

(2007) 11 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 32677 of 1998

Sri Govind Singh and Others

APPELLANT

Vs

The Principal Secretary to
Government, Government of
Andhra Pradesh, Revenue
Department (UC-II) and Others

RESPONDENT

Date of Decision: Nov. 19, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(1), 10(5), 10(6), 2

Citation: (2008) 1 ALT 593 : (2007) 3 APLJ 249

Hon'ble Judges: Gopala Krishna Tamada, J

Bench: Single Bench

Advocate: Challa Sitaramaiah, appearing on behalf of N. Ashok Kumar, for the Appellant;
G.P. for Revenue, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Gopala Krishna Tamada, J.

This writ petition is filed seeking a Writ of Mandamus declaring the action of the 3rd respondent in forcing the petitioners to surrender the lands as illegal and arbitrary and consequently declare the impugned Memo No. 2013/UCII/84-6 dated 20.10.1998 passed by the 1st respondent as illegal, without jurisdiction and also to declare that the lands held by late Zaidunissa Begum are exempt from Chapter III of the Urban Land (Ceiling and Regulation) Act, 1976 in view of G.O.Ms. No. 733 dated 31.10.1988.

2. The case of the petitioners is that the 1st petitioner purchased an extent of 1953.55 square yards of land situated in Sy. No. 503/B of Attapur village, Hyderabad, under registered sale deeds dated 27.01.1989 and 24.01.1990 from respondent Nos.

4 and 5 (grand-daughters of late Zaidunnissa Begum). Other petitioners have also purchased lands from respondent Nos. 4 and 5 under different registered sale deeds. It is stated that originally late Zaidunnissa Begum filed a declaration u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (Act 33 of 1976) (for short "the Act") before the 3rd respondent-Special Officer and competent Authority. In the declaration she declared that the land situated at Sy. No. 503/B of Attapur village, Hyderabad, admeasuring an extent of Ac.8.00 was in her holding. The 3rd respondent by order dated 22.07.1985 declared an extent of 33,280 square meters in Sy. No. 503/B of Attapur village as surplus land. Aggrieved by the same, an appeal was preferred before the 2nd respondent and the same was dismissed by order dated 22.02.1991. It is further stated that the Government of Andhra Pradesh issued G.O.Ms. No. 733 dated 31.10.1988 whereunder the lands situated in peripheral areas to an extent of Ac.8.00 are exempted from the provisions of the Act. In pursuance to the G.O.Ms. No. 733 the 2nd respondent has addressed a letter to the 1st respondent seeking permission u/s 34 of the Act to revise the 8 (4) orders for giving effect to the benefit under the said G.O. It is further stated that respondents 4 and 5 filed an application before the 1st respondent on 17.12.1984 for granting exemption under the Act and the same was rejected on 20.10.1998 directing the 3rd respondent to take possession of the surplus land. It is further stated that in view of rejection order passed by the 1st respondent dated 20.10.1998, the 3rd respondent is forcing to surrender the lands from the petitioners. Hence the writ petition.

3. Counter-affidavit has been filed on behalf of respondents contending that one Mohd.Hameeduddin (grandfather of respondents 4 and 5) filed a declaration u/s 6(1) of the Act declaring an extent of 32374.80 square meters situated in Sy. No. 503/AA of Attapur village after retaining an extent of 1000.00 square meters. He was provisionally declared as surplus holder to an extent of 31374.80 square meters in Sy. No. 503/AA. Draft statement u/s 8(1) and notice u/s 8(3) of the Act were issued calling for objections, if any and the same were served on the declarant on 24.03.1981. It is stated that on check measurement, an area in T.S. No. 20, Ward No. 19 and Block "F" of Attapur village measuring 33280 square meters correlating to Sy. No. 503/AA was found to be correct and, therefore, the said area was taken into account for computation of holding of declarant. It is further stated that as per land use certificate issued by Hyderabad Urban Development Authority except two small bits in western side, rest of the area is specified for the purpose other than agriculture and as such the land in question is treated as vacant land. It is further stated that the declarant Hameeduddin died on 29.08.1981 i.e., after commencement of the Act and hence he is treated as the holder of the land. Respondents 4 and 5, who are the grand-daughters of the declarant, are not entitled to any share as on the date of enforcement of the Act. It is further stated that the draft statement u/s 8(1) of the Act is confirmed with alteration in the area as per check measurement and declared as surplus holder to an extent of 33280 square meters in Sy. No. 503/AA after allowing retainable area of 1000 square

meters. Against the said order, 4th respondent and another filed an appeal before the 2nd respondent-Commissioner of Land Reforms and Urban Land Ceilings and the same was rejected by order dated 22.02.1991. It is further stated that on the application dated 17.12.1984 filed by the G.P.A. holder of respondents 4 and 5 for exemption u/s 20(1)(b) of the Act, the Government rejected the same vide Memo No. 2013/UCII (2)/84-6 dated 20.10.1998 on the ground that request is not feasible and directed the 3rd respondent-Special Officer and Competent Authority to take over possession of the surplus land. Notification u/s 10(1) of the Act got published in A.P. Gazette No. 287 dated 30.10.1991 and 10 (3) declaration was also issued and in the meanwhile the petitioners filed the present writ petition. It is further stated that the declaration u/s 6(1) of the Act has been filed by Md.Hameeduddin but not Ziadunnisa Begum as stated by the petitioners. It is further stated that the Government issued orders vide G.O.Ms. No. 733 dated 31.10.1988 exempting an extent of Ac.5.00 of land within peripheral area from the provisions of the Urban Land Ceiling Act but not Ac.8.00 as contended by the petitioners. It is further stated that respondents 4 and 5 filed an application before the Government on 17.12.1994 for granting exemption u/s 20(1)(b) of the Act and the same was rejected on the ground of non- feasibility. It is further stated that G.O.Ms. No. 733 dated 31.10.1988 was issued subsequent to issuance of orders u/s 8(4) of the Act dated 22.07.1985 and therefore, there is no applicability of exemption granted under the said orders of the Government. Heard both sides.

4. Learned Senior Counsel for the petitioners submits that as per the communication addressed by the 2nd respondent to the 1st respondent, it is clear that the land is situated in the peripheral area and as such the land to an extent of Ac.8.00 stand exempted from the provisions of the Act. He further submits that the 1st respondent ought to have treated the matter as one covered under G.O.Ms. No. 733 and granted the exemption instead of rejecting the exemption application. He further submits that 1st respondent in the impugned order not only rejected the application for exemption but also directed the 3rd respondent to take possession of the surplus land, which is illegal and contrary to the Act. He further submits that the 2nd respondent while dismissing the appeal dated 22.02.1991 should have set aside the order passed by the 3rd respondent dated 22.07.1985 and applied the benefit of G.O.Ms. No. 733 and declared the lands held by late Zaidunnisa Begum as non-surplus. He further submits that the petitioners have purchased the lands from respondents 4 and 5 for a valuable consideration subsequent to G.O.Ms. No. 733 dated 31.10.1988 by which time the lands stood exempted from Chapter III of the Urban Land Ceiling Act and as such the sale deeds are valid and legal. He further submits that in view of rejection of the exemption application, the 3rd respondent under the guise of the rejection order passed by the 1st respondent vide Memo No. 2013/UC-II (2)/84-6 dated 20.10.1998 is forcing the petitioners to surrender the lands illegally. It is further contended by the learned Senior Counsel for the petitioners that though the land in question was exempt from the Act u/s 20(1)(b) of

the Act, it was not exempted and the impugned order has no reasons for not granting the exemption. He further contends that the land in question was in peripheral area and the land was below five acres and, therefore, the Government should have exempted this land from the purview of the Act in the light of G.O.Ms. No. 733, dated 31.10.1988. Orders impugned in this writ petition were passed without giving any reasons.

5. On the other hand, the learned Government Pleader for Revenue submits that the petitioners are the alleged purchasers of the land in question, their sale was not valid as it was effected during the pendency of proceedings under the Act and they have no locus standi to challenge the orders u/s 20(1)(b) of the Act which were passed on the application filed by respondents 4 and 5 who were only competent to challenge the said orders, but they have not challenged and the order becomes final. He also submits that the benefit of G.O.Ms. No. 733 also could not be given to the petitioners for the same reason as their sale was not valid and they were not in possession of the land as on the date of issuance of the G.O.Ms. No. 733 dated 31.10.1988.

6. The learned Senior Counsel for the petitioners submits that the G.O.Ms. No. 733 can be made applicable even prior to the date of its issuance and in this connection he relies on a judgment of this Court reported in [P.S. Rao Vs. Special Officer and Competent Authority, Urban Land Ceiling, Hyd. and Another](#), . In this judgment, this Court held as under:

The Government, by virtue of the delegated power conferred upon it u/s 20(1)(b) of the Act, has issued the G.O. The G.O. makes it very clear that the land situated in the peripheral area as specified in Column 3 of Schedule 1 to the Act of the Hyderabad Urban Agglomeration, Visakhapatnam Urban agglomeration, Guntur Urban Agglomeration, Warangal Urban agglomeration in excess of the ceiling limit is exempted from the provisions of Chapter III of the Act. At the threshold, it can be noted that what is assailed before the Court in the present writ petition is the validity of the appellate order arising out of the notice of the first respondent u/s 10(5) of the Act. Section 10 falls within Chapter III of the Act. On that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O. is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as he has assailed the validity of the action taken u/s 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once a statutory authority by exercise of its delegated power frames rules or issues notifications exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself. Therefore, the stand taken by the Government and reiterated by the learned Government pleader for Revenue is not well-founded for the reasons stated supra. There is no controversy between the

parties that if the Government Order - G.O.Ms. No. 733, dated 31.10.1988 is applied, the petitioner is entitled to the exemption envisaged under Clause (a) of para 6 of the Government Order - G.O.MS. No. 733, dated 31.10.1988. There is also no controversy between the parties that the petitioner is holding only 2801 sq.mtrs. of land and exemption is made in the aforementioned Government Order to the extent of five acres and the land is situated in the peripheral area as specified in Column 3 of Schedule 1 to the Act of the Hyderabad Urban agglomeration. Therefore, a case is made out for interference.

7. The matter went to the Supreme Court and the Supreme Court did not disturb the findings of this Court in PS Rao's case.

8. In [Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and Another Vs. P.S. Rao](#), the Supreme Court in paras 8, 9 and 10 held as under:

An application for grant of exemption u/s 20 is maintainable even after the excess land has been declared and the excess land has vested in the State u/s 10.

Under the Scheme of the Act it is not possible to make any meaningful application for exemption u/s 20(1) (a) or (b) unless the exact quantum of excess is determined u/s 10 after following the various provisions of the Act relating to statutory deductions and mode of computation. If the plea that once the land gets vested in State u/s 10 the declarant cannot be said to be "holding" any land and cannot therefore apply for exemption u/s 20 is accepted, then the peculiar position will be that before the excess is determined, a person will not be able to seek exemption because he does not know what is the actual excess land held and once the excess is determined, he cannot apply because he is not holding the excess land. That would frustrate the entire object of Section 20. It has therefore, to be held that the definition of the words "to hold" in Section 2(1) cannot be applied in the context of Section 20(1)(b) or Section 20(1)(b).

9. The learned Senior Counsel for the petitioners also submits that the exemption under the G.O.Ms. No. 733 was automatic even without making an application subject to conditions that the excess land is in peripheral area and that the extent is five acres exclusive of land set apart towards roads, open spaces, school and hospital and in this case those conditions were satisfied and hence the land in question would have been exempted. For this, he relies on a judgment of this Court reported in [Nalla Yakoob Vs. The Govt. of A.P. Revenue \(UC.II\) Department and Others](#), . This Court in paras 2 and 3 held as under:

Now the issue, is whether the aforesaid piece of land of 1093 sq. mtrs. is fit to be exempted or is liable to be surrendered as an excess vacant land. In view of issuance of G.O.Ms. No. 733, dated 31.10.88, the earlier G.O.Ms. No. 323 M.A. dated 17.5.1977 has lost its significance. The liability to surrender the excess land has to be determined now in the context of G.O.Ms. No. 733 Revenue (UC-2) Department, dated 31.10.1988 and not otherwise. This G.O.Ms. No. 733, dated 31.10.1988 has

been issued by the Government in exercise of its powers u/s 20(1)(a) of the Urban Lands (Ceiling and Regulation) Act, 1976 enunciating a policy to grant exemption of vacant land in the peripheral area as specified in column (3) of Schedule-I to the Urban Lands (Ceiling and Regulation) Act, 1976 prescribing a maximum of 5 acres of land, that too, after making provision for roads, open spaces, hospitals and school. This is a general exemption granted not contemplating or making any application by any individual. This exemption is automatic, provided, two conditions are complied; namely (1) that the land is in peripheral area; and (2) that the maximum extent five acres exclusive of the land set apart towards roads, open spaces, school and hospital.

In the instant case, as seen from the above, these two conditions are satisfied. Even, according to the finding of the 3rd respondent, the land is situated in peripheral area and the excess land is only 1093 sq. mtrs., much below the specified maximum extent qualified for exemption. In consequence, the irresistible conclusion is that the petitioner does not hold any excess land and is entitled to retain the said extent of 1093 sq. mtrs. In S. No. 234 of Vaddepally village in terms of G.O.Ms. No. 733, dated 31.10.1988 and accordingly the order passed by the 1st respondent contained in Memo NO.107712/U.C.II(2)/91- 1, dated 18.2.1992 is hereby set aside.

10. To the same effect, there are other judgments of this Court in [M.V.S. Satyanarayana and Another Vs. Government of A.P. and Others](#), and also unreported judgments in W.P. No. 7814 of 1990, dated 7.2.2001 and W.P. Nos. 13820 of 1989 and batch, dated 27.9.1993. The learned Counsel also relies on a judgment of the Supreme Court reported in [T.R. Thandur Vs. Union of India \(UOI\) and Others](#), to say that the decision of the Supreme Court in [S. Vasudeva Vs. State of Karnataka and others](#), that prohibited transfer of any part of the excess vacant land in respect of which exemption had been granted u/s 20(1)(b) of Urban Land (Ceiling and Regulation) Act, 1976 was overruled. The learned Government Pleader for Revenue contends that purchaser of surplus land under the Act cannot claim benefit of policy contained in G.O.Ms. No. 733, dated 31.10.1988 and seek exemption u/s 20 of the Act and it was only the original owner that can seek exemption under the said G.O. but not any purchaser, whose purchase was after the Act and the petitioners were not in possession of the land in question as on the date of G.O. He relied on a judgment of a Division Bench of this Court in [Parchuri Ratnakar Rao Vs. State of A.P. and Others](#), . In this case the Division Bench of this Court held in para No. 43, which reads as under:

By the date of purchase by the appellants on 26.08.1997, all the proceedings under Chapter-III of the Act including acquisition of vacant land in excess of ceiling limit u/s 10 were completed with the last notice u/s 10(5) on 17.06.1992 and the last memo, u/s 10(6) directing the field staff to take possession on 27.03.1993. Only the ministerial act of taking physical possession happened on 16.11.1998 and hence it may not be open to the appellants to seek any exemption under G.O.Ms. No. 733.

The appellants whose purchase was after the Act and after the proceedings u/s 10(6) cannot challenge the earlier statutory proceedings on the strength of their purchase, which is null and void. Even otherwise, when the original owner or any of his legal representatives never raised any objection or claim so far, including any benefit under G.O.Ms. No. 733, it is not open to the appellants to make any such claim. The contention that the land did not fall under "vacant land" u/s 2(q) or "urban land" u/s 2(o), is not open to the appellants when the original owner himself filed the declaration on the premise that the land is urban vacant land and never retracted from the same. The alleged bona fide belief of the appellants in the land being exempt under G.O.Ms. No. 733 is rendered doubtful by their silence since their purchase in 1997 and even after the officials taking over possession in 1998 till 2005. Irrespective of whether the abnormal and unexplained delay in approaching the Court defeats the request of the appellants for the exercise of the equitable jurisdiction of the High Court under Article 226 of the Constitution of India or not, the appellants have to fail for the other reasons elaborated above. Hence, the impugned orders of the learned Single Judge dismissing the writ petitions at the admission stage need no interference.

11. The learned Government Pleader also submits that the above judgment was also followed by another Division Bench of this Court in [K. Anjana Devi and Others Vs. Government of A.P. and Others](#), wherein in para-47 the Court held as under: "From the facts mentioned above, it is clear that on 14.2.1978, the GPA of the declarants sought for exemption of the excess land for alienation in favour of the society in terms of the guidelines issued in G.O.Ms. No. 136, Revenue, dated 3.3.1977. As the surplus land of 18,94,472 square meters was allotted to Hyderabad Urban Development Authority through G.O.Ms. No. 5013 Revenue dated 19.12.1980, the said exemption application was rejected on 21.2.1981. The declarants did not challenge the said order of rejection till the filing of writ petition in 2006, and, at this belated stage, we do not find any justification to entertain their plea. It is no doubt true that the amendment made in G.O.Ms. No. 217 vide G.O.Ms. No. 733 dated 31.10.1988 is applicable only in the cases in which the possession of the land had been taken over by the Government under Sections 10(5) and 10(6) and possession in this case was taken after 31.10.1988. The declarants cannot avail of the said benefit for the simple reason that, even according to them, they were not in possession as on 31.10.1988. As a matter of fact, there are conflicting versions regarding possession of the land. On one hand, the society has claimed that in furtherance of agreement dated 9.8.1974 entered with the GPA of the declarants, it is in possession of the land. On the other hand, the purchasers, who are petitioners in W.P. Nos. 4121 and 4144 of 2006, claim that they have purchased the property from the declarants in pursuance of G.O.Ms. No. 733. However, the fact remains that the declarants" were not in possession of the property. In a given case, the benefit under G.O.Ms.NO.733 may be available if the declarants were in possession up to 31.10.1988 and possession was taken by the Government subsequent thereto, but,

in our considered view, G.O.Ms.NO.217 cannot be interpreted as entitling the declarants to claim benefit of exemption even in cases where they were not in possession as on 31.10.1988. From Annexure 29 filed on behalf of the State Government, it is clear that possession of the excess land was taken under a panchanama on 20.7.1993 and the same was handed over to the Mandal Revenue Officer, Sherlingampally. Even prior to that, the said land was allotted to Hyderabad Urban Development Authority vide G.O.Ms. No. 5013 dated 19.12.1980. The declarants have neither challenged G.O.Ms. No. 5013 nor the memo of rejection dated 21.2.1981 for exemption. In this factual scenario, the declarants cannot be allowed to take the benefit of G.O.Ms. No. 733 since this is not merely a case where the declarants were dispossessed, but the property was transferred initially in favour of Hyderabad Urban Development Authority and later to A.P. Industrial Infrastructure Corporation, Hyderabad for utilizing the same to set up Integrated I.T Park Project. Even assuming that there is any scope for claiming the benefit under G.O.Ms. No. 733 as modified in G.O.Ms. No. 217, the conduct of the declarants disables them from claiming any such benefit. They have been varying their stands from time to time. They have not explained as to what happened to the agreement of sale in favour of the society. They have not given any details as to when the land was sold to the third parties. They have not produced copies of any such sale deeds in their writ petitions to substantiate their contention that the sale deeds were executed invoking the exemption under G.O.Ms. No. 733 as pleaded by them in the writ petition. We are, therefore, of the view that the declarants have taken shelter under G.O.Ms. No. 733 as a desperate attempt to somehow get back a part of the property from out of the excess land. Their conduct disentitles them from making any such claim based on G.O.Ms. No. 733."

12. Now in the light of the submissions made by the learned Counsel for the parties and in view of the law laid down by the above judgments, it has to be seen whether the petitioners are entitled to benefit of G.O.Ms. No. 733 Revenue (UC.II) Department dated 31.10.1988 or not.

13. This is a general exemption granted not contemplating or making any application by any individual. This exemption is automatic, provided, two conditions are complied with viz., (1) that the land in question is in peripheral area; and (2) that the maximum extent of five acres exclusive of the land set apart towards roads, open spaces, school and hospital. The claim of the petitioners herein is also below five acres of land and it is an admitted case of the respondents themselves according to the letter dated 12.2.1993 written by Commissioner of Land Reforms and Urban Land Ceilings, A.P., Hyderabad to the Principal Secretary to Government, Revenue (UC) Department, A.P., Hyderabad that the land in question is falling in peripheral area. The letter reads as under:

The attention of the Government to the reference 2nd cited (copy enclosed). M.Hameeduddin represented by L.Rs was declared as a surplus holder for 33,280 sq.

mtrs in Sy. No. 503/B of Attapur village, falling in peripheral area. Referring to the exemption application and the land of 3.9 1/2 acres sold to Sri Lalman Singh and others in January, 1990, the S.O. & C.A., Hyderabad, has sought for permission u/s 34 to revise 8(4) order to give benefit of G.O.Ms. No. 733 dated 31.10.1988. Since the order u/s 8(4) in this case was passed prior to the issuance of G.O.Ms. No. 744, Revenue, dated 31.10.1988. It is doubtful whether the declarant can avail himself of the benefit of G.O.Ms. No. 733. The Government may consider these aspects and issue orders.

14. In the first instance, the respondents sought to revise the orders passed u/s 8(4) of the Act to give benefit of G.O.Ms. No. 733, dated 31.10.1988, but by this letter it is stated that orders u/s. 8(4) of the Act was passed prior to the G.O. and it is doubtful whether the declarant can avail himself of the benefit of the G.O. However, it is stated in the letter that the Government may consider these aspects and issue orders. The revision of the orders passed u/s 8(4) of the Act was sought by the respondents after the notification u/s 10(1) of the Act was got published in A.P. Gazette No. 287, dated 30.10.1991. The impugned order relates to exemption sought u/s 20(1)(b) of the Act. The respondents have not placed any orders with regard to applicability or non-applicability of G.O. to the present case. The respondents also stated in their counter-affidavit that "it is a fact that reference is made to the Government by Special Officer and Competent authority, Urban Land Ceilings for permission to revise 8 (4) orders u/s 34 of the Urban Land Ceiling Act which is awaited".

15. It is not in dispute that respondents 4 and 5 were legal heirs of declarant and they were in possession of the land in question as on the date of issuance of G.O.Ms. No. 733, dated 31.10.1988 and there is also no dispute that they have filed an application in 1984 u/s 20(1)(b) of the Act seeking exemption from the Act which was rejected in 1998. By the date of issuance of G.O.Ms. No. 733, the proceedings under the Act have not been concluded as even 10 (1) notification was got published in 1991.

16. In [Parchuri Ratnakar Rao Vs. State of A.P. and Others](#), (6th cited supra) which is relied on by the respondents, the Division Bench of this Court held that the purchaser of land who was declared as surplus under the Act cannot claim benefit of policy contained in G.O.Ms. No. 733 dated 31.10.1988 and seek exemption u/s 20 of the Act and it was only original owner that can seek exemption under the said G.O. but not any purchaser whose purchase was after the Act and after proceedings u/s 10(6) of the Act. It also held that it was not open to such purchaser to contend that the land did not fall under vacant land or that it was not urban land when original owner himself filed declaration on premise that land is urban land and never retracted from the same. In this case the purchase was made on 26.8.1997 and the proceedings under Chapter-III of the Act including acquisition of vacant land in excess of ceiling limit u/s 10 were completed with the last notice u/s 10(5) on

17.6.1992 and the last memo u/s 10(6) was issued on 27.3.1993 directing the field staff to take possession. In these circumstances, the Division Bench held that it may not be open to the appellants to seek any exemption under G.O.Ms. No. 733 and the appellants whose purchase was after the Act and after the proceedings u/s 10(6) cannot challenge the earlier statutory proceedings on the strength of their purchase, which is null and void. In this case the earlier judgments of this Court including Yakoob's case were also considered.

17. In the present case the holders of the land in question were in possession as on the date of G.O.Ms. No. 733 and they had also applied in 1984 for exemption from the Act and it was rejected in 1998. When the sale was made in favour of the petitioners, the land was not vested with the Government and it was in possession of respondents 4 and 5. The proceedings under the Act have not been concluded when the purchase was made. It was held in [K. Anjana Devi and Others Vs. Government of A.P. and Others](#), (7th cited supra) that the benefit of G.O.Ms. No. 733 may be available if the declarants were in possession up to 31.10.1988 and possession was taken by the Government subsequent thereto. In the present case the declarant had died much earlier to the G.O and his legal heirs i.e., respondents 4 and 5 were in possession of the land as on the date of G.O. Having regard to the fact that the land in question is situated within the peripheral area of Hyderabad Urban Agglomeration and is below five acres as stipulated in G.O.Ms. No. 733, Revenue (UC.II) Department, dated 31.10.1988 and as the letter dated 12.02.1993 addressed by the 2nd respondent-Commissioner of Land Reforms and Urban Land Ceilings, Hyderabad, to the 1st respondent-Principal Secretary to Government of Andhra Pradesh seeking to revise the orders passed u/s 8(4) of the Act, so as to enable the authority to give benefit of G.O.Ms. No. 733, Revenue (UC.II) Department, dated 31.10.1988, is under consideration, this Court is of the view that the petitioners are entitled to the relief as prayed for in this writ petition. Hence, the impugned Memo dated 20.10.1998 is hereby set aside. However, though the petitioners are in possession of the land in question, they are not parties to the impugned Memo, I deem it appropriate to direct the official respondents to consider the case of the petitioners positively for exemption of the land in question from the purview of the Act in the light of G.O.Ms. No. 733, Revenue (UC.II) Department, dated 31.10.1988, keeping in view the observations made hereinabove. The writ petition is accordingly disposed of. No costs.