
(2014) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26156 of 2006

Gunreddy Ramkoti Reddy

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 300A
Evidence Act, 1872 — Section 13, 4, 40, 40, 40
Land Acquisition Act, 1894 — Section 10, 16, 17, 17(1), 17(2)
Specific Relief Act, 1963 — Section 43

Citation : (2014) 5 ALD 146 : (2014) 6 ALT 718 : (2015) ALT(Rev) 62

Hon'ble Judges : Akula Venkata Sesha Sai, J

Bench : Single Bench

Advocate : C. Raghu, Advocate for the Appellant

Final Decision : Dismissed

Judgement

A.V. Sesha Sai, J.—This writ petition, filed under Article 226 of the Constitution of India, assails the Award No. 74/2006-2007 dated 29.06.2006, passed by the Special Deputy Collector Land Acquisition, A.M.R.P. Unit-II, Nalgonda, the third respondent herein.

2. The pleaded case of the petitioners is as follows:

The third respondent issued a draft notification under sub-section 1 of Section 4 of the Land Acquisition Act, 1894 (hereinafter called "the Act"), proposing to acquire a total extent of Ac. 46-22 Gts. including the petitioners land situated in Sy. Nos. 137, 146, 147, 148, 238, 241, 242 and 243 of Akkapally Nagar P.A. Pally, P.A. Pally village and Mandal, Nalgonda District, for the public purpose i.e., for R & R of Alimineti Madhava Reddy Project. By invoking the provisions of Section 17(4) of the Act, the enquiry u/s 5-A of the Act was dispensed with. The said Section 4(1) notification was published in the Gazette on 25.02.2006 and in the newspapers on 03.03.2006 and 01.03.2006 and in the locality on

20.03.2006. One Mr. Chittaranjan Reddy and another, whose lands are also covered by the said notification, filed W.P. No. 11768/2006, questioning the notification u/s 4(1) of the Act and invocation of the provisions of Section 17(4) of the Act, and this Court, by virtue of an order dated 16.06.2006, disposed of the said writ petition and the operative portion of the said order reads as under:

In the aforesaid circumstances, the decision in the impugned notification to invoke the urgency clause and dispensing with the enquiry u/s 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 u/s 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 u/s 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.

3. After coming to know about the above said order, petitioners 1 to 4 filed W.P. No. 15995/2006, assailing Section 4(1) notification and the action of the respondents in dispensing with the 5-A enquiry by invoking Section 17(4) of the Act and the petitioners 5 to 8 filed W.P. No. 15450/2006 questioning the same. W.P. No. 15995/2006 was disposed of on 01.08.2006, directing to hold 5-A enquiry and the respondents thereafter filed a review application on the ground that the Award No. 74/2006-2007 was already passed on 29.06.2006 and the said review was allowed by this Court. Challenging the said award passed by the third respondent herein and while contending that the action of the respondents is arbitrary, illegal and contrary to the provisions of the Act, the present writ petition has been filed.

4. This Court, while ordering Rule Nisi on 18.12.2006, passed the following interim order in W.P.M.P. No. 33587 of 2006 in W.P. No. 26156 of 2006:-

Prima facie, the critical steps in the acquisition process, in the case on hand, are in gross transgression of the provisions of the Land Acquisition Act, 1894 (for short "the Act"). The relevant dates, as apparent from the impugned award No. 74-2006-07, dated 29-6-2006 are as under:

A notification u/s 4(1) of the Act was published in the Gazette on 25-02-2006 in two daily News papers on 03-3-2006 and 01-3-2006 and the substance of the notification was published in the village and on the land in question on 20-3-2006. Even before the substance of the notification was published in the village (on 20-3-2006), the draft declaration u/s 6 of the Act was issued, on 27-02-2006. No possession of the land was taken either by the Requisitioning

Department or by the Land Acquisition Officer, as is apparent from the statement made in the award, in the paragraph relating to payment of interest (internal page No. 42 of the award).

On this apparent factual scenario, the invocation of the urgency clause, issuance of Section 6 declaration and the failure to take possession of the land within three months (as required u/s 17(5) of the Act), prima facie, constitutes transgression of mandatory provisions of the Act. The award No. 74/2006-07, dated 29-6-2006 is therefore, suspended, in so far as the petitioners lands are concerned, to the extent of acquisition of their lands.

5. The above interim order dated 18.12.2006 was vacated on 09.10.2007 vide orders in W.V.M.P. No. 760/2007 and subsequently in W.P.M.P. No. 37091/2008 status quo was granted by this Court on 29.12.2008 and the same was extended until further orders on 30.01.2009 and the said order was vacated on 04.03.2009 in W.V.M.P. No. 278/2008 and the said order reads as under:-

It appears the lands of the petitioners were sought to be acquired by way of a Notification u/s 4(1) of the Land Acquisition Act dated 25.02.2006 and Section 6 declaration was also issued simultaneously. However, the said Notification was under challenge before this Court in three writ petitions, firstly, in W.P. No. 11768 of 2006 for which the petitioners are not parties and, secondly, in W.P. Nos. 15995 of 2006 and 15450 of 2006, for which the petitioners were the parties. The said writ petitions were disposed of directing the authorities to conduct Section 5-A enquiry. However, it appears, review petitions were filed in all the three writ petitions and, insofar as W.P. 11768 of 2006 is concerned, since it was disposed of on 16.06.2006 and an Award was passed thereafter i.e. on 29.6.2006, the review petition filed in the said writ petition was dismissed, since the Award was not passed as on that day. Whereas the review petitions filed in the other two writ petitions were allowed and the petitioners were directed to challenge the Award passed by the respondents on 29.6.2006.

Initially, this Court suspended the operation of the Award dated 29.6.2006, but on filing a vacate stay petition, the same was vacated on 19.10.2007. In the vacate stay petition it was stated that the award was not only passed but the petitioners were also dispossessed from the lands i.e. respondents have also taken over possession of the lands on 20.7.2006. Thereafter, the matter was carried in appeal, being W.A. No. 1001 of 2007, and the same was dismissed on 12.2.2008. Thereafter, it appears, one of the petitioners died. Therefore, his legal representatives were sought to be impleaded. While filing the implead party petition, W.P.M.P. No. 37091 of 2008 was also filed seeking stay of dispossession and this Court granted stay of dispossession. Therefore, the present vacate stay petition is filed seeking to vacate the said order.

The earlier vacate stay petition was allowed on the ground that the petitioners were already dispossessed and that order attained finality in the writ appeal, as noticed above. Under these circumstances, I am of the opinion that a second

stay petition filed in W.P.M.P. No. 37091 of 2008 itself is not maintainable.

Under these circumstances, the interim order dated 29.12.2008 passed in W.P.M.P. No. 37091 of 2008 is liable to be vacated. It is accordingly vacated and the W.V.M.P. is allowed.

Registry is directed to post the writ petition for final hearing on 26th March, 2009, high up in the list.

6. The above said order, vacating the interim order in W.V.M.P. No. 760/2007 was confirmed in W.A. No. 396/2009 dated 25.03.2009.

7. A counter affidavit is filed on behalf of the respondents herein denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

8. Heard Sri C. Raghu, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

9. Contentions of the learned counsel for the petitioners:

1. The action of the respondents in not holding 5-A enquiry in respect of the land of the petitioners while extending the said benefit to one Sri Chittaranjan Reddy is discriminatory, illegal and arbitrary.

2. The action of the respondents is violative of Section 17(4) of the Act, according to which, if possession is not taken within 90 days, it is obligatory on the part of the authorities to hold 5-A enquiry.

3. The order passed in favour of Sri Chittaranjan Reddy in W.P. No. 11768/2006 dated 16.06.2006 is an order in rem. The authorities should have conducted 5-A enquiry in respect of the petitioners herein also and the action of the respondent authorities in not holding the said enquiry in respect of the petitioners tantamounts to unreasonable classification.

4. The very publication of Section 6 declaration in Gazette on 27.02.2006 even before publication of 4(1) notification in the locality on 20.03.2006 is bad and would vitiate the proceedings.

5. There cannot be two declarations, one in respect of Sri Chittaranjan Reddy and another in respect of the petitioners.

10. In support of his contentions, the learned counsel for the petitioners places reliance on the judgments in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, and the Judgment of Bihar High Court in the case of Bihar State Board of Religious Trusts Vs. Raj Ratan Gir and Others, and the judgment of High Court of Madras in the case of The Secretary of State for India in Council Vs. Syed Ahmad Badsha Sahib Bahadur, .

11. In the case of Hindustan Petroleum Corporation Limited (supra), the Hon''ble

apex Court at paragraphs 8 and 9, held as follows:-

8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial noncompliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

In the case of *The State of Madhya Pradesh and Others (supra)*, the Hon''ble apex Court at paragraph No. 2, held as follows:

2. The question that has arisen is whether a number of declarations u/s 6 of the Land Acquisition Act, 1894 can be issued successively in respect of different pieces of lands included within the locality specified in a notification issued u/s 4 of the Act. My learned brother has said that Section 4, 5A and 6 of the Act have to be read together and so read, the conclusion is clear that the Act contemplates only a single declaration u/s 6 in respect of a notification u/s 4. I so entirely agree with his reasonings for this view that I find it unnecessary to add anything to them. But it was said that there are other considerations which indicate that our reading of these sections is unsound. In this judgment I propose to deal only with these considerations.

3. ...But even otherwise, this view of the matter does not support the argument. After the issue of a notification u/s 4, an owner of land in the locality notified cannot have full beneficial enjoyment of his property; he cannot, for example, build on his land for if he does so and the land is acquired, he will get no compensation for the building put up and will lose the costs incurred for it. If it is a justification for saying that a number of declarations can be made u/s 6 because otherwise the Government may have to pay more, it seems to me that it

is at least an equal justification for saying that such declarations cannot have been contemplated by the Act because that would mean an avoidable deprivation of the owners of their beneficial enjoyment of lands till such time as the Government is able to make its plan. As the Act is an expropriatory Act, that interpretation of it should be accepted which puts the least burden on the expropriated owner. The Government could, of course, always make a complete plan at a time and I am unable to hold that the Act contemplated that it need not do so and go on making declarations from time to time as its plan goes on taking shape even though the result might be to increase the hardship of persons whose lands are taken away.

4. Reference was then made to sub-sections (1) and (4) of Section 17. These give the Government the power to take possessions of waste and arable lands included in the notification u/s 4 on the expiry of fifteen days from the publication of the notice mentioned in Section 9 and before the making of the award, without holding the enquiry contemplated by Section 5. It was said that if a notification u/s 4 included both arable and waste lands as also lands of other descriptions, it will be necessary to issue two separate declarations under s. 6 in respect of the different kinds of lands. It was also said that the vesting in respect of the two kinds of lands in the Government would also be by stages. All this, it was contended, would support the view that more than one declaration u/s 6 was contemplated in such a case. I do not feel called upon to express any opinion whether in such a case a number of declarations u/s 6 is contemplated. It is enough to say that it is not contended that this is a case of that kind. Therefore, it cannot be said that the disputed declaration u/s 6 was in this case justified u/s 17. On the contrary, if the contention that Section 17 contemplates more declarations than one u/s 6 be correct, that would be because the statute specifically so provided for a particular case. It must follow that without a special provision, more than one declaration u/s 6 was not contemplated.

5. The next contention was that section 48 which gives the Government power of withdrawal from acquisition before taking possession implies that a notification u/s 4 remains in force for all purpose till such withdrawal, and if it so remains in force, successive declarations u/s 6 must be permissible for otherwise it would be useless to keep the notification u/s 4 in force. The substance of this argument is that the only way to get rid of a notification u/s 4 is by a withdrawal of the acquisition proceedings u/s 48 if the proceedings are not withdrawn, the notification remains and then there may be successive declaration. This argument seems to me clearly ill founded. Now a notification u/s 4 will be exhausted if declaration is made under it in respect of the entire area covered by it. Likewise, it seems to me that if the correct interpretation is that only one declaration can be made u/s 6 that also would exhaust the notification u/s 4; that notification would no longer remain in force to justify successive declarations u/s 6 in respect of different areas included in it. There is nothing in the Act to support the view that it is only a withdrawal u/s 48 that puts a notification u/s 4 completely out of the way. The effect of Section 48 is to withdraw the acquisition

proceedings, including the notification u/s 4 with which it started. We are concerned not with a withdrawal but with the force of a notification u/s 4 having become exhausted. That is different case and has nothing to do with a withdrawal.

9. On May 16, 1949, a notification was issued u/s 4(1) of the Act, by which it was declared that lands in eleven villages including village Chhawani was likely to be needed for a public purpose i.e. the erection of an iron and steel plant. It appears that thereafter notifications were issued u/s 6 with respect to the villages notified in the notification u/s 4(1) and it is not in dispute that a number of such notifications Section 6 were issued with respect to village Chhawani and some land in that village was acquired under those notifications the last of such acquisitions being in the year 1956. Thereafter on August 12, 1960, another notification u/s 6 of the Act was issued by the appropriate government proposing to acquire 486.17 acres of land in village Chhawani and the area which was proposed to be acquired was demarcated on a map kept in the office of the Collector of Durg for inspection. The notification also stated that the provisions of Section 5-A of the Act shall not apply thereto. Thereupon the respondents who are interested in some of the land notified filed a writ petition in the High Court challenging the validity of the notification u/s 6. The principal contention raised on their behalf was that the notification u/s 6 of the Act was void as it had not been preceded by a fresh notification u/s 4(1) and the notification u/s 4(1) issued in 1949 had exhausted itself when notifications u/s 6 with respect to this village had been issued previously and could not support the issue of another notification u/s 6. In substance the contention of the respondents in their petition was that a notification u/s 4(1) could be followed only by one notification u/s 6 and that there could be no successive notifications u/s 6 with respect to lands comprised in one notification u/s 4(1).

10. The petition was opposed on behalf of the appellant, and it was contended that it was open to the appropriate government to issue as many notifications as it deemed fit u/s 6 of the Act with respect to lands comprised in one notification u/s 4(1) and that it was not correct that the notification u/s 4(1) was exhausted as soon as one notification u/s 6 was issued with respect to a part of the land comprised in the notification u/s 4(1), and that it was always open to the appropriate government to issue successive notifications u/s 6 so long as these notification were with respect to land comprised within the notification u/s 4(1).

11. The High Court has accepted the contention of the respondents and has held the a notification u/s 4(1) can only be followed by one notification u/s 6 and that it is not open to the appropriate government to issue successive notifications with respect to parts of the land comprised in one notification u/s 4 and that as soon as one notification is issued u/s 6 whether it be with respect to part of the land comprised in the notification u/s 4(1) or with respect to the whole of it, the notification u/s 4(1) is exhaustive and cannot support any further notification u/s 6, of the Act with respect to parts of land comprised in the notification u/s 6. In

consequence the petition was allowed and then notification dated August 12, 1960 quashed. The appellant then applied to the High Court for a certificate which was granted; and that is how the matter has come up before us.

11a. The question whether only one notification u/s 6 can be issued with respect to land comprised in the notification u/s 4(1) and thereafter the notification u/s 4(1) exhausts itself and cannot support any further notification u/s 6 with respect to such land depends upon the construction of Sections 4, 5-A and 6 of the Act and on the connection between these provisions. Before however we deal with these provisions we may briefly refer to the scheme of the act and the background in which these provisions have to be interpreted.

14. It is in this background that we have to consider the question raised before us. Two things are plain when we come to consider the construction of sections 4, 5A and 6. The first is that the Act provides for acquisition of land of persons without their consent, though compensation is paid for such acquisition; the fact however remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly construed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is not in dispute that it is open to the appropriate government to issue as many notifications as it deems fit u/s 4(1) even with respect to the same locality followed by a proper notification u/s 6 so that the power of the appropriate government to acquire land in any locality is not exhausted by the issue of one notification u/s 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification u/s 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification u/s 4(1) and the notification u/s 6 in case prices have risen in the meantime. This delay is likely to be greater if successive notifications u/s 6 can be issued with respect to land comprised in the notification u/s 4 with greater consequential loss to the person whose land is being acquired if prices have risen in the meantime. It is however urged that price may fall and in that case the person whose land is being acquired will stand to gain. But as it is open to the appropriate government to issue another notification u/s 4 with respect to the same locality after one such notification is exhausted by the issue of a notification u/s 6, it may proceed to do so where it feels that prices have fallen and more land in that locality is needed and thus take advantage of the fall in prices in the matter of acquisition. So it is clear that there is likely to be prejudice to the owner of the land if the interpretation urged on behalf of the appellant is accepted while there will be no prejudice to the government if it is rejected for it can always issue a fresh notification u/s 4(1) after the previous one is exhausted in case prices have fallen. It is in this background that we have to consider the question raised before us.

16. ...There is nothing in sections 4, 5-A and 6 to suggest that section 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of that locality it needs. This is followed by a declaration u/s 6 specifying the particular land needed and that in our opinion completes the process and the notification u/s 4(1) cannot be further used thereafter. At the stage of section 4 the land is not particularised but only the locality is mentioned; at the stage of section 6 the land in the locality is particularised and thereafter it seems to us that the notification u/s 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire (section 4(1)) to the declaration u/s 6 unmistakably leads one to the reasonable conclusion that when once a declaration u/s 6 particularising the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularised area stands automatically released. In effect the scheme of these three sections is that there should be first a notification u/s 4(1) followed by one notification u/s 6 after the government has made up its mind which land out of the locality it requires.

21. Lastly it is urged that vesting is also contemplated in two stages and that shows that successive notifications can be issued u/s 6 following one notification u/s 4(1). Section 16 provides for taking possession and vesting after the award has been made. Section 17 provides for taking possession and consequent vesting before the award is made in case of urgency. We fail to see how these provisions as to vesting can make any difference to the interpretation of sections 4, 5-A and 6. Section 16 deals with normal case where possession is taken after the award is made while section 17(1) deals with a special case where possession is taken fifteen days after the notice u/s 9(1). Vesting always follows taking of possession and there can be vesting either u/s 16 or u/s 17(1) depending upon whether the case is a normal one or an urgent one. What we have said with respect to section 17(1) and section 17(4) would apply in this matter of vesting also and if the matter is of urgency the government can always issue two notifications u/s 4, one relating to land urgently required and covered by section 17(1) and the other relating to land not covered by section 17(1). The argument based on these provisions in section 16 and section 17 can have no effect on the interpretation of sections 4, 5-A and 6 for reasons which we have given when dealing with sections 17(1) and 17(4). We are therefore of opinion that the High Court was right in holding that there can be no successive notifications u/s 6 with respect to land in a locality specified in one notification u/s 4(1). As it is not in dispute in this case that there have been a number of

notifications u/s 6 with respect to this village based on the notification u/s 4(1) dated May 16, 1949, the High Court was right in quashing the notification u/s 6 issued on August 12, 1960 based on the same notification u/s 4(1).

In the case of Bihar State Board of Religious Trusts (*supra*), a Division Bench of High Court of Bihar, at paragraph 7, held as under:

7. Mr. Prem Lall, at a later stage of his submissions, urged that the order passed by the Authority u/s 43 of the Act was in the nature of an order or judgment in rem and, as such, was binding on the plffs. even though they were not parties to the proceeding before the Authority. Strictly speaking, it is not necessary to decide this question, because whether the order passed by the Authority u/s 43 of the Act was an order in rem or was an order in personam, it will have no effect if the order-as in the present case, was without jurisdiction. Yet, as the point has been argued at length, it may e briefly disposed of. It is true that Clause (a) of Sub-section (2) of Section 43 provides for the publication of a general notice in the prescribed manner calling upon all persons having any claim to such property to file their claims within a certain time from the publication of the general notice. In Halsbury's Laws of England, Volume 22, page 742, paragraph 1605, judgments in rem and in personam have been have been described as under:

A judgment in rem may be defined as the judgment of a court of competent jurisdiction determining the status of a person or thing, or the disposition of a person or thing, or the disposition of a thing, as distinct from the particular interest in it of a party to the litigation. A judgment in personam determines the rights of the parties inter se to or in the subject matter in dispute, whether it be corporeal property of any kind whatever, or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant.

There is nothing in the above passage to indicate that merely because a procedure for giving a general notice calling upon all persons having any interest or claim in the property which might be the subject-matter of adjudication or determination before a court or an Authority has been provided for, the order passed by the Authority or the judgment rendered by the court will be an order or a judgment in rem. Moreover, apart from the fact that Clause (B) of Sub-section (2) of Section 43 provides for notices to be served on the Board and on the persons stated in the application or known to such authority to be in possession of the property clearly envisaging the determination of some particular interest of a particular party in the subject matter of litigation, we find that under Sub-section (5) and (6) of Section 43 the order passed by Authority is made subject of the final result of any suit that might be instituted by the person who is aggrieved by the said order. In this connection, reference may be made to Section 41 of the Indian Evidence Act, 1872. In the case of Secretary of State v. Syed Ahmad Badsha Sahib Badadur AIR 1920 Mad. 248 F.B. Kumaraswami, J. observed as followed:

If it a judgment in rem, the court u/s 41 of the Evidence Act will treat it as conclusive proof of the matters stated in that section and u/s 41 it will prevent evidence from being given for the purpose of disproving the facts established by the Judgment in rem. One has only to file the judgment and the court has no option but to decide the matter covered by it in accordance with the declaration in that judgment, even though the other party may be in a position to prove facts to the contrary. So far as judgments in rem are concerned, I think the matter is codified by Section 41 of the Evidence Act which stated that judgments would be judgments in rem so as to make them conclusive proof of the declarations granted by them. It seems to me that it is not open to us, in the face of the sections of the Civil Procedure Code, the Evidence Act and the Specific Relief Act, to hold that judgments not falling within those sections would still be a bar to an action or afford conclusive proof. This, in effect, would be to create new kinds of res judicata and to destroy the distinction between judgments in rem and judgments in personam which has been laid down in Sections 41 and 42 of the Evidence Act.

An order passed u/s 43 of the Act cannot be said to be an order passed in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction. On this short ground alone, apart from the other considerations into which in the instant case it is not necessary to go, it must be held that the order does not partake the character of an order in rem; and, as the plaintiffs were neither parties nor could be said to be represented through their brother, defendant No. 2, in the proceedings before the Authority in which the impugned order was passed, they can not be said to be bound by the same.

and in the case of Secretary of State (supra), a Division Bench of Madras High Court, held as under:

The question is how far and under what circumstances can a judgment in personam be given the force of a judgment in rem or be pleaded as a bar under S. 11, CPC in cases where it is pleaded as a defence to an action, by third parties who do not claim under or were not represented by the parties to the original action. So far as the statute law in this country is concerned, the case is governed by S. 11 of the CPC which deals with res judicata, Ss. 40 to 41 of the Evidence Act which deal with the relevancy of judgments of competent Courts and S. 43 of the Specific Relief Act which deals with declaratory decrees. Under S. 11 of the CPC one of the conditions precedent to its application is that the former suit should be "between the same parties or between parties under whom they or any of them claim" and the section is a bar to the trial of a suit or issue in which the matter directly and substantially in issue in the previous suit. The section codifies the law in British India as regards the plea of res judicata and, though the principle has been applied to proceedings other than suits (e.g.) execution proceedings), the essentials required by the section as to identity of the questions involved and parties has not been lost sight of S. 43 of the Specific Relief Act enacts that a declaratory decree passed under the Act is binding only

on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. Ss. 40 to 44 of the Evidence Act deal with the relevancy of judgments of Courts of Justice. S. 40 enacts that the existence of any judgments, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial. S. 41 deals with final judgments, orders or decrees of competent Courts in the exercise of Probate, Matrimonial, Admiralty or Insolvency jurisdiction, or what is known as judgments, in rem and it states that such judgments, orders or decrees are conclusive proof of the matters specified in the section: and, by virtue of S. 4 of the Evidence Act, evidence cannot be allowed to disprove the facts established by such judgments. S. 42 refers to judgments relating to matters of a public nature relevant to the enquiry and the section states that such judgments, though evidence, are not conclusive proof of that which they state, thus allowing evidence to be given to disprove the facts found in the judgments. S. 43 says that judgments, orders or decrees, other than those mentioned in Ss. 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Act (e.g., S. 13). S. 44 enables a party to show that any judgments, order or decree which is relevant under Ss. 40, 41 or 42, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

In dealing with this question, I think the distinction between the effect of a judgment as preventing the Court from trying the same matter in issue in subsequent proceedings and as simply affording evidence of the truth or falsity of the claim under consideration should be borne in mind. In the former case S. 11 declares that the Court shall not try the suit or issue and the plea is one in bar to the maintainability of the action. In cases where there is no bar under S. 11, the Court has to try the issue and if the judgment is filed for the purpose of proving the plaintiff's claim or for the purpose of proving defence to the action, it is relevant only as a piece of evidence the probative value of which is regulated by the provisions of the Evidence Act. If it is a judgment in-rem, the Court under S. 41 of the Evidence Act will treat it as conclusive proof of the matters stated in that section and under S. 4 it will prevent evidence being given for the purpose of disproving.... So far as judgment in rem are concerned, I think the matter is codified by S. 41 of the Evidence Act which states what judgments would be judgments in rem so as to be made conclusive proof of the declarations granted by them. It seems to me that it is not open to us, in the face of the sections of the Civil Procedure Code, the Evidence Act and the Specific Relief Act, to hold that judgment is not falling within those sections would still be a bar to an action or afford conclusive proof.... Turning to the Evidence Act, I have already pointed out that Ss. 41 and 42 draw a distinction between Judgments in rem and judgments in personam and it seems to me, to be clear from the

sections that a Judgment which does not fall within S. 41 can only be evidence but cannot be used for the purpose of preventing the other side from proving facts which he sets up.

12. Contentions of the learned Government Pleader for Revenue for the respondents:

In view of the orders reviewing the orders in W.P. Nos. 15450 and 15995/2006, it is absolutely not open for the petitioners to contend that they are entitled for the benefits secured by the petitioners in W.P. No. 11768/2006 dated 16.06.2006. Award was passed on 29.06.2006 and possession of the land was also taken on 20.07.2006. The claim of the petitioners is also barred by doctrine of res judicata. Once the reviews were allowed by this Court dismissing the writ petitions filed by the petitioners, petitioners are precluded from questioning the proceedings prior to the declaration u/s 6 of the Act and they should confine to the proceedings under sub-section 9 (3) and Section 10 of the Act.

The contention of the petitioner that the order in W.P. No. 11768/2006 operates as an order in rem is not sustainable having allowed the orders of dismissal of the writ petitions in W.P. Nos. 15450 and 15995 of 2006 to become final.

13. To bolster his submissions, learned Government Pleader places reliance on the judgments of the Hon''ble apex Court in *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Others*, , *Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and Others*, , *Tamil Nadu Housing Board Vs. L. Chandrasekaran and Others*, , *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, and *Abhey Ram (dead) by LRs. and others Vs. Union of India and others*, .

14. In the case of *Booz Allen and Hamilton Inc. (supra)*, the Hon''ble apex Court at paragraph 37, held as follows:-

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself.

In the case of *Satrucharla Vijaya Rama Raju (supra)*, the Hon''ble apex Court at paragraph 12, held as follows:

12. With respect to learned senior counsel, these decisions do not show that the judgment in an election petition could be treated as a judgment in rem.

Obviously, the whole of the constituency concerned is interested in the outcome of an election petition, since it either affects the choice they have already made, or their right to have the freedom of a fresh choice. But since a challenge to an election petition is only a statutory challenge under the Representation of the People Act and since the acceptance of the challenge or the rejection of it in a given case would be based on facts and law available therein, and since an adjudication therein is not one which comes directly within the purview of Section 41 of the Act, the same could not be treated as a judgment in rem. In fact, if it were a judgment in rem, the ratio of the decision of this Court in *C.M. Arumugam Vs. S. Rajgopal and Others*, earlier referred to, would not have been rendered, since the adjudication in the earlier election petition would have barred the consideration of the question even if it be based on additional facts. We, therefore, overrule the argument that the judgment in E.P. 13 of 1983, should be held to be a judgment in rem binding on the whole world including the election petitioner herein, even though he was not a party to the earlier proceeding.

In the case of *Tamilnadu Housing Board (supra)*, the Hon''ble apex Court at paragraph 17, held as follows:

We may also usefully refer to the judgments of this Court in *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, , *Abhey Ram (dead) by LRs. and others Vs. Union of India and others*, , *Delhi Administration Vs. Gurdip Singh Uban and Others etc.*, and *Delhi Administration Vs. Gurdip Singh Uban and Others*, , in which it has been consistently held that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. Moreover, in the absence of challenge by L. Chandrasekaran to the order passed by the Division Bench of the High Court in Writ Appeal No. 9 of 1998, his legal representatives do not have the locus to contend that the order dated 21-8-1990 passed by this Court in S.L.Ps. (C) Nos. 11353-55 of 1988 had the effect of nullifying the entire acquisition.

In the case of *Sangappa Gurulingappa Sajjan (supra)*, the Hon''ble apex Court at paragraph No. 2, held as follows:

2. The petitioner contends that the declaration u/s 6 was not published within three years from the date of the Notification dated May 17, 1984 and, therefore, the Notification u/s 4(1) shall stand lapsed. We find no substance in the contention. Firstly the case would be dismissed on a short ground that though this plea was available to the petitioner, he did not raise the same in the first instance and that, therefore, by operation of Section 11 C.P.C. it operates as constructive res judicata. Under first proviso to Section 6(1), as amended in the Land Acquisition (Amendment) Act 68 of 1984 through Section 6 thereof that (i) no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1) shall be published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance. 1967. but before the commencement of the Land Acquisition (Amendment) Act, 1984, after the expiry of three years from the date of the publication of the notification or (ii) 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. In other words, under the pre-Amendment Act the declaration u/s 6(1) shall not be published after the expiry of three years from the date of Section 4(1) publication and after the commencement of the Amendment Act, the State has no power to proceed with the matter and publish the declaration u/s 6(1) after the expiry of one year from the date of the publication -of the notification. Explanation 1 thereto provides the method or mode of computation of the period referred to in the first proviso, namely, the period during which "any action or proceeding" be taken in pursuance of the notification issued under Sub-section (1) of Section 4 being "stayed by an order of a Court shall be excluded", In other words, the period occupied by the order of stay made by a Court shall be excluded. Admittedly, pending writ petition on both the occasions the High Court granted "stay of dispossession". Admittedly, the validity of tenability of the notification issued and published u/s 4(1) is subject of adjudication before the High Court. Till the writ petitions are disposed of or the appeals following its heels, the stay of dispossession was in operation. Though there is no specific direction prohibiting the publication of the declaration u/s 6, no useful purpose would be served by publishing Section 6(1) declaration pending adjudication of the legality of Section 4(1) notification. If any action is taken to pre-empt the proceedings, it would be stigmatised either as "undue haste" or action to "over-reach the Court"s judicial process". Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in computation" of the period of three years covered by Clause (1) of the first proviso to the Land Acquisition Act. When it is so computed, the declaration published on the second occasion is perfectly valid. Under these circumstances, we do not find any justification to quash the notification published u/s 6 dated May 17, 1984. The review petitions are accordingly dismissed. No costs.

and in the case of *Abhey Ram (Dead) by L.Rs. and Others*, (supra), the Hon"ble apex Court at paragraph 11, held as follows:

11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the SLP in this Court. If it were a case entirely relating to Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State u/s 16 and 17(2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration u/s 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration u/s 6 by the Division Bench does not enure to the appellants.

15. In the light of the above pleadings, averments and contentions, now the question which this Court is called upon to resolve is as to whether the

petitioners herein are entitled for the relief as prayed for in the present writ petition?

16. The material available on record reveals that questioning the draft notification issued u/s 4(1) of the Act and the action of dispensing with the enquiry u/s 5-A of the Act, one Sri Chittaranjan Reddy and another filed W.P. No. 11768/2008 on 07.06.2006 and this Court, by way of an order dated 16.06.2006, disposed of the said writ petition, directing to hold 5-A enquiry while finding fault with invocation of Section 17(4) of the Act, dispensing with the enquiry u/s 5-A of the Act. Even though, Section 6 declaration was already gazetted on 27.02.2006, the petitioners filed W.P. Nos. 15450 and 15995 of 2006 questioning the draft notification and the action of dispensing with the enquiry u/s 5-A of the Act and the said writ petitions were dismissed on 01.08.2006 and 27.07.2006, respectively, by this Court by directing enquiry u/s 5-A of the Act. Seeking review of the said orders, applications were filed before this Court and they were allowed by this Court on 07.12.2006 and 30.04.2007, setting aside the orders passed in W.P. Nos. 15450 and 15995 of 2006.

17. In the instant case, award was passed "on 29.06.2006 and possession was also taken on 20.07.2006. Having filed W.P. Nos. 15450 and 15995 of 2006, questioning the draft notification u/s 4(1) of the Act and the action of dispensing with the enquiry u/s 5-A of the Act and having suffered the orders of dismissal and the orders in reviews which are the orders in personam and having allowed the said orders to become final, it would not be open for the writ petitioners to complain discrimination on the ground that one Sri Chittaranjan Reddy and another are given benefit u/s 5-A of the Act. In view of the law laid down in the above referred judgments, this Court is of the considered opinion that the said orders passed in the writ petitions filed by Sri Chittaranjan Reddy and another would not operate in rem in view of the orders passed in the review applications in the writ petitions filed by the petitioners herein.

18. Coming to the contention of the petitioners that the publication of Section 6 declaration in the gazette on 27.02.2006 even before the local publication of 4(1) draft notification on 20.07.2006 would vitiate the entire proceedings, it is to be noted that the same cannot invalidate the entire proceedings as contended by the counsel for the petitioners herein in view of the judgment of the Hon'ble apex Court in the case of Mohan Singh and Others Vs. International Airport Authority of India and Others, and in the said judgment, the Hon'ble apex Court at paragraph Nos. 12 and 13, held as under:-

12. It is seen that Section 4(1) and Section 6(1) have expressly mentioned the phrase "hereinafter", while similar language does not find place in Section 17(4). Equally Section 17(4) does not mention the last of the dates of the publication, i.e., the three steps required u/s 4(1) or Section 6(2). In other words, the object of Section 17 appears to be that when the Government exercises the urgency power u/s 17(1) or emergency power u/s 17(2), they form the opinion that the land is needed for public purpose. If the possession of the land is needed

urgently or immediately they are required to have the notification u/s 4(1) published in the official Gazette and within a gap of one day to make the declaration u/s 6 and have the same published u/s 6(1). Thus, what is mandatory is publication of the notification u/s 4(1) in the Gazette. Thereafter within a gap of a day publication of the declaration u/s 6(1) is mandatory. Thereby, the public purpose becomes conclusive, as envisaged under Sub-section (3) of Section 6 and the Collector is empowered to take immediate possession of the land for the said public purpose.

13. The question is: whether it " is mandatory in such a situation, i.e., after the publication of the notification in the Gazette publication in two local newspapers and giving of notice of the substance of the notification at convenient places in the locality, to await the exercise of power u/s 17(4)? After giving due and deep consideration to the respective contentions raised by the learned Counsel, we are of the considered view that though the compliance of these three steps required u/s 4(1) is mandatory; for the exercise of the power u/s 17(4) it is not necessary that all the three steps should be completed before making the declaration u/s 6(1) and have it published for directing the Collector to take possession u/s 17(1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification u/s 4(1) and of the declaration u/s 6(1). Herein, we dispose of the controversy and agree with Shri Shanti Bhushan that the date of the notification and declaration published as mentioned in the Gazette is conclusive but not the actual date of printing of the Gazette. This interpretation of ours would serve the public purpose, namely, the official functions are duly discharged. When the land is urgently needed u/s 17(1), notice u/s 9(1) would be given to the owner and steps would be taken to and resume its possession after the expiry of 15 days. If it is needed urgently u/s 17(2), even without waiting for 15 days on issue of notice u/s 9(1) to the owner, the appropriate Government would direct -the Collector to take possession of the land immediately. If the publication in the newspapers and in the locality is also insisted upon as preliminary to the exercise of power u/s 17(4) which are mandatory requirements and until last of them occurs, the immediate or urgent necessity to take possession of the land u/s 17(1) and 17(2) before making the award would be easily defeated by dereliction of duty by the subordinate officers or by skillful manoeuvre. The appropriate Government is required to take the decision for acquisition of the land and to consider the urgency or emergency and to make the notification u/s 4(1) and declaration u/s 6 and have them published in the Gazette that the land acquired u/s 4(1) is needed for public purpose; they become conclusive u/s 6; and to give direction to the Collector to take its possession. The publication in the newspapers and giving of notice of the substance of the notification at the convenient places in the locality are required to be done by the Collector authorised by the Government u/s 7 and his subordinate staff. If dereliction of duty is given primacy, delay deflects public justice to meet urgent situation by the acts of subordinate officers for any reason whatsoever. Until that is done and the last of the dates occurs, Government

would be unable to act swiftly for the public purpose to take immediate possession envisaged under Sub-section (1) or (2) of Section 17 and they would be easily defeated or frustrated.

19. In view of the above judgment, the above mentioned contention of the petitioners with regard to the alleged irregularity in publication of Section 6 declaration even before publication of 4(1) notification in the locality cannot be sustained and the said aspect in the considered opinion of this Court would not - by any stretch of imagination render the proceedings invalid.

20. Yet another contention advanced by the counsel for the writ petitioners that there cannot be more than one declaration u/s 6 of the Act in view of the Hon''ble apex Court's judgment in *The State of Madhya Pradesh and Others (supra)*, in the considered opinion of this Court, is also unsustainable in view of the amendment to Section 6 of the Act by virtue of Act 13/1967 dated 12.04.2007 which empowers the authorities to issue different declarations and in support of the stand contra, the learned Government Pleader places reliance on *Abhey Ram (Dead) by L.Rs. and Others, (supra)*.

21. The contention of the learned counsel for the petitioners that the entire proceedings would get lapsed as the possession was not taken within 90 days as stipulated u/s 17(5) of the Act in view of the invocation of urgency clause is also not sustainable for the reason that Section 17(5) of the Act was in fact quashed by this Court in the case of *Shaik Kannam Saheb and Others Vs. The Dist. Collector, Khammam and Others* and the said legal possession was subsisting till the said provision was upheld by a Full Bench of this Court in *W.P. No. 22947/2006* dated 27.02.2013. Therefore, the contention of the learned counsel for the petitioners falls to ground and it does not merit any consideration.

22. The above narration clearly demonstrates that there are absolutely no merits in the writ petition and the petitioners herein have failed in making out any case, warranting interference or indulgence by this Court by way of judicial review under Article 226 of the Constitution of India.

23. For the aforesaid reasons and having regard to the principles laid down by this Court and the Hon''ble apex Court in the above referred judgments, writ petition is dismissed. Consequently, pending miscellaneous petition, if any, shall stand dismissed. No order as to costs.