

(1993) 03 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1116, 1123, 1160 and 1164 of 1986 and W.P. No's. 18047/89 and 8942/92

The Spl. Dy. Collector, L.A., Visakhapatnam Urban
Development Authority and Another

APPELLANT

Vs

M.J. Swamy and Others

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 — Section 6
Land Acquisition Act, 1894 — Section 4(1), 48(1)

Citation : (1993) 2 ALT 116 : (1993) 2 APLJ 219

Hon'ble Judges : P.L.N. Sarma, J; P. Venkatarama Reddi, J; A. Lakshmana Rao, J

Bench : Full Bench

Advocate : Sumalini Reddy, in W.As., Koka Raghava Rao and Kum. G. Rohini, in W.Ps, for the Appellant; N.V. Ranganatham in W.As. and Sumalini Reddy in W.Ps., for the Respondent

Final Decision : Allowed

Judgement

1. This Full Bench has been constituted to consider mainly the question whether a fresh notification issued u/s 4(1) of the Land Acquisition Act (hereinafter, referred to as "L.A.Act") can be issued without withdrawing or cancelling the earlier notification which stood vitiated by the failure to publish its substance in the locality within the stipulated time. The learned single Judge allowed the writ petitions holding that the earlier notification u/s 4(1) subsisted notwithstanding such failure and that the fresh notification could only be issued after the withdrawal of the earlier one u/s 48 of the L.A.Act. When the writ appeals filed against the common judgment came up for hearing before the Division Bench consisting of Ramanujulu Naidu and Ranga Reddy, JJ., the learned Judges, after having referred to certain observations in two judgments of the Supreme Court felt that in view of the importance of the question, the cases are fit to be decided

by a Full Bench. Accordingly, the four writ appeals have been referred to the Full Bench. Two other connected writ petitions have also been tagged on to the writ appeals. Thus in all, six cases are before the Full Bench.

2. The writ appeals were filed by the respondents in the writ petitions namely the Visakhapatnam Urban Development Authority (hereinafter referred to as "the VUDA") and Special Deputy Collector (Land Acquisition) Urban Development Authority, Visakhapatnam. The two writ petitions, namely W.P.18407/89 and W.P.8942/92 were filed by the persons who purchased the lands at the auction sale held by the Income Tax Department either during the pendency of the writ petitions or writ appeals.

3. The relevant facts are these: The VUDA is a statutory authority constituted by the Andhra Pradesh Urban Areas (Development) Act, 1975. At the instance of VUDA, the Government of Andhra Pradesh, by G.O. Ms. No. 1203, Housing, Municipal Administration & Urban Development, dated 19-9-1980 notified u/s 4(1) of the L.A. Act, an extent of Ac.8-00 and 42,926 sq. feet comprised in T.S.Nos. 442, 457, 991, 994, 999 and 1005 situate in Ward No. 2 of Bhimunipatnam Municipality near Visakhapatnam. The said notification u/s 4(1) of the Act was published in the Andhra Pradesh Gazette dated 5-1-1981. The public purpose mentioned in the notification is "implementation of development schemes". The substance of the notification was published in the village on 10-4-1981 i.e., more than three months after Gazette publication. The Special Deputy Collector (Land Acquisition), Urban Development Authority, issued notices u/s 5-A of the L.A. Act on 1-4-1981 calling for objections from the interested persons. An enquiry u/s 5-A was conducted on 6-5-1981. The landholders including the respondents in the Writ Appeals, filed objections. After the report was submitted by the Special Deputy Collector (Land Acquisition Officer), the declaration u/s 6 was approved by the District Collector, who by that time, it appears had delegated powers. The declaration u/s 6 was published in the A.P. Gazette on 4-7-1983. Notices under Sections 9(1) and 10 of the L.A. Act were issued by the Land Acquisition Officer on 5-12-1983 fixing the date of award enquiry as 6-1-1984. No enquiry seems to have been conducted. A few days before the declaration u/s 6, the Land Acquisition (A.P. Amendment and Validation) Act 1983 received the assent of the President and became law. The said Act had retrospective effect from 12th September, 1975. According to the amendment introduced to Section 4(1) by the said Act, the Collector was required to cause public notice of the substance of Section 4(1) notification to be given in the locality within forty days from the date of its publication in the Gazette. Having regard to the fact that Section 4(1) notification published on 1-6-1981 did not comply with this requirement, a fresh draft notification u/s 4(1) was submitted by the Land Acquisition Officer to the District Collector for approval, treating the notification issued earlier as invalid. The District Collector approved the proposal on 22-5-1984 and the fresh notification u/s 4(1) covering the same land and area was published in the A.P. Gazette dated 1-6-1984. The public purpose mentioned in the notification is "Development under L.A.D.

Scheme meant for tourism development by U.D.A., Visakhapatnam". The substance of Section 4(1) notification was published in the village on 6-7-1984. The enquiry u/s 5-A was conducted by the Land Acquisition Officer in August 1984. The objections received were considered and a report was sent up. Thereupon, the draft declaration u/s 6 was approved by the District Collector on 28-10-1985 and it was published in the A.P. Gazette dated 31-10-1985. The substance of the declaration was published in the village on 20-11-85. Notices under Sections 9(1) and 10 fixing the date of award-enquiry as 16-12-1985 were issued by the Land Acquisition Officer. At the instance of the petitioners, the enquiry was postponed to 26-12-1985. At that stage, the four writ petitions which are the subject-matter of writ appeals were filed on various dates in December 1985. In these writ petitions, the notification u/s 4(1) published on 1-6-1984 and the declaration issued u/s 6 pursuant thereto and the consequential notices issued under Sections 9(1) and 10 were challenged. By a common judgment dated 19-6-1986, the writ petitions were allowed by Seetharam Reddi, J. and Section 4(1) notification dated 1-6-1984 was quashed. The learned Judge held: "the second notification published on 1-6-1984 u/s 4(1) is not a valid one in view of the fact that the first notification dated 5-1-81 was still in subsistence and unless that was withdrawn which admittedly had not been done, the second notification cannot be issued and therefore it cannot be held to be a valid one." It is against this judgment VUDA and the Special Deputy Collector (Land Acquisition) Visakhapatnam, have filed the present writ appeals.

4. The respondent in W.A.No. 1116/86 (petitioner in W.P.No. 13697/85) is concerned with the land in T.S.No. 442 and 457. The respondent in WA1123/86 (petitioner in WP No. 14876/85) is concerned with the land in TS No. 999. The appellant in WA 1160/86 (petitioner in WP No. 14785/85) is concerned with TS No. 1005 and the appellant in WA 1164/86 (petitioner in WP. No. 15025/85) is concerned with TS No. 991 and 994.

5. The petitioner in WP No. 18407/89 claims to have purchased undivided half share in the land in TS No. 457 at an auction sale conducted by the Income Tax Department for realising the tax arrears due from Rani Rukmini Devi. The sale was confirmed in his favour on 23-11-1987. The petitioner claims to have purchased the other half share under a registered sale deed dated 4-5-85 from Rani Kamala Devi who is the respondent in WA No. 1116/86.

6. The petitioner in WP No. 8942/92 has stated that he purchased half share in the land comprised in TS No. 442 held by Rani Rukmini Devi at the auction sale held by the Income Tax Department on 26-4-84 and the sale was confirmed on 6-8-1986. It is also stated that the properties were divided by metes and bounds by a memorandum of partition dated 12-9-89 between Rani Rukmini Devi and Rani Kamala Devi, by virtue of which the petitioner became an absolute owner of the land in TS No. 442.

7. The learned Counsel for the appellants in the writ appeals, Ms. Sumalini Reddy has contended that the notification u/s 4(1) of the L.A. Act not having been

followed by the local publication of the substance of the notification within the prescribed time, the notification is void and it will have no legal existence after the expiry of the prescribed period of 40 days. It is therefore contended that the competent authority can proceed to issue a fresh notification u/s 4(1) and a fresh declaration u/s 6 without formally withdrawing or cancelling the earlier notifications. The learned Counsel has submitted that Section 48 is wholly inapplicable to a case where the notification became extinct by reason of non-compliance with the mandatory requirement of Section 4(1) regarding the local publication and that the question of withdrawal could arise only in case valid proceedings are pending. She has pointed out that the decision of the Division Bench of this Court in *Sardar Anjuman Ahmediyya, Muslim Mission v. State of A.P.*, 1980 (2) ALT 32 = AIR 1980 A.P. 246 relied upon by the learned single Judge has no bearing on the question.

8. The learned Counsel for the respondents Sri. N.V.Ranganadham, Sri. Y. Sivarama Sastry (Senior Counsel) appearing in Writ Appeals and Sri. Koka Raghava Rao appearing for the writ petitioner have contended that until and unless the first notification u/s 4(1) is duly cancelled or withdrawn, a second notification cannot lawfully be issued. The learned Counsel disputed the contention of the appellants that the failure to comply with the requirement of local publication as envisaged by Section 4(1) has the affect of rendering the notification void and nugatory and contended that it will continue to exist and be in force until steps are taken to have it struck down by the Court of law or the competent authority u/s 4 avoids the same by issuing a notification withdrawing or cancelling the same. In other words, the learned Counsel contended that the notification u/s 4(1) not followed by local publication is at best voidable and it is not open to the respondent to unilaterally ignore the same and proceed to issue a fresh notification. For the same reason, the learned Counsel submits that a fresh declaration u/s 6 cannot be issued in the face of an earlier one. The learned Counsel for the respondents therefore justified the judgment under appeal.

9. The crucial provision is Section 4(1) of the L.A. Act as amended by Land Acquisition (Andhra Pradesh Amendment and Validation) Act 9/83 which reads as follows:

"Wherever it appears to the appropriate Government, the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language, and (the Collector shall within 40 days from the date of publication of such notification) cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification."

The relevant portion of Sub-section (2) reads:

"Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government (or the District Collector) in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub soil;

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

.....

10. The bracketed words in Sub-section (1) of Section 4.- "within 40 days from the date of publication of such notification" were added by Land Acquisition (A.P. Amendment and Validation) Act 9/83. The said Act received the assent of the President on 23rd June, 1983 and the same was published in the Andhra Pradesh Gazete (Ext.) Part IV-B dated 29-6-1983. The Amendment Act is retrospective in its effect as Sub-section (3) of Section 1 of the Act enjoins that "it shall be deemed to have come into force on the 12th September, 1975." The statement of objects and reasons appended to the Bill discloses that the Amendment and Validation Act was enacted with a view to overcome the problems caused by the Full Bench ruling of this Court in Yadaiah Corporation Govt. of A.P. 1983 (1) ALT 233. The Full Bench inter alia held that there must be simultaneous publication of the substance of the notification in the locality along with the publication in the Official Gazette and if there was a time gap of even one day, the land acquisition proceedings u/s 4(1) stood vitiated. By enacting A.P. Act 9/83, a significant change was brought about in Section 4(1) by enacting that the local publication shall be done within 40 days from the date of publication in the Gazette. By Section 5, the State Legislature validated the acquisition of land made or purporting to have been made under the principal Act before the commencement of Act 9/83. It is laid down in that section that no acquisition of lands made and no action taken or thing done in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground that "the Collector has not caused public notice to be given as required under Sub-section (1) of Section 4 of the principal Act, simultaneously with the publication of the notification in the Andhra Pradesh Gazette or the District Gazette, as the case may be." Section 5 operates notwithstanding any judgment, decree or order of any Court, tribunal or other authoirty to the contrary. We are omitting to refer to the other provisions as they are not relevant.

11. It may be interesting to note that shortly after the said Amendment Act came into existence, the Supreme Court in Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, took a different view holding that the publication in the Official Gazette and public notice in the locality need not be simultaneous or immediate, but must be contemporaneous. Their Lordships of the Supreme Court pointed out that although there was bound to be a time gap between the publication in the Official Gazette and public notice in the locality, what was really

necessary was that they should not be separated by such a long interval of time that the continuity of action may appear to be interrupted by a long gap. The Supreme Court further observed: "If the notification and the public notice are separated by such a large gap of time, it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to any one." It is obvious that the view taken by the Full Bench in *Yadaiah v. Govt of A.P.* (2 *supra*) stands superseded by the aforementioned judgment of the Supreme Court. But the fact remains that the State Legislature stepped in the meanwhile and made appropriate amendments to the principal Act by prescribing a limit of 40 days within which the public notice in the locality has to be published. It is that provision which is extent now and has to be given effect to, notwithstanding the interpretation given by the Supreme Court with reference to the then existing provision. Incidentally we may just refer to the Land Acquisition (Amendment) Act, 1984 (Central Act No. 68/84) which was enacted by the Parliament. According to this Central Amendment Act, the notification u/s 4(1) apart from being published in the Official Gazette should also be published in two daily newspapers having circulation in the locality. This amendment came into force with effect from 24-9-1984 and it is therefore not relevant for the purpose of this case.

12. Applying the provisions of Section 4(1) as amended by A.P. Act 9/83, the public notice of the substance of the Gazette notification dated 5-1-1981 ought to have been given in the locality within 40 days after its publication in the Gazette. In the instant case, the local publication was admittedly not done till 10-4-81 i.e., for about 95 days after the Gazette publication. Obviously this does not satisfy the requirement of the amended Section 4(1) which has retrospective effect. It may be that on the date of issuance of Section 4(1) notification and the publication thereof, the Amendment Act was not enacted. However, there cannot be two views on the point that the requirement as to local publication within 40 days must be deemed to have been in force and operation at the point of time when Section 4(1) notification was published on 5-1-1981. Otherwise, we will be ignoring the plain and obvious effect of retrospective legislation.

13. What then is the effect of non-compliance of the requirement of Section 4(1) regarding local publication of the substance of the notification? The question has been considered by three or four judgments of the Supreme Court and the answer to this question has to be found on the principles laid down in these cases. The first decision which needs immediate reference is that of *Khub Chand v. State of Rajasthan* AIR 1967 SC 1075. In that case, the Supreme Court repelled the contention urged by the State that the direction to cause a public notice of the substance of the notification to be given at convenient places in the locality was only a directory provision. After examining the scheme underlying Sections 4, 5, 5-A, and 6 of the Act, Subba Rao, C.J. speaking for himself and Shelat, J. observed:

"The provisions of a statute conferring power on the Government to compulsorily

acquire lands shall be strictly construed. Section 4 in clear terms says that the Collector shall issue public notice of the substance of such notification to be given at convenient places in the said locality. The provision is mandatory in terms. Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation lends to some absurd or inconvenient consequence or be at variance with the intent of the Legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that should flow from the infringement of the direction and such other considerations. The object underlying the said direction in Section 4 is obvious. Under Sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The Legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry. The fact that the owner may have notice of the particulars of the intended acquisition u/s 5 (2) does not serve the purpose of Section 4 for such a notice shall be given after the appropriate officer or officers enter the land and submit the particulars mentioned in Section 4. The objects of the two sections are different: the object of one section is to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other is to enable him to know the particulars of the land which is sought to be acquired."

The Supreme Court fortified its view by referring to the language of Section 4 (2) of the Act. It was observed:

"Indeed, the wording of Section 4 (2) of the Act leads to the same conclusion. It says, "thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality..." The expression "thereupon" and "shall be lawful" indicate that unless such a public notice is given, the officer or his servants cannot enter the land. It is a necessary condition for the exercise of the power of entry. The non-compliance with the said condition makes the entry of the officer or his servants unlawful. On the express terms of Sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied with, he or his servants cannot exercise the power of entry u/s 4(2), with the result that if the expression "shall" is construed as "may" the object of the Sub-section itself will be defeated. The statutory intention is, therefore clear, namely, that the giving of public notice is mandatory."

Then follows the crucial observation:

"If so, the notification issued u/s 4 without complying with the said mandatory

direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void."

14. The ratio of the judgment, in our view, rests on two factors. Firstly the Legislature intended that in a case of compulsory acquisition, it is absolutely necessary that before the authorised officer enters the land of another, the owner should have a clear notice of the intended entry. Secondly, the language of Section 4 (2) itself makes it clear that giving of a public notice as contemplated by Section 4(1) is the necessary pre-requisite or foundation for the exercise of power of entry and taking other steps essential for the processing of the acquisition proposal. Publication in the Official Gazette and public notice in the locality are the essential elements of Section 4(1) and two vital steps to be taken before . proceeding to enter upon the land (Vide Deepak Pahwa case (3 supra). Having regard to these circumstances, the Supreme Court held that publication of substance of the notification in the locality was mandatory and an absolutely essential requirement. In unmistakable terms, their Lordships have also held that the notification issued u/s 4(1) and the acquisition proceedings taken pursuant thereto would be rendered void in case of failure to give public notice in the locality.

15. No doubt, the Supreme Court was considering the provisions of the principal Act which did not provide for local publication within 40 days. But we do not see any difference in principle-whether it be the amended or pre amended Section 4(1). By parity of reasoning, it must be held that not giving public notice of the substance of notification in the locality within 40 days after its publication in the Gazette, would strike at the root of the notification issued u/s 4(1) and make it void and unenforceable.

16. Let us notice the other relevant judgments of the Supreme Court. In Collector (Dist. Magistrate), Allahabad v. Raja Ram AIR 198S SC 1622 the Supreme Court reiterated the principles laid down in Khub Chani case (4 supra) and cited with approval the observations made therein. The Supreme Court pointed out:

"A bare perusal of Section 4(1) clearly shows that in order to comply with the statutory requirement therein set out, a notification stating therein "the land which is needed or is likely to be needed for a public purpose" has to be published in the Official Gazette. The second part of the Sub-section provides that the Collector has to cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. Both the conditions are held by a catena of decisions to be mandatory. Whether the second condition is mandatory or directory is no more res integra. In Khub Chand and Others Vs. State of Rajasthan and Others, , Subba Rao, C.J. speaking for the Court observed that "the statutory intention is, therefore, clear, namely, that the giving of public notice is mandatory. If so, the notification issued u/s 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would

be equally void."

The Supreme Court then proceeded to say:

"The Court also referred to Smt. Somavanti and Others Vs. The State of Punjab and Others, , and quoted with approval the statement therein made that a valid notification under Sub-section (1) of Section 4 is a condition precedent to the making of a declaration under Sub-section (1) of Section 6. This view has been consistently followed and was approved in State of Mysore Vs. Abdul Razak Sahib, , wherein it was observed that in the case of a notification u/s 4 of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied with. The publication of a notice in the locality is a mandatory requirement."

17. Now, we shall refer to the judgment of the Supreme Court in Land Acquisition Officer v. Mohd. Amir Khan 1986 (1) APLJ 14 SC where in the Supreme Court considered the very provision with which we are concerned and construed the effect of Section 4(1) of the L.A. Act as amended by A.P. Act 9/83. The Supreme Court while pointing out that every provision in the Amendment Act (A.P. Act 9/83) must be deemed to have come into effect from the date - 12th September, 1975, declared that the notification u/s 4(1) the substance of which was published in the locality beyond the stipulated time of 40 days was invalid. Bhagwati, C.J. observed:

"What therefore Sub-section (1) of Section 4 as it stood from and after 12th September 1975 provided was that the Notification under that section shall be published in the Official Gazette and public notice of the substance of such Notification shall be given in the locality "within forty days from the date of publication of such notification. This requirement would obviously apply to every Notification under Sub-section (1) of Section 4 issued by the appropriate Govt. on or after 12th September, 1975. If in case of a Notification issued u/s 4 Sub-section (1) on or after 12th Sept., 1975, public notice of the substance of such Notification is not given in the locality within forty days from the date of publication of such Notification in the Official Gazette, it would introduce a fatal infirmity invalidating such notification. Here, in the present case, the Notification u/s 4 Sub-section (1) was published in the Official Gazette on 4th August, 1977 but public notice of the substance of such Notification was given in the locality as late as 3rd October, 1977 i.e., more than forty days after the date of publication of such Notification in the Official Gazette. There was therefore clearly a violation of the mandate enacted in Sub-section (1) of Section 4 as it stood from and after 12th September, 1975 and the Notification u/s 4 Sub-section (1) was liable to be struck down as invalid though on a ground different from that which found favour with the High Court."

Thus the Supreme Court reiterated even with reference to the amended Section 4(1) that non-compliance with the requirement of local publication as enjoined by the amended provision would introduce a fatal infirmity in the notification and such notification is "invalid" in law. There is another judgment of the Supreme Court in *C.K. Narayana Chary and Others Vs. Pothepalli Ashanna and Others*, rendered on the same day wherein following the judgment in *Mohd. Amir Khan* case (6 supra), referred to above, the Supreme Court held that if public notice of the substance of the notification is not given in the locality within forty days from the date of publication of such notification in the Official Gazette, "such notification would be invalid". In a recent judgment of the Supreme Court in *Nutakki Sesharatanam Vs. Sub-Collector, Land Acquisition, Vijayawada and others*, , the Supreme Court again considered the provisions of Section 4(1) as amended by A.P. Act 9/83. The Supreme Court held:

"On the merits, it is clear that the acquisition of the land is bad in law because the substance of the notification u/s 4(1) of the said Act was not published in the locality within forty days of the publication of the notification in the Government Gazette. The time-limit of forty days for such publication in the locality has been made mandatory by Section 4(1) of the said Act as amended by the Andhra Pradesh (Amendment) Act. It is well settled that such non-compliance renders acquisition bad in law."

18. An analysis of the above decisions would unequivocally indicate that the Supreme Court in one voice expressed the view that the requirement as to local publication - whether under the pre-amended or amended Section 4(1), is a mandatory requirement and the breach of that mandatory duty introduces a fatal infirmity in the notification, thereby invalidating it. In *Khub Chand* case (4 supra), the requirement of local publication was viewed as a pre-condition or foundation for the exercise of the power of entry into the land and taking necessary steps in furtherance of the notification. The non-compliance of the pre-condition made the notification u/s 4 void and the proceedings taken pursuant thereto were held to be equally void. The law laid down in *Khub Chand* case (4 supra) was referred to with approval in *Rajaram's* case (5 supra). In the later three judgments dealing with amended Section 4(1), no doubt, the expression "void" was not used. The expressions used therein were "invalid" or "bad in law". But in our view, that is a matter of insignificance. The expressions "void", "invalid", bad in law" need not necessarily convey different meanings and we do not envisage any dichotomy between these various expressions. "Invalidity in law" or "bad in law" are expressions wide enough to cover an act or order void in its nature. It is not possible to say that the Supreme Court, in the later cases, intended to whittle down the observations made by Subba Rao, J. in *Khub Chand* case (4 supra), nor can it be said that their Lordships wanted to strike a distinction between "void" and "invalid". On the other hand, the Supreme Court was emphatic in saying in *Mohd. Amri Khan* case (6 supra) that the non-compliance with the aforementioned mandatory requirement introduces fatal infirmity in the notification. We cannot, therefore, accept the argument of the

learned Counsel for respondents built up on the basis of differential expressions used to describe the legal status of the notifications.

19. The learned Counsel for the respondents agree that if the notification becomes void, it is liable to be ignored by the statutory authorities and it needs no order to quash or cancel it. The learned Counsel would therefore place the notification in the "voidable" category. The notification, according to the learned Counsel exists in the eye of law despite the non-compliance of mandatory requirement of local publication. The use of expression "void" in Khub Chand case (4 supra) and the absence of such expression in the later judgments rendered in the context of A.P. Amendment, is sought to be pressed into service to sustain their argument. We think that this is a distinction without principle. We have already observed that the expressions "invalid in law" and "bad in law" are wide and sweeping and there is no reason to think that void actions are not encompassed within the amplitude of those expressions. We are inclined to think that on principle, it makes no difference whether the publication was not made at all or it was made after the stipulated period. Publication in one case and publication within forty days in another case being essential pre-requisite to proceed further, the reasoning of the Supreme Court in Khub Chand case (4 supra) equally applies to both the situations. In our view, the law laid down by the Supreme Court in Khub Chand case (4 supra) regarding the legal status of Section 4(1) notification not followed by local publication is unaffected by any later judgments of the Supreme Court. In fact, that view was reinforced by the Supreme Court in Mohd. Amir Khan's case (6 supra), by observing that the non-compliance with mandatory requirement afflicted the notification with a fatal infirmity". Having regard to the consistent view taken by the Supreme Court in the aforementioned decisions, we do not think that a notification u/s 4(1) exists in law for any purpose when once the mandatory and crucial requirement of local publication has not been fulfilled. It is to be noted that the invalidity which attaches to the notification is by no means a negligible, trivial or formal one. On a fair reading of the various judgments of the Supreme Court, there is no escape from the conclusion that the invalidity is so grave that the notification cannot be said to be legally existing on the expiry of forty days. The fact that the Supreme Court has used such expressions as "void", "fatal infirmity" would clearly lead to the conclusion that on the expiry of forty days, the notification u/s 4(1) gets nullified and denuded of legal effect. It becomes a dead letter. If in recognition of the invalidity attaching to the notification, the Collector proceeds on the basis that Section 4(1) notification no longer survived in law and re-starts the process of acquisition afresh, we do not think, that he would be committing any illegality. There is no legal bar to do so. It is difficult to say that the notification not followed by local publication will be merely in a state of dormancy or suspended animation. It is equally difficult to say that inspite of fatal infirmity permeating the notification by virtue of the breach of mandatory duty, it still survives until and unless it is avoided. It may be that a landholder aggrieved by the notification may play it safe by asking for a declaration from the Court that it is invalid, for, if

that is not done, he will have to ignore that notification at his peril. But it does not follow that the Government or the Collector, as the case may be, should necessarily take the step of withdrawing or cancelling the notification. In our view, a formal cancellation of an invalid or inoperative notification is not required in a case of this nature, the Collector or the Government can straight-away issue a fresh notification without formally cancelling or withdrawing the same. The issuance of fresh notifications will have the obvious effect of superseding the earlier invalid notifications. May be the authorities could have cancelled the notification by way of abundant caution and to avoid unnecessary controversy. But the omission to do so does not make any difference.

20. The learned Counsel for the respondents then contended that the interpretation which we have placed, virtually means that the notification u/s 4(1) and the other proceedings initiated consequent thereto, "would lapse"-an expression which is used by Section 11-A but not to be found in Section 4. The learned Counsel argues that appropriate expression should have been used if it was the intention of the Legislature that the notification u/s 4(1) should become automatically null and void for want of local publication according to law. We are unable to accept this contention. Section 11-A introduces a sort of limitation for making an Award. It is for that reason the consequences of not making the award within the prescribed time limit have been expressly set out. The mere fact that the consequences of the breach of mandatory provision as to public notice have not been specifically provided for in Section 4(1), does not call for a different interpretation. The Legislature need not provide for consequences of breach of statutory duty in each and every case. The Court has to place a proper construction as to the effect of non-compliance of a mandatory requirement keeping in view the relevant provisions. That is what the Supreme Court did in *Khub Chand* case (4 supra) and in other cases aforementioned.

21. The learned Counsel Mr. Ranganatham cited the Judgment in *State of Mysore and Others Vs. V.K. Kangan and Others*, and sought to rely upon para 16 of that judgment. The Supreme Court declined to quash the notification u/s 4(1) on the ground of failure to give public notice for the reason that there was an unreasonable lapse of time in filing the writ petition. By implication, the learned Counsel suggests, the Supreme Court recognised the validity of the notification despite the non-compliance with the statutory requirement of public notice. We do not agree. Whether in given circumstances, relief has to be granted by this Court under Article 226 is a consideration which rests on a different principle. The ratio of that decision has no bearing on the question whether the competent authority under the Land Acquisition Act can ignore a void and inoperative notification and proceed to issue a fresh notification in its place.

22. The learned Counsel Mr. Ranganatham then contended that the writ petitioners never raised an objection before the Land Acquisition Officer in the course of Section 5-A enquiry on the ground that the notification was vitiated by failure to give public notice in the locality. The requirement being in the interests

of the affected landholders, they can very well waive the objection and they must be deemed to have done so. The learned Counsel therefore submits that it is not open to the land acquisition authorities to unilaterally treat the notification as invalid and proceed to issue a fresh notification. It is not possible for us to accept this contention either. Apart from the fact that the plea of waiver has not been raised in the writ petition, the argument does not really help the respondent-landholders. If the respondents waived their right to question the notification on the ground of lack of public notice, they may not be entitled to any relief. That does not mean that the validity is imported to an otherwise invalid notification or that the concerned authorities should necessarily treat the notification as valid and subsisting.

23. In reaching the conclusion as we do, we are not unmindful of the complications at times created by the use of the contractual law terms "void", "voidable" and other allied expressions in judging the consequences of unlawful administrative acts. Krishna Iyer, J. in *Nawabkhan Abbaskhan Vs. The State of Gujarat*, observed: "The law in this area is full of alarming conundrums hardly resolved by academic writing or judicial dicta." In *Wade's Administrative Law* (Fourth Edition) at page 296, the various approaches to the problem and the confusion surrounding this branch of law have been highlighted. The learned author has pointed out that the term "void" is meaningless in any absolute sense. Its meaning is relative. The learned author also pointed out that "an order which is ultra vires within any of the ramifications of that doctrine, e.g., because of unreasonableness or wrong grounds or violation of statutory requirements, can only be void. Once the court condemns it as being void, it is seen to have been destitute of all legal effect from the outset. An order which is merely voidable, on the other hand, has legal effect upto the time when it is quashed." Lord Diplock, in *Hoffmann-LA Roche v. Trade Secy.*, 1975 Appeal Cases 295 observed:

"It leads to confusion to use such terms as "voidable", "voidable ab initio", "void" or "a nullity" as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or latent defects, before its validity has been pronounced by a court of competent jurisdiction."

Rubinstein in his treatise on "Jurisdiction and Illegality" pointed out the distinction between "void" and "voidable" acts in the following terms:

"Voidable acts are those that can be invalidated in certain proceedings; these proceedings are especially formulated for the purpose of directly challenging such acts.....On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings before any Court or tribunal and whenever it is relied upon. In other words, it is subject to "collateral attack". (Passage quoted in *Nawabkhan's* case)

The judgment of *R. v. Paddington Valuation Officer* 1965 (2) All.E.R. 836 brings to focus the distinction between the void and voidable acts or orders. In that

case, the valuation lists prepared under the provisions of the Rating and Valuation (Miscellaneous Provisions) Act was in question. It was observed by Denning M.R. at page 841:

"It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void altogether, but only voidable. In that case, it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent acting within his jurisdiction-exercised that jurisdiction erroneously. That makes the list voidable but not void. It remains good until it is set aside."

From whatever angle the problem is viewed, that is to say, whether the notification is void in the sense explained by Wade or Rubinstein or gravely invalid as pointed out by Denning, M.R. or ultra vires of the provisions of the Act, the emerging conclusion is irresistible. The notification issued in G.O.Ms.No. 1203 dated 19-9-1980 had no legs to stand after the expiry of 40 days from the date of publication in the Gazette and the appropriate authority can proceed on the basis that no such notification survives in law. He can treat the further consequential proceedings taken in the matter of acquisition of land as having abated. If so, there is no legal bar to issue straight-away a fresh notification u/s 4. Viewed from another angle, the earlier notifications being amenable to collateral attack, when once they are held to be void and inoperative, the subsequent notifications can regain their full force.

24. We were taken through the judgments of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, and *Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others*, where certain aspects regarding the issuance of successive notifications u/s 6 and the exercise of powers of withdrawal and cancellation have been discussed. In the first case, the Supreme Court held that Section 4(1) cannot be construed as a "kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively." The Supreme Court held 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." The Supreme Court then repelled the argument that Section 48 is the only provision in the Land Acquisition Act by which the Government can withdraw from the acquisition and unless action is taken u/s 48(1), the notification u/s 4(1) would remain. The Supreme Court pointed out that the withdrawal u/s 48(1) is not the only way in which a notification u/s 4 or Section 6 can be brought to an end and that the Government can always cancel the notifications under Sections 4 and 6 by invoking the power u/s 21 of the General Clauses Act. The Supreme Court then pointed out that "Section 48(1) is a special provision for those cases where

proceedings for acquisition have gone beyond the stage of the issue of notice u/s 9(1)." The Supreme Court observed: "It seems that Section 48 refers to the stage after the Collector has been asked to take order for acquisition u/s 7 and has issued notice u/s 9(1). It does not refer to the stage prior to issue of the declaration u/s 6."

25. The judgment of the Supreme Court in Vishnu Prasad case (13 supra) cannot be understood as laying down the proposition that atleast, the cancellation of notification u/s 21 of the General Clauses Act is a must for the purpose of putting an end to the notification u/s 4. The Supreme Court while answering the question whether withdrawal u/s 48 was the only way to put an end to the notification u/s 4 referred to the fact that before the stage of Section 9(1) notice is reached, the notification could also be cancelled in exercise of the power u/s 21 of the General Clauses Act. The Supreme Court was not concerned with the question whether an invalid or inoperative notification u/s 4 is required by law to be cancelled in a formal manner before starting the exercise again.

26. So also, the Judgment in Girdharlal's case (14 supra) cannot be understood as laying down a principle that wherever the notification was found to be or became invalid, it is to be first cancelled and then only a fresh notification has to be issued. In that case, no doubt the Government cancelled the notification issued u/s 6, having realised that it had no power to issue such a notification. But whether in such a case there should be express cancellation of the invalid notification was not gone into by the Supreme Court. On the other hand, the following observations made therein seem to support the stand of the appellant. It was observed:

"There was nothing in Section 48 which precluded the Government from treating the earlier invalid notification as ineffective and issuing in its place an effective notification u/s 6. It could not be said that on issuing the notification dated July 18, 1961, the power of the State Government to issue a notification u/s 6 was exhausted and the Government could not issue a fresh notification u/s 6. By the issue of this notification, the Government had not effectively exercised its power u/s 6. In the circumstances, the Government could well issue the fresh notification u/s 6 dated August 14, 1964."

27. Reliance was placed by the learned single Judge who allowed the writ petitions, as well as the respondents' Counsel Mr. Ranganatham on a Division Bench judgment of this Court in S. Anjuman Ahmediyya, Muslim Mission v. State (1 supra). In that case, the notifications under Sections 4 and 6 were published in the year 1971. Thereafter, certain representations were made pursuant to which the Government decided to drop the acquisition proceedings in the year 1974. To that effect, a Memo was issued by the Government on 20-10-1974. The Collector then sent up a draft notification for withdrawal to the Government. But the said withdrawal notification was not published. At the same time, in view of the change in circumstances, it was decided to proceed with the acquisition. It was contended that the acquisition proposals must be deemed to have been

dropped and therefore they cannot be continued without recourse to fresh notifications under Sections 4 and 6. This contention was rejected by the the requisite notification should be published in the Gazette and in the absence of such notification, there could not be a withdrawal according to law. In coming to that conclusion, the learned Judges relied upon Rule 5 of the, Rules made by the State Government u/s 55 of the L.A. Act and also the requirement in Section 21 of the General Clauses Act that the power has to be exercised in the same manner and subject to the same conditions as it has to be in relation to the notification sought to be superseded. This case has no relevance to the question which we are called upon to decide.

28. In the light of the above discussion, the conclusion of the learned single Judge that the first notification u/s 4(1) published on 5-1-1981 continues to subsist for the reason that it was not withdrawn, cannot be sustained. The case law cited by the learned single Judge, viz., Anjuman Ahmediyya, Muslim Mission case (1 supra), Amir Khan case (6 supra) and C.K. Narayanacharya case (7supra), do not at all support the view taken by him. Having regard to the conclusion we have reached that the earlier notification u/s 4(1) became void, inoperative and ineffectual after the crucial date of expiry of 40 days from 5-1-1981, it follows that the declaration u/s 6 published on 4-7-1983 could have no legal existence. It is not and cannot be disputed that Section 6 declaration is dependent upon Section 4 notification and it cannot claim separate and independent existence, except in rare cases where the acquisition is for a company. The notification u/s 4(1) being the essence and foundation of all further proceedings under the L.A. Act including the declaration u/s 6, when once that foundation is shattered, the superstructure cannot remain. In Khub Chand case (4 supra), the Supreme Court said it in so many words that if the notification u/s 4 becomes void, the proceedings taken pursuant thereto would be "equally void". The first declaration u/s 6 therefore falls to ground along with first notification u/s 4, thereby paving the way for issuance of a fresh notification and declaration by the authorities concerned. This is what has been done by the land acquisition authorities after the A.P. Act 9/83 came into force and we uphold the action taken in this behalf.

29. Mr. Y. Sivarama Sastry, learned Senior Counsel appearing for the respondent in one of the writ appeals has concentrated on another point, namely, that by virtue of the mandate contained in Section 11-A of the L.A. Act the acquisition proceedings starting from the issuance of fresh Section 4(1) notification on 1-6-1984 have lapsed. The learned Counsel therefore submits that the reference to Full Bench on the other question was itself unnecessary. Section 11-A, in so far as it is relevant, is extracted hereunder:

"11-A. Period within which an award shall be made: The Collector shall make an award u/s 11 within a period of two years from the date of publication of declaration and if no award is made within that period, the entire proceedings for acquisition of the land shall lapse.

(Proviso-omitted).

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

The learned Counsel submits that although there was stay of all further proceedings when the writ petitions were filed in December 1985, there was no such blanket stay in the writ appeals. During the pendency of the writ appeals, only the take-over of possession of the lands has been stayed by orders dated 24-9-86 and 30-9-86. According to the learned Counsel, there was no bar to pass the Award and the High Court did not place any restraint in that behalf. It is contended that the Explanation which saves the period of limitation does not come into play for the reason that the high Court did not stay any action or proceeding to be taken in pursuance of the declaration u/s 6. Taking of possession is not an act or proceeding within the meaning of the Explanation to Section 11 A, according to the learned Counsel. The same contention raised in the context of Explanation-I to the first proviso to Section 6(1) was negated by a Division Bench of this Court consisting of Jeevan Reddy and Syed Shah Mohd. Quadri, JJ. in *J. Subba Rao v. Collector, E.G.* 1990 (1) An.W.R. 562: 1990 (1) L.S. 247, Jeevan Reddy, J. speaking for the Bench observed:

"Explanation-I does not contemplate stay of all further proceedings. Its language is clear and specific. It says: "the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1) is stayed by an order of a Court". Taking possession is an "action" or "proceeding" to be taken in pursuance of the notification u/s 4(1). Where taking possession of the land is stayed by an order of the Court, the Explanation is satisfied. We see no reason to restrict the plain meaning of the words used in the Explanation and/or to read them as meaning stay of all further proceedings in pursuance of the notification u/s 4. The use of the word "any" preceding "action or proceeding" is of significance and must be given its full play."

In a recent case, a Division Bench of this Court consisting of M.N. Rao and S.V. Maruthi, JJ. in *The Andhra Pradesh Industrial Infrastructure Corporation Ltd. Vs. Chalasani Vijaya Lakshmi and others*, held that the interpretation placed by the Division Bench in the aforementioned Case to Explanation-I to Section 6 does not hold good for the purpose of Explanation to Section 11-A. The learned Judges distinguished the judgment in *J. Subbarao's case*, 1990 (1) An.W.R. 562 = 1990 (1) L.S. 247 stating that there may be situations in which the possession could be taken pursuant to Section 4(1) notification by invoking the urgency clause in Section 17(4). The learned Judges held that the period during which the stay of dispossession was in force cannot be excluded for the purpose of the Explanation to Section 11-A. It is not necessary for us to consider whether the point of distinction made out by the learned Judges who decided the later case is correct. We find that the point raised is squarely covered by the Judgment of the Supreme Court in *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and*

another, The Supreme Court considered the very provision with which we are concerned i.e., the Explanation to Section 11-A. The Supreme Court while confirming the judgment of the Gujarat High Court, observed:

"In the Explanation to Section 11-A of the said Act which prescribes the period which is to be excluded, the expression used is....."the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order by a Court."

"The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award u/s 11 of the said Act. In the first place, as held by the learned Single Judge himself, where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a land-holder whose land is acquired after the declaration u/s 6 is made, in case covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. In order to get the benefit of the said provision what is required is that the land-holder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment."

Incidentally it may be mentioned that the Supreme Court over-ruled the judgment of the Kerala High Court in *S. Bavajan Sahib Vs. State of Kerala and Others*, which was relied upon by the Division Bench in *A.P. Industrial Infrastructure Corporation case* (16 supra). Unfortunately, the judgment of the Supreme Court in *Yusufbhai Noormohmed Nendoliya case* (17 supra) was not brought to the notice of the learned Judges who decided the *A.P. Industrial Infrastructure Corporation Case* (16 supra). Thus, the decision of the Division Bench in *A.P. Industrial Infrastructure Corporation case* (16 supra) is no longer good law and the same is hereby over-ruled. It is not in dispute that if the period covered by the stay order-whether in writ-petitions or writ appeals is excluded, the lapse of proceedings contemplated by Section 11-A does not arise. The point raised by the learned Counsel for the respondent being no longer *res integra*, it is liable to be rejected.

30. The other contention raised by the learned Counsel for the respondents and writ petitioners turn on the merits and propriety of acquisition. It is contended that the public purpose mentioned in the impugned notification is vague and the

notification is therefore vitiated by the defect pointed out by the Supreme Court in *Munshi Singh and Others Vs. Union of India (UOI)*, . In that case, "planned development of the area" was the public purpose mentioned in Section 4(1) notification. The Supreme Court pointed out that in the absence of specification . of particular public purpose, the persons interested will be handicapped to file effective objections. The Supreme Court then held:

"We would accordingly hold that owing to the vagueness and indefiniteness of the public purpose stated in the notifications u/s 4(1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question, the appellants were wholly unable to object effectively and exercise their right u/s 5A of the Acquisition Act."

But, we do not think, the same defect vitiates the notification in question. Whatever may be said of the first notification wherein public purpose was mentioned as "Implementation of Development Schemes." The impugned notification is quite specific and sufficiently clear. "Tourism Development by the Urban Development Authority" is the purpose for which the land is sought to be acquired. It is difficult to characterise the purpose so specified as vague and indefinite. In *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, the specification of the public purpose as "development and utilisation of the lands as industrial and residential areas" was held to be valid. Moreover, going by the objections filed in the instant case, it is quite clear that the affected parties were quite aware of the intended purpose of acquisition and no prejudice can be said to have been caused to them. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the Supreme Court observed that the question whether the purpose specified in Section 4 notification is sufficient to enable an objection to be filled u/s 5-A depends upon the facts and circumstances of each case.

31. It is then contended that the land is not being acquired for any bona fide public purpose. It is submitted that the development of tourism by constructing hotels, beach resorts, etc. could be better achieved by private enterprise and there is no need for VUDA to embark on this venture. It is alleged that VUDA is actuated purely by a commercial motive. We find no merit in this contention. VUDA is a statutory authority created by the A.P. Urban Areas (Development) Act, 1975. The main object of the authority, as enjoined by Section 5 is to promote and secure the development of the areas comprised in development area according to plan and for this purpose the authority has the power to acquire, hold, manage, plan, develop or dispose of land, to construct buildings and to execute works for the benefit of public. The development of tourism in a sprawling and overdeveloping coastal city like Visakhapatnam cannot be said to be alien to the public purpose. There is no bar against VUDA undertaking such activities which will have the incidental effect of overall development of the city. There is no factual foundation for the allegation that VUDA is only actuated by commercial motive. At this stage, it is not possible to assume that VUDA will not

act in pursuit of its avowed goal, namely, tourism development, in the interests of public.

32. Next it is urged that having regard to the capacity and willingness of the writ petitioners themselves to construct hotels and other tourist complexes, the availability of alternative lands and the hardship that may be caused by reason of "acquisition, the impugned acquisition is not proper and valid. Particularly, on behalf of the respondents in W.A. No. 1160/86, it is stressed that the respondent is qualified to run the hotel industry and the plans are already afoot to construct a Star Hotel. It is contended that the purpose of acquisition could be better fulfilled by him if the land is released. We do not think that these are all germane considerations which should weigh with us in declaring the acquisition proceedings illegal. This Court cannot in exercise of jurisdiction under Article 226 of the Constitution, go into these factual aspects on the scanty material placed before this Court nor can it go into the correctness of the policy underlying the decision to acquire the land. We therefore see no infirmity in the land acquisition proceedings.

33. It is contended by Mr. K. Raghava Rao, learned Counsel for the writ petitioners that the land was purchased at the auction after the writ petitions were allowed by the learned Single Judge and therefore the petitioners should not suffer any prejudice. We do not think that on that account, the petitioners will acquire a paramount title to the land or get any immunity against acquisition, more especially when the judgment of the learned Single Judge has not become final.

34. For the afore said reasons, we allow the writ appeals, reverse the judgment of the learned Single Judge and dismiss the writ petitions. The appellants are at liberty to proceed with the acquisition from the stage it was stopped earlier. In the circumstances, we make no order as to costs in the writ appeals and writ petitions.