
D.R. Somayajulu Vs Attili Appala Swamy

Civil Appeal No. 10404 of 2014 (Arising out of SLP (Civil) No. 3489/2012) and Civil Appeal No. 10408 of 2014 (Arising out of SLP (Civil) No. 9648/2013)

Court: Supreme Court of India

Date of Decision: Nov. 19, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 22 Rule 2, Order 47 Rule 1#Urban Land (Ceiling and Regulation) Act, 1976 – Section 10(1), 10(2), 10(3), 10(5), 10(6)#Urban Land (Ceiling and Regulation) Repeal Act, 1999 – Section 10(3), 20(1), 3, 3(1), 4#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – Section 11, 117(1)

Citation: (2015) 7 AD (SC) 77 : AIR 2015 SC 569 : (2015) 1 ALD 151 : (2015) 1 ALLMR 470 : (2015) 108 ALR 719 : (2015) 2 CHN 86 : (2015) 2 JLJR 273 : (2015) 2 PLJR 384 : (2015) 2 SCC 390 : (2014) 10 SCJ 325

Hon'ble Judges: T.S. Thakur, J; R. Banumathi, J; A.K. Goel, J

Bench: Full Bench

Advocate: Guru Krishna Kumar, V.V.S. Rao, Sr. Advocates., T.V. Ratnam, Jayshree, Guntur Prabhakar and G.N. Reddy, Advocates for the Appellant; P.P. Rao, Prabhu Patel, Sr. Adv., Mahesh Babu, Venkateswara Rao Anumolu, Y. Raja Gopala Rao, Y. Vismai Rao, Sudheer K. Reddy and Hitender Nath Rath, Advocates for the Respondent

Final Decision: Allowed

Judgement

R. Banumathi, J.

Delay condoned in S.L.P. (Civil) No. 9648/2013. Leave granted in both the special leave petitions.

2. These appeals challenge the correctness of order of Andhra Pradesh High Court passed in review application being W.P.M.P. No. 1540/2009

in Writ Appeal No. 1840/2008 dated 30.4.2011, setting aside the order dated 5.1.1982 passed by the competent authority determining an extent

of 38,781 sq. mtrs. of late Attili Narasayamma as surplus land and also the order passed by the appellate authority dated 24.4.2001 on the

ground that the proceedings taken against the dead person are totally void ab initio and non-est.

3. The case has a chequered history. A maze of facts and events confront us in the course of determination of these appeals. Essentially, the core

questions required to be examined are:

(i) The effect of non-impleading of legal heirs of Attili Narasayamma on the final statement passed Under Section 9 of the Urban Land (Ceiling

and Regulation) Act, 1976 (for short ULCR Act) and vesting of surplus land in the Government;

(ii) Effect of Urban Land (Ceiling and Regulation) Repeal Act 1999 (for short "Repeal Act 1999") on the land so vested:

(a) to an extent of 6.00 acres of land vested with the State Government which is allotted to the Appellant-society as the society has entered into an

agreement of sale with the owners of the land and claims to be in possession of 6.00 acres;

(b) effect of Urban Land (Ceiling and Regulation) Repeal Act 1999 on the remaining extent of surplus land.

4. Despite the limited scope of the dispute which arises for our consideration, it is essential for us to notice the factual background of the dispute

between the parties. The Appellant-society entered into an agreement of sale with the grandmother of the first Respondent, Attili Narasayamma

on 25.8.1974 in respect of property measuring 6.00 acres in S. No. 30/1 and 30/2 of Kapparada Village, Visakhapatnam for the purpose of

providing housing plots to its members. Sale consideration of Rs. 1,52,000/- was received by Attili Narasayamma and possession of the land was

handed over to the Appellant-society. The Appellant-society had also entered into other Memorandum of Understanding/Agreements of Sale on

various dates, details of which would be referred at the relevant place. Meanwhile, in pursuance of Urban Land (Ceiling and Regulation) Act 1976,

the competent authority sought to take the surplus land holdings. Attili Narasayamma filed declaration Under Section 6(1) of the ULCR Act.

Sons, daughters and grandchildren have also filed declarations Under Section 6(1) of the ULCR Act on the basis of family arrangement. After due

enquiry, the competent authority issued draft statement Under Section 8(1), together with notice Under Section 8(3) of the ULCR Act

provisionally determining Attili Narasayamma as a surplus landholder to the extent of 38781 sq.mtrs. in S. Nos. 29/1, 30/1, 30/2 and 30/3 of

Kapparada Village.

5. In response to the notice issued Under Section 8(3) of the ULCR Act, all the declarants including the first Respondent herein filed identical

objections, except late Attili Narasayamma. Before the competent authority, the declarants were represented through their counsel. After giving

due opportunity of hearing by issuing notices to the individual declarants and also to their counsel, the competent authority passed the order dated

5.1.1982 finding Attili Narasayamma to be holder of surplus land to the extent of 38781 sq.mtrs. Challenging the said order passed by the

competent authority, Attili Narasayamma filed an appeal Under Section 33 of the ULCR Act. In the meantime, final statement Under Section 9 of

the ULCR Act had been issued. Notification Under Section 10(1) and declaration Under Section 10(3) of the ULCR Act were issued and they

were published in the Andhra Pradesh Gazette on 24.2.1983 and 22.10.1990 respectively. Attili Viswanadha Rao and Attili Peda Venkata

Ramana Murthy have filed a petition bearing W.P. No. 2696/1991 which was dismissed as withdrawn. The Appellate Authority-Chief

Commissioner of Land Administration rejected the contention of the first Respondent that legal heirs of Attili Narasayamma were not formally

impleaded in the proceedings before the competent authority and dismissed the appeal filed Under Section 33 of the ULCR Act by its order dated

24.4.2001.

6. Challenging the order of the Appellate Authority dated 24.4.2001, Attili Peda Venkata Ramana Murthy and Attili Viswanadha Rao filed Writ

Petition No. 18340/2001. The said writ petition was dismissed as withdrawn against second Petitioner-Attili Viswanadha Rao. During pendency

of the writ petition, Attili Peda Venkata Ramana Murthy died and first Respondent herein was brought on record as the legal representative of

deceased Peda Venkata Ramana Murthy. The said writ petition was subsequently dismissed by the High Court on 6.11.2008 on the ground that

the non-service of notice upon the legal representatives caused no prejudice as they all had the opportunity of putting forth their objections on

behalf of Attili Narasayamma and they had participated in the proceedings throughout. Aggrieved by the said order, first Respondent preferred

writ appeal being Writ Appeal No. 1840/2008 which was dismissed by the Division Bench of the High Court vide order dated 2.2.2009. In the

meantime, Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force in the State of Andhra Pradesh with effect from 27.3.2008,

gazetted on 22.4.2008. First Respondent filed a review petition being W.P.M.P. No. 1540/2009 seeking review of the Order in W.A. No.

1840/2008 on the grounds: (i) that the legal representatives of Attili Narasayamma were not brought on record in the proceedings before the

competent authority and the Order dated 5.1.1982 is void and illegal; (ii) effect of Urban Land (Ceiling and Regulation) Repeal Act, 1999 was not

taken into consideration by the Division Bench.

7. The High Court allowed the review petition mainly on the ground that there was no proper representation of the estate of the deceased Attili

Narasayamma before the competent authority and any proceedings taken against a dead person are totally void ab initio and non-est. The High

Court accordingly set aside its own order dated 2.2.2009 and consequently set aside the order dated 5.1.1982 passed by the competent authority

and also the orders passed by the Appellate Authority dated 24.4.2001 and the order of the learned single Judge dated 6.11.2008. These appeals

by special leave, filed at the instance of the Appellant-society and the Department challenge the correctness of the said order passed by the High

Court in the review petition.

8. Mr. Guru Krishnakumar, learned Senior Counsel appearing for the Appellant-society submitted that the sons, daughters, grandchildren of Attili

Narasayamma including the first Respondent have filed their statements and objections to the draft statement issued Under Sections 6(1) and 8(3)

respectively of the ULCR Act and thus, all the legal representatives of Attili Narasayamma had participated in the proceedings under the ULCR

Act and that no prejudice could be said to have been caused to them on account of the non-service of formal notice to the legal heirs. Laying

emphasis on the vesting of the land in the Government of Andhra Pradesh and allotment of 6.00 acres of land to the Appellant-society vide GO.

Ms. No. 340 dated 5.3.2003 and GO. Ms. No. 1900 dated 20.12.2006, learned Senior Counsel submitted that the society and the members/allottees are already in possession of the property and the provisions of the Urban Land (Ceiling and Regulation) Repeal Act 1999 are

not applicable insofar as the extent of the land allotted to the society and the High Court was not justified in allowing the review petition.

9. Mr. V.V.S. Rao, learned Senior Counsel appearing for the Respondent Nos. 2 and 3 submitted that Respondent No. 1 and other legal

representatives of Attili Narasayamma had participated in the proceedings and they had sufficient knowledge of the proceedings pending before

the competent authority. Taking us through the judgment of the single Judge in W.P. No. 18340/2001 and also the Writ Appeal No. 1840/2008,

learned Senior Counsel submitted that courts below have recorded clear finding that legal representatives of Attili Narasayamma had participated

in the proceedings and only by suppressing the factum of participation, Respondent No. 1 filed review application seeking review. Learned senior

Counsel for Respondent Nos. 2 and 3 further submitted that the Urban Land (Ceiling and Regulation) Repeal Act 1999 as adopted by the State of

Andhra Pradesh (on 27.3.2008) is not applicable in this case as the surplus land has vested in the Government long back in accordance with the

provisions of Section 8(3) of the ULCR Act.

10. Taking us through the GO. Ms. No. 1900 dated 20.12.2006, learned Senior Counsel Mr. P.P. Rao, appearing on behalf of Respondent No.

1. submitted that the said order specifically mentions that allotment of land shall be subject to the result of pending litigation and Appellant-society

has no independent right in respect of the suit property. The learned Senior Counsel submitted that Attili Narasayamma died on 15.9.1977 and

the draft statement Under Section 8(3) of the ULCR Act, issued on 30.11.1977 could not have been served on Attili Narasayamma and since

Attili Narasayamma"s legal representatives were not brought on record and no notice was served on them, all proceedings against the dead

person are illegal and void ab initio. It was further contended that since the courts below as well as the competent authority and the appellate

authority had failed to appreciate the relevant aspect that the notice issued Under Section 8(3) of the ULCR Act (dated 30.11.1977) was not

served on the declarant-Attili Narasayamma, the review petition filed by the first Respondent was rightly allowed by the High Court.

11. We have given our thoughtful consideration to the contention of the learned Counsel for the appearing parties and perused the impugned order

and materials on record.

12. Attili Narasayamma, grandmother of first Respondent, died on 15.9.1977. Draft Statement Under Section 8(1) together with notice Under

Section 8(3) of the ULCR Act has been issued on 30.11.1977. High Court allowed the review petition mainly on the ground that the said notice

Under Section 8(3) of the ULCR Act was not served on Attili Narasayamma and that legal representatives were not brought on record. In the

impugned order, High Court, inter-alia, held as under:

...In the absence of the proper representation of the estate of the deceased by proper legal representatives, any proceedings taken against the dead

person are totally void ab initio and therefore it can safely be said that the proceedings as refer to dated 5.1.1982 at the inception itself is totally

void, illegal and non-est and the same could not be relied on for any purpose whatsoever nature.... There could not have been any such subsequent

proceedings under the provisions of the Act unless and until the original order is valid and there is due determination in accordance with law.

13. It is no doubt true that the provisions of ULCR Act are confiscatory in nature depriving a person of his valuable right in the property. When the

Legislature says that the competent authority shall duly consider any objection received Under Sub-section (4) of Section 8, it casts a duty upon

the competent authority to serve the draft statement Under Section 8(3) in such manner, as may be prescribed, upon the concerned person. The

draft statement to be served by the competent authority Under Section 8(3) of the ULCR Act is to enable the person concerned to file his

objections in case he has any reason to object. There may be an occasion when a person dies after filing a statement Under Section 6(1) of the

ULCR Act but before the notice along with Draft Statement was issued Under Section 8(3) of the ULCR Act and order passed by the competent

authority Under Section 9 or before a final determination Under Section 10(3) of the ULCR Act. In such circumstances, legal representatives of

the deceased are to be impleaded and the competent authority is to consider any objection received from the legal representatives.

14. In the facts and circumstances of the case at hand, it is seen that the sons, daughters and grandchildren including the first Respondent have

participated in the proceedings before the competent authority under the ULCR Act. Attili Narasayamma had filed a declaration Under Section

6(1)"and it was numbered as CC No. 5443/1976. Her sons, daughters and grandchildren namely (i) Attili Annapurna, (ii) Attili Malamamba, (iii)

Attili Narasamamba, (iv) Attili Appalaswamy-(1st Respondent) (v) Attili Venkata Rao, (vi) Attili Viswanadha Rao and (vii) Attili Peda Venkata

Ramana Murthy have filed their statements Under Section 6(1) of the ULCR Act, each claiming certain extent of vacant land by virtue of a family

arrangement. Competent authority issued a draft statement Under Section 8(1) together with Notice Under Section 8(3) of the ULCR Act to Attili

Narasayamma provisionally determining her as a surplus landholder to the extent of 38,781 sq.mtrs. in S. No. 29/1, 30/1, 30/2 and 30/3 of

Kapparada Village. Copy of the draft statement and notice Under Section 8(3) has been served on her sons, daughters and grandchildren,

including the first Respondent who have filed their statements Under Section 6(1) of the ULCR Act. In response to the said notice issued Under

Section 8(3) of the ULCR Act sons, daughters and grandchildren, namely, the above said declarants have filed their individual objections and they

were all represented through their counsel. In their objections, sons, daughters and grandchildren of Attili Narasayamma raised the following

grounds: (i) that there was a family arrangement dated 15.7.1974 in pursuance of which, each of the declarants are in possession and enjoyment of

their respective shares; (ii) Attili Narasayamma had executed a Will and bequeathed the properties; (iii) Attili Narasayamma executed an

agreement of sale dated 25.8.1974 in favour of Diesel Loco Shed Employees and S.E. Railway Employees House Building Cooperative Society

(Appellant) to the extent of 6.00 acres of land in S. No. 30/1, 30/2 (P) of Kapparada Village and the said extent of land has to be excluded from

the computation of the ceiling area of the declarant.

15. In the counter affidavit filed by Respondent Nos. 2 and 3, it is averred that subsequent to the filing of the objections against the draft statement,

the competent authority issued notices both to all the individual declarants and also their advocates to attend for inquiry. It is averred that right from

3.4.1978, the declarants have sought for adjournments either on one plea or the other and as such they have not turned for inquiry for about five

years since filing of objections against the draft statement. In our view sufficient opportunity was afforded to the sons, daughters and grandchildren

who filed their objections and only after considering their objections the competent authority passed the order Under Section 8(4) of the ULCR

Act confirming the draft statement issued Under Section 8(1) of the ULCR Act and thereafter, final statement as required Under Section 9 of the

ULCR Act has been issued. In effect, legal representatives of Attili Narasayamma were given sufficient opportunity to file their objections to

prove their claim to the property. In such situation, the legal representatives cannot be allowed to claim that prejudice was caused to them as they

were not brought on record, when in essence they have actually participated at all stages of inquiry before the competent authority.

16. In its order dated 5.1.1982 competent authority observed thus:

The Draft Statement was served on the declarant Smt. Attili Narasayamma on 2.2.1978. Against the said Draft Statement Under Section 8(1)

issued to Smt. Attili Narasayamma all the eight declarants including Attili Narasayamma have filed objection petitions which were received in this

office on 28.2.1978.

The above observation, of course, is factually incorrect. Before the appellate authority, Attili Viswanadha Rao assailed the order passed by the

competent authority by raising objection as to non-impleading of legal representatives on record. By referring to the proceedings before the

competent authority, the appellate authority held that Attili Viswanadha Rao and other sons and daughters of late Attili Narasayamma have been

brought on record all through the proceedings and were given notice of the proceedings as required under law, thereby rejecting the objection of

non-impleading legal representatives of Attili Narasayamma.

17. Sequence of events clearly indicates that sons, daughters and grandchildren of Attili Narasayamma including the first Respondent participated

in the entire proceedings and they have filed declaration Under Section 6(1) of the ULCR Act and also filed their objections in response to the

notice issued Under Section 8(3) of the ULCR Act. In fact, right from the inquiry, the declarants including the first Respondent were represented

through their advocates. Their objections were considered at length by the competent authority before passing the order dated 5.1.1982 and

thereafter, final statement as required Under Section 9 of the Act has been issued. Notification Under Section 10(1) and declaration Under Section

10(3) of the ULCR Act were issued and they were published in the AP Gazette on 24.2.1983 and 22.10.1990 respectively. The first Respondent

Attili Appala Swamy and his father Attili Peda Venkata Ramana Murthy were vigorously pursuing the matter. In the counter affidavit filed by the

Respondent Nos. 2 and 3, the first Respondent is stated to be an acquainted lawyer and an ex-Government Pleader. While so, the first

Respondent cannot plead ignorance of the proceedings before the competent authority and his participation thereon.

18. There is no specific provision in the ULCR Act to bring on record the legal representatives of a declarant who subsequently dies after filing

declaration. In respect of the matters specified in Clauses (a) to (e) of Section 31 of ULCR Act, the competent authority has been given all the

powers of a civil court while trying a suit under the Code of Civil Procedure, 1908. Clause (f) of Section 31 of the ULCR Act provides that for

other matters also, it can be prescribed that provisions of the Code of Civil Procedure, 1908 would be made applicable. This by implication shows

that the entire provisions of the Code of Civil Procedure are not made applicable. Section 46 of ULCR Act enables the Central Government to

make rules for carrying out the provisions of the Act. Clause (n) of Sub-section (2) of Section 46 empowers the Central Government to make

rules conferring the powers to the competent authority under Clause (f) of Section 31. Nothing was placed before us to show that any such rule

was framed by the Central Government or that which of the provisions of Code of Civil Procedure are made applicable.

19. For the sake of completion, we may refer to Order XXII Rule 2, Code of Civil Procedure, 1908 which is the relevant provision in Code of

Civil Procedure dealing with the procedure where one of the several Plaintiffs or Defendants dies and right to sue survives. Order XXII Rule 2,

Code of Civil Procedure reads as under:

2. Procedure where one of several Plaintiffs or Defendants dies and right to sue survives.-Where there are more Plaintiffs or Defendants than one,

and any of them dies, and where the right to sue survives to the surviving Plaintiff or Plaintiffs alone, or against the surviving Defendant or

Defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving

Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants.

When the legal representatives of a deceased Plaintiff are already on record in their individual capacity, a mere note under Order XXII Rule 2

Code of Civil Procedure is sufficient. As noticed earlier, in the proceedings before the competent authority, sons, daughters and grandchildren of

Attili Narasayamma were already on record in their individual capacity. While so, the first Respondent cannot complain of any prejudice being

caused due to formal non-impleading of legal representatives of deceased Attili Narasayamma or non-serving of formal notice upon the legal

representatives of deceased Attili Narasayamma.

20. In the review petition, in our view, the High Court ignored the sequence of events and the full participation of sons, daughters and the

grandchildren including the first Respondent before the competent authority. Court of review has only a limited jurisdiction circumscribed by the

definitive limits fixed by the language used in Order XLVII Rule 1 Code of Civil Procedure It may allow a review on three specified grounds,

namely:

(i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could

not be produced by him at the time when the decree was passed or order was made;

(ii) mistake or error apparent on the face of the record; or

(iii) for any other sufficient reason. Application for review on the ground of discovery of new material should be considered with great caution and

should not be granted very lightly.

21. Factum of death of Attili Narasayamma on 15.9.1977 and plea as to non-impleading of legal representatives in the proceedings before the

competent authority was raised at all stages i.e. before the appellate authority as well as before the single Judge and also in the writ appeal.

Considering the participation of sons, daughters and grandchildren of Attili Narasayamma before the competent authority, the appellate authority

as well as the learned single Judge (Writ Petition No. 18340/2001) held that the legal representatives of Attili Narasayamma had sufficient

opportunity of putting forth their objections on behalf of Attili Narasayamma and the order passed by the competent authority does not suffer

from any illegality. In Writ Appeal No. 1840/2008, the Division Bench also considered this aspect and found that all the legal representatives were

already on record and participated in the proceedings and cannot complain of non-impleading of legal representatives. In the review petition while

setting aside its own order and then orders of the authorities under ULCR Act, High Court observed that there was no proper representation of

the estate of the deceased Attili Narasayamma by proper legal representatives and any proceedings taken against a dead person are totally void

ab initio and the order dated 5.1.1982 is void and illegal. While so saying, the High Court has completely ignored the participation of sons,

daughters and grandchildren of Attili Narasayamma in the proceedings before the competent authority and that the said objection was considered

and negated by all the forums. Insofar as the applicability of ULCR Repeal Act 1999, in the impugned order only passing observations have been

made that "".....all the proceedings have no effect in view of the repealing Act"". In our view, the impugned order passed by the High Court in the

review petition is erroneous and not sustainable.

22. Vesting of the land: Sub-section (1) of Section 10 states that after service of the statement, the competent authority has to issue a notification

giving particulars of the land held by such person in excess of the ceiling limit. A notification has to be published for the information of the general

public in the Official Gazette, stating that such vacant land is to be acquired and that the claims of all the persons interested in such vacant land be

made by them giving particulars of the nature of their interests in such land. Sub-section (2) of Section 10 states that after considering the claims of

persons interested in the vacant land, the competent authority has to determine the nature and extent of such claims and pass such orders as it

might deem fit. Sub-section (3) of Section 10 states that after the publication of the notification Under Sub-section (1) the competent authority has

to declare that the excess land referred to in the notification published Under Sub-section (1) of Section 10 shall, with effect from such date, as

might be prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect

such land shall be deemed to have been vested absolutely in the State Government, free from all encumbrances, with effect from the date so

specified.

23. By publication in the Gazette on 22.10.1990 Under Section 10(3) of the ULCR Act, the surplus land measuring an extent of 38,781 sq.mtrs.

shall be deemed to have been vested absolutely in the State Government free from all encumbrances. On 31.1.1991 notice was issued Under

Section 10(5) to surrender possession of vacant lands. So far as the vesting of the surplus land with the Government, there are overwhelming

materials and accordingly, vesting became conclusive.

24. Effect of Repealing Act 1999: Urban Land (Ceiling and Regulation) Repeal Act, 1999 was adopted in the State of Andhra Pradesh with effect

from 27.3.2008. First Respondent contends that since possession was not taken, ULCR repeal Act 1999 is squarely applicable and land ceiling

proceedings are abated. First Respondent relies upon Sections 3 and 4 of the Repeal Act, 1999. It would, therefore, be appropriate to refer to

Sections 3 and 4 of the repeal Act, 1999 which read as under:

3. Saving.-(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 the State Government or any

person duly authorized 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

of 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 authorized 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.

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 other 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 in so far as such

proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the

State Government in this behalf or by the competent authority.

25. Contention advanced at the hands of the Government and the Appellant was that recognizing possession of the Appellant-society and the

allottees to whom the plots were allotted, Government issued GO. Ms. 1900 dated 20.12.2006 which is much prior to the adoption of repeal Act

in the State of Andhra Pradesh and therefore, repeal Act is not applicable to the said 6.00 acres allotted to the Appellant-society. In so far as

remaining extent, contention of the Government is that the actual possession of the same was taken over by a Panchnama dated 4.1.2008 much

before the repeal Act and therefore, repeal Act is not applicable.

26. In State of U.P. Vs. Hari Ram, , this Court considered the question with regard to ""deemed vesting"" Under Section 10(3) of ULCR Act in the

context of saving clause in the Repeal Act 1999. This Court held that for the purpose of saving clause under the repeal Act 1999, de facto

possession is required to be taken by the State and not de jure. In paragraphs (31), (34) and (35) of Hari Ram's case this Court held as under:

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 Vs. State of Uttar Pradesh and Others, , 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.....

.....

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 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 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 Sub-section (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.

27. First Respondent placed much reliance on the observations in paragraph (42) of Hari Ram's case which reads as under:

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.

Contention of the first Respondent is that possession of the surplus land was never surrendered to the Government and the above observations in

Hari Ram's case are squarely applicable and by virtue of the repeal Act, land ceiling proceedings stood abated.

28. As noticed earlier, a total extent of 38,781 sq.mtrs. were declared surplus. The description of surplus land of 38,781 sq.mtrs. is as under:

29. Effect of repeal Act, in our view, has to be considered separately as regards two different extents viz., (1) 6.00 acres of land in Survey Nos.

30/1 and 30/2 of Kapparada Village allotted to the Appellant-society in GO. Ms. No. 1900 dated 20.12.2006 and which is in occupation of the

allottees-members of the Appellant-society; (2) Surplus land in Survey Nos. 29/1 and 30/3 and remaining extent in Survey Nos. 30/1 and 30/2.

30. Late Attili Narasayamma had executed an agreement of sale in favour of Appellant-society on 25.8.1974 of the land in Survey Nos. 30/1 and

30/2 to the extent of 6.00 acres and received an amount of Rs. 1,52,000/-. On 10.3.1990, the Appellant-society had entered into a Memorandum

of Understanding between the legal heirs of Attili Narasayamma wherein the Appellant-society agreed to pay Rs. 4,00,000/- per acre and an

advance of Rs. 50,000/- was paid. On 3.6.1996, the Appellant-society entered into another agreement of sale with the legal heirs of Attili

Narasayamma in respect of the same property. This agreement was with regard to 1.40 acres, in lieu of which entire sale consideration of Rs.

6,22,000/- was paid and the possession of the said extent had been handed over to the Appellant-society and the same was developed into plots

which were allotted to the members of the society. On 15.1.2001, yet another agreement of sale in relation to the remaining 4.60 acres was

entered into between the Appellant-society and legal heirs of Attili Narasayamma on a revised rate of Rs. 10,00,000/- per acre and an advance

of Rs. 3,00,000/- was also paid. On 6.2.2003, by virtue of GO. Ms. No. 455 dated 29.7.2002 Government of Andhra Pradesh formulated

guidelines for allotment of excess land under the ULCR Act already in occupation of the 3rd parties. The Appellant-society made representations

to the Government for allotment of 6.00 acres covered under the agreement. In response to the same, Government issued GO. Ms. No. 340

dated 5.3.2003 and decided to consider the case of the Appellant favourably by relaxing certain guidelines in this regard and called for certain

details. The first Respondent filed Writ Petition 1216/2004 questioning the validity of this order.

31. The Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam submitted the proposals based on the application filed for

allotment Under Section 23(4) of the ULCR Act of the excess land acquired by the State Government and in occupation of the members of the

Appellant-society in Survey No. 30/1 and 30/2 of Kapparada Village. GO. Ms. No. 1900 dated 20.12.2006 was issued allotting 6.00 acres land

to the Appellant-society and thereby regularising their occupation. The said Government Order states that the society has also paid the requisite

amount towards compensation for such allotment. Again this order was challenged by the first Respondent by filing writ petition No. 735/2007 and

both the writ petitions are stated to be pending.

32. We are conscious that two writ petitions viz. W.P. No. 1216/2004 and W.P. No. 735/2007 have been filed in the High Court challenging the

allotment of 6.00 acres of land to the Appellant-society. In support of his contention that the land allotted to the Appellant society remains vacant,

few photographs were filed by the 1st Respondent. As regards the said 6.00 acres of land, there are overwhelming materials to show that

possession was already handed over to the Appellant-society prior to the adoption of ULCR Act by state of Andhra Pradesh on 27.3.2008.

Following terms in the agreement dated 10.3.1990 clearly show that possession was handed over to the Appellant-society to clear the bushes etc.:

In pursuance of the above understandings the 1st party received Rs. 50,000/- from the President as an advance to permit the 2nd party to clear

the bushes and survey the land for the purpose of making a layout and the 2nd party and 1st party hereby acknowledges the same.

The agreement dated 3.6.1996 also contains clause as regards delivery of possession and also tentative allotment made to the members as under:

The entire sale consideration of 1 acre 40 cents was paid by the above 12 members and possession is delivered to them in consultation with the

Society President and Secretary and on the basis of tentative allotment made by the society vide its letter dated 8.8.1994 and they have enclosed

their plots with fencing as per the layout plan of plot 45 to 56.

The agreement dated 15.1.2001 also records handing over of possession and forming of layout and conferring right upon the society to have

access to the road as under:

The vendors agree to permit the purchasers to level the land and demarcate the roads and plots as per the plan within a period of 3 months.

The purchasers agree that after the layout has been laid and the roads laid, the seller will be entitled to use the road for the other land belongs to

them abutting the schedule land.

The vendors agree to give access to the road formed in the layout to go to their plots of purchasers in case if it is necessary for the vendors land

which is abutting the schedule land. Both the vendors and purchaser having agreed for the terms and conditions mentioned above and affixed their

signatures on the 15th day of January 2001 at Visakhapatnam.

33. In terms of Section 3(1) of the repeal Act, the vesting of any vacant land Under Sub-section (3) of Section 10, the possession of which has

already been taken by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority,

repeal of the principal Act shall not affect the same. Terms of various agreements referred above and also the tenor of the GO. Ms. No. 1900

dated 20.12.2006 clearly indicate that possession was already handed over to the Appellant-society and the respective allottees were in

occupation of the plots. It is also pertinent to note that as many as 38 members-allottees are said to have already put up their construction and few

others have fenced their plots. By virtue of earlier agreements and Government Order GO. Ms. No. 1900 dated 20.12.2006, on the date when

the repeal Act was adopted in the State of Andhra Pradesh i.e. on 27.3.2008, the Appellant-society was already in possession of 6.00 acres in

Survey No. 30/1 and 30/2 and repeal Act is not applicable insofar as the said extent of 6.00 acres.

34. As noticed earlier, the land was allotted to the society mainly on the ground that the members-allottees were in occupation of the allotted plots.

The occupation of the 6.00 acres land by the members of the society is evident by virtue of prior agreements of sale. When we asked Mr. Guru

Krishnakumar, learned Senior Counsel appearing for the society whether entire sale consideration in terms of the agreements was paid to the

vendors, the learned Senior Counsel submitted that around rupees thirty lakhs have been paid to the vendors. Correct details of the consideration

paid to the vendors, the balance amount payable to the vendors and whether amount has been paid to the government in lieu of allotment are not

clear. No materials were placed before us on these aspects. Having entered into agreements of sale and having got the allotment, equity demands

that the society should pay the entire sale consideration to the vendors apart from the amount, if any, paid to the Government. Instead of this Court

determining the balance sale consideration amount payable to the vendors, insofar as 6.00 acres of land is concerned, the matter can, in our

opinion, be remitted to the High Court only for the limited purpose of determining the balance sale consideration payable by the Appellant-society

to the vendors-legal heirs of Attili Narasayamma.

35. Except the land covered under GO. Ms. No. 1900 dated 20.12.2006, possession of the remaining extent of the surplus land is said to have

been taken by virtue of Panchnama dated 4.1.2008. In the Writ Petition No. 18340/2001, interim stay was granted by the High Court on

12.9.2001 and the same continued to be in force till 6.11.2008 i.e. till the disposal of the writ petition. In such view of the matter, the effect of

Panchnama has to be examined and it has to be considered whether the actual possession was taken by the Government or the representatives of

the State. Insofar as the remaining extent of surplus land is concerned, the following questions would arise viz., (i) whether actual physical

possession was taken by the State Government; (ii) When interim order granted by the High Court on 12.9.2001 was in force, what is the effect of

Panchnama dated 4.1.2008; (iii) whether the repeal Act adopted by the State of Andhra Pradesh on 27.3.2008 is applicable and whether the first

Respondent is entitled to get the benefit of Section 4 of the repeal Act 1999 are to be considered. In our view, instead of this Court examining

these questions, the matter be remitted to the High Court for examining the above questions.

36. In the result, appeals are allowed, the impugned order of the High Court passed in Review Petition W.P.M.P. No. 1540/2009 and the order

of the Division Bench passed in W.A. No. 1840/2008 dated 2.2.09 are set aside and the matters are remitted back to the High Court for

consideration of the Writ Appeal No. 1840/2008 afresh in the light of the above discussion and the directions contained in paragraph Nos. (34)

and (35). The High Court shall afford an opportunity to all the parties concerned to file additional affidavits and counter affidavits and also to file

additional documents, if any, and proceed with the matter in accordance with law. In the facts and circumstances of the case, we make no order as

to costs.