contention urged by Mr. Agarwal. He urged that the petitioner has two sheds. He is also entitled to 500 sq. metres in respect of each of the sheds. We do not think that we could accept this submission. Learned District Judge has rejected this claim on the ground that the two sheds are adjoining sheds and should be treated as one structure. In other words, he has proceeded on the basis that although there are two numbers given to the shed they form parts of the same structure or building. We do not find any infirmity in this finding and accordingly reject the contention urged for the petitioner."

83. In other words, the learned Judges proceeded on the basis that though two numbers were given to the sheds, they form part of the same structure.

84. During the course of the arguments, the counsel for the declarant submitted a plan of the premises certified by the Deputy Executive Engineer, Irrigation Department said to have been approved by Vijayawada Municipality granting permission for raising these structures. This is only a photostat copy of the alleged approved plan of the premises. But at the same time, the learned counsel did not place the application given by the lessee seeking grant of permission for raising the sheds in question to know the circumstances under which the Municipality gave the alleged permission contrary to Building Rules, if these sheds are to be treated as buildings. At any rate, the entire premises is covered by a single municipal number and the same is being assessed to tax as a single unit as per the tax assessment register of the Vijayawada Municipality produced before us. Accordingly, we reject the declarant's claim in this regard.

85. The learned counsel for the declarant tried to argue before us that a road formed in the premises also should be excluded. A look at the plan reveals that the premises is situated in between two streets and a school is being in the premises, Gates are provided on both sides of the premises for ingress and egress of the pupils. In the map the open space in between the gates shown as road. Hence, the claim of the declarant cannot be accepted. Accordingly, Writ Appeal Nos. 457/94 and 1047/94 are allowed and the order of the learned single Judge is set aside on this aspect.

86. Coming to Writ Appeal No. 611 / 94, a part of residential building over an extent of 838 sq. metres bearing D. No. 33-20-60 in N.T.S. No. 791 was not disclosed by the declarant in his declaration. Even during the enquiry, for preparation of the draft statement, this item of property did not come to the light of the authority. Subsequently, this item of property came to the notice of the competent authority. The declarant resisted the inclusion of the property in his holding by contending that the buildings to his mother and the same cannot be

included in his holding. But the authorities as well as the learned single Judge rejected the claim of the declarant.

87. From the judgment of the learned single Judge, it is seen that while the declarant did not seriously contest the finding of the appellate authority, the major son contended that this property in question belong to his grand-mother and the declarant got the same under a Will executed by his mother, who died in 1985. During the course of arguments before us, the learned counsel for the declarant contended that under a registered partition deed, the declarant and his father got divided in the year 1957 and thereafter the declarant's father settled the property in question on his wife. But the declarant did not produce the registered partition deed to show that the property in question fell to the share of the declarant's father or the settlement deed said to have been executed by the declarant's father bequeathing the property to his wife. Likewise, the major son having pleaded that the property vested in the declarant by virtue of a Will, did not choose to produce that Will also. The fact remains that this building situated in 833 sq. yards along with another residential building spread over in an extent of 1255 sq. metres are covered by the same Door No. 33-20-60. Except the oral assertions, there is no documentary evidence available on record to establish that the land in question belongs to the mother of the declarant. The tax assessment register maintained by the Municipality with regard to the property in question, shows that the building was constructed in 1954 and till this date both the buildings stand in the name of D. Venkatarathnam deceased father of the declarant.

88. Under these circumstances, we are left with no other alternative except to remit the matter back to the competent authority to decide the question whether an extent of 838 sq. metres with building in N.T.S. No. 791 under Door No. 33-20-60 of Vijayawada has to be excluded from the holding of the declarant or not after giving an opportunity to the declarant to produce necessary documentary evidence with regard to that property and pass appropriate orders according to law as expeditiously as possible, in any event, not later than two months from the date of receipt of a copy of this order. While deciding the issue, the competent authority has to keep in mind that even according to the declarant and his major son the mother of the declarant died in the year 1985 and he is expected to file a fresh declaration for computation of the excess vacant land held by him as the property devolved on him exclusively being matruka property. To the extent indicated above, the matter is remanded to the competent authority. On all other aspects, the claim of the declarant, his major son and Durga Society are rejected. At the same time, Writ Appeal No. 456/ 94 filed by E.B.C. Society is dismissed and the judgment in Writ Petition No. 372/92 filed by Durga Society is confirmed as the E.B.C. Society is not eligible for allotment of the excess vacant land by the Government as per the priorities indicated in the G.O.Ms. No. 840 Revenue (U.C. II) Department, dated 16-6-1982.

89. The finding arrived at in the above appeals are summarised as hereunder:

A harmonious construction has to be given to Rule 5(2) of the Rules by interpreting the same that the notice contemplated under this Rule is intended to a person whose interest are in conflict with the interest of the declarant (page 23). If the Rule is construed in any other manner, the same will be in conflict with Section 8(3) of the Central Act and is liable to be struck down.

The decision in Sreeramakrishnaiah's case (supra) and the decision in W. P. No.6855/84 dated 26-9-1989 are not correctly decided.

A major son of a Hindu Undivided Family who is not required to file a separate declaration and who is entitled to one unit for himself u/s 4(7) of the Central Act, cannot be treated as a person with interest adverse to that of his father i.e., the declarant and no separate notice need be given to him under Rule 5(2) of the Rules. On the question of laches, the major son filed the Writ Petition nearly after 11 years after the competent authority served a notice on the declarant u/s 8(3) of the Central Act. The very conduct of the major son in not preferring an appeal against the judgment and decree of the Sub-Court, Vijayawada and the decision of the learned single Judge in Writ Petition No. 8331/91 wherein the order of rejection of the application of the declarant seeking exemption was confirmed itself speaks about the conduct and bona fides of the petitioner in filing the present Writ Petition. The conduct of all the parties involved in the suit leads to irresistible conclusion that the society was brought into existence by the members of the declarant family with their own supporters only to obtain exemption from the provisions of the Central Act in respect of the excess land held by the family.

The land in question was sought to be transferred after 17-2-1975 under an unregistered ante dated agreement of sale which cannot create any right or interest in favour of the alleged transferee-society.

Durga Society cannot take shelter under the decree of the Civil Court in O. S. No. 208/91 as the same is non-est in law as per Section 42 of the Central Act.

Though a suit for specific performance is maintainable against the declarant, the same has to be ignored for purposes of the Act u/s 4(4)(a) of the Central Act and the land so transferred has to be computed, for arriving at the excess vacant land held by the declarant. Hence, the society cannot contend that it is entitled for a notice as required under Rules as a "person interested".

It is highly difficult to believe that the land in question is in possession of Durga Society.

While draft statement u/s 8(3) of the Central Act was served on the declarant way back on 14-4-1978, the Durga Society filed the Writ Petition only in 1991 for the first time. On the ground of laches also, the claim of the society is liable to be rejected. Hence, Durga Society cannot claim notice under Rule 5(2) of the Rules as "person interested".

The claim of Durga Society seeking a direction to the Government to consider its

application for exemption of the lands in, question u/s 20(1)(a) of the Central Act cannot be acceded to as Durga Society cannot fall under any of the Co-operative Societies which are eligible for allotment of the land on priority basis as per G.O.Ms. No. 840 Revenue (UC II) Department dated 16-6-1982 as the members of the society do not belong to weaker sections or Class IV or low income or middle income groups and all of them without exception are engaged in gainful employment like service in Government or Bank, business and agriculture. Hence, no public interest is involved for grant of exemption to the land in question in favour of Durga Society.

The orders of the Government in G.O.Ms. No. 1156 Revenue (UC I) Department, dt. 20-12-1991 assigning the lands in question to EBC Society cannot be sustained.

The assignment was made in violation of the interim orders passed by this Court dated 19-4-1991 in WPMP No. 7102/91 in Writ Petition No. 5699/91 which was made absolute on 19-8-1991.

The EBC Society was registered under the provisions of Societies Act but not under the provisions of A.P. Co-operative Societies Act, as required in G.O.Ms. No. 840 dated 16-6-1982 and none of its members belong to weaker sections or Class IV or low income groups.

As the land in question is in the heart of Vijayawada town the members of Durga Society as well as EBC Society who are influential persons are trying to over reach other and hectic efforts are being made to take possession of the land circumventing the provisions of the Central Act and to defeat the very laudable objective underlying this welfare legislation.

In the light of the view taken by us that both the societies are not eligible for assignment of the excess vacant land vested with the Government as per the guidelines issued in G.O.Ms. No. 840 dated 16-6-1982. The authorities concerned are directed to make a thorough investigation about the eligibility of the persons applying for assignment of the land in question and try to assign the land in the order of priority indicated in the above G.O. after the excess land vested with the Government.

In the light of the definition given to a building in S. 3(2) of the A.P. Municipalities Act, dwelling house in Rule I(ii) of the Building Rules, R.9 of the Building Rules specifying the requirements for construction of a building and the fact that the entire premises was assessed to tax under one Door No. 29-28-69, the temporary sheds raised by the lessee for the purpose of running the school cannot be considered as independent buildings and they are treated as out houses which are included in the definition of the building. Accordingly, the declarant can claim exemption of 500 sq. metres only but not more.

With regard to a part of residential building over an extent of 838 metres bearing Door No. 33-20-60 in N.T.S. No. 791, except oral assertions no documentary

evidence is available on record to establish that the land in question belong to the mother of the declarant and as per a tax assessment register maintained by the Municipality the building was constructed in 1954 and till this date both the buildings stand in the name of D. Ven-kataratnam deceased father of the declarant.

The matter is remitted back to the competent authority to decide the question afresh within two months from the date of receipt of the copy of the order after giving an opportunity to the declarant to produce necessary documentary evidence.

90. In the result, Writ Appeal Nos.455/ 94 filed by EEC Society and Special Officer respectively against the order in Writ Petition No. 7996/93 are allowed and the order of the learned single Judge is set aside.

Writ Appeal No. 840/94 filed by the Special Officer against the order in Writ Petition No. 11806/91 is allowed and the order in the writ petition is set aside.

Writ Appeal No. 959/94 filed by Durga Society is dismissed and the judgment of the learned single Judge in W. P. No. 9864/92 is confirmed.

Writ Appeal No. 456/94 filed by EBC Society and Writ Appeal No. 1048/94 filed by the Special Officer against the order in Writ Petition No. 372/92 are dismissed and the order in the said writ petition is confirmed.

Writ Appeal No. 457/94 filed by EBC Society and Writ Appeal No. 1047/94 filed by the Special Officer against the order in Writ Petition No. 5699/91 are allowed and the order of the learned single Judge with regard to land with building under Door No. 29-28-29, in Ward No. 26 of Vijayawada Municipality is set aside.

Writ Appeal No. 611/94 filed by the declarant against the order in Writ Petition No. 5699/91 in so far as it went against him with regard to a portion of a building bearing Door No. 33-20-60 in N.T.S. 791 spread over an extent of 838 sq, metres is allowed and the matter is remitted to the competent authority for fresh disposal within two months from the date of receipt of a copy of the order, after giving an opportunity to the declarant to produce the documentary evidence available with him, if any.

91. Order accordingly.