



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 977 of 2018

In R/SPECIAL CIVIL APPLICATION NO. 28698 of 2007

FOR APPROVAL AND SIGNATURE:

**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

THE STATE OF GUJARAT & ANR.

Versus

LEGAL HEIRS OF SHIVABHAI VIRABHAI PRAJAPATI & ORS.

Appearance:

MS. HETAL G. PATEL, ASSISTANT GOVERNMENT PLEADER for the Appellant(s) No. 1,2

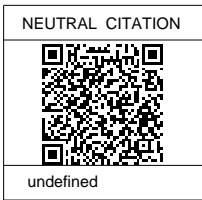
DECEASED LITIGANT for the Respondent(s) No. 2

MR ZUBIN F BHARDA(159) for the Respondent(s) No.

2.1,2.2,2.3,2.4,2.5,2.6,2.7

RULE SERVED for the Respondent(s) No. 1.1

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**



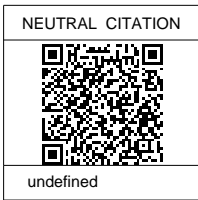
Date : 17/05/2024

CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

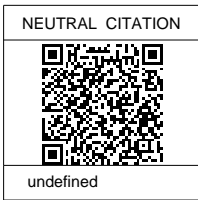
The instant Appeal has arisen out of the judgment and order dated 19.04.2014 passed by the learned single Judge in dismissing the writ petition filed by the State challenging the order dated 20.2.1999 passed by the Urban Land Ceiling Tribunal in Appeal No. Ahmedabad/5/1999 under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976.

2. The brief facts relevant to decide the matter at hands are that the land-in-question namely Survey No. 143/2 admeasuring 3339 sq.mtrs., situated at Village : Gota, Ahmedabad (Daskroi) was sold by the original land holder-Shivabhai Virabhai Prajapati vide sale deed dated 10.02.1976 in favour of one Devrajbhai Khunabhai Rabari, as the predecessor in interest of respondent Nos. 2.1 to 2.7. It seems that in the proceedings conducted by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (in short referred to as 'the ULC Act'), the competent authority passed order dated 09.08.1990 under Section 8(4) of the ULC Act declaring 2339 sq.mtrs. of excess land from Survey No. 143/2, on the premise that the original owner could not produce any document like agreement to sell, sale deed etc. to show that the said



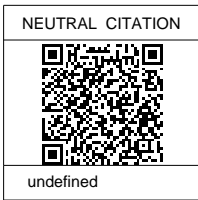
transaction was *bona fide* and not to defeat the object of the ULC Act, inasmuch as, the sale deed was executed between 17.02.1975 and 28.01.1976, being the appointed date. Final Statement under Section 9 of the ULC Act, was issued on 06.10.1990 and was served to the landholders. A notification under Section 10(1) of the ULC Act was published on 07.03.1991 giving the particulars of the vacant lands held by the legal heirs of the deceased Shivabhai Virabhai Prajapati (original owner) in excess to the ceiling limit. A notification under Section 10(3) of the Act was published on 23.02.1994 intimating that the excess vacant land referred to in the notification shall be deemed to have been acquired by the State Government and such land shall be deemed to have been vested absolutely in the State Government free from all encumbrances. In the meantime, the original owner namely Shivabhai Virabhai Prajapati had expired on 1.11.1995.

3. Another notification under Section 10(3) of the ULC Act was published in the name of Sivaben, wife of the deceased Shivabhai Virabhai Prajapati. Thereafter, the notification under Section 10(5) of the Act was issued to the landholder on 03.07.1996 to surrender or return the possession of the excess vacant lands to the State Government within 30 days. It was stated in the writ petition that the said notice was served



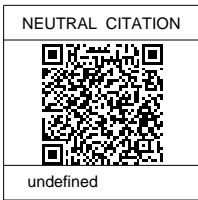
personally upon the landholder on 07.08.1996. Subsequently, another notice under Section 10(6) of the Act was served on the landholder on 14.05.1977 stating therein that since the land holder had failed to surrender or return the excess vacant land, the possession of which was to be taken by the State Government. It is stated that the possession of the land-in-question was taken after drawing panchnama on 12.12.1997. A perusal of the copy of the panchnama indicates that it does not bear the signature of the landholders, who were in actual physical possession of the land-in-question at the time of drawing of the panchnama.

4. In the year 1999, the heirs and legal representatives of the respondent no.2 had filed an appeal under Section 33 of the ULC Act challenging the order passed by the competent authority dated 09.08.1990 on the ground that the land-in-question was purchased vide sale deed dated 10.02.1976 and the possession was also handed over to the transferee. The inclusion of the said land-in-question in the proceedings under the ULC Act was illegal, and moreover no notice or opportunity has been granted to the purchaser. The said appeal was allowed on 20.02.1999. The contention in the writ petition was that the appeal was allowed by the appellate authority without giving opportunity of hearing to the competent authority and moreover, the appeal was hopelessly



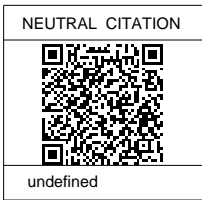
barred. With the notification issued under Section 10(3) of the ULC Act on 23.02.1994, the land-in-question deemed to have been vested absolutely in the State Government free from all encumbrances and thereafter possession has also been taken after following due process of law. In the said scenario, the appellate authority could not have allowed the appeal. The order impugned therefore suffers from grave error of law and could not be sustained. The order passed by the competent authority for declaration of the land-in-question as surplus is liable to be upheld.

5. The learned single Judge has dismissed the writ petition noticing the contentions made by the learned Assistant Government Pleader that the transaction of sale is hit by the provisions of Section 5 of the ULC Act, as such the transaction of sale was without any permission as required under the law. It was also contended that the possession of the land-in-question was taken on 12.12.1997 and the land-in-question vested with the government before coming into force the Repeal Act. The learned single Judge has formulated the question as to whether the transaction can be said to be hit by the provisions of Section 5 of the ULC Act. However, the learned single Judge noted that the moot question would be as to whether the actual physical possession of the land-in-question is with the purchasers ?. Reference has been made to the



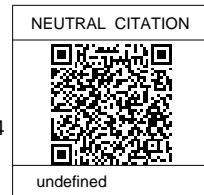
judgment of the Apex Court in **State of Uttar Pradesh Vs. Hari Ram [(2013) 4 SCC 280]**, wherein the legal position about the effect of the Repeal Act has been settled, to note that for taking physical possession of the land-in-question, notice under Section 10(5) of the ULC Act was required to be given not only to the land holder, but also to the person who may be in possession of the land-in-question, asking him to surrender or deliver the possession to the State Government within 30 days of the service of the notice. Admittedly, no notice had been given to the respondent purchaser and in view of the decision of the Apex Court, as the physical possession of the land-in-question remained with the respondent purchaser and the statutory requirement of notice under Section 10(5) and 10(6) of the ULC Act had not been fulfilled by sending the notice to the occupant, who was in possession of the land-in-question, with the effect of the Repeal Act, the proceedings under the ULC Act with respect of the land-in-question stood abated. The contention of the petitioner State that the purchaser was not entitled to the land-in-question and the transaction was hit by the statutory provisions of Section 5 of the ULC Act, therefore, was rejected.

6. Ms. Hetal Patel, the learned Assistant Government Pleader, has vehemently argued about the effect of Section 4(4) (a) read with Section

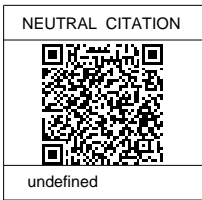


5 of the ULC Act. It was contended that since the land-in-question was sold to the original respondent No.2 namely Devrajbhai Khunabhai Rabari within the period prescribed under Section 4(4)(a), just before the appointed day, the transaction was hit by Section 4(4)(a) of the ULC Act, 1976. Further, the transaction being hit by Section 5 of the ULC Act, the transfer being violative of the ULC Act, it could not be said to be valid in the eye of law. The submission is that the transferee, namely the original respondent No.2, since did not acquire any right, title or interest in the land in question, there was no question of issuance of notice to him. The possession of the land-in-question having been taken by preparation of panchnama on 12.12.1997, the effect of the Repeal Act would not be applicable to the land-in-question. The Tribunal has committed an error of law in setting aside the order passed by the competent authority and allowing the belated appeal.

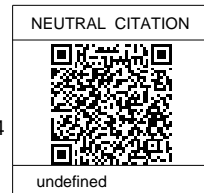
7. Testing these submissions of the learned Assistant Government Pleader appearing for the State appellant, relevant is to note that the Urban Land (Ceiling and Regulation) Act, 1976 came into force on 30.03.1999. As per Section 3 of the Repeal Act, vesting of any vacant land under Section 10(3) of the ULC Act was saved where the possession has been taken.



8. The Apex Court in the case of **Hari Ram (supra)** has faced with the question of the effect of the Repeal Act. The question before the Apex Court was whether the deemed vesting of surplus lands under Section 10(3) of the ULC Act, 1976, would amount to taking *de facto* possession depriving the landholders the benefits of saving clause under Section 4 of the Repeal Act, 1999. The Apex Court taking note of the object and reasons of the Repeal Act, has further examined as to whether the possession could be taken following the procedure laid down in Sub-section(3) of Section 10 of the ULC Act, within the meaning of Section 3 of the Repeal Act. It was noted that vesting in Sub-section (3) of Section 10 means vesting of title absolutely, but not the possession. It was held that the word “vesting” taken in every interest in property included *de jure* possession and not *de facto* possession, but it is always open to a person to voluntarily surrender and deliver the possession under Section 10(3) of the Act. It was further held that from the date of publication of the notification under Sub-section (1) of Section 10 and ending with the date specified in the declaration made under Sub-section (3), there is no question of disturbing the possession of person and the possession therefore, continues to be with the holder of the land. 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)



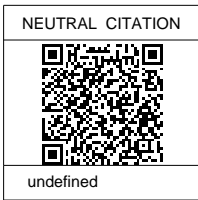
of Section 10, the competent authority may by notice in writing, order any person, who may be in possession of it, to surrender or transfer the possession to the State Government or any other person duly authorised by the State Government. If *de facto* possession has already been passed on to the State Government by the two deeming provisions under Sub-section (3) of Section 10, there was no necessity of using expression “where any land is vested” under Sub-section (5) of Section 10. In case there is no voluntary surrender or delivery of possession under Sub-section(3) of Section 10, the State Government has to issue notice in writing under Sub-Section (5) of Section 10 to surrender or deliver the possession. It is, thus, held that even Sub-section (5) of Section 10 visualize a situation of surrendering and delivering possession peacefully. Sub-section (6) of Section 10, however, provides for forceable possession, but only when a person refuses to comply with the order under Sub-section (5) of Section 10. Sub-section (6) therefore, contemplates a situation of a person refuses or fails to comply with the order under Sub-section (5) in the event of which the competent authority may take possession by use of force. Forceable dispossession of the land, therefore, is being resorted to only in a situation which falls under Sub-section (6) and not under Sub-section (5) of Section 10. The requirement of giving notice under Sub-sections (5) and (6) of Section 10 is



mandatory. The effect of non-compliance of the notice under Sub-section (5) or (6) of Section 10 may result in the land holder being dispossessed without notice and therefore the word “may” occurring in the Sub-section has to be read as “shall”. The Apex Court has also taken note of the directions issued by the State Government (of Uttar Pradesh) in exercise of powers under Section 35 of the ULC Act, providing the procedure for taking possession of the vacant land in excess of the prescribed ceiling limit. It was, thus, held that Sub-section (3) of Section 10 takes in only *de jure* possession and not *de facto* possession, therefore, if the landowner is not surrendering the possession voluntarily under Sub-section (3) of Section 10 or surrendering or delivering possession after notice under Sub-section (5) if dispossess by use of force, it can be said that the State Government has taken possession of the vacant land.

8.1 Holding the above taking note of the fact of Repeal Act, it was said that :-

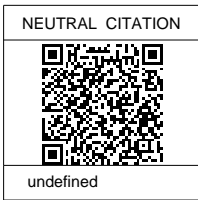
“41. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to [Section 10](#) of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.



42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. 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 land owner 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.”

9. It is, thus, clear that it would be mandatory for the State Government to establish that there has been transfer of possession peacefully, voluntarily by the landowner or forceable dispossession under Sub-section (6) of Section 10 had taken place, prior to the enforcement of the Repeal Act, 1999.

10. In view of the above stated law, the learned single Judge could not be said to have erred in holding that as no notice under Sub-section (5) and Sub-section (6) of Section 10 has been issued to the purchaser the respondent No.2, who was in possession of the land-in-question, the transfer of possession to the State Government cannot be said to be complete prior to the enforcement of the Repeal Act, 1999.



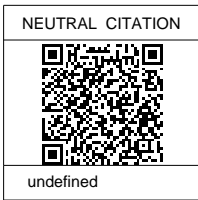
11. In this regard, we may note the language of Sub-section (5) and Sub-section (6) of Section 10 of ULC Act, 1976, which reads as under,

“5. Transfer of vacant land.-(1) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

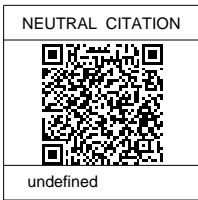


6. Persons holding vacant land in excess of ceiling limit to file statement- (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain:

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words "Every person holding vacant land in excess of the ceiling limit at the commencement of this Act", the words, figures and letters "Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement" had been substituted.

Explanation. In this section, "commencement of this Act" means,-

- (i) the date on which this Act comes into force in any State;
 - (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;
 - (iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.
- (2) If the competent authority is of opinion that
- (a) in any State to which this Act applies in the first instance, any person held on or after the 17th day of February, 1975 and before the commencement of this Act or holds at such commencement; or
 - (b) in any State which adopts this Act under clause (1) of



article 252 of the Constitution, any person holds at the commencement of this Act,

vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit; so, however, that the period or the aggregate of the periods of such extension shall not exceed three months.

(4) The statement under this section shall be filed,-

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf.;

(b) in the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both;

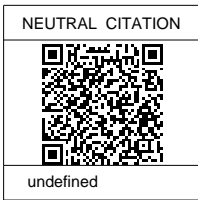
(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by a person competent to act on his behalf.

Explanation.-For the purposes of this sub-section, "principal officer",-



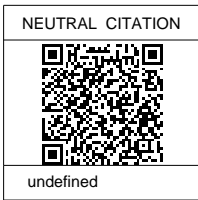
(i) in relation to a company, means the secretary, manager or managing-director of the company;

(ii) in relation to any association, means the secretary, treasurer, manager or agent of the association,

and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of his intention of treating him as the principal officer thereof.”

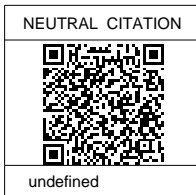
12. As noted hereinbefore, as held by the Apex Court, with the issuance of notification under Sub-section (3) of Section 10, only title in the excess land vests absolutely in the State Government free from all encumbrances, with effect from the date so specified. However, after vesting under Sub-section (3), the competent authority is required to give notice in writing to the persons who may be in possession of the land, to surrender or deliver the possession thereof to the State Government. The words “any person who may be in possession of it”, “to surrender or deliver possession thereof” would clearly mean that the notice was required to be given to the persons in possession of the land, who may not be the land owner.

13. In the instant case, the land-in-question was transferred vide registered sale deed dated 10.02.1976 in favour of Devrajbhai Khunabhai



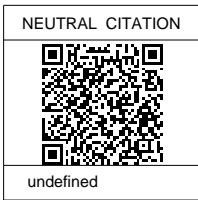
Rabari. who was in possession of the land-in-question on the date of declaration of the same being excess land and vesting of the same by virtue of the notification under Section 10(3) of the ULC Act published on 23.02.1994. It may also be relevant to note that from a perusal of the orders passed by the competent authority, it is evident that the landholder gave details of the sale deeds in the statement filed under Section 6(1) of the ULC Act, 1976. From the description of the landed property of the original landowner namely Shivabhai Virabhai Prajapati, as indicated in the order, it is evident that there is a mention of the plot No. 143/2, Village : Gota, Ahmedabad and that the said plot was sold by way of the sale deed dated 10.02.1976. From a perusal of the order passed by the competent authority, though it is evident that it has refused to accept the sale deed as *bona fide* transaction, but nothing has been said in the order of the competent authority except that the transferer, namely the original owner, could not prove the *bona fide* of the transaction.

14. From the reading of Section 4(4)(a), atleast, it is evident that a *bona fide* sale under a registered sale deed for a valuable consideration was saved by the said provision. There is no finding of the competent authority that the sale consideration of the land-in-question namely Survey No. 143/2, as indicated in the sale deed, was not for valuable



consideration. There is no independent finding that the transaction could not be said to be *bona fide* in nature, rather the competent authority has rejected the claim of the landholder from exemption of the transferred land on the premise that he has not been able to prove the *bona fide* of the transaction.

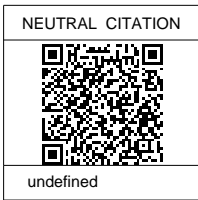
15. Coming to the order passed by the appellate authority, suffice it to note that it is categorically recorded therein that person namely the original respondent No.2 was in actual physical possession of the land-in-question, namely Survey No. 143/2, Gota, which was sold by way of registered sale deed dated 10.07.1976. It was also noted that in the statement, the landholder had given description of the land-in-question being in the possession of the transferee and has also sought exemption from the Ceiling Act. The result is that on the date of issuance of notice under Section 10(3), whereby title in the land-in-question has been vested with the State Government, the physical possession of the land-in-question was with the transferee namely the original respondent No.2. Notices under Section 10(5) and 10(6), admittedly had not been served upon the actual occupant of the land-in-question and moreover, there is nothing on record which would indicate that actual physical possession of the land-in-question had been taken by the State Government at the time



of drawing of the panchnama on 12.12.1997.

16. As noted hereinbefore, at the cost of repetition, it may be noted that the panchnama only refers to the names of two witnesses, namely Ramtuji Ramaji Thakore and Ramaji Punjaji Thakore and further refers that the land-in-question namely Survey No. 143/2 area 2339 sq.mtrs. has been declared surplus and has been vested with the State Government under Section 10(3) of the ULC Act. Further, notice under Section 10(5) of the Act dated 3.7.1996 had also been served, but there is no representation. It further refers that there was no construction or encumbrance over the land-in-question.

17. However, from the reading of the panchnama, photo copy of original of which has been appended at page 88 of the paper book, it is more than evident that there is no reference in the same that the possession of the land-in-question was taken in the presence of the original owner, namely Shivabhai Virabhai Prajapati, respondent No.2, who was stated to be in occupation of the land-in-question. In any case, the panchnama dated 12.12.1997 appended as Annexure-K of the writ petition, does not record that the physical possession of the land-in-question was taken even in presence of the landholder or the occupant of

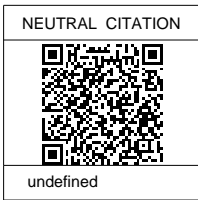


the land-in-question, namely respondent No.2 in whose favour sale deed was executed on 10.07.1976.

18. The fact remains that the exercise of taking over the physical possession of the land-in-question by drawing the panchnama dated 12.12.1997 remained a paper-exercise. There is lot of over-writing in the date on the original panchnama at page Nos. 88-89 of the paper book.

19. In this scenario, it cannot be said that the original owner or the purchaser/respondent No.2 who was in occupation of the land-in-question on the date of drawing of panchanam on 12.12.1997 has been dispossessed forceably by adopting due process of law.

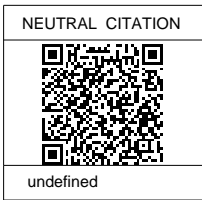
20. Moreover, no notice was given to the actual occupant of the land-in-question. Notice under Sub-sections (5) and (6) of Section 10 was mandatory before dispossession of the occupier of the excess land. Section 10(5) also includes any person who is in possession of the land, apart from the landholder. The result is that the notices under Section 10(5) and 10(6) issued in the name of the original owner, could not be said to give cause to the State Government to dispossess the actual occupant of the land-in-question, who was in possession on the date of



issuance of notice under Section 10(5) and 10(6) of the ULC Act, 1976.

21. Moreover, it is found that the procedure adopted by the competent authority in taking over the possession of the excess land was not in accordance with the provisions prescribed therefore under the ULC Act, the result is that on the date of enforcement of the Repeal Act, i.e. on 30.03.1999, the possession of the land-in-question being with the respondent No.2, the transferee, the effect of Repeal Act would be that the land holder is to be given benefit of Section 4 of the Repeal Act. As held by the Apex Court in **Hari Ram (supra)**, it was for the State to establish that there has been a voluntary surrender of vacant land and delivery of peaceful possession under Sub-section (5) of Section 10 or forceable dispossession under Sub-section (6) of Section 10. In this case, the State appellant could not establish any of the above situations.

22. In the said scenario, the respondent No.2, the holder of the land-in-question or the land owner, is entitled to the benefit of Section 4 of the Repeal Act, 1999. The effect is that the ceiling proceedings in respect of the land-in-question stood abated with the enforcement of the Repeal Act, 1999.



23. In view of the above discussion, no error could be found in the decision of the learned single Judge. The Appeal is dismissed being devoid of merits. No orders as to costs.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

C.M. JOSHI/PPS