
(2013) 02 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1616 and 5119 of 2012

Penmatsa Appala Narasimha Raju and Another

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Constitution of India, 1950 — Article 141

Income Tax Act, 1961 — Section 6

Land Acquisition Act, 1894 — Section 10, 11, 11(1), 11A, 17

Citation : (2013) 4 ALD 454 : (2013) 3 ALT 258 : (2013) ALT(Rev) 201

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : C. Ramachandra Raju in W.P. No. 5119/2012 and Sri K.L.N. Swamy in W.P. No. 1616/2012, for the Appellant;

Judgement

C.V. Nagarjuna Reddy, J.—Extents of Ac. 1-72 cents in R.S. No. 515/2B and Ac. 1-00 in R.S. No. 515/2 belonging to petitioner Nos. 1 and 2, respectively, in W.P. No. 1616/2012 of Yendagandi village, Undi Mandal, West Godavari District, were proposed for acquisition for providing house sites to landless poor persons under the Indiramma Housing Scheme, vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") by respondent No. 1. Similarly, extents of Ac. 1-00 in S. Nos. 392/2 and 392/3 and Ac. 0-70 cents in R.S. Nos. 393/2 and 393/3 in the same village and belonging to petitioner Nos. 1 and 2, respectively, in W.P. No. 5119/2012, were also notified under the same notification and for the same purpose. The notification u/s 4(1) of the Act was published in the West Godavari Gazette on 12-11-2008, Andhra Bhoomi Telugu and Gopi Krishna Telugu Dailies on 19-11-2008 and the substance thereof was published in the locality on 1-12-2008. The Sub-Collector, Narsapur, has issued notices u/s 5-A of the Act on 4-12-2008. After completion of the enquiry, the draft declaration approved by respondent No. 1 on 28-11-2009 was published in the West Godavari District Gazette on 30-11-2009, in the New Indian Express (English Daily) and Vasista Times Telugu Daily on 1-12-2009 and the substance

thereof was published in the locality on 31-12-2009. On 11-11-2011, award enquiry notices were issued under Sections 9(1) & 10 and 9(3) and 10 of the Act. An award was passed u/s 11(1) of the Act on 26-11-2011. As the petitioners have not come forward to receive the compensation amounts, the same were stated to have been deposited in the Court of the Senior Civil Judge, Bhimavaram, on 29-12-2011. The respondents claimed to have taken physical possession of the lands on 12-12-2011. Questioning these acquisition proceedings, the petitioners filed these Writ Petitions. Detailed counter-affidavits have been filed. The contents of these counters shall be adverted to while dealing with the contentions raised by the learned counsel for the petitioners. On behalf of the petitioners in W.P. No. 5119/2012, Sri C. Ramachandra Raju, has advanced arguments at length. No specific arguments have been advanced on behalf of the petitioners in W.P. No. 1616/2012.

2. Sri C. Ramachandra Raju, learned counsel, advanced the following submissions:

1. That the notification u/s 4(1) of the Act was issued in the name of the Collector, but the satisfaction of the State Government has been referred therein. When the District Collector has issued the notification, it is his satisfaction to the effect that the land is required for a public purpose which is material, and that in the absence of such satisfaction being recorded in the notification, the whole acquisition proceedings got vitiated.

2. That the declaration u/s 6 of the Act was published in the Gazette on 30-11-2009, but the substance thereof was not published in the locality. Even assuming that such substance was published, the same was stated to have been published on 31-12-2009 and that the publication of substance being the last of the publications of the declaration, the same was published beyond one year prescribed under clause (ii) of the second proviso to Section 6(1) of the Act and consequently the whole land acquisition proceedings have lapsed.

3. That the District Collector has no power to permit the Revenue Divisional Officer to hold the enquiry u/s 5-A of the Act.

4. That the Collector has mechanically accepted the Revenue Divisional Officer's report and therefore the decision to acquire the lands suffers from non-application of mind.

5. That the order of the District Collector passed u/s 5-A of the Act was not communicated to the petitioners.

6. That from the fact that the award enquiry notices were issued almost two years after the publication of the declaration u/s 6 of the Act, it is evident that the purported public purpose did not exist.

7. That the alleged consents of the petitioners are not valid in law as they have not executed such consents and their signatures were obtained on blank papers without disclosing the real purpose for which they were taken.

8. That as alternative Government lands are available, acquisition of private lands is arbitrary and illegal.

3. The learned Government Pleader has opposed the above submissions. He has placed the entire record before the Court.

4. Apropos the first submission of the learned counsel for the petitioners, a perusal of the impugned notification issued u/s 4(1) of the Act would show that the same was approved by the Collector, West Godavari District, vide proceedings dated 8-11-2008 and issued in her name. The notification stated that "it appears to the Government that the lands specified in the schedule is needed for a public purpose, namely, for providing house sites to weaker section people." Thus, though the notification has been issued by the Collector, the satisfaction of the State Government is recorded therein.

5. In paragraph-6 of the counter-affidavit filed in W.P. No. 5119/2012 by the Sub-Collector/Land Acquisition Officer, Narsapur Division-respondent No. 2, it is inter alia averred that the powers of the State Government in respect of acquisition of lands for social welfare purposes were delegated to the District Collector. It is further averred that the District Collector has got power to issue notification u/s 4(1) of the Act and that accordingly the notification in question was issued by the District Collector. In sub-para (ix) of paragraph-6, the said averment was further reiterated qua Section 4(1) and also Section 6 of the Act.

6. Section 4(1) of the Act was amended by the A.P. State Legislature by Amendment Act 22 of 1976, with effect from 12-9-1975. By the said amendment, the District Collector is also empowered to issue notification u/s 4(1) of the Act where it appears to him that the land in any locality is needed or is likely to be needed for acquisitions for the purpose of construction, extension or improvement of dwelling houses for the poor. This power conferred on the District Collector, is thus, concurrent with that vested in the appropriate Government.

7. Section 3-A of the Act was added by the A.P. State Legislature by the above mentioned Amendment Act, which authorized the State Government to delegate any power vested in it under the Act to the District Collector by notification to be published in the Andhra Pradesh Gazette. Thus, the District Collectors are empowered to act in their dual capacities under the Act. While they can straightaway issue a notification u/s 4(1) of the Act for acquisition of land for the purposes referred to above without reference to the State Government, they can also act as delegates of the State Government wherever such delegated powers are conferred on them under notifications to be published in the Andhra Pradesh Gazette.

8. In support of the plea that powers were delegated to the District Collectors for issuing the notification u/s 4(1) and declaration u/s 6 of the Act for acquisition of lands for providing house sites to the poor, the learned Government Pleader placed before the Court an extract of G.O.Ms. No. 1888, Revenue (K), dated

31-12-1984. Under the said notification, the Government of Andhra Pradesh has directed that all the District Collectors shall exercise all the powers and discharge all the duties imposed on the State Government under Sections 4, 5-A, 6 and sub-section (4) of Section 17 of the Act, "for the purpose of acquisition of land for provision of pathways to the Harijan Cheries and Weaker Sections" Housing colonies, for burial grounds for weaker sections and pathways to the burial grounds." The language used in the said G.O. would suggest that the power of delegation is limited to acquisition of lands for provision of pathways to the Harijan Cheries and Weaker Sections" Housing colonies, besides the power to acquire lands for burial grounds for Weaker Sections and pathways to such burial grounds. Therefore, I am of the view that the District Collectors were not delegated with the powers of the State Government for the purpose of acquiring lands for providing house sites to the poor. In the absence of such delegation, it is deemed that the District Collector has not acted as a delegate of the Government, but he acted in exercise of his substantive power u/s 4(1) of the Act, as amended by the A.P. State Legislature.

9. In the light of the above finding, the further question that arises is whether the notification, which recorded the satisfaction of the State Government, is sustainable in law? I had an occasion to deal with a similar situation in V. Bhavani Devi Rao Vs. The District Collector, Revenue Divisional Officer and Mandal Revenue Officer, wherein I have held that even if the notification issued by the Collector has not referred to his satisfaction and instead the satisfaction of the State Government is recorded, if the file discloses such satisfaction on the part of the Collector, the notification will not get vitiated. It would be useful to reproduce the relevant portion of the said Judgment hereunder (paras 6, 7 & 8):

As regards the first submission of the learned counsel for the petitioner, in Pyda Lakshmi's case (W.P. No. 3016/2001, dt. 30-10-2008), this Court held that the State Government and the Collector being different entities u/s 4(1) of the Act, which have concurrent powers to issue notification for acquisition of private land for public purpose, the authority which issued the notification should have the satisfaction that the land is needed for a public purpose.

The learned Government Pleader has drawn a distinction between the case decided by this Court in Pyda Lakshmi's case (supra) and the present case. He has placed reliance on the additional counter-affidavit filed by respondent No. 1 wherein it is inter alia stated that the then District Collector, Krishna, Machilipatnam, after satisfying himself about the requirement for acquisition of Acs. 4-15 cents in R.S. Nos. 248/5, 248/6 and 248/7 for public purpose, namely, for providing house sites under Indiramma Scheme to the eligible beneficiaries belonging to weaker sections of Indupalli village, approved the draft notification on his satisfaction about the requirement of land for public purpose. It is also averred that while sending the draft notification for publication in the Gazette and newspapers, the format of Form II-A as provided in the Act was adopted without making necessary corrections in the printed format and that the office

staff of the Collector, Krishna have not corrected the format by inadvertent mistake.

The learned Government Pleader placed the original file before the Court, from a perusal of which I am satisfied that the issue of the proposed acquisition engaged the attention of respondent No. 1, who approved the proposal in the note file on 19-8-2006. From the above facts, I am of the opinion that the case on hand is distinguishable from Pyda Lakshmi's case (supra) on which the learned counsel for the petitioner placed reliance. In that case, this Court observed that the learned Government Pleader has fairly stated that the record does not disclose any correspondence between the Government and the District Collector and that therefore the basic requirement relating to satisfaction of the District Collector was absent. However, as noted above, in this case, not only that the District Collector has filed an additional counter-affidavit but also the file produced on his behalf would show that he was satisfied that the land was needed for providing house sites to the weaker sections, which undoubtedly is a public purpose. Therefore, the first contention of the learned counsel for the petitioner is rejected.

10. I have carefully perused the relevant files produced by the learned Government Pleader. Volume-I of the file maintained by respondent No. 2/Land Acquisition Officer contains letter Roc. 361/2008(DT), dated 25-8-2008 of the Tahsildar, Undi, addressed to the Revenue Divisional Officer, Narsapur. It is inter alia stated in the said letter that the Collector, West Godavari District and the Revenue Divisional Officer, Narsapur, issued instructions to acquire an extent of Ac. 7-11 cents for provision of house sites to 321 beneficiaries identified for grant of house sites in Yendagandi village as no suitable Government land is available for the said purpose in the village. On the said proposals initiated by the District Collector, the land was inspected by the Tahsildar, Undi, who submitted a detailed report to the Revenue Divisional Officer, Narsapur. After observing the legal formalities, proposals for approval of the draft notification were sent to the District Collector. A perusal of the District Collector's file would show that the draft notification proposals for acquisition of the above mentioned extent of land were approved by her on 8-11-2008. These facts, borne-out by the record, would thus establish that the very proposal of acquisition of the lands itself has emanated from the District Collector. Unless the District Collector was satisfied that the lands are needed for the specified public purpose, the question of her initiating the proposals would not have arisen. Thus, even though, in form, the notification has referred to the satisfaction of the State Government, in substance, it is the District Collector who is satisfied that the lands are needed for the stated public purpose, namely, provision of house sites to the poor people. In the light of the ratio laid down in V. Bhavani Devi (1-supra), as reproduced above, the impugned notification does not become invalid merely because the satisfaction of the District Collector is not specifically mentioned therein. Therefore, this contention of the learned counsel is without any merit and the same is rejected.

11. As regards the second submission of the learned counsel, it comprises two parts, viz., that the substance of the declaration u/s 6 of the Act was not published in the locality, and that, alternatively, the declaration u/s 6 of the Act was not published within one year and thereby the acquisition proceedings have lapsed. Qua the first part of the submission, Volume-II of the Revenue Divisional Officer's file, produced by the learned Government Pleader, shows that the Village Revenue Officer has certified under her stamp and signature affixed on 31-12-2009 that the substance of the declaration u/s 6 of the Act was published by way of tom-tom in the village and a copy of the declaration was affixed to a wooden post planted over the lands under acquisition. In the light of this certificate, I have no reason to accept the submission of the learned counsel for the petitioners that the publication of declaration was not made in the locality. But the main thrust of the submission of the learned counsel lies in the second part, viz., that even assuming that such publication in the locality was made, as the publication of declaration was not completed within one year of the publication of notification u/s 4(1) of the Act, the acquisition proceedings have lapsed in view of clause (ii) of second proviso to Section 6(1) of the Act.

12. Let me now examine this aspect. One of the various amendments made by Act No. 68 of 1984 to the Act is the reduction of the time limit for making declaration u/s 6 of the Act. Clause (ii) of the second proviso to Section 6(1) of the Act, introduced by way of the said amendment, deals with declarations published after the commencement of Act No. 68 of 1984. As the acquisition proceedings in these cases were initiated after the commencement of the said Amendment Act, the said provision is attracted to these cases. Under the said clause, no declaration in respect of any land covered by notification u/s 4(1) of the Act shall be made after the expiry of one year from the date of publication of the notification.

13. In short, the submission of the learned counsel for the petitioners is that under sub-section (2) of Section 6 of the Act, every declaration u/s 6 shall be published in the Official/District Gazette in two daily newspapers circulating in the locality, of which one shall be in the regional language and also in the locality and that the last of the dates of such publication and giving of such public notice shall be the date of publication of the declaration. It is the submission of the learned counsel that for the declaration to be within the stipulated time limit of one year from the date of publication of the notification u/s 4(1) of the Act, not only that the declaration u/s 6 of the Act shall be made, but the same shall also be published in the manner as prescribed under sub-section (2) of Section 6 and that the date on which the last of the publications is made, shall be within the period of one year of publication of notification u/s 4(1) of the Act. Realizing that this issue is no longer *res integra* as the Supreme Court has, in more than one case, rejected a similar submission, the learned counsel submitted that those Judgments have not considered sub-section (2) of Section 6 of the Act and that therefore the same are *per incuriam*. The learned counsel placed reliance on the Judgment of the Apex Court in *Eugenio Misquita and Others Vs. State of Goa* and

Others, in support of his submission. The learned counsel also heavily relied on the Judgment in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, to buttress his submission that a decision not founded on reasons nor given on consideration of the issue cannot be deemed as law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India. According to the learned counsel, none of the Judgments of the Supreme Court in AIR 2002 187 (SC) , Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others, and Devender Kumar Tyagi and Others Vs. State of U.P. and Others, which have dealt with the same issue, has laid down the correct law and that therefore they shall be treated as per incuriam.

14. The proceedings for acquisition of land commences with publication of notification u/s 4(1) of the Act. It prescribed several modes of publication, viz., publication in the Official Gazette, in two daily newspapers of which at least one shall be in the regional language, and by causing public notice of the substance of such notification in the locality in which the land is situated. The last of the dates of such publication and giving of such public notice shall be referred to as the date of publication of the notification.

15. In order to see that the acquisition proceedings are not unduly prolonged, the Parliament has amended the provisions of Section 6 of the Act under the Land Acquisition (Amendment and Validation) Ordinance 1967 whereby limitation of three years was prescribed for the exercise of power u/s 6(1) of the Act. Under the first proviso added to Section 6(1), a period of three years for publication of declaration u/s 6 of the Act from the date of publication of the notification u/s 4(1) thereof was prescribed. By the Amendment Act No. 68 of 1984, the first proviso to Section 6(1) of the Act was further amended by reducing the time limit to one year in respect of the notifications published after its commencement.

16. The earliest case which dealt with the first proviso to Section 6(1) of the Act was The Executive Officer, The Executive Officer, TTD Vs. N.S. Venugopal and Others, wherein a Division Bench of this Court repelled an argument identical to the one advanced by the learned counsel for the petitioners herein. M. Jagannadha Rao., J (as his Lordship then was) who rendered the said Judgment has reiterated the same view while presiding over the Division Bench as Chief Justice of Kerala High court in Lt. K. Padmadas Vs. State of Kerala and Others,

17. In The Executive Officer, T.T.D. (7-supra), the Division Bench held as under:

Taking up Section 4(1), the last of the dates of publication and giving of public notice is "hereinafter referred to as the date of publication of Section 4(1) notification". Therefore, wherever the words "date of publication of the notification u/s 4(1)" are used in the provisions immediately following Section 4(1) in the Act, the above said method of computation is to be applied. Then coming to Section 6(2), the position again is that wherever the words "dates of publication of declaration u/s 6" are mentioned in the provisions immediately

following Section 6(2), the method of computation mentioned in Section 6(2) is to be followed. For example, when we come to second proviso to Section 6(1), the words used so far as Section 6(1) declaration is concerned, are that no declaration u/s 6 shall be made after the period prescribed in the proviso to Section 6(1). It will be noticed that in Section 6(1) there is no mention of "date of publication of the declaration". Such words are only found in Section 6(2) and not in Section 6(1). When we come to Section 11-A, the words "date of publication of declaration" are used and in that context, it is stated that the method of computation mentioned in Section 6(2) is to be adopted.

In other words, the method of computation mentioned in Section 4(1) is applicable when we come to sub-clause (1) of Section 6 of the Land Acquisition Act. So far as the method of computation mentioned in Section 6(2) is concerned, the same is applicable for purposes of Section 11-A, and may be other provisions where subsequent to Section 6(2), the words "date of declaration" are employed. But, in our view, the method of computation mentioned in Section 6(2) cannot be imported into the proviso to Section 6(1) that is because of the words "hereinafter" used in Section 6(2).

18. However, a learned single Judge of the Rajasthan High Court in Jagrup Singh Vs. State of Rajasthan and Others, 7 has taken a contra view by holding that unless the publication of declaration is completed through all modes as envisaged u/s 6(2) of the Act within the period of one year from the date of publication of the notification u/s 4(1), the acquisition proceedings would lapse.

19. The occasion for the Apex Court to consider this question first arose in Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others, In that case, an argument identical to the one advanced by the learned counsel for the petitioners herein was put forth before the Supreme Court. While conclusively rejecting the said argument, the Supreme Court has made a subtle distinction between making of the declaration and its publication. Noticing the variance in the phraseology that while completion of publication of notification u/s 4(1) by all modes marks the commencement of limitation for making of declaration u/s 6(1), the publication of declaration as envisaged u/s 6(2) has no relevance for the purpose of computation of limitation under the second proviso to Section 6(1) of the Act. Keeping in view the words "being hereinafter referred to as the date of publication of the declaration" in sub-section (2) of Section 6, the Supreme Court held that the last of the publications of declaration which shall be treated as the publication of such declaration is relevant only for the purposes of further steps taking place under the various statutory provisions following Section 6(2) and not anterior thereto. Their Lordships have illustrated the said reasoning by referring to Section 11-A by holding that the limitation for making the award will commence from the date of completion of declaration as envisaged u/s 6(2) of the Act. Though the Supreme Court made no reference to the Judgments of the Andhra Pradesh and Kerala High Courts in The Executive Officer, T.T.D. (7-supra) and Lt. K. Padmadas (8-supra), it has taken the identical

view as was taken in the said two Judgments. It would be instructive to reproduce the relevant portion of the Judgment hereunder:

Clause (i) of the proviso to Section 6(1) mandates the publication of the declaration in the Official Gazette and it should be within three years from the date of the publication of the notification u/s 4(1) i.e., the last of the dates referred to in Section 4(1). The word "publish" emphasizes the act accomplished i.e., declaration u/s 6(1) being published in the Official Gazette. The last date u/s 6(2) shall be the date for the purposes "hereinafter referred to" would be not for computing the period of three years prescribed in clause (i) of proviso to Section 6(1) of the Act as it was already done, but purposes to be followed hereinafter. Otherwise language would have been "hereinbefore done". Sub-section (2) as such did not prescribe any limitation within which the declaration u/s 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award u/s 11 or in computation of the period prescribed in Section 11-A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose u/s 6(1) and also to provide limitation to make the award u/s 11 by the Collector. In other words, the limitation prescribed u/s 11-A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under Sections 4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Official Gazette already made under clause (i) of proviso to sub-section (1) of Section 6 is complete, as soon as the declaration u/s 6(1) was published in the Official Gazette. That will be the date for the purpose of computation of three years" period from the last of the dates of the publication of the notification u/s 4(1). The procedural ministerial acts prescribed under sub-section (2) are only for the purpose of the procedure to be followed "hereinafter", in other words, the steps to be taken subsequent to the publication of the declaration u/s 6(1) of the Act. We cannot agree with Shri Rana, the learned Senior Counsel, that the date of making the declaration by the Secretary to the Government or the authorized officer is the date for computing period of three years. Equally, we cannot agree with the learned counsel for the respondents, Shri Upadhyay, that publication of the substance being the last date from which the period of three years needs to be computed. Acceptance of either contention would easily defeat the public policy under the Act by skilful manner of management with the lower level officials...

(Emphasis supplied)

20. However, the Apex Court in *Eugenio Misquita* (2-supra) not only referred to the two Judgments in *The Executive Officer, TTD* (7-supra) and *Lt. K. Padmadas*

(8-supra), but also it has commended the view of the Andhra Pradesh and Kerala High Courts taken in the said Judgments. The Supreme Court further held that the Judgment of the Rajasthan High Court in Jagrup Singh (9-supra) has not laid down the correct law. The Supreme Court also referred to and agreed with its earlier Judgment in Krishi Utpadan Mandi Samiti (10-supra) and in para-18 held as under:

The above view of this Court lends support to the view that for the purpose of calculating the limitation prescribed under proviso to Section 6(1)(ii), it is not the last of the publication in the series that should be taken into account, but the publication that was made in the first instance u/s 6.

21. The Supreme Court, having referred to the Judgment in State of Haryana and Another Vs. Raghubir Dayal, while holding that the view taken by the Rajasthan High Court in Jagrup Singh (9-supra) was not correct, inter alia, held at para-15 as under:

...there is nothing in the statute to suggest by publishing in the Official Gazette the "making of declaration" has not been achieved nor is there anything in the statute to show that the modes of publications prescribed u/s 6(2) notwithstanding the express language used in that Section about which we have already pointed out, namely, hereinafter those modes also govern the publication at the prior stage, namely, u/s 6(1).

22. Referring to the Judgment in State of Haryana (11-supra), the Supreme Court held that for the purpose of computing the limitation prescribed under the proviso to Section 6(1)(ii), it is not the last of the publications in the series that should be taken into account, but the publication that was made in the first instance u/s 6 of the Act.

23. Surprisingly, the learned counsel for the petitioners has placed heavy reliance on the Judgment in Eugenio Misquita (2-supra), to drive home his submission. But the fact remains that the said Judgment, instead of laying down a different proposition of law, has in fact concurred with the view of the Supreme Court in Krishi Utpadan Mandi Samiti (10-supra). Thus, instead of helping the petitioners, the Judgment in Eugenio Misquita (2-supra), completely demolishes the submission of the learned counsel for the petitioners. The learned counsel for the petitioner relied on para-14 of the said Judgment which extracted the Judgment in Jagrup Singh (9-supra) but declared in para-16 that the said Judgment has not correctly laid down the law.

24. Similar views were reiterated by the Apex Court in Srinivas Ramnath Khatod (4-supra) and Urban Improvement Trust (5-supra). In Devender Kumar Tyagi and Others Vs. State of U.P. and Others, , the Supreme Court has also explained the difference between making of declaration and its publication, and held at para-12, as under:

The notification u/s 4 has to be published in the manner laid down therein. As

against this, u/s 6, a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2) of the LA Act. Also proviso (ii) to Section 6(1) lays down a time-limit within which the declaration has to be made. The said proviso (ii) significantly only provides a time-limit for a declaration and not for publication as it has been incorporated in sub-section (1) of Section 6 of the L.A. Act.

25. However, on facts, the Supreme Court, in that case held that as the declaration was not made within one year from the date of publication of notification u/s 4(1) of the Act, the acquisition proceedings have lapsed.

26. In *M. Arun Subramanian and Smt. M.A. Ramani Eswari and Others Vs. The State of Andhra Pradesh and Others*, I have considered the identical issue. Upon considering the Judgments in *Srinivas Ramnath Khatod (4-supra)* and *Urban Improvement Trust (5-supra)*, I have held that the Judgment of the Division Bench of this Court in *G. Pattabhi Ramayya and Co. Vs. The District Collector, The Special Deputy Collector (Land Acquisition), Visakhapatnam Urban Development Authority and The Visakhapatnam Urban Development Authority,)*, which has taken the view similar to that taken by the Rajasthan High Court in *Jagrup Singh (9-supra)*, is not in consonance with the law declared by the Supreme Court in the above mentioned two Judgments. In para-17 of the said Judgment, I have held as under:

The ratio laid down in the above noted Judgments of the Supreme Court, is, thus, clear to the effect that while the commencement of the limitation period of one year is from the date of the last publication of the notification u/s 4(1), limitation stays (sic: stops) running on the making of declaration u/s 6 of the Act with the subsequent publication of declaration being treated as a mere ministerial act. In other words, there is no relevancy for the publication of declaration u/s 6 of the Act unlike in the case of publication of notification u/s 4(1) of the Act.

27. On the analysis of the Judgments of the Supreme Court which reflect the unanimity in view, the legal position that emerges is that, for the purpose of computation of limitation of one year period under the second proviso to Section 6(1), sub-section (2) of Section 6 of the Act has no relevance and that the declaration will not lapse even if its publication within the meaning of Section 6(2) is not completed before the expiry of one year period from the date of publication of notification u/s 4(1) of the Act. The publication in the first instance before the expiry of one year period from the date of publication of notification u/s 4(1) of the Act will satisfy the requirement of Section 6 of the Act.

28. The submission of the learned counsel for the petitioners that the Judgments of the Supreme Court have not referred to Section 6(2) of the Act and that therefore they have no precedential value is without any merit. As noted hereinbefore, all the Judgments of the Supreme Court referred to above have referred to Section 6(2) and distinguished the same from the provisions of

Section 6(1) of the Act. It is equally incorrect to contend that since the said Judgments have no precedential value, they do not have the binding force on the Courts under Article 141 of the Constitution of India.

29. A case is a precedent and binding for what it explicitly decides. What is of the essence in a Judgment is its ratio and it is the principle that is laid down in a Judgment that is binding law under Article 141 of the Constitution (See: Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, , State of Orissa and Others Vs. Md. Illiyas, and Jitendra Kumar Singh and Another Vs. State of U.P. and Others,

30. The disastrous consequence of ignoring a precedent was succinctly expounded by Earl of Halsbury L.C. in London Tramways Co. Vs. London County Council (1898) A.C. 375 as under:

... The disastrous inconvenience-of having each question subject to being reargued and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no real final Court of Appeal ?

31. In all the Judgments of the Supreme Court i.e., Eugenio Misquita (2-supra), Srinivas Ramnath Khatod (4-supra), Urban Improvement Trust (5-supra) and Krishi Utpadan Mandi Samiti (10-supra), the only or the main issue that fell for its consideration is the interpretation of the second proviso to Section 6(1) of the Act. In all these cases, the question whether the publication of declaration as envisaged u/s 6(2) of the Act must be made within the period of one year from the date of publication of notification u/s 4(1) of the Act, has been answered in the negative in no uncertain terms. Hence, by no stretch of imagination, can the submission of the learned counsel that these Judgments do not lay down any law on the interpretation of the provisions of Section 6 of the Act, be accepted. These Judgments contain ratio decidendi and consequently they have the precedential value having the force of the binding law under Article 141 of the Constitution of India.

32. The Judgment in State of U.P. (3-supra), relied upon by the learned counsel, no way helps the petitioners' cause. In that case, the power of the State Government to levy taxes on sale or purchase of goods under Entry 54 of List II of the VII Schedule of the Constitution was considered and adjudicated by the Supreme Court in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, . T.K. Thommen and R.M. Sahai, JJ., who rendered separate opinions were unanimous in their view that the only question which was considered by the Supreme Court in the said Judgment was whether the States could levy excise duty or vend-fee or transport fee and the like, by recourse to Entry 51 or 8 in List-II in respect of industrial alcohol and that the conclusion drawn by the Supreme Court in that case on the lack of power in the State Government to levy taxes on sale or purchase of goods under that Entry, cannot be taken as a precedent and consequently it has no binding force under Article

141 of the Constitution of India. R.M. Sahai., J, while pointing out that the conclusion in *Synthetics & Chemicals Ltd.* (19-supra), was not preceded by any discussion and no reason or rationale could be found therein, framed the following question:

...This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incuriam and is liable to be ignored.

33. While answering this question, the learned Judge considered the principles of per incuriam, binding precedents and sub silentio. It would be useful to quote the relevant passages of the Judgment, at paras 40 and 41, hereunder:

"Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered "in ignoratum of a statute or other binding authority" (*Young v. Bristol Aeroplane Co. Ltd.* (1944) 1 KB 718 : (1944) 2 All.E.R. 293). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu Vs. Rajdewan Dubey and Others*, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as a rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind". (*Salmond on Jurisprudence* 12th Edn., p.153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* (1941) 1 K.B. 675, 677: (1941) 2 All.E.R. 11), the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority". It was approved by this court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, . The bench held that, "precedents sub-silentio and without argument are of no moment". The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao Vs. The Union Territory of Pondicherry*,) it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without

any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

34. While the opinion of the Supreme Court reflected in the above reproduced paragraphs is unexceptionable, the same does not advance the cause of the petitioners, for, as held hereinabove, in *Eugenio Misquita* (2-supra), *Srinivas Ramnath Khatod* (4-supra), *Urban Improvement Trust* (5-supra) and *Krishi Utpadan Mandi Samiti* (10-supra), not only that the question of interpretation of the second proviso to Section 6(1) of the Act arose, but it was considered in depth by the Apex Court. The conclusions arrived at in all these Judgments were based on sound reasoning. These Judgments have laid down precedents which bind all the Courts in India under Article 141 of the Constitution of India. Therefore, this submission of the learned counsel is conclusively rejected as baseless.

35. Adverting to the submission relating to the alleged lack of power in the Sub-Collector/Land Acquisition Officer to hold enquiry, in the counter-affidavit of respondent No. 2 it is inter alia averred that in exercise of its power u/s 3(c) of the Act, the State Government has issued G.O. Ms. No. 822, Revenue (K) Department, dated 16-7-1985 authorising the Revenue Divisional Officers to exercise the powers of Collectors.

36. Section 5-A(2) of the Act envisages filing of objections to the notifications issued u/s 4(1) before the Collector in writing and the Collector in turn giving the objector an opportunity of being heard. It further provides that after making such enquiry as he thinks necessary, the Collector shall send his report to the appropriate Government. Section 3(c) of the Act defined "Collector" as the Collector of a District and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. Under G.O.Ms. No. 822, Revenue (K) Department, dated 16-7-1985, the Governor of Andhra Pradesh, exercising his power u/s 3(c) of the Act appointed the Revenue Divisional Officers and Mandal Revenue Officers in their respective jurisdictions to perform the functions of Collectors under the Act inter alia for the purpose of acquisition of lands for the construction, extension or improvements of any dwelling house to the poor. As the Act empowered the Government to delegate the power of the District Collector to any other officer u/s 3(c) of the Act and as such power was delegated to the Revenue Divisional Officers, respondent No. 2 was legally entitled to consider the objections, hold enquiry and submit his report. Therefore, I find no merit in this submission of the learned counsel.

37. With regard to the submission of the learned counsel for the petitioners that the District Collector has mechanically accepted the Revenue Divisional Officer's report, a perusal of the order passed by the District Collector shows that he has discussed the report of respondent No. 2, in two parts. The first part pertains to

the lands of two persons by names Madunuri Subba Lakshmi w/o. Ramakrishnamraju and Alluri Vijaya Lakshmi Sithadevi w/o. Subbaraju who objected to the acquisition of the lands. In the second part of the order, the District Collector has considered the report of respondent No. 2 with reference to the four petitioners in the present Writ Petitions. The District Collector has clearly recorded in this part of the order that respondent No. 2 has reported that in case of petitioner No. 2 in W.P. No. 1616/2012 and both the petitioners in W.P. No. 5119/2012, they have given their consents, while petitioner No. 1 in W.P. No. 1616/2012 has not filed any objections for the proposed acquisition. Therefore, in the absence of any objections, even if the consents were not given, as pleaded by the learned counsel for the petitioners in W.P. No. 5119/2012, the District Collector is not under obligation to traverse anything beyond the contents of the report of respondent No. 2. After discussing the report, the District Collector has clearly recorded his satisfaction that acquisition of the lands is for a public purpose and that there is no other alternative except to acquire the lands in question. Therefore, I do not find any force in the submission of the learned counsel that either the order was passed in a mechanical manner by the District Collector or the same suffers from non-application of mind.

38. As regards the submission that the District Collector has not communicated the order passed u/s 5-A(2) of the Act, a perusal of the record of the District Collector will show that the office of respondent No. 2 has sent FAX message No. Roc. 2003/2008/B, dated 25-11-2009 to the office of the District Collector wherein it is mentioned that the Tahsildar, Undi, reported that the order passed by the Collector, West Godavari District u/s 5-A(2) in proceedings Roc. 10754/2008/G2/SW, dated 19-11-2009 was served on the land owners in two separate modes. With regard to the petitioners, they are shown to have been served in person and the service was effected on two other persons by names Smt. Mudunuri Subbalaxmi and Smt. Alluri Vijaya Lakshmi Sithadevi, who are non-residents of the village in which the lands are located, by way of affixture in the land under acquisition. The sequential pagination of the record would prove its authenticity. As this communication being contemporaneous which came into existence much before the institution of the Writ Petitions, I have no reason to disbelieve this piece of record. Hence, this submission of the learned counsel deserves to be rejected.

39. The submission of the learned counsel that from the fact that the award enquiry notices were issued almost two years after publication of the declaration u/s 6 of the Act it is evident that the purported public purpose did not exist, has no legal basis. From the mere fact that there was delay in commencing the award enquiry, it cannot be presumed that the public purpose which existed at the time of issuance of notification u/s 4(1) of the Act has ceased to exist by efflux of time. Unless the petitioners are able to show that any proceedings in question has taken place beyond the period stipulated under the Act, the acquisition proceedings cannot be invalidated by reason of considerable gap between one stage of the proceedings and another stage. The burden heavily lies

on the person to plead and prove that the need for acquisition of land ceased to exist due to radical change of circumstances subsequent to the commencement of the acquisition proceedings. Except the submission of the learned counsel, the petitioners have neither raised proper pleading in this regard nor substantiated the same by adducing necessary evidence. Hence, this submission of the learned counsel is rejected.

40. The last but one submission of the learned counsel is that the alleged consents are not valid in law as the signatures of the petitioners in this regard were obtained on blank papers without disclosing the real purpose for which they were taken. This aspect of the case does not assume much relevance as the petitioners failed to make out any case on merits. Whether the purported consents given by the petitioners are valid in law or not, the same will have no bearing on the outcome of the cases as the petitioners failed to establish any illegality in the acquisition proceedings.

41. Be that as it may, a perusal of Volume-I of the record of respondent No. 2 produced by the learned Government Pleader would show that petitioner Nos. 1 in both the Writ Petitions have signed a statement written in Telugu wherein they have given their consent for giving away the lands owned by them and notified for acquisition. A close perusal of the statement would suggest that the same was drafted and signed by petitioner No. 1 in W.P. No. 5119/2012. Petitioner No. 1 in W.P. No. 1616/2012 has also affixed her signature. Even assuming that a third party has drafted the said statement, the same does not become invalid so long as the said petitioners have not disputed their signatures therein. Far from doing so, they have admitted their signatures. Therefore, the burden heavily lies on these petitioners to prove that their signatures were obtained for a different purpose. By a separate statement, petitioner No. 2 in W.P. No. 1616/2012 has agreed to part with his land on market value as fixed by the Government. As this petitioner appears to be illiterate, he has affixed his thumb impression.

42. As noted hereinbefore, in case of two other persons other than the petitioners in these Writ Petitions, respondent No. 2 has mentioned in his report that they have filed their objections and the same were considered on merits. If the respondents were to manipulate the purported consents of the petitioners, I do not find any reason why they did not resort to the same process in case of the other two persons. That the plea of the petitioners that their signatures/thumb impressions were obtained without informing them of the real purpose for which they were taken is specious, is further fortified by the fact that they did not bother to approach this Court for more than two years after publication of the declaration u/s 6 of the Act. If the petitioners have not given their consents and were really aggrieved by the acquisition of their lands, they would not have remained quiet for such a substantially long period without questioning the declaration published u/s 6 of the Act. The conduct of the petitioners, coupled with the unimpeachable record discussed above, would clinchingly establish that this plea of the petitioners is a pure afterthought and the same has no bonafides.

43. The last and also the least of the submissions is that alternative Government lands are available in the locality for acquisition. However, at the hearing, Sri C. Ramachandra Raju, learned counsel for the petitioners, fairly conceded that the petitioners have no evidence to substantiate this aspect.

44. On the analysis as above, I do not find any merit in these two Writ Petitions and they are accordingly dismissed. As a sequel, interim orders granted in both the Writ Petitions are vacated and WPMP No. 2015/2012 & WVMP No. 1540/2012 and WPMP No. 6522/2012 & WVMP No. 1594/2012, filed in the respective Writ Petitions are disposed of as infructuous.