

(2003) 03 AP CK 0069

Andhra Pradesh High Court

Case No: CCCA No. 196 of 2001

Special Officer and Competent
Officer, Urban Land Ceiling

APPELLANT

Vs

Syed Azam and Others

RESPONDENT

Date of Decision: March 7, 2003

Acts Referred:

- Constitution of India, 1950 - Article 300A
- Land Acquisition Act, 1894 - Section 16, 17, 18, 23(1), 4
- Specific Relief Act, 1963 - Section 6
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 1(2), 10(3), 11, 12(1), 16

Citation: (2003) 3 ALD 516 : (2003) 4 ALT 437

Hon'ble Judges: G. Rohini, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Advocate General, for the Appellant; J. Prabhakar, for the Respondent

Final Decision: Dismissed

Judgement

Bilal Nazki, J.

This is an appeal filed against the judgment and decree in O.P. No. 276 of 1993. Land admeasuring Ac.8-31 guntas and 61 sq. yards in T.S. No. 26 and Sy. Nos. 286 to 291, 293 and 296 situated at Bagh Amberpet village, Musheerabad Mandal, Hyderabad was acquired for the purpose of providing police parade grounds and ultimately an award was passed. A reference was made by the Land Acquisition Officer to the Civil Court which decided the matter on 21.1.2000. During the pendency of the reference before the trial Court the present appellant moved an application and got himself arrayed as party-claimant No. 16 claiming that the acquired land was surplus land under the Urban Land (Ceiling & Regulation) Act, 1976, therefore any compensation payable towards the land should be paid to the Urban Land Ceiling Authority and not to other claimants. The claimants 1 to 14

claimed that they were brothers and sisters and were legal heirs of the deceased pattedar. The claimant No. 15 had claimed that she had purchased an extent of 480 sq. yards under Ex.A1-registered sale deed. On the question of apportionment between the claimants 1 to 15 no dispute was projected before the Civil Court or before this Court. Therefore, there would be no necessity in going to the question of apportionment of compensation in between the claimants 1 to 15. The trial Court also found that the claimant No. 16-Urban Land Ceiling Authority had not proved the claim that the acquired land before the acquisition had vested in the State, therefore the trial Court declined to accept the claim of the claimant No. 16 and awarded the compensation in favour of claimants 1 to 15. This appeal has been filed by claimant No. 16. So the first question is whether the land had vested in the State under Urban Land (Ceiling & Regulation) Act, 1976 and if so what would be the consequences. The second question would be, even if the proceedings under the Ceiling Act had been initiated, whether the appellant would be entitled to challenge the award passed under the Land Acquisition Act.

2. The claimant No. 16 who is the appellant herein produced one witness before the trial Court who was a Tahasildar in the Department at the relevant point of time. It may be interesting to note that another piece of land belonging to mainly the same claimants had also been declared surplus which was subject matter of lot of litigations and the matter went up to the Supreme Court and it appears that certain matters are still pending before the High Court. Mainly the statement has been made by R.W.1 with respect to that land for which exemption had been granted in favour of one Tulsi Co-Operative Housing Society and subsequently the exemption had been withdrawn. With respect to the present controversy he exhibited only four documents. Ex.B1 is the notice u/s 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976 which was issued on 29.6.1982. Ex.B2 is the notification dt. 16.12.1982 u/s 10(1) of the Urban Land (Ceiling & Regulation) Act, 1976. Ex.B3 is an Errata to notification-Ex.B2. Ex.B4 is not relevant because it is an order passed by the Supreme Court concerning the land for which exemption was granted and later withdrawn, that land is not subject matter of the present appeal.

3. Now it appears that the process of acquisition of land under the Urban Land (Ceiling & Regulation) Act, 1976 was initiated on 29.6.1982 after the declaration had been made by the claimants in terms of the Act. On the other hand, draft notification u/s 4(1) of the Land Acquisition Act had been issued on 24.9.1990 and published on 4.12.1990. Possession of the acquired land had been handed over on 19.1.1991. An award was passed by the Land Acquisition Officer on 6.2.1993. During the process of enquiry by the Land Acquisition Officer the present appellant did not participate in the proceedings. At no point of time they challenged the notifications issued in terms of the Land Acquisition Act. Now the question remains whether the land could have been acquired in terms of the Land Acquisition Act, when steps had already been taken by the State to declare the land surplus in terms of the Urban Land (Ceiling & Regulation) Act, 1976.

4. The learned Advocate General contends that the Urban Land (Ceiling & Regulation) Act, 1976 came into force in the State of Andhra Pradesh on 17.2.1976. He contends that when the proceedings were taken under the Urban Land (Ceiling & Regulation) Act, 1976, the determination of compensation will have to be done u/s 11 of that Act and in the present case the respondents would be entitled to a compensation of Rs.10/- per sq. yard subject to maximum of Rs.2.00 lakhs and the quantum of compensation could be challenged u/s 12 of the Urban Land (Ceiling & Regulation) Act, 1976. He contends that Section 42 of the Ceiling Act has an overriding effect over all other laws. On the other hand, the learned counsel for the respondents submits that since it was not possible for the State to take immediate possession under the Urban Land (Ceiling & Regulation) Act, 1976 and it could only be taken after proceedings were complete, they could not resort to Land Acquisition Act and the State cannot be allowed to resort to one Act for the purposes of acquisition and another Act for the purposes of payment of compensation detrimental to the claimants/owners. He also contends that the appeal is not maintainable against the respondent No. 12 who had died even before the appeal. He also contends that amounts of compensation had been withdrawn by some of the claimants. He also contends that in terms of the Urban Land (Ceiling & Regulation) Act, 1976 the claimants had a right to claim exemption on certain grounds and had it been known to them that the land was being acquired as surplus land under the Urban Land (Ceiling & Regulation) Act, 1976, they could have applied for exemption. He further contends that the matter was pending for more than three years before the Land Acquisition Officer, notices were issued in the Gazettes under the Land Acquisition Act, but the present appellant did not take any steps to claim the interest in the acquired land before the Land Acquisition Officer.

5. Now in the light of these arguments, the question would be, if a declaration was filed in terms of Section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 by a land owner before the authorities and the authorities have passed an order u/s 8(4) of the Ceiling Act determining the excess vacant land and issued a statement u/s 9 of the Ceiling Act and in the meantime notification for acquisition of land was issued under the Land Acquisition Act, whether the notification issued under the Urban Land (Ceiling & Regulation) Act, 1976 remains in operation or not. In this context, various judgments have been pressed into service by both the parties, but before going to these judgments, it will be necessary to have a glance of both the Acts.

6. Section 2 of the Urban Land (Ceiling & Regulation) Act, 1976 gives the definitions. Section 3 lays down, "Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land, in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of Section 1". The methodology for ceiling limit is given u/s 4. Section 5 lays down that any vacant land transferred at any time during the period commencing on the appointed day and ending with the commencement of the Act would be taken into consideration for calculating the extent of vacant land. Section 6

creates a responsibility on the persons having vacant land in excess of the ceiling limit to file a statement. Section 7 is not relevant for the purpose of the present case. Section 8 provides for preparation of draft statement by competent authority as regards the vacant land held in excess of ceiling limit. Section 9 provides for preparation of final statement by the competent authority and Section 10 provides for acquisition of vacant land in excess of ceiling limit. This section needs to be reproduced,

"10. Acquisition of vacant land in excess of ceiling limit:-

(1) As soon as may be after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that__

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interest in such land;

to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed,

(2) After considering the claims of the person interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1) the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1), shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such, Government is free from all encumbrances with effect from the date so specified.

(4) During the period of commencing on the date of publication of the notification under sub-section (2) and ending with the date specified in the declaration made under sub-section (3)-

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or caused to be altered the use of such excess vacant land.

(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 authorised by the State Government in this behalf within thirty days of the service of the 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."

7. This section lays down the final procedure for acquisition of land and unless an order u/s 10(3) of the Act is passed, the land does not vest in the State and in terms of Section 10(1) it is only the intention of the competent authority to acquire the land which is communicated to the land owner and at this stage also the claimants or persons interested in the vacant land can make their claims before the concerned authority and after consideration of those objections, by a notification in an official Gazette the competent authority can declare that the excess vacant land referred to in the notification published under sub-section (1) would be deemed to have been acquired by the State Government from a date specified in the notification. Therefore, under the Urban Land (Ceiling & Regulation) Act, 1976 the land would vest only in the State Government when an order u/s 10(3) of the Act is passed. Even after the order is passed u/s 10(3) there are remedies available to the claimants aggrieved of such an order, but that may not be important for the purposes of this case, as we only wanted to know as to which is the date or the event in the scheme of things under the Urban Land (Ceiling & Regulation) Act, 1976, when the land vests in the competent authority under the Act and we have no doubt in our mind that the land vests in the State Government or authorities under the Urban Land (Ceiling & Regulation) Act, 1976 on the date an order is passed u/s 10(3) of the Act. In the present case no order u/s 10(3) of the Ceiling Act had been passed by the competent authority when the State Government issued a notification u/s 4(1) of the Land Acquisition Act.

8. Now let us examine the scheme of the Land Acquisition Act. u/s 4(1) of the Act when a notification is issued, it becomes lawful for any officer to enter upon and survey and take levels of any land. The notification authorises the officer to dig or bore into the sub-soil. It also authorises the officer to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon. Section 5 deals with hearing of objects and u/s 6 a declaration of intended acquisition can be made. After declaration u/s 6, the appropriate Government can direct the Collector to take order for acquisition in terms of Section 7. u/s 8 of the Act the land has to be marked out and u/s 9 the Collector has to give notice to the interested persons and place notices at convenient places and Sections

10 and 11 of the Act deal with the enquiry and award by the Collector. After the award is passed possession can be taken in terms of Section 16 of the Act. Section 16 of the Act is an important section in the context of the present controversy. Section 16 of the Act lays down,

"16. Power to take possession:- When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances".

9. Section 17 of the Act even gives special powers of taking possession in cases of urgency. Under this section possession can be taken even before the award has been passed and on taking possession even before passing of the award, the land taken possession of vests absolutely in the State Government free from all encumbrances. Therefore, practically the date of vesting of the land in the State Government without any encumbrances is the date on which the possession was taken. In the present case we have seen that the possession had been taken on 2.3.1991, although the award had been passed on 6.2.1993. Therefore, in this case in terms of the Land Acquisition Act the land had vested in the State Government on 2.3.1991 and in terms of the Ceiling Act the land has yet to vest in the State. Now in the light of this situation the judgments produced by the parties will have to be considered.

10. The learned Advocate General relied on a judgment of the Constitution Bench of the Supreme Court reported in [Union of India \(UOI\) and Others Vs. Valluri Basavaiah Chowdhary and Others](#), which came just after promulgation of the Urban Land (Ceiling and Regulation) Act, 1976 itself and dealt with various aspects concerning the constitutional validity of the Act. This judgment also laid down what the Supreme Court thought the object and purpose of the Act and in para-6 it held,

"The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976, "the Act", as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bring about an equitable distribution of land in urban agglomerations to sub serve the common good, in furtherance of the directive principles of Art. 39 (b) and (c)."

11. He also relied on a judgment of the Supreme Court reported in [Dattatrya Shankarhat Ambalgi and Others Vs. State of Maharashtra and Others](#), which is altogether in a different context and we have not been able to appreciate as to how the law laid down in this judgment would apply to the facts of the present case. An argument was advanced in the case before the Supreme Court that if land belonging to "A" and "B" within an urban agglomeration is reserved for a public

purpose under development scheme and "A" is holding land within ceiling area, whereas "B" holds land in excess of such ceiling area "A" will get compensation under the Maharashtra Act No. 37 of 1966, whereas "B" will get compensation under the Ceiling Act and the basis and method of compensation will drastically vary. This argument was considered by the Supreme Court and it held that the land to the extent which falls within the ceiling area stands in a class different from the land which is in excess of the ceiling area and is liable to be declared surplus to give effect to the purpose and object of the Act. Besides, this judgment also upheld the constitutional validity of the Act.

12. Another judgment relied on by the learned Advocate General is the judgment of the Supreme Court reported in *Ratan Kumar Tandon V. State of U.P.* (1997) 2 SCC 161. This judgment would also not substantially help us in deciding the controversy before us. The controversy in the case before the Supreme Court appears to be similar, but there is a vital difference. In the case before the Supreme Court a final publication u/s 10(3) of the Ceiling Act had been passed, whereas in the case before us final publication u/s 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 has not been passed. We are also not aware as to whether the notification u/s 4(1) of the Land Acquisition Act in the case before the Supreme Court was passed before the notification was published u/s 10(3) of the Ceiling Act and whether possession had been taken as a consequence of publication of order u/s 10(3) of the Ceiling Act or under Sections 16 or 17 of the Land Acquisition Act. The Supreme Court, while relying on the earlier judgment reported in [Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad](#), held that it was not necessary for the Government to determine the compensation u/s 23(1) of the Land Acquisition Act in respect of the excess land found under the Ceiling Act since Ceiling Act is a special Act, notwithstanding any contrary law. It also noticed that by the judgment of the Supreme Court reported in [State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others](#), it was held that the provisions of the Ceiling Act have overriding effect on all other laws. The Supreme Court also noted that in [State of Madhya Pradesh Vs. Surendra Kumar and another](#), the purchase of vacant land within ceiling limit pending determination by competent authority had come up for consideration. After the considering the facts of the case before it, the Supreme Court held that therefore it was not necessary for the State to proceed with the determination of the compensation u/s 23(1) of the Land Acquisition Act to the extent of the excess land found under the Ceiling Act and compensation could be paid u/s 11(6) of the Ceiling Act. In this case, as pointed out earlier, there was a finding of the authorities created under the Ceiling Act that a piece of land was excess land and had to be treated as vacant land within the meaning of the Act, whereas in the present case there is no such finding. We are supported further in our view by the judgment of the Supreme Court reported in [Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad](#), (reference of which has already been made vide 4th supra) that unless the vacant land is determined under the Ceiling Act, it may not be treated as a vacant land for

the purposes of compensation particularly when notifications under Sections 4, 6 and 9 of the Land Acquisition Act have been issued and final award has been passed. In para-10 the Supreme Court laid down,

"It would, thus, be clear that when the vacant land is declared under the Ceiling Act, it is not necessary for the State to acquire the excess vacant land vested in it under the Act. But unfortunate to the appellant that benefit of the declaration was unavailable for the reason that the Government in G.O.Ms. No. 1552/MA, dated May 20, 1981 had permitted HUDA to acquire the surplus land under the provisions of the Act. In consequence, having exempted the excess vacant lands from the purview of the Ceiling Act, the appellant had denied itself of the benefit of Section 11 of the Ceiling Act to pay compensation as prescribed there under. The result is that the appellant would determine the compensation under the Land Acquisition Act."

13. We are also conscious that there is a provision under which exemption could be granted. After the notification u/s 4 of the Land Acquisition Act was issued, all steps were taken under the Act and an award was passed and till the award was passed there was no objection from the present appellant. Therefore the claimants did not claim exemption because it was normal to expect that since the land was being acquired under the Land Acquisition Act, they would have no choice in the matter and they would be compensated for that acquisition.

14. The learned Advocate General also relied on a judgment of the Supreme Court reported in [State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others](#), . This judgment is not relevant for the purpose of this case as it dealt with altogether a different question, but reference has been given which stated that when the lands in question or bulk of them were likely to be acquired under ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire the said lands under the provisions of Land Acquisition Act, 1894. It appears that in case before the Supreme Court acquisition notices were given, but in terms of Section 48 of the Land Acquisition Act they had been subsequently withdrawn also.

15. Now coming to the judgments relied on by the learned counsel for the respondents, there are various judgments which do not deal with the issue directly, but which dealt with a different question and lay down the principles which, in our view, would also govern the case of present nature. In the present case admittedly the land belonged to the respondents. It would vest in the State by operation of law either under the Ceiling Act or under the Land Acquisition Act. There are cases where lands admittedly belong to the Government, but the possession was transferred to the citizens without transferring the title and in such cases whenever the land was required for public purposes and notifications were issued under the Land Acquisition Act, the Courts consistently held that those claimants would be entitled to compensation in terms of the Land Acquisition Act, although the land was owned by the State.

16. The first judgment relied on by the learned counsel for the respondents is the judgment reported in [Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another](#), . This was a case in which the Government of Mysore had granted a plot of land to the citizens on condition that "in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation". While the need was felt for taking back the land for public purposes, the Government did not exercise the covenant referred to above, but took steps under the Land Acquisition Act, but no compensation was awarded. The Supreme Court held that in such a situation the parties were entitled to compensation for their interest in the land under the Land Acquisition Act.

17. In a judgment of the Supreme Court reported in [The State of Madras Vs. K.N. Shanmugha Mudaliar and Others](#), an argument was made that a piece of land for which a notification was issued on 12.7.1949 u/s 4 of the Land Acquisition Act had already vested in the State, when Madras Estates Abolition Act (26 of 1948) had been passed. In order to appreciate the controversy, we would somehow in detail reproduce the argument made before the Supreme Court by the State of Madras, as similar argument has been advanced by the learned Advocate General. It contended that as the land in question had vested under the Abolition Act in the State, the claimants were not entitled to compensation under the Land Acquisition Act. The Supreme Court answered the argument with the following finding,

"We find it difficult to accede to this submission, for we are of the opinion that in case the State wanted to take over the land under the Abolition Act it should not have proceeded to acquire the interest of the respondents in the land in dispute under the Land Acquisition Act. There were two alternative courses open to the State, either to proceed under the Land Acquisition Act or to take over the land under the Abolition Act. Although the estate was notified under the Abolition Act, the proceedings under that Act were stayed and the matter proceeded under the Land Acquisition Act. As the proceedings which were continued were under the Land Acquisition Act the compensation payable had also to be paid in accordance with the provisions of that Act. The reference which was made by the Land Acquisition Officer to the Subordinate Judge u/s 18 of the Land Acquisition Act was with respect to the quantum of compensation payable to the respondents because the respondents had felt dissatisfied with the amount awarded to them as compensation by the said officer. The underlying assumption of these proceedings was that the respondents had an interest in the land. If it was the case of the appellant that the respondents had been divested of their interest in the land and the same had vested in the appellant-State, the appellant should have taken appropriate steps to make such a claim in accordance with law. No such claim seems to have been made. The High Court expressly left open the question of the claim of the compensation deposited on the score that Melwramdar respondents were not entitled to it by reason of having lost all their interest in the land at the relevant point of time. We agree with

the High Court that it was not open to the appellant-State in the particular reference made at the instance of the respondents to the Subordinate Judge to set up a claim adverse to the interest of the respondents. There is also we find nothing in the award of the learned Subordinate Judge to show that any question was raised before him that the amount of compensation was not payable to the respondents in accordance with the provisions of the Land Acquisition Act. This question appears to have been agitated for the first time only in the appeal before the High Court. The High Court rejected the contention in this behalf. We find no cogent ground to take a different view."

18. The matter pertaining to Government grants and their rescission came before a 5-Judge bench of this Court also reported in [State of Andhra Pradesh Vs. Bondapalli Sanyasi and Others](#), . One of the Judges, with whose opinion the majority agreed, after considering the whole case laws, held that where the assigned land is taken possession of by the State in accordance with the terms of the grant or patta the right of the assignee to any compensation will have to be determined in accordance with the conditions in patta itself and where the State does not resort to the covenant of the grant and resorts to the Land Acquisition Act the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as an owner but as an interested person for the interest he held in the property. Learned Chief Justice S.B. Sinha (as His Lordship then was) has concurred with this opinion and gave added reasons for coming to this conclusion. In para-23 His Lordship held,

"Where the stand of the Government is that it has resumed land in accordance with the terms and conditions of the patta, the question of issuance of any direction upon the State to initiate proceedings under the Land Acquisition Act would not arise at all. The provisions of Section 6 of the Specific Relief Act, 1963 are not applicable in the case of State. Having regard to the fact that the lands cannot be restored back even in a suit filed by the plaintiffs, what would be payable is the amount of compensation to which the plaintiffs may be found to be entitled to, but the grant of compensation by no stretch of imagination can be equivalent to the market value of the land in view of the fact that the interest of the assignees in the land was limited. The State while acquiring lands can exercise its power of eminent domain. Solatium is paid only in terms of the provisions of the Land Acquisition Act. There does not exist provisions for payment of solatium if acquisition or requisition of the land is made in terms of the provisions of an Act other than the Land Acquisition Act. It is one thing to say that having regard to Article 300A of the Constitution of India no citizen should be deprived of his right to property without payment of compensation if the State exercises its power of eminent domain, but, it is another thing to say that they would be entitled to the market value of the land as if they are the full owners thereof despite the fact that they are not. Grant of compensation, therefore, must be determined having regard to the nature of rights and other circumstances attending thereto. To the said extent, the Full Bench decision, in our opinion, has not laid down correct law and must be overruled."

19. In our view since the land had not vested in State under Urban Land Ceiling Act when award under Land Acquisition Act was passed, the land could not be treated as surplus or vacant land under Urban Land Ceiling Act and appellant could not claim compensation for the same.

20. Even if it is accepted as canvassed by the learned Advocate General that the land was vacant in terms of the Urban Land Ceiling Act, even then the appellant could not claim compensation as interested person in terms of the Land Acquisition Act in view of the law laid down by the latest judgment of the Supreme Court reported in *Sharda Devi V. State of Bihar* 2003 (1) ALD 117. The facts of the case before the Supreme Court need to be mentioned in view of the fact that they bear close similarity to the facts of the case with which we are dealing presently. In the case before the Supreme Court a piece of land which was subject matter of controversy was notified u/s 4(1) of the Land Acquisition Act on 16.2.1982. Declaration u/s 6 of the Act was issued on 25.5.1982. Objections u/s 9 of the Act were filed. The State through Circle Officer filed reply to the objections on 19.2.1996. The Collector made an award u/s 11 of the Act directing the compensation, as appointed by him, to be paid to one Smt. Sharda Devi. The land in question was a part of Zamindari estate. Before vesting of Zamindari, the land was settled by the ex-landlord in the name of one Deo Narain Prasad by means of a registered deed of settlement dated 24.4.1954. It was a raiyati settlement. The appellant purchased the land from the said Deo Narain Prasad through a registered deed of sale dated 7.9.1962. The appellant developed the land and kept it under cultivation raising the crops. Her name was mutated in the revenue records by the Circle Officer. A correction slip was issued to her in her name. The State realised revenue from her from the very date of vesting i.e., from 1955 till 1975. On 18.5.1979 the Circle Officer issued a notice u/s 3 of the Bihar Public Land Encroachment Act, 1956 (Bihar Act XV of 1956) calling upon the appellant to explain why she should not be treated as an encroacher on the land and why her encroachment should not be removed. The notice was issued on the premise that consequent upon vesting of Zamindaris, the said land had stood vested in the State of Bihar and was, therefore, "public land" within the meaning of clause (3) of Section 2 of the Bihar Public Land Encroachment Act, 1956. The appellant before the Supreme Court filed a writ petition before the High Court against the proceedings. The High Court upheld the claim of the appellant that she was raiyat of the land in question and therefore she could be ejected from the land only in accordance with the provisions of the Chota Nagpur Tenancy Act. The proceedings initiated against the appellant were quashed by the High Court. In the year 1981 a notice was again given to the appellant before the Supreme Court u/s 4 (h) of the Bihar Land Reforms Act, 1950 proposing to annul the settlement of land in question in favour of Deo Narain Prasad. The proceedings were initiated on the premise that the said settlement was done with the object of defeating the provisions of the Act. An enquiry was held. Once again the appellant before the Supreme Court filed a writ petition seeking quashing of these proceedings. During

the pendency of these proceedings, notification u/s 4(1) of the Act was published on 16.2.1982. The Collector was reluctant to make an award in favour of the appellant. Another writ petition was filed and the High Court ordered the Collector to prepare the award. The High Court further said that if there was any dispute thereafter, the matter could be referred to the Civil Court under Sections 18 and 30 of the Act for adjudication of any claim in accordance with law. After the reference was made to the Civil Court u/s 18 of the Act, an application was filed by the Circle Officer before the Collector for referring the matter u/s 30 of the Act. We have given these facts somewhat in detail as to understand the principle of law laid by the Supreme Court in the correct prospective. A reference was initiated at the instance of the State itself. Whether such a reference was maintainable or not in terms of the Land Acquisition Act was the question that was considered by the Supreme Court and the Supreme Court held in para-26,

"The scheme of the Act reveals that the remedy of reference u/s 18 is intended to be available only to a "person interested". A person present either personally or through representative or on whom a notice is served u/s 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed u/s 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for u/s 18 would obviously be a pre-existing title by reference to the date of the award. So is Section 29, which speaks of "persons interested". Finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the "persons interested" on the other hand and attaches to the issues relating to (i) the true area, i.e., measurement of the land, (ii) the value of the land i.e., the quantum of compensation, and (iii) apportionment of the compensation among the "persons interested". The "persons interested" would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the "persons interested" inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to "persons interested". It would, therefore, be available for being invoked by the "persons interested" if they were neither present nor represented in proceedings before the Collector, nor were served with notice u/s 12(2) of the Act or when they claim on the basis of a title coming into existence post-award. The definition of "person interested" speaks of "an interest in compensation to be made". An interest coming into existence post-award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a "person interested", as already pointed out hereinabove and on account of its right being pre-existing, the

State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post-award may be determined in a reference u/s 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post-award could not have been canvassed up to the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Sections 18 and 30 would not overlap and would have fields to operate independent of each other."

21. Then the Supreme Court referred to its various judgments and held,

"The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act."

22. In para-36 summing up the law it held,

"To sum up the State is not a "person interested" as defined in Section 3(2) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in law pre-owned by State cannot be subject matter of acquisition by State the question of deciding the ownership of State or holding of any interest by the State Government in proceedings before the Collector cannot arise in proceedings before the Collector (as defined in Section 3(c) of the Act). If it was a Government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either u/s 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings u/s 30 of the Act beginning from the reference and adjudication thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so."

23. We do not find any reasons not to apply the principles laid down by the Supreme Court and also the judgment of the Larger Bench of this Court. In view of the above discussion we are of the view that the land had not vested under the Ceiling Act in the State before possession was taken by the State under the Land Acquisition Act

and the proceedings under the Land Acquisition Act were completed without a murmur from the appellant. Even if the land had vested under the Ceiling Act in the State, even then they could not have become a party to the reference u/s 30 of the Land Acquisition Act. Therefore, the respondents-claimants are entitled to compensation under the Land Acquisition Act.

24. Certain Government orders were also brought to the notice of this Court by the learned counsel for the respondents like G.O.Ms. No. 456, dt. 29.7.2002 and G.O.Ms. No. 455, dt. 29.7.2002 whereby exemptions were liberalised and even the ceiling limits were increased and even the G.O.Ms. No. 456, dt. 29.7.2002 laid down that the Government would consider the cases for exemption even in the cases where final order u/s 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 had been passed and the land had vested in the State.

25. We were also told that during the pendency of the matter the claimants 14 and 2 filed applications for withdrawal of an amount to the tune of Rs.28,95,516/- each on 29.4.2000 and 28.6.2000 respectively and they were paid the compensation and even the State did not object to that. Since most of the compensation has already been paid, therefore also we do not think it appropriate to interfere in the decision of the trial Court. C.M.P. Nos. 21471, 21472 and 21473 of 2001 are allowed.

26. For the reasons given hereinabove, the appeal is dismissed. No order as to costs.