



IN THE HIGH COURT OF ANDHRA PRADESH :: AT AMARAVATI

* * * *

Writ Petition No.9325 of 2013

Between

Vankena Krishna Rao and 2 others

.... Petitioners

And

The Government of Andhra Pradesh, rep by its
Secretary, Revenue (Land Acquisition) Department,
Secretariat, Hyderabad and others

.... Respondents

JUDGMENT PRONOUNCED ON

:04.05.2022

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes



*** THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

+ Writ Petition No.9325 of 2013

% 04.05.2022

Vankena Krishna Rao and 2 others

.... Petitioners

Vs.

\$ The Government of Andhra Pradesh, rep by its
Secretary, Revenue (Land Acquisition) Department,
Secretariat, Hyderabad and others

... Respondents

! Counsel for the Petitioners : Sri B.S. Kartik

^ Counsel for the Respondents : Govt. Pleader for Land
Acquisition

<Gist :

>Head Note :

? Cases referred

1. (2007) 3 SCC 470
2. (2012) 6 SCC 348
3. 2012 (12) SCC 443



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.9325 of 2013

Order:

This Writ Petition is filed questioning the award dated 24.07.2012 as arbitrary, illegal and contrary to the provisions of Sections 11-A and 12(2) of the Land Acquisition Act, 1894 (for short 'the Act').

The first petitioner is the owner and possessor of the land admeasuring an extent of Ac.2.56 cents in RS No.115/2, second petitioner is the owner and possessor of the land admeasuring an extent of Ac.2.56 cents in RS No.115/2A and the third petitioner is the owner and possessor of the land admeasuring an extent of 0.50 cents in RS No.115/1B, situated in Badampudi village, Unguturu Mandal, West Godavari district and they are in actual and physical possession of the said lands; a notification under Section 4(1) of the Act was published on 20.01.2009 proposing to acquire the subject lands for distribution as house site pattas to the landless poor and public notice of the said notification was not displayed at any public place; personal notice was not served on the petitioners and urgency clause was not invoked; the third respondent caused enquiry under Section 5-A of the Act and draft notification was approved on 03.03.2010; Section 6 declaration was issued on 03.03.2010, but the notification or the declaration were not published in the largest circulated local linguistic language newspaper as contemplated under the Act; notification was issued proposing to acquire Ac.11.52 cents belonging to 11 persons, but except the lands of the petitioners the lands of other 8 persons were deleted from the proposed acquisition, in spite of the objections of the petitioners stating that they are small farmers, the subject lands are double crop wet lands, there is availability of other



waste land in the subject village and in the nearby villages; the officials never physically visited the lands and possession was never taken and non-taking of possession is contrary to Section 17(5)(a)(b) of the Act; Section 4(1) notification was not published in the gazette within 40 days from the date of notification; Section 4(1) notification was issued on 21.01.2009 and Section 5A notification was published in the month of June 2009 and Section 6 notification was published in the District Gazette on 03.03.2010 i.e., after lapse of statutory period of one year as contemplated under the proviso to Section 6(1) of the Act; the award was passed on 24.07.2012 i.e., after two years from the date of publication of the first notification on 21.01.2009, hence the proceedings under the Act stands lapsed under law and the award was passed only after the petitioners approached this Court by way of Writ Petition No.22617 of 2012, wherein there is no interim order of stay of operation etc., hence, the period of initial notification is enforceable under law; the respondents asked the petitioners to put their signatures to consider their objections and to show their presence in the office and believing the respondents, petitioners put their signatures on the papers hoping that their objections will be considered without suspecting the respondents and during the pendency of that Writ Petition No.22617 of 2012 petitioners came to know that the signatures of the petitioners were converted to suit to their convenience and if at all petitioners accepted the proposal and gave consent for award they ought to have released the compensation immediately; petitioners never appeared before the negotiation committee or before the District Collector; petitioners never gave consent for the award; even otherwise, the said award is void, as the same was passed after lapse of statutory period; during the pendency of the said Writ



Petition petitioners came to know about the alleged consent award, hence they withdrew the said Writ Petition on 28.08.2012; the award was not passed within two years from the date of declaration under Section 6 of the Act; award was not served on the petitioners and it is contrary to Section 12(2) of the Act. Hence, the Writ Petition.

Counter affidavit is filed by the third respondent stating, *inter alia*, that Section 4(1) notification was published in the Gazette on 23.01.2009, in the newspapers on 28.01.2009 and in the locality on 27.02.2009 and notice was issued in Form-3 under Section 5A of the Act to all the land owners to file their objections, if any and to attend the enquiry on 15.07.2009; petitioners and other land owners filed their objections on 15.07.2009 and personal hearing was also given and orders under Section 5A(2) of the Act were passed by the Collector on 27.02.2010 for an extent of Ac.5.62 cents and communicated to the land owners; thereafter, the District Collector approved the draft declaration under Section 6 of the Act on 02.03.2010 and the same was published in the Gazette on 03.03.2010, in the newspapers on 13.03.2010 and in the locality on 26.03.2010 and notices under Sections 9(1) and 10 of the Act were issued on 23.01.2012 fixing the date of award enquiry as 08.02.2012 and the said notice was published in the office of the Tahsildar, Unguturu Mandal, Mandal Parishad Development Officer, Unguturu, Gram Panchayat Office, Badampudi and the Sub-Registrar Office, Tadepalligudem and published on the land by hanging to a stick planted in the land and notices were also served in Form-VII under Sections 9(3) and 10 of the Act on the petitioners on 23.01.2012; petitioners received the notices, acknowledged the same and gave consent for acquisition of the land and to pass a consent award at the rate of Rs.7,00,000/- per acre; petitioners also



signed the agreement in Form-III on 19.04.2012; they were served notices in Form-I to attend the DLNC meeting on 10.04.2012 and after giving consent, petitioners filed Writ Petition No.22617 of 2012 questioning the draft notification and declaration and subsequently withdrew the said Writ Petition; the land owners have not taken the compensation amount, hence the same was deposited in the court of the Senior Civil Judge, Eluru under Section 31(2) of the Act and possession was taken under a cover of panchanama by the Tahsildar on 23.03.2013; as the petitioners filed a Writ Petition previously, the present Writ Petition is not maintainable; the petitioners having signed the agreement in Form-3 and agreed to pass consent award, now cannot contend that the award was passed after two years; there is no other suitable land to provide house sites and prayed to dismiss the Writ Petition.

Reply affidavit is filed by the petitioners denying the contents of the counter affidavit and specifically denying the averment that they have given consent for the award, that they signed the agreement on 19.04.2012 and that they were served with Form-I notice to attend the DLNC meeting on 10.04.2012; no award was passed as on the date of filing of the Writ Petition No.22617 of 2012 and the present Writ Petition was filed questioning the award dated 24.07.2012 and hence the principle of *res judicata* does not apply; even as on today, petitioners are in possession of the subject land; as the declaration was issued under Section 6 of the Act, beyond one year from the date of Section 4(1) notification, the same is void and the draft notification under Section 4(1) lapsed even by the date of approval of the declaration by the District Collector under Section 6 of the Act and hence without legal existence of Section 4(1) notification, there cannot be any declaration under Section 6



of the Act; the award was passed beyond two years which is contrary to the provisions of Section 11-A of the Act; passing of the award after lapse of proceedings under Section 4(1) notification and declaration under Section 6 is a nullity. Giving of consent, notice in Form-I asking them to appear before the DLNC and notices under Section 12(2) of the Act were denied, there cannot be any award after lapse of notification under Section 4(1) and declaration under Section 6 of the Act.

The copies of pahanies dated 01.04.2016 and copy of 1-B Namuna dated 01.04.2016 were filed along with the Writ Petition which show the names of the petitioners herein.

Learned Government Pleader filed copy of award dated 24.07.2012, copy of Section 5A notice, copy of draft declaration under Section 6 of the Act and Sections 9(1) and 10 notices.

Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court reported in **Ashok Kumar v. State of Haryana**¹, **Kulsum R. Nadiadwala v. State of Maharashtra**² and **Anil Kumar Gupta v. State of Bihar**³.

Learned Government Pleader has relied upon the common order of this Court passed in WP Nos.27325 and 11881 of 2018, dated 18.01.2022.

The relevant Sections which are necessary for disposal of this Writ Petition are reproduced below.

Section 4 of the Act which deals with publication of preliminary notification reads as follows.

"4. Publication of preliminary notification and powers of officers thereupon. - (1) Whenever it appears to the appropriate Government that land in

¹ (2007) 3 SCC 470

² (2012) 6 SCC 348

³ 2012(12) SCC 443



any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

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;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."



Section 6 of the Act reads as follows.

“6. Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.



Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which It is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

Section 9, which deals with notice to persons interested, reads as follows.

"9. Notice to persons interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession



of the land, and that claims to compensations for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in letter addressed to him at his last known residence, address or place or business and [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).”

Section 11 deals with enquiry and award by the Collector and Section 11A deals with the period within which an award shall be made.

Section 11 reads as follows.

“11. Enquiry and award by Collector. - (1)

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under



section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-“

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other



lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under subsection (2) shall be liable to registration under that Act.”

Section 11-A reads as follows.

“11A. Period within which an award shall be made.- (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.-In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

Section 12 of the Act reads as follows.

“12. Award of Collector when to be final.- (1) Such award shall be filed in the Collector’s office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not



present personally or by their representatives when the award is made.”

The admitted facts of the case are that draft notification under Section 4(1) of the Act was approved on 20.01.2009, published in the gazette on 23.01.2009 and in the locality on 27.02.2009; the draft declaration was approved on 02.03.2010, published in the gazette on 03.03.2010 and in the locality on 26.03.2010. The main contention of the learned counsel for the petitioners is that according to first proviso (ii) to sub-section (1) of Section 6 of the Act, no declaration in respect of the land covered by notification under Section 4 (1) of the Act shall be made after expiry of one year from the date of publication of the notification. In the present case, admittedly, there is no stay granted by this Court in the previous Writ Petition. Hence, Explanation 1 of second proviso to Sub-Section (1) of Section 6 does not apply. Admitted dates according to the counter-affidavit are the publication of section 4(1) notice in the locality i.e., last of the publication is on 27.02.2009 and the declaration under Section 6 was approved on 02.03.2010. As seen from the said dates, the draft declaration under Section 6 was approved and issued beyond one year from the date of Section 4(1) notification and hence the same is contrary to Sub-Section (1)(ii) of first proviso of Section 6 of the Act.

In **Ashok Kumar's** case (supra) it was held that proviso (ii) to sub-section (1) of Section 6 debars making of declaration after the expiry of one year from the date of publication under Section 4(1) of the Act and that in such circumstances such a declaration which was made after expiry of one year from the date of publication of notification under Section 4(1) would be void and of no effect. Relevant portions of judgment read as follows.



"14. Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section, 4(1), is stayed by an order of a Court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.

15. Provisions of the Act should be construed having regard to the purport and intent thereof. Section 6 of the Act is beneficent to the land owners.

17. We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit."

According to first proviso to Section 6(1), declaration should be issued within a period of one year from the last publication of notification



under Section 4(1) and if it is not done Section 6(1) declaration is a nullity, unless it falls under the explanations to Second proviso of Section 6(1).

As the mandatory requirements under Section 4(1) were not complied with, the Hon'ble Supreme Court in **Kulsum R.Nadiadwala's** case (supra) held that the entire acquisition of land is null and void and directed the respondents therein to handover possession to the land owners. It was also held that if the statute provides a particular manner, for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. The relevant paragraphs read as follows:

"12. The said provisions came up for consideration before this Court in Collector v. Raja Ram Jaiswal (1985) 3 SCC 1). In the said decision, the Court specifically observed that there are two requirements for the issuance of Notification under Section 4 of the Act. The first requirement is that the notification requires to be published in an Official Gazette and the second requirement is that the acquiring authority should cast public notices of the substance of such notification in a convenient place in the locality in which the land proposed to be acquired is situate. The Court has further observed that both the contentions are cumulative and they are mandatory.

13. In the instant case, the respondents before the High Court had filed their reply affidavit. They did not dispute the contentions of the appellants that they had not issued any public notices as required under Section 4 of the Act. They only reiterated that such notification was published in the Official Gazette. Since the mandatory requirement as required under Section 4(1) of the Act is not complied with by the respondents, while acquiring the lands in question, in our opinion, the entire acquisition proceedings requires to be declared as null and void.



14. This Court in J&K Housing Board v. Kunwar Sanjay Krishan Kaul (2011) 10 SCC 714, has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings. This Court further observed thus:

“32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the landowners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to.”

15. We further direct that the respondents shall handover 50% of the vacant possession of the said land to the appellants forthwith. No costs. Ordered accordingly.”

In **Anil Kumar Gupta’s** case (supra), the ground raised by the appellant therein was whether the declaration issued under first proviso (ii) of Section 6(1) was valid because it was issued beyond one year that is prescribed in Section 4. The Hon’ble Supreme Court held that the declaration issued under Section 6(1) was *non est* and the relevant paragraphs read as follows.

“20. We may now advert to the main question as to whether the declaration issued under Section 6(1) was nullity because the same was issued after expiry of the



period of one year specified in proviso (ii) to that Section. This issue is no longer res integral and must be treated as settled by the judgments of this Court in Padma Sundara Rao (Dead) and Ors. v. State of Tamil Nadu and Ors. (2002) 3 SCC 533, Ashok Kumar and Ors. v. State of Haryana and Anr. (2007) 3 SCC 470 and a recent judgment in Devender Kumar Tyagi and Ors. v. State of UP. and Ors. (2011) 9 SCC 164). In Padma Sundara Rao's case (supra), the Constitution Bench unequivocally held that the second proviso to Section 6(1) is mandatory and a declaration issued beyond the period of one year from the last publication of the notification issued under Section 4(1) is nullity. In view of the proposition laid down in these judgments, it must be held that the learned Single Judge had rightly held that the declaration issued under Section 6(1) was non-est.

21. Learned Counsel for the Respondents relied upon corrigendum dated 01.07.1994 and argued that if the period of one year is counted from the date of corrigendum then the declaration issued under Section 6(1) cannot be treated as beyond the period of one year. We are unable to accept the submission of Learned Counsel for two reasons. Firstly, it has not been shown whether the corrigendum had been published in the manner prescribed under Section 4(1). Secondly, the corrigendum was issued only for correcting the typographical mistakes in the gazette publication of the notification issued under Section 4(1). Such corrigendum will relate back to the date on which notification under Section 4(1) was issued and the same cannot be relied upon for recording a finding that the declaration under Section 6(1) was issued within the period prescribed under proviso (ii) to that Section

22. In the result, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge quashing the acquisition proceedings is restored. The Respondents are directed to hand over vacant possession of the acquired land to the Appellant within a period of eight weeks from today. The parties are left to bear their own costs."



Learned Government Pleader contends that the present Writ Petition is hit by the principles of *res judicata* as petitioners filed Writ Petition previously, and as the same was withdrawn without the leave of the Court. As seen from the record, petitioners filed W.P.No.22617 of 2012 previously. The prayer in the said Writ Petition is as follows.

“to declare the impugned action of the respondents in trying to take over the land for an extent of Ac.2.56 cents in RS No.115/2 of the 1st petitioner, Ac.2.56 cents in RS No.115/2A of the 2nd petitioner and Ac.0.50 cents in RS No.115/1B of the 3rd petitioner, for the purpose of distribution to poor against the principles of natural justice as also conducting a sham 5A enquiry by the 3rd respondent as approved by the 2nd respondent in his proceedings G1/268/2009(SW) dated 02.03.2010 and without dropping the proceedings under land acquisition proceedings in violation of statutory provisions of the land Acquisition Act 1894 and without following due process of law as illegal, arbitrary and violative of principles of natural justice etc. and consequently set aside the Sec.4(1) draft notification Roc.No.G1/268/20099SW) dated 20.01.2009 and also the Sec.6 draft declaration Roc.No.G1/268/2009(SW) dated 03.03.2010 issued by the 2nd respondent in respect of lands belonging to the petitioners for and extent of Ac.2.56 cents in RS No.115/2 of the 1st petitioner, Ac.2.56 cents in RS No.115/2A of the 2nd petitioner and Ac.0.50 cents in RS No.115/1B of the 3rd petitioner, Badampudi village, Unguturu Mandal, West Godavari district.”

The present Writ Petition is filed challenging the award which was passed pending Writ Petition. As the prayer in both the Writ Petitions is different and as the cause of action in both the Writ Petitions is different,



the doctrine of *res judicata* does not apply to the facts of the present case.

In **Anil Kumar Gupta's** case (supra), the Hon'ble Supreme Court also held that the acquisition proceedings can be challenged at various stages. At para 17, it was held as follows:

"The issue needs to be examined from another angle. A person who is deprived of his land can challenge the acquisition proceedings at various stages. He can question the notification issued under Section 4(1) on the ground of violation of the mandate contained therein like publication of the notification in the official gazette and/or two newspapers including the one in the regional language, failure of the Collector to cause public notice of the substance of the notification to be given at convenient places in the locality. He can challenge the declaration issued under Section 6(1) on the ground of non-compliance of Section 5A(1) and/or (2) or violation of proviso (ii) to Section 6(1). In a given case, the land owner can also challenge the notice issued under Section 9 and the award passed under Section 11 on the ground that he had not been heard or that the acquisition proceedings are nullity. He can also challenge the award if it is not made within the period prescribed under Section 11A. The vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The invoking of urgency clause contained in Section 17 can be questioned on the ground that there was no real urgency. There may be many more grounds on which the land owner can challenge the acquisition proceedings. Insofar as the appellant is concerned, he had challenged the acquisition proceedings immediately after passing of the award



and pleaded that the declaration issued under Section 6(1) was liable to be declared nullity because of violation of the time limit prescribed in proviso (ii). This being the position, it is not possible to approve the view taken by the Division Bench of the High Court that the writ petition was belated.”

Declaration under Section 6 of the Act was issued beyond one year from the date of Section 4(1) notification and as such the same is null and void. Draft notification under Section 4(1) lapsed by the date of approval of declaration itself. Without a valid Section 4(1) notification, there cannot be a declaration under Section 6 of the Act.

As seen from the facts of the present case and following the judgments referred to above, the declaration under Section 6(1) is a nullity and is *non est* in the eye of law and when such is the position, the award could not have been passed either on 24.07.2012 or on 27.02.2012.

Learned Government Pleader submitted that when the petitioners have given consent, they cannot challenge the award and relied on the common order of this Court passed in WP Nos.27325 and 11881 of 2018, dated 18.01.2022. The said Writ petitions were filed seeking a direction to pay compensation prevailing on the date of 4(1) notification and to declare the action of the respondents in passing the award on the basis of 2002-03 Standard Schedule Rates (SSR) and in the said case Government took a stand that when the awards were passed after obtaining consent, petitioners are not entitled to claim enhancement of the compensation and the point that was framed by the Court for consideration is as follows.

“Whether Award Nos.1 and 2/2006-07 dated 31.07.2006 passed by the third respondent are consent awards? If so, whether the petitioners are



entitled to question the adequacy of compensation on any of the grounds and whether a direction as claimed by the petitioners be issued by this Court while exercising power under Article 226 of the Constitution of India?”

And this Court observed in the said order that the respondents therein could establish that the awards were consent awards, the agreement is binding on the petitioners therein, the petitioners therein are not entitled to claim compensation basing on the SSR rates of 2005-2006, that the petitioners failed to establish that the awards were passed under Section 11(1) and not under Section 11(2) of the Act and that they did not deny execution of agreement in Form-V. It was also observed that the petitioners did not deny the consent awards.

The said order does not apply to the facts of the present case in the light of the following facts. Firstly, the petitioners denied execution of agreement in Form-V prescribed under the Rules and a copy of the agreement is not found in the record admittedly. Secondly, petitioners denied giving consent to the award, and the respondents could not establish that it was a consent award.

As disputed facts are involved learned Government Pleader was directed to produce the original record and the learned counsel for the petitioners was also permitted to peruse the original record in the presence of learned Government Pleader. This court also perused the original record.

The record reveals that initially an award under Section 11(1) was passed as there is no consent and subsequently even though there is no consent, award under Section 11(2) of the Act was passed. The record contains the copies of both the awards.



As seen from the said original record, the Joint Collector vide Roc.No.GI/268/2009/S.W., dated 26.02.2012, approved the award and the Land Acquisition Officer was requested to pass compulsory award under Section 11(1) of the Act on 26.02.2012. Section 11(1) of the Act deals with compulsory award and Section 11(2) of the Act deals with consent award. The said letter reads as follows:

"Roc.No.GI/268/2009/S.W.

West Godavari Collectorate
Eluru, dated: 26.02.2012

PROCEEDINGS OF THE JOINT COLLECTOR, WEST GODAVARI,
ELURU

Present: Sri T. Baburao Naidu, I.A.S.,

Sub: LAND ACQUISITION W.W. – West Godavari District – Eluru (D) Unguturu Mandal – Badampudi village – RS No.115/1 etc., measuring an extent of Ac.5.62 cts – Acquisition of land for provision of house sites to weaker section people under Indiramma programme – draft award U/s 11(1) approved – Orders – Issued.

Read:- Roc.2275/2008/B, dt.21.02.2012 of the R.D.O., Eluru.

ORDER:-

The Revenue Divisional officer & Land Acquisition Officer, Eluru, has submitted draft award for approval pertaining to the lands measuring an extent of Ac.5.62 cts covered by R.S.No.115/1B etc., of Badampudi village of Unguturu Mandal, for acquisition of land for provision of house sites to weaker section people under Indiramma programme.

In this case, the Market value @ Rs.2,00,000/- per acre (excluding all benefits) was approved U/s 23(1) of the L.A. Act.

The draft award has been verified and found correct and it is hereby approved. The Land Acquisition officer & Revenue Divisional officer, Eluru, is requested to pass compulsory award U/sec.11(1) of the Land Acquisition Act.

He is also requested to take post award action and to submit the LACM accordingly.

Sd/ - T. Baburao Naidu
Joint Collector,
West Godavari, Eluru."

As seen from the letter of the Revenue Divisional Officer, dated 21.03.2013 bearing ROC No.2275/2008/B, addressed to the Tahsildar, the



Joint Collector approved the draft award and accordingly the award was passed by the Land Acquisition Officer on 27.02.2012. The said letter reads as follows.

“I invite attention to the reference cited. The Joint Collector, W.G. District has been pleased and approved the draft award in the ref. cited in respect of land measuring Ac.5.62 cents covered by RS No.115/1B ect of Badampudi village of Unguturu Mandal. Hence the award bearing No.2/2012 dated 27.02.2012 was passed in this L.A Case and compensation amount U/s.11(1) of L.A.Act, was deposited in Civil Court on 21.03.2013. I, therefore, request you to take possession of said land and kept the safe custody the same and prepare the beneficiaries list as per the norms issued by the Govt.”

The copy of petition filed by the Land Acquisition Officer under Section 31(2) of the Act which contains the stamp of the learned District and Sessions Judge Court, Eluru, West Godavari district is also there in the original record. At para 7 of the said petition it is categorically stated that the land owners have not given consent for passing of the award and hence acquisition was inevitable and in the said petition it is also categorically stated that the award was passed on 27.02.2012 under Section 11(1) of the Act. The file also contains the affidavit filed by one Boddla Srinivasa Rao, Revenue Divisional Officer, Eluru in the said OP. Even in the said affidavit at para 6 he has specifically stated that the land owners did not give consent for passing of the award. It also shows that the award was passed on 27.02.2012 and the said petition bears OP No.502 of 2014 on the file of the Principal District Judge, West Godavari district, Eluru and copy of award dated 27.02.2012 under Section 11(1) of the Act is also available in the record. The copy of the award is as follows:



"AWARD No.2/2012
Roc.2275/2008/B

O/o the Land Acquisition Officer &
Revenue Divisional Officer, Eluru.
Dt.27.02.2012.

Proceedings of the land Acquisition Officer and
Revenue Divisional Officer, Eluru
Present: Sri K. Nageswara Rao, M.Sc.,

Sub:- Land Acquisition – Social Welfare Land Acquisition – W.G.
Dt., - Eluru Division – Unguturu Mandal – Badampudi
village – R.S.No.115/1B etc., - measuring Ac.5.62 ccts –
Acquisition of land for provision of house sites under
Indiramma Housing Programme – DN and DD approved
– PV fixed – Award passed under Section 11(1) of L.A.
Act – Orders issued – reg.

- Ref: 1) W.G. Collector's Roc No.G1/268/2009/SW dated
20.01.2009.
2) W.G. Collector's Roc No.G1/268/2009/SW dated
27.02.20110.
3) W.G. Collector's Roc No.G1/268/2009/SW dated
02.03.2010.
4) W.G. Collector's Roc.No.G1/268/2009/SW dated
26.01.2012.

ORDER:

1. Introduction:

An extent of Ac.5.62 cts covered by R.S. No.115/1B ect
of Badampudi village of Unguturu Mandal is proposed for
acquisition for provision of house sites to weaker section
people under Indiramma Housing Programme Phase III.

2. Draft Notification:

The Draft Notification U/s.4(1) of the L.A. Act along
with 5A enquiry was approved by the Collector, West
Godavari, Eluru in Roc.G1/SW/268/2009, dated 20.01.2009 to
an extent of Ac.11.52 cents covered by R.S.No.114/1 etc. of
Badampudi village. The DN has been published in the West
Godavari district Gazette vide Gazette No.39, dated:
213.01.2009. The Notification has also been published in two
dailly newspapers i.e., Jayakethanam on 28.01.2009,
Prajaskthi 28.01.2009 and locality on 27.02.2009. Among



four modes of publication the last one was done on 27.02.2009. It has been taken as the date of publication of the draft notification.

5A enquiry was conducted on 15.07.2009 as required under L.A. Act. The land owners attended 5A enquiry and filed objections. After examination of the objections a report was submitted to the Collector, W.G.Dt., It was informed to the Collector that the land owners have not given consent for the proposed acquisition. Taking into consideration of the compact block an extent of Ac.5.62 cts covered by R.S.No.115/1 etc is proposed for acquisition. Accordingly 5A orders have been approved by the Collector, W.G., Eluru vide proceedings Roc.No.G1/268/2009/SW, dated 27.02.2010.

3. **Draft Declaration:**

The Draft Declaration U/s.6 of the L.A. Act was approved by the Collector, West Godavari, Eluru in Roc.G1/268/2009/SW Dated: 02.03.2010. The contents were published in Dist. Gazette No.33, Dt: 3-3-2010. The contents of the Notification have been published in two daily Newspapers i.e., Prajasakthi on 13.-3.2010, and Jeevana Rekha on 12.03.2010 and in the locality on 26.03.2010. Among four modes of publication of the last one was done 26.....10. It has been taken as the date of publication of the Draft Declaration.

4. **True Area:**

The land proposed for acquisition has been measured and got sub-divided. The Sub-division record prepared by the Mandal Surveyor, Unguturu and pre-scrutinized by the Dy. Inspector of Survey and Land Records, R.D.O's office, Eluru. The area as per the scrutinized sub-division record as R.S.No.1115/1A etc., Ac.5.62 cents of Badampudi village of Unguturu mandal.

5. **Market value:**

The Tahsildar, Unguturu has gathered the Registration statistics from the preceding 3 years from the date of publication of draft notification. The DN has been approved



by the Collector, W.G., Eluru and issued proceedings in their Roc.G1/SW/268/2009, dated 20.01.2009. During the year 2007 there are no sale transactions are made in the vicinity and nearer to the lands under acquisition.

There are 2 sale transactions were made in the year 2008, one sale which took place for an extent of Ac.2.48 cts in RS No.114/2 as the total sale was done at the rate of Rs.3,50,000/-. That the sale transaction was made as per the basic value is Rs.1,41,200/- per acre. And the another sale was made in RS No.97/1 for an extent of Ac.1.00 cents the total sale was done @ Rs.1,60,500/- and the basic value of the sale transaction is Rs.1,60,500/- per acre. However, the sale transactions are very old and not taken into consideration. Hence the sales were discarded.

There are 2 sale transactions were made in the year 2009, one sale which took place for an extent of Ac.0.25 cents in RS No.100/2A as the total sale was done @ Rs.40,500/-. That the sale transaction was made as per the basic value is Rs.1,62,000/- per acre and the another sale was made in RS No.100/2A, 100/2B for an extent of Ac.0.35 cents the total sale was done @ Rs.56,500/- and the basic value of the sale transaction is Rs.1,62,000/- per acre. These sale transactions made even though far away from proposed land under acquisition due to no other sales made under nearest survey numbers in the year 2009. However, the second sale transaction has to be taken into consideration to fix the valuation of the land proposed under acquisition.

The basic value of the sale land is Rs.1,62,000/- per acre. Due to increase in trend of the prevailing market value of the lands in the village, the reasonable market value of the proposed land under acquisition it was recommended to fix the land value under acquisition is Rs.2,00,000/- per acre.

The Joint Collector, West Godavari, Eluru has fixed the market value of the acquisition land @ Rs.2,00,000/- p.a. (Rupees Two Lakhs only) excluding statutory benefits



U/s.23(1) of the L.A. Act and issued proceedings vide Roc.G1/268/2009(SW) dated 26.01.2012.

6. Value of the Trees and Buildings etc.:

There are no trees and permanent structures in the acquired land.

7. (a) Damages U/s.23(1) of the L.A. Act.

No damages falling within the purview of the clauses (3) to (6) of Section 23(1) of the L.A. Act.

7 (b) Additional Market Value @ 12% P.A.

The draft notification U/s.4(1) of L.A. Act was published in this L.A case 27.02.2009. The land owners are entitled to get the 12% additional market value per annum on the land value fixed by the Joint Collector from the date of draft notification to date of passing of award.

7 (c) Solatium:

The land owners are entitled to get the 30% Solatium on the land value fixed.

8. Payment of Interest:

The land was not taken advance possession, therefore the land owners are not entitled to get the interest on the market value.

9. Claims and objections:

Notices U/s.9(1), 10 and 9(3), 10 were sent to the land owners with a direction to attend before Land Acquisition Officer and Revenue Divisional Officer, Eluru on 08.02.2012 and to claim the interest over the land and to conduct of award enquiry for the proposed acquisition. The notices were received published in the locality and also served to the land owners on 23.01.2012.



10. **Award apportionment:**

1) Smt. Negunta Rajeswari R.S.No.115/1B Ac.0.50 Cts

The awarded compensation of the land measuring Ac.0.50 Cts as detailed below.

Market value fixed (per acre)	2,00,000
Market value on Ac.0.50 Cts i.e., acquired land	1,00,000
Solatium @ 30%	30,000
12% Additional Market Value from 27.02.2009 to 26.02.2012 (3 years)	36,000
Total	1,66,000

The land owner not attended for award enquiry and not given consent for passing of award U/s 11(2) of L.A. Act. The acquisition of land is inevitable to provide house sites to needy beneficiaries. Therefore, an amount of Rs.1,66,000/- (Rupees One Lakh Sixty Six thousand only) U/s.11(1) of L.A. Act was awarded to the notified land owner.

2) Sri Vankina Krishna Rao R.S.No.115/2A Ac.2.56 Cts.

The awarded compensation of the land measuring Ac.2.56 Cts as detailed below.

Market value fixed (per acre)	2,00,000
Market value on Ac.2.56 Cts i.e., acquired land	5,12,000
Solatium @ 30%	1,53,600
12% Additional Market Value from 27.02.2009 to 26.02.2012 (3 years)	1,84,320
Total	8,49,920

The land owner not attended for award enquiry and not given consent for passing of award U/s.11(2) of L.A. Act. The acquisition of land is inevitable to provide house sites to needy beneficiaries. Therefore, an amount of Rs.8,49,920/- (Rupees Eight lakhs Forty Nine thousand Nine Hundred and Twenty only) U/s. 11(1) of L.A. Act was awarded to the notified land owner.



3) Sri Vankina Sriramanjaneyulu R.S.No.115/2B
Ac.2.56 Cts.

The awarded compensation of the land measuring Ac.2.56 Cts as detailed below.

Market value fixed (per acre)	2,00,000
Market value on Ac.2.56 Cts i.e., acquired land	5,12,000
Solatum @ 30%	1,53,600
12% Additional Market Value from 27.02.2009 to 26.02.2012 (3 years)	1,84,320
Total	8,49,920

The land owner not attended for award enquiry and not given consent for passing of award U/s.11(2) of L.A. Act. The acquisition of land is inevitable to provide house sites to needy beneficiaries. Therefore, an amount of Rs.8,49,920/- (Rupees Eight lakhs Forty Nine thousand Nine Hundred and Twenty only) U/s. 11(1) of L.A. Act was awarded to the notified land owner.

12. **Funds:**

The Collector, West Godavari, Eluru has provided funds under Indiramma Housing Scheme for an amount of Rs.60,00,000/- (Rupees Sixty Lakhs only) for 3rd quarter for the year 2011-12 and 2.00 Crores for Home Steeds. The expenditure shall be met from those funds.

Typed to my dictation on the day of 27th February 2012.

Sd/- x x x,
27.02.2012
Land Acquisition Officer,
Revenue Divisional officer,
Eluru"

The award also shows that the petitioners did not give consent to pass award under Section 11(2) of the Act and acquisition was inevitable.



Even though the respondents took a stand that the petitioners also executed agreements in Form III and IV giving consent for acquisition, the agreements said to have been executed by the petitioners are not found in the record and the petitioners took a specific plea that they did not execute any such agreement. There is one Form III and one Form IV found in the record. The said Form III & IV are totally blank without the names, extents, Survey numbers and date. Apart from that the said agreement in Forms III & IV are signed by one Somanna Veeraju and 2 others who are not the petitioners herein. Petitioners also specifically took a plea that they never gave consent and never signed an agreement, agreeing to receive Rs.7,00,000/- as compensation. In view of the same, the respondents have to prove that petitioners gave consent by signing agreements which they failed to do so. The record categorically shows that as there was no consent, compulsory award under Section 11(1) was passed, and thereafter another award under Section 11(2) is passed which is contrary to law.

When once an award has been passed, the official becomes *functus officio* and he cannot pass a second award and even if such second award is passed it is *non est* in the eye of law. As seen from the original record, one award was already passed by the authority. Hence, second award could not have been passed by the authority. When the learned Government Pleader was asked to explain as to why the second award has been passed, he states that as the consent has been given by the parties, the consent award has been passed for the second time. As award has been passed once, stating that there is no consent to the Award, the respondents have no jurisdiction or authority to pass a second Award.



The Land Acquisition Collector, after making of the award within the prescribed period, became *functus officio*. After making of the award under Section 11 within the prescribed period, the Land Acquisition Collector has no jurisdiction or power to modify the award. Section 12 of the Act provides that an award made shall be final and conclusive evidence, as between the Collector and the persons interested.

In the affidavit filed in support of the writ petition, a plea has been taken stating that petitioners are small farmers. The same is not denied in the counter-affidavit and in spite of the same the subject land was sought to be acquired. Even though respondents contend that possession was taken from the petitioners, petitioners dispute the same and in support of their contention, they filed pahani and I.B. Namuna and pattadar pass book dated 01.04.2016 which show the names of two petitioners as possessors of the subject land.

The petitioners also took a specific plea that they never appeared before the negotiation Committee or the Collector and the same is not disputed in the counter-affidavit. The record also does not disclose that they appeared before the Negotiation Committee.

The Land Acquisition Act is an expropriatory legislation and hence, the provisions of the statute must be strictly complied with as it deprives a person of his land without his consent.

It is also settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act.

According to Section 11A of the Act, the Collector has to make an award under Section 11 within a period of two years from the date of publication of declaration and if no award is made within that period, the



entire proceedings for acquisition would lapse. As seen from the facts of the present case, assuming for a moment that the declaration under Section 6 is valid, the date of publication of declaration in the gazette is 03.03.2010 and in the locality it is 26.03.2010 and award was passed on 24.07.2012. Hence, the entire proceedings for acquisition lapsed. Passing of award after lapse of land acquisition proceedings is a nullity and without jurisdiction.

Even though many other contentions are raised by the learned counsel for the petitioners with regard to service of notices, the same are not being adjudicated in the present Writ petition and the Writ Petition is being decided based on the main contentions raised by the parties.

In view of the facts and circumstances and for the reasons mentioned above and in the light of the law declared by the Hon'ble Supreme Court in the judgments referred to above, the impugned award is liable to be set aside and is, accordingly, set aside.

Accordingly, the Writ Petition is allowed and the respondents are directed not to interfere with the possession of the petitioners with regard to the subject land. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 04th May, 2022
Nsr

Note:
LR copy to be marked
(B/O)



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.9325 of 2013

Date:04th May 2022

Nsr