M/S A.P. Electrical Equipment ... vs The Tahsildar on 27 February, 2025

2025 INSC 274

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS 4526-4527 OF 2024

M/S A.P. ELECTRICAL EQUIPMENT CORPORATION …APPELLANT(S)

VERSUS

THE TAHSILDAR & ORS. ETC. …RESPONDENT(S)

J U D M E N T

J.B. PARDIWALA, J.

1. Since the issues raised in both the captioned appeals are same, the parties are also same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing Date: 2025.02.27 17:11:38 IST Reason:

analogously and are being disposed of by this common judgment and order.

2. “…..One of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression ‘the act of the Court’ is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.” [Privy Council in Alexander Rodger Charles Carnie v. Comproir D’Escompte De Paris, 1871 Law Reports 3 Privy Council 475]

3. These appeals arise from a common judgment and order passed by the High Court for the State of Telangana and Hyderabad dated 03.01.2022 in Writ Appeal No. 665 of 2022 and Writ Appeal No.

670 of 2022 respectively by which both the writ appeals filed by the State came to be allowed thereby setting aside the judgment and order passed by the learned Single Judge of the High Court allowing the writ petitions filed by the appellants-herein.

4. The facts giving rise to these appeals may be summarized as under:-

i) M/S A.P. Electrical Equipment Corporation (Now known as 'ECE INDUSTRIES LIMITED'), hereinafter the appellant is a company engaged in the business of manufacture and sale of power transformers and other electrical equipment. For the purpose of establishing its manufacturing unit, the appellant company had purchased land measuring 1,63,764 (Sq. yards in Survey Nos 74,75,76, 78, 79) ('Subject Land') and the same is the subject matter of the present appeals.

ii) The subject land is situated in Fatehnagar Village Balanagar Mandal, Rangareddy District.

iii) Following the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act, 1976'), the appellant filed a declaration in Form I under Section 6(1) of the Act, 1976 whose declaration was taken up as C.C. No. 10571 of 1976 by the special officer and competent authority of urban land ceiling department for utilization of excess land. The declaration, which covered the appellant's holdings in Hyderabad and Visakhapatnam, was duly processed by the authorities.

iv) Lands held by the appellant at Hyderabad are as under:

S. No	Properties	Area (in Sq. Mtrs)
1.	Total extent in Sy. Nos- 74/P, 75/P, 76/P, 78 & 79 in Fathenagar (Vg)	163679
2.	Extent covered by GVM road in Sy. No. 78 & 79 in T.S. No. 3 & 6 of Block A = 5088 Sq Meters	163679-5088 = 158591
3.	Extent exempted by the Government u/s 20(1)(a) vide G.O.Ms No. 1729 dt 23.11.82 = 51580.00 Sq meters	158591-51580 = 107011
4.	Extent Exempted u/s 21 under Housing Scheme in Sy. Nos = 50280.43 .74/P, 75/P = 56730.57 Sq Mtrs	107001-56730.57
5.	Total Extent exempted i.e. (108310.57 Sq Mtrs)	

6. Extent Effected by Roads in 50280.43-3742 = Sy. No. 74/P, 75, 76 as per 46538.43 MCH Plan, 3742.00 Sq Mtrs out of 50283.00 Sq Mtrs

7. Surplus extent in Sy.No. 74/P, 46538.43 75/P & 76/P (Fatehnagar)

v) In respect of the Hyderabad holdings, the appellant's submission led to the issuance of Government Orders, notably GO Ms. No. 1729 (dated 27 November 1982), whereby the exemptions were granted under Section 20(1)(a):-

a. The entire land in Surveys 78 and 79 was exempted on the ground that a factory had been constructed there; b. A portion of the land in Surveys 74, 75 and 76 measuring approximately 48,859.50 square metres was exempted subject to the condition that separate industrial structures be constructed within a prescribed period;

c. The appellant had also filed a declaration under Section 21(1) of the ULC Act and the same declaration was taken up as for accommodation of weaker sections to an extent of 56,730.57 square meters out of the aforesaid land. Accordingly, permission was accorded by the Special Officer and Competent Authority under Section 21(1) of the ULC Act on 04.02.2001. While granting the permission, a condition was imposed on the appellant that the construction of the dwelling units shall be for the weaker sections of the society and the same should be completed within 5 years. It was alleged that the appellant had failed to construct the dwelling units within the specified period thereby violating the condition while granting permission under Section 21(1) of the ULC Act.

vi) In respect of the land in Survey Nos. 74, 75 and 76 respectively, the dated 07.04.1990 withdrawing the exemption granted earlier under G.O.Ms. No. 1729.

vii) The stance of the Respondents is that the failure on the part of the appellant to utilize the 48,859.50 sq. m. portion in the prescribed manner led to the withdrawal of the exemption for that land, as affected by GO Ms. No.

303. On April 7, 1992, the Special Officer and the Competent Authority for Urban Land Ceiling, Hyderabad, issued a draft statement under Sections 8(1) and 8(3) of the Act, 1976 respectively, provisionally categorizing the appellant as holding surplus land amounting to 1,01,645 sq. m.

viii) Later, on 03.04.2005, the Special Officer issued an order under Section 8(4) determining that the excess vacant land in the Hyderabad Urban Agglomeration measured 46,538.53 sq. m. of this total, the appellant was entitled to retain 1,000 sq. m. under Section 4(1)(b) of the ULC Act, leaving a balance of 45,538.43 sq. m. as vacant hand.

ix) Aggrieved by the order dated 03.04.2005, the appellant approached the Appellate authority by way of an appeal under Section 33 bearing no. Hyd/11/2005. The Appellate authority vide order dated 28.07.2005, set aside the order appealed against and remanded the matter to the special officer and competent authority for fresh computation. After due enquiry, a revised order under

Section 8(4) of the ULC Act and final Statement under Section 9 of the ULC Act were issued on 20.03.2007 which determined the surplus at 46,538. 43 sq. mts. which was separate from the land exempted under Section 21 of the ULC Act.

x) It is the case of the Respondents that the Government of Andhra Pradesh issued a notification under Section 10(1) of the ULC Act, in the Andhra Pradesh Gazette inviting claims from persons interested in the Subject land measuring 46,538.43 sq. mts. It is also the stance of the Respondents that the said gazette notification was never challenged by the appellant.

xi) After completion of such computation, notification under Section 10(3) of the ULC Act was published in the Andhra Pradesh State Gazette dated 03.10.2007, wherein an extent of 46,538.43 square meters in survey nos. 74/P, 75/P and 76/P of the Fatehnagar Village in Balanagar mandal was declared to have been acquired by the State Government, with effect from 12.07.2007. It is the case of the appellant-herein that the aforesaid notification failed to note that the surplus land was only to the extent of 45,538.43 sq. mts. and not 46,538.43 sq. mts.

xii) It is the case of the appellant that the Competent Authority purportedly issued a notice under Section 10(5) of the ULC Act dated 05.01.2008 directing the appellant-

herein to surrender the excess vacant land within thirty days. Further, according to the Respondents since the appellant's factory was closed due to lockout on 05.01.2008 the said notice was affixed on the main door of the factory premises on 08.01.2008. The operative portion of the notice is reproduced herein below:-

> "Whereas the lands in sy.Nos. 75/p, 75/p, 76/p to an extent of£ 46538.43 Sq/Mtrs.
>
> Fatehnagar vg., Balanagar Mandal, Ranga Reddy District, Marripalen vg. Visakhapatnam District in Sy. No. 59/3, 8437.48 Sq. Mtrs. (B Category) equivalent to 12,656.22 Sq. Mtrs. (C- Category) and which are in your possession are deemed to have vested absolutely in the State Government free from all encumbrance with effect from the 12.07.2007 under Sub- section (3) of Section 10 of the Urban land (Ceiling & Regulation) Act, 1976 (Central Act 33 of 1976) vide Notification No. G 1/10571/76, published at pages 1 of part-II Extraordinary of the Andhra Pradesh Gazette No. 288 dated 3.10.2007. Now, therefore, in exercise of the powers conferred by sub-section (5) of section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act, 33 of 1976), I hereby order you to surrender/deliver possession of the said land to Sri S.A. Khader, Deputy Tahsildar of this office within thirty days of the service of this Notice."

xiii) According to the Respondents due to non-compliance of the aforementioned notice, order under Section 10(6) of the ULC Act was issued on 05.02.2008 authorising the enquiry officer to take over the possession of the Surplus Land. Accordingly, the Enquiry Officer took over the possession of the surplus land on 08.02.2008 to the extent of 46,538.43 Square Meters in Survey Nos. 74/P, 75P and

76P in Fatehnagar Village, Balanagarmandal, Ranga Reddy District.

5. The operative part of the order is reproduced hereinbelow:-

"Notice U/s 10(5) of the Act was issued to the M/s A.P.E.E.C Fathenagar Balangar Mandal, RR Dist.

asking them to deliver the possession of the following surplus land withing 30 days from the date of the service of notice u/s 10(5) of the Act.

Sl. No.	Descripti on of the Property	Location	Extent in Sq. Mtrs
	74/P, 75/P, 76/P	vg. Balanagar, Mandal, Ranga Reddy District.	8437.48 Sq Mts (B-Category) equivalent to
		Marriapalem vg. Visakhapatnam District	12656.22 Sq Mtrs (C Category)

The 30-days time given in the notice U/s 10(5) of the Act expired on 01- 10-2008 buy they failed to deliver possession before the expiry date. Hence Sri SA Khader Enquiry officer of this office is authorized to take over the possession of land in question U/s 10(6) of the Act and hand over the same to the Mandal Revenue Officer concerned and report compliance within one week positively."

xiv) According to the Respondents, the enquiry officer in pursuance of the order dated 05.02.2008 took over the actual physical possession of the surplus Subject Vacant Land on 08.02.2008 by way of a panchnama. It is the case of the Respondents that the panchnama was prepared by the Deputy Tahsildar and enquiry officer in the presence of three panchas and the said possession was taken over by drawing a valid panchnama. The relevant extracts of the panchnama is reproduced herein below:-

Sl. Panchas Name Aged Occupation Residence No. 1 Ramaiah 50 Business Fathenagar 2 Yashwanadham 45 Coolie Fathenagar 3 Jagadeesh 25 Carpenter Fathenagar We three panchas under the call from Deputy Tahsildar and Inquiry Officer, Urban Land Ceiling, Hyderabad present at site at Rangareddy District,

Balanagar Mandai, Fathonagm: village limits sy.nos. 74/8, 75/8and 76/f3.

There the Deputy Tahsildar over the said survey nos. land holding the ownership rights their land under Urban land ceiling act 1976 (46538.435 mtrs.) is identified as excess land vide Special Officer, Urban Land Ceiling Hyderabad orders No.F1/G1/10571/71/76 dated : 5.2.08 through the said land owners are excess land owners as confirmed said. Such excess land ext.46538.42 sq.mtrs. handover to government, the said ceiling act sec.1 0(5) the file no.F1/G1/10571/76/76 dated : 5-1-08 through to the land owners issued the notice. But according to that notice the said land though the stipulated is completed, the said excess land not handed over to the government Hence in the said ceiling act sec.1 0(6) tl1e said excess land to take possession by the government the Deputy Tahsildar permitting to the Inquiry Officer file no.F1/G1/10571/76 dated : 9-2-08 through the Special Officer issued the orders. Hence the inquiry officer according to the orders, today i.e. on 8-2-08 in the said survey nos. 46538.43 sq.mts. excess land according to sub division sketch after fixing the boundaries by the surveyor, he himself personally to take into govt. possession in our panchas presence taken into possession. Hence this excess land from today onwards is in the govt. possession as confirmed. This excess land vacant/making plots /made the constructions/structures. This panchnama took place in our presence is true. Read over in Telugu, as all the above contents are true believing we signed below."

6. It is the case of the appellant-herein that the purported "panchnama" dated 08.02.2008 was prepared in a printed form, and the Respondents allegedly took symbolic possession of the Subject Land. Admittedly, the actual physical possession of the Subject Land is with the appellant till date. A copy of the purported panchnama, a printed Form with gaps filled in, was handed over to the appellant for the first time on 14.09.2010, when the writ petition was filed before the High Court.

7. On 22.04.2008 the State of Andhra Pradesh brought into force the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, "the Repeal Act, 1999") with effect from 27.03.2008.

8. According to the appellant in or around 2009, the Respondents attempted to take action under the purported acquisition proceedings in respect of the Subject Land. The appellant filed a writ petition before the High Court being Writ Petition No. 11293 of 2009, against illegal attempts of dispossession by the Tahsildar. The High Court issued notice in the said Writ Petition and granted interim injunction in favour of the appellant.

9. According to the appellant the copies of the purported Section 10(5) Notice, Section 10(6) Order and the panchnama (collectively, "Section 10 Notices") were handed over to the appellant for the first time on 14.09.2010.

10. On 20.09.2010 the appellant preferred another writ petition being Writ Petition No. 23477 of 2010, inter alia assailing the purported panchnama. In Writ Petition No. 23477 of 2010, the High Court directed that pending further orders, the appellant shall not be dispossessed from the Subject Land. The learned Single Judge adjudicated both the writ petitions filed by the appellants and allowed those vide common judgment and order dated 03.01.2022. The learned Single Judge held as under:-

"From the sum and substance of the above said judgments of the Hon'ble Supreme Court and various other Courts, it is clear that the official respondents after issuing notices under Section 10(1) and 10(3) have to issue notice under Section 10(5) directing the party to surrender the possession of the land, within a period of thirty days, and if voluntary possession of the same is not given, then the official respondents are obligated to issue notice under Section 10(6) to the petitioner and then take possession. The above judgments also make it abundantly clear that mere issuance of the notice under Section 10(3) does not automatically entitle the official respondents to take possession of the notified lands, but the authorities have to necessarily issue notice under Section 10(5) to the land owner or any other interested person. The Courts have also held that the taking over of the possession has to be actual physical possession and not mere de jure possession.

Having regard to the above laid proposition of law, the question now before this Court is to see as to whether the notifications issued under Section 10(5) and 10(6) by the authorities and the panchnama stand to the legal scrutiny of this Court?

31. The documents filed, more particularly, the notice issued under Section 10(6) of the Act reveals that in the said notice, two dates are mentioned i.e. 05.02.2008 and 08.02.2008.

32. Even if the contention of the official respondents that the 10(5) notice dated 05.01.2008 is sent through registered post is taken to be true, it will take minimum two or three days time for the said notice to reach the office of the petitioner. As per the requirement of ULC Act, the time period of thirty days is prescribed for issuance of 10(6) notice after issuance of 10(5) notice. If that be so, the 10(6) notice should be dated 08.02.2008. But a perusal of the 10(6) notice shows that two dates are written on the said notice i.e. the dates of 05.02.2008 and 08.02.2008, which clearly shows that the date 10(6) notice has been prepared even before the expiry of 30 days. Moreover, in the said notice it is mentioned as under:

"The 30-days time given in the notice U/s 10(5) of the act expired on 01-10- 2008 but they failed to deliver possession before the expiry date. Hence Sri. S.A. Khader, Enquiry Officer of this office is authorized to take over possession of land in question U/s 10(6) of the Act and hand over the same to the Mandal Revenue Officer concerned and report compliance within one week positively." (Emphasis Added)

33. The above extracted portion of the 10(6) notice clearly reveals that the notices are back-dated for the purpose of preparing the said notice and panchanama. It is beyond comprehension and not understandable as to how the date of 01.10.2008 can be mentioned while calculating the expiry date of thirty days from either 05.01.2008 or 08.01.2008, as the case may be.

Evidently the person who was preparing the 10(6) notice did so after the Repeal Act was enacted and adopted by the then Government of Andhra Pradesh. Even in the counter filed by the Special Officer & Competent Authority, it is stated as under:

> "18..... A notice U/s. 10(5) of the Act was issued on 5- 1-08 asking the declarant to surrender the excess vacant, land within (30) days from the date of its receipts. The company was under lockout, hence the notice issued U/s 10(5) of the Act was affixed on the main door on 8-1-08. The time stipulated in the notice expired but the declarant failed to surrender the land. Hence order U/s 10(6) of the Act was issued on 5-2-08, authorizing the Enquiry Officer of this office to take over possession of the surplus land and hand it over to the MRO, concerned. The Enquiry Officer of this office took over possession of the surplus land on 8-2-
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> 2008 to an extent of 46538.43 sq.mtrs. in Sy.
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> Nos. 74/p, 75/p and 76/p, in Fathenagar Village, Balanagar Mandal and Special Officer, ULC, Visakhapatnam accordingly took over possession of the surplus land to an extent of 8437.48 sq. mtrs. in Sy. No. 59/3, Marripalem village, Visakhapatnam on 12-3-
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> 2008." (Emphasis Added)
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> 34. Even if the above averments made in the counter are taken to be true and correct, the very admission on the part of the official respondents that the notice was served on 08.01.2008 and Section 10(6) notice is issued on 05.02.2008 confirms that the mandatory period of 30 days between Sections 10(5) and 10(6) notices is not met and the same has to be held void, illegal and bad. Besides, when pointed out by this Court about the discrepancies with regard to the dates mentioned in the 10(6) notice and also the non-

service of the notice under Section 10(5) to the petitioner in-person, the learned Special Government Pleader tried to brush out the same as some clerical errors and argued that the same has to be ignored as a minor procedural lapse. The two dates mentioned in 10(6) notice belie the claim of the official respondents that they have taken over the physical possession of the subject land on 08.02.2008. There is no whisper or explanation forthcoming from the authorities as to how the date of 01.10.2008 is mentioned in the 10(6) notice while calculating the expiry of 30 days period from either 05.01.2008 or 08.01.2008. Even a perusal of the 10(5) notice shows that the same has not been served on the petitioner, but was affixed on the gate of the factory only on 08.01.2008. There is no signature on the said notice as to who has received the same except a name has been scribbled (which is not legible). Having regard to the overwhelming evidence to show that the physical possession of the land is still with the petitioner, this Court is of the considered view that the valuable rights of the parties cannot be allowed to be defeated on the basis of the documents prepared after the Repeal Act has come into force and the stand of the Government that the dates shown in the documents are only clerical errors, cannot be accepted and is hereby rejected. In the

absence of any cogent and convincing evidence or document to show that the Government has taken physical possession of the subject land as contended or any other material to show that the notices under Sections 10(3), 10(5) and 10(6) were validly prepared and served on the petitioner, both the Section 10(6) notice and panchanama dated 08.02.2008 have to be taken as a bogus and fabricated one, prepared after the Repeal Act come into force. The material placed before this Court clinchingly establishes that the physical possession of the subject premises has not been taken over by the official respondents as claimed and absolutely there is no material to show that the subject land is in their physical possession even as on date. The panchanama dated 08.02.2008, on which the independent witnesses are stated to have affixed their signatures, relied by the official respondents to substantiate that the officials went to the site and taken physical possession, do not contain either the addresses of the panchas or their description and do not instill any confidence in the Court that they are genuine. The official respondents did not even bother to file affidavits of the so-called panchas to show that they were present at the site and the panchanama was prepared in their presence.

Admittedly, there is no signature of the land owner on the alleged panchanama dated 08.02.2008 or the site map annexed thereto. Even the description of the panchas or their addresses or even their temporary addresses are not shown therein. In the Absence of the signatures of the land owner on the panchanama, the panchanama and the site map will have to be considered as having been prepared behind the back of the petitioner and in the office of the authorities. The documents filed by the petitioner establish beyond any doubt that the factory is still running, number of apartments are constructed in part of the land and that the physical possession has not been taken over by the Government, as contended, but the same is still with the petitioner Company. No affidavit of any of the panchas has been filed to show that the authorities have physically gone to the subject land and taken over the possession in the presence of the owner. The entire exercise of affixing signatures and taking over the possession of the land appears to have been done sitting in the office of the authorities and only on paper.

35. It is apt to note that the Hon'ble Supreme Court in Barangore Jute Factory (referred supra) has held that where the Statute requires a particular act to be done in a particular manner, the same has to be done in that manner alone. It is obvious from the record that the official respondents did not follow the procedure contemplated under the ULC Act, but acted contrary to it. Once the ULC Act was repealed by the Central Government and the same has been adopted by the State Government and physical possession of the land is still with the petitioners, the preparation of notices under Sections 10(5) and 10(6) and the panchanama of taking possession is void ab initio and non est in the eye of law. The bare perusal of the panchanama, notices under Sections 10(5) and 10(6) of the ULC Act, do not inspire any confidence in the Court, which warrants any indulgence of this Court in favour of the official respondents.

x x x x

38. The documents filed by the petitioner clearly establish the fact that the physical possession of the land has not been taken over by the respondents. The photographs filed by the petitioner show that there is a factory in existence, beside number of multi storied residential buildings have already

been constructed in a part of the said land, entire land is encompassed with compound wall and gate manned by security guards. In the absence of any material to show that the procedure as contemplated under the ULC Act, more particularly sections 10(1), 10(5) and 10(6) thereof, has been followed in its true letter and spirit, the irresistible conclusion that can be drawn from the record filed by the petitioner is that the 10(5) and 10(6) notices are backdated and panchanama has been prepared in the office of the authorities after the Repeal Act has come into force and the physical possession of the subject land is still with the land owner only. It is also pertinent to mention that G.O.Ms. No. 1534 dated 20.12.2008 wherein the Government sought to resume the surplus land has been set aside by a learned Single Judge of this Court vide order dated 26.10.2009 in W.P. No. 3140 of 2009. Relevant portion of the said order reads as under:

> "… it is clear that possession was not taken under the Act and

proceedings under Section 10(5) and 10(6) have not been initiated insofar as the subject land is concerned. Therefore, the impugned order passed by first respondent in directing the Special Officer and Competent Authority to take possession from the first petitioner though the petitioners 2 and 3 are in possession of the subject land is arbitrary and illegal, particularly when the 1976 Act has no application by virtue of Repeal Act, 1999, which was adopted by the State of Andhra Pradesh with effect from 27.03.2008 i.e. much prior to issuance of the impugned G.O. In view of the above, I am of the opinion that the impugned G.O. is liable to be set aside and accordingly set aside. The writ petition is accordingly allowed. No order as to costs." (Emphasis supplied)

11. Thus, what is discernible from the judgment rendered by the learned Single Judge referred to above is as under:-

> i. Under Sections 10(5) and 10(6) of the Act, 1976 the State is required to take over physical possession of vacant land in a cogent and convincing manner. As per the decisions of this Court in State of Uttar Pradesh v. Hari Ram, (2013) 4 SCC 280, and Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and Ors., (2014) 12 SCC 523 respectively, unless actual physical possession of the Subject Land is taken over prior to the Repeal Act, 1999 all proceedings shall stand abated upon its enactment. ii. Mere issuance of a notice under Section 10(3) of the Act, 1976 does not automatically entitle the officials of the Respondents to take possession. The requirement of giving notice under Sections 10(5) and 10(6) of the Act, 1976 respectively is mandatory. iii. The documents on record establish beyond any doubt that the factory is still running, number of apartments are constructed in part of the Subject Land and that the physical possession has not been taken over by the Government, as contended, but the same is still with the Appellant.
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> iv. In the absence of any cogent and convincing evidence or document to show that the Government has taken actual physical possession of the Subject Land as contended or any other material to show that the notices under Sections 10(5) and 10(6) respectively were validly prepared and served on the Appellant, both the order

> under Section 10(6) and the panchnama have to be treated as bogus and fabricated. In other words, prepared after the Repeal Act, 1999 came into force. V. Even taking the Respondents' case at the highest, the mandatory 30-day period provided to the landholders between a notice under Section 10(5) and a notice under Section 10(6) was not complied with, making the order under Section 10(6) void, illegal and bad in law.
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> vi. Even a bare perusal of the Section 10(5) Notice shows that the same has not been served on the Appellant but was affixed on the gate of the factory only on 08.01.2008. There is no signature on the said notice as to who had received the same except some name has been scribbled (which is not legible).

vii. The valuable rights of the parties cannot be allowed to be defeated on the basis of documents prepared after the Repeal Act, 1999 has come into force. The stand of the Respondents that the dates shown in the documents are only clerical errors, was rejected.

viii. The inconsistencies and lacunae in the panchnama do not instil any confidence that the same is genuine.

ix. There is no signature of the landowner or any responsible officer or person on the panchnama dated 08.02.2008.

12. The respondents being dissatisfied with the judgment and order passed by the learned Single Judge preferred two writ appeals i.e. Writ Appeal No. 665 of 2022 and Writ Appeal No. 670 of 2022 respectively.

13. The Division Bench of the High Court allowed both the appeals filed by the State and thereby set aside the judgment and order passed by the learned Single Judge allowing the two writ petitions filed by the appellant herein. The Division Bench held as under:-

> "17.2. Claim of the appellants that notice under Section 10(5) was issued on 05.01.2008 was denied by the respondent. 05.01.2008 was a Saturday. It was the duty of the appellants to establish that 05.01.2008 was a working day and that notice dated 05.01.2008 was despatched from the office on a working day. It is also the duty of the competent authority to establish the exact date of service of notice under Section 10(5) and service on the noticee were conspicuously absent in the counter affidavit. Appellants merely stated that notice under Section 10(5) was issued on 05.01.2008. Since the respondent was under lockout, the notice was affixed on the main door on 08.01.2008. In the absence of dispatch of notice by registered post with acknowledgement due, the service would be deemed to be in violation in terms of Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976 (briefly, 'the ULC Rules' hereinafter). That apart, it was reiterated that there was no lockout in the establishment of the respondent at the relevant point of time; rather it was fully operational for which respondent relied upon various documentary evidence

including returns filed before the Employees' State Insurance Corporation for the period from 01.10.2007 to 31.03.2008. 17.3. While denying that notice under Section 10(5) was served on 08.01.2008 as claimed by the appellants, it was averred that the thirty days period mentioned in the said notice to surrender possession voluntarily would have expired only on 07.02.2008. Right of the competent authority to take further action under Section 10(6) would accrue only after 08.02.2008. Therefore, no reliance could be placed on the alleged order dated 05.02.2008 passed under Section 10(6) of the ULC Act. That apart, order dated 05.02.2008 containing more than one date with overwriting did not inspire any confidence at all.

17.4. Further attempt by the appellants to show that they had taken over possession of the excess vacant land on 08.02.2008 by relying on the purported panchanama does not inspire any confidence. It is contended that when the order under Section 10(6) of the ULC Act dated 05.02.2008 was of no legal consequence, the alleged taking over of possession on 08.02.2008 on the strength of the order dated 05.02.2008 would also be of no consequence. Besides, a bare perusal of the panchanama would reveal that it was prepared in a printed format to suit the case of the appellants. A careful reading of the panchanama itself would indicate that it was a fabricated document without furnishing details of the three panchas, as a result of which the panchas were not identifiable.

17.5. Appellants claimed to have taken over possession of 46,538.43 square meters on 08.02.2008 which included 1000 square meters of land conferred on the respondent under Section 4(1) of the ULC Act. This only goes to show that appellants had not applied their mind and had just produced some documents to show that they had taken over possession.

17.6. Respondent's name was shown as owner in possession and enjoyment of the lands including the excess vacant land in the revenue record which only goes to show possession of the respondent, besides pahanis stand in the name of the respondent in respect of the subject land.

Therefore, the theory of possession put forth by the appellants is contrary to the record.

18. Learned Single Judge after narrating the relevant facts and after adverting to the submissions made by learned counsel for the parties had examined various provisions of the ULC Act, more particularly Sections 10(1), 10(3), 10(5) and 10(6) of the ULC Act as well as the Repeal Act which was adopted by the Government of undivided Andhra Pradesh on 27.03.2008 vide G.O.Ms.No.603 dated 22.04.2008. Learned Single Judge examined the claim of the appellants of having taken over possession of the subject land under Section 10(6) of the ULC Act as well as the contents of the panchanama observed that whenever a panchanama is prepared, the same has to be done duly putting the actual owner/interested person on notice;

> panchas should be reputed and respectable persons of the locality; date and time on which the panchanama was prepared as well as the name, age and address of the panchas should be mentioned in the panchanama. Thereafter, learned Single Judge held that unless and until actual physical possession of the subject land was taken over, the taking over proceedings under the ULC Act would stand abated on coming into force of the Repeal Act. After referring to various decisions, learned Single Judge held that after issuing notice under Sections 10(1) and 10(3) of the ULC Act, competent authority under the said Act would have to issue notice under Section 10(5) directing the party to surrender possession of the excess land within a period of thirty days. If voluntary possession of the same is not given, then the authorities are under obligation to issue notice under Section 10(6) and thereafter take possession.

Mere issuance of notice under Section 10(3) would not automatically entitle the authorities to take over possession of the notified lands; the authorities would have to necessarily issue notice under Section 10(5) of the ULC Act to the land owner or any other interested person. Taking over of possession has to be actual physical possession and not mere de jure possession.

18.1. After referring to the alleged anomalies noticeable in Section 10(6) notice, learned Single Judge came to the conclusion that very admission on the part of the appellants that the notice was served on 08.01.2008, whereafter Section 10(6) order was passed on 05.02.2008 would clearly show that the mandatory period of thirty days between the two provisions was not met. Learned Single Judge further noted that there was no explanation forthcoming as to how the date “01.10.2008” appeared in the Section 10(6) notice. Thus, learned Single Judge vide the judgment and order dated 03.01.2022 came to the conclusion that physical possession of the subject land was still with the respondent.

There was no cogent and convincing evidence to show that State Government had taken over physical possession of the subject land. That apart, learned Single Judge found that the panchanama dated 08.02.2008 did not inspire the confidence of the Court. Further, from the documentary evidence, it was proved beyond any doubt that the factory of the respondent was still functional, a number of apartments had been constructed. Therefore, physical possession of the subject land had not been taken over by the government but was still with the respondent.

Learned Single Judge also referred to an order of this Court dated 26.10.2009 in writ petition No.3140 of 2009, whereby government sought to resume the surplus land of the respondent by issuing G.O.Ms.No.1534 dated 20.12.2008. In the said order, this Court had set aside G.O.Ms.No.1534 holding that possession of the subject land was not taken over by the government. Accordingly, both the writ petitions were allowed and the panchanama dated 08.02.2008 was set aside.

19. Mr. Raju Ramachandran, learned Senior Counsel for the appellants submits that learned Single Judge was not at all justified in setting aside the panchanama proceedings dated 08.02.2008 and interfering with the action of the State in taking over possession of the surplus land of the respondent under the ULC Act. In the course of his arguments, learned Senior Counsel for the

appellants has placed before the Court a flow chart of land belonging to the respondent covered by the final statement made under Section 8(4) of the ULC Act. He submits that respondent had declared under Section 6(1) of the ULC Act a total of 1,63,679 square meters of land in Survey Nos.74/P, 75/P, 76, 78 and 79. Out of the aforesaid land, 5,088 square meters was covered by GVM Road leaving land to the extent of 1,58,591 square meters. By G.O.Ms.No.1729, an extent of land measuring 51,580 square was allowed to be retained by the respondent to run the industry for manufacturing electrical meters. Though an extent of land admeasuring 48,859.90 square meters was allowed to be retained by the respondent for establishing fan factory, later on the exemption was withdrawn vide G.O.Ms.No.303. Excluding 51,580 square meters from the total extent of 1,58,591 square meters surplus excess land with the respondent was quantified at 1,07,011 square meters. Out of this extent, 56,730.57 square meters in Survey Nos.74, 75 and 76 was exempted under Section 21 of the ULC Act leaving balance extent of 50,280.43 square meters for computation under Section 8(4) of the ULC Act. After excluding an extent of 3,742 square meters, which was affected by road, the extent of surplus land quantified by the competent authority under the ULC Act was estimated at 46,538.43 square meters as per revised order of the competent authority dated 20.03.2007. 19.1. Because of clerical mistakes, learned Single Judge ought not to have disbelieved the notice issued under Section 10(5) of the ULC Act as well as the order passed under Section 10(6) of the ULC Act, more so when learned Single Judge did not requisition the record. While admitting that appearance of the date “01.10.2008” in the order dated 05.02.2008 is inexplicable, Mr. Raju Ramachandran, learned Senior Counsel for the appellants submits that that by itself would not justify the conclusion reached by the learned Single Judge that the aforesaid notice and order were antedated and thus discarded. He submits that learned Single Judge was also not justified in disbelieving the panchanama dated 08.02.2008 and thereafter declaring the notices under Section 10(5) and 10(6) as well as the panchanama as void ab initio. He further submits that learned Single Judge committed a manifest error in holding that physical possession of the surplus vacant land had not been taken over by the appellants.

x x x x 29.2. We have already extracted the provisions of subsections (5) and (6) of Section 10 of the ULC Act and made an analysis of the same. Section 10(5) contemplates service of notice calling upon the person in possession of the excess vacant land to surrender or deliver possession thereof to the State Government within thirty days of service of notice. If he fails to do so then under sub-section (6) of Section 10, the competent authority may take over possession of the excess vacant land for which purpose such force as may be necessary may be used. Though issuance and service of notice on the person in possession of the excess vacant land under sub-section (5) of Section 10 is mandatory as held by the Supreme Court in Hari Ram (supra) however, sub- section (6) of Section 10 nowhere says that after the period of thirty days of service of notice under Section 10(5), another order has to be passed or another notice has to be given. Question of once again putting the parties on notice at the stage of subsection (6) of Section 10 is not statutorily provided. Therefore, learned Single Judge fell in error in taking the view that at the stage of Section 10(6), the owner or person in possession of the excess vacant land has to be again put on notice. There is no such legal requirement. 29.3. Insofar preparation of panchanama is concerned, the same is not statutorily provided either in the ULC Act or in the ULC Rules. Therefore, we fail to understand as to how learned Single Judge came to the conclusion that while preparing the panchanama the site map also needs to be prepared and both would have to be attested not only by the panchas and the person

preparing the same but also by the land owner. We are afraid learned Single Judge fell in complete error in coming to the aforesaid conclusion as there is no such statutory prescription. The panchanama comes into the picture at the stage of Section 10(6) when the owner or person in possession of the excess vacant land fails to comply with the notice under Section 10(5). Therefore, to expect such a person to put his signature on the panchanama is wholly unrealistic.

29.4. In fact, in Sita Ram Bhandar Society, New Delhi (supra) Supreme Court in the context of the Land Acquisition Act, 1894, after referring to previous judgments held that one of the accepted modes of taking over possession of the acquired land is recording of a memorandum or panchanama by the land acquisition officer in the presence of witnesses signed by them and that would constitute taking possession of the land.

It is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchanama in the presence of panchas, taking possession and giving delivery to the beneficiaries which is the accepted mode of taking possession of the land. While taking possession of a large area of land, a pragmatic and realistic approach has to be taken. One of the methods of taking possession and handing it over to the beneficiary department is the recording of a panchanama which can in itself constitute evidence of the fact that possession had been taken and that the land had vested absolutely in the government.

29.5. This position has been reiterated by the Supreme Court in Omprakash Verma (supra). This was a case under the ULC Act. In the facts of that case, Supreme Court reiterated that 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.

30. Proceeding further, we find that in paragraph 30 of the judgment and order, learned Single Judge once again reiterated that after expiry of the period of thirty days as contemplated under sub-section (5) of Section 10, if voluntary possession of excess vacant land is not handed over then the authorities are obligated to issue notice under Section 10(6) to the land owner and then take possession. Having held so, learned Single Judge proceeded to frame the question as to whether notifications issued under Section 10(5) and 10(6) by the authorities and the panchanama would stand to legal scrutiny.

30.1. As already discussed above, there is no statutory requirement under sub-section (6) of Section 10 to once again put the defaulting owner or the person in possession on notice. After the thirty days period following service of notice under Section 10(5) of the ULC Act is over, it is open to the authority to take over possession of the excess vacant land forcibly, if necessary even by using force. Therefore, the very basis of the learned Single Judge framing the above question does not stand to legal scrutiny, the same being contrary to the legal requirement which has vitiated the impugned judgment and order.

31. In paragraph 31 of the judgment under appeal, learned Single Judge has mentioned that the notice issued under Section 10(6) of the ULC Act has two dates in it i.e., 05.02.2008 and 08.02.2008. As already mentioned above, there is no legal requirement for passing any order or

issuing further notice under Section 10(6) of the ULC Act. Therefore, the order dated 05.02.2008 at page 234 of the paper book (W.A.No.670 of 2022) is really not material; in fact the same is of no legal consequence.

Though below the date 05.02.2008, '08' is written, who has written it is not known. There is also no initial by the side of the figure '08'. But one thing is certain; there is no date '08.02.2008', therebeing only one date i.e., 05.02.2008. However, what is evident therefrom is that notice under Section 10(5) is dated 05.01.2008. If we contrast this notice at page 234 of the paper book with the order (notice) dated 05.02.2008 at page 334 of the paper book (W.A.No.670 of 2022), there is no figure '08' below 05.02.2008. This is a signed order of the special officer and competent authority which is missing at page 234.

Besides, this document is attested by the Special

Tahsildar, Urban Land Ceiling (Wing), Medchal Malkajgiri District. Be that as it may, there is one date which has remained unexplained. As a matter of fact, Mr. Raju Ramachandran, learned Senior Counsel for the appellants frankly told the Court that it is inexplicable as to how the date '01.10.2008' appears in the last paragraph of the order (notice) dated 05.02.2008. Appearance of this date cannot be explained. The last paragraph of the order (notice) dated 05.02.2008 says that thirty days time given in the notice under Section 10(5) expired on '01.10.2008'. As seen from the aforesaid order (notice) itself, notice under Section 10(5) is dated 05.01.2008. As such, there is no question of expiry of thirty days period on '01.10.2008'. In any case, the order or notice dated 05.02.2008 does not have any legal sanction or even necessity as Section 10(6) does not require issuance of a fresh order or a notice before taking forcible possession.

Therefore, either the order dated 05.02.2008 can be ignored or if taken at its face value, it does not convey an irregularity or illegality of a magnitude which may render taking over of forcible possession invalid.

X x x

35. This brings us as to how learned Single Judge dealt with the panchanama dated 08.02.2008. Learned Single Judge held as under:

> "34. xxx xxx xxx xxx xxx The panchanama dated 08.02.2008, on which the independent witnesses are stated to have affixed their signatures, relied by the official respondents to substantiate that the officials went to the site and taken physical possession, do not contain either the addresses of the panchas or their description and do not instill any confidence in the Court that they are genuine. The official respondents did not even bother to file affidavits of the so-called panchas to show that they were present at the site and the panchanama was prepared in their presence.

> Admittedly, there is no signature of the land owner on the alleged panchanama dated 08.02.2008 or the site map annexed thereto. Even the description of the panchas or their addresses or even their temporary addresses are not shown therein. In the absence of the signatures of the land owner on the panchanama, the panchanama and the site map will have to be considered as having been prepared behind the back of the petitioner and in the office of the authorities. The documents filed by the petitioner establish beyond any doubt that the factory is still running, number of apartments are constructed in part of the land and that the physical possession has not been taken over by the Government, as contended, but the same is still with the petitioner Company. No affidavit of any of the panchas has been filed to show that the authorities have physically gone to the subject land and taken over the possession in the presence of the owner. The entire exercise of affixing signatures and taking over the possession of the land appears to have been done sitting in the office of the authorities and only on paper.
>
> 35.1. According to the learned Single Judge, the panchanama does not contain the addresses of the panchas or their description. Affidavits of the panchas were not filed, describing the panchas as so called panchas. Further, according to the learned Single Judge, there was no signature of the land owner in the panchanama. Therefore, such a panchanama would have to be considered having been prepared behind the back of the respondent and in the office of the authorities.
>
> 35.2. We have already held that neither the ULC Act nor the ULC Rules provide for the procedure for service of notice under Section 10(5) of the ULC Act.

However, as discussed above, it is judicially recognised that taking over of possession of large tracts of land by way of panchanama is an acceptable mode. There is no requirement under the statute for obtaining the signature of the land owner in the panchanama or filing of affidavits by the panchas. Such finding of the learned Single Judge in our considered opinion is not based on any materials on record.

36. Having said so, we may examine the panchanama which is at pages 89 to 91 of the paper book (W.A.No.670 of 2022). While page 89 is the Telugu and original version of the panchanama, the translation copy thereof is at page 90 and page 91 contains the site plan. A reading of the panchanama would go to show that the same was prepared by the Deputy Tahsildar and Enquiry Officer in presence of three panchas viz., 1) Ramayya, 2) Viswanadham and 3) Jagdish, whose addresses were mentioned in the panchanama. Two persons by name Venkateshwar Rao and Mallayya stood as witnesses. As per the panchanama, notice under Section 10(5) dated 05.01.2008 was served upon the land owner. When possession was not handed over to the Government even after expiry of the time limit, order was passed by the competent authority on 05.02.2008 directing the Deputy Tahsildar and Enquiry Officer to take over possession. Pursuant to such order, the Enquiry Officer had taken over possession of the land to the extent of 46,538.43 square meters on 08.02.2008 after identification and fixation of boundary by the surveyor in presence of the panchas, who certified that the panchanama was prepared in their presence.

37. As already discussed above, there was no requirement of passing an order or issuing further notice under Section 10(6) of the ULC Act.

Therefore, the order or notice dated 05.02.2008 is of no legal consequence. But the fact remains that according to the version of the appellants, Section 10(5) notice is dated 05.01.2008 which was affixed at a conspicuous place of the premises on 08.01.2008, whereafter possession was taken over on 08.02.2008 as per the panchanama dated 08.02.2008. Therefore, there was no breach of the thirty days period. To our mind, learned Single Judge committed a manifest error in declaring the notice under Section 10(5) as well as the panchanama as void ab initio and non est in the eye of law.

If the correctness or genuineness of the same were disputed by the respondent, then it would be a case of disputed and contentious facts. A proceeding under Article 226 of the Constitution of India is not the proper forum to adjudicate such disputed and contentious facts. As pointed out by the Supreme Court in Bhaskar Jyoti Sarma (supra), such seriously disputed questions of fact would not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction.

38. That being the position, we have no hesitation in our mind that learned Single Judge had erred on facts as well as in law in declaring the notice dated 05.01.2008 under Section 10(5) of the ULC Act as well as the panchanama dated 08.02.2008 being void ab initio and non est in the eye of law and thereafter in setting aside the panchanama." (Emphasis supplied)

14. Thus, what is discernable from the aforesaid discussion in the impugned judgment is as under:-

> i. Taking over of possession of land by way of panchnama under the Act is an acceptable mode. Consequently, the impugned judgment does not in any manner consider the effect of Section 3(2) of the Repeal Act, 1999. The impugned judgment does not in any manner deal with the judgments in Hari Ram (supra) and Gajanan Kamlya Patil (supra); and ii. The Division Bench further said that there is no legal requirement under Section 10(6) of the Act, 1976 for passing any order or issuing any further notice to the affected parties under Section 10(6) of the Act, 1976. Therefore, in the present case, the Section 10(6) Order is of no legal consequence. On this basis, the Division Bench en bloc rejected the issues regarding the legality /validity of the Section 10(6) Order and the panchnama thereafter.
>
> It is relevant to note at this stage that the impugned judgment does not in any way disturb the factual findings recorded in the judgment of the learned Single Judge as regards the factory very much in operation and also that the physical possession of the land remains with the appellant.

15. In such circumstances referred to above, the appellant is here before this Court with the present two appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. The written submissions of the appellant read as under:-

> "I. It is a statutory mandate to issue an order under Section 10(6) after proper and effective service of notice under Section 10(5) of the Act.

17. The Impugned Judgment suffers from a patent error insofar as it holds that there is no statutory requirement under Sections 10(5) and 10 (6) of the Act to issue or serve a notice to the affected/concerned parties.

18. On this erroneous premise, the impugned judgment has brushed aside all the illegalities and/or statutory lacunae in the Section 10(5) Notice and the Section 10(6) Order.

19. It is trite law that the requirement of issuance of notice under Section 10(5) and order under Section 10(6) of the Act is mandatory under law. Refer to : Hari Ram (supra) and State of Telangana v. Southern Steels Limited, W.A. 1975 of 2017.

20. Significantly, the judgments in Hari Ram (supra) as well as Southern Steel Limited (supra) were relied upon by the Appellants before the Hon'ble Division Bench. However, the impugned judgment while coming at a diametrically opposite finding, fails to deal with the judgments in Hari Ram (supra) and Southern Steel Limited (supra) in any manner whatsoever.

21. Before this Hon'ble Court, the Respondent had sought to contend that this settled legal position has been disturbed by the Hon'ble Supreme Court in State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321. The same is not correct. The facts in Bhaskar Jyoti Sarma were completely different and the same are not in any manner applicable in the case at hand. In Bhaskar Jyoti Sharma, this Hon'ble Court held that where possession is stated to have been taken long ago and there is undue delay on the part of the landholder in approaching the writ court, in such a case attraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as it can be taken that the persons for whose benefit the procedure existed have waived his right thereunder.

In that case, the original landowner sold the excess vacant land to six people after a notification under Section 10(1) of the Act had been published. In the first round of litigation, the purchasers questioned the acquisition, and this came up to this Hon'ble Court, wherein such challenge was dismissed in 2002. Thereafter, in 2003, the excess vacant land was allotted to Guwahati Metropolitan Development Authority and mutated accordingly. After coming into effect of the Repeal Act in Gujarat in 2003, a writ was again filed by the legal heirs of the original landowner. This was the second round of litigation. Such challenge was also dismissed by this Hon'ble Court, holding that the original landowner had waived his right by not questioning the aspect of possession under Section 10(5) of the Act, despite possession having been taken as early as on 07.12.1991.

22. In the present case, it is not even Respondents' case nor is there any finding to this effect in the impugned judgment that the Appellants have waived their right in any manner whatsoever or have delayed in approaching the writ court. In fact, in 2009, as soon as the attempts were made by the Respondents to dispossess the Appellant from the Subject Land, the Appellant immediately

approached the writ court.

23. Hence, the said finding in the impugned judgment regarding Sections 10(5) and 10 (6) of the Act is ex facie unsustainable in law. II. The acquisition proceedings are de hors the Act, more particularly Section 10 of the Act.

24. The purported Section 10 Notices suffer from glaring illegalities. This clearly reflects that the said purported Section 10 Notices are de hors the Act, fictitious and non est in law.

25. The purported Section 10 Notices were never contemporaneously served nor received by the Appellant. The Appellant was made aware of the Section 10 Notices for the first time only on 14.09.2010. A bare perusal of the same would demonstrate that the Section 10 Notices are not prepared contemporaneously.

26. Such glaring illegalities at each stage of the said acquisition proceedings are evident from the statements that follow:-

> STAGE ILLEGALITIES / LACUNAE Purported a. The Appellant never Notice received the Section 10(5) under Notice contemporaneously. The Section Appellant was made aware of 10(5) of this notice for the first time the Act on 14.09.2010.
>
> b. In any event, the Section 10(5) Notice is dated 05.01.2008. As per the Respondents, it was affixed on the main gate on 08.01.2008 on the false pretext that there was a lockout in the factory.
>
> c. The Respondent has miserably failed to establish that on the said date, there was a lockout in the factory.

Even from a bare perusal of the purported Section 10(5) Notice, it is clear that the same has not been served on the Appellant in any manner whatsoever. There is no signature on the said notice as to who has affixed the same, except a name has been scribbled, which is not legible. The Respondents have also failed to show that any attempt was made by them to carry out service of the Section 10(5) Notice by any other means in any manner whatsoever.

> d. Even in the situation of lockout, it is implausible that the Respondent

authorities were not able to locate any personnel or individual for the purported service of the Section 10(5) Notice.

> e. It is well settled that affixing of notices, as the Respondents suggest having done, should only be a last

resort. The Government of Tamil Nadu v. Nandagopal, 2011 (3) CTC 843 f. Therefore, it is clear that the so-called stand regarding affixing of the Section 10(5) Notice on the main door of the factory is concocted and nothing but a cock and bull story.

g. Moreover, such stand of the Respondents themselves runs counter to their core contention that the factory was not on the Subject Land. Purported a. The Appellant never Order received the Section 10(6) under Order contemporaneously. The Section Appellant was made aware of 10(6) of this order for the first time the Act on 14.09.2010.

b. There is no reasonable or justifiable explanation for the two dates which are “05.02.2008” and “08.02.2008”.

c. Pertinently, the Respondents were unable to explain the date of “01.10.2008” which was also

mentioned in the Section 10(6) Order. Admittedly, there is no explanation for the same.

d. Further, the Section 10(6) Order states that the 30-day time given in the Section 10(5) Notice expired on 01.10.2008, after the enforcement of the Repeal Act. This is completely incomprehensible.

e. Moreover, the copy of the Section 10(6) Order provided to the Appellant on 14.09.2010 and the copy filed by the Respondents as part of the Compilation of Copies of Original Record dated 23.02.2024, reveal further discrepancies in relation to execution of the said order.

For instance, the date of “08.02.2008” is missing from the said copy supplied to the Appellant as part of the Compilation of Copies of Original Record and it only mentions the date [or date of purported issuance] of “05.02.2008”. These discrepancies clearly demonstrate that the record of proceedings is tampered with and cannot be relied upon in any manner whatsoever.

f. In any event, even as per the Respondents, the Section 10(6) Order was issued on 05.02.2008 and the Section 10(5) Notice was affixed on the wall on 08.01.2008.

g. Therefore, even as per the Respondents, 30 days had not lapsed between the purported service of the Section 10(5) Notice, i.e., 08.01.2008 and alleged issuance of the Section 10(6) Order, i.e., 05.02.2008. It is mandatory to have a gap of 30 days between a notice under Section 10(5) of the Act and an order under Section 10(6) of the Act.

The Principal Commissioner v. M. Venkataraman, 2014 SCC OnLine Mad 4505;

P. Laxmi Kantha Rao and Others v. Government Of Andhra Pradesh, 2014 SCC OnLine Hyd h. The Ld. Single Judge rightly held that the Section 10(6) Order is bad in law.

Panchnama	a. The Appellant never received this anchnama contemporaneously. The Appellant was made aware of

this purported Panchnama for the first time on 14.09.2010.

b. It is a printed form where gaps have been filled up.

c. The purported Panchnama lacks fundamental particulars of a Panchnama such as:

- The purported Panchnama did not contain either the address or the description of panchas;

- No affidavit was filed by the panchas to evidence that they were present at the site and the Panchnama was prepared in their presence;

- There is no signature of the landowner on the Panchnama; and

- The purported Panchnama did not contain any site map or distinctive boundaries with sub-divisions, whatsoever. It may be noted that the entire extent of 1,63,679 square meters is bound by one compound wall.

d. The Ld. Single Judge rightly held that the purported Panchnama is bad in law.

27. Crucially, the concocted and spurious nature of the Notices is evident from the fact that such acts have been carried out by the Respondents against various other entities/individuals in the same region wherein the Subject Land is situated.

J Sarada Govardhini v. Special Officer and Competent Authority, Writ Petition No. 9680 of 2006
Gonguluri Srinivasa Sharma and Anr. v. Government of AP and Ors., Writ Petition No. 28883 of 2011.

28. In light of the above, it is clear that the purported Section 10(5) Notice, Section 10(6) Order and the Panchnama are ex facie bad in law and de hors the provisions of the Act. The same cannot be relied upon in any manner whatsoever. In view thereof, the question of the Respondents having taken over possession of the Subject Land in any manner whatsoever does not arise.

29. Hence, the so-called acquisition proceedings stand abated by virtue of Section 3 of the Repeal Act. II. In any event, the actual or physical possession of the Subject Land has admittedly not been taken by the Respondents and consequently, the said acquisition is hit by the Repeal Act.

30. It is an admitted position that physical or actual possession of the Subject Land has not been taken over by the State Government at any point in time. Even as per the Respondents, they have only taken symbolic/paper possession by way of the Panchnama.

31. It is also an admitted position that the mandatory 30-day period between the alleged issuance of the Section 10(5) Notice and purported issuance of the Section 10(6) Order had not lapsed.

32. It is admitted by the Respondents that the Appellant is still running a factory over the Subject Land. Further, it is also admitted that number of apartments are constructed on a part of the Subject Land. Most significantly, it has been admitted that physical possession of the Subject Land has not been taken over by the Respondents.

33. In fact, the Ld. Single Judge, after consideration of the documents on record, has categorically held that the Appellants have established that the factory is still running on the Subject Land and a number of multi-storied residential buildings have also been constructed therein. It has also been held that the entire land is encompassed by a boundary wall and the gate is manned by security guard. Resultantly, it has been conclusively held that the actual physical possession of the Subject Land is still with the Appellant and has not been taken over by the Respondents.

34. Hence, admittedly, the actual physical possession of the Subject Land has not been taken over by the Respondents and the same is with the Appellant.

35. Significantly, Section 3(1)(a) of the Repeal Act provides that restoration of land to the Government shall not take place if "possession" was not taken over by the Government prior to coming into force of the Repeal Act.

36. In relation to the term 'possession' under Section 3 of the Repeal Act, courts have consistently held that 'possession' therein means actual physical possession or de facto possession and not mere paper or de jure possession. In this regard, reliance is placed upon the following judgments:

> Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and Ors., (2012) 4 SCC 718 Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and Ors. (supra) State of Gujarat v. Kamuben, 2019 SCC OnLine Guj 4941 Dip Co. Op. Hsg. Society Ltd. through Purshottam S. Patel v. State of Gujarat and Others, 2020 SCC OnLine Guj 693 Dip Co. Op. Hsg. Society Ltd. through Purshottam S. Patel v. State of Gujarat and Others, 2024 SCC OnLine Guj 3034

37. It is important to note that impugned judgment errs in not adopting the settled legal position under the Act. On the contrary, the impugned judgment has wrongly applied the legal position under the Land Acquisition Act, to the acquisition proceedings concerned in relation to the Subject Land. The legal position under the Land Acquisition Act, 1894, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("Land Acquisition Acts"), regarding the effect of repeal of a statute vis-à-vis possession is wholly inapplicable to acquisition under the Act, i.e., the Urban Land (Ceiling and Reform) Act, 1976. This is another fundamental fallacy in the impugned judgment. In fact, reliance placed by the Respondents on judgments in relation to the Land Acquisition Acts is a complete red herring and is absolutely misplaced in the present case

38. Therefore, in the present case, as admittedly the actual or physical possession of the Subject Land is not taken by the State Government, the acquisition proceedings stand abated. The impugned judgment deserves to be set aside on this ground alone.

39. In light of the above, it is submitted that the instant acquisition proceedings are hit by Section 3 of the Repeal Act. Accordingly, the acquisition proceedings in relation to the Subject Land ought to stand abated." SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. The written submissions filed on behalf of the State read thus:-

> "Writ Proceedings before the Hon'ble High Court – Appellant did not challenge Notice u/s 10(5) or order passed u/s 10(6) of the ULC Act
>
> 10. The Appellant filed W.P. 11293/2009 challenging the Respondent's alleged interference with the possession and enjoyment of Petitioner w.r.t. 30181.10 sq. yds. in survey no. 76. The Appellant also filed W.P. 23477/2010 challenging the panchnama proceedings dated 08.02.2008 taking over possession of 46,538 sq. mts. land in survey nos. 74 to 76.
>
> 11. Admittedly, the challenge before the Hon'ble High Court in the writ proceedings was with regards to the taking over of possession of the Subject Vacant Land by execution of panchnama. The Appellant did not seek the relief for quashing of notice under Section 10(5) or order passed under Section 10(6) of the ULC Act.
>
> 12. The Ld. Single Judge passed a combined order dated 03.01.2022. The Respondents filed W.A. 665/2022 and W.A. 670/2022 before the Division Bench of the High Court. The Division Bench of the High Court passed the Impugned Judgment on 14.02.2023. Submissions:
>
> 13. Physical possession of the Subject Land was validly taken over by the Respondent in accordance with the ULC Act before the Repeal Act. The Appellant has alleged that there were some discrepancies / illegalities in the process adopted under Section 10(5) and 10(6) of the ULC Act. Each of the alleged illegalities is dealt as under:
>
> I. Issuance of Notice and Service thereof was in accordance with Section 10(5)
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> 14. The Appellant has alleged that the notice dated 05.01.2008 issued under Section 10(5) is illegal on the ground that the said notice was not received by the Appellant who was made aware of the said notice only on 14.09.2010, and it was merely affixed on the main gate of the Existing Factory on 08.01.2008 without any service through registered post.
>
> 15. In this regard, it is submitted that:-

a) The notice under Section 10(5) of the ULC Act is dated 05.01.2008, calling upon the Appellant to surrender the Subject Vacant Land.

b) The said notice was served upon the Appellant by way of affixation on the main gate of the Existing Factory on 08.01.2008.

The Existing Factory was locked / closed on the said date. Since there was no other means to effect service upon the Appellant, the said notice was affixed on the main door of the Existing Factory, belonging to the Appellant, which is adjacent to the Subject Vacant Land. It is submitted that such affixation of notice is deemed service upon the Appellant.

c) Furthermore, the Subject Vacant Land being a large tract of vacant land in the present case, service of the notice by affixing it on the door of the Existing Factory belonging to the Appellant is a valid mode of service. In the absence of any rule or prescribed procedure for service of the notice, it was served by affixation.

d) It is submitted that Rule 5 and 6 of the Urban Land (Ceiling and Regulation) Rules, 1976 recognize affixation as a valid mode of service.

e) In any case, the Appellant was very well aware of the proceedings under ULC Act. In fact, the Appellant had also challenged the order dated 03.04.2005 passed by the Special Officer and Competent Authority under Section 8(4) of the ULC Act before the Appellate Authority.

16. Despite being well aware of the proceedings under ULC Act, the Appellant has mischievously denied service of notice under Section 10(5), due to the fortuitous circumstance of the Repeal Act w.e.f. 27.03.2008, thereby, tempting the Appellant to raise the issue of service under Section 10(5).

II. Order under Section 10(6) dated 05.02.2008 to take possession was lawful

17. The Appellant has challenged the order dated 05.02.2008 under Section 10(6) on the ground that the said order was not received by the Appellant it came to knowledge of the Appellant on 14.09.2010. The Appellant has further pointed out certain alleged discrepancies such as the mentioning of the date '01.10.2008' in the said order and non- mentioning of the date '08.02.2008'. Alternatively, the Appellant has suggested that the order dated 05.02.2008 was issued prior to the expiry of the 30 days period from the date of service of the notice under Section 10(5) on 08.01.2008 when the said notice was affixed on the main gate of the Existing Factory.

18. It is submitted that the Order under Section 10(6) is legal:

(a) There is no statutory requirement to send another notice under Section 10(6) after the expiry of 30 days from the date of service of notice under Section 10 (5).

(b) As such, the order dated 05.02.2008, is immaterial and thus, the alleged discrepancies, if any, are of no relevance and cannot have any legal consequence.

(c) The internal notings in a departmental file do not have the sanction of law to be an effective order. It is for internal use and consideration of the other officials of the department and for the benefit of final decision making. These notings are not meant for outside exposure. It is possible that after expressing of an opinion on a particular matter by one officer, another officer may express a different opinion.

Reliance is placed upon Bachhittar Singh v.

State of Punjab AIR 1963 SC 395 relevant para at 10; Sethi Auto Service Station and Another v. Delhi Development Authority and Others (2009) 1 SCC 180 relevant para at 14, 15, 16 and 17; Jasbir Singh Chhabara and Others v. State of Punjab and Others, (2010) 4 SCC 192 relevant para at 35; State of Uttaranchal and Another v. Sunil Kumar Vaish and Others, (2011) 8 SCC 670 relevant para at 24; Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Housing Society and Others, (2018) 8 SCC 215 relevant para at 35 and 36.

(d) Without prejudice, the internal notings which culminated into the order dated 05.02.2008 under Section 10(6) does not have any discrepancy. It is submitted that the mentioning of date '01.08.2008' is immaterial and has no legal consequence.

(e) The order under Section 10(6) is dated 05.02.2008 but was issued on 08.02.2008 when the panchnama was executed and possession was as such taken over only after the competition of 30 days from the date of service of notice on 08.01.2008.

19. Appellant's challenge to order under Section 10(6) is irrelevant and baseless. It is a desperate attempt of the Appellant to take disadvantage of the alleged discrepancy, if any, in the internal notings made by the officials of the State Government, so as to illegally hold the excess vacant land admeasuring 46,538.43 sq. mts. despite its failure to comply with the condition of constructing the Proposed Fan Factory.

III. Panchnama dated 08.02.2008 is a valid mode of taking possession

20. The Appellant has suggested that it became aware of the panchnama issued on 08.02.2008, only on 14.09.2010. Even otherwise, it is alleged the said panchnama is defective since it does not contain the addresses or description of the panchas, or signatures of the landowner, site map, and further there is no affidavit on record by the panchas to evidence that they were present at the site and panchnama was prepared in their presence.

21. Upon failure of the Appellant to comply with the notice under Section 10(5) of the ULC Act, the Respondents were compelled to take over the possession of Subject Vacant Land by recording of panchnama. The aforesaid allegations of the Appellant are incorrect and baseless. It is submitted that:

(a) Panchnama was legally prepared by the Deputy Tahsildar and Enquiry Officer in the presence of three panchas, namely, (i) Ramayya, (ii) Viswanadham and (iii)

Jagdish, whose addresses are mentioned in the panchnama.

(b) Two persons stood as witnesses – Venkateshwar Rao and Mallaya.

(c) Panchnama records that the notice under Section 10(5) was served upon the Landowner.

(d) Pursuant to the expiry of 30 days from the date of service of the notice under Section 10(5) on 08.01.2008, the enquiry officer took over possession of the Subject Vacant Land after identification and fixation of boundary by the surveyor in the presence of panchas, who certified that the panchnama was prepared in their presence.

(e) There is no requirement of preparation of a site map along with the panchnama in the absence of any statutory provision or judicial precedent. The Appellant has failed to establish that the panchnama was not prepared as per the mandate.

(f) The suggestion of signature of landowner on the panchnama is also without any substance in the absence of any statutory mandate and furthermore, it is unpragmatic to expect from a landowner who is not willing handing over possession of the excess vacant land to sign on the panchnama.

22. It is a settled principle of law that possession of a land can be taken over by execution of a proper panchnama or memorandum. Panchnama is evidence in itself that possession has been taken over and land vests in the government absolutely. In this regard, reliance is placed upon para 30 in the judgment of Sita Ram Bhandari Society, New Delhi v. Lieutenant Governor of NCT of Delhi (2009) 10 SCC 501: “It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government...”

23. In Omprakash Verma v. State of A.P. (2010) 13 SCC 158, the same position of law was reiterated, in the context of ULC Act, in Para 85, and it was held: “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 panchnama”

24. Reliance is also placed upon Balmokand Khati Educational and Industrial Trust v. State of Punjab (1996) 4 SCC 212 and Para 9 of Tamil Nadu Housing Board v. A. Viswan (1996) 8 SCC 259.

25. In view of the above settled position of law, the Division Bench of the High Court rightly relies upon Sita Ram (supra) as well as upon Omprakash Verma (supra) to hold that while taking possession of a large area of land, a pragmatic and realistic approach has to be taken and one of the methods of taking possession and handing it over to the beneficiary department is the recording of panchnama which constitutes evidence of the fact that the possession has been taken and land vests absolutely with the government.

26. Furthermore, it is submitted that Appellant cannot belatedly contend that Section 10(5) of the ULC Act, has been breached. A bare perusal of the relief sought by the Appellant in W.P. 23477/2010 filed before the Hon'ble High Court shows that the challenge was only to the taking over of possession by way of panchnama dated 05.02.2008. Reliance in this regard is placed upon State of Assam v. Bhaskar Jyoti Sharma (2015) 5 SCC 321 [Para 14 to 17] wherein it is held that in the event of belated challenge to notice under Section 10(5), the landowner is presumed to have waived his right under Section 10(5) of the Act.

27. Thus, the panchnama having been validly executed and in terms of the settled position of law, the Respondent has taken over valid and legal possession of the Subject Vacant Land in terms of Section 10(5) and (6) of the ULC Act. It is further submitted that while service of notice is mandatory under Section 10(5) in terms of the judgment in Hari Ram (supra), there is no requirement of service of notice under Section 10(6).

28. It is reiterated that the present case concerns a huge tract of land admeasuring 46,538.43 sq. mts. i.e., the Subject Vacant Land, wherein the Appellant was granted exemption for an area admeasuring 48,859.90 sq. mts under Section 20 (1) (a) subject to the condition of construction of a Proposed Fan Factory, and it was only due to the failure of the Appellant to comply with the said condition that the exemption was later withdrawn by the State Government.

29. In view of the above, it is submitted that the possession of the Subject Vacant Land has been validly taken by the Respondents by issuing of notice and service thereof under Section 10(5) and possession was validly taken over in compliance with Section 10(6) of the ULC Act prior to the coming into force of the Repeal Act, and thus, the Appeal deserves to be dismissed with heavy costs."
ANALYSIS

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the Division Bench of the High Court committed any error in upsetting the findings recorded by the learned Single Judge.

19. Before adverting to the rival submissions canvassed on either side, we must look into few relevant provisions of the Repeal Act, 1999 which read as under:-

> "Section 3. Savings— (1) The repeal of the principal Act shall not affect—
>
> (a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
>
> (b) the validity of any order granting exemption under sub-

section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment or any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

Section 4. Abatement of legal proceedings:—All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate;

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

20. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not assumes great significance after the coming into force of the Repeal Act, 1999 inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10(3) of the Act, 1976 would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land.

21. Sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively which are relevant for the purpose of deciding the present Appeals read as under:

> "10. Acquisition of vacant land in excess of ceiling limit— (5) Where any vacant land is vested in the State Government under sub-

section(3),the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of notice.

(6) If any person refuses or fails to comply with an order made under sub section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State

Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary".

22. On a plain reading of the aforesaid provisions, it is apparent that the statute contemplates giving an opportunity to the landholder or any person in possession of excess vacant land to surrender or deliver possession thereof to the State Government and for this purpose provides for giving notice in writing, ordering such person to surrender or deliver possession of such land. It is only when pursuant to such notice, such person refuses or fails to comply with an order under sub-section (5) within a period of thirty days of the service of notice, that the competent authority is required to take over possession of the vacant land and for that purpose may use force, if necessary. Therefore, the provisions of sub-section (6) are to be resorted to only when there is refusal or non-compliance of an order under sub-section (5) of Section 10 of the Act, 1976 within the prescribed period.

23. In State of Maharashtra v. B.E. Billimoria, (2003) 7 SCC 336, this Court in the context of the Act, 1976 held that the said Act being an expropriatory legislation should be construed strictly.

24. This Court in the case of Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, in the context of the Gujarat Town Planning and Urban Development Act, 1976 held thus:-

> "The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The state and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof".
>
> (Emphasis supplied)

25. Thus, applying the principle of strict construction as explained in the aforesaid two decisions, the authorities are required to act strictly in accordance with the statutory provisions. Thus, when sub-section (5) of Section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in its true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of sub- section (6) of Section 10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under Section 10(6) of the Act, 1976 unless a period of thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of Section 10, there will be no starting point for calculating the period of thirty days. In other words, time will not start running, hence the question of taking over possession under sub-section (6) of Section 10 of the Act, 1976 will not arise at all. In this view of the matter, in the case on hand, it was not open to the respondent authorities to resort to the provisions of sub-section (6) of Section 10 of the Act, 1976 without first strictly complying with the provisions of sub-section (5) thereof. Hence, such action being in contravention of the statutory provisions cannot be sustained and deserves to be struck down.

26. The case of Hari Ram (supra) needs to be looked into. In the said case, this Court dealt with the very same issue i.e. deemed vesting of the surplus land under Section 10(3) of the Act, 1976. The matter was from Allahabad. This Court explained the concept of voluntary surrender, peaceful dispossession and forceful dispossession. We may quote the relevant observations:-

> "18. The legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a "deeming provision". In interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan [(1996) 2 SCC 449] held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.
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> 19. James, L.J. in Levy, In re, ex p Walton [(1881) 17 Ch D 746 : (1881-

85) All ER Rep 548 (CA)] speaks on deeming fiction as: (Ch D p. 756) "... When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

20. In Szoma v. Secy. of State for Work and Pensions [(2006) 1 AC 564 :

> (2005) 3 WLR 955 : (2006) 1 All ER 1 (HL)] the Court held: (AC p. 574, para 25) "25. ... it would ... be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. 'The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further'...." (See also DEG Deutsche Investitions und Entwicklungsgesellschaft mbH v.

Koshy [(2001) 3 All ER 878(CA)].)

21. Let us test the meaning of the expressions "deemed to have been acquired" and "deemed to have been vested absolutely" in the above legal settings. The expressions "acquired" and "vested" are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in Organo Chemical Industries v. Union of India [(1979) 4 SCC 573 : 1980 SCC (L&S) 92] that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility.

Reference may also be made to the judgment of this Court in Directorate of Enforcement v. Deepak Mahajan [(1994) 3 SCC 440 : 1994 SCC (Cri) 785]. Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, they are associated on the context but are read together and construed in the light of the purpose and object of the Act.

22. This Court in S. Gopal Reddy v. State of A.P. [(1996) 4 SCC 596 :

> 1996 SCC (Cri) 792] held: (SCC p. 607, para 12) "12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary."

23. In Jugalkishore Saraf v. Raw Cotton Co. Ltd. [AIR 1955 SC 376] , S.R. Das, J. stated: (AIR p. 381, para 6) "6. ... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation."

24. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of "vesting" on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in Customs and Excise Commissioners v. Zielinski Baker and Partners Ltd. [(2004) 1 WLR 707 : (2004) 2 All ER 141 (HL)] , All ER at para 11 described as "heroic piece of deeming".

25. The word "vest" or "vesting" has different meanings. Legal Glossary, published by the Official Language (Legislative) Commission, 1970 Edn. at p. 302:

> "Vest.—(1) To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, (2) To become legally vested; (TP Act) Vesting order.—An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;"

26.Black's Law Dictionary (6th Edn.), 1990 at p. 1563:

> "Vested.—Fixed;accrued; settled; absolute; complete.

> Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not continue 'vested right'. Vaughn v. Nadel [228 Kan 469 : 618 P 2d 778 (1980)] . See also Accrue; Vest, and specific types of vested interests, infra."

27.Webster's Third New International Dictionary, of the English Language unabridged, Vol. III S to Z at p. 2547 defines the word "vest" as follows:

> "'vest' vest ... To place or give into the possession or discretion of some person or authority [the regulation of the waterways ... to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) (a deed that vests a title estate in the grantee and a remainder in his children)
>
> (b) to grant, endow, or clothe with a particular authority right or property ... to put (a person) in possession of land by the feudal ceremony of investiture ... to become legally vested (normally) title to real property vests in the holder of a property executed deed.]"

28. "Vest"/"vested", therefore, may or may not include "transfer of possession", the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.

29. What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land are pitted against a statutory hypothesis. Possession, there is an adage is "nine points of the law". In Beddall v. Maitland [(1881) 17 Ch D 174 : (1881-85) All ER Rep Ext 1812] Sir Edward Fry, while speaking of a statute which makes a forcible entry an indictable offence, stated as follows: (Ch D p.

188) "... This statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession he may use force to keep out a trespasser; but, if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance."

30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about

equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words "acquired" and "vested" have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

31. The "vesting" in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in Maharaj Singh v. State of U.P. [(1977) 1 SCC 155] , while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in Rajendra Kumar v. Kalyan [(2000) 8 SCC 99] held as follows:

> (SCC p. 114, para 28) "28.... We do find some contentious substance in the contextual facts, since vesting shall have to be a 'vesting' certain. 'To "vest", generally means to give a property in.' (Per Brett, L.J. Coverdale v. Charlton [(1878) 4 QBD 104 (CA)] : Stroud's Judicial Dictionary, 5th Edn., Vol. VI.)Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorisation cannot however but be termed to be a contingent event. To 'vest', cannot be termed to be an executory devise.
>
> Be it noted however, that 'vested' does not necessarily and always mean 'vest in possession' but includes 'vest in interest' as well."

32. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and subsection (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in subsection (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under subsection (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer

possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under subsection (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-

section (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37. The requirement of giving notice under subsections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub- sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub- section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall". "

> 27. In the very same judgment, the effect of the Repeal Act, 1999 has also been discussed. Paragraphs 41 and 42 respectively read as under:-
>
> "41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute

and the facts of the particular case.

> 42. The mere vesting of the land under subsection (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub- section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."

(Emphasis supplied)

28. A close reading of the above judgment more particularly the dictum laid therein lays down that though Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1978 (Central Act), which is pari-materia to Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Ceiling Act), provides that the vacant land is deemed to be acquired, yet it does not mean that the possession of the land has been taken over. This Court has categorically stated that the procedure contained under sub-sections (5) and (6) of the Act, 1976 must be scrupulously followed. This Court was of the view that Section 10(5) of the Act, 1976 which is pari-materia to Section 11(5) of the Ceiling Act stipulates that any vacant land even if vested in the State under sub-section (3),the competent authority has to by notice in writing order any person who may be in possession of it to surrender or deliver possession of the land to the State Government within thirty days of the service of notice. If the landowner fails or refuses to do so, then the State Government has to follow the procedure under sub-section (6) of Section 10 or Section 11 as the case may be, and take forcible possession.

29. Thus, the dictum, as laid in Hari Ram (supra), is that where the possession of the subject land has not been taken over by the State Government or by any person duly authorised by the State Government in this behalf or by the competent authority, the proceedings under the Act would not survive and mere vesting of the vacant land with the State Government by operation of law, without actual possession, is not sufficient. To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal.

30. The proposition of law that mere paper possession is not sufficient to vest the land in the State has been explained by this Court in Raghbir Singh Sehrawat v. State of Haryana,,2012 AIR SCW 240. This was a case under the Land Acquisition Act, 1894. This Court, while allowing the appeals and declaring the acquisition illegal, observed that the taking of possession means the actual possession. Paper possession is not sufficient to vest the land in the State. This Court noticed

various revenue entries recorded in the revenue records which showed that the crops were grown on the different acquired land said to have been taken over. The Court noticed that the State had not questioned the genuineness and correctness of the entries contained in the revenue records. This Court also took notice of the fact that it was neither pleaded nor any evidence had been produced before the Court to show that the occupant of the land had unauthorisedly taken possession of the land after its acquisition.

31. The decision rendered in the case of Hari Ram (supra) has been followed by this Court in the case of in Vipin Chandra Vadilal Bavishi v. State of Gujarat, reported in (2016) 4 SCC 531. The relevant paragraphs of the judgment read as under:-

> "20. From these facts and the documents available on record, it is evidently clear that neither the Notifications under Sections 10(1), 10(2), 10(3) and 10(5) were issued in respect of plot nos. 36 to 43 nor possession of those plots have been taken over by the respondents. Curiously enough even the map attached to the letter dated 26.6.1989 shows that the possession of plot nos. 1 to 16 were taken and not of plot nos. 36 to 43.
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> X x x x
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> 23. A similar question came up for consideration before this Court in the case of State of U.P. v. Hari Ram reported in (2013) 4 SCC 280. In this case, a question arose as to whether the deemed vesting of surplus land under Section 10(3) of the Act would amount to taking de facto possession depriving the landholders of the benefit of the saving clause under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. After examining in detailed provisions of the Ceiling Act as also the Repeal Act, the Court observed:-
>
> "35. If de facto possession has already passed on to the State Government by the two deeming provisions under subsection (3) of Section 10, there is no necessity of using the expression "where any land is vested" under subsection (5) of Section 10. Surrendering or transfer of possession under subsection (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-
>
> section (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under subsection (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub- section (6),

therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under subsection (5) of Section 10. Sub- sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-

section (6) of Section 10.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub- sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under subsection (5) or sub- section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall"."

24. The Bench further considered the effect of Repeal Act and held that:-

> "41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.
>
> 42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10.

On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.

43. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 4 of the Repeal Act. However, there

will be no order as to costs."

25. The submission of Mr. Kapoor, learned counsel appearing for the respondent- State, that mentioning of Plot Nos. 1 to 16 in the Notification issued under Sections 10(1), 10(3) and 10(5) is a clerical mistake which can be corrected by issuing a corrigendum, is absolutely not tenable in law. How Plot Nos. 1 to in those Notifications by issuing a hand- written corrigendum which was not even finally approved by the authorities after 1976 Act stood repealed.

26. An arithmetical mistake is a mistake in calculation, while a clerical mistake is a mistake of writing or typing error occurring due to accidental slip or omissions or error due to careless mistake or omission. In our considered opinion, substituting different lands in place of the lands which have been notified by a statutory Notification under Section 10(1), 10(3) and 10(5) cannot and shall not be done by issuing a corrigendum unless the mandatory requirements contained in the aforementioned sections is complied with. A land holder cannot be divested from his land on the plea of clerical or arithmetical mistake liable to be corrected by issuing corrigendum."

32. We should now look into the decision of this Court in the case of State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321. A cursory reading of this decision may at the first blush create an impression that the dictum as laid in Hari Ram (supra) has been diluted.

33. We quote few relevant paras of the said judgment as under:-

> "14. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorised officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand. Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him. It is this aspect that has to an extent bothered us.
>
> 15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his

> failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.
>
> 16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time.

In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word ‘may’ appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma-erstwhile owner had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.” (Emphasis supplied)

34. We have supplied emphasis on paras 15 and 17 of Bhaskar Jyoti Sharma (supra) referred to above, for the purpose of highlighting that Hari Ram (supra) has not been diluted in any manner. We are of the firm view that Hari Ram (supra) holds the field even as on date. The statements of law in Hari Ram (supra) are absolutely correct.

35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathern, 1901 AC 495 at p.506 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:

> "..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand.

> 36. The "vesting" in sub-section (3) of section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. This Court in Maharaj Singh v. State of UP, reported in 1977(1) SCR 1072, while interpreting section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that "vesting" is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. This Court in Rajendra Kumar v. Kalyan (Dead) by L.Rs.

reported in (2000) 8 SCC 99, held as follows:-

> "We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton, Stroud's Judicial Dictionary, 5th Edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested." does not necessarily and always mean "vest in possession" but includes "vest in interest" as well." (Emphasis supplied)

> 37. Sub-section (5) of Section 10 talks of "possession" which says where any land is vested in the State Government under sub-

section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

38. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested." under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act, 1976 early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub- section (5) to Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

39. The mere vesting of the land under sub- section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.03.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 3 of the Repeal Act, 1999. In the case on hand, the State Government has in our considered view not been able to establish any of those situations and hence the learned Single Judge was right in holding that the appellant herein is entitled to get the benefit of Section 3 of the Repeal Act, 1999.

40. The effect of Repeal Act, 1999 is further clear. If the landowner remains in physical possession, then irrespective of his land being declared surplus and/or entry being made in favour of the State in revenue records, he will not be divested of his rights. Even if compensation is received that also will not dis-entitle him to claim the benefit if compensation is refunded, provided he is in actual physical possession. Payment of compensation has no co-relation with the taking of actual physical possession as with the vesting land compensation becomes payable which can be paid without taking actual physical possession.

41. The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

> [1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.
>
> [2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.
>
> [3] In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession" is valid or invalidated on any of the considerations in law.
>
> [4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[7] The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18th March 1999.

[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (6) of Section 10 or forceful dispossession under sub-section (6) of Section 10.

SCOPE OF INTRA-COURT APPEAL

42. We have noticed that the Division Bench in its impugned judgment has used the expression "shockingly the learned Single Judge" at various places. We fail to understand what is so shocking in the judgment of the learned Single Judge that the Division Bench had to interfere in a writ appeal. Was the Division Bench deciding a criminal appeal against the judgment and order of conviction passed by the learned Single Judge? The Division Bench was quite aware that it was deciding an intra court appeal. An intra-court appeal is really not a statutory appeal preferred against the judgment and order of an inferior to the superior court. The Division Bench was not deciding a criminal appeal against the judgment rendered by learned Single Judge. The appeal inter se in a High Court from one court to another is really an appeal from one coordinate bench to another coordinate bench and it is for this reason that a writ cannot be issued by one Bench of the High Court to another Bench of the High Court nor can even the High Court issue writ to a High Court. Thus, unlikely an appeal, in general, an intra court appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, such as a criminal appeal, where the whole evidence on record is examined afresh by the appellate court, what is really examined, in an intra court appeal, is the legality and validity of a judgment and/or order of the learned Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record or the judgment is against the established or settled principles of law. If two views are possible and a view, which is reasonable and logical has been adopted by a Single Judge, the other view howsoever appealing may be to the Division Bench, it is the view adopted by the learned Single Judge, which should, normally, by allowed to prevail.

43. The learned Single Judge after a meticulous examination of the entire record noticed so many deficiencies in the procedure adopted by the State. The plain reading of the impugned judgement gives an impression that all that the Division Bench kept doing was to cure such deficiencies noted

by the learned Single Judge by giving benefit of doubt to the State at every possible stage.

44. The State has not been able to give us any satisfactory reply as to on what basis it says that at the relevant point time the factory was closed; there was not a soul in site and therefore, the officials were left with no other option but to affix Section 10(5) notice outside the premises. This is something which is absolutely unpalatable. The State proceeds further saying that as there was no voluntary surrender of the excess land within thirty days from the date of affixation, it had to invoke Section 10(6) of the Act, 1976 and accordingly took over the possession. It is extremely hard to believe that when such a large parcel of land is being taken over the owner would not be present and further would not take any steps in accordance with law.

45. It was pointed out on behalf of the appellant herein that not only the factory is still running on the subject-land but there are multi-storeyed residential buildings also constructed therein. It was also pointed out that entire land is encompassed by a boundary wall and the gate is manned by security guard. It was also brought to our notice that the so called panchnama does not contain any site map or distinctive boundaries with special divisions whatsoever. The entire extent of 1,63679 sq.mtrs. is bound by one compound wall. It seems that the Division Bench in its impugned judgment has observed that there is no requirement under the statute for obtaining the signature of the landowner in the panchnama or filing of the affidavits by the panchas. When State Authorities try to take law in their own hands by hook or crook and rely on bogus paper panchnamas for the purpose of asserting that actual physical possession was taken over before the date of the repeal, then it is imperative that the signature of the landowner must be obtained in the panchnama so as to attach sanctity and authenticity to such exercise of taking over of actual possession. Affidavits of the panchas would also attach great sanctity to the same.

46. We have no hesitation in saying that the State has not placed true and correct facts in all respect. Both of us (J.B. Pardiwala and R. Mahadevan, J.J.) have worked as judges in our respective High Courts. We had the occasion to decide many matters exactly of the present type. Our experience so far has been that out of ten matters in nine matters it was apparent that the cases were one of paper possession. The present case is also one of paper possession. The learned Single Judge was constrained to observe that having regard to the materials on record few documents were found to be ante dated coupled with fabrication of evidence to some extent. All this has been dismissed by the Division Bench saying that they could be clerical errors or arithmetical errors.

POWER OF WRIT COURT TO DETERMINE DISPUTED QUESTION OF FACT

47. One stock argument available with the State in this type of cases is that the question whether the actual physical possession of the disputed land had been taken over or not is a seriously disputed question of fact, which the High Court should not adjudicate or determine in exercise of its writ jurisdiction. As a principle of law, there need not be any debate on such a proposition, but by merely submitting that it is a seriously disputed question of fact, the same, by itself, will not become a question of fact. To put it in other words, having regard to the materials on record, which falsifies the case of the State Government, then such materials should not be overlooked or ignored by the Court on the principle that the issue with regard to taking over of the actual physical possession

would be a disputed question of fact.

48.Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

50. In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei reported in AIR 1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:-

> "Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court." (Emphasis supplied)

51. This Court in the case of Gunwant Kaur v. Bhatinda Municipality reported in AIR 1970 SC 602 observed as follows:-

> "The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Art.226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art.226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a

> complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated., or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons." (Emphasis supplied)

52. In one of the recent pronouncements of this Court in State of U.P. & Anr. v. Ehsan & Anr. reported in 2023 INSC 906, this Court observed that:-

> "28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.
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> 29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.
>
> 30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of UP vs. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam vs. Bhaskar Jyoti Sarma, (supra)].

In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such

question, either for insufficient/ inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable." (Emphasis supplied)

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.

54. We are of the considered opinion that the issue as regards taking over of the actual physical possession of the excess land in accordance with the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 could be said to be a mixed question of law and fact and not just a question of fact. Mixed question of law and fact refers to a question which depends on both law and fact for its solution. In resolving a mixed question of law and fact, a reviewing court must adjudicate the facts of the case and decide relevant legal issues at the same time. Mixed questions of law and fact are defined "as questions in which the historical facts are admitted or established, the rule of law is resolved and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated". [Bausch & Lomb v. United States C.I.T. 166, 169 (Ct. Int'l Trade 1997]

55. In the aforesaid context, we may refer to the decision of this Court in Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others reported in (2024) 10 SCC 533, wherein this Court in paras 28 and 29 respectively observed thus:-

> "28. While it is true that after the 44th Constitutional Amendment [the Constitution (44th Amendment) Act, 1978], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A [300-A of the Constitution:"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."] which declares that "no person shall be deprived of his property save by authority of law" has been characterised both as a constitutional and also a human right [Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448; Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] . To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

29. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated [State of Bihar v. Kameshwar Singh, (1952) 1 SCC 528]. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414] . A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub- rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands." (Emphasis supplied)

56. In the overall view of the matter, we are convinced that the Division Bench of the High Court committed an egregious error in interfering with a very well considered and well-reasoned judgment rendered by the learned Single Judge of the High Court. There was no good reason for the Division Bench to interfere with the judgment rendered by the learned Single Judge.

57. In the result, both the appeals succeed and are hereby allowed. The impugned judgment and order passed by the Division Bench of the High Court is hereby set aside and that of the learned Single Judge is affirmed and restored.

58. Pending applications, if any, shall stand disposed of.

.....J. (J. B. Pardiwala) .....J. (R. Mahadevan)
New Delhi;

27th February, 2025.