

ITEM NO.1B
(For judgment)

COURT NO.6

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.10534-10535/2014
(@ of Special Leave Petitions (C) No(s).26315-26316/2013)

G. MANIKYAMMA & ORS

Petitioner(s)

VERSUS

ROUDRI COOP. HOUS. SOCIETY LTD. & ORS

Respondent(s)

WITH

Civil Appeal No.10536/2014
(Arising out of SLP(C) No. 38017/2013)

Date : 25/11/2014 These matters were called on for pronouncement of
judgment today.

For Petitioner(s) Mr. K. Shivraj Choudhuri,Adv.

Mr. D. Mahesh Babu,Adv.

For Respondent(s) Mr. M. P. Shorawala,Adv.

Mr. G. N. Reddy,Adv.

Hon'ble Mr. Justice J. Chelameswar pronounced the
judgment of the Bench comprising of His Lordship and Hon'ble Mr.
Justice S.A. Bobde.

Delay condoned. Permission to file SLP is granted.

Leave granted. Appeals are disposed of, in terms of the
signed reportable judgment.

[O.P. SHARMA]
COURT MASTER

[INDU BALA KAPUR]
COURT MASTER

(Signed reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.10534-10535 OF 2014

(Arising out of Special Leave Petition (Civil) No.26315-26316 of 2013)

G. Manikyamma & Others	...	Appellants
<i>Versus</i>		
Roudri Co-operative Housing Society Ltd. & Others	...	Respondents

WITH

CIVIL APPEAL NO.10536 OF 2014

(Arising out of Special Leave Petition (Civil) No.38017 of 2013)

Government of Andhra Pradesh & Others	...	Appellants
<i>Versus</i>		
Roudri Co-operative Housing Society Ltd.	...	Respondent

J U D G M E N T

Chelameswar, J.

1. Delay condoned. Permission to file SLP is granted. Leave granted in the SLPs.
2. Special Leave Petition (Civil) Nos.26315-26316 of 2013 has been filed by nine petitioners aggrieved by the orders dated 02.7.2012 and 24.01.2013 of the High Court of Andhra Pradesh in Writ Appeal No.580 of 2011 & WAMP No.59 of 2013 in Writ Appeal SR No.6051 of 2013, both of these filed aggrieved by the judgment dated 11.7.2011

passed in WPMP No.19151 of 2011 in WP No.10414 of 2011 and Order dated 26.12.2012 passed in WP No.10414 of 2011.

3. Special Leave Petition (Civil) No.38017 of 2013 has been filed by the Government of Andhra Pradesh aggrieved by the judgment of the High Court of Andhra Pradesh in Writ Appeal No.1125 of 2013 arising out of Writ Petition No.10414 of 2011 and connected matters.

4. Writ Petition No.10414 of 2011 was filed by M/s. Roudri Co-operative Housing Society Limited which is the first respondent in all the appeals herein. The said writ petition was filed seeking a writ of mandamus with various prayers which read as follows:

“For the reasons stated in the accompanying affidavit, it is therefore, prayed that this Hon’ble Court may be pleased to issue a writ, order or orders more particularly one in the nature of writ of mandamus declaring the action of the respondents in not implementing the order dated 18.3.2011 of the State Human Rights Commission in HRC No.758/2011 by shifting the hut dwellers from an extent of land admeasuring Ac.4-10 guntas in Sy. Nos.82, 122, 123(P) of Saidabad Mandal, Hyderabad District and not accommodating them in the alternative site inspite of the assurances given on 20.01.2006 by the 2nd respondent on 25.02.2006 by the 4th respondent, the G.O.Ms No.1451 dated 06.12.2008, G.O. Memo No.65122/UC.IV/97-6 dated 06.12.2008 and the orders dated 18.03.2011 in HRC No.758 of 2011 passed by the Hon’ble State Human Rights Commission Hyderabad as arbitrary, illegal and against the principles of natural justice and also Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents to evict the hut dwellers there from and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

It can be noticed that the first prayer is for implementation of the order dated 18.3.2011 of the State Human Rights Commission in HRC No.758/2011. The operative portion of the said order is as follows:

“In the circumstances, pending final disposal of this case and H.R.C. No.510/2011 after hearing all the parties, the Collector, Hyderabad District is directed to consider shifting of the hut-dwellers of Singareni Colony from an extent of Ac.4-10 guntas belonging to M/s. Roudri Cooperative Housing Society to the Munaganuru Village of Hayathnagar Mandal of Ranga Reddy District, where an extent of Ac.2.00 has been identified for temporary rehabilitation of the hut dwellers and also to see that no new huts are erected on the extent of Ac.4.10 guntas of land and report compliance by 8.4.2011.”

The case of all the appellants herein is that the State Human Rights Commission has no jurisdiction to pass any order, such as the one extracted above (order dated 18.03.2011) for the implementation of which Writ Petition No.10414 of 2011 was filed. The appellants also raised various other questions regarding the correctness of the orders passed by the High Court, the details of which will be considered later.

5. The factual background in which these matters arise is complicated as the litigation is almost four decades old now.

6. The first respondent Society entered into an agreement of sale dated 05.4.1981 for purchase of 25 acres of land in Survey Nos.82, 122 & 123 Part situated at Saidabad village and Mandal, Hyderabad District with six persons. According to the Society, three of them were the owners and the other three were the protected tenants on the land in dispute. It is the case of all the parties herein that the land was urban vacant land falling within the purview of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the Act”).

7. Having entered into such an agreement (referred to above) the first respondent Society made an application to the Government of Andhra Pradesh praying that the property in question be exempted from the purview of the operation of the Act in exercise of the authority of the State conferred under Section 20(1)(a) of the Act. The respondent Society claims that the vendors have delivered physical possession of the land on 24.10.1985. The respondent Society also claims that out of the total consideration of Rs.7,50,000/-, it had paid an amount of Rs.3,51,500/- on different dates. We are not concerned with the details of such payments.

8. Since the Government of Andhra Pradesh did not grant exemption as sought for by the Society, another representation was made on dated 15.7.1988 to which the Government vide its letter dated 16.8.1988 replied that the request of the Society would be considered only after determination of the excess land held by the vendors of the land (by the Special Officer and Competent authority, Urban Land Ceiling, Hyderabad).

9. On 21.9.1992, the Competent Authority under the Act determined the extent of surplus land held by the vendors and simultaneously sent a letter to the Commissioner of Land Revenue recommending the permission for alienation of the land in favour of

the respondent Society by the original owners pursuant to the agreement dated 05.4.1981 mentioned earlier.

10. Pursuant to the said letter, the Commissioner of Land Revenue recommended by his letter dated 03.4.1993 to the State Government that such permission for alienation be granted. Such a letter was written in the light of the G.O.M. No.136 of 28.1.1981 which permitted the registered Co-operative Housing Societies to purchase the land from the persons whose lands are declared as surplus lands.

11. According to the pleadings of the first respondent Society, for a decade thereafter, no significant development took place with respect to the disputed land. According to the Society, sometime in the month of June 2002, a part of the land came to be occupied by large number of homeless people. Strangely, the Society approached the revenue authorities of the State Government praying that the encroachers be evicted and thereafter approached the High Court of Andhra Pradesh in Writ Petition No.10888 of 2002 seeking a writ of mandamus against the revenue authorities to take appropriate action to protect the land of the Society until an appropriate decision is taken by the State Government on the recommendation made by the Commissioner of

Land Reforms and Urban Land Ceilings in his letter dated 03.4.2003.

12. It appears from the pleadings in the writ petition that in the said writ petition, an interim order dated 09.6.2002 was passed by the High Court directing the revenue authorities to evict the encroachers by removing the huts erected in the land belonging to the Society.

“On 09.6.2002, in WPMP No.13379 of 2002 in WP No.10888 of 2002 this Hon’ble Court granted interim orders, directing the Respondents 2 to 5 to evict the encroachers by removing the huts erected in the land belonging to the petitioner Society in Sy. Nos.82, 122 and 123 Part in Saidabad Manda, Hyderabad and direct the Respondents 6 to 9 herein to aid the Respondents 2 to 5 in evicting the encroachers.”

Naturally, this led to further extra-ordinary litigation. Three writ petitions by different bodies claiming to be representing the hut dwellers/encroachers came to be filed seeking various reliefs from the High Court which were dismissed. Subsequently, another set of writ petitions came to be filed at the behest of the hut dwellers and it appears that various interim orders were passed by the High Court, the details of which may not be necessary for the purpose of this case.

13. In the meanwhile, the Urban Land (Ceiling and Regulation) Act, 1976 came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Under Section 2 of the 1999 Act, the Urban Land (Ceiling and Regulation) Act, 1976 was repealed. However, under Section 1, the 1999 Act was made applicable initially only to the State of Haryana and Punjab and all the Union Territories and it was

declared that it would apply to other States with effect from such date when the Legislative Assembly of the State by resolution adopt the Repealing Act.

“1. (1) This Act may be called the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

(2) It applies in the first instance to the whole of the States of Haryana and Punjab and to all the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (2) of article 252 of the Constitution.

(3) It shall be deemed to have come into force in the States of Haryana and Punjab and in all the Union territories on the 11th day of January, 1999 and in any other State which adopts this Act under clause (2) of article 252 of the Constitution on the date of such adoption; and the reference to repeal of the Urban Land (Ceiling and Regulation) Act, 1976 shall, in relation to any State or Union territory, mean the date on which this Act comes into force in such State or Union territory.”

14. The erstwhile State of Andhra Pradesh adopted the Repeal Act w.e.f. from 27.03.2008.

15. The erstwhile State of Andhra Pradesh issued GOM No.455 dated 29.7.2002 subject to various conditions stipulated therein, the relevant portion of which reads as follows:

“4. The Government while keeping in view the observations of High Court and after careful consideration of the issue of occupation of excess and by third parties (i.e., other than the declarants/excess land holders or their successors) and taking into account all ground realities and the practical aspects of the problem and difficulties encountered in the strict enforcement of the law and bearing in mind the fact that the Urban Land (Ceiling and Regulation) Act, 1976 is an expropriatory law, have, as a matter of policy, decided to allot the excess lands to such respective third parties in occupation U/s. 23 of the Act.”

16. In the light of the GOM No.455, the first respondent Society and

its members made representations to the State Government. In response to the said representations, the Government of Andhra Pradesh issued another GOM No.457 dated 24.3.2003, the relevant portion of which reads as under:

“4. The Roudri Co.Operative House Building Society Ltd., Hyderabad in the representation 2nd read above, stated that it purchased Acres 25.00 of excess land in S.Nos.82, 122 and 123 (part), Saidabad village, Hyderabad District from the surplus land holders S/Sri Mohd. Mahaboob Mohiuddin, Mohd. Giasuddin and Safiuddin and 3 protected tenants Sri Pratap Singh, J.P. Singh and T.K. Singh on 05.4.1981 and the request of the surplus land holder and the society as well for granting exemption of the said land has not yet been finalized and still pending for one or the other reason. No registered document of sale could therefore be executed by the surplus land holder to the society and in turn by the society to its members. In the meantime, the society in accordance with the wishes of members has allotted plots to individual members based on which they are in possession. In this background, the society in has expressed no objection for allotting the plots of land to the members directly by Government in terms of the orders issued in the G.O. 1st read above, by relaxing orders issued therein to the extent necessary.

5. The Government, therefore, in relaxation of the orders issued in para 4 (e) to (h) of the G.O. 1st read above, hereby direct that:-

- a) The society shall furnish all necessary records of allotment of plots made by it to its members, to the Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad which shall include the (i) Name of member with father/husband's name (ii) Full address (iii) Membership No. & Date of enrolment (iv) Amount paid to Society (v) S.No. (village) Plot No. allotted (vi) Extent of the allotted plot in sq. mtrs. (vii) Date of allotment (viii) Date of putting the member in possession of plot and such other information as may be needed by him. It shall also make available all required records for his verification and processing the proposals to Government.
- b) The plot of land held by the member with or without structures, based on the allotment order/letter of allotment/Minutes of the Society, be considered for allotment to such member, on filing individual applications in terms of the orders issued in the G.O. 1st read above.
- c) For determining the time period of possession and amount payable for all members who are original allottees and continue to enjoy even now and also their successors in case of death of any

member, the date of allotment/putting the member in possession of land shall be taken into consideration. For those who have got the membership/plots transferred from the original allottee or purchasers the dates of such transfer or purchase (to be certified by the society) shall be taken into consideration to determine the time period of possession and amount payable.

- d) Allotment shall be subject to there being no litigations pending in respect of the land which shall be through verified and reported by the Special Officer & Competent Authority, Hyderabad.

17. It can be seen from the above extract that the Government only called for the data specified in para 6 of the above GOM No.457 with a view to consider the allotment of plots in favour of individual members of the Society out of the land agreed to be purchased by the first respondent Society from the holders of the excess land. It is not known from the record whether any final allotment in favour of individual members of the Society ever came to be made.

18. It appears that a large number of huts of the encroachers of the land in question were destroyed due to fire accident which occurred on 09.2.2005. Therefore, the State of Andhra Pradesh decided to provide permanent houses under a Scheme known as “the VAMBAY Housing Scheme” in an extent of 7 acres out of 25 acres of the land claimed by the first respondent Society. The said fact is borne out of the letter of the Collector, Hyderabad dated 20.01.2006, the relevant portion of which reads as follows:

“This refers to the fire accident which occurred on 09.2.2005 in which a large number of hut dwellers have lost everything when their houses

got gutted in fire. As you aware that the Government has decided to construct permanent housing under VAMBAY Housing Scheme and accordingly a portion of the land where hut dwellers are staying is being utilized for construction of VAMBAY housing. Accordingly, the construction of VAMBAY Scheme commenced in extent of Ac.7.00 Gts. from the portion of the land claimed by Co-operative Housing Society as owners to an extent of Ac.25.00 gts on the consent of said Society not claiming the land. The Collector agreed to keep remaining and for the purpose of the Society subject to outcome of U.L.C. while evicting the existing illegal encroached hut dwellers in Sy. No.82, 122 and 123/part. So also the beneficiaries already identified will be shifted to VAMBAY housing Scheme immediately after completion of the project.

You are therefore requested to pursue the matter with Roudhri Co-operative Housing Society Ltd. and assure them that their interest is protected as per the Law. Meaning protect the land in question from the illegal encroachers and take steps to finalise the list beneficiaries of VAMBAY housing Programme from the victims of the fire accident.”

19. Pursuant to the said letter, the Revenue Divisional Officer Hyderabad vide letter dated 25.02.2006 called upon the first respondent Society to agree for the proposal. In response to the said letter, the first respondent Society once again submitted a letter seeking “regularization of the area in occupation of the members in terms of GOM Nos.455 and 457”. The first respondent Society submitted 219 applications of individual members along with DDs valued at Rs.43,50,222/-.

20. The Government of Andhra Pradesh issued GOM No.1451 dated 06.12.2008 by which an extent of 9 acres 14 guntas in Sy. No.82, 122 and 123 Part of Saidabad Village and Mandal, Hyderabad was allotted in favour of the first respondent Society. In the said GOM, the

Government took note of the history of litigation between the Society and the State and also recorded that as per the report of the Special Officer and Competent Authority of the Land Ceiling Hyderabad that out of the 25 acres of land claimed by the first respondent Society, various parcels of land were either under encroachment or occupied by hut dwellers¹.

21. It is interesting to note the contents of paras 7 and 8 of the said GO which reads as follows:

“7. Government after careful examination of the matter and as the Collector has given consent to evict the encroachments, hereby **decided to allot the surplus land to an extent of Ac.9.14 gts.,** (Ac.5.04 gts., covered with compound wall and Ac. 4.10 gts., covered by encroachers) in favour of M/s. Roudri Co-operative Housing Society Limited, Saidabad in terms of the orders issued in the G.O. first read above, as a Special Case to facilitate the Society to take up constructions of residential apartments and to allot the flats to the individual members of the Society.

8. Accordingly, the Government hereby allot **the excess land taken possession by the State government under the provisions of the Principal Act, 1976** to an extent of Ac.9.14 gts., in Sy. No.82, 122, 123/P of Saidabad Village and Mandal, Hyderabad District in favour of M/s. Roudri Co-operative Housing Society Limited, Saidabad who are reported to be in possession of the excess land. Since the members of the Society have also paid the requisite amounts prescribed in G.O.Ms. No.455, dated 29.07.2002, as a Special Case, to facilitate the Society to take up construction of residential apartments and to allot the flats to the individual members of the Society, the land is allotted to Society instead of individual members in view of the reasons mentioned in para (3) and (4).”

22. Two factors are required to be taken notice of. We do not find

¹ 4. Whereas, the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad reported that out of total extent of Ac.25.00 gts., Ac.6.20 gts., was encroached by M/s. Bhanu Construction Housing Society, Ac.4.10 gts., was encroached by illegal huts, Ac.1.23 gts., covered by R.C.C. Road, Ac.0.20 gts., covered by Mosque, Ac.1.00 gts., covered by Graveyards, Ac. 6.03 gts., was taken over for construction of houses under VAMBAY Housing Scheme and Ac.5.04 gts., of vacant land covered by compound wall.

anything on record. At any rate nothing is brought to our notice by the State, to establish that the possession of the land in question was actually taken by the State in accordance with the provisions of the Act during its subsistence. Secondly, by the date of abovementioned GO, the Act stood repealed in the erstwhile State of Andhra Pradesh.

23. It appears from the averments made in the writ petition that the first respondent Society was continuously pursuing the authorities of the State of Andhra Pradesh to evict the encroachers and finally succeeded to some extent. The averments made in the affidavit filed in support of the Writ Petition No. 10414 of 2011 read as follows:-

“27. I submit that on 14.2.2011, the Respondents 2 to 5 with the aid of Respondents 6 to 9 evicted the hut dwellers, occupied in portion of land to an extent of Ac.4-10 guntas in Sy. No. 82, 122 and 123 Part of Saidabad village Mandal and delivered the vacant physical possession of the land to the Petitioner Society under a Panchanama. A copy of the Panchanama along with sketch is marked as Annexure P-36.

28. I submit that to the utter surprise of the Petitioner Society, the hut dwellers who vacated the said land in the morning returned back again on the same day evening and once again occupied the land belonging to the Petitioner Society by threatening the Security and Watchman provided by the Petitioner Society with dire consequences and illegally trespassed into the land and committed various offences.”

24. In the background of the above-mentioned facts, it appears that the Communist Party of India (Marxist) made complaint to the State Human Rights Commission, Andhra Pradesh on 17.2.2011 pleading the case of hut dwellers that they were being high handedly evicted by

the revenue and police authorities of the State. The Human Rights Commission passed an order, the operative portion of which reads as follows:-

“In the circumstances, the Collector, Hyderabad District is directed to take steps for immediate restoration of the water and electricity supply to the hut-dwellers of Singareni Colony, whose huts have been demolished, and they be not evicted from the said place till consideration as to sanction of the pucca houses to the said people.”

25. Within a month thereafter, some of the members of the first respondent society filed a complaint before the State Human Rights Commission on 18.3.2011 seeking a direction to the various revenue and police authorities of the State to evict the hut-dwellers from the land admeasuring 4 acres 10 guntas out of the 9 acres 14 guntas allotted to the petitioners under GoMS no. 1451 referred to supra.

26. It is on the said complaint, the interim order dated 18.3.2011 came to be passed by the State Human Rights Commission for the implementation of which the first respondent Society approached the High Court by way of Writ Petition No. 10414 of 2011.

27. Writ Petition No. 10414 of 2011 and Writ Petition No. 4898 of 2012 came to be disposed of by a common judgment dated 26.12.2012. The Writ Petition No. 4898 of 2012 was filed by an association of the encroachers seeking a writ in the nature of

mandamus declaring the action of the State and its authorities in seeking to evict the hut dwellers from the land in question without providing an alternative accommodation to them, to be arbitrary and violative of Articles 14 and 21 of the Constitution of India.

28. By the above-mentioned common judgment, the High Court allowed Writ Petition No. 10414 of 2011 and disposed of Writ Petition No. 4898 of 2012. The operative portion of the judgment reads as follows:-

“17. Therefore, I allow W.P. No. 10414 of 2011 and direct the respondents 1 to 9 therein to take all necessary steps for securing eviction of the 367 families, who have occupied the Singareni Colony land latest by 20.01.2013. Similarly, the Respondents 1 to 9 will not raise any objection for the 367 families only from raising temporary constructions in the identified 3 acres of land at Munaganoor Village to enable them to live at the new site of rehabilitation. The Respondents 1 to 5 would also take all necessary steps to complete the permanent housing scheme contemplated by them in ground plus two upper floors, so that the identified rehabilitated families can be shifted on to the permanent accommodation. As and when permanent accommodation is made available, each of the rehabilitated family member shall deliver vacant peaceful possession of the site occupied by him in the temporary rehabilitation camp to the Tahsildar-cum-Mandal Revenue Officer, Saidabad and obtain acknowledgement in token of handing over the vacant possession. The occupants will be redelivering the possession certificate which the Mandal Revenue Officer will be issuing to the identified rehabilitated families at the time of their moving on to the permanent housing scheme contemplated by the State.

18. It is open to the petitioner Society to secure necessary permission for construction of a pucca nonporous compound wall around their site from the competent Municipal Corporation/authority and then proceed by way of construction of a compound wall to protect their

property.

19. In view of the above order, W.P. No. 4898 of 2012 is disposed of granting time to the Petitioner Sangam for rehabilitating themselves at the new temporary rehabilitation center identified at Munaganoor Village on or before 20.01.2013.

29. It appears that during the pendency of Writ Petition No. 10414 of 2011, a Miscellaneous Petition No. 19151 of 2011 came to be filed by five petitioners praying that they may be impleaded as party respondents in the writ petition. The said miscellaneous petition was dismissed. Aggrieved by the same, the unsuccessful petitioners filed Writ Appeal No. 580 of 2011.

30. Aggrieved by the decision in Writ Petition No. 10414 of 2011, the State of Andhra Pradesh carried the matter in appeal by way of Writ Petition No. 1121 of 2013 which was dismissed by a judgment dated 20.8.2013 whereas Writ Appeal No. 580 of 2011 was also rejected by an order dated 2.7.2012. Aggrieved by the dismissal of Writ Appeal No. 1121 of 2013, the State of Andhra Pradesh preferred SLP No. 38017 of 2013 and the other two SLPs are filed by the unsuccessful appellants in Writ Appeal No. 580 of 2011 and the High Court is right in law to give the various directions such as the one given.

31. The core question which arises in these three appeals is whether the State Human Rights Commission has any jurisdiction to pass the

order such as the one passed by it seeking the implementation of which the first respondent Society filed Writ Petition No. 10414 of 2011.

32. All the appellants submitted that the State Human Rights Commission went beyond its jurisdiction in issuing the directions in question. On the other hand, the learned counsel for the first respondent Society argued that in view of the judgment of this Court in ***P.T. Munichikkanna Reddy v. Revamma*** (2007) 6 SCC 59 holding that the right to property is one of the human rights, the State Human Rights Commission's directions to protect the property rights of the first respondent Society's members are well within its jurisdiction.

33. The first respondent Society's right, if any, to the 9 acres 14 guntas of land arises out of GOM No. 1451 dated 16.12.2008 by which the Government purported to allot the land in favour of the first respondent Society. The right, title and interest of the first respondent Society in the property in question prior to 16.8.2008 appears (to use a cautious expression) doubtful in view of the Urban Land (Ceiling and Regulation) Act, 1976 and require a thorough examination. The first respondent Society asserts to be in possession of the said property on and from 24.10.1985 pursuant to the delivery of possession by their

vendors - original owners who were subsequently declared to be the holders of surplus land under the Urban Land Ceilings Act.

34. Assuming for the sake of argument that the first respondent Society obtained such a possession, they seem to have lost such possession even according to their own admission at least from the month of June, 2002. On the other hand, the State of Andhra Pradesh issued GOM No. 1451 specifically asserting that the land in question was 'excess land' of which possession was taken by the State under the provisions of the Act. On the face of such conflicting claims regarding the physical possession of the property in dispute, and the unascertained nature of the legal rights of the first respondent Society to the property, whether the State Human Rights Commission would have jurisdiction to pass the orders such as the orders passed by it, is the issue.

35. The authority of the State to evict encroachers for the benefit of the members of the first respondent Society (whose right to possession of the property is not clearly established) by the use of police force is wholly inconsistent with the rule of law. The mode of eviction of unauthorised occupants depends on the ownership of the property. In a country governed by the rule of law, even squatters can be evicted only in accordance with some procedure established by law. In the

absence of any special statute dealing with the eviction of such squatters, persons seeking to evict squatters, must obtain a decree for eviction from a competent court and execute such a decree. Such a decree can be granted only if the competent court comes to the conclusion that the person seeking such a decree has a superior legal right to the possession of the property in dispute than the right of the squatter.

36. Statutes of various states in this country provide for eviction of squatters on land belonging to the State and its instrumentalities by following a summary procedure prescribed therein. Such procedure obviates the need for obtaining a decree for eviction from a competent court. In the context of the erstwhile State of Andhra Pradesh, one such enactment is the AP Land Encroachment Act. However, in ***Government of Andhra Pradesh v. Thummala Krishna Rao & Anr.***, AIR 1982 SC 1081, this Court held with reference to the lands of the State or its instrumentalities which are in possession of squatters for long time, such summary procedure could not be resorted to.

37. Therefore, in our opinion, the State of Andhra Pradesh could have resorted to the summary procedure of eviction of the encroachers only if the land in dispute vests in the State and the possession of the squatters is of recent origin. There is nothing on record to establish

that the land in question vests in the State of Andhra Pradesh. At any rate, nothing is brought to our notice to establish that the land in question vests in the State of Andhra Pradesh.

38. Even if the land in dispute is declared surplus land under the provisions of the Act, the same can be taken possession of by the State only by following the procedure established by law which is indicated under Section 10 of the Act.

“10. Acquisition of vacant land in excess of ceiling limit.—

(1) As soon as may be after the service of the statement under section 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 person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests 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 persons 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 declaration, such land shall be deemed to have vested absolutely in the State Government

free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) 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 cause 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.”

39. Under the scheme of the Act, persons holding ‘vacant land’ in excess of the ceiling limit specified by the Act are required to file a statement under Section 6 thereof. Such a statement is required to be examined by the competent authority in accordance with the procedure laid down under Sections 8 and 9 and “determine the vacant land held by the person.... in excess of the ceiling limit”. Only upon such determination the possession of such excess land can be taken by the State following the procedure under Section 10. It can be seen from Section 10, the competent authority is required to give a

notification giving the particulars of the excess vacant land which is proposed 'to be acquired by the ... State government' and invite objections from any person interested in the said land for the acquisition of such land. If any such claims are received by the State Government {in response to the notification under Section 10(1)}, the tenability of such claims is required to be determined by the competent authority. Under sub-Section (3), the State Government is authorised to make a declaration by a gazette notification that any excess vacant land referred to in the notification published under sub-Section (1) shall be deemed to have been acquired by the State Government w.e.f. the date specified therein. Upon such a declaration, such land shall be deemed to have vested absolutely in the State Government. After such notification under Section 10(3), the competent authority may call upon any person who is in actual possession of such property to deliver possession thereof to the State Government (sub-Section (5)). If any such person in possession of the property refuses to comply with an order under sub-Section (5), the competent authority shall take possession of the vacant land, if necessary, by use of such force as may be necessary for taking possession (sub-Section (6))

40. Until the procedure contemplated under Section 10 is followed,

the land which is determined to be the excess vacant land of any landholder does not either vest in the Government or the possession thereof can be taken by the State.

41. There is nothing on record before us to establish that the land in question was duly taken possession by the Government under the provisions of the Act. Until possession is duly taken as explained above, property still remains private property notwithstanding the determination that such property is “land in excess of the ceiling limit” under the Act. The persons in possession of such property, whatever be the nature of their possession-whether they are encroachers or persons such as the first respondent Society - cannot be evicted by force. All this requires a thorough examination of the respective rights of the various parties and the authority of the State to deal with the property in question.

42. The Human Rights Commission, in our view, would not be competent forum for the examination of the above-mentioned issues. Both the first respondent Society as well as the encroachers, in our view, wrongly invoked the jurisdiction of the Human Rights Commission instead of pursuing the appropriate remedies available to them in law, and the Human Rights Commission was too willing to exercise authority without any jurisdiction. We are also of the opinion

that the High Court resorted to more of a mediation activity than the determination of the legal issues involved in the case.

43. In our opinion, the Human Rights Commission does not have any jurisdiction to deal with the disputed questions of title and possession of the property.

44. We make it clear that in the case of ***P.T. Munichikanna Reddy v. Revamma*** (supra), this Court examined the impact of a claim of adverse possession over rented property in the context of the claim of a person who has a valid title in his favour. This Court upon examination of ***Beaulane Properties Ltd. Vs. Palmer***, (2005) 3 WLR 554 and ***JA Pye (Oxford) Ltd. Vs. United Kingdom***, (2005) ECHR 921 opined;

“43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgment of *Beaulane Properties Ltd. v. Palmer* and *JA Pye (Oxford) Ltd. v. United Kingdom*. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights.

45. ***P.T. Munichikkanna Reddy's case*** (supra) arose out of a suit filed under Section 9 of the Code of Civil Procedure, 1908 (for short

“the CPC”) where both the plaintiff and defendant asserted their title to the property in dispute. The plaintiff in the alternative claimed that he had preferred the title by adverse possession. It was a case where the original owner of the property sold the same piece of land to both the parties to the suit. The sale in favour of the defendant is anterior to the sale in favour of the plaintiff. It was in the background of the above-mentioned facts, this Court examined the question. **P.T. Munichikkanna Reddy’s case** (supra) is not an authority for the proposition that the Human Rights Commission either National or State constituted under the Protection of Human Rights Act, 1993 are competent to adjudicate upon the disputed questions of title and possession.

46. The functions and powers of the Commission are enumerated under Section 12 of the Protection of Human Rights Act, 1993, which reads as follows:-

12. Functions of the Commission.-

The Commission shall perform all or any of the following functions, namely:-

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of-

(i) violation of human rights or abatement thereof; or

- (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the State Government, any jail or any other institution under the control of the state Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights
- (j) such other functions as it may consider necessary for the promotion of human rights.

47. It can be seen from the language, there is nothing in Section 12

which authorises the Human Rights Commission to adjudicate upon the disputes of title and possession of property.

48. Apart from that, there is neither any examination nor any determination by any competent body of the rights of the first respondent Society and its members on one hand, and the encroachers on the other hand, for that matter, even the rights and authority of the State over the property in dispute.

49. In the circumstances, we deem it appropriate to set aside the orders of the Andhra Pradesh Human Rights Commission dated 17.2.2011 and 18.3.2011 and the judgment of the learned Single Judge dated 26.12.2012 in Writ Petition No. 10414 of 2011 and also the judgments in Writ Appeal No. 580 of 2011 dated 2.7.2012 and the judgment in Writ Appeal No. 1125 of 2013 leaving it open to the parties to seek their remedies before the appropriate fora, if they are so advised. We also direct all the parties including the authorities of the State to maintain *status quo* obtaining as on today with respect to the possession of the various parties until the competent court/forum determines the rights of the first respondent Society and also the encroachers with respect to the land in question admeasuring 4 acres 10 guntas.

50. Appeals stand disposed of. No order as to costs.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

**New Delhi;
November 25, 2014**