
(2002) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19190 of 2001

Zarina and Others

APPELLANT

Vs

Special Officer and Competent Authority, Urban Land Ceiling,
Vijayawada, Krishna Dist. and Others

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 26, 26(1),
26(2)

Citation : (2002) 3 ALD 558

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

**Advocate : Vedula Venkataramana, for the Appellant; Government Pleader for
Assignments, for the Respondent**

Final Decision : Dismissed

Judgement

E. Dharma Rao, J.—96 residents of Vidyadharpuram village of Vijayawada Town filed this writ petition to issue a writ of mandamus declaring the action of the first respondent - Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada, in issuing the proceedings RC No, A2/309/96, dated 30-10-1996 purporting to keep the No Objection Certificates issued u/s 26 of the Urban Land (Ceiling and Regulation) Act, 1976 (for brevity the Act) in respect of land in RS No. 20/P of Vidyadharpuram, Vijayawada, in abeyance and to direct the respondents 2 and 3 i.e., the District Registrar, Vijayawada and Sub-Registrar, Gandhinagar, Vijayawada, (sic "not") to entertain any sale deed for registration in respect of the said land, is arbitrary and illegal and to consequently direct the 2nd and 3rd respondents to entertain the registration of sale documents which may be presented by the petitioners in respect of the said Sy.No.

2. Factual matrix, in a narrow compass, is as under. The petitioners are the purchasers of bits lands in RS No.20/P of Vidyadharpuram under registered sale deeds, which were executed by their vendors during 1995-96, deriving their title

to the lands sold under a decree dated 27-4-1995 in OS No.211 of 1995, passed by the learned Principal Subordinate Judge, Vijayawada. It is their further case that their vendors are not surplus holders and they became owners of the respective parts of the land in S.No.20/P by virtue of award dated 24-4-1995 which was made rule of the Court by the decree in OS No. 211 of 1995. It is further submitted that the Vijayawada, Guntur, Tenali Urban Development Authority has approved a layout in favour of their predecessors in title, who suffered arbitration award dated 24-4-1995 and the decree in OS No.211 of 1995. Consequent to the said decree, the vendors of the petitioners applied for No Objection Certificates u/s 26 of the Act and the first respondent on 28-11-1995 granted No Objection Certificates to the effect that the Government does not intend to exercise first option for purchasing the land and thus registration of the sale deeds was permitted and thus they have purchased different parts of land in the said Sy. No. under various registered sale deeds and thus became absolute owners and possessors of the respective bits of land and competent to alienate the same. Complaining that the respondents 2 and 3 are not entertaining the sale documents for the registration, on the instructions of first respondent, the petitioners filed this writ petition. It is further complained that they came to know that the operation of No Objection Certificates dated 28-11-1995 was suspended by the first respondent by orders dated 30-10-1996. It is contended that since the petitioners are not parties to the said proceedings and that their vendors did not keep them informed about the impugned proceedings, they could not approach this Court for appropriate relief immediately, that due to the impugned proceedings, they are now disabled from alienating the lands, despite they being the real owners, they are now driven to file the present writ petition. The validity of the impugned proceedings is assailed on the grounds that the first respondent has no power to review or revision u/s 26 of the Act or keep it in abeyance for the reason that the substance of Section 26 of the Act is to give first option to the State Government to purchase the land and if such a right is not exercised within 60 days, it is deemed to have been waived. It is also contended that the vendors of the petitioners have no interest in the land for the reason that they have sold the land to the petitioners, therefore, the petitioners, by virtue of their purchase, are entitled to file this writ petition assailing the correctness of the above said proceeding. Further, before issuance of the impugned proceedings dated 30-10-1996, the vendors of the petitioners have submitted their explanation and the first respondent, without considering the same, passed the impugned order. It is further contended that the award of the arbitration and the decree of the civil Court making the award rule of the Court, have become final and there is absolutely no justification in placing restrictions on right to enjoyment of the property which is covered by a decree of civil Court and its title is not in dispute and, therefore, the direction issued by the first respondent to the registration authorities is arbitrary and illegal. Therefore, sought for a direction to the first respondent declaring the impugned action in directing the 2nd and 3rd respondents not to entertain and register sale deeds in respect of RS No.20/P of Vidyadharpuram as illegal and

arbitrary and to consequently direct the 2nd and 3rd respondents to entertain sale deeds in respect of the said for registration.

3. Consequent upon issuance of rule nisi by this Court, the Special Officer and Competent Authority under the Urban Land Ceiling, Vijayavada - first respondent, filed counter-affidavit stating that one Mazmudar Krishna Rao, Mazmudar Srinivas Rao and Mazmudar Narasimha Rao filed declarations u/s 6(1) of the Act declaring the lands held by them in RS No. 20 of Vidyadharpuram village in Vijayawada Urban agglomeration, which were numbered as CC Nos.291, 292 and 293 of 1976 respectively and the 1st respondent after due enquiry declared Muzmudar Krishna Rao as surplus land holder to an extent of 16530 Sq.Mts., Muzmudar Srinivas Rao as surplus land holder to an extent of 15888 Sq.Mts. and Muzmudar Narasimha Rao as surplus land holder to an extent of 16348 Sq.Mts. u/s 8(4) of the Act by order dated 18-9-1978. Thereafter, Section 10(1) notification was published on 20-11-1980; Section 10(3) notification was published on 7-5-1985 and Section 10(5) proceedings were issued on 24-9-1985.

4. Subsequently one Darsi Sreerama Murthy and 14 others issued notices for the grant of No Objection Certificates u/s 26(1) of the Act, proposing to sell the vacant land in the said Sy.No. in favour of prospective purchasers, enclosing copy of the judgment and decree dated 27-4-1995 passed in OS No.211 of 1995 by the learned Principal Subordinate Judge, Vijayawada and a copy of the award of the arbitrator and each of the 17 persons got 0.50 cents of the land in the award which is equivalent to 2027.6 Sq.Mts. or 2425 Sq.Yards. Thereafter, enquiry was made and notices were issued to Darsi Sreerama Murthy and others and recommended for issuance of permission u/s 26(1) of the Act to the following 17 persons :

Sl. No. Name of the person whom notice is given F.Dis. & Data RS No. Extent

1 2 3 4 5

1. Tammina Venkateswara Rao S/o Anjappa B2.1294I95 Dt. 25-11-95 20 1130
2. Paleli Veera Raotavainh S/o Krishnaiah B2.1296I95 Dt. 29-12-96 20 1264
3. Chekka Krishna Murthy S/o Reddyya B.21278I95 20 1552
4. Khambhampati Venkata Appa Rao B2.1263/95 Dt.28.11/95 20 1335
5. Uppala Prasada Rag S/o Smyanarayana B2.1337I95 Dt.29-12-95 20 1087
6. Vadlamanu MaHeswara Rao S/o Venkaiah B.2 1158/95 20 1668
7. Khambhampati Gopala Krishna Murthy S/o Pida Pullaiah B1.1261/95 Dt.28-11-95 20 1358
8. TVV Satyanarayana S/o Anjaah 82.1139I95 Dt.12-12-95 20 1241
9. Uppala Pulla Rao s/o Suryanarayana B2.1336/95 Dt. 4-11-95 20 362

10. Nambuti Lakshmi Narayna S/o Venkateswara Rao 62.1279/95 Dt.26-11-95
20 1099
 11. Khambhampati Sreeramulu S/o Peddapllaiah B2.126H/95 20 1360
 12. Khambhampati Sreeramulu S/o Peddapulliah B2.1354/95 20 433
 13. Paleti Venu S/o Veera Raghawaiah B2.1262/95 20 -
 14.
-do-
B2.1355/95 20 -
 15. Darsi Sreerama Murthy S/o Venkateswarlu B. 1338/95 Dt.25-12-95 20 346
 16. Tulabandula Radha Krishna Murthy B2.849195 20 1778
 17. Namburi Lakshminarayana S/o Venkateswara Rao B2.1378/95 20 340
- Total 16352

5. It is further submitted that it was brought to the notice of the first respondent the permission granted u/s 26(1) subject to the provisions of Sections 5(3) and 15 of the Act by the then Special Officer and Competent Authority is contrary to the Act and the decree obtained by Darsi Sreerama Murthy and others is contrary to Sections 42, 5(3) and 10(4) of the Act and, therefore, a show-cause notice was issued to the above 17 persons as to why the No Objection Certificates issued to them should not be cancelled, all the 17 persons submitted objections and the Competent Authority has kept the No Objection Certificates issued u/s 26(1) of the Act in abeyance pending enquiry and also submitted a report to the Commissioner of Land Reforms, Urban Land Ceiling, vide his letter RC A2/ 309/96, dated 1-11-1996.

6. It is further submitted that the original declarants were declarant as surplus land holders and the same was not questioned either by the declarants or by the subsequent purchasers from the declarations, that the arbitration award and the decree of civil Court dated 27-4-1995 are non-est in the eye of law u/s 42 of the Act and even the No Objection Certificates issued u/s 26(1) of the Act do not confer any right on the petitioners" vendor and the petitioners to alienate the lands for the reason that Section 26 comes in play only in a case where the land is within the ceiling limit and the owner would like to transfer the land and it does not apply to the case where the land is declared as surplus by the Competent Authority. Until and unless exemption is granted by the Government u/s 20(1) of the Act the land is deemed to be Government land and vested with the Government u/s 10(3) of the Act and it does not confer any title. The object of Section 26 is not to confer any title on the person who seek no objection, but it only explains either the State is interested or not in purchasing the property by exercising its option. This respondent denies that the Vijayawada - Guntur - Tenali Urban Development Authority has approved the layout and admitted that

on receipt of information, the Special Officer and Competent Authority has issued impugned proceedings and the matter was referred to CBCID with regard to the illegal and bogus No Objection Certificates and registration of land in Vijayawada including the land in RS No.20 of Vidyadharpuram. The respondent has gone to the extent of saying that the subordinates have misplaced the CC files and disciplinary action has already been initiated against a Senior Assistant, who did not hand over the file to her successor. It is further averred that in view of the fraud and illegality committed by the earlier authority, the respondent has passed the orders keeping the No Objection Certificates in abeyance and, therefore, it does not amount to reviewing or revising ones own order. Since any order obtained by playing fraud is non-est in the eye of law, the respondent has also submitted a report to the Government for exercising the power u/s 34 of the Act. It is further contended that the purchasers do not get better and valid right than his vendor and when the vendors' title itself is defective, the purchaser has no right to claim such a title. The respondents took the plea of alternative remedy available to the petitioners u/s 33 of the Act and, therefore, on the availability of the alternative efficacious remedy, sought for dismissal of the writ petition.

7. The main thrust of the learned Counsel for the petitioners is that the respondent has no power to review, revise or keep its order in abeyance, that the substance of Section 26 of the Act is to give first option to the State Government to purchase the land and if such a right is not exercised within 60 days, it is deemed to have been waived and, therefore, the impugned order keeping the No Objection Certificates in abeyance is totally without authority of law and jurisdiction.

8. From the facts and circumstances of the case, it is clear that Mazmudar Krishna Rao, Srinivas Rao and Narasimha Rao filed declarations u/s 6(1) of the Act and after due enquiry, the first respondent declared them as surplus land holders u/s 8(4) by this order dated 18-9-1979 and Section 10(1) notification was published on 20-11-1980; Section 10(3) notification was published on 7-5-1985 and Section 10(5) proceedings were issued on 24-9-1985. Consequently, the lands vest in the Government and the declarants have no title or any manner of rights over the above said surplus declared land, so as to alienate to any third parties.

9. It is also a fact that one Darsi Srirama Murthy and 14 others issued notices for the grant of No Objection Certificates u/s 26(1) of the Act, enclosing copy of the judgment and decree passed in OS No. 211 of 1995 dated 27-4-1995 and copy of the award passed by the arbitrator, under which each of the 17 persons mentioned above, got 0.50 cents of land, proposing to sell vacant land in the said Sy.No to the prospective purchasers; that after conducting enquiry the Enquiry Officer has recommended for permission u/s 26(1) of the Act. Thereafter, when it was brought to the notice of the Competent Authority that the said permissions granted by the then Special Officer is contrary to the Act and that

the decree obtained by Darsi Sreerama Murthy and others is contrary to Sections 42, 5(3) and 10(4) of the Act, show-cause notices were issued as to why the No Objection Certificates should not be cancelled as the lands vest in the Government and that the No Objection Certificates were issued contrary to the provisions of the Act.

10. In the first round of litigation, the declarations submitted by the original owners of the land were registered as CC Nos. 291, 292 and 293 of 1976, that by virtue of the judgment and decree of the civil Court dated 27-4-1995 in OS No.211 of 1995, which was made rule of the Court and, therefore, the sales are valid u/s 42 of the Act and the original declarants without informing the arbitrator or the civil Court that the lands were notified as surplus by the Government, allowed them to pass award, which was made rule of the Court. The Counsel for the petitioners, therefore, contended that the petitioners are entitled for issuance of No Objection Certificates u/s 26(1) of the Act and also entitled for registration of the sale deeds.

11. To appreciate the contentions, it is necessary to have a glance of Section 26(1) of the Act. It reads as under :

26. Notice to be given before transfer of vacant lands :-(1) Notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise, except after giving notice in writing of the intended transfer to the competent authority.

12. From the above provision of law, it is clear that no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise, except after giving notice in writing of the intended transfer to the Competent Authority.

13. A learned single Judge of this Court in *Sri Shiv Trakash Bansal and another v. the Competent Authority Urban Land Ceiling, Hyderabad and another* 1985 (1) ALT 239, while distinguishing Sections 26 and 27 of the Act, has observed that Section 26 applies to vacant land whereas Section 27 provides the procedure for transfer of a building, a person holding vacant land within the ceiling limit alone can transfer the property by way of sale, mortgage, gift, lease or by way of other transactions, in case of transfer other than sale, mere notice of intention to transfer to the competent authority is insufficient for obtaining the registration of the said transaction; in case of a transaction of sale, the applicant should wait till the expiry of 60 days for obtaining the registration of the document, under Sub-section (2) of Section 26 the first option to purchase was given to the Competent Authority which option shall be exercised within sixty days, failing which it shall be lawful for the owner to transfer the land to whomsoever he likes, that no enquiry is contemplated u/s 26 and no order of permission or clearance has to be issued by the competent authority unlike u/s 27. A reading of these proposition makes it clear that Section 26 has no application when the person owns land

beyond the ceiling area or the notification u/s 10(1) is not issued, if he filed a statement u/s 6 of the Act. Thus, if one reads Section 26 along with Section 5(3) and Section 10(3), it is clear that the competent authority can hold that a notice u/s 26 cannot be entertained either on the ground that the applicant holds vacant land beyond the ceiling area or the notification in respect of his holding is not issued u/s 10 of the Act and barring these two grounds, the only requirement of Section 26 is, exercising the first option by the Competent Authority to purchase the holding, if no such option is exercised within sixty days from the date of receipt of the notice, it shall be presumed that the Competent Authority has no intention to purchase such holding and the applicant can transfer the land to whomsoever he likes

14. As can be seen from the facts and circumstances of the case, as early as in the year 1985, the lands vested in the Government. Though it is a vacant land, the petitioners' vendors had no title over the said land and consequently had no legal right to apply to the Competent Authority to purchase the land on behalf of the State Government a price calculated in accordance with the provisions of the Land Acquisition Act or of any law for the time being in force.

15. Section 42 of the Act has overriding effect on other Laws, it reads thus :

"Act to override other laws :-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith 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."

16. The facts and circumstances of the case manifests that the vendors of the petitioners have purchased the land from the original declarants by virtue of the award which was made rule of the Court in OS No.211 of 1995, and in view of the overriding effect of Section 42 of the Act, the judgment and decree of the civil Court has no effect in respect of the lands situated in RS No.20 of Vidyadharapuram firstly the lands vest in the Government and the declarants have no power to sell and secondly by virtue of any agreement entered into between the parties on the basis of the said agreement of sale, any award or decree by any arbitrator or civil Court under the provisions of Specific Relief Act, neither the award nor the judgment and decree have binding effect in respect of the transfer of the said land. As can be gathered from the facts of the instant case, the petitioners' vendors are not holding vacant land within ceiling limit, as the land, was vested with the Government by virtue of the notification issued on the basis of the declarations submitted by the original owners of the land. Therefore, the issuance of No Objection Certificates, in such circumstances, on enquiry by the competent authority, is invalid and non-est in the eye of law. A non-est order is a void order and it confers no title and its validity can be questioned or invalidity can be set up in any proceedings or at any stage.

17. The learned Counsel for the petitioners have placed reliance on a decision of this Court in M. Prabhakara Rao v. The Sub-Registrar, Registration of Documents,

Khuirtabad, Hyderabad and another 1988 (1) ALT 685, and contended that the petitioners herein are innocent and conniving parties and, therefore, the meaning of Sections 5(3) and 26 of the Act should be read as sanctioning enforcement only against the original owners. The learned single Judge while dealing with the said provisions has considered the petitioners therein as bona fide purchasers and therefore, were held entitled for the relief and directed the authorities to receive the applications and register the land purchased by the claimants therein, as bona fide purchasers. The learned Judge while interpreting Section 5(3) of the Act has held that it is reasonable on the basis of the language of Section 5 to exclude the operation of the Act against the innocent transferee on the reasonable assumption that it is not part of the legislative intent. While considering Section 26 of the Act, the learned Judge held that Section 26(1) gives the power to the Government to prevent illegal transfers of urban vacant land and that is the scheme, scope and intention of the Act. Thus alone the non-conniving and innocent third parties will not fall a prey to the indifference of the executive and to the intrigues of the scheming parties, but the Government by its failure is shifting the incidence of the Act from the shoulders of the original owners to his vendee's vendees. That way the whole scheme of the Act would be turned upside down. Such can never be the process that the Act could have sanctioned.

18. The learned Judge was dealing with the meaning of Section 5(3) and (b) and whether such pattern of enforcement of the Act against the innocent and non-conniving parties sanctioned by the Act and held that there cannot be any estoppel against a statute and the officer who acts ultra vires of his power is not competent to represent the State. But this abstract theory of law must be softened to some degree by considerations of equity mixed with it subject to which alone a statute to the last should be read and, therefore, came to the conclusion that the Act sanctions enforcement only against the original owners and not against innocent parties. If the Government enforced the Act properly, the excess land would have been acquired by the Government from Rajaiah - original owner therein, on whom alone the burden of the Act should fall, that when an Act provides for a method of enforcement, it is not open for the executive to resort to some other method of enforcement. It is further observation that any alienation contrary to Section 5(3) is not declared by the act null and void. The Act merely declares such alienation should be deemed to be null and void. From the use of the words deemed to be null and void, the Act warns its interpreter to be beware of the fictional nature of that clause, and therefore, it is reasonable on the basis of the language, to exclude the operation of the Act against the innocent transferee on the reasonable assumption that it is not part of the legislative intent.

19. In this case, the sales were effected by playing fraud ten years after the notification u/s 10 of the Act. In that case, the petitioners were considered to be the bona fide purchasers. Therefore, the learned single Judge has not addressed himself on the issue of fraud but dwell upon only the issue of equity, but here in

the instant case, after the notification u/s 10(3), the lands vested in the Government and knowing this fact fully well, the original owners entered into agreement of sale, obtained arbitration award and made it a rule of the Court, without giving notice u/s 26 of the Act. Thus in none of these transactions, the Government was a party to the proceedings. Therefore, irrespective of the fact that there is a decree of civil Court and an arbitration award, which is made rule of the Court, the original owners should have followed the procedure contemplated under the Act, before effecting sales, more particularly in view of Section 42 of the Act. Therefore, it can be visualised that to defeat the provisions of the Act, the original owners have resorted to effect the sales. Therefore, certainly there is an element of fraud. Therefore, the ratio laid down by the learned single Judge in M. Prabhakar Rao's case cannot be applied to the facts and circumstances of the this case or the benefit that was extended in that ease can be extended to the petitioners herein.

20. Reliance is also placed by the learned Counsel for the petitioners on yet another decision Kamnam Venkateswarlu v. Principal Secretary, Municipal Administration and Urban Development, Hyderabad and others 1997 (4) ALD 476 (DB) and contended that the purchasers of the land found in excess under the Act and when no permission of the Competent Authority was obtained, the purchasers cannot be said to be bona fide purchasers and the purchases made with the permission of the competent authority are valid purchases. The Division Bench of this Court, while dealing with the writs and having regard to the facts of the case, classified into four categories :

- (i) persons who have purchased vacant land after securing permission from the competent authority under the Act and made constructions thereon;
- (ii) persons who have purchased the land under the purported permission of the Urban Land Ceiling Authority but raised no construction on the land and the land is just kept vacant;
- (iii) persons who have purchased vacant land without permission of the competent authority under the Act but obtained permission from the Government and accordingly paid betterment charges and got the plan sanctioned by the Municipal Authority but could not complete the construction; and
- (iv) persons who have purchased vacant land without permission of the Competent Authority under the Act, raised some constructions without either payment of the betterment charges or obtaining permission from the Municipal Authority.

21. The Bench while dealing with the transactions therein, held that except three transactions, all other transactions under which the petitioners claim title to the plots were in respect of excess land. The benefit of the permission granted by the competent authority can ensure to three plots only as the transactions in respect of other plots were in respect of excess land and not covered by the said permission, so they are illegal. For the purpose of the Act the pleas that the

purchaser has obtained non-encumbrance certificate, enquired into the title of the owner and presented sale deed before the registering authority who registered the sale deed or that after purchase Government relaxed lay out rules and that he paid betterment charges or even that the Municipality or Municipal Corporation granted permission for construction of building, are all irrelevant and on these pleas he cannot be accepted as a bona fide purchaser, what is relevant is whether the transfer in his favour is supported by permission of the competent authority. If he is armed with such a person, then he can claim that he is a bona fide purchase and the sale in his favour is valid under the Act.

22. Evidently, in that case, some of the purchasers were bona fide purchasers and, therefore, the Bench considered it appropriate and granted the relief. As stated earlier, in the instant case, the land was declared as excess land and it was deemed to be vesting with the Government; ten years thereafter on the basis of the agreement of sale, suppressing the fact that the original owners have declared the land, allowed the arbitrator and the civil Court to pass orders. This suppression of facts tantamount to playing fraud on the Government and the purchasers and, therefore, the purchasers cannot draw a perfect title muchless have any right to property. Therefore, they are not entitled to give notice u/s 26(1) of the Act to obtain No Objection Certificates to transfer the land in favour of the petitioners. Thus we are at threshold and the facts can be differentiated with the facts before the Division Bench in *Karnam Venkateswarlu's* case. After detecting the fraud played by the petitioners' original owners, the petitioners' vendors made the Government party to the proceedings and obtained decree and executed the sale deeds. But in view of the overriding effect of Section 42 of the Act, the judgment and decree have no binding effect and cannot operate against the Government.

23. The learned Government Pleader has extensively argued the matter, but I am not inclined to go into all those submission in view of the settled principles of law. However, I would like to deal with some of the legal propositions submitted by the learned Government Pleader.

24. A Division Bench of this Court in *Spl. Officer and Competent Authority, Urban Land Ceiling and Another Vs. P. Ramanamma*, held that by reason of the prohibition envisaged by Section 5(3) and also by Section 10(4) of the Act against transfer of the whole vacant land as per the former provisions and of the notified excess vacant land, as per the latter provisions, and in the face of the statement filed by the owner u/s 6 and the pendency of the proceedings, the very sale of the land, may be under the decree of the Court, in favour of the society, is not free from cloud, more so by virtue of the overriding effect of the Act u/s 42. The Bench further held that Section 26 of the Act read alongwith Sections 5(3) and 10(4), the rejection of the permission u/s 26 of the Act cannot be held to be either arbitrary, illegal or resultant of any infirmity. It is very much relevant to note here that as per Section 42 of the Act, the Act has overriding effect over the decree obtained by the society, therein, from the civil Court and

therefore, that decree cannot be said to have been prevailing effect. This principle laid down by a Bench of this Court aptly applies to the facts and circumstances of this case.

25. A Bench of Calcutta High Court in a decision *Sanat Kumar Mukherjee and another Vs. State of West Bengal and another*, , on extensive consideration of Section 5(3) and Section 26(1) of the Act, held that Section 5(3) of the Act cannot be read in isolation of Section 26(1), as the prerequisite condition of the notice before transfer of vacant land is a sine qua non, may be the life of the notice expired for the efflux of time, but if the fabric of notice is stricken with fraud -subsequently detected, discovered and came to light, law is not so illogical that with the passage of time, it attaches gilt edged title to the transfer of property. It is further held that it is apposite to mention that fraud is secret in its origin and the mere registration of the deeds sprang up from fraudulent permission could never confer any title, water and air proof. Therefore, afflux of time followed by registration is not the healing factor to secure the relief.

26. As stated earlier, the several contentions raised by the learned Government Pleader are not required to be appreciated in view of these decided principles.

27. The petitioners, in this writ petition, question the action of the respondents in keeping the No Objection Certificates in abeyance. The petitioners herein are the intending purchasers of the land. I am afraid, in view of the element of fraud played by the original owners, in suppressing the material facts, which culminated into a decree dated 27-4-1995 from civil Court in OS No.211 of 1995 and the award of the arbitrator which was made rule of the Court, the transactions entered into by the petitioners cannot be termed as bona fide transactions. Evidently, the original declarants have played fraud against the Government and the Competent Authority. When the land was vesting with the Government by virtue of Section 10(3) notification, after lapse of ten years, the Court was allowed to pass a judgment and decree suppressing that material fact. Therefore, when the purchasers cannot get a perfect title over the said property, they are equally incompetent to issue notice u/s 26(1) to the Competent Authority either to exercise its option u/s 26(1) or to allow them to proceed u/s 26(2) of the Act.

28. From the above discussion, it is clear that the Government is ceased of the matter which is having suo motu power to call for the records, on its own motion, and examine the same of any order passed or proceedings taken under the provisions of this Act and against which no appeal has been preferred u/s 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order shall be made, except after giving the person affected a reasonable opportunity of being heard in the matter. Thus, it is clear from the above said section that the State Government may, on its own motion, call for and examine the records of any order passed or proceedings taken up under the provisions of the above said Act, against which order appeal has been preferred by the

aggrieved party, to satisfy as to the legality or propriety of such an order. As stated by the respondents in their counter, they have already submitted a report to the Government through Proceedings RC No.A2/309/96, dated 1-11-1996 and the matter is pending consideration. If the order passed by the respondents is without jurisdiction, it is for the Government to look into its propriety, as to whether it is without jurisdiction and contrary to the provisions of the Act and if the Government intend to pass any order adverse or affecting the rights of the petitioners, it will give opportunity to the petitioners, in compliance of principles of natural justice. Thus, the impugned order passed by the respondents is subject to the scrutiny under the provisions of Section 34 of the Act by the Government. Therefore, it is too early to hold, pending consideration of the matter by the Government u/s 34 of the Act, that the impugned order passed by the respondents is illegal, void and contrary to the provisions of the Act. In such circumstances, there cannot be any mandamus to the respondents.

29. In the result, the rule is discharge and the writ petition fails and is accordingly dismissed. No costs.