Omprakash Verma & Ors vs State Of A.P. & Ors on 8 October, 2010

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 998 OF 2007

Omprakash Verma & Ors. ....

Appellant(s)

Versus

State of Andhra Pradesh & Ors. . ...

Respondent(s)

WITH

CIVIL APPEAL NO. 1024 OF 2007

CIVIL APPEAL NO. 6115 OF 2008

AND

CIVIL APPEAL NO. 997 OF 2007

J U D G M E N T

P. Sathasivam, J.

1) These appeals are directed against a common judgment and final order dated 17.01.2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition Nos. 4121, 4141, 4144 and 5776 of 2006 whereby the High Court dismissed all the writ petitions preferred by the appellants herein challenging the validity of G.O.Ms.No. 161, Revenue (UC-II) Department, dated 13.02.2006 and connected proceedings passed by the State of Andhra Pradesh.

2) Brief facts:-

(a) One Mohd. Ruknuddin Ahmed and 10 others were the original owners of land admeasuring 526.07 acres in Survey No. 83 situated at Village Raidurg (Panmaktha) of Ranga Reddy District in the State of Andhra Pradesh. Out of the said land, an extent of 252.33 acres is assessed to revenue as cultivable agricultural land and the remaining extent of 273.14 acres is treated as pote-kharab(un-

cultivable) land. On 07.07.1974, the owners executed registered General Power of Attorney (hereinafter referred to as "GPA") in favour of a partnership firm known as "Sri Venkateswara Enterprises" represented by its Managing Partners A. Ramaswamy and A. Satyanarayana. On 01.01.1975, the A.P. Land Reforms Act, 1975 came into force. Since the land in Survey No.83 was an agricultural land, the said owners filed eleven declarations under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Land Reforms Act") and the Authority under the Land Reforms Act declared about 99 acres as surplus in the hands of 4 declarants and possession was also taken on 11.04.1975. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as `the ULC Act') came into force on 17.02.1976. The owners, through their GPA, filed declarations under Section 6(1) of the ULC Act under a mistaken impression that the ULC Act was applicable to their land, though the same was inapplicable for the reason that the land in question was agricultural land and the same was not included in the Master Plan as on the date of commencement of the ULC Act. On 01.07.1977, draft statements under Section 8(1) of the ULC Act together with notice under Section 8(3) were served inviting objections to the draft statement prepared under Section 8(1) of the ULC Act but no orders were passed on any of the declarations. On 06.12.1979 & 25.01.1980, final statements under Section 9 were issued declaring the surplus area by each of the declarant. On 16.09.1980 & 30.01.1980, the Competent Authority issued notification under Section 10(1) of the ULC Act.

(b) By G.O.Ms. No. 391 MA, dated 23.06.1980, the Master Plan as on 17.02.1976 was amended and the land in Survey No. 83 was included in the Second Master Plan which came into force w.e.f.

29.09.1980 vide Government Memo No. 1439-UC.I/80-2, dated 10.12.1980 as a result of which re-computation of the land in the said Survey No. 83 had to be carried out in accordance with the ULC Act.

(c) By G.O.Ms.No. 5013 dated 19.12.1980, the State Government, under Section 23 of the ULC Act, allotted 468 acres out of the said land to Hyderabad Urban Development Authority (hereinafter referred to `HUDA').

The Competent Authority vide notification dated 24.01.1981, under Section 10(3) of the ULC Act, vested the land in Survey No. 83 to the State Government. On 26.12.1981, the Competent Authority issued a notice under Section 10(5) for surrendering possession, however, the possession was not surrendered.

(d) By G.O. Ms.No. 733 dated 31.10.1988 read with G.O.Ms.No. 289 dated 01.06.1989 and G.O. Ms. No. 217 dated 18.04.2000, the State Government in exercise of its power under Section 20(1) of the ULC Act granted exemption upto an extent of 5 acres after excluding 40% of the area to be set apart for laying of roads as per lay out rules. Thus, by virtue of this exemption, each holder of excess land is now entitled to hold 5 acres instead of 1000 sq meters. A number of persons including the appellants herein purchased small extents of land in Survey No. 83 by registered sale deeds between January and March 1991. It is their case that these purchasers including the appellants herein have been in possession ever since their purchase.

(e) On 05.08.1992, Inspector General of Registration issued a memo directing the District Registrar to cancel the sale deeds. The District Registrar, on 03.09.1993, ordered cancellation of the sale deeds. Being aggrieved by the abovesaid order, W.P. No. 18385 of 1993 and W.P. No. 238 of 1994 were filed where owners were impleaded as parties. By order dated 27.07.1994, learned Single Judge set aside the orders of the District Registrar nullifying the sale deeds regarding the land in question. By order dated 06.10.1994, another learned Single Judge following the above order allowed their petition whereas W.A. No. 1220 of 1994 arising out of W.P. No. 238 of 1994 filed by the State was dismissed by a Division Bench on 28.10.1994.

On 04.12.1996, W.A. No. 918 of 1994 filed by the State against the order of the learned single Judge dated 27.07.1994 was dismissed by the Division Bench. On 28.08.1997, the State filed SLP(C) No. 14868 of 1997 before this Court against the judgment dated 04.12.1996 in which this Court issued notice and ordered status quo regarding possession be maintained. On 06.11.2001, a three Judge Bench of this Court disposed of all the appeals, i.e. State of Andhra Pradesh and Others vs. N. Audikesava Reddy and Others reported in (2002) 1 SCC

227. In view of the law declared by this Court, the Competent Authority is now statutorily bound to compute the land afresh, in accordance with the provisions of the Act and in the light of the law declared in Audikesava Reddy's case (supra).

(f) The State Government, in exercise of its powers under Section 23 of the ULC Act, issued G.O.Ms.Nos. 455 and 456 dated 29.07.2002 and decided to allot the excess land to third parties who

were in occupation of such excess land on payment of prescribed regularization charges and as per the conditions set out in the said G.Os. On 28.11.2003, by way of a representation, the owners requested the Competent Authority to compute the holdings afresh in terms of the law declared by this Court in Audikesava Reddy's case (supra). The owners also stated in their representations that they themselves would like to retain the excess land in their occupation by paying the requisite compensation in terms of the aforesaid G.Os.

(g) On 02.07.2004, the owners submitted another representation to the Secretary (Revenue), Government of Andhra Pradesh to re-compute the land afresh in the light of the decision of this Court and also to compute the compensation amounts to be paid for regularization in terms of G.O.Ms.Nos. 455 and 456. On 16.09.2005, the owners once again filed their representations under Section 6(1) of the ULC Act, as there was no response to the earlier representations.

(h) Without taking any action on the aforesaid three representations, the State Government, in exercise of its powers under Section 23 of the ULC Act issued G.O.Ms.No. 161 dated 13.02.2006 purporting to allot Ac.424.13 gts out of Ac.526.27 gts in Survey No. 83 to the Andhra Pradesh Industrial Infrastructure Corporation Limited (in short `APIIC'), Hyderabad, the 4th Respondent herein. On 15.02.2006, the State Government issued G.O.Ms.No. 183, extending the time up to 31st March 2006 for submitting the applications accompanied by the amount of compensation under the aforesaid G.O. Nos.

455 and 456.

(i) Before the High Court, four writ petitions were filed by the purchasers, owners as well as Chanakyapuri Cooperative Housing Society Limited, Secunderabad.

(j) Writ Petition No. 4121 of 2006 has been filed by Smt. K. Anjana Devi and 45 others who claim to be the purchasers of a small extent of land forming part of Survey No. 83 of Village Raidurg, Ranga Reddy District. They claim to have purchased the said lands from the GPA Holder of the original land owners. Writ Petition No. 4144 of 2006 has been filed by Om Prakash Verma and 43 others who also claim to be purchasers of small extent of land forming part of Survey No. 83 Village Raidurg, Ranga Reddy District from the said GPA. Writ Petition No. 4141 of 2006 has been filed by Ahmed Abdul Aziz and 14 others who claim to be the owners of the land of an extent of acres 526.07 guntas in Survey No. 83. Writ Petition No. 5776 of 2006 has been filed by Chanakyapuri Cooperative Housing Society Limited, Secunderabad, which claims to be the holder of Agreement to Sell dated 09.08.1974 allegedly executed by the GPA holder of the owners of the land in Survey No. 83 Village Raidurg, Ranga Reddy District.

Before the High Court, all the petitioners have questioned the validity of G.O.Ms.No.161 Revenue (UC II) Department, dated 13.02.2006 and other proceedings and prayed for quashing of the same with a direction to the official respondents to consider their claim for grant of exemption under various Government Orders, namely, G.O.Ms. No. 733 Revenue (UC II) Department dated 31.10.1988 as clarified in G.O.Ms. No. 217 Revenue (UC II) Department dated 18.04.2000, G.O.Ms. No. 455 Revenue (UC I) Department dated 29.07.2002 and G.O.Ms. No. 456 Revenue (UC I)

Department, dated 29.07.2002. The High Court, by a common judgment and final order dated 17.01.2007, dismissed all the writ petitions filed by the appellants herein. Against the common order, the appellants have preferred these appeals by way of special leave petitions before this Court.

3) Heard Mr. K. Rajendra Chowdhary, learned senior counsel for the appellants in all the appeals, Mr. L. Nageshwar Rao, learned senior counsel for the State of Andhra Pradesh, Mr. G.E. Vahanvati, learned Attorney General for India, Mr. Rakesh Dwivedi, and Mr. Ranjit Kumar, learned senior counsel for Andhra Pradesh Industrial Infrastructure Corporation (APIIC) R-4 and Mr. A.K. Ganguly, Mr. P.S. Patwalia and Mr. Basavaprabhu S. Patil, learned senior counsel for the applicants.

Issues:

> 4) The main question in these appeals is whether the proceedings of the Competent Authority under Sections 8, 9 and 10 of the ULC Act in relation to the land in Survey No. 83 of Village Raidurg of Ranga Reddy District declared by the Division Benches by its judgment dated 28.10.1994 and 04.12.1996 in Writ Appeal Nos. 1220 and 918 of 1994 respectively, as void, stood restored by virtue of judgment of this Court in Audikesava Reddy's case (supra) as claimed in G.O. Ms. No. 161 dated 13.02.2006. In other words, what actually is the adjudication contained in Audikesava Reddy's case (supra) is the question involved for determination. The adjudication contained in the Audikesava Reddy's case (supra) admittedly was in relation to the same land in Survey No. 83 situated in village Raidurg and between the same parties. In the earlier part of our judgment, we have already set out the facts which led to the filing of C.A. Nos. 3813 of 1996 and 7239 of 2001 in this Court by the respondent-State in Audikesava Reddy's case (supra).

5) In order to go into the factual position and ultimate decision in Audikesava Reddy's case (supra), it is necessary to bear in mind the meaning of expressions "Master Plan", "Urban Land", "Vacant Land" occurring in Sections 2(h), 2(o), 2(q) respectively which reads as:-

> "Section 2(h)"master plan", in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out;
>
> (o) "urban land" means,-
>
> (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
>
> (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever

name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.-For the purpose of this clause and clause

(q),-

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

(i) raising of grass,

(ii) dairy farming,

(iii)poultry farming,

(iv) breeding of live-stock, and

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

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

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

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

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

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

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

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

and

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

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

> 6) On behalf of the appellants, it was submitted that a combined reading of the definitions of the above expressions disclose that any "land" though situated in urban agglomeration is not a "Vacant Land" if the same is used mainly for the purpose of agriculture and not referred to in the Master Plan existing as on 17.02.1976.

In other words, according to the appellants, the land in Survey No. 83 is not a "Vacant Land" though situated in urban agglomeration as the same was used mainly for agricultural purpose and not included or referred to in the Master Plan existing as on 17.02.1976 as found by the High Court in Writ Appeal No. 918 of 1994 which led to Audikesava Reddy's case (supra). It is the appellants case that it was never the case of the respondent-State in Writ Petition Nos. 18385 of 1993 and 238 of 1994 (which culminated into the judgment of this Court in Audikesava Reddy's case) that the land in Survey No. 83 were "grazing lands" as shown in the declaration. The case of the respondent-State in those writ petitions was that the land in Survey No. 83 was not agricultural land since the same was within the urban agglomeration, the land has to be treated as "Vacant Land" and therefore the ULC Act is applicable with effect from 17.02.1976, even if the said land is not included in the Master Plan existing as on 17.02.1976.

7) The appellants in their earlier writ petitions, i.e. W.P. No. 18385 of 1993 and 238 of 1994 specifically averred and contended that the land in the said Survey No. 83 was "mainly used for the purpose of agriculture". By order dated 27.07.1994 and 06.10.1994 in those writ petitions, learned Single Judge recorded that the land in Survey No. 83 was "agricultural land". The Division Bench in Writ Appeal No. 918 of 1994 confirmed the finding of the learned single Judge that the land was mainly used for the purpose of agriculture. After quoting conclusion of the Division Bench in W.A. No. 918 of 1994, it was contended that there were concurrent findings on the question whether the land in Survey No. 83 was agricultural land as the same was "mainly used for agriculture" and the owners filed declarations under misconception. Mr. Rajendra Chowdhary, learned senior counsel

for the appellants heavily contended that since the land in Survey No. 83 was found to be "mainly used for the purpose of agriculture" and not included or referred to in the Master Plan existing as on 17.02.1976, the said land was neither "Urban Land" nor "Vacant Land"

> under Sections 2(o), 2(q) and consequently the ULC Act was inapplicable. Therefore, according to him, the Division Bench, by judgments dated 28.10.1994 and 04.12.1996, upheld the orders of the learned single Judge declaring the proceedings of the Competent Authority treating the date of commencement of the Act as 17.02.1976 as void and quashed the same. He pointed out that the Division Bench declined to look into the second Master Plan which came into force on 29.09.1980, in order to treat the land as "Vacant Land" in view of the law declared by this Court in Atia Mohammadi Begum vs. State of U.P. and Ors. (1993) 2 SCC 546. It was against these judgments dated 28.10.1994 and 04.12.1996 in W.A. No. 1220 and 918 of 1994, the State preferred C.A. Nos. 3813 of 1996 and 7239 of 2001 before this Court which is referred to as Audikesava Reddy's case. Since the State was disabled to treat the land in Survey No. 83 as "Vacant Land" even after its inclusion in the second Master Plan with effect from 29.09.1980, on account of the above ruling in Atia Begum's case, certain States including the State of Andhra Pradesh sought reconsideration of the decision in Atia Begum's case. Accordingly, this Court, by its orders dated 23.02.1996, referred the question of correctness of ruling in Atia Begum's case to a larger Bench of three Hon'ble Judges.
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> 8) Mr. G.E. Vahanvati, learned Attorney General for India and other senior counsel appearing for the State as well as Respondent No.4 submitted that as a consequence of setting aside of the judgment of the Division Bench, which had approved the orders passed by the learned single Judge, the proceedings taken under the ULC Act starting from filing of statements under Section 6(1) and culminating in subsequent orders of the Competent Authority under Sections 8 (4), 9, 10(1), 10(2), 10(5) and 10(6) will be deemed to have been upheld and attained finality. According to them, in view of the judgment of this Court in Audikesava Reddy's case (supra), it is not open to the appellants to seek re-opening of the proceedings under the ULC Act. In support of the above claim, learned Attorney General and other senior counsel relied on various judgments to show that once the decision of the High Court is set aside by this Court, it is not open to contend that a particular aspect or argument was not considered by this Court.

Atia Begum's case

9) Before considering the ultimate order and the ratio laid down in Audikesava Reddy's case (supra), we will briefly notice the facts of Atia Begum's case (supra) and the question involved therein. In that case the question was regarding the quantification of vacant land. The Competent Authority had declared that the appellant had 19,813.83 sq m of vacant land in Aligarh in excess of the ceiling limit but the District Judge reduced the area of the excess land to 6738.23 sq m. The order of the District Judge was challenged by both i.e. the owner and the State by filing writ petitions in the High

Court. The owner's writ petition was dismissed and that of the State was partly allowed. In appeal before this Court, the owner sought restoration of the order of the District Judge which had been set aside by the High Court on the interpretation of the provisions of the ULC Act. The Act came into force in the State of Uttar Pradesh on 17-2-1976. At that time, there was no master plan for the area of Aligarh. The master plan for Aligarh was made on 24-2-1980. In that master plan, the land in dispute was shown. The High Court took the view that by virtue of Explanation (c) of Section 2(o) defining "urban land", the land of the appellant could not be treated as mainly used for the purpose of agriculture because it was shown in the master plan made on 24-2-1980. The correctness of this view was in issue in Atia Begum's case. The decision, though notices that determination of the area of vacant land in excess of ceiling limit under the Act is to be made with reference to the date of commencement of the Act, fails to notice the Explanation to Section 6 which provides the meaning of the expression "commencement of this Act".

Section 6(1) and the Explanation read as under:

> "6. Persons holding vacant land in excess of ceiling limit to file statement.--(1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain:
>
> Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub- section shall have effect as if for the words `Every person holding vacant land in excess of the ceiling limit at the commencement of this Act', the words, figures and letters `Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement' had been substituted.
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> Explanation.--In this section, `commencement of this Act' means,--
>
> (i) the date on which this Act comes into force in any State;
>
> (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;
>
> (iii) where any notification has been issued under clause (n) of Section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification."

Audikesava Reddy's case

10) Now, we have to see the entire discussion and ultimate order passed in Audikesava Reddy's case (supra). A bench of three Hon'ble Judges in Audikesava Reddy's case after narrating the factual position in Atia Begum's case (supra) and after analyzing the issues, allowed those appeals. Since the entire argument rests with the ultimate decision in Audikesava Reddy's case, it is but proper to refer all the relevant paragraphs.

> "11. If the expression "commencement of the Act" is read with reference to the aforesaid Explanation, the area of doubt about the correctness of the decision of Atia Begum case becomes very narrow e.g. a few observations therein which are these: (SCC p.549, para 4) "Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action."

12. The observations that the authorities by their subsequent action after 17-2-1976 cannot alter or introduce the master plan which has the effect of increasing the area of excess vacant land do not represent the correct view of law.

The aforesaid Explanation to Section 6(1), inter alia, provides that where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land would be the date of the commencement of the Act as regards such land.

13. Development and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. That apart, the definition of "master plan" in Section 2(h) is very significant. It reads as under:

> "2. (h) `master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out;"

The above provision, inter alia, contemplates the master plan prepared under any law for the time being in force for development of an area. The plan shall also provide for the stages by which such development shall be carried out. It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the Explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under clause (ii) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land

becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17-2-1976.

Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land.

Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17-2-1976. It would all depend on the facts and circumstances of each case.

14. Accordingly, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, Atia Begum is not correctly decided.

15. In these matters, however, we are not concerned with the question as to the consequences of filing of a statement by a person under a wrong impression that the vacant land held by him is in excess of ceiling limit if it was not so when he filed a statement. This aspect is left open to be decided in an appropriate case.

16. Before concluding, we wish to place on record our deep appreciation for the able assistance rendered by Mr Raju Ramachandran, Senior Advocate, who on our request very readily agreed to assist the Court as amicus curiae.

17. For the aforesaid reasons, CAs Nos. 3813 of 1996, 7238 and 7239 of 2001 are allowed and CAs Nos. 1149 of 1985 and 10851 of 1996 are dismissed. The parties are left to bear their own costs."

11) It is the claim of Mr. Rajendra Chowdhary, learned senior counsel for the appellants that this Court in Audikesava Reddy's case was called upon to decide the only question relating to the correctness of the decision in Atia Begum's case. While elaborating the same, Mr. Chowdhari submitted that the State of Andhra Pradesh in C.A. Nos. 3813 of 1996 and 7239 of 2001 neither canvassed the facts nor challenged the above concurrent findings of facts before this Court in Audikesava Reddy's case. According to him, all the State Governments including the State of Andhra Pradesh were confined only with the reconsideration of the decision in Atia Begum's case as the States were disabled from looking into the second Master Plan, as a result of which any agricultural land, though situate in urban agglomeration not included in the existing Master Plan as on 17.02.1976 could never be treated as "Vacant Land" notwithstanding its inclusion in any other subsequent Master Plan for bringing such land within the purview of or the ambit of the ULC Act. In those circumstances, according to Mr. Chowdhary, the State cannot now be permitted to reagitate the same question once again in these appeals arising out of Writ Petition Nos. 4121, 4141, 4144 and 5776 of 2006 whether the land in Survey No. 83 was being mainly used for the purpose of agriculture or whether the declarations were not filed in the year 1976 under a wrong impression.

12) In support of the above claim, learned senior counsel for the appellants relied on a Constitution Bench decision of this Court in Direct Recruit Class II Engineering Officers' Association vs. State of

Mahrashtra and Others (1990) 2 SCC 715. The following principles enunciated in paragraph 35 were pressed into service.

> "....In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at SCR p. 595 of the reported judgment, thus : (SCR p. 595) "We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."

The decision in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case.... "

> (Emphasis Supplied)
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> 13) In Ishwar Dutt vs. Land Acquisition Collector and Another (2005) 7 SCC 190, this Court, once again reiterated that the principles of constructive res judicata enshrined in the Explanation IV to Section 11 of Civil Procedure Code will apply to writ proceedings.
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> 14) It is pointed out that by the impugned common judgment, the High Court held that by reason of the expression "appeals are allowed", occurring in para 17 of Audikesava Reddy's case, the judgments in W.A. Nos.

1220 and 918 of 1996 suffered complete reversal as a result of which the proceedings of the Competent Authority which were declared void and quashed stood restored or revived and consequently, "vesting" and "taking" of possession on 20.07.1993 of the land in Survey No. 83 under Sections 10(3), (5), (6) became final. It is the case of the appellants that the above conclusion cannot

be sustained as the judgment in Audikesava Reddy's case cannot be read as having restored the proceedings of the Competent Authority under Section 8(4), 9 and 10 of the ULC Act, merely because the use of the expression "appeals allowed" in para 17 of the said judgment. In other words, according to the appellants, the efficacy and binding nature of the adjudication and declaration of law in relation to the land in Survey No. 83 contained in Audikesava Reddy's case cannot be either diminished or whittled down on such construction of the expression "appeals allowed".

15) As regards the contention of the appellants that in view of the ratio in Audikesava Reddy's case (supra), the State is liable to re-compute the excess land holding of the appellants under the provisions of the ULC Act with reference to the date on which the Master Plan for the City of Hyderabad came to be extended to the appellants land that is as on 29.09.1980 (G.O.Ms. No. 23.06.1980). Mr. Nageshwar Rao, learned senior counsel for the State submitted that the declaration filed by the appellants in 1976 under the provisions of the ULC Act were filed deliberately and consciously hence, binding upon them.

He also submitted that the judgment of the Division Bench of the High Court in the earlier round of litigation being judgment dated 04.12.1996 delivered in Writ Appeal No. 918 of 1994 had merged into the judgment of this Court in Audikesava Reddy's case (supra) hence, reliance could not be placed by the appellants herein on any observations made or finding returned therein. He also submitted that in view of the judgment of this Court in Audikesava Reddy's case (supra) which was a judgment inter partes, it was no longer open to the appellants to seek re-computation of land holdings with reference to the date of extension of the Master Plan to the lands in issue.

16) The submissions made by the appellants about the decision of this Court in Audikesava Reddy's case (supra) are mis-conceived in law and were rightly rejected by the Division Bench in the impugned judgment. It was highlighted that on the basis of the declaration made under the ULC Act, the erstwhile owners of the land in issue had got released from the authorities an area of 99.17 acres of land that had been declared as excess land under the Land Reforms Act. Various materials with relevant dates and particulars furnished on behalf of the State clearly demonstrate that the owners of the land in issue were actively and deliberately seeking to get release 99.17 acres of land held to be excess land under the Land Reforms Act by relying on their declaration filed under the ULC Act. Even as early as on 11.04.1975, GPA holder of owners filed declaration under Section 8(1) of the Land Reforms Act in respect of entire extent of 526.07 acres.

On 02.06.1976/16.06.1976, the declarants held to be holding excess land to the extent of 99.17 acres.

17) On 02.09.1976, the GPA holder of declarants filed application in Land Reforms Tribunal contending that the provisions of the Land Reforms Act are not applicable and provisions of ULC Act are applicable since the land is urban vacant land. A prayer was made for release of land admeasuring 99.17 acres declared as excess land under the Land Reforms Act to be returned to owners. On 16.09.1976/27.07.1977, the very same GPA holder of owners filed declarations under Section 6 of the ULC Act.

Draft statement under Section 8(1) and notice under Section 8(3) of the ULC Act was issued on 01.07.1977/11.11.1977. A perusal of the draft statement subsequently state that the land is a grazing land and is not mainly used for the purpose of agriculture. By order dated 06.12.1979/25.01.1980, the Competent Authority under the ULC Act held the owners to be in possession of vacant land in excess of ceiling limit and issued final statements under Section 9 of the ULC Act declaring the surplus area of each declarant. On 16.01.1980/30.01.1980, a notification was issued under Section 10(1) of the ULC Act stating the extent of surplus land held by the declarants and affording opportunity of hearing to all interested persons. On 23.06.1980, the Master Plan came to be extended to cover the land in issue.

18) On 16.07.1980, GPA holder of declarants filed another application in Land Reforms Tribunal contending that the provisions of the Land Reforms Act are not applicable and provisions of the ULC Act are applicable since the land is urban vacant land. As a matter of fact, a prayer was made for release of land admeasuring 99.17 acres declared as excess land under the Land Reforms Act to be returned to the owners. Meanwhile, surplus lands were allotted to Hyderabad Urban Development Authority by G.O.Ms. No. 5013 dated 19.12.1980. By notification dated 24.01.1981 issued under Section 10(3) of the ULC Act, the surplus land would be deemed to have been acquired by the State Government and the same shall vest absolutely in the State Government free from all encumbrances. On 21.02.1981, the application for exemption was filed under Section 20 of the ULC Act by GPA holder of declarants and Chanakyapuri Cooperative Housing Society which was rejected by the State Government. By notice dated 26.02.1981 issued under Section 10(5) of the ULC Act, the Competent Authority asked the declarants to vacate and deliver possession of the land. Application for release of land admeasuring 99.17 acres declared as excess land under the Land Reforms Act was rejected by the Land Reforms Tribunal by order dated 19.04.1982. Against the said rejection, an appeal was filed in 1983 before the Land Reforms Tribunal being L.R.A. No. 6 of 1983. By order dated 22.09.1984, the Land Reforms Appellate Tribunal allowed L.R.A. No. 6 of 1983 and remanded to the Land Reforms Tribunal for fresh disposal. On remand, application for release of land admeasuring 99.17 acres declared as excess land under the Land Reforms Act was allowed on 10.11.1987 by the Land Reforms Tribunal. It is brought to our notice that possession of said extent of land delivered to the declarants on 25.04.1990 was through their GPA under Panchnama. On 19.07.1993, notification was issued under Section 10(6) of the ULC Act directing that possession be taken over all lands declared to be surplus under the ULC Act. In fact, possession of surplus lands was taken over on 20.07.1993. Those lands were allotted to Respondent No.4 (APIIC) on 13.02.2006 and physical possession was handed over to APIIC on 14.02.2006. The above factual details with clear-cut materials cannot be assailed. All those dates and events are available in the various documents filed by all the parties. Those particulars also show that only when possession of the said 99.17 acres of land was returned to the owners in 1990, then the owners for the first time sought to take the plea that the declaration made by them under the ULC Act was a mistake and hence proceedings under the ULC Act were void. As rightly pointed out, the owners having taken part, all the declarations filed by them under Section 6 of the ULC Act to recover lands admeasuring 99.17 acres surrendered under the provisions of the Land Reforms Act. Either the appellants or anybody claiming through them are estopped from assailing the legality or validity of the declaration made by the owners under Section 6 of the ULC Act on the principle that a person cannot aprobate and reprobate in respect of the same transaction.

19) Mr. Chowdhary, learned senior counsel for the appellants, by drawing our attention to para 15 of Audikesava Reddy's case (supra) submitted that this Court has not gone into the factual conclusion arrived by the Division Bench of the High Court and the present decision is confined with only issue referred to by the two-

Judge Bench, namely, it is the Master Plan that was in existence when the ULC Act was enforced and not the plan prepared subsequently that has to be taken into consideration to determine if land is vacant land held in excess of ceiling limit fixed under the Act. As pointed out earlier, this submission is also mis-placed. A close reading of para 15 makes it clear that in the said case it was "not concerned with the question as to the consequences of filing of a statement by a person under a wrong impression that the vacant land held by him is in excess of the ceiling limit." Inasmuch as the case of the appellants is that the lands regarding which declaration was filed by them was not vacant land at all, they would not be covered by the observations made by this Court in para 15 as aforesaid since the same is ex-facie intended to cover only such cases where the factum of the land in issue being vacant land is admitted. But thereafter, a submission was made that the vacant land declared to be excess land was in fact not excess land.

20) Equally, reliance placed by the appellants upon the observations and findings reached in the judgment of the Division Bench of the High Court in the earlier round of litigation which culminated in the judgment of this Court in Audikesava Reddy's case (supra) regarding lands in issue having been agricultural lands, the prayer of extension of the Master Plan thereto is also mis-conceived and unsustainable. As pointed out by learned senior counsel for the respondents by virtue of special leave petition filed against the judgment dated 04.12.1996 delivered in Writ Appeal No. 918 of 1994 as also the judgment dated 28.10.1994 delivered in Writ Appeal No. 1220 of 1994, finality of the said judgment and all findings contained therein stood destroyed. It is useful to refer the decision of this Court in Dharam Dutt and Others vs. Union of India and Others, (2004) 1 SCC

712. This Court held filing of an appeal destroys the finality of the judgment under appeal (vide para 69).

21) In M/s Gojer Bros. (Pvt.) Ltd. vs. Shri Ratan Lal Singh, (1974) 2 SCC 453, the following conclusion was pressed into service.

> "11. The juristic justification of the doctrine of merger may be sought in the principle that there cannot be, at one and the same time, more than one operative order governing the same subject-matter. Therefore the judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgment of the superior court. In other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court."

22) In Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359, this Court held:

> "12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way -- whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below."

However, Mr. Chowdhary very much emphasized the subsequent passage in the same paragraph which reads thus:

> "However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

By pointing out, Mr. Chowdhary submitted that the reliance placed on the doctrine of merger and the aforesaid judgment in Kunhayammed and Others (supra) cannot be sustained. He further pointed out that the last portion in the said paragraph shows that what this Court laid down was that the principle contained in the doctrine of merger is not of universal application.

Whatever may be, it is clear that once special leave has been granted, any order passed by this Court thereafter, would be an appellate order and would attract the applicability of the doctrine of merger. The above view is supported in the very same Kunhayammed and Others (supra) which reads:

> "41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.
>
> 42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the

> absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68.)"

In the same decision, their Lordships have summarized their conclusion as under:

> "44. To sum up, our conclusions are:
>
> (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.
>
> (ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.
>
> (iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.
>
> (iv) An order refusing special leave to appeal may be a non-

speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge.

All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority

in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

23) It is clear that once leave was granted by this Court in the special leave petitions filed against the Division Bench of the High Court in the earlier round of litigation and the consequent civil appeals arising therefrom filed by the State Government is allowed by this Court, the judgment of the Division Bench lost its identity and merged with the judgment of this Court. The said judgment of the Division Bench of the High Court, therefore, cannot be relied upon for any purpose whatsoever. Even on merits, it is relevant to point out that the arguments of the appellants that the lands in issue became amenable to the ULC Act only upon extension of Master Plan thereto on 23.06.1980 and that the declaration made prior to such date is non est is not acceptable and sustainable. As a matter of fact, the stand of the State Government has through out been that the lands in issue were not agricultural lands but were vacant lands under the ULC Act even in 1976 when the declaration was made by the owners under Section 6 of the ULC Act, hence the declaration and all action taken consequent thereto are valid in law. This position or stand of the State Government is clear and reiterated in its writ appeal filed by way of counter affidavit before the Division Bench of the High Court and before this Court in the present proceedings. It was brought to our notice that the appellants conceded before the High Court that the lands in issue were part of urban agglomeration even when the declaration under Section 6 of the ULC Act was enforced. In addition to the same, it was also brought to our notice that by an agreement dated 09.08.1974, the lands in issue were sold by the owners to a society, namely, Chanakyapuri Cooperative Housing Society which got a layout plan sanctioned on 20.10.1975 by Raidurg Gram Panchayat for construction of houses on the said lands. These materials clearly show that the lands were not agricultural lands even prior to declaration filed under Section 6 of the ULC Act by the owners in 1976. Any land not being agricultural land and falling within an urban agglomeration, constitutes vacant land as defined in Section 2(q) of the ULC Act. The lands in issue, therefore, constitute vacant land on the date of filing of declaration under Section 6 of the ULC Act by the owners in 1976. As per Section 6 of the ULC Act, declaration was required to be filed in respect of vacant land, such declaration was correctly filed by the owners hence, subsequent extension of master plan to the lands in issue on 23.06.1980 has no relevance to the validity of the declaration made in 1976 or to the proceedings initiated under the ULC Act pursuant to such declaration. It is not in dispute that the proceedings under the ULC Act were not challenged by the owners at any stage as provided by the statute. The notification under Section 10(3) of the ULC Act stating that the surplus land would be deemed to have been

acquired by the State Government and the same shall vest absolutely in the State Government free from all encumbrances was issued even as early as on 24.01.1981 which was allowed to become final in the absence of any appeal being filed against such notification as provided by the statute. Once vesting takes place under Section 10(3) of the Ceiling Act, the State has absolute title and ownership over it. The owner has no further say in respect of the land that has vested in the State. This position has been explained by us in Smt. Sulochana Chandrakant Galande vs. Pune Municipal Transport & Ors., 2010 (7) Scale 571 as under:

> "9. The meaning of the word `vesting' has been considered by this Court time and again. In The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust, AIR 1957 SC 344, this Court held that the meaning of word `vesting' varies as per the context of the Statute in which the property vests. While considering the case under Sections 16 and 17 of the Act 1894, the Court held as under:
>
> ...the property acquired becomes the property of Government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration."

(Emphasis added).

10. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property.

It must run with the property. (Vide Collector of Bombay v. Nusserwanji Rattanji Mistri and Ors., AIR 1955 SC 298; H.P. State Electricity Board and Ors.

v. Shiv K. Sharma and Ors., AIR 2005 SC 954; and AI Champdany Industries Ltd. v. Official Liquidator and Anr., (2009) 4 SCC 486).

11. In State of Himachal Pradesh v. Tarsem Singh and Ors., AIR 2001 SC 3431, this Court held that the terminology `free from all encumbrances' used in Section 16 of the Act 1894, is wholly unqualified and would en-compass the extinguishing of "all rights, title and interests including easementary rights" when the title vests in the State.

Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it.

Thus, State has absolute title/ownership over it.

12. In Satendra Prasad Jain and Ors. v. State of U.P. and Ors., AIR 1993 SC 2517, this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view

has been reiterated in Awadh Bihari Yadav and Ors. v. State of Bihar and Ors., (1995) 6 SCC 31; U.P. Jal Nigam, Lucknow v. M/s Kalra Properties (P) Ltd. Lucknow and Ors., AIR 1996 SC 1170; Pratap and Anr. (Supra);

Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors., (1996) 6 SCC 405; Allahabad Development Authority v. Nasiruzzaman and Ors., (1996) 6 SCC 424; State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr., AIR 1997 SC 2703; M. Ramalinga Thevar v. State of Tamil Nadu and Ors., (2000) 4 SCC 322; Printers (Mysore) Ltd. v. M.A. Rasheed and Ors., (2004) 4 SCC 460; Bangalore Development Authority and Ors., v. R. Hanumaiah and Ors,. (2005) 12 SCC 508; and Government of Andhra Pradesh and Anr. v. Syed Akbar, AIR 2005 SC 492.

13. So far as the change of user is concerned, it is a settled legal proposition that once land vests in the State free from all encumbrances, there cannot be any rider on the power of the State Government to change user of the land in the manner it chooses.

In a similar situation, in Gulam Mustafa and Ors. v. The State of Maharashtra and Ors., AIR 1977 SC 448, this Court held as under:

> "Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring Authority diverts it to a public purpose other than the one stated in the....declaration."

14. Re-iterating a similar view in C. Padma and Ors. v.

Deputy Secretary to the Government of Tamil Nadu and Ors., (1997) 2 SCC 627, this Court held that if by virtue of a valid acquisition of land, land stands vested in the State, thereafter, claimants are not entitled to restoration of possession on the grounds that either the original public purpose is ceased to be in operation or the land could not be used for any other purposes.

15. In Bhagat Singh etc. v. State of U.P. and Ors., AIR 1999 SC 436; Niladri Narayan Chandradhurja v.

State of West Bengal, AIR 2002 SC 2532; and Northern Indian Glass Industries v. Jaswant Singh and Ors., (2003) 1 SCC 335, this Court held that, the land user can be changed by the Statutory Authority after the land vests in the State free from all encumbrances.

16. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever."

24) With regard to the ultimate decision in Audikesava Reddy's case (supra), Mr. Vahanvati, learned Attorney General for India, by drawing our attention to the decree prepared by the Registry submitted that there is no doubt as to setting side the entire judgment of the Division Bench of the High Court and the parties cannot claim that certain issues have been kept open or untouched. In support of the above claim, learned Attorney General heavily relied on the decree drafted by the Registry. The relevant portion of the decree is as follows:

> "..... while holding that the Master Plan prepared as per law in force even subsequent to enforcement of the Urban Land (Ceiling & Regulations) Act, 1976 is to be taken into consideration to determine whether a particular piece of land is vacant land or not, and while leaving open the question as to the consequences of filing of a statement by a person under a wrong impression that the vacant land held by him is in excess of ceiling limit if it was not so when he filed a statement, to be decided in an appropriate case and for the reasons recorded in its Judgment DOTH in allowing the appeal and the resultant appeal ORDER:
>
> 1. THAT the Judgments and Orders dated 28th October, 1994 and the 4th December, 1996 of the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal Nos. 1220 and 918 of 1994 respectively, and also Judgments and Orders dated 6th October, 1994 and 27th July, 1994 of the Single Judge of the said High Court in Writ Petition Nos. 238 of 1994 and 18335 of 1993 be and are hereby set aside and in place thereof an order dismissing Writ Petition Nos. 238 of 1994 and 18335 of 1993 on the file of High Court be and is hereby substituted;
>
> 2. THAT the parties herein shall bear their own costs of these appeals in this Court;..."

Mr. Chowdhary submitted that the terms of decree drawn by the Registry of this Court, cannot, in law, provide any guidance of the interpretation of and for deducing the adjudication contained in the judgment of this Court in Audikesava Reddy's case having regard to the definitions of the expressions "judgment and decree"

> contained in Section 2(9) and Section 2(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as `CPC') respectively, which reads thus:
>
> "2(9) "judgment" means the statement given by the Judge on the grounds of a decree or order;
>
> 2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

According to him, a combined reading of the above two definitions show that the judgment must furnish the reasons or grounds for the adjudication of the controversy or controversies on the basis of which only a decree can be drawn. He pointed out that that is the reason it is said in law that "a decree must follow the judgment" or "a decree must agree with the judgment". Repeatedly, Mr. Chowdhuri submitted except answering the question referred to by a two-Judge Bench, this Court has not considered or concerned with the consequences of filing declarations under a wrong impression that the land is "vacant" when the land is not a "vacant land" and the same be decided in an appropriate case, which necessarily means that this Court was not inclined to go into the three questions, namely, whether the land in Survey No. 83, Raidurg (Panmaqtha) village was agricultural or not, whether such declarations were filed on 16.09.1976, on a wrong impression and whether the proceedings under Sections 8, 9 and 10 of the ULC Act are valid, having already declared in Para 13 that the date of commencement of the ULC Act qua the land in Survey No. 83, would be the date on which the said land was included in the second Master Plan that is, on 29.09.1980 when the owners were obligated to file declarations under Section 6 of their holdings and as such the statutory obligation to deal with such declarations also would commence only from the date of filing fresh declarations after 29.09.1980 (date of commencement of the Act). While winding up his reservation about the decree, he submitted that this Court in Audikesava Reddy's case (supra) expressly did not go into the question of validity of the proceedings taken by the Competent Authority under Sections 8, 9 and 10 of the ULC Act on the earlier declarations filed in September, 1976 under a mis- conception or a wrong impression when the land was not a "vacant land". As a matter of fact, after making the above submissions as to the decree, Mr. Chowdhury requested this Court to issue suo moto direction to the Registry for making necessary correction.

25) About the decree prepared by the Registry, though as per the Rules, the parties are permitted to point out error or defect, if the same is not in accordance with the decision before the official concerned. Till date, the appellants have not questioned the correctness of the decree, even now, there is no application for its correction.

On the other hand, we are of the view that the decree which we have extracted in the earlier part of our judgment makes it clear that the allowing of the appeals filed by the State in Audikesava Reddy's case clearly means that the High Court judgment is set aside and the writ petitions are dismissed.

26) The appellants also contended that the decree must follow the judgment and if it does not conform to the judgment then the same can be corrected. As a matter of fact, Mr. Chowdhary, learned senior counsel appearing for the appellants, made a plea for suo moto correction and reliance was placed on the judgment of this Court in Lakshmi Ram Bhuyan vs. Hari Prasad Bhuyan, (2003) 1 SCC 197. In this case, the High Court had modified the order of the trial Court. After the matter came back to the trial Court, a decree was prepared. During execution proceedings, an objection was raised to the execution as the decree did not contain the relief granted. The trial Court stopped execution and issued direction for correction of the decree. The matter was taken up to the High Court and finally to this Court. On perusal of the entire factual details, we find that this judgment has no application to the case on hand as these proceedings do not arise out of the proceedings for correction of decree.

As observed earlier, till date, no application has been filed for correction of decree. On the other hand, we have already held that in the case on hand the decree is consistent with the judgment. As the High Court had allowed the writ petitions only on one ground based on Atia Begum's case and as this Court had overruled the said judgment, it was not inclined to go into the question relating to filing of declaration by owners under wrong impression. The direction that the appeals are allowed can have only one meaning and the meaning is that the judgment of the High Court is set aside and the writ petitions are dismissed. In view of the same, there is no occasion for making any correction even suo moto and that too after a lapse of nine years from the date of the judgment.

27) To meet the above contentions, learned Attorney General has made an elaborate argument by drawing our attention to the decree prepared by the Registry. In fact, we also summoned the original decree drafted by the Registry. A judgment comprises three segments (i) the facts and the point at issue; (ii) the reasons for the decision and (iii) the final order containing the decision.

Order XX CPC requires a judgment to contain all the issues and findings or decision thereon with the reasons therefor. The judgment has to state the relief allowed to a party. The preparation of decree follows the judgment.

The decree shall agree with the judgment. The decree shall contain, inter alia, particulars of the claim and shall specify clearly the relief granted or other determination of the suit. The very obligation cast by the Code that the decree shall agree with the judgment spells out an obligation on the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his opinion, has been found entitled to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted. The operative part of the judgment should be so clear and precise that in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith. The obligation is cast not only on the trial court but also on the appellate court. Order 41 Rule 31 CPC casts an obligation on the author of the appellate judgment to state the points for determination, the decision thereon, the reasons for the decision and when the decree appealed from is reversed or varied, the relief to which the appellant is entitled. It is well settled by a catena of decisions of this Court that once a decision of the High Court is set aside by this Court, it ceases to exist. It falls on all four corners and not open to contend subsequently that a particular

aspect or argument was not considered by this Court or that it can be relied upon.

28) In Kausalya Devi Bogra (Smt.) and Others vs. Land Acquisition Officer, Aurangabad and Another, (1984) 2 SCC 324, this Court held that once the Supreme Court sets aside a judgment of the High Court, the High Court judgment is a nullity and cannot be revived.

29) In Ballabhdas Mathurdas Lakhani and Others vs. Municipal Committee, Malkapur, (1970) 2 SCC 267, this Court observed that a decision of the Supreme Court was binding.

> "... on the High Court and the High Court could not ignore it because they thought that "relevant provisions were not brought to the notice of the Court...""

30) In M/s Kesho Ram and Co. and Others Etc. vs. Union of India and Ors., (1989) 3 SCC 151, this Court held that:

> "Once Petitioners challenge to Section 3 and the impugned Notification was considered by the Court and the validity of the same upheld, it must be presumed that all grounds which could validly be raised were raised and considered by the Court."

31) Similarly, in Director of Settlements, A.P. and Others vs. M.R. Apparao and Another, (2002) 4 SCC 638, this Court held thus:

> "a judgment of the High court which refused to follow the decision and directions of the Supreme court or seeks to revive a decision of the High court which has been set aside by the Supreme court is a nullity."

In view of the peculiar controversy, we read the judgment in Audikesava Reddy's case carefully, particularly, paras 13 to 17 and we are satisfied that the decision of this Court has been correctly drafted by the Registry in the form of a decree and there is no ambiguity as claimed by learned senior counsel for the appellants.

32) Learned Attorney General submitted that a judgment rendered by this Court cannot be collaterally challenged as is sought to be done by the appellants in these appeals.

For the said proposition, he relied on the following:

> In Hunter vs. Chief Constable [1982] 1 A.C, Diplock LJ delivering his speech in the House of Lords enunciated the doctrine of `Collateral attack on a judgment and observed thus:
>
> "The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court

> of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

Quoting Halsburys, the learned judge observed:

> "I think it would be a scandal to the administration of justice if the same question having been disposed by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again."

33) This Court has approved this well settled principle that a judgment of the Supreme Court cannot be collaterally challenged on the ground that certain points had not been considered. This Court in Anil Kumar Neotia and Others vs. Union of India and Others, (1988) 2 SCC 587 held that it is not open to contend that certain points had not been urged or argued before the Supreme Court and thereby seek to reopen the issue. The relevant portion of the judgment is as follows:

> "... This Court further observed that to contend that the conclusion therein applied only to the parties before this Court was to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory..... It is no longer open to the Petitioners to contend that certain portions had not been urged and the effect of the judgment cannot be collaterally challenged."

34) In Palitana Sugar Mills (P) Ltd. and Another vs. State of Gujarat and Others, (2004) 12 SCC 645, this Court reiterated the principle that a judgment of this Court is binding on all and it is not open to contend that the full facts had not been placed before the Court. In this regard, para 62 of the judgment reads as follows:

> "62. It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues ....."

35) In A.V. Papayya Sastry and Others vs. Govt. of A.P. and Others, (2007) 4 SCC 221, this Court observed as under:

> "38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or

authority to review, recall or reconsider the order."

36) Regarding the doctrine of merger, once the appeal of the State was allowed in Audikeshava Reddy's case the net result was that the High Court judgment which held that the proceedings under the ULC Act were vitiated stood merged in the decision of this Court in Audikeshava Reddy. The logical sequitor of this is that the writ petitions filed by the appellants are deemed to be dismissed. In Kunhayahmed (supra), a three Judge Bench of this Court while elucidating the doctrine of merger held that once `leave' is granted while exercising jurisdiction under Article 136 of the Constitution of India, the doors of the appellate jurisdiction are opened. It does not matter whether reasons are given or not. The doctrine of merger is attracted as soon as `leave' has been granted in a special leave petition.

37) As pointed out by learned Attorney General, the matter can be looked at from another angle. The proceedings in the instant case are barred by the principle of constructive res judicata. The validity of the ULC Act were squarely in issue. The effect of allowing the State appeals in Audikeshava Reddy's case is that all contentions which parties might and ought to have litigated in the previous litigation cannot be permitted to be raised in subsequent litigations.

38) In Forward Construction Co. & Ors. vs. Prabhat Mandal & Ors., (1986) 1 SCC 100, this Court held that an adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The following portion of the judgment is relevant which reads as under:

> "20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. "

39) In Hoystead vs. Commissioner of Taxation (1926) 1 Appeal Cases 155, the Privy Council observed:

> "Parties are not permitted to bring fresh litigations because of new views that they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigations would have no end except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle."

As rightly observed by the High Court, what is utmost relevant is the final judgment of the superior Court and not the reasons in support of that decision. Apart from the legal position and the effect of allowing of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that W.P.Nos. 18385 of 1993 and 238 of 1994 stood dismissed. Inasmuch as the writ petitions having been dismissed, the orders passed under the ULC Act have attained finality. The declarations which had been made and statements filed on 06.09.1976 and 25.07.1977 stand till today and these declarations are not even sought to be withdrawn. In those circumstances, as rightly contended by the learned senior counsel appearing for the respondents, the prayer on the part of the owners in W.P. No. 4141 of 2006 made for the first time in 2006 after 32 years of filing of the statements under Section 6 and after 26 years of the conclusion of ULC proceedings was completely misconceived and was rightly rejected.

40) Before the High Court, the purchasers had contended that the original owners had filed the declarations under misconception and confusion. Even before this Court, the purchasers had raised a similar plea when they found that the observations in Atia Begum's case was overruled.

The observations in paragraph 15 of the judgment in Audikesava Reddy's case are in the context of the plea of the purchasers. It was not the case of the State that the original owners filed any statement or declaration under the ULC Act under a wrong impression. On the other hand, this was a contention of the purchasers.

However, in paragraph 15 of Audikeshava Reddy's case, this Court did not even go into the question because the owners were not before it and perhaps the purchasers could not raise that plea. This Court said, "this question is left open to be decided in an appropriate case." This means that this was not a fit case for going into this issue and when a proper case filed by owner comes with such a plea then the Court would consider the same. It follows that the appeals were allowed "for the aforesaid reasons"

> and this means on account of two reasons. The first reason is the overruling of Atia Begum's case and the second reason is that the Court was not prepared to examine the declaration filed by the owners at the behest of the purchasers. In those

circumstances, there was no necessity to remand, hence there is no order for remand. Therefore, the expression "appeals are allowed" can have only one meaning and that is the judgment of the High Court is set aside and writ petitions are dismissed and the determination of ceiling already made remains intact and undisturbed.

41) The appellants contended that the High Court had recorded a finding that the land is agricultural and the State had taken up a ground saying that the land was not agricultural land and was a vacant land but that point was not pressed before this Court in Audikesava Reddy's case, hence to that extent the High Court judgment would operate with binding effect in view of principles of constructive res judicata. We accept that principle of res judicata/constructive res judicata is applicable to the writ proceedings. However, in the present case, the Division Bench finding with respect to nature of land in a writ petition filed by purchasers does not survive after appeals of the State were allowed and after this Court refused to go into the question of filing of statements by owners under a wrong impression. If this Court wanted the nature of land to be separately considered then it would have done so or remanded the matter. However, paragraph 15 of Audikesava Reddy's case shows a clear intent to leave the declaration of the owner filed under the ULC Act intact. In the case on hand, as observed earlier, no part of the judgment of the High Court would survive after the appeal is allowed unless and until it is expressly and specifically preserved. In view of the same, the contrary contention of the appellants in this context is unacceptable and unsustainable. In any case, the owners are bound by the determination of surplus land by the Competent Authority on the basis of their own declaration and the various orders passed under the ULC Act. They cannot be permitted to re-open the chapter after about 25 years.

42) Mr. Chowdhary, learned senior counsel contended that when a doubt arises about what the Court intended then the same must be resolved by construing the expressions inconsistent with the law. He placed reliance on the following judgment of this Court:

1. Gajraj Singh & Ors. vs. State of U.P. & Ors (2001) 5 SCC 762

2. Sarat Chandra Mishra & Ors. vs. State of Orissa & Ors. (2006) 1 SCC 638, 643 and

3. State of Haryana & Ors. vs. M.P. Mohla, (2007) 1 SCC 457, 464 On going through those decisions, we have no quarrel over the ratio laid down, however, there is no scope of applying them to the present case. As pointed out earlier, the expression `civil appeals are allowed' carry only one meaning, i.e., the judgment of the High Court is set aside and the writ petitions are dismissed. Moreover, the determination of surplus land based on the declaration of owners has become final long back. The notifications issued under Section 10 of the Act and the panchanama taken possession are also final. On behalf of the State, it was asserted that the possession of surplus land was taken on 20.07.1993 and the Panchanama was executed showing

> that the possession has been taken. It is signed by witnesses. We have perused the details which are available in the paper book. It is settled law that where possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed Panchanama. [vide Sita Ram Bhandar Society, New Delhi vs. Lieutenant Governor, Govt. of NCT, Delhi, (2009) 10 SCC 501].

43) It is not in dispute that the Panchnama has not been questioned in any proceedings by any of the appellants.

Though it is stated that Chanakyapuri Cooperative Society is in possession at one stage and Shri Venkateshawar Enterprises was given possession by the owners and possession was also given to Golden Hill Construction Corporation and thereafter it was given to the purchasers, the fact remains that the owners are not in possession. In view of the same, the finding of the High Court that the possession was taken by the State legally and validly through a Panchnama is absolutely correct and deserves to be upheld.

44) It is relevant to point out the conduct of the appellants in the previous proceedings which were highlighted by learned senior counsel for the State as well as APIIC. They are:

> a) The appellants themselves described the land in Survey No. 83 as "grazing land" in their declarations filed under Section 6(1);
>
> b) The appellants filed declarations under the Land Reforms Act subjecting the land to the jurisdiction of the Tribunal;
>
> c) filing declarations under the ULC Act treating the land in Survey No. 83 as vacant land;
>
> d) the transaction of agreement of sale entered into between GPA and Chanakyapuri Cooperative Housing Society;
>
> e) Owners and Society filed applications for exemptions which were rejected;
>
> f) Chanakyapuri Society pursued its remedies against such rejection of exemption up to this Court in which the owners through their Power of Attorney were sailing with the Society.

In fact these instances were projected in their counter affidavit before the High Court by the State and APIIC to non-suit the appellants. Though learned senior counsel for the appellants pointed out that these aspects were not highlighted before the High Court, the conduct of the appellants as regards the above aspects cannot be ignored.

45) It is pointed out that the owners themselves have described the land in Survey No. 83 as "grazing lands" and "vacant land" in the relevant columns of their declaration under Section 6(1)

and, therefore, the proceedings of the competent authority under Sections 8, 9 and 10 are valid.

Though the said aspect had not been disputed by the appellants, however, it is pointed out that the mentioning of "grazing lands" in the said declaration is not conclusive.

However, as observed earlier, their statements in the form of declarations before the authorities concerned cannot be denied. In fact, we were taken through those entries which are available in the paper-book in the form of annexures.

46) About the sales under G.O.Ms. No. 733 dated 31.10.1988 and G.O.Ms. No. 289 dated 01.06.1989, it is the stand of the appellants that those government orders were passed on the basis of a policy to encourage building activity and in public interest under Section 20(1)(a) of the ULC Act. According to the appellants, they are entitled to the benefits of G.O.Ms.No. 733 dated 31.10.1988 and they are entitled to the same benefits as any other holder of excess vacant lands is entitled to as they are in actual physical possession even as on date irrespective of whether the Act became applicable on 17.02.1976 or 29.09.1980. It is brought to our notice that the amendment made in G.O.Ms. No. 217 vide G.O.Ms. No. 733 dated 31.10.1988 is applicable only in the cases in which the possession of land had been taken over by the Government under Section 10(5) and 10(6) and according to the State Government, in this case, possession was taken after 31.10.1988 as pointed out by learned senior counsel for the respondents, the declarants cannot avail the said benefit since even, according to them, they were not in possession as on 31.10.1988. The benefit of G.O.Ms. No. 733 may be available if the declarants were in possession and up to 31.10.1988 and possession was taken by the Government subsequent thereto. As rightly observed by the High Court, G.O.Ms. No. 217 cannot be interpreted as entitling the declarants to claim benefit of exemption even in cases where they were not in possession as on 31.10.1988. The same was handed over to the Mandal Revenue Officer, Sherlingampally, even prior to that, the said land was allotted to Hyderabad Urban Development Authority vide G.O.Ms. No. 5013 dated 19.12.1980. Admittedly, the said Government Order was not challenged by the appellants. In those circumstances, the appellants cannot be allowed to take the benefit of G.O.Ms. No. 733 since this is not merely a case where the appellants were dispossessed but the property was transferred initially in favour of Hyderabad Urban Development Authority and later to APIIC for utilizing the same to set up IT Park Project. We are satisfied that the appellants are not entitled to claim benefits under G.O.Ms. No.733. It is also clear from G.O.Ms. No. 455 and 456 dated 29.07.2002 that occupation/possession is sine qua non for the allotment of surplus lands.

47) Various third parties have filed separate applications by way of I.As in these appeals praying for certain reliefs.

In view of the disposal of the appeals, they are free to approach the appropriate authority/court to vindicate their grievance if the same is permissible under law.

48) In the light of the above discussion, we do not find any merit in the appeals filed by the appellants.

Consequently, they are dismissed. No order as to costs.

.....J. (P. SATHASIVAM) .....J. (DR. B.S. CHAUHAN)
NEW DELHI;

OCTOBER 8, 2010.