*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

+ WRIT PETITION NOs: 19806 of 2009 & 24126 of 2012

% .01.2026

WRIT PETITION NO: 19806 of 2009

S.Pichappan (died) & 3 others

……Petitioners

And:

$ The District Collector & 3 others

….Respondents

WRIT PETITION NO: 24126 of 2012

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And:

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….Respondents

!Counsel for the petitioners : Sri Varun Byreddy representing Sri Sai Saran Chodisetty

^Counsel for the respondent : Sri J.Dileep Kumar, GP for Rs.1 to 3 and Ms.V.Sireesha Rani, Standing Counsel for Municipality

<Gist:

>Head Note:

? Cases referred:

1. (2002) 3 Supreme Court 533
2. (2005) 7 Supreme Court Cases 627
3. (2009) 9 Supreme Court Cases 92
4. (1996) 2 SCC 26
5. (2012) 2 SCC 25

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

WRIT PETITION NOs: 19806 of 2009 & 24126 of 2012

DATE OF JUDGMENT PRONOUNCED*:* **.01.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NOs: 19806 of 2009 & 24126 of 2012

ORDER:

Heard Sri Varun Byreddy, learned counsel representing Sri Sai Saran Chodisetty, learned counsel for the petitioners, Sri J.Dileep Kumar, learned Government Pleader for Revenue and land Acquisition for respondent Nos.1 to 3 and Ms.V.Sireesha Rani, learned Standing Counsel appearing for Bhimavaram Municipality (in short 'Municipality').

I. FACTS:

2. W.P.No.24126 of 2012 has been filed by the petitioners under Article 226 of Constitution of India with a prayer to set aside the proceedings of respondent No.1 therein, the District Collector, West Godavari District, Eluru, bearing ROC.No.G2/892/2007, dated 04.07.2012 on the petitioners' objections filed under Section 5A of the Land Acquisition Act, 1894 (in short 'L.A.Act')in regard to the land admeasuring Ac.14.56 cents in Sy.No.318, Yenamuduru Village, Bhimavaram Mandal, West Godavari District for which the notification dated 20.02.2007 under Section 4(1) of the Land Acquisition Act was published for the purposes of setting up a Municipal Solid Waste Compost yard (in short 'compost yard').

3. The facts are that the Bhimavaram Municipality through its Commissioner, Bhimavaram, West Godavari District, which is a Selection Grade Municipality made unsuccessful efforts to acquire land for formation of

compost yard, for various reasons.The Consumer Protection Council, Bhimavaram(in short 'CPC') filed W.P.No.19351 of 2006 (PIL) for direction to Bhimavaram Municipality to take action for formation of compost yard. In the said writ petition, High Court appointed a Special Government Pleader to inspect the Municipality and to submit a report. The Special Government Pleader inspected the Municipality on 12.11.2006 and submitted a report.The High Court ordered to implement the suggestions of the Government Pleader within a stipulated time and to take action for formation of Compost Yard in the larger public interest.

4. In W.P.No.19351 of 2006 (PIL) the High Court issued directions vide orders dated 20.09.2006, 19.10.2006, 09.07.2007, 20.08.2007, 19.10.2007 and 20.10.2007 for establishment of compost yard by Bhimavaram Municipality under Solid Waste (Management & Handling) Rules 2000.

5. The Municipality made efforts for formation of Compost Yard in R.S.No.318 of Yanamaduru Village, Bhimavaram Mandal but the Gram Panchayat is said to have resolved to restrain the establishment of compost yard. The Municipality requested the District Authorities of West Godavari District to identify suitable land on behalf of the Municipality for acquisition vide letter Rc.No.10179/80/G1, dated 05.07.2006. The District authorities instructed the local revenue authorities and the Mandal Revenue Officer, Bhimavaram suggested the site in R.S.No.318 of Yanamaduru Village, Bhimavaram Mandal vide letter Roc.No.851/A/2006 dated 18.11.2006 to which the Bhimavaram Municipal Council accorded approval for acquisition

vide CR.No.565, dated 20.11.2006.The District Medical and Health Officer, West Godavari District issued feasibility report vide letter No.5819/En Sanitation/RHS/06, dated 06.12.2006. The proposed land for acquisition was inspected on 27.12.2006 by the District Site Clearance Committee (in short 'the Committee') and submitted a report that the proposed site was suitable for setting up of a municipal solid waste facility. The State Government vide G.O.Ms.No.57, M.A., dated 12.01.2007 permitted the Municipal Council to acquire the land and to pay the cost of land from the general funds of the Municipality.Consequently an amount of Rs. 79,52,000/- and also Rs.50,000/- towards compensation amount payable to the proposed land acquisition and for publication of proposals was deposited with Revenue Divisional Officer, Narsapur vide Roc.No.10179/80/G1, dated 31.01.2007.The Revenue Divisional Officer, Narsapuram issued notification G2/892/07, dated 20.02.2007 under the Land Acquisition Act, 1894 proposing to acquire the land in R.S.No.318/3 to an extent of Ac.14-56 cents situated in R.S.No.318/3 Yanamaduru Village, Bhimavaram Mandal. The proposed land was taken by the Revenue Divisional Officer, Narsapuram on 26.04.2007 and handed over to the Bhimavaram Municipality on the same day. Thereafter, the Revenue Divisional Officer passed an award No.2/2007-08 on 27.04.2007. After taking possession of the site, the Bhimavaram Municipality started the work by digging a pit all around the land and constructed a bund with mud by spending amounts. The Municipality also started formation of road to the site by

spending money. For which vide G.O.Ms.No.57, M.A., dated 12.11.2007, the 12th Finance Commission sanctioned considerable amount.

6. The notification under Section 4(1) and Section 6 of Land acquisition Act were issued invoking urgency clause under Section 17(4) of the L.A. Act. Those were published in AP State Gazette Extra-ordinary issue Nos.40 dated 20.02.2007 and 44 dated 28.02.2007 respectively. The land was taken possession on 26.04.2007 and the award was passed on 27.04.2007.

7. At that stage, the land owner namely S.Pichappan and two others filed W.P.No.5905 of 2007 challenging the notifications.The High Court held that the decision to invoke the urgency clause and dispensing with the enquiry under Section 5-A of the Land Acquisition Act was irrational and unsustainable. The respondents therein were directed to issue notice to the writ petitioners for submission of the objections, if any, to the proposal to acquire the lands and on the petitioners' submitting their objections within the time stipulated in the notice, the respondents were directed to take appropriate decision and to duly communicate the same to the writ petitioners simultaneously with the recommendations made, after the enquiry under Section 5-A of the Land Acquisition Act. It was provided that the writ petitioners shall not be dispossessed pending communication of the decision to the petitioners consequent on the enquiry under Section 5-A of the Land Acquisition Act. W.P.No.5905 of 2007 was disposed of with the directions vide order dated 23.03.2007, which read as under:

> "In the aforesaid circumstances, the decision in the impugned notification to invoke the urgency clause and dispensing with the enquiry under Section 5-A of

> the Act is declared irrational and unsustainable. The respondents are directed to issue notice to the petitioners for submission of objections if any to the proposal to acquire the lands. On the petitioners' submitting their objections within the time stipulated in the notice, the same shall be considered and an appropriate decision taken duly communicating the decision to the petitioners simultaneously with the recommendations made after the enquiry under Section 5-A of the Act by the acquiring authority. The petitioners shall not be dispossessed pending communication of the decision to the petitioners consequent on the enquiry under Section 5-A of the Act.
>
> The Writ Petition is disposed of as above at the stage of admission, after hearing the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition. There shall however be no order as to costs."

8. Challenging the order dated 23.03.2007 in W.P.No.5905 of 2007 review W.P.M.P.No.22279 of 2007 was filed by the State/its authorities which was dismissed on 01.04.2009.

9. The Writ Appeal No.1114 of 2009 filed by State was also dismissed on 28.08.2009. The relevant part of the order dated 28.08.2009 reads as under:

> "8. For the aforesaid reasons, in our opinion, the view expressed by the learned single Judge cannot be said to be incorrect in view of the fact that the official respondents have disregarded the direction of this Court and practically, have committed contempt and now they have approached this Court with a prayer that the said order be quashed and set aside.
>
> 9. We do not see any justifiable reason for quashing and setting aside the order passed by the learned single Judge. In the circumstances, the appeal is dismissed with no order as to costs."

10. The Land Acquisition Officer and Sub-Collector, Narsapur issued notice under Section 5-A of Land Acquisition Act dated 28.08.2009 directing the land owners to file objections within a specified time. The objections were filed by the petitioners on 14.09.2009 to the proposed acquisition of their land.

11. In the meantime another writ petition No.19806 of 2009 was filed for declaring the notification dated 20.02.2007 under Section 4(1) of Land Acquisition Act; declaration under Section 6 of the Act dated 25.02.2007 in respect of the petitioners' land as illegal and void and consequently also to

declare the Award No.2 of 2007-2008 dated 27.04.2007 as illegal. The petitioners also prayed in the said writ petition that notice issued under Section 5-A dated 28.08.2009 be also declared illegal. They also prayed to stay further proceedings pursuant to the notice dated 28.08.2009. In W.P.M.P.No.25828 and 25829 of 2009 in W.P.No.19806 of 2009 on 17.09.2009, interim direction was issued to maintain status-quo, which reads as under:

> "Learned A.G.P. for Land Acquisition takes notice for respondents 1, 2 and 3.
> Sri Nageswara Reddy, takes notice for R4 and requests time to file counter affidavits.
> List the W.P.M.Ps. immediately after vacation.
> Status quo obtaining as on today to be maintained for a period of eight weeks."

12. The same was extended on 12.10.2009, 20.11.2009 and 04.12.2009

13. The District Collector, West Godavari, Land Acquisition Officer and Revenue Divisional Officer, Narsapur and Tahsildar, Bhimavaram had filed SLP.No.8929 of 2010 and SLP.No.16980 of 2010, challenging the orders passed in and arising out of W.P.No.5905 of 2007. The SLP, after being converted into Civil Appeal No.3634 of 2012, was disposed of by the Hon'ble Apex Court on 17.04.2012. The direction was issued to the authorities that, they shall proceed with the enquiry under Section 5-A of the Act pursuant to the notice dated 28.08.2009 and shall complete the enquiry expeditiously within three months. The Hon'ble Apex Court issued the following directions:

> "14. We, accordingly, dispose of the appeal by the following order:
> (i) the clause in the notification dated February 22, 2007 with regard to the dispensation of enquiry under Section 5A of the Act is declared to be ineffective.
> (ii) The concerned authority shall now proceed with the enquiry under Section 5A of the Act pursuant to the notice dated August 28, 2009 and

> shall complete the enquiry as early as may be possible and in no case, later than three months from the date of the production of the certified copy of this order."

14. Pursuant to the order of the Hon'ble Apex Court, the Land Acquisition Officer and Revenue Divisional Officer, Narsapur submitted the enquiry remarks on the objections filed by the land owners in response to the notice dated 28.08.2009. On the objections of the writ petitioners the District Collector passed the proceedings vide order dated 04.07.2012 which did not find favour to the petitioners. Challenging the proceedings dated 04.07.2012 W.P.No.24126 of 2012 has been filed.

15. One more W.P.No.16701 of 2007, was decided by the Division Bench of this Court along with W.P.No.32702 of 2010, 1635 of 2011 and 34229 of 2011 by common judgment dated 05.07.2012.

16. In W.P.No.16701 of 2007, petitioner therein had challenged the action of Bhimavaram Municipality in establishing MSW compost yard in the land admeasuring Acs.14.56 cents in Sy.No.318/3 of Yenamaduru Village of Bhimavaram Mandal in West Godavari District and for a consequential order/direction including with respect to the authorization dated 03.10.2007 granted to the Municipality.

17. By the common judgment dated 05.07.2012, inter-alia the authorization dated 03.10.2007 granted to the Bhimavaram Municipality by Andhra Pradesh Pollution Control Board (in short 'the Board') was set aside. The operative part i.e., conclusion, of the said judgment reads as under:

> "In view of the above findings, we hold that the selection of sites and the decision to set up WPD facilities – be it a transit/segregation point or compost

> yard, is contrary to MSW Rules and consequently the authorization granted by the A.P.State Pollution Control Board is illegal and unsustainable. The writ petitions for the above reasons are to be allowed as prayed for. There shall be an order setting aside the authorizations granted by the A.P.State Pollution Control Board on 29.09.2011 to Ongole corporation and the authorization dated 03.10.2007 granted to Bhimavaram Municipality and both the ULBs be restrained from carrying out any activity at the lands situated at Panchayats.
>
> The writ petitions are accordingly allowed, without any order as to costs."

18. The State of Andhra Pradesh filed SLP(c).No.33692 of 2013 challenging the order dated 05.07.2012 in W.P.No.16701 of 2007 which is pending before the Hon'ble Apex Court.

19. The Bhimavaram Municipality also filed SLP(C).No.34889-34891 challenging the order dated 05.07.2012 passed in W.P.No.16701 of 2007.

20. In SLP(c).Nos.34889-34891 of 2013, the Hon'ble Apex Court passed the following order dated 02.05.2018:

> "1. It is submitted by learned counsel for the parties that the land in question is no more required for the purpose of solid waste management.
>
> 2. Consequently, nothing survives in the petitions and the same are disposed of as having become infructuous.
>
> 3. Pending application, if any, shall also stand disposed of."

21. So the position that now emerges is that:

i) The proceedings for setting up a municipal solid waste compost yard were started pursuant to orders passed in W.P.No.19351 (PIL) of 2006.

ii) Challenging the notification under Section 4 of the Land Acquisition Act, W.P.No.5905 of 2007 was filed, which was disposed of with directions to issue notice for submission of the objections under Section 5A of the Act. That order was maintained by dismissal of review as also writ appeal No.1114 of 2009. Further, the Civil Appeal No.3634 of 2012 was disposed of by the Hon'ble Apex Court declaring the dispensation of

enquiry under Section 5A to be ineffective and to proceed further with the enquiry under Section 5A pursuant to the notice dated 28.08.2009 already issued to the writ petitioners and to conclude the same.

iii) W.P.No.19806 of 2009 was filed challenging the same notifications under Section 4 and 6 of the Act, 1894 as also the award, and notice dated 28.08.2009 issued under Section 5A.

iv) W.P.No.24126 of 2012 challenges the proceedings of the District Collector on the objections under Section 5A of Land Acquisition Act, dated 04.07.2012.

II. SUBMISSIONS OF THE LEARNED COUNSELS:

a) FOR THE PETITIONERS:

22. Learned counsel for the petitioners submitted that all the objections as raised by the writ petitioners were not properly considered. Detailed discussions and justifiable reasons have not been assigned. He submitted that the concerned Yenamaduru village is not within the Municipal limits of Bhimavaram Municipality. Rule 4 of the Municipal Solid Waste Management and Handling Rules, 2000 (in short "Rules, 2000) prescribes that every municipal authority shall, within its territorial area, be responsible for the implementation of the provisions of these rules, as also for infrastructure development, for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes. He submitted that the rule is for the municipal authority with respect to its territorial area. So, the submission

advanced is that for the municipal area if the land falls within it, the notification could be issued, but not for the area falling outside.

23. Learned counsel for the petitioners referred to Rule 6 and contended that it is the responsibility of the Central Pollution Control Board and the State Board of the Committees to monitor the compliance of the standards regarding ground water, ambient air etc., as specified under Schedules II, III & IV to those rules. Referring to schedule III, learned counsel submitted that there was violation of point No.8 of the specification for landfill sites. The landfill site shall be away from habitation clusters, forest areas, water bodies monuments, National parks, wetlands and places of important cultural, historical or religious interest. He submitted that the petitioners had taken a specific plea that the land of the petitioners was very close to habitation clusters i.e., about 3.4 kilometer to the Yenamaduru village and in between also there were houses and families staying there. Further, the land was very close to the water bodies i.e., drinking water tank and the land was wet land. There were large number of cattle and cattle sheds near to the site. The objectors were paying necessary tax to the local bodies. There were three Government irrigation canals and some private irrigation canal, supplying water to the land in R.S.No.320 as also drinking water tanks in R.S.No.318.

24. He submitted that the objection was also taken that some other Government land was available within the limits of Bhimavaram Municpality, suitable for locating a compost yard and the land of the objectors, outside the

limits of the municipality was unsuitable for compost yard but was illegally chosen.

25. Learned counsel for the petitioners contended that in view of Section 6 of the LA Act, now no declaration can be made after the expiry of limitation period from the date of the publication of the notification under Section 4(1).

26. Learned counsel for the petitioners placed reliance in the following cases:

(i) Padma Sundara Rao (dead) and others v. State of T.N. And Others, [1]

(ii) Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others, [2]

(iii) Vijay Narayan Thatte and others v. State of Maharashtra and others[3]

b) <u>FOR THE RESPONDENTS:</u>

27. Referring to the counter affidavit, learned counsel for the respondent Nos. 1 to 3 submitted that the objections of the petitioners were duly considered in detail and for the reasons assigned, the objections did not find favour. There is no illegality in the proceeding vide order dated 04.07.2012 which calls for no interference.

28. Learned counsel for respondent Nos.1 to 3 further submitted that the lands of the petitioners were not double crop wet lands. The land under acquisition is located at around 1.1 kms away from human habitation of

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[1] (2002) 3 Supreme court 533

[2] (2005) 7 Supreme Court Cases 627.

[3] (2009) 9 Supreme Court Cases 92.

Yenamaduru Village. There are no forest areas, water bodies, monuments, national parks, educational institutions and places of important cultural, Historical or religious interests, to the surroundings of the proposed land. The objectors land/ the proposed site was not very close to water bodies or drinking water tank. There was only Akumalla Cheruvu in a small extent on the northern side of proposed site in R.S.No.315 but that was not the drinking water tank. There was a small R.C.C.shed in North West Corner of R.S.No.318 i.e., in R.S.No.318/2 in Ac.0.23 cents to keep agricultural apparatus but that was not covered by the acquisition. There were no cattle in the shed. There were two irrigation field bodies in private lands, but not canals. One, on northern side of R.S.No.318/1 in an extent of Ac.0.38 cents(not covered by acquisition) and the other on northern side of R.S.No.332, east, to supply irrigation water to the fields from the main body called 'Mindi Kalva'. But those were not at all disturbed and were not covered by the acquisition.

29. Learned counsel further submitted that the petitioners were having Ac. 22.58 cents in R.S.No.318 & 320 besides the land Ac.47.91 cents possessed by their Kith and Kin in R.S.Nos.315, 332 & 331 of the same village and if the land under acquisition Ac. 14.56 cents was deducted from their holding, still there remained an extent of Ac.8.02 cents for agriculture. The petitioners belong to APL Category and they were doing some other business as well.

30. He further submitted that the authorization granted by APPCB is subject to the terms and conditions and the Bhimavaram Municipality adopted and

would ensure the necessary measures for setting up and operating waste processing and disposal facility in the land under Acquisition.

31. Learned counsel for the respondent Nos.1 to 3 submitted that the proceeding passed by the District Collector on Section 5-A enquiry was valid, and based on the material on record, which did not violate any of the rights of the petitioners. There was an imperative need for establishment of compost yard in the land under acquisition, in the larger interest of the public and also in compliance of the orders passed in W.P.No.19351 of 2006. He emphasised about imperative need for establishment of compost yard and there being no alternative land for construction of compost yard for the Bhimavaram Municipality.

32. Respondent No.4 filed counter affidavit giving in detail, the steps taken, for establishment of compost yard in the larger interest of public, prior to as also pursuant to, the directions issued by the High Court in W.P.No.19351 of 2006 (PIL). The stand taken inter-alia is that the site in R.S.No.318 was suggested by the Mandal Revenue Officer basing on the merits vide letter dated 18.11.2006. The proposed site did not cause any water pollution. Its distance was around 2 Km to Bhimavaram town residential area and 2 km away from Yanamaduru village residential area. There were no residential buildings and it did not cause any air, water pollution in any manner. There were no locations of residential buildings, drinking water sources, educational institutions, surrounding the proposed site. The feasibility report was also issued by District Medical and Health Officer, West Godavari District. The Site

Clearance Committee received a certificate from the Panchayat Secretary, Yanamaduru Village to the effect that the 'Kunta' situated in R.S.No.315 was only meant for external usage and was not a source of drinking water. There were no Archeological and historical sites and monuments near to the proposed site. There was no archeological norms violation. The Site Clearance Committee opined that the proposed site was suitable for setting up of a municipal solid waste facility and made recommendation for the proposed site.

33. The respondent No.4, in the counter also took the stand that the land acquisition Officer and Revenue Divisional Officer, Narsapur submitted the enquiry remarks on the objections filed by the land owners. During the enquiry, it was revealed that the objection raised in para-2, that, S.Pichappan and two others were nor residents of Yenamaduru village of Bhimavaram Mandal and were the residents of Tamilnadu state. The proposed lands were not double crop wet lands. Those were under ayacut land. The stand taken is that the land acquisition was required in the interest of the Public and there was no other suitable government land, than the proposed site. The further stand is that it was also decided as a part of precautionary measures that the Municipality will construct a pucca compound around the proposed site; Concrete flooring would be formed inside the site to eradicate seepage and to prevent pollution to neighboring lands; necessary internal peripheral drains will be constructed and the necessary treatment would be given to waste water,

before discharging it into the drain, So, there would be no scope of any water pollution.

34. The further stand of the respondent No.4 in the counter affidavit is that, as per the condition No.6 of the authorization dated 03.10.2007 issued by the APPCB, the Bhimavaram Municipality shall ensure that there shall not be any open burning of waste in the compost yard to avoid air pollution. The garbage brought to the compost yard will be segregated into bio-degradable and recyclable internal waste material and those shall be disposed of as Vermin-compost by constructing vermin-compost units in the proposed compost yard itself. The recyclable waste material shall be disposed of by public calling. So, there will be no air pollution or adverse effect on the crops, or to the public health.

III. <u>POINTS FOR CONSIDERATION:</u>

35. The following points arise for consideration:

A) Whether the impugned proceedings of the District Collector, dated 04.07.2012 on the objections of the petitioners under Section 5A of the Land Acquisition Act call for any interference in W.P.No.24126 of 2012?

B) Whether the notification dated 20.02.2007 under Section 4(1) and Section 6 of the Land Acquisition Act, 1894 and the Award No.2/2007-2008 dated 27.04.2007 along with the notice dated 28.08.2009 deserve to be quashed or declared illegal, as prayed in W.P.No.19806 of 2009 ?

C) Whether a fresh publication under Section 6 of the LA Act, based on the notification under Section 4(1) dated 20.02.2007, cannot be made now?

IV. CONSIDERATION/ ANALYSIS:

36. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

POINT - A

37. In W.P.No.24126 of 2012, the challenge is to the recommendation made by the District Collector vide order/proceedings dated 04.07.2012.

38. Section 5-A of the Land Acquisition Act reads as under:

> **"5A. Hearing of objections**. - (1) Any person interested in any land which has been notified under section 4, subsection (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.
>
> (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.
>
> (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]"

39. In ***Hindustan Petroleum Corporation limited*** (supra), the Hon'ble Apex Court held that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution of India, the State in

exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid. The Hon'ble Apex Court held that Section 5A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary. Whereupon he must submit a report to the appropriate Government in respect of the land which is the subject matter of notification under Section 4(1) of the Act. The Report would also contain recommendations on the objections filed by the owner of the land. The Collector is required to forward the records of the proceedings held by him together with the report. On receipt of such a Report together with the records of the case, the Government is to render a decision thereupon. It was further held that the considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, must precede a proper application of mind on the part of the Government.

40. It is apt to refer para Nos.15 & 16 of ***Hindustan Petroleum Corporation limited*** (supra) which read as under:

> "15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject matter of notification under Section 4(1) of the Act. The said Report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a Report together with the records of the case, the Government is to render a decision thereupon. It is now well-settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. [See Kalumiya Karimmiya v. State of Gujarat (1977) 1 SCC 715 and Delhi Admn. V. Gurdip Singh Uban, (2000) 7 SCC 296].

> 16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exists, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings."

41. Consequently, the Government is the competent authority to take a decision under Section 5A and the District Collector is only an authority to make the recommendations on the objections after holding enquiry.

42. So, the impugned proceedings are only the recommendations. Those recommendations are to be sent to the Government. It is the Government which is the competent authority to take decision. The recommendation, it is well settled in law is not binding on the decision taking authority. The Government may or may not accept the recommendations. It is the decision of the Government under Section 5A(2), which becomes final. Present is the stage of 'no decision' taken by the Government under Section 5A, but is a stage only of the recommendation made by the District Collector to the Government on the objections after holding the enquiry.

43. Consequently, it is not the stage to go into the correctness or otherwise of the recommendations made, in the exercise of the writ jurisdiction. It is only after a decision is taken by the Government under Section 5A, that the occasion may arise for the judicial review with such decision, if the petitioners feel aggrieved from the final decision of the Government.

44. This Court therefore is not proceeding to consider the contentions of the learned counsels, for the parties opposing and supporting the recommendations, except the one contention, for the reason that any observation made by this Court may affect the taking of the decision either way, whereas the Government is legally required to take an independent decision preceded by a proper application of mind to the various factors and the material before it.

45. In ***Gulabrao Keshavrao Patil v. State of Gujarat*** [4]the question was whether the appropriate Government under Section 5A(2) of the Land Acquisition Act had decided the objections raised by the claimants for further action under Section 6 of the Act. There also the Land Acquisition Officer duly conducted the enquiry under Section 5A(1) and submitted the report to the Government for appropriate decision. The High Court rejected the writ petition holding that the Government had not taken the decision under Section 5A(2). The Hon'ble Apex Court held that the High Court was right in rejecting the writ petition as being not proper for interference.

46. Paras 2 and18 of the ***Gulabrao Keshavrao Patil*** (supra) read as under:

> 2. Having heard the counsel on both sides and given our anxious consideration to the respective contentions, we propose to dispose of the matter on merits. The only question is whether the appropriate Government under Section (2) of Section 5-A of the Land Acquisition Act 1 of 1894 (for short, `the Act') has decided the objections raised by the claimants for further action under Section 6 of the Act. The Standing Committee of the Surat Municipal Corporation, authorised by its resolution dated February 27, 1992, the Municipal Commissioner to take appropriate action to acquire the land in question for relieving parking and traffic congestion near Surat railway station. On July 31, 1992, permission was granted by the Town Planning Department to the Corporation to acquire the land in question under Section 78 of the Town Planning Act. A declaration in that behalf was made. Accordingly on October

[4] (1996) 2 SCC 26

> 29, 1992, the Collector had published the notification under Section 4(1) of the Act. It is stated in the declaration that "the District Collector of Surat feels that the lands shown in the attached list may be required for the road and parking for the purpose of public at large by Surat Municipal Corporation". Thereafter, notice under Section 5-A was issued and the appellant had objected to the acquisition in his objections dated 4.1.1993 and 23.2.1993. Later the Land Acquisition Officer duly conducted the enquiry under Section 5-A(1) and submitted the report to the Government for appropriate decision in that behalf. Here the dispute arises as to whether the decision has been taken by the State Government to proceed with the acquisition or to stop further action in that behalf. It is seen that the Revenue Department of the State Government to proceed with the acquisition or to stop further action in that behalf. It is seen that the Revenue Department of the State Government had decided, as reflected in the letter dated 12.7.1993 written by the Section Officer of the Revenue Department that "taking into consideration the objection submitted by the account holder and that taking into consideration the legal position and also the revenue circular dated 20.6.1970, notification under Section 6 cannot be sanctioned. Therefore, the Land Acquisition Officer was requested to do the necessary proceedings accordingly". The Ministry of Urban Development did not agree with the view of the Ministry of Revenue. Consequentially, they moved the Chief Minister to have the issue re-examined. However, before a decision was taken, the Section Officer of the Revenue Department communicated its decision to the Land Acquisition Officer to take further action as indicated above. Since action was not being taken in that behalf, the appellants have approached the High Court for necessary directions under Article 226 of the Constitution. By the impugned order dated 7.12.1994, made in Special Civil Application No.7890/94, the High Court has held that the Government had not taken the decision under sub-section (2) of Section 5-A of the Act. Therefore, the writ petition was rejected. Thus this appeal by special leave."
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> * * * * * * *
>
> 18. It would thus be seen that the decision of the Revenue Minister on July 6, 1973 is not final because the Urban Development Department did not accept or agree to the decision taken by the Minister for Revenue. As stated earlier, when the matter was brought by the Ministry of Urban Development and Housing Department to the notice of the Chief Minister, who holds ultimate responsibility and duty to report to the Governor and accountable to the people, the Chief Minister, in light of instruction 10, should place the decision necessarily before the Council or the Cabinet, as the case may be, and then may be decided by the Chief Minister. It is seen that no decision has been taken by the Chief Minister under instruction 10. Therefore, under Section 5-A(2), no decision was taken to proceed further under Section 6 or to drop the acquisition proceedings. The High Court, therefore, was right in rejecting the writ petition as being not proper for interference."

47. The one contention of the petitioners' counsel that can be considered in this writ petition is that, in view of Rule 4 of the Rules 2000, the notification under Section 4 of the Act could not be issued for an area falling outside the area of the Bhimavaram Municipality for the purposes of such municipality.

48. Rule 4 of the Rules, 2000 reads as under:-

> **"4. Responsibility of municipal authority:-**
>
> 1. Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.
>
> 2. The municipal authority or an operator of a facility shall make an application in Form-I, for grant of authorization for setting up waste processing and disposal facility including landfills from the State Board or the Committee in order to comply with the implementation programme laid down in Schedule I.
>
> 3. The municipal authority shall comply with these rules as per the implementation schedule laid down in Schedule-I.
>
> (4) The municipal authority shall furnish its annual report in Form-II:-
>
> a. to the Secretary-incharge of the Department of Urban Development of the concerned State or as the case may be of the Union Territory, in case of a metropolitan city; or
>
> b. to the District Magistrate or the Deputy Commissioner concerned in case of all other towns and cities,
>
> with a copy to the State Board or the Committee on or before the 30th day of June every year."

49. Rule 4 therefore provides for the responsibility of the Municipal authority inter-alia for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes within the territorial area of the municipality. That, does not mean that, the municipal solid waste of the area of the municipality, has to be disposed of within the area of the municipality. It does not mean that the State Government cannot acquire land for the establishment of compost yard for municipal solid waste of an area of the municipality, outside the area of such municipality. The duty of the municipal authority is with respect of the municipal solid waste of its area for disposal. But, it does not follow from Rule 4, that for disposal of the municipal waste the compost yard should be established in the same municipal area. The municipal waste of the area of one municipality may be disposed of out of its area, at the compost yard established at a place acquired by the Government.

50. The submission based on Rule 4 of the Rules 2000 that, the land outside the area of the municipality could not be acquired for establishment of the compost yard has no force for its acceptance. Acceptance of such an argument would be limiting or restricting the State Government's power under the Land Acquisition Act and would be subjecting it to Rule 4 of the Rules, 2000, whereas, in the view of this Court, the State is competent to acquire the land, even outside the municipal area of one municipality for the purposes of such municipality, to enable that municipality to discharge its statutory functions and duties.

51. So, considered on **point 'A'** it is held that the impugned proceedings do not call for any interference at this stage, since it is for the Government, first to take a decision on those proceedings of recommendation under Section 5A of the Land Acquisition Act.

POINT – B:

52. In W.P.No.19806 of 2009, the challenge is

i) to the notification dated 20.02.2007 under Section 4(1) of the Land Acquisition Act,

ii) to the notification under Section 6 of the Act

iii) to the award dated 27.04.2007

iv) the notice dated 28.08.2009 under Section 5A.

53. The challenge to the notification dated 20.02.2007 under Section 4(1) of the Land Acquisition Act as also to the notice dated 28.08.2009 under Section 5A is bound to fail for the obvious reason that in Civil Appeal No.3634 of 2012, the Hon'ble Apex Court vide judgment dated 17.04.2012 directed that the concerned authority shall proceed with the enquiry under Section 5A of the Land Acquisition Act pursuant to the notice dated 28.08.2009 and shall complete the enquiry. The notification under Section 4 which was under challenge in the previous round of litigation upto the Hon'ble Apex Court was not interfered except to the extent that, the enquiry was directed to be held under Section 5A after holding that such enquiry could not be dispensed with.

54. The challenge to the notification under Section 6 of the Act and to the Award is sustainable.

55. The notification under Section 4(1) was initially challenged in W.P.No.5905 of 2007, out of which the matter was taken up to the Hon'ble Apex Court in Civil Appeal No.3634 of 2012. In those proceedings the notification to the extent of dispensation with the enquiry under Section 5A was declared to be ineffective with further directions to hold the enquiry under Section 5A and complete the same.

56. The stage of Section 6 is after the enquiry is completed and Government takes a decision under Section 5A, on the recommendations of the District Collector that there exists the public purpose for the acquisition. On taking of such decision the declaration under Section 6 is made.

57. In ***Kamal Trading Private Limited v. State of West Bengal***[5], the Hon'ble Apex Court held that Section 5-A(1) of the LA Act gives a right to any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5A requires the Collector to give the objector an opportunity of being heard in person or by any person authorized by him in this behalf. After hearing the objections, the Collector can, if he thinks it necessary, make further inquiry. Thereafter, he has to make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the appropriate Government and the decision of the appropriate Government on the objections shall be final. It was further held that the hearing contemplated under Section 5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration

[5] (2012) 2 SCC 25

of the report, if any, made by the Collector under Section 5A(2). Relevant part from para 15 of Kamal Trading Private Limited (supra) is as under:

> "15. Hearing contemplated under Section 5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in ***Hindustan Petroleum Limited*** (supra), the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf."

58. In Kamal Trading Private Limited (supra) the Hon'ble Apex Court reiterated, as in ***Hindustan Petroleum Corporation Limited*** (supra), that the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf. The Hon'ble Apex Court further held that Sub-Section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The hearing contemplated under Section 5A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this

provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the Act.

59. In ***Kamal Trading Private Limited*** (supra), the notification under Section 4 was published. The objections were raised under Section 5A. The Second Land Acquisition officer issued a notice dated 23.09.1997 fixing the date of hearing of the objections and on that date they requested to fix a another date which was postponed to a future date. Further requests for adjournment was not accepted and the Acquisition Officer had submitted a report to the Government. The declaration under Section 6 was made and published by the Government. The Hon'ble Apex Court recorded that there was total non-compliance or substantial non-compliance with the provisions of Section 5A of the Act. Since no hearing was given to the objectors. The declaration under Section 6 was set aside.

60. This Court is of the view that once the enquiry under Section 5A was directed to be held, the consequence flowing from such direction would be that the previous action taken pursuant to the notification under Section 4(1), which invoked the urgency clause and dispensed with the enquiry, i.e., issuance of Section 6 notification and passing of the award dated 27.04.2007, would be of no legal affect and would fall to the ground. Those proceedings cannot be saved. In the present case, the declaration under Section 6 can certainly said to be in total non-compliance of Section 5A and so deserving to be set aside as also the impugned award.

61. On **Point – B** it is held that Section 4 notification and the notice under Section 5-A calls for no interference but the notification under Section 6 and the Award deserves to be quashed.

POINT - C

62. Learned counsel for the petitioner next submitted that based on the same notification under Section 4(1) any notification under Section 6 cannot be issued, as Section 6 provides for the period of limitation within which publication is to be made. In the case of Section 6(1) proviso 1, the period is three years and in the case of proviso 2, it is one year, which period has already expired. He contended that the proviso to Section 6 of the Land Acquisition Act is mandatory and bears no exceptions. No declaration under Section 6 can now be made after the expiry of one year (in the present case) from the date of publication of notification under Section 4(1). The notification under Section 4 was issued on 20.02.2007 and since then the statutory period for making the declaration under Section 6 has already expired. So, no further action can be taken pursuant to the notification under Section 4. He referred to the judgments in the cases of ***Padma Sundara Rao*** (supra) and ***Vijay Narayan Thatte*** (supra) in support of his contention.

63. So far as, the issuance of fresh notification under Section 6, and to the passing of award is concerned, this Court is of the view that it would be dependent on the outcome of the decision on the enquiry under Section 5A. The reason is that if the Government takes the decision in favour of the

petitioners/objectors that there is no public purpose, there would be no occasion for acquisition and no occasion to proceed further for declaration and publication under Section 6 of the Act or to pass an award.

64. But, if the Government takes a decision that there is public purpose for acquisition of the land in question, then the question would be if the fresh notification under Section 6 can be issued pursuant to the notification under Section 4(1) dated 20.02.2007.

65. Section 6 of the Land Acquisition Act, 1894 reads as under:

> **"6. Declaration that land is required for a public purpose**. - (1) Subject to the provision 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, 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, 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."

66. In ***Padma Sundara Rao*** (supra), the Constitution Bench of the Hon'ble Apex Court held that in terms of the proviso to Section 6, the declaration cannot be made under Section 6 in respect of any land covered by the notification under Section 4(1) of the Act after the expiry of three years or one year from the date of its publication, as the case may be. The proviso deals with two types of situations. It provides for different periods of limitation depending upon the question whether (i) the notification under Section 4(1) was published prior to commencement of Land Acquisition (Amendment and Validation) Ordinance, 1967, but before commencement of Land Acquisition (Amendment) Act, 1984, or (ii) such notification was issued after Land Acquisition (Amendment) Act, 1984. In the former case, the period is three years whereas in the latter case it is one year.

67. In ***Padma Sundara Rao*** (supra), it was further held that the Explanation 1 appended to Section 6(1) provides that in computing the period of three years or one year as the case may be, the period during which any

action or proceeding to be taken in pursuance of the Notification under Section 4(1), is stayed by an order of the Court, shall be excluded.

68. In ***Padma Sundara Rao*** (supra) the Hon'ble Apex court considered the three Judge Bench judgment in N.Narasimhaiah v. State of Karnataka (1996) 3 SCC 8 and State of Karnataka v. D.C.Nanjudaiah (1995) 5 SCC 206. In Narasimhaiah's case the notification under Section 4(1) was published, dispensing with the enquiry under Section 5A and invoking urgency clause and declaration was published within one month but the possession was not taken due to dilatory tactics of the interested person and the court ultimately found that the exercise of urgency power was not warranted and so it was neither valid nor proper and directed the Government to give an opportunity to the interested person and to conduct an enquiry under Section 5-A. It was held that, if the enquiry is dragged for obvious reasons, declaration under Section 6(1) cannot be published within the limitation from the original date of the publication of the notification under Section 4(1). A valid notification under Section 4(1) becomes invalid. It was held that on the other hand, after conducting enquiry as per court order and, if the declaration under Section 6 is published within one year from the date of the receipt of the order passed by the High Court, the notification under Section 4(1) becomes valid since the action was done pursuant to the orders of the court and compliance with the limitation prescribed in clauses (i) and (ii) of the first proviso to sub-section (1) of the Act would be satisfied. The Nanjudaiah's case followed the aforesaid view as in Narasimhaiah's case (supra).

69. The Hon'ble Apex Court in ***Padma Sundara Rao*** (supra) held that stipulation regarding the urgency in terms of Section 5A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The Hon'ble Apex Court held further that, the legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous and there is no scope for reading something into it. The period could not be stretched to have the time period run from date of the order of the High Court or from the service of High Court's order. The view taken in Narasimhaiah's case (supra) that the period under Section 6 proviso was from the date of the receipt of the order of the High Court and if the declaration was within the statutory period from the date of the order or from the date of service of the order, the notification under Section 4(1) becomes valid, was not approved but was overruled. The Hon'ble Apex Court in ***Padma Sundara Rao*** (supra), held that such a view could not be reconciled with the language of Section 6(1) and if the view was accepted it would mean that a case can be covered by not only clauses (i) and (ii) of proviso of Section 6(1) of the Act, but also by a non-prescribed period and the same can never be the legislative intent. The declaration under Section 6 was quashed as the same was after the statutory period, laying down that the legislature specifically provided for periods covered by orders of stay or injunction which clearly showed that no other period was intended to be excluded and that there was no scope for providing any other period of limitation.

70. Para Nos.14, 16 & 17 in Padma Sundra Rao (supra) deserves to be reproduced which read as under:

> "14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.] The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent."
>
> * * * * *
>
> "16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K.Chinnathambi Gounder (supra) was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curiae neminem gravibit highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.
>
> 17. The view expressed in Narasimhaiah's case (supra) and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu's case and Oxford's case (supra) is affirmed."

71. In ***Vijay Narayan Thatte*** (supra), the Hon'ble Apex Court held that the proviso to Section 6 of the Land Acquisition Act is mandatory and bears no exception. It was observed that the language of statute is plain and clear and so there was no scope for consideration of equity, public interest or seeking the intention of the legislature.

72. The position of law on the aforesaid aspect is thus well settled that

i) The declaration under Section 6 cannot be made in pursuance of the notification under Section 4(1) of the Act, after the expiry of three years

or one year, as the case may be under the proviso to Section 6, depending upon the publication of the notification under Section 4(1) before or after the commencement of the Land Acquisition (Amendment) Act, 1984;

ii) In computing the period of three years or one year, as the case may be under the proviso to Section 6 of the Act, the period during which any action or proceeding to be taken in pursuance of the notification under Section 4(1), is stayed by an order of the Court, shall be excluded;

iii) there is no scope of providing any other period of limitation or excluding any other period, and

iv) the stipulation regarding the urgency in terms of Section 5A of the Act has no role to play when the period of limitation is reckoned under Section 6 of the Act.

73. In the light of the aforesaid legal position, while calculating the period under Section 6 for publication, the period during which there is stay, shall be excluded. So, excluding that period of stay the fresh notification under Section 6, when issued, may be within the statutory period or it may not be as well. But, at this stage it cannot be so determined. After the decision under Section 5A, if the notification under Section 6 is issued then such a question may arise which may be open to be agitated at that stage in appropriate proceedings.

74. On **Point-C**, it is held that if the decision taken by the Government under Section 5-A is for acquisition then the notification under Section 6, can be issued only within the limitation period in terms of Section 6(1) proviso (ii) Explanation 1, otherwise not, but in such a case fresh acquisition proceedings can be taken in accordance with law.

RESULT:

75. Thus considered, in the result:

i) Writ Petition No.24126 of 2012 is disposed of directing the State Government to take appropriate decision under Section 5A of LA Act considering the recommendations of the District Collector vide proceedings dated 04.07.2012, along with the material on record in accordance with law, within a period of three months.

ii) The W.P.No.19806 of 2009 is partly allowed setting aside the notification under Section 6 of the Land Acquisition Act as also the award No.2 of 2007-2008 dated 27.04.2007, whereas

iii) The W.P.No.19806 of 2009 is partly dismissed to the extent of challenge to the notification dated 20.02.2007 under Section 4 of the Land Acquisition Act, and the notice dated 28.08.2009 under Section 5A of the LA Act.

iv) Depending upon the decision of the Government under Section 5A of the Land Acquisition Act

a) if in favour of acquisition, the declaration under Section 6 shall be made strictly within the period of limitation as provided by Section 6(1) proviso (ii) read with Explanation 1 of the Land Acquisition Act.

b) if such limitation has expired no declaration under Section 6 shall be made,

c) i) if the decision is not in favour of acquisition or

ii) in case Clause iv (b) supra is attracted, the possession of the petitioners land shall be restored to the concerned writ petitioners respectively within a reasonable period.

v) However, in case of clause iv (b) (supra), being attracted, it shall be open for the State to initiate fresh proceedings for acquisition in accordance with law.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Dated:
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B/o.
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NOs: 19806 of 2009 & 24126 of 2012

Dated:
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