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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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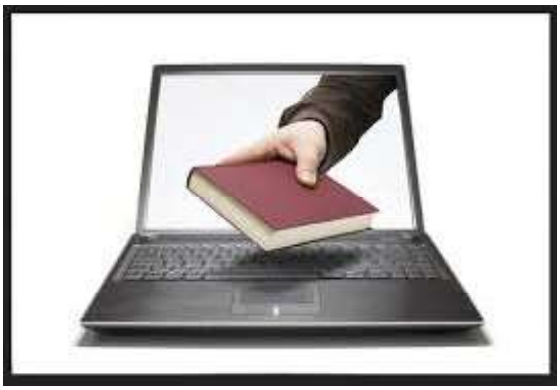

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PART - 11 (15TH JUNE 2022)

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HELD: Bank authorities failed to follow the procedure as contemplated under Rule 9(1) of the Rules and when a new property is included in sale notice, then automatically the Respondent/Bank have to follow the procedure under the Act from the stage of Sec.13(2) of SARFAESI Act, but the Respondent/Bank, without following such procedure, straight away issued impugned sale notice by including a new property, which is illegal, and contrary to the mandatory provisions of the act - Sale notice stands liable to be set aside, when once sale notice is set aside, the auction proceedings pursuant to the said sale notice becomes null and void – Writ Petition stands allowed, however the Respondent/Bank is at liberty, to proceed further in accordance with the provisions of SARFAESI Act. **(A.P.)** ***103***

2022(2) L.S. 79 (A.P.) (D.B.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Chief Justice
Prashant Kumar Mishra &
The Hon'ble Mr. Justice
M. Satyanarayana Murthy

VR Commodities Pvt. Ltd., ..Petitioner
Vs.
Norvic Shipping Asia Pte. Ltd ..Respondent

ARBITRATION AND CONCILIATION ACT, 1996, Sec.9 – INDIAN STAMP ACT, Sec.35 - Single Judge refused to refer the matter and appoint Arbitrator on the ground that the agreement is not properly stamped.

HELD: Clause pertaining to settlement of disputes by Arbitration contained in substantive agreement can be taken into consideration even to decide an application under Section 9 of the Arbitration and Conciliation Act leaving it open to the Arbitration Tribunal to record a finding, if any, on the clause, its admissibility due to failure to pay stamp duty on the substantive document - In view of Apex Court Judgment, Order under challenge cannot be interfered on the ground that the substantive agreement is not stamped - Appeal stands liable to be dismissed.

Mr.Sanjay Suraneni representing Avanija Inuganti,Advocate for the Appellant.

Mr.Amitava Majumdar, Advocates for the Respondent.

J U D G M E N T

(per the Hon'ble Mr.Justice M. Satyanarayana Murthy)

1. Aggrieved by the order dated 28.01.2022 passed in ICOMAOA No.11 of 2021 by the learned single Judge, the present appeal is preferred under Section 37 of the Arbitration and Conciliation Act.

2. The parties to the appeal will hereinafter be referred as arrayed before the learned single Judge for the sake of convenience and to avoid confusion.

3. The petitioner (respondent herein) before the learned single Judge, filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:

> a) pass an order of interim injunction in favour of the petitioner and against the respondent, restraining the respondent, from directly or indirectly through its nominees, agents, associates, affiliates, representatives or employees, in any manner, acquiring, selling, encumbering, alienating, transferring, issuing delivery orders getting possession or otherwise dealing with the cargo of 7,600 MTs out of the 32,770 MTs of coal discharged by the Vessel MV Port Tokyo and currently lying at the V.O. Chidambaranar Port at Tuticorin in the month of August 2021, till the disposal of the present petition;

b) pass an order appointing a Receiver/Court Commissioner to take custody of the cargo of 7,600 MTs of coal currently lying at the V.O Chidambaranar Port at Tuticorin discharged from the vessel MV Port Tokyo;

c) pass an order directing the respondent to offer security in the form of cash security or other security as this Hon'ble Court deems fit for a sum of INR 4,86,97,180.40 ps. equivalent to USD 646,486.11 being the sum total of the principal claim of USD 566,486.11 in lieu of admitted pending dues of demurrage payable to the Petitioner and USD 80,000 towards legal costs

d) Pass an order directing the Respondent to bear all costs, charges, expenses, levies, of any kind whatsoever which may be incurred by the petitioner in exercise of its lien over the cargo of 7,600 MTs of coal, including storage and maintenance costs

e) pass an order permitting the Petitioner to sell the liened cargo of 7,600 MTs of coal in the event of non-payment of sums to the petitioner as set out in prayer clauses (c) above;

f) for ad interim reliefs in terms of prayer (a) (b) (c) and (d) above.

4. It is alleged that the petitioner (respondent herein) is a company incorporated under the Companies Act, carrying on shipping business known as "Norvic Shipping Asia Pte. Limited, whereas the respondent (appellant herein) is another company carrying on its business in the name and style of "VR Commodities Private Limited. The petitioner and respondent entered into fixture note dated 16.07.2021, Charterparty dated 29.05.2021 and settlement agreement dated 06.09.2021 for transportation of coal from "Muara Bunyuasi to "Tuticorin and "New Mangalore, India. But there is a breach of agreement of Charter party allegedly and the petitioner sustained loss due to default of certain terms under the charterparty agreement, requiring the petitioner to have arbitral proceedings. To make good for the amount possibly to recover from the respondent, the petitioner sought various interim reliefs under Section 9 of the Arbitration and Conciliation Act.

5. Learned single Judge ordered ad-interim injunction on 22.10.2021 in favour of the petitioner against the respondent restraining the respondent, from directly or indirectly through its nominees, agents, associates, affiliates, representatives or employees, in any manner, acquiring, selling, encumbering, alienating, transferring, issuing delivery orders, getting possession or otherwise dealing with the cargo of 7,600 MTs out of the 32,770 MTs of coal discharged by the vessel MV Port Tokyo, which is currently lying at V.O.Chidambaranar Port at Tuticorin, in the event of the respondent failing to furnish security for US $ 646,500/- within 48 hours of service of notice as well as this order on the respondent.

6. After passing order dated 22.10.2021, final order dated 28.01.2022

was passed in ICOMAOA No.11 of 2021 by the learned single Judge. Operative portion of the order dated 28.01.2022 is as follows.

> "However, considering the scope of this application under Section 9 of the Arbitration and Conciliation Act, 1996, no further steps can as such be ordered pursuant to it. If the petitioner so desires, it can as well approach the Court for necessary relief.

Purpose of filing the present petition is over and therefore, this petition is directed to be closed, preserving liberty to the petitioner to file separate application if so advised in respect of subject matter in question for necessary reliefs. No costs.

7. Aggrieved by the order passed by the learned single Judge, respondent in the ICOMAOA No.11 of 2021 preferred this appeal on various grounds.

8. Though several grounds were raised in the grounds of appeal, appellant/ respondent, limited his contentions as to the admissibility of charterparty and arbitration clause contained in it in evidence before the Court or Arbitrator as it was not duly stamped, leaving the other contentions.

9. In view of the limited contentions urged before this Court, this Court is not required to adjudicate upon other issues except about the admissibility of document i.e. charterparty and arbitration clause imbedded in it in evidence before this Court or before the Arbitrator, without payment of stamp duty and penalty as it was not stamped.

10. During hearing, Sri Mr.Sanjay Suraneni representing Ms.Avanija Inuganti, learned counsel for the appellant would contend that since Charterparty is inadmissible in evidence and passing of order under Section 9 of the Arbitration and Conciliation Act based on arbitration clause in the substantive agreement, is a serious illegality. The charterparty between the petitioner and respondent is unstamped and when it is presented before the officer, who is authorised to receive the document in evidence, unless it is impounded collecting stamp duty and penalty under Section 35 of the Indian Stamp Act, 1899, the same is inadmissible, thereby the order dated 28.01.2022 passed by the learned single Judge is illegal. In support of his contentions, he has drawn the attention of this Court to the judgment of the Apex Court in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited** (2019) 9 SCC 20). On the strength of the principle laid down in the above judgment, learned counsel for the appellant requested to set aside the order dated 28.01.2022 passed in ICOMAOA No.11 of 2021 by the learned single Judge.

11. Sri Amitava Majumdar, learned senior counsel for the respondent, would submit that in proceedings under Section 8 and 11 of the Arbitration and Conciliation Act, the Courts concluded that such arbitration agreement or substantive agreement consisting of arbitration clause must be stamped. But in proceedings under Section 9 of the Arbitration and Conciliation

Act, the Full Bench of the High Court already concluded that the agreement is admissible though not duly stamped and relied on "**Gautam Landscapes Pvt. Ltd. v. Shailesh S.Shah (**AIR 2019 Bom 149). He further submitted that when similar issue came up for consideration before the Apex Court in various judgments, the Apex Court dealt with the issue with reference to object of enacting the Arbitration and Conciliation Act. In "**N.N.Global Mercantile Private Limited v. Indo Unique Flame Limited** (2021) 4 SCC 379)the Full Bench of the Supreme Court referred the question to the Constitution Bench. Learned senior counsel placed reliance on another judgment of the Apex Court in "**Vidya Drolia v. Durga Trading Corporation** (2021) 2 SCC 1). Finally, learned senior counsel would submit that the issue can be decided by this Court though it is pending in reference before the Constitution Bench of the Apex Court.

12. Considering rival contentions, perusing the material available on record, the point need be answered by this Court is as follows:

> **Whether the charterparty dated 29.05.2021 consisting of arbitration clause is admissible in evidence before this Court or before the Arbitrator as the agreement is not stamped? If not, whether the order passed by the learned single Judge closing the arbitration proceedings as the purpose is served, be set aside?**

2 3 **POINT**:

13. It is not in quarrel about the parties entering into agreement known as Charterparty dated 29.05.2021 for transportation of coal from Muara Bunyuasi to Tuticorin and New Mangalore, India subject to conditions contained in the agreement. Certain clauses are incorporated in the said charterparty. One of the terms of the charter party is with regard to arbitration. Clause No.5 deals with arbitration and the same is necessary for deciding the present issue and it is extracted hereunder:

> **"If any dispute or difference should arise under this Charter, same to be referred to three parties in the City of Singpore New York, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision, or that any two of them, shall be final and binding and this agreement may, for enforcing the same, be made a rule of Court. Said three parties to be commercial men who are members of the Institute of Arbitrators in Singapore. English Law to apply and arbitrations and General Average in Singapore"**

14. Annexure-B of Charterparty consists of arbitration clause and seat of arbitration is at "Singapore governed by English law, but the Charterparty is not stamped as required under the Indian Stamp Act.

15. As seen from annexure-B of Charterparty, it was executed in India. When

the Charterparty is executed in India, it must be duly stamped under the provisions of Indian Stamp Act. The Indian Stamp Act is a fiscal enactment intended to collect revenue from public, who entered into transactions. Therefore, it is the duty of every public officer, who is competent to receive the document, is under obligation to protect the revenue of the state. It is settled law that no document can be admitted in evidence unless it is properly stamped. (Vide: **Shankar Balwant Lokhande (Dead) by L.Rs. vs. Chandrakant Shankar Lokhande (**JT 1995 (3) SC 186)

16. Undoubtedly, it is true that unless the document is impounded and collected stamp duty and penalty payable on such document, it cannot be received in evidence and no Court is competent to pass any decree or judgment based on such unstamped document. When the document is executed at a particular State, the law applicable to particular State for payment of stamp duty alone is applicable for collection of stamp duty and penalty and to admit the document in evidence.

17. Chapter – IV of the Indian Stamp Act deals with Instruments not duly stamped. Section 33 deals with 'examination and impounding of instruments', which is as follows:

> "33. Examination and impounding of instruments. —
>
> (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.
>
> (2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed:
>
> Provided that—
>
> (a) nothing herein contained shall be deemed to require any Magistrate of Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
>
> (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
>
> (3) For the purposes of this section,

in cases of doubt, —

(a) the [State Government] may determine what offices shall be deemed to be public offices; and

(b) the [State Government] may determine who shall be deemed to be persons in charge of public offices.

18. Section 35 prohibits receiving instruments not duly stamped or unstamped in evidence. According to Section 35 of the Indian Stamps Act, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

19. Therefore, there is a clear prohibition against receipt of unstamped and not duly stamped document in evidence by public officer, who is entitled to receive such document in evidence and when it is produced before him, he shall examine the same and impound the same, collect stamp duty payable on the document.

20. According to Sl.20 of Schedule – I, Charter party, that is to say, any instrument (except an agreement for the hire of a tugsteamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the character, whether it includes a penalty clause or not, stamp duty payable is Rs.5/-.

21. Schedule I-A, which is applicable to the State of Andhra Pradesh deals with stamp duty payable several instruments or documents.

22. According to Sl.18 of Schedule-IA, Charter party, that is to say, any instrument (except an agreement for the hire of a tugsteamer), whereby a vessel or some specified principal part thereof is left for the specified purposes of the charter, whether it includes a penalty clause or not, stamp duty payable is “one rupee.

23. Thus, as per Schedule-I and Schedule-I A, stamp duty is to be paid on charterparty. Whereas, Schedule – I of the Indian Stamp Act and Schedule –IA (Andhra Pradesh) did not prescribe any stamp duty payable on arbitration agreement. When arbitration agreement though forms part of substantive agreement, it can be separable from the substantive agreement i.e. charter party. Time and again, this issue came up for consideration before the Court, but various countries dealt with this issue in different modes. The doctrine of separability treats an agreement to arbitrate contained within a contract as an independent agreement that is deemed to be separable from the main contract. To put it simply, as per the doctrine of separability, where a dispute arises concerning the initial validity or continued existence of a contract, the arbitration clause embedded in the main contract is seen to be autonomous, and separate. The doctrine preserves the validity and enforceability of the arbitration clause in a contract, even when the primary contract is found to be invalid and unenforceable, providing autonomy to the arbitration clause. The UNCITRAL Model law on International

Commercial Arbitration, 1985, Article 16[1], integrates the doctrine of separability as an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract, it runs as follows:

> **"The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. It provides that an arbitral tribunal's determination that a contract is void does not immediately render the arbitration provision unenforceable. The same principle is manifested in Section 7 of the Arbitration Act, 1996 of England, Singapore's approach to separability provisions and Section 16(1) of India's Arbitration and Conciliation Act, 1996."**

24. As seen from Charterparty, English law alone is applicable and the seat of the arbitration is at 'Singapore'. As the law governing such arbitration is English law, it is necessary to advert to few decisions under English law relating to separability of arbitration clause from original agreement.

25. The United Kingdom views separability as reflecting the presumed intention of the parties that their preferred method of resolving dispute remain effective. Arbitration agreement is seen as distinct. Section 7 of the English Arbitration Act, 1996, deals with the Separability of Arbitration agreement.

26. The Doctrine was first recognised in England, through the landmark judgment in "**Heyman vs. Darwins Ltd**. (1942 AC 356), which laid down the principle of separability of arbitration agreement, and was later incorporated in the Arbitration Act of 1996, based on UNCITRAL Model Law through legislation.

27. In "**Fiona Trust & Holding Corp v. Privalov** (2007) UKHL 40)the House of Lords held that unless otherwise agreed by the parties an arbitration agreement which forms or was intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

28. The House of Lords further stated that the arbitration agreement must be treated as a distinct agreement and can be void or voidable only on grounds which relate directly to the arbitration agreement; the invalidity or rescission of the main contract does not necessarily entail the invalidity or rescission of the arbitration agreement.

29. The primary or substantive

agreement and the arbitration agreement may both be declared as illegal for the same reason in rare situations. For example, if a signature on a contract including an arbitration clause is forged, the arbitration clause is null and void. This is because the signature to the arbitration agreement as a "separate agreement" was forged, not because the primary agreement is unlawful. However, in other circumstances, if an agent is accused of transgressing his power by entering into the primary or substantive agreement on conditions that were not authorised or for improper reasons, the arbitration agreement is not always under dispute.

30. In "**Sulamrica Cia Nacional de Seguros SA vs EnesaEngenharia SA** (2012) WLR (D) 148)it is observed that the only purpose of the doctrine of separability is to give legal effect to the parties' intention of resolving disputes through arbitration and not to insulate the arbitration agreement from the substantive contract for all purposes. Accordingly, it was held that an express choice of law governing the substantive contract is a strong indication of the parties' intention in relation to the agreement to arbitrate. The principle of separability of arbitration agreements from the contracts in which they sit which means that disputes arising out of the contract are submitted to arbitration even where the existence of the contract itself is challenged, was re-emphasised.

31. The House of Lords re-emphasised the doctrine of 'separability of arbitration agreements from the substantive contracts in which they sit, which means that disputes arising out of the contract are submitted to arbitration even where the existence of the contract itself is challenged.

32. In "**Soleimany v. Soleimany** (1999) Q.B. 785)the Court of Appeal reversed the High Court's decision to enforce an arbitral award (rendered by the Beth Din in England under Jewish law) which enforced a contract to smuggle carpets out of Iran, held as follows:

> **"In our view, an enforcement judge, if there is prima facie evidence from one side that the award is based on an illegal contract, should enquire further to some extent.**
>
> **The judge has to decide whether it is proper to give full faith and credit to the arbitrator's award. Only if he decides at the preliminary stage that he should not take that course does he need to embark on a more elaborate enquiry into the issue of illegality."**

33. The Court declined to enforce an award relating to a dispute arising out of an illegal contract to smuggle carpet out of Iran holding that 'where the making of the contract will itself be an illegal act, the court would be driven nolens volens to hold that the arbitration was itself void'. It was also specified that the enforcement court must see whether there is prima facie evidence that the award is based on an illegal contract.

34. United Kingdom views on doctrine of separability as reflecting the presumed intention of the parties that their preferred method of resolving dispute remain effective. Arbitration agreement seen as distinct. In cases of void ab initio contracts, it should be seen if the arbitration agreement by itself is void ab initio. However, in case of illegal contracts, court will find arbitration agreement within it invalid.

35. Singapore follows a limited 'separability in arbitration agreements. There are no distinct statutory provisions, but this doctrine is drawn from Article 16 UNCITRAL model law. The separability doctrine in the country is seen as a tool for execution of parties intention or expectation that the arbitration clause should survive an agreement that has been invalidated by Court. Here, the doctrine does not imply that arbitration agreement is independent of the main contract.

36. There are statutory provisions in the country in the Singapore Arbitration Act 2001, Part VI states Jurisdiction of Arbitral Tribunal. These are provisions for separability of arbitration clause and competence of arbitral tribunal to rule its own jurisdiction. When the jurisdiction is challenged before an arbitral tribunal one of the most common grounds raised is that the contract which incorporates the arbitration was never concluded. Before it was a common practice to determine both the validity of arbitration agreement and existence of binding contract together. (Vide: **Hyundai Merchant Marine Company Ltd vs. Americas Bulk Transport Ltd**.) (2013) EWHC 470 (Comm) at [35]-[36].

37. In the case of "**BCY and BCZ** (2016) SGHC 249)the defendant's case was a binding ICC arbitration agreement which was concluded before the conclusion of SPA. In such cases where arbitration clause was negotiated in the context of a contract such an approach was found problematic from the perspective of both parties as well as arbitrators.

38. There are decisions of the High Court of the country where the law governing the arbitration agreement was implied from the main or substantive contract. The Court held that when the arbitration clause is a part of the main or substantive contract, then it is reasonable to presume that the entire relationship is governed by uniform law, if the intention differed, they must have specified or entered into different agreements. Further clarity is provided by Article 16 of the UNCITRAL Model Law on International Commercial Arbitration.

39. In the recent years there have been perspective judicial pronouncements which have provided clarity with respect to 'doctrine of separability of arbitration agreements. The court in the judgment of "**BNA v. BNB** (2019) SCGA 84), stated that the root cause behind evolution of the doctrine of separability is the desire to give effect to the arbitration agreement even if the substantive contract is ineffective. Court refused to accept this as limitation of the doctrine following which it was held that it is legitimate to presume that the parties want the arbitration clause to survive. The only limitation the court stated was to only give 'reasonable effect' to this intention. The judgment further discusses the reason

why 'doctrine of separability has a limited scope, being consistent with the ut res magis principle, it is there just to give effect to the intention of the parties which is presumed that the arbitration clause should survive.

40. The Court interpreted this doctrine and held that it has a limited scope it is broad enough to operate and uphold the arbitration clause, which is integrated in an agreement, but an operation of the substantive agreement could operate to nullify the parties manifest intention to arbitrate their disputes.

41. In India, the statutory provision is present in Chapter IV of Arbitration and Conciliation Act, 1996. There have been judicial pronouncements as cases upholding the 'Doctrine of Separability as well as on Illegal Contracts and Frauds. In the case of "**N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited**(referred supra), the enforceability of Arbitration agreement embedded in Unstamped Contract was discussed. It was held that separability of arbitration agreement from substantive contract in which it is embedded is well settled law. Invalidity, ineffectiveness or termination of substantive commercial contract does not effect the validity of the arbitration agreement.

42. In the case of "**Today Homes & Infrastructure (P) Ltd. vs. Ludhiana Improvement Trust** (2014) 5 SCC 68), the two-judge bench held that arbitration clause is not invalidated even if the main or substantive agreement is declared void.

43. In the case of "**National Agricultural Coop. Marketing Federation India Ltd. vs. Gains Trading Ltd**. (2007) 5 SCC 692), it was stated Even if the performance of the contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract.

44. In view of the settled law laid down by the United Kingdom and in view of separate clause contained in Singapore Arbitration Act, the clause relating to settlement of disputes by arbitration shall be an independent and autonomous clause. Though Charterparty is not stamped, still, in view of separability of arbitration clause, which does not require any stamp duty payable thereon either under the Indian Stamp Act or law relating to the State of Andhra Pradesh, the arbitration clause is independent clause. When once the arbitration agreement is not liable for stamp duty, based on such arbitration clause, though the substantive agreement is not duly stamped, the Court can take into consideration of such clause independently and pass appropriate orders under Section 9 of the Arbitration and Conciliation Act, 1996.

45. The law is well settled regarding appointment of arbitrator despite the arbitration agreement/clause being contained in an insufficiently stamped document.

46. The Karnataka High Court in the case of "Malchira C. Nanaiah v. Messrs

Pathak Developers Private Limited, [Civil Miscellaneous Petition No. 113 of 2019, decided on October 5, 2020] faced with the issue of an application under Section 11 of the Act arising out of an insufficiently stamped arbitration agreement. In consideration of the peculiar facts and circumstances of the case, particularly having regard to the joint submission and consent given by both the parties to proceed with the appointment of the sole arbitrator upon imposition of necessary conditions with regard to payment of stamp duty and penalty on the sale agreement by the petitioners on or before the first date of hearing before the sole arbitrator, the Court went onto appoint an arbitrator to adjudicate upon the dispute between the parties despite the arbitration agreement being contained in an insufficiently stamped document. However, the Court also enumerated that the instant decision shall not be treated as a precedent.

47. The law relating to admissibility of a document and treating the arbitral agreement as separable was discussed in various judgments.

48. Learned counsel for the appellant placed reliance on the judgment of the Apex Court in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**(referred supra). In the said judgment, the Apex Court held as follows:

> "In view of the above deliberation, we answer the questions as framed by us as follows:
>
> (1) Whether a court, under the Arbitration and Conciliation Act, 1996, can entertain and grant any interim or ad-interim relief in an application Under Section 9 of the said Act when a document containing arbitration Clause is unstamped or insufficiently stamped?
>
> In the Affirmative
>
> (2) Whether, inter alia, in view of Section 11 (6A) of the Arbitration and Conciliation Act, 1996, inserted by Arbitration and Conciliation (Amendment) Act, 2016, it would be necessary for the Court before considering and passing final orders on an application Under Section 11(6) of the Act to await the adjudication by the stamp authorities, in a case where the document objected to, is not adequately stamped?
>
> In the Negative
>
> Question (2), having been answered contrary to our judgment, is held to be incorrectly decided.
>
> One reasonable way of harmonising the provisions contained in Sections 33 and 34 of the Maharashtra Stamp Act, which is a general statute insofar as it relates to safeguarding revenue, and Section 11(13) of the 1996 Act, which applies specifically to speedy resolution of disputes by appointment of an arbitrator expeditiously, is by declaring that while proceeding with the Section 11 application, the High

Court must impound the instrument which has not borne stamp duty and hand it over to the authority under the Maharashtra Stamp Act, who will then decide issues qua payment of stamp duty and penalty (if any) as expeditiously as possible, and preferably within a period of 45 days from the date on which the authority receives the instrument. As soon as stamp duty and penalty (if any) are paid on the instrument, any of the parties can bring the instrument to the notice of the High Court, which will then proceed to expeditiously hear and dispose of the Section 11 application. This will also ensure that once a Section 11 application is allowed and an arbitrator is appointed, the arbitrator can then proceed to decide the dispute within the time frame provided by Section 29A of the 1996 Act.

49. Earlier to the said judgment, when similar issued came up for consideration in "**SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited** (2011) 14 SCC 66). In the facts of the above case, a lease deed was executed with respect to two tea estates. Clause 35 of the deed provided for settlement of disputes between the parties by arbitration. However, the lease deed was unregistered and unstamped. With respect to the validity of the arbitration clause contained in an unregistered (but compulsorily registrable) instrument, the Supreme Court relied upon section 49 of Registration Act, 1908. The proviso to this section elucidates exceptions in which such an instrument can be received as evidence of any transaction affecting such property. The proviso states that it may be received as evidence of any collateral transaction not required to be effected by registered instrument. Applying the doctrine of separability, the Supreme Court held that an arbitration clause in a contract is a collateral term relating to the resolution of disputes and has nothing to do with the performance of the contract. Therefore, there are two independent documents:

(a) the substantive contract which requires registration; and

(b) the arbitration agreement which is not compulsorily registrable.

50. The Supreme Court concluded by stating that an arbitration agreement does not require registration under the Registration Act and, thus, can be enforced for the purpose of arbitration.

51. With respect to the validity of the arbitration clause in an unstamped instrument, the Supreme Court relied on sections 33 and 35 of the Indian Stamp Act, 1899. Section 33 of the legislation relates to the examination and impounding of instruments and section 35 provides that instruments not duly stamped are inadmissible in evidence and cannot be acted upon. The Supreme Court rejected the application of doctrine of separability to an unstamped instrument containing an arbitration clause, only for the reason that section 35 did not contain a proviso like the one in section 49 of the Registration Act, 1908. Therefore, the Supreme Court

held that as the arbitration agreement is also a part of the instrument, it cannot be acted upon unless the stamp duty and penalty is paid.

52. The judgment of the Apex Court in "**N.N.Global Mercantile Private Limited v. Indo Unique Flame Limited**(referred supra) signifies a complete overhaul in the approach of the Court regarding the validity of an arbitration clause in an unstamped instrument. The Supreme Court held that an arbitration agreement is separate and distinct from the substantive commercial contract on the basis of two principles: the doctrine of separability and kompetenz – kompetenz. While the doctrine of separability has been discussed earlier, principle of kompetenz – kompetenz is relatively unexplored. This principle states that the arbitral tribunal is competent to determine and rule on its own jurisdiction, including issues of existence, validity and scope of arbitration agreement. The ruling of the arbitral tribunal is subject to judicial scrutiny by courts at a later stage. This legislative policy of minimal interference has been statutorily recognized by the Arbitration and Conciliation Act, 1996 by the following provisions:

> (a) Section 5 prohibits judicial intervention except as specified in Part I of the Arbitration and Conciliation Act, 1996; and
>
> (b) Section 16 explicitly empowers the arbitral tribunal to rule on its jurisdiction and also recognizes the independent existence of an arbitration clause.

53. With respect to the specific issue of validity of arbitration clause contained in an unstamped instrument, the Supreme Court held that according to Maharashtra Stamp Act, 1958 (which was the legislation applicable in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**(referred supra), the arbitration agreement is not included as an instrument chargeable to Stamp duty. Therefore, due to the doctrine of separability, the arbitration clause will exist independently and would not be rendered invalid on account of non-payment of stamp duty as the same is not chargeable to it.

54. On this basis, the Supreme Court overruled the judgment in "**SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited**(referred supra). Further, the Supreme Court stated that the judgment in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**(referred supra), was affirmed by a coordinate bench in "**Vidya Drolia v. Durga Trading Corporation**(referred supra). Therefore, the Supreme Court referred the issue to a constitution bench of five judges of the Supreme Court.

55. Sri Amitava Majumdar, learned senior counsel for the respondent, relied on "**Gautam Landscapes Pvt. Ltd. v. Shailesh S.Shah**(referred supra), the Full Bench judgment of Bombay High Court on detailed consideration of various provisions concluded as follows:

> "Taking an overall view of the scheme of the ACA, judgments delivered by

> the Supreme Court, we are of the view that the party need not be put to a disadvantage merely because an objection has been raised in respect of insufficiency of the stamp on the agreement presented before the court. Neither a contesting party could deprive legitimate rights of a litigant in praying for timely intervention of the court by praying for appointment of an arbitral tribunal nor for interim reliefs in the fact situation of a case. That would be rendering a party without any forum and in a given situation the outcome would be, at times, catastrophic and disastrous and the damage could be irreparable one. A balanced approach, keeping in view the legislative intent and the view adopted by the Supreme Court, needs to be adopted, so that the purpose of enacting the provisions of Sections 11 and 9 of the ACA as amended by the Amendment Act is not defeated.
>
> If an application under Section 11 or under Section 9 is required to be postponed till the order of adjudication is passed by the learned Collector of Stamps with such uncertainty of the time it would take to decide and the hierarchy of remedies after such order, as it would be subject to an appeal or a revision, as the case may be and till such time no order either under Section 11 of under Section 9 should be passed, then the Legislature would not have provided for speedy disposal of the applications under Section 11 or under Section 9 of the Act by inserting sub-Section (13) in Section 11 and sub- Section (2) in Section 9 of the Act.

56. Learned Senior counsel for the respondent relied on "**Shakti Bhog Foods Limited v. Kola Shipping Limited** (2009) 2 SCC 134), wherein the Apex Court held as follows:

> "Fixtures are frequently recorded in a telex or fax recapitulating the terms finally agreed (a "recap"). Thus a recap telex or fax may constitute the "charter Party referred to in another contract. In the case of "Welex A.G. v. Rosa Maritime Ltd. (The "Elipson Rosa Case") [2002] EWHC 762 (Comm), it was decided by the Queen's Bench Division (Commercial Court) that a voyage charter party of the Elipson Rosa was concluded on the basis of a recap telex which incorporated by reference a standard form charter. Before any formal charter was signed, bills of lading were issued referring to the "Charter Party", without identifying it by date. It was held that the charter party referred to was the contract contained in or evidenced by the recap telex.

In the present case therefore, we conclude that there existed a charter party between the parties to the suit which can be identified from the correspondence between the parties to that effect as also from the fixture note and the bill of lading signed by the parties.

57. In "**Saifee Developers Pvt. Ltd. vs. Shanklesha Constructions (**2019 SCC OnLine Bom 13047), the High Court of

Bombay held that 'the decision of the Supreme Court in **Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**(referred supra) is rendered in the context of Section 11 of the Act and not in a proceeding under Section 9 of the Act. The decision of the Full Bench in the context of Section 9 of the Act is subject matter of challenge before the Supreme Court in "Shailesh S. Shah vs. Gautam Landscapes Pvt. Ltd. in a Petition for Special leave to Appeal (c) No. 10232 - 10233 of 2019. By an order dated 29th April, 2019, passed by the Supreme Court, on the said petition, while issuing notice to the respondents, the Supreme Court has not stayed the decision of the Full Bench. The Supreme Court, however, observed that section 9 petition may continue, in the meanwhile judgment delivered thereon shall not be implemented without leave of the Court. Thus, as the judgment of the full bench is binding on this Court, and the same being not stayed by the Supreme Court, it is not possible to accept the contention as urged on behalf of respondent that this Court cannot grant any ad-interim relief.

58. The judgment of learned single Judge is not binding and similarly the judgments of other High Courts are also not binding, however they got persuasive value. Therefore, persuaded by the law laid down in "**N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited**(referred supra) and by applying the doctrine of separability, in the absence of inclusion of arbitration agreement in Schedule – I of Indian Stamp Act or Schedule-IA (Andhra Pradesh) and not chargeable with stamp duty, the arbitration clause is admissible since it is a separate contract.

59. Recently, the Apex Court in "**Intercontinental Hotels Group (India) Pvt. Ltd. vs. Waterline Hotels Pvt. Ltd**. (AIR 2022 SC 797) the Full Bench after consideration of judgments (referred above) expressed its opinion as to the admissibility of unstamped or insufficiently stamped arbitration clause in unstamped substantive agreement, held as follows:

> "Upon reading "**Vidya Drolia v. Durga Trading Corporation**(referred supra), the issue of 'existence' and/ or 'validity' of the arbitration clause, would not be needed to be looked into herein, as payment of stamp duty, sufficient or otherwise, has taken place herein. In order to ascertain whether adequate stamp duty has been paid in terms of the Karnataka Stamp Act, this Court needs to examine the nature of the substantive agreement, the nature of the arbitration agreement, and whether a separate stamp fee would be payable for the arbitration agreement at all. It may be noted that the Petitioners, have themselves attempted to self-adjudicate the required stamp duty and have paid, on 29.07.19, a stamp duty of Rs. 2,200/-, describing the HMA as a "bond". On 10.06.2020, the Petitioners further purchased 11 e-stamps for Rs. 200/- each, describing the HMA as an 'agreement' Under Article 5(j). Therefore, it falls upon the Court, under the Stamp Act to

review the nature of the agreement in order to ascertain the stamp duty payable. From the above it is clear, that stamp duty has been paid, whether it be insufficient or appropriate is a question that maybe answered at a later stage as this Court cannot review or go into this aspect Under Section 11(6). If it was a question of complete non stamping, then this Court, might have had an occasion to examine the concern raised in "**N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited**(referred supra), however, this case, is not one such scenario.

60. In view of the law laid down by the Apex Court in various judgments and by applying the principle of separability, the clause pertaining to settlement of disputes by Arbitration contained in substantive agreement can be taken into consideration even to decide an application under Section 9 of the Arbitration and Conciliation Act leaving it open to the Arbitration Tribunal to record a finding, if any, on the clause, its admissibility due to failure to pay stamp duty on the substantive document.

61. In any view of the matter, the issue is pending before the Constitution Bench of the Apex Court and this finding is only subject to decision of Constitution Bench in the reference made in "**N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited**(referred supra).

62. The main contention raised before this Court by the appellant is that since the document is unstamped, basing on the principle laid down in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**and "**SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited**(referred supra), the order of the learned single Judge is liable to be set aside. The same was considered in the later judgment by the Full Bench in "**N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited**(referred supra) and referred the issue to the Constitution Bench. Therefore, basing on the principle laid down in "**Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited**and "**SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited**(referred supra), it is difficult to uphold the contention of the learned counsel for the appellant since the same was turned down by the Full Bench indirectly while referring the matter to the Constitution Bench.

63. In view of our foregoing discussion, we find no merits in the contention of the learned counsel for the appellant-respondent, hence the order under challenge cannot be interfered on the ground that the substantive agreement is not stamped. Consequently, the appeal is liable to be dismissed.

64. In the result, the appeal is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed

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2022(2) L.S. 95 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
R. Raghunandan Rao

Bhavani Mahila Trust (BMT), ..Petitioner
Vs.
State of A.P., & Ors., ..Respondents

A.P. PANCHAYAT RAJ ACT, 1994, Sec.58 (1), 98 & 103 and G.O.Ms.188, Dt.21-7-2011 - Whether Section 58 would vest all Gramakantam lands in the Gram Panchayath - Tiled house was in the possession of the Petitioners - Disputed Ac.0.06 cents of land was classified as Gramakantam land in the resettlement register - 5th respondent contended Mahila Mandali is being run in the village and the said land was proposed to be used for construction of library.

HELD: Notices issued on Petitioner only called upon to vacate the premises and did not give opportunity of hearing - Disciplinary action is said to have been initiated against Panchayat Secretary and extension authority, on account of these deficiencies - Demolition of the tiled house of Petitioner was in clear violation of all safe guards given in the act and rules - It is admitted case of both sides that Petitioner has been in long standing possession of the tiled house since 1960, viewed either from the stand point of Sec.58(1) of Panchayat Raj Act or from the stand point of decided cases, occupied Grama Kantha land is not property of Gram Panchayat to invoke the provisions of either Sec.98 or 103 of the A.P. Panchayat Raj Act or the mechanism under G.O.Ms.No.188, Dt.21-7-2011 – Accordingly the demolition of tiled house in the possession of Petitioner is clearly beyond the authority of the 5th respondent and it is violation of both procedural and substantive law - Petitioner would be entitled to restore back to the same position as was obtaining prior to the demolition - 5th respondent shall bare the entire cost of reconstruction house of the Petitioner and also 5th Respondent directed to return all the material taken away from the tiled house.

Smt.T.V. Sridevi, Advocates for the Petitioner.
Government Pleader for Revenue, Advocate for the Respondent 2,
Koti Reddy Idamakanti, (SC).Advocate for the Respondents: R5.

O R D E R

The case of the petitioner is

a) Smt. Late Nagandla Sambrajyam established Bhavani Mahila Mandali, in Peda kakani Mandal, Guntur District for upliftment of woman and girl child in 1967.

b) The father of Smt. Late Nagandla Sambrajyam was the owner of various extents of land in the village including Ac.0.54 cents in Sy.No.560 of the village.

c) He had settled this land along

with other extents of land in favour of his son late Sri Nagandla Surya Narayana by way of a registered deed of settlement dated 17.02.1945.

d) Upon demise of Sri Nagandla Surya Narayana, the said property, which included a tiled house in Ac.0.06 cents in Sy.No.560, devolved upon his daughter Smt. Late Nagandla Sambrajyam. This tiled house was dedicated to the Bhavani Mahila Mandali right from its inception 1967.

e) After her demise, the deponent of the affidavit filed in support of the writ petition (hereinafter referred to as the Deponent) took charge and continued to run the said Bhavani Mahila Mandali. A deed of trust was also executed and registered before the Sub-Registrar, Pedakakani on 21.07.2014 showing that the office of the Trust was at D.No.1-111, Pathuru situated in an extent of Ac.0.06 cents in Sy.No.560.

f) The said tiled house is said to have been used for carrying out various activities for the development of women and girls in the area and photographs showing such activities have also been filed along with the writ petition.

g) On 12.01.2022, the 5th respondent pasted a notice dated 06.01.2022 in Rc.No.3/2022, issued under sections 58, 98 (10, 103 (60 read with G.O.Ms.No.188, dated 21.07.2011, stating that the Bhavani Mahila Mandali is being run in Sy.No.557 of Pedakakani village and since the said land was proposed to be used for construction of a library, the Bhavani Mahila Mandali was required to vacate the building within three days, failing which the land would be taken over.

h) The petitioner Trust, upon coming to know of this notice informed the 5th respondent that the Bhavani Mahila Mandali was running in a private property and not in the Government land and requested the 5th respondent not to interfere with the possession of the petitioner-Trust.

i) On 17.01.2022, the 5th respondent sought to demolish the building by using a JCB. At this stage, the petitioner has approached this Court by way of the present writ petition.

2. By the time the matter came up before the Court on 21.01.2022, the tiled house was demolished and the material and assets of the petitioner, including computers etc., were taken away by the 5th Respondent. This Court on 21.01.2022, directed the 2nd respondent to survey the entire land in Sy.No.560 and 557 of Pedakakani village and Mandal and submit a report to this Court by the next date of hearing as to whether the house bearing D.No.1-111 in Sy.No.560 of Pedakakani Village had been demolished by the 5th respondent or not. The report, filed by the 2nd respondent, will be considered in the course of this judgment.

3. After the demolition of the building, the Petitioner amended its prayer and sought a declaration that the action of the 5th respondent in demolishing the tiled house of the petitioner, as arbitrary and violative of Article 14, 21 and 300-A of the

Constitution of India and for a consequential direction to the respondents either to restore possession of the property to the petitioner by constructing or by directing the respondent to pay compensation by initiating land acquisition proceedings under the Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013.

4. The 5th respondent-Gram Panchayat filed a counter, stating thus:

A) A request arose from the villagers for setting up a library in the place of the tiled house in Sy.no.557. On this request a gram sabha meeting was held on 07.10.2021, where a resolution was for construction of a library in the government site. Pursuant to this resolution, the Gram Panchayath also passed a resolution on 10.12.2021, to construct the library by removing the existing tiled house and other encroachments. A notice was issued on 06.01.2022 to the Deponent to vacate the tiled house. As an endorsement of receipt was not being given, the notice was pasted on the tiled house itself. As there was no response, another notice dated 10.01.2022, was served, giving further time. After the expiry of the time given in the notice, the tiled house was removed.

B) The tiled house is situated in Sy.No.557 of the village and not in Survey No. 560 as claimed by the petitioner. A sale deed was executed by the mother of the deponent of the writ affidavit in the year 1999. The schedule in this sale deed shows the Mahila Mandali as the western boundary of the property sold in Sy.No.560/2. This shows that the tiled house was situated in Sy.No.557 and not Sy.No.560.

C) The survey conducted by the 2nd respondent, District Collector shows that the tiled house is situated in Sy.No.557 and the house bearing no. 1-111 is situated in Survey No.172.

5. During the pendency of the writ petition an I.A.No.2 of 2022 was filed stating that the correct address of the demolished building was D.No.5-128, Sivalayam Road, Pedakakani, Guntur District and the petitioner be permitted to make the necessary amendment in the affidavit and petition. It was the contention of the Petitioner that her mother was initially running the Mahila Mandali in House No.5-94 and constructed a tiled house on the western side of House No.5-94 and the same was given the number 5-128. The deponent owns and lives in house No.1-111, which is the office of the petitioner, and the address of the tiled house was shown by mistake as 1-111 instead of 5-128. This application was allowed.

6. The 2nd respondent had filed a report stating that:

A) The subject land admeasuring an extent of Ac.0.06 cents is situated in South East corner of Sy.No.557 of Pedakakani village and not in Sy.No.560. So far as house bearing D.No.1-111 is concerned the said house is about one kilometre away from the subject land. The house claimed by the petitioner situated in Sy.No.557 was demolished.

B) Apart from the meetings mentioned in the counter affidavit of the 5th respondent, a further Gram sabha was conducted on 06.01.2022 resolving to take over the government land Sy.No.557 and to construct a library.

C) The land where the demolished tiled house was situated in survey no. 557 was classified as Grama Kantam in the re-Settlement register. As per PRIS survey conducted in the year 2018 the subject land was noted as Government land.

D) Notices dated 06.01.2022 and 10.1.2022 were sought to be served on the petitioner but were refused and the tiled house was removed on 17.01.2022 in the presence of Police and Revenue authorities.

E) The extension Officer, Panchayath Raj, on the basis of the resolutions, had instructed the panchayath secretary to take necessary action to remove the tiled house as per the provisions of the Panchayath Raj Act and G.O.Ms.No.188.

F) The tiled house was having Door No. 19-15 and not 1-111.

G) The notices issued on 06.01.2022 and 10.1.2022 did not call for any explanation and simply called upon the petitioner to vacate the tiled house.

H) G.O.Ms. No. 188 requires a notice to be given for giving objections and eviction can be taken up only after a hearing is given. In the present case notices were served but no hearing was given and Disciplinary action was initiated against the Panchayath secretary and the Extension officer for not following the procedure.

7. Heard Smt. T.V. Sridevi, learned counsel for the petitioner, Sri Koti Reddy Idamakanti, learned Standing Counsel appearing for the 5th respondent and the learned Government Pleader for Revenue for the 2nd respondent.

8. The facts which can be culled out from the rival submissions made by all the parties in the writ petition are as follows:

a) There was a tiled house in Sy.No.557, which was in the possession of the petitioners. It was the contention of the petitioners that this tiled house was in the possession of the petitioner and was being used by the petitioner from 1960s. None of the respondents have disputed this fact in their counter affidavits. It is therefore, held that the tiled house was in the possession of the petitioner and used by the petitioner since 1960s.

b) The disputed Ac.0.06 cents of land was classified as Gramakantam land in the resettlement register. The subsequent PRIS survey conducted in the year 2018, classifying this land as Government land cannot be taken into account unless and until the entries in the resettlement register are changed. Accordingly the disputed land shall be treated as

Gramakantam land.

c) Resolutions had been passed in the Gramasabha and Gram Panchayat to take over the disputed Ac.0.06 cents of land and use the said land for constructing a library.

d) On the basis of these resolutions, the Extension Officer, Panchayat Raj, directed the Panchayat Secretary to take steps to remove the tiled house as per the provisions of the Panchayat Raj Act and G.O.Ms.No.188.

e) On the basis of these instructions, the Panchayat Secretary issued notices dated 06.01.2022 and 10.01.2022 which was pasted on the tiled house and the said tiled house was demolished on 17.01.2022 after taking away all the material in the tiled house, belonging to the petitioner.

f) The notice dated 06.01.2022 and 10.01.2022 only called upon the petitioner to vacate the tiled house and did not call upon the petitioner to show cause why the petitioner should not be evicted from the said house.

g) This notice did not meet the basic requirements of G.O.Ms.No.188.

9. It is the contention of the 5th respondent that notices were issued under Section 58, 98 and 103 of the Panchayat Raj Act, 1994 read with G.O.Ms.No.188. Section 58 vests certain properties including grazing grounds, threshing floors, burning and burial grounds, cattle stands, cart stands and topes, which are at the disposal of the Government and are not required by them for any specific purpose in the Gram Panchayat. The language of Section 58, which uses the word “namely” would mean that this is an exhaustive list. Section 98 authorises the Executive Authority to remove any projection, encroachment or obstruction over any public road vested in the Gram Panchayat, after notice being given to the owner of the building.

10. Section 103 provides for recovery of penalty and compensation for unauthorised occupation of any land which is set apart for a public purpose and vests or belongs to the Gram Panchayat. It is clear that Section 98 does not apply to the present case as there is no complaint of any encroachment of a public road.

11. Section 58 vests certain properties in the Gram Panchayat. The question whether Section 58 would vest all Gramakantam lands in the Gram Panchayath is considered in the course of this judgment. Section 103 provides for levy of penalty in case of unauthorised occupation of such properties. This would raise the question as to whether the land in question vests in the Gram Panchayat.

12. The Government issued G.O.Ms.No.188 dated 21.07.2011, in pursuance of the judgment of the Hon’ble Supreme Court in the case of Jagpal Singh and Ors., vs. State of Panjab in Civil Appeal.No.1132 of 2011 dated 28.01.2011. The said G.O. classified the lands belonging to Gram Panchayats into three categories.

We are presently concerned with Category-C in Rule 2, which states as follows:

> Category-C: Vested With Gram Panchayats.
>
> All public water works, All public water courses, Springs, Reservoirs, Tanks, cisterns, Fountains, Wells, Stand Pipes and other water works (as per section 80 of Andhra Pradesh, Panchayat Raj Act) Minor Irrigation Tanks, Tank bunds and all water bodies and vested porambokes (Grazing Lands threshing floors, Burning and Burial grounds, cattle stands, cart stands, topes.(These are essentially the same categories of land set out in Section 58(1) of the Panchayath Raj Act, which shall also be considered)

13. The procedure, to be followed for protection of the Gram Panchayat properties, is given in Rules 3 and 4. Rule 3 requires the Panchayat Secretary of every Gram Panchayat to prepare an inventory of the landed properties of the Gram Panchayat based on Field Measurement Book and Field Survey Atlas, apart from the field survey inspections. The said inventory is to be placed before a Gramasabha, which shall approve the land inventory bills by passing a resolution. Subsequently, a Gram Panchayat would also convene a meeting and approve the land inventory bills by way of a resolution. The said approved land inventory bills would be published in the District Gazette.

14. Rule 4 stipulates that where it is found that any property of the Panchayat is under the occupation of any other person, a notice would be served on the party concerned and the said party would be given a hearing before a proceeding for eviction. Obviously, such a hearing would include a hearing on the claims of that person over the property. After hearing the person, suitable orders would be passed by the Panchayat Secretary and eviction is to take place only after such orders are passed. It is also settled law that passing of orders would include service of such orders on the evicted party. This would mean that a person cannot be evicted without such an order being served on the said person.

15. In the present case, there is no mention of any inventory having been prepared nor approved by either the Gramasabha or the Gram Panchayat under Rule 3. Keeping aside this issue, it can also be seen that the minimum requirement of Rule 4, namely, giving an opportunity of hearing to the petitioner and passing an order on the said objections filed by the petitioner before any eviction takes place, has been given a complete go by. In fact, the notices said to have been served on the petitioner only called upon the petitioner to vacate the premises and did not give the opportunity of hearing to the petitioner. This fact has also been noticed by the District Panchayat Officer in his report to the District Collector and disciplinary action is said to have been initiated against the Panchayat Secretary and the Extension Authority. On account of these deficiencies, the demolition of the tiled house of the petitioner was in clear violation of all the

safeguards given in the Act and the Rules.

16. Apart from the question of procedural irregularities, there remains the question whether such an eviction could have been carried out at all. The disputed land has been classified as Gramakantam land. The Respondent Gram Panchayath claims that the Gramkantam land vests in the Gram panchayath, by virtue of Section 58(1) of the Act and it would be entitled to recover the said land from unauthorized privat occupation. Section 58(1) of the Panchayath Raj Act, 1994, reads as follows:

> "58. Certain Government porambokes to vest in Gram Panchayat etc.:- (1) The following porambokes namely, grazing grounds, threshing floors, burning and burial grounds, cattle stands, cart stands and topes, which are at the disposal of the Government and are not required by them for any specific purpose shall vest in the Gram Panchayat subject to such restrictions and control as may be prescribed"

17. In Banne Gandhi and Ors., vs. District Collector, Ranga Reddy District and Ors., (2007 (4) ALT 550) it was held that since Section 58(1) does not enumerate Gramkantam land, as vesting in the Gram Panchayath, it cannot be held that Gramkantam land vests in the gram panchayath.

18. In Sigadapu Vijaya vs. State Of Andhra Pradesh, (2015 (4) ALT 296) the petitioners had approached the court with the complaint that the registration authorities were refusing to register transactions relating to Gramkantam lands on the ground that Gramkantam lands are government lands. It was held, after an extensive review of the judgments pronounced on this subject that, "occupied Gramkantam by its nature or classification does not belong to the government to include the Gramkantam in the prohibitory list". It must also be recorded that the judgments cited in this case had also considered the question whether Gramkantam lands would be communal lands and the consensus in all these judgments was that Gramakantam lands are not communal lands kept aside for communal use, such as threshing floors or burial grounds. On the contrary they held that Gramanatham or Gramkantam lands are lands kept aside for construction of houses and any such land in the occupation of an individual would entitle him to protect such possession by way of legal proceedings also.

19. In Bayya Mahadeva Satry vs. State of Andhra Pradesh (2020 (4) ALT 250) a learned single judge of this Court, following the aforesaid judgments and other judgments mentioned therein, had held:

> "Thus from the above jurisprudence on the subject in issue, it can be delineated that the Gramkantam land whereon the houses are constructed or intended to be constructed does not vest with either the Government or the Gram Panchayath. In that view, even if the argument of the respondents is accepted that the subject land is a Gramakantam and occupied by the petitioners, that fact will not ensure to the benefit of the

respondents to confer any title on them. Thus, either way the respondents cannot meddle with the possession and enjoyment of the petitioners in respect of the subject land and their construction of compound wall"

20. In the present case, it is the admitted case of all sides that the petitioner has been in long standing possession of the tiled house since the 1960s. Viewed either from the standpoint of Section 58(1) of the A.P. Panchayath Raj Act, 1994 or from the standpoint of decided cases, occupied Gramkantam land is not the property of the Gram Panchayath to invoke the provisions of either section 98 or 103 of the A.P. Panchayath Raj Act, 1994 or the mechanism under G.O.Ms.No.188, dated 21.07.2011.

21. Accordingly, the demolition of the tiled house in the possession of the petitioner is clearly beyond the authority of the 5th respondent. As the demolition of the tiled house of the petitioner is in violation of both procedural and substantive law, it must be held that the entire action is illegal, arbitrary and violative of the rights of the petitioner including the rights guaranteed in Article 14 & 300-A of the Constitution of India.

22. The complaint of the petitioner is that there was an illegal demolition of the tiled house and the 5th respondent had illegally taken away the computers and other equipment and material of the petitioners situated in the tiled house. The 5th respondent did not deny the contention of the petitioner that the computers and other material of the petitioner have been taken away by the 5th respondent. There remains the question of compensation to the petitioner. The petitioner is entitled to be put back in the same position as it was before the illegal demolition of its property.

23. The tiled house in the occupation of the petitioner has been demolished illegally and once this Court has given a finding that the demolition was illegal, both procedurally and substantively, the petitioner would be entitled to be restored back to the same position as was obtaining prior to the demolition. This would mean that the tiled house of the petitioner has to be reconstructed and the equipment and material of the petitioner which has been removed from the said tiled house would have to be returned to the petitioner. In the event of any damage to the said material, the petitioner would be entitled to be compensated for the loss caused due to such demolition.

24. For all the aforesaid reasons, the writ petition is disposed of with the following directions:

1. As a measure of restitution, the 5th respondent shall bear the entire cost of reconstruction of tiled house by the petitioner. This construction shall be for the purpose of reconstructing the tiled house with the same dimensions as was obtaining earlier.

2. For the purpose of such construction, the 5th respondent shall

Maruthi Cotton Mills Pvt. Ltd., pay a provisional amount of Rs.2,00,000/- to the petitioner within a period of three weeks from the date of receipt of a copy of this order.

3. The petitioner shall be permitted to reconstruct the tiled house without having to obtain any building permission or any approval from the 5th respondent or any other authority.

4. The petitioner, after reconstruction of the said tiled house, is entitled to recover from the 5th respondent such additional amounts that the petitioner may have spent over and above the provisional amount of Rs.2,00,000/-.

5. There shall also be a direction to the 5th respondent to return all the material taken away by the 5th respondent from the tiled house, which was in the possession of the petitioner, forthwith.

6. In the event of any shortfall in the material that had been taken away or in the event of any damage to the said computers, the petitioner is entitled to recover compensation on account of such damage or shortfall.

7. For the purpose of such recovery of money both on account of restoration of the house, if any, and on account of damage caused to the property of the petitioner, it shall be open to the petitioner to initiate a civil action for recovery of such damages and compensation. There shall be no order as to costs.

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

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2022(2) L.S. 103 (A.P.) (D.B.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
C. Praveen Kumar &
The Hon'ble Smt. Justice
V,. Sujatha

Maruthi Cotton Mills Pvt. Ltd., ,,Petitioner

Vs.

Canara Bank,Vizianagaram .. Respondent

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002(SARFAESI ACT), Sec.13(2) – Bank published sale notice and same was questioned by Petitioner before Debts Recovery Tribunal and sale notice was set aside by Debts Recovery Tribunal, prior to setting aside impugned sale notice, without awaiting the results of Debts Recovery Tribunal, the respondent Bank had taken steps for sale of scheduled properties, hence Petitioner filed instant Writ Petition challenging the Bank action - Respondent/Bank contended that Writ Petition is not maintainable since successful bidders are not made parties.

W.P. No.2479/2020 Date:29-3-2022

HELD: Bank authorities failed to follow the procedure as contemplated under Rule 9(1) of the Rules and when a new property is included in sale notice, then automatically the Respondent/Bank have to follow the procedure under the Act from the stage of Sec.13(2) of SARFAESI Act, but the Respondent/Bank, without following such procedure, straight away issued impugned sale notice by including a new property, which is illegal, and contrary to the mandatory provisions of the act - Sale notice stands liable to be set aside, when once sale notice is set aside, the auction proceedings pursuant to the said sale notice becomes null and void – Writ Petition stands allowed, however the Respondent/Bank is at liberty, to proceed further in accordance with the provisions of SARFAESI Act.

Mr.T. Lakshminarayana, Advocates for the Petitioners.
Mr.Bachina Hanumantha Rao, Advocate for the Respondent.

O R D E R

(per the Hon'ble Mr.Justice C. Praveen Kumar)

1. Challenging the Sale Notice, dated 18.11.2021, published in Hindu English Newspaper on 21.11.2021 without taking recourse to Rule 8 of Security Interest (Enforcement) Rules, 2002, ["Rules 2002], the present Writ Petition is filed.

2. The facts, which lead to filing of the present petition, are as under:

(i) The second Petitioner herein is the Managing Director of the 1st Petitioner Company. The Respondent Bank sanctioned a term loan of Rs.3,00,00,000/- and also working capital limit upto Rs.3,00,00,000/- on 07.12.2015 under two loan accounts numbers, which are 0644766000002 and 0644261000543. The loan was to be repaid within 28 quarterly instalments starting from April 2017. The immovable properties of the 1st Petitioner Company, namely, plant and machinery; agricultural land to an extent of Ac.1.10 cents situated near JOCIL Company, abutting to Guntur to Narsaraopet State Highway and also a residential house standing in the name of the 2nd Petitioner.

(ii) As the Petitioners committed default in payment of loan amount, their accounts were declared as "Non Performing Assets on 17.10.2017. Thereafter, a notice under Section 13 (2) came to be issued on 31.10.2017 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ["SARFAESI Act], in which the total debt was shown as Rs.6,10,15,997.75 paise.

(iii) The Bank published the Sale Notice on 12.09.2018 for sale of the mortgaged properties. Since, the Sale Notice came to be issued without following the provisions of law; S.A. No. 362 of 2018 came to be filed before the Debts Recovery Tribunal at Visakhapatnam on

27.09.2018. After hearing both sides, the Sale Notice was set-aside by the Debts Recovery Tribunal, on 21.12.2021. Prior to setting aside the Sale Notice by the Tribunal, the Respondent Bank published the impugned Sale Notice, dated 18.11.2021, in Hindu English Newspaper on 21.11.2021, without awaiting the result in S.A. No. 362 of 2018. This notice is now sought to be challenged on various grounds, namely, that in view of the order passed by the Tribunal, the entire process has to be commenced afresh including a notice under Section 13(2).

(iv) It is further urged that, once an order is passed by the Tribunal, the principle of doctrine of merger steps in and the consequential steps taken by the Respondent Bank till 21.12.2021 have to be declared as null and void. In other words, the argument of Sri. Ashok, learned Counsel appearing on behalf of Sri. T. Lakshmi Narayana, Advocate appearing for the Petitioners, would be that entire process has to be started afresh by following the procedure contemplated under Section 13(4) read with Rule 8 of the Rules.

3. On the other hand, Sri. Bachina Hanumantha Rao, Counsel appearing for the Respondent Bank, opposed the same. He would submit that the Writ Petition is not maintainable since the successful bidders are not made parties. He further submits that already the plant and machinery are sold and, as such, the proper remedy for the Petitioners would have been to approach the Debts Recovery Tribunal, once again.

4. (i) The averments in the Counter would show that, pursuant to the default committed, a notice under Section 13(2) was issued and after a lapse of sixty days from the date of service of notice, the Respondent Bank took possession of the secured asset and served Possession Notice on 24.10.2018 as required under Section 13(4) of the SARFAESI Act, which was acknowledged by the Petitioners. Since, there was no response from the Petitioners with regard to payment of any amount; Possession Notice was issued on 24.10.2018 by publishing the same in English vernacular language Newspapers on 31.10.2018 and also affixing the same at a conspicuous place as required under Rule 8(1) and 8(2) of Rules 2002. It is further stated that, a Notice under Rule 8 (6) of the Rules was issued on 27.08.2018, which was also served and acknowledged by the Petitioners. The Sale Notice dated 27.08.2018 was published in two newspapers on 13.09.2018. Thus, complying with the provisions of law.

(ii) It is stated in the counter that, pursuant to 1st Sale Notice, dated 12.09.2018, the date of auction was fixed on 15.10.2018. The auction scheduled to be held on 15.10.2018 did not materialize fully for want of bidders, because of which, the Respondent Bank has conducted auction on more than 14 occasions starting from 30.11.2018 and 31.01.2022. All the auctions

failed due to lack of bidders. Hence, it is urged that the order of the Tribunal does not come in the way of the Respondent Bank, as the proceedings before the Tribunal relate to a different sale notice.

(iii) It is further stated that, finally on 27.12.2021, the auction took place for two securities [plant & machinery and vacant plot at Guntur] in favour of M/s. Srivatsa Biotech India Private Limited and Mr. Srinivasa Aditya Akella, who were turned as successful bidders for an amount of Rs.98,10,000/- and Rs.75,99,000/-, respectively. Thereafter, Sale Certificate, dated 11.01.2022, came to be issued in favour of M/s. Srivatsa Biotech India Private Limited. Having regard to the above, it is said that, auction purchasers would be necessary parties to the property in dispute.

(iv) It is further stated that the physical possession of the plant and machinery was handed over to the Respondent Bank by the Petitioners themselves as the factory was not in operation for a long time and no workmen is present at the time of eviction. For all the above circumstances and the averments in the counter are supported by material documents, pleads that there are no merits in the Writ Petition and the same is liable to be dismissed.

5. The short point that arises for consideration is, whether the Sale Notice, dated 18.11.2021, which was published in Newspapers on 21.11.2021 is violative of the provisions of the SARFAESI Act and the Rules made thereunder?

6. Before dealing with the issue involved, we intend to go through the relevant provisions of the SARFAESI Act and the Rules made there-under to find out the procedure that is required to be followed before putting any property to auction by the secured creditor.

7. Section 13 of the SARFAESI Act, deals with "Enforcement of Security Interest".

(i) Sub-section (1) postulates that, notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this SARFAESI Act.

(ii) Section 13 (2) deals with issuance of notice to the borrower who had made default in repayment of secured debt or any instalment thereof and in respect of such debt been classified by the secured creditor as on-performing asset. The notice shall be issued in writing by the secured creditor, requiring the borrower to discharge his full liability to the secured creditor within 60 days from the notice, failing which the secured creditor shall exercise all or any of the rights under sub-section (4). Section 13(2) speaks about certain exceptions.

(iii) On receipt of such notice under Sub-section (2), the borrower if

makes any representation or raises any objection, the secured creditor shall consider such representation or objection. If the secured creditor is not in acceptance of the explanation given, he shall communicate within 15 days of receipt of such representation or objection the reasons for non-acceptance of the objection or representation. This procedure referred to above is contemplated under Section 13 (3A). It is also to be noted here that, notice under Section 13(2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower

(iv) In case the borrower fails to discharge his liability in full, then sub-section (4) comes into play, wherein, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt including to take over possession of the secured asset by way of lease, assignment or sale for realising the secured debt.

(v) Section 13(8) postulate that, where the amount of dues of secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, the said secured asset shall not be transferred by way of any lease, assignment or sale by the secured creditor.

(vi) Rule 4 of the Rules lays down the procedure to be followed after issuing notice under Sub-section (2) of Section 13 i.e., when the amount mentioned in the demand notice is not paid within the specified time. It states that, in such situation, the Authorised Officer shall proceed to realise the amount by adopting any one or more of the measures specified in Sub-section (4) of Section 13 of the SARFAESI Act.

(vii) Rule 5 deals with the situation where after taking possession under sub-rule (1) of Rule 4 and in any case before sale, the Authorised Officer shall obtain the estimated value of the movable secured assets and thereafter in consultation with the secured creditor, fix the reserve price of the assets to be sold in realisation of the dues of the secured creditor.

(viii) Rule 6 prescribes the mode in which the property which is taken possession under sub-rule 1 of Rule 4 is to be sold.

(ix) Rule 7 postulates that where movable secured assets is sold, sale price of each lot is to be paid as per the terms of the public notice or on the terms settled between the parties and on payment of sale price,

the authorised officer shall issue a certificate of sale in the prescribed form specifying the movable secured assets sold, price paid and the name of the purchaser. Thereafter, only the sale shall become absolute. Rule 7 (2) categorically states that the "certificate of sale" so issued shall be prima facie evidence of title of the purchaser.

(x) Rule 8 deals with "Sale of Immovable Secured Assets". What is relevant here is, sub-rule 6 of Rule 8 which states that, the authorised officer shall serve to the borrower a notice of thirty days for sale of immovable secured assets, under sub-rule (5). As per the proviso, if the sale is by public auction, the secured creditor shall cause a public notice in the prescribed form to be published in two leading newspapers, one in vernacular language having sufficient circulation in the locality by setting out the terms of the sale. Such notice is also required to be affixed at a conspicuous part of the immovable property as per sub-rule 7.

(xi) Sub-rule 1 of Rule 9 stipulates that, no sale of immovable property under these Rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served on the borrower. If the sale of immovable property under Rule 8 (5) fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

8. From a reading of the above Rules, more particularly, Rule 8 (5) and (6) and Rule (1), it follows that, thirty days of sale is required to be given by the Authorized Officer and no sale can take place before the expiry of thirty days, in the first place. If for some reason, the sale does not get materialize, in the first instance, for subsequent sale, the notice period shall not be less than fifteen days.

9. In Mathew Varghese v. M. Amritha Kumar And Others (2014 (5) SCC 610), the Hon'ble Supreme Court had a occasion to analyze the provisions of the SARFAESI Act and the Rules made there-under. In paragraph Nos. 30 and 31 of the Judgment, the Court held as under:

> "30. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.
> 31. Once the said legal position is

ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorised officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act."

10. Further, the Hon'ble Supreme court in paragraph Nos. 33.1 and 33.2 observed that Rule 8 and Rule 9 of the SARFAESI Act, have got a twin objective to be achieved, held as under:

> "33.1 In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/ borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.
>
> 33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower

to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question."

11. Therefore, from the judgment of the Hon'ble Supreme Court it is very clear that, a clear thirty days time is required to be give for effecting the sale of any immovable secured asset and the right of redemption would be available to the borrower till the date of time of auction sale. In case, if the auction, at the first stance fails, then under the proviso to Rule 9, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale, meaning thereby that in-stead of thirty days notice as required under 8(6) for sale of immovable secured asset under sub-rule 5, fifteen days time is sufficient to the borrower for the subsequent sale.

12. Keeping in the procedure that is mandated in the SARFAESI Act and the Rules made there-under, we shall now proceed to deal with the case on hand.

13. As per the averments in the counter filed by the Respondent Bank, it appears that there were two sale notices. The first one on 12.09.2018 and the second one on 18.11.2021. The first notice, dated 12.09.2018, was challenged before Debts Recovery Tribunal ["D.R.T.] in S.A. No. 362 of 2018, which was allowed on the ground that no material has been placed to show that notices under Section 8(6) were published in a local newspaper of vernacular language. The said order was passed on 21.12.2021. But, as said earlier, prior to the order of the Tribunal another e-auction sale notice, dated 18.11.2021, was issued fixing the e-auction on 27.12.2021. This notice is challenged in the present Writ Petition.

14. If there is only one sale notice, dated 12.09.2018, and when the same is set-aside, for want of compliance of mandatory requirement, the Bank could not have proceeded with the auction. If there are two different sale notices, as pleaded now, then the Bank could have proceeded with the auction, provided other mandatory requirements under the Act are followed. The counter filed is silent on this aspect. Except stating that the two e-auction sale notices are different and that two of the properties in Auction Sale notices are auctioned and Sale Certificate was also issued, there is no reference to compliance of Section 13 (2), Section 13(4) of the Act and Rule 8 (6) and 9 of the Rules in the affidavit. The counter further states that Sale Notice, dated 12.09.2018, was published in two newspapers and one of which was in vernacular language newspaper, but could not be filed before the D.R.T.

15. At this stage, it would be appropriate to refer to two Auction Sale notices, dated 12.09.2018 and 18.11.2021.

Auction Sale Notice dated 12.09.2018	Auction Sale Notice dated 18.11.2021
1. Property No-1: Zeroyathi Dry Land for an extent of Ac.0.58 cents in Survey No. 172-4 Ac.0.26 cents in Survey No.172-5 and Ac 0.63 cents in Survey No. 172-6 with a total extent of Ac. 1.47 cents (0.588 Hec.) with a single plot situated at Garrajucheepurupalli of Garrajucheepurupalli Panchayat Rajam Mandal, Srikakulam District. Bounded: North Zeroyathi Dry Land of Pannada Suryanarayana Nemmadi Chandrakala and others, South: Zeroyathi Dry Land of Chelikam Subhadra Saibu and etc., East: Zeroyathi Dry Land of Dharmana Suseela and Road, West: Zeroyathi Dry Land of Dharmana Leelavathi. 2. Property No -2: An extent of 70-2 ½ sq. yards of site and a house therein bearing D. No. 5-72-75/1, situated at T.S. No. 20/2,19,18/1, Guntur District, Guntur Sub-District, Guntur Municipal Corporation Guntur City, Pandaripuram 1st Line. Bounded: North: Bachepalli Rama Rao – 21.2 ft. South: Joint Galli-21ft. East: Gumma Rama Kotamma – 30ft out of which an extent of 25-1/2 of site and 4-1/2 joint galli, West: Anil Kumar Compound Wall 30ft out of which 25-1/2 site 1-1/2 Joint galli. 3. Property No -3: An extent of Ac1.10 cents of site, situated at Door No. 308/D of Ameenabad Guntur District Narasaraopet Registration district, Phirangipuram Sub-district Ameenabad Gram Panchayat, Ameenabad Village,	1. **Property No. 1**: The Part and parcel of Factory Land admeasuring 1.47 acres along with industrial building situated at S. No. 172/4, 172/5 and 172/6 of Garrajucheepurupalle Panchayat, Rajam Mandal, Srikakulam District, Andhra Pradesh, standing in the name of Maruthi Cotton Mills Private Limited. Bounded: On the north by: Dry Land belongs to Ponanda Suryanarayana, Nemmadi Chandrakala etc., On the south by: Dry Land belongs to “Chelikani Subhadra, Sai Babu etc. On the east by: Dry land belongs to Dharmana Suseela and Road, On the west by: Dry Land belongs to Dharmana Leelavathi.2. **Property No. 2**: Plant and Machinery related to Cotton Ginning situated at Garraju Cheepurupalli Village & Panchayat, Rajam Mandal, Srikakulam District. 3. **Property No. 3**: The part and parcel of vacant site admeasuring 1.10 cents (5324 sq. yards – 1475 sq. yards deducted for internal road = 3849 sq. yards) situated at Door No. 308/D, Near JOCIL Company, abutting Guntur to Narasaraopet State Highway, Ameenabad Village Panchayat, Phirangipuram Mandal, Guntur District standing in the name of Sri Patchala Srinivasa Rao. Bounded: One the north by: Land of Bathula Ramachandraiah, On the south by: Guntur to Narasaraopet Road, On the east by: Land of Yejendla Tirupataiah, On the west by: Land of Gopavaram Brahmanandam.

Bounded: North: Land of Bathula Ramachandraiah, South: Guntur to Narasaraopet Road, East: Land of Yejendla Tirupataiah, West: Land of Gopavaram Brahmanandam.	

16. A comparison of the same would show that in both the Auction Sale Notices, three properties were put to auction. Two of the three properties are only common. In the first notice, dated 12.09.2018, there is a reference to a property situated in T.S. No. 20/2,19,18/1, admeasuring 70-2 ½ square yards and a house bearing Door No. 5-72-75/1, but same is not put to auction vide Auction Sale Notice, dated 18.11.2021. Instead, Plant and Machinery relating to Cotton Gunning situated at Garrajuchipurupalle Village is put to auction. That being the position, the Bank authorities ought to have followed the procedure as contemplated under the Act. They could not have put to auction properties which were not part of Section 13(2) notice. On the other hand, the E-auction details filed along with counter (in the form of a table) would show that Sale Notice, dated 18.11.2021, is in continuation of earlier Sale Notice, meaning thereby that as earlier auction failed to materialize for want of bidders, another Auction Sale Notice came to be issued. For instance, as the auction on 20.09.2021 pursuant to Auction Sale Notice, dated 10.08.2021, did not materialize, the impugned Auction Sale Notice, dated 18.11.2021, was issued. Further, the properties are put to auction and Sale Certificate was issued in favour of auction purchasers, who are not made parties in this Writ Petition.

17. The Act, as stated above, clearly postulates that if sale notice does not materialize at the first instance, fifteen days time to the borrower is sufficient to give another sale notice. Further, once the auction notice, dated 12.09.2018, has been set-aside for not following the procedure required, the question of holding auction again even without giving fifteen days time as contemplated under the proviso to Rule 9 (1) of the Rules is improper. The argument of the learned counsel for the Petitioner appears to be that subsequent notices nowhere indicate auction being conducted in terms of Rule 9(1) by giving 15 days time. When the subsequent notices do not indicate the procedure as contemplated under proviso to Rule 9(1) being followed, then automatically they have to fall back and start afresh from the stage Rule 13(4). The same is disputed by the Counsel for the Respondent Bank, stating that as the issue before the Tribunal was different, they could not file all the material and if an opportunity is given, relevant material evidencing compliance of mandatory requirements would be filed before the Tribunal.

18. Having regard to the aforesaid facts and circumstances of the case, it appears that property No.2, which is sought to be put to auction in the first sale notice

dated 12.09.2018, was not included in the subsequent sale notice dated 18.11.2021, instead, some other property i.e. plant and machinery relating to Cotton Ginning situated at Garraju Cheepurupalli village and Panchayat, Rajam Mandal, Srikakulam District, was put to auction. Further, as stated earlier, the subsequent sale notice does not anywhere indicate auction being conducted in terms of Rule 9 (1) of the Rules. Further, the fact of issuance of sale notice dated 18.11.2021, though issued even prior to passing of the order by the Tribunal, was not brought to the notice of the Tribunal at the time when the Tribunal passed the order. In such circumstances, since the respondent bank authorities have failed to follow the procedure as contemplated under Rule 9 (1) of the Rules and when a new property is included in the sale notice, then automatically the respondent bank have to follow the procedure under the Act from the stage of Section 13 (2) of the SARFAESI Act. But, the respondent bank, without following such procedure, straight away issued the impugned sale notice dated 18.11.2021 by including a new property, which is illegal, improper and contrary to the mandatory provisions of the SARFAESI Act. Hence, the sale notice dated 18.11.2021 is liable to be set aside. When once the sale notice dated 18.11.2021 is set aside, the auction proceedings pursuant to the said sale notice becomes null and void.

19. Accordingly, the writ petition is allowed and the sale notice dated 18.11.2021 is set aside. However, the respondent bank is at liberty, if they so desire, to proceed further in accordance with the provisions of the SARFAESI Act. There shall be no order as to costs.

Consequently, the miscellaneous petitions pending, if any, shall stands closed

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2022(2) L.S. 113 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
U. Durga Prasad Rao

Marupudi Dhana Koteswara Rao ..Petitioner

Vs.

Union of India rep. & Ors., ..Respondents

PASSPORT ACT, 1967, Sec.6(2)(f) & 10(3), Rule 5 and Form-EA(P)2 of Schedule-III - RENEWAL OF PASSPORT – Rejection of Renewal of Passport on ground that Petitioner was involved in two criminal cases, which are pending before concerned Courts.

HELD: Petitioner directed to approach concerned Criminal Courts and seek NOC, for renewal of his Passport - Concerned Court shall consider his application and pass appropriate Orders and may impose suitable conditions, if needed.

Mr.G.V.R. Choudary, Advocates for the Petitioner:.

Assistant Solicitor General, Advocate for the Respondents.

O R D E R

The petitioner prays for a writ of mandamus declaring the action of respondents 1 to 5 in refusing to renew his passport bearing No.K1839017 which was issued on 23.02.2012 and expired on 22.02.2022 as illegal, unjust and violative of Article 21 of the Constitution and for a consequential direction to the respondents to renew his passport.

2. The petitioner's case succinctly is thus:

(a) The petitioner is a resident of Penamalur in Krishna District. The petitioner holds passport bearing No.K1839017 which was issued on 23.02.2012 and expired on 22.02.2022. The petitioner submitted application dated 10.12.2021 for renewal of the passport. However, the 5th respondent declined to consider his application for renewal of passport on the ground that the petitioner is involved in two criminal cases i.e., (1) CC No.161/2020 on the file of Ist Metropolitan Magistrate, Vijayawada for offences under sections, 341, 143, 188, 290 r/w 149 of IPC wherein the petitioner is accused No.3 and (2) SC No.4/2019 on the file of IV Metropolitan Sessions Judge, Vijayawada for the offences under sections 147, 148, 324, 307, 341, r/w 149 of IPC where the petitioner is arrayed as accused No.2.

(b) Questioning the summons issued to him in SC No.4/2019, the petitioner filed Criminal Petition No.2291/2019 u/s 482 Cr.P.C before this Court to quash the proceedings and this Court by its order dated 01.10.2020 granted interim orders staying all further proceedings in SC No.4/2019.

(c) Petitioner's second daughter is residing in United States of America and the petitioner has to visit her to attend housewarming ceremony of his daughter. Therefore the petitioner needs renewal of the passport at the earliest.

(d) Petitioner contends that under Section 6(2)(f) of the Passport Act, 1967, the passport authority cannot refuse renewal of passport on the ground that pendency of criminal cases. Hence the writ petition.

3. Learned counsel for the petitioner Sri G.V.R Choudary would submit that what is required by the petitioner is the renewal of the passport and therefore the passport authorities shall, while considering the application for renewal, scrupulously act within the parameters of the Passport Act, 1967 either in granting or refusing renewal. Without issuing any written order, it was orally informed to the petitioner that because he was involved in two criminal cases which are pending for trial, his renewal was rejected. He would submit that application for renewal of the passport has to be made in Form EA(P)-2 prescribed under the Schedule III of the Passport Act and as per the Clause-5 of the said Form, the passport authority can only seek for information as to any criminal proceedings

pending against applicant in criminal court in India or any other disqualifications under Section 10(3) of the passport Act. Learned counsel would submit that the said clause did not specifically mention that if criminal cases pending against the applicant, the authorities can refuse the renewal. In this regard, he relied upon a decision in Ashok Khanna V. Central Bureau of Investigation (265(2019)DLT614 = MANU/DE/3767/2019) case. He thus prayed to allow the writ petition. While thus prayed to allow the writ petition, the learned counsel would request that a direction may be issued to passport authorities to renew his passport and if any condition is imposed on the petitioner to appear before the Criminal Courts and execute bonds for his due return to the Country and appear in the concerned criminal cases, he will abide.

4. Per contra, learned Assistant Solicitor General argued that since the petitioner is involved in two criminal cases, it is apposite for him to obtain NOC from the concerned Criminal Courts so as to enable the passport authorities to renew his passport.

5. The point for consideration is whether there are merits in the writ petition to allow ?

6. POINT: In its wide spectrum, the personal liberty envisaged in Article-21 of the Constitution of India encompasses the right to travel abroad for any lawful purpose such as for tourism, employment, education, to meet the friends and relations etc., and the State cannot smother such a right except according to the procedure established by law. It was so held by Hon'ble Apex Court many a times. In Satwant Singh Sawhney v. D. Ramarathnam (AIR 1967 SC 1836 = MANU/SC/0040/1967) case it was held thus:

> "For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Art. 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating depriving persons of such a right."

Similarly in a decision rendered by 7 Judge Bench of Apex Court in Maneka Gandhi v. Union Of India (MANU/SC/0133/1978) case it was observed thus:

> "Now, it has been held by this Court in Satwant Singh's case that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh's case was struck down as invalid. It will be seen at once from the language of Article' 21

that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State Law'. Vide A. K. Gopalan's case. Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure."

7. It has now to be seen whether the oral rejection made by the respondent authorities to renew the passport of the petitioner on the alleged ground of his involvement in two criminal cases is backed by any law.

8. In this context, a perusal of the decision in Ashok Khanna's case (1 supra) cited by the petitioner would show that the facts are more or less similar. In that case the petitioner was convicted for the offences under Section 13(a)(d) of the Prevention of Corruption Act and sentenced to undergo 2½ years of imprisonment and with fine of Rs.20,000/-. The petitioner therein possessed valid Indian Passport which was due to expire on 01.06.2019. He used to frequently travel to USA to see his daughter, hence he applied for renewal on 05.02.2019. However, the authorities opposed the application stating that as per Section 6 of the Passport Act, 1967, if conviction was for more than two years, then for renewal of passport, permission was required from the Court concerned. Aggrieved, he approached the High Court of Delhi. In that context, learned single Judge of Delhi High Court while referring to various provisions of Passport Act, observed that Section 6 of the passport Act, 1967 has no application to the cases where the application was filed for renewal of the passport and not for issuance or re-issuance of passport. Learned Judge held that Rule-5 of Passport Rules, 1980 applies for the renewal of the passport and as per Rule-5, the application Form EA(P)-2 is the relevant Form which is applicable for applying renewal. In the said Form at Clause No.5, it was only mentioned whether any criminal proceedings were pending against the applicant in a Criminal Court in India or any other disqualification was acquired by him under Section 10(3). Except that there was no condition mentioned therein to obtain No Objection Certificate from the concerned Criminal Court. Learned single Judge ultimately held that the authorities misread the provisions and insisted the applicant/petitioner to obtain NOC from the concerned Criminal Court. He ultimately directed the passport authorities to renew the passport of the petitioner.

9. True is that, Rule-5 of Passport Rules and Form EA(P)-2 of Schedule-III applies for renewal of passport. In Clause-5 of Form EA(P)-2 it is mentioned as follows:

"5. Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3)"

In Clause-5 of Form EA(P)-2, it is only mentioned that an information has to be provided by the applicant as to whether

any criminal proceedings are pending against him in a Criminal Court in India or whether he attained any disqualification under Section 10(3). It is also true there is no specific mention in it that if criminal cases are pending, he should necessarily obtain NOC from the concerned Criminal Court. To this extent I fully agree with the observations of the learned Judge. However, in my view, when criminal cases are pending against a person who seeks for renewal, it cannot be concluded that passport authorities shall not insist for obtaining NOC from the concerned criminal Court. In my considered view a legal duty is cast on the Court to see that such visit of the applicant/ accused will not hamper the criminal proceedings pending against him/her. Similarly, the passport authorities seeking such information is not without any purpose and it is not an empty rhetoric. If any criminal cases are pending against the applicant who seeks renewal or he attains disqualification in terms of Section 10(3), the authorities can re-consider to renew the passport and such right or discretion is implicit in Rule-5. In that view, with due respect I am unable to agree with the observation of the learned Judge.

(a) It should be noted that Form EA(P)-1 of Schedule-III applies for new/re-issue/replacement of lost/damaged passport and in the said Form in Clause-17(b) and (c), it is mentioned that whether any criminal proceedings are pending against the applicant before a Court in India and if so he has to obtain NOC from the concerned Court for grant of passport. Therefore for fresh issue of passport or re-issue in case of loss or damage of the passport, NOC is required from the concerned Criminal Court. It goes without saying that the authorities can seek for NOC in case of renewal of passport also. The avowed object in seeking for NOC from the Criminal Court is to see that the absence of the applicant from India should not hamper the criminal proceedings. Since the concerned Criminal Court is the best authority to say whether the absence of the applicant/accused will hamper criminal proceedings or not, seeking NOC from the Criminal Court by the passport authorities cannot be found fault on the mere ground that in Form EA(P)-2 seeking for NOC is not specifically mentioned. Running the risk of pleonasm it must be mentioned that such a power to seek for NOC from the Criminal Court is implicit in Rule-5.

10. In the result, this writ petition is disposed of directing the petitioner to approach the concerned Criminal Courts where he is appearing as accused and seek for NOC for renewal of his passport, in which case the concerned Courts shall consider his application and pass appropriate order and in case they issue NOC, they may impose suitable conditions. Such orders have to be passed by the concerned Courts within one week from the date of filing of applications by the petitioner. On production of NOCs by the petitioner, the respondent authorities shall consider his renewal application and issue renewal of the passport within two weeks from the date of production of NOCs. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

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2022(2) L.S. 118 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Smt.Justice
Kongara Vijaya Lakshmi

Vankena Krishna Rao & Ors., ..Petitioners

Vs.

Govt. of A.P. & Ors., ..Respondents

LAND ACQUISITION ACT, 1894, Secs.11-A and 12(2) – Respondent/Govt. acquired Petitioners land and passed an award of compensation without due process of law.

HELD: Entire proceedings for acquisition lapsed and passing of award after lapse of land acquisition proceedings is a nullity and without jurisdiction - Impugned award stands liable to be set aside - Writ Petition stands allowed and respondents are directed not to interfere with the possession of Petitioner with regard to the subject land.

Mr.B.S. Kartik, Advocates for the Petitioners.
Govt. Pleader for Land Acquisition, Advocate for the Respondents.

O R D E R

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

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

W.P.No.9325/2013 Date:4-5-2022

villages; the officials never physically visited the lands and possession was never taken and non-taking of possession is contrary to Section 17(5)(a)(b) of the Act; Section 4(1) notification was not published in the gazette within 40 days from the date of notification; Section 4(1) notification was issued on 21.01.2009 and Section 5A notification was published in the month of June 2009 and Section 6 notification was published in the District Gazette on 03.03.2010 i.e., after lapse of statutory period of one year as contemplated under the proviso to Section 6(1) of the Act; the award was passed on 24.07.2012 i.e., after two years from the date of publication of the first notification on 21.01.2009, hence the proceedings under the Act stands lapsed under law and the award was passed only after the petitioners approached this Court by way of Writ Petition No.22617 of 2012, wherein there is no interim order of stay of operation etc., hence, the period of initial notification is enforceable under law; the respondents asked the petitioners to put their signatures to consider their objections and to show their presence in the office and believing the respondents, petitioners put their signatures on the papers hoping that their objections will be considered without suspecting the respondents and during the pendency of that Writ Petition No.22617 of 2012 petitioners came to know that the signatures of the petitioners were converted to suit to their convenience and if at all petitioners accepted the proposal and gave consent for award they ought to have released the compensation immediately; petitioners never appeared before the negotiation committee or before the District Collector; petitioners never gave consent for the award; even otherwise, the said award is void, as the same was passed after lapse of statutory period; during the pendency of the said Writ Petition petitioners came to know about the alleged consent award, hence they withdrew the said Writ Petition on 28.08.2012; the award was not passed within two years from the date of declaration under Section 6 of the Act; award was not served on the petitioners and it is contrary to Section 12(2) of the Act. Hence, the Writ Petition.

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

Registrar Office, Tadepalligudem and published on the land by hanging to a stick planted in the land and notices were also served in Form-VII under Sections 9(3) and 10 of the Act on the petitioners on 23.01.2012; petitioners received the notices, acknowledged the same and gave consent for acquisition of the land and to pass a consent award at the rate of Rs.7,00,000/- per acre; petitioners also signed the agreement in Form-III on 19.04.2012; they were served notices in Form-I to attend the DLNC meeting on 10.04.2012 and after giving consent, petitioners filed Writ Petition No.22617 of 2012 questioning the draft notification and declaration and subsequently withdrew the said Writ Petition; the land owners have not taken the compensation amount, hence the same was deposited in the court of the Senior Civil Judge, Eluru under Section 31(2) of the Act and possession was taken under a cover of panchanama by the Tahsildar on 23.03.2013; as the petitioners filed a Writ Petition previously, the present Writ Petition is not maintainable; the petitioners having signed the agreement in Form- 3 and agreed to pass consent award, now cannot contend that the award was passed after two years; there is no other suitable land to provide house sites and prayed to dismiss the Writ Petition.

Reply affidavit is filed by the petitioners denying the contents of the counter affidavit and specifically denying the averment that they have given consent for the award, that they signed the agreement on 19.04.2012 and that they were served with Form-I notice to attend the DLNC meeting on 10.04.2012; no award was passed as on the date of filing of the Writ Petition No.22617 of 2012 and the present Writ Petition was filed questioning the award dated 24.07.2012 and hence the principle of res judicata does not apply; even as on today, petitioners are in possession of the subject land; as the declaration was issued under Section 6 of the Act, beyond one year from the date of Section 4(1) notification, the same is void and the draft notification under Section 4(1) lapsed even by the date of approval of the declaration by the District Collector under Section 6 of the Act and hence without legal existence of Section 4(1) notification, there cannot be any declaration under Section 6 of the Act; the award was passed beyond two years which is contrary to the provisions of Section 11-A of the Act; passing of the award after lapse of proceedings under Section 4(1) notification and declaration under Section 6 is a nullity. Giving of consent, notice in Form-I asking them to appear before the DLNC and notices under Section 12(2) of the Act were denied, there cannot be any award after lapse of notification under Section 4(1) and declaration under Section 6 of the Act.

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

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

Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court reported in Ashok Kumar v. State of Haryana (2007) 3 SCC 470), Kulsum R. Nadiadwala v. State of Maharashtra (2012) 6 SCC 348) and Anil Kumar Gupta v. State of Bihar (2012(12) SCC 443).

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

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

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

> "4. Publication of preliminary notification and powers of officers thereupon. - (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.
>
> (2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -
>
> to enter upon and survey and take levels of any land in such locality;
>
> to dig or bore into the sub-soil;
>
> to do all other acts necessary to ascertain whether the land is adapted for such purpose;
>
> to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;
>
> to mark such levels, boundaries and line by placing marks and cutting trenches; and,
>
> where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;
>
> Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

Section 6 of the Act reads as follows.

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

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

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

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

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

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

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

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in

the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which It is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

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

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

"9. Notice to persons interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

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

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

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

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

Section 11 reads as follows.

"11. Enquiry and award by Collector. - (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, subsection (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

"(i) the true area of the land;

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

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

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

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

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

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

Section 11-A reads as follows.

"11A. Period within which an award shall be made.- (1) The Collector shall make an award under section 11 within a period of two years from

the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

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

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

Section 12 of the Act reads as follows.

"12. Award of Collector when to be final.-

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

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

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

In Ashok Kumar's case (supra) it was held that proviso (ii) to sub-section (1) of Section 6 debars making of declaration after the expiry of one year from the date

of publication under Section 4(1) of the Act and that in such circumstances such a declaration which was made after expiry of one year from the date of publication of notification under Section 4(1) would be void and of no effect. Relevant portions of judgment read as follows.

> "14. Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section, 4(1), is stayed by an order of a Court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.
>
> 15. Provisions of the Act should be construed having regard to the purport and intent thereof. Section 6 of the Act is beneficent to the land owners.
>
> 17. We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit."
>
> According to first proviso to Section 6(1), declaration should be issued within a period of one year from the last publication of notification under Section 4(1) and if it is not done Section 6(1) declaration is a nullity, unless it falls under the explanations to Second proviso of Section 6(1).

As the mandatory requirements under Section 4(1) were not complied with, the Hon'ble Supreme Court in Kulsum R.Nadiadwala's case (supra) held that the entire acquisition of land is null and void

and directed the respondents therein to handover possession to the land owners. It was also held that if the statute provides a particular manner, for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. The relevant paragraphs read as follows:

> "12. The said provisions came up for consideration before this Court in Collector v. Raja Ram Jaiswal (1985) 3 SCC 1). In the said decision, the Court specifically observed that there are two requirements for the issuance of Notification under Section 4 of the Act. The first requirement is that the notification requires to be published in an Official Gazette and the second requirement is that the acquiring authority should cast public notices of the substance of such notification in a convenient place in the locality in which the land proposed to be acquired is situate. The Court has further observed that both the contentions are cumulative and they are mandatory.
>
> 13. In the instant case, the respondents before the High Court had filed their reply affidavit. They did not dispute the contentions of the appellants that they had not issued any public notices as required under Section 4 of the Act. They only reiterated that such notification was published in the Official Gazette. Since the mandatory requirement as required under Section 4(1) of the Act is not complied with by the respondents, while acquiring the lands in question, in our opinion, the entire acquisition proceedings requires to be declared as null and void.
>
> 14. This Court in J&K Housing Board v. Kunwar Sanjay Krishan Kaul (2011) 10 SCC 714, has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings. This Court further observed thus:
>
> "32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/ modes have to be strictly complied with in the manner provided therein. Merely because the landowners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to."

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

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

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

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

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

left to bear their own costs."

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

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

The present Writ Petition is filed challenging the award which was passed pending Writ Petition. As the prayer in both the Writ Petitions is different and as the cause of action in both the Writ Petitions is different, the doctrine of res judicata does not apply to the facts of the present case.

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

> "The issue needs to be examined from another angle. A person who is deprived of his land at various stages. He can question the notification issued under Section 4(1) on the ground of violation of the mandate contained therein like publication of the notification in the official gazette and/or two newspapers including the one in the regional language, failure of the Collector to cause public notice of the substance of the notification to be given at convenient places in the locality. He can challenge the declaration issued under Section 6(1) on the ground of non-compliance of Section 5A(1) and/or (2) or violation of proviso (ii) to Section 6(1). In a given case, the land owner can also

challenge the notice issued under Section 9 and the award passed under Section 11 on the ground that he had not been heard or that the acquisition proceedings are nullity. He can also challenge the award if it is not made within the period prescribed under Section 11A. The vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The invoking of urgency clause contained in Section 17 can be questioned on the ground that there was no real urgency. There may be many more grounds on which the land owner can challenge the acquisition proceedings. Insofar as the appellant is concerned, he had challenged the acquisition proceedings immediately after passing of the award and pleaded that the declaration issued under Section 6(1) was liable to be declared nullity because of violation of the time limit prescribed in proviso (ii). This being the position, it is not possible to approve the view taken by the Division Bench of the High Court that the writ petition was belated."

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

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

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

> "Whether Award Nos.1 and 2/2006-07 dated 31.07.2006 passed by the third respondent are consent awards? If so, whether the petitioners are entitled to question the adequacy of compensation on any of the grounds and whether a direction as claimed by the petitioners be issued by this Court while exercising power under Article 226 of the Constitution of India?"

And this Court observed in the said order that the respondents therein could

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

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

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

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

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

"Roc.No.GI/268/2009/S.W. West Godavari Collectorate
Eluru, dated: 26.02.2012

PROCEEDINGS OF THE JOINT COLLECTOR, WEST GODAVARI, ELURU

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

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

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

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ORDER:-

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

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

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

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

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

As seen from the letter of the Revenue Divisional Officer, dated 21.03.2013 bearing ROC No.2275/2008/B, addressed to the Tahsildar, the Joint Collector approved the draft award and accordingly the award was passed by the Land Acquisition Officer on 27.02.2012. The said letter reads as follows.

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

and prepare the beneficiaries list as per the norms issued by the Govt."

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

"AWARD No.2/2012

Roc.2275/2008/B
O/o the Land Acquisition Officer &
Revenue Divisional Officer, Eluru.
Dt.27.02.2012.

Proceedings of the land Acquisition Officer and

Revenue Divisional Officer, Eluru

Present: Sri K. Nageswara Rao, M.Sc.,

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

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

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ORDER:

1. Introduction:

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

2. Draft Notification:

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

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

3. Draft Declaration:

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

4. True Area:

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

5. Market value:

The Tahsildar, Unguturu has gathered the Registration statistics from the preceding 3 years from the date of publication of draft notification. The DN has been approved by the Collector, W.G., Eluru and issued proceedings in their Roc.G1/SW/268/2009, dated 20.01.2009. During the year 2007 there are no sale transactions are made in the vicinity and nearer to the lands under acquisition.

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

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

The basic value of the sale land is Rs.1,62,000/- per acre. Due to increase in trend of the prevailing market value of the lands in the village, the reasonable

market value of the proposed land under acquisition it was recommended to fix the land value under acquisition is Rs.2,00,000/- per acre.

The Joint Collector, West Godavari, Eluru has fixed the market value of the acquisition land @ Rs.2,00,000/- p.a. (Rupees Two Lakhs only) excluding statutory benefits U/s.23(1) of the L.A. Act and issued proceedings vide Roc.G1/ 268/2009(SW) dated 26.01.2012.

6. Value of the Trees and Buildings etc.:

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

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

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

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

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

7 (c) Solatium:

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

8. Payment of Interest:

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

9. Claims and objections:

Notices U/s.9(1), 10 and 9(3), 10 were sent to the land owners with a direction to attend before Land Acquisition Officer and Revenue Divisional Officer, Eluru on 08.02.2012 and to claim the interest over the land and to

conduct of award enquiry for the proposed acquisition. The notices were received published in the locality and also served to the land owners on 23.01.2012.

10. Award apportionment:

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

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

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

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

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

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

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

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

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

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

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

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

12. Funds:

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

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

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

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

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

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

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

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

The petitioners also took a specific plea that they never appeared before the

negotiation Committee or the Collector and the same is not disputed in the counter-affidavit. The record also does not disclose that they appeared before the Negotiation Committee.

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

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

According to Section 11A of the Act, the Collector has to make an award under Section 11 within a period of two years from the date of publication of declaration and if no award is made within that period, the entire proceedings for acquisition would lapse. As seen from the facts of the present case, assuming for a moment that the declaration under Section 6 is valid, the date of publication of declaration in the gazette is 03.03.2010 and in the locality it is 26.03.2010 and award was passed on 24.07.2012. Hence, the entire proceedings for acquisition lapsed. Passing of award after lapse of land acquisition proceedings is a nullity and without jurisdiction.

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

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

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

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

–X–

2022(2) L.S. 141 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
M. Satyanarayana Murthy

T.C. Rajarathnam (died) & Ors., ..Petitioners

Vs.

State of A.P. & Ors., ..Respondents

REGISTRATION ACT, 1908, Sec.22-A(1)(e) – A.P. (ANDHRA AREA) ESTATES (ABILITION AND CONVERSION INTO RYOTWARI) ACT, 1948, Sec.11(a) – Petitioners land was included in the list of properties prohibited for registration – Long standing harassment of Government meted out to the petitioner, depriving him from enjoying land, though the litigation attained finality in the Hon'ble Supreme Court lead to filing of present Writ Petition, declaring the action of the third respondent in including land from the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, by treating the same as Government land, despite granting patta under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, in favour of Petitioner.

HELD: Order passed by the administrative authorities must disclose the reasons - But the Order impugned in the Writ Petition is bereft of any reasons - Therefore, the same is liable to be set-aside, as it is in violation of principles of natural justice and contrary to law - Writ Petition stands allowed declaring the action of the third respondent/District Collector in inclusion of the land in the list of prohibited properties under Section 22-A(1) of the Registration Act, by treating the same as Government land as illegal and arbitrary.

Mr.K. Rama Mohan, Advocates for the Petitioners.

Government Pleader for Revenue, Advocate for the Respondents.

W.P.No.44992/18 Date: 6-5-2022

O R D E R

The long standing harassment of the mighty Government meted out to the original petitioner – T.C. Rajarathnam, who is a poor ryoth, depriving him from enjoying land of an extent of Ac.5-00 cents in S.No.78/2 (P) of Mangalam Village, Tirupathi Urban Mandal, Chittoor District, though the litigation attained finality in the Hon'ble Supreme Court lead to filing of this writ petition by the original petitioner – T.C. Rajarathnam, claiming writ of mandamus, declaring the action of the third respondent in including land of an extent of Ac.5-00 cents in S.No.78/2 (P) of Mangalam Village, Tirupathi Urban Mandal, Chittoor District from the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908, by treating the same as Government land, despite granting patta under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and

Conversion into Ryotwari) Act, 1948, (for short "the Act) in favour of the original petitioner by Sri A.D.V. Reddy, Settlement Officer, Nellore, which is confirmed by the Hon'ble Apex Court in S.L.P.Nos.12594-12595 of 2016, as illegal, arbitrary, unjust and contrary to the law, so also to declare the rejection order of the fourth respondent dated Nil/09/2018 as illegal, arbitrary and contrary to law, consequently, direct the sixth respondent to delete the subject land from the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908.

The case of the petitioners in brief is that Petitioner No.1/late T.C. Rajarathnam purchased land of an extent of Ac.5-00 cents in S.No.78/2 (P) of Mangalam Village, Tirupathi Urban Mandal, Chittoor District (hereinafter referred as "subject land) from one P. Padmanabhaiah through a registered sale deed in the year 1968 for valid consideration. The Estate of Mangalam Village was taken over by the Government under the provisions of the Act. Petitioner No.1 submitted a claim under Section 11(a) of the Act before the then Settlement Officer, Nellore claiming ryotwari patta forr the land purchased by him. After conducting enquiry, examining the witnesses and verifying the records, the Settlement Officer, Nellore, granted ryotwari patta over the subject land in SR.No.13/11(a)81 CGR dated 19.09.1981.

The Director of Settlement, Andhra Pradesh, Hyderabad has taken up suo-moto revision against grant of ryotwari patta under Section 5(2) of the Act, passed orders setting-aside the orders of the Settlement Officer, Nellore vide order in R.P.No.187/83 dated 20.08.1985.

Aggrieved by the order, Petitioner No.1 preferred a revision before the Commissioner, Survey, Settlement and Land Records, A.P. Hyderabad, wherein the Commissioner set-aside the orders of Director of Survey and Settlements vide proceedings No.P3/2439/1985 dated 11.08.1985 and remanded the case to the Director of Settlements for fresh enquiry and disposal.

The Director of Settlements has again set-aside the orders of Settlement Officer, Nellore vide order dated 30.11.1991. The Commissioner of Survey, Settlements and Land Records, before whom revision was filed, has passed order vide Proc.No.P3/2104/92 dated 25.07.1994 duly allowing the revision and confirmed the orders passed by the Settlement Officer, Nellore dated 19.09.1981. Since the orders of Commissioner of Survey, Settlements and Land Records, Hyderabad, were not implemented by the District Collector, Chittoor, Petitioner No.1 filed W.P.No.25640 of 1995 before the High Court, the writ petition was disposed of on 17.11.1995 directing the Joint Collector, Chittoor to pass appropriate orders within two months.

Instead of implementing the orders passed by the Commissioner, the District Collector preferred W.P.No.5718 of 1997, which was allowed on 18.07.2000, setting-aside the orders of C.S.S. & L.R vide order dated 18.07.2000 and remanded the case to the Commissioner. The Commissioner of Appeals has taken up the remanded case for enquiry and confirmed the orders

of Settlement Officer, Nellore dated 19.09.1981 vide order dated 30.05.2001.

In pursuance of the orders passed by the High Court in W.P.No.25640 of 1995 dated 17.11.1995, the District Collector, Chittoor issued instructions to the Tahsildar, Tirupati Urban in Ref.No.E1/2404/1992 dated 05.12.1996 to implement the orders of the Settlement Officer, Nellore dated 19.09.1981, but the Tahsildar did not implement the orders. Aggrieved thereby, Petitioner No.1 filed W.P.No.22970 of 2001 before the High Court to implement the orders of the Settlement Officer, Nellore dated 19.09.1981. Parallel thereto, the District Collector, Chittoor also filed W.P.No.10566 of 2001 to quash the proceedings of Commissioner of Appeals in Proc.No.P3/1003/2000 dated 30.05.2001. The High Court at Hyderabad passed a common order in W.P.No.22970 of 2001 and W.P.No.10566 of 2001 dated 13.05.2003, whereby, W.P.No.10566 of 2001 filed by the District Collector was dismissed and W.P.No.22970 of 2001 filed by Petitioner No.1 was allowed, confirming the orders of the Commissioner of Appeals, C.C.L.A, Hyderabad.

Thereupon, the District Collector filed W.A.No.1582 of 2003 against the orders in W.P.No.22970 of 2001 dated 13.05.2003 against Petitioner No.1, apart from filing another W.A.No.1644 of 2003 against the orders passed by the Commissioner of Appeals. The Division Bench of the High Court dismissed the appeals on 18.09.2015, confirming the orders passed by the learned single Judge, holding that the grant of settlement patta dated 19.09.1981 has been accepted by the Court and the appellants are under legal obligation to effect necessary changes in the revenue records concerning the subject matter.

Instead of abiding by the judgment delivered by the Division Bench of the High Court, the District Collector, Chittoor preferred S.L.P.Nos.12594-12595/2016 before the Hon'ble Supreme Court against W.A.Nos.1582 of 2003 and 1644 of 2003 dated 18.09.2005. The Division Bench of the Hon'ble Supreme Court dismissed the Special Leave Petitions. As the respondents did not stop harassing Petitioner No.1 and did not implement the orders of this Court, Petitioner No.1 filed C.C.No.378 of 2016 and finally, the Tahsildar/Respondent No.6 implemented the orders passed by the Settlement Officer, Nellore dated 19.09.1981 in the village accounts by acknowledged Petitioner No.1 as pattadar of the subject land. Though the orders of the Settlement Officer, Nellore dated 19.09.1981 was implemented in all the village accounts in respect of the subject property in favour of Petitioner No.1, vide Khata No.642, the subject property was included in the list of properties prohibited from registration under Section 22-A(1)(e) of the Registration Act, 1908, still presuming that the same is government land and vested with the Government, thereby virtually disabled Petitioner No.1 to deal with the subject property as per his wish.

It is contended that, Petitioner No.1 submitted a representation to the District Collector through Mee-Seva vide application No.TTA011800009702 dated 19.05.2018 with a request to the authority to delete the

subject property from the list of properties prohibited from registration. The request of Petitioner No.1 was rejected on Ni./09/2019. It is contended that the rejection order of the Joint Collector/Respondent No.4 is perverse and without assigning any reasons. Therefore, the petitioner approached this Court by filing the present writ petition on various grounds.

During pendency of the writ petition, Petitioner No.1 – T.C. Rajarathnam died and his legal representatives are brought on record as Petitioner Nos. 2 & 3 as per the orders of this Court in I.A.No.1 of 2021 dated 28.12.2021, as they are entitled to prosecute the proceedings, having succeeded the subject property.

The main grounds urged by Petitioner No.1 in the writ petition are that, when once the Hon'ble Apex Court dismissed S.L.P.Nos.12594-12595/2016, confirming the judgment passed by the Division Bench of the High Court in W.A.Nos.1582 of 2003 and 1644 of 2003 dated 18.09.2005, wherein the order passed by Sri A.D.V.Reddy, Settlement Officer, Nellore in S.A.No.13/11(a)/81/CGR dated 19.09.1981 was upheld, inclusion of the land again in the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908, is illegal, arbitrary and the respondents appears to have acted prejudicial to the interest of Petitioner No.1, even to implement the direction issued by various authorities. Though the respondents lost their long standing litigation in different Courts and authorities, including the Hon'ble Supreme Court, subjecting Petitioner No.1 to harassment inventing a different story and inclusion of the subject land in the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908 is without any basis. When once the patta was granted under Section 11(a) of the Act, Petitioner No.1 became the absolute owner of the property and the question of vesting the subject property on the government on the presumption that it is "Assessed Waste Dry land in the pre-abolition record is nothing but flouting the orders of the Hon'ble Apex Court and such conduct of the respondents is depreciable and thereby, the Endorsement of the Joint Collector/fourth respondent dated Nil/09/2018 in rejecting the request of Petitioner No.1 to delete the subject land from the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908, is ex-facie illegal and arbitrary and requested to set-aside the same, while issuing a direction as claimed by Petitioner No.1.

Respondent No.3/Sri Hari Narayanan, District Collector, Chittoor, a senior I.A.S officer heading the entire district administration filed counter affidavit narrating the chequered history of the litigation regarding grant of patta in favour of Petitioner No.1 by Sri A.D.V. Reddy, Settlement Officer, Nellore under Section 11(a) of the Act. It is also contended that, for grant of ryotwari patta under Section 11(a) of the Act, the following conditions have to be fulfilled:

a. The land applied for, should be a ryoti land.

b. The claimant should be a ryot.

c. The claimants should have been admitted into possession of the land prior to 01.07.1945 for agricultural purpose.

It is contended that, in the present case, Petitioner No.1 has not satisfied the above three ingredients, but was granted ryotwari patta on belated claim petition against G.O.Ms.No.50 Revenue Department dated 16.01.1974. It is further contended that, grant of patta under Section 11(a) of the Act in favour of Petitioner No.1 is a grave error, as Petitioner No.1 is not a landholder and the landholder was not identified by the Settlement authorities. Post abolition documents are not valid documents for grant of ryotwari patta. There are many irregular orders issued by Sri A.D.V. Reddy, Settlement Officer, Nellore and the Government of Andhra Pradesh has issued order on 25.04.1984 vide Memo No.486/J2/84-6, directing all the Collectors not to implement the orders of Sri A.D.V. Reddy, Settlement Officer, Nellore, as the orders were issued by the Settlement Officer basing on post abolition agreement of sale. Therefore, the respondents are not under obligation to implement the order of the Settlement Officer, Nellore. The third respondent further went on explaining the orders passed by various authorities and Courts, so also result of said litigations.

A strange contention is raised before this Court in second paragraph of Page No.4 of the counter affidavit of the third respondent that, connected S.R. file is already cancelled and the land was resumed to the Government on 30.12.1992 and at present, ryotwari patta granted in favour of T.C. Rajarathanam is not in force as the land was taken under Section 3(d) of the Estates Abolition Act, remains as AWD in the revenue records, technically.

The third respondent also admitted about implementation of the order mutating the name of Petitioner No.1 in the revenue records by the Tahsildar only to avoid punishment in C.C.No.378 of 2016. Therefore, mere mutation of the name of Petitioner No.1 in the revenue records would not confer any title to Petitioner No.1.

In obedience of the order of this Court in W.A.Nos.343 of 2015, 232 of 2012 and 353 of 2012 dated 23.12.2015, all the Government lands were categorized and notified in Annexure in Section 22-A(1)(a)(b)(c)(d)(e) of the Registration Act, the present survey number is “Assessed Waste Dry and included in the list of properties prohibited from registration, under Section 22-A(1) of the Registration Act, 1908. The specific contentions urged in the counter affidavit are specifically extracted hereunder for better appreciation of the case:

a. The then Settlement Officer, Nellore has granted ryotwari patta vide S.R.No.13/11(a)/1981, dt: 19.09.1981 basing agreement. This Settlement Officer has issued many irregular ryotwari pattas for communal lands. Hence Government has issued Memo No.486/J2/84-6, dt: 25.04.1984 and directed all the Collectors not to implement the orders of the Settlement Officer Sri A.D.V.Reddy.

b. The Government Memo is as

follows "it has been brought to the notice of the Government by the some of the Collector and also a number of legislatures that Sri ADV Reddy retired Settlement officer has issued bogus settlement pattas both before and after his retirement. This has also been specially brought to the notice of the Government by the Collector's, Chittoor and Prakasam. There is thus the danger of valuable land going into the hands of unauthorized persons. The Director of Settlements has also cancelled such bogus pattas which were brought to notice in Prakasam District".

The Commissioner Survey Settlement and Land records is requested to bring to the notice of all the collectors about the issue of bogus pattas by Sri A.D.V.Reddy and issue instructions to them not to implement the settlement pattas in village accounts. He may also issue necessary instructions to the Director of Settlements in this regard to get all bogus pattas cancelled at once and ensure that holders of such bogus pattas do not derive illegal benefit out of it.

c. In the present case, the then Settlement Officer relied on registered sale deed agreement and post abolition documents which are not valid for grant of ryotwari patta as per the provisions of E.A.Act, 1948."

The third respondent further submitted that, though the issue of Memo No.486/ J2/84-6 dated 25.04.1984 was brought to the notice the authorities, for the first time in W.A.No.802 of 2002, W.A.No.1817 of 2005, W.A.No.731 of 2006 and W.P.No.8346 of 2002 dated 30.04.2011, the issue was submitted to the High Court and orders were passed in favour of the Government in Sy.No.46 to an extent of Ac.22-26 cents which is known as "Poolavanigunta of Tirupati Urban Mandal. Therefore, believing that Sri A.D.V. Reddy, Settlement Officer, Nellore mischievously granted patta under Section 11(a) of the Act in favour of the alleged allottees and those pattas were disbelieved and passed orders in favour of the Government. A disciplinary case was also pending against Sri A.D.V. Reddy. The Government issued memo directing the Collectors not to implement the orders passed by Sri A.D.V. Reddy, Settlement Officer, Nellore dated 19.09.1981. Later, vide G.O.Ms.No.1407 Revenue (F) Department dated 29.10.1986, a penalty of stoppage of pension @ 15% per month was imposed against Sri A.D.V. Reddy, Settlement Officer, Nellore, for his misconduct and entertaining applications/claim petitions and their disposal without following the rules and instructions while working as Settlement Officer, Nellore. Therefore, based on such order of an officer who is found guilty for misconduct i.e Sri A.D.V. Reddy, Settlement Officer, Nellore, this Court cannot issue a direction to delete the property from the list of prohibited properties and requested to dismiss the writ petition.

During hearing, Sri K.G. Krishna Murthy, learned senior counsel reiterated the contentions urged in the affidavit, while submitting that the chequered history regarding issue of patta under Section 11(a)

of the Act, which ended in favour of Petitioner No.1 is sufficient to conclude that Petitioner No.1 became owner of the property, in view of the patta granted in his favour under Section 11(a) of the Act. Even the order passed by various authorities, learned single Judge and confirmed by the Division Bench of the High Court and finally due to dismissal of Special Leave Petition by the Hon'ble Apex Court, the order dated 19.09.1981 passed by Sri A.D.V Reddy, Settlement Officer, Nellore attained finality. But, the revenue authorities with adamancy did not implement the order dated 19.09.1981 and made Petitioner No.1 to roam around the courts to file one petition after the other. Even, after issue of direction by the High Court, the respondents did not implement the order, but only when contempt case was filed, the respondent/Tahsildar implemented the order mutating the name of Petitioner No.1 in all revenue records. The revenue authorities abused their power, at the instance of political bigwigs and again started another round of litigation by including the land in the list of prohibited properties from registration under Section 22-A of the Registration Act. Though, Petitioner No.1 filed an application in an authorized mode by paying requisite fee, the fourth respondent/Joint Collector passed the rejection order dated Nil/09/2018 impugned in the writ petition, without any basis and without recording any reasons. Therefore, the inaction of the respondents is ex-facie illegal, arbitrary and motivated to harass Petitioner No.1 to deprive him from enjoying the property.

It is further contended that the respondents raised a specific plea with regard to the legality of the order dated 19.09.1981. Hence, the legality of the order dated 19.09.1981 passed by Sri A.D.V. Reddy, Settlement Officer, Nellore, is germane for deciding the real issue, since the patta granted by Sri A.D.V. Reddy, Settlement Officer was confirmed even in the Hon'ble Supreme Court, while dismissing S.L.P.Nos.12594-12595/2016. Therefore, various pleas raised by the third respondent/ District Collector regarding validity of the patta issued under Section 11(a) of the Act by the Settlement Officer, Nellore is irrelevant for deciding the real controversy in this petition and appears to have made an allegation with an intent to prejudice the Court and requested to set-aside the impugned endorsement i.e. rejection order of the fourth respondent/Joint Collector dated Nil/09/2018, while declaring the same as illegal and arbitrary.

Sri G.L. Nageswara Rao, learned Government Pleader for Revenue vehemently contended that, Sri A.D.V Reddy, Settlement Officer, Nellore committed various irregularities and suffered from penalty in departmental enquiry initiated against him for the irregularities committed by him, while entertaining claims/petitions under Estates Abolition Act and issue of pattas in their favour, which attained finality, the government also issued Memo No.486/ J2/84-6 dated 25.04.1984 not to implement the orders issued by Sri A.D.V. Reddy, Settlement Officer, Nellore under Section 11(a) of the Estates Abolition Act, which remained unchallenged. Apart from that, the proceedings issued granting ryotwari patta in favour of Petitioner No.1 were cancelled and the land was resumed to the

government, since it is classified as "Assessed Waste Dry . Hence, the subject land is a government land and therefore, inclusion of the same in the prohibited properties list under Section 22-A of the Registration Act is in accordance with law and no irregularity is committed, thereby, the writ petition is liable to be dismissed and requested to dismiss the writ petition.

Considering rival contentions, perusing the material available on record, the point that need be answered by this Court is as follows:

"Whether inclusion of Ac.5-00 cents in Sy.No.78/2 (P) of Mangalam Village, Tirupathi Mandal, Chittoor District in the list of properties prohibited from registration under Section 22-A of the Registration Act, 1908, treating the same as government land, where patta granted in favour of this petitioner under Section 11-A of the Estates Abolition Act, as confirmed by the Apex Court is illegal. If not, whether the rejection order of the fourth respondent/Joint Collector dated Nil/09/2018 rejecting the request of this petitioner be declared as illegal, arbitrary and whether a direction be given to the respondents delete the property from the list of prohibited properties?"

POINT:

The chequered history narrated above regarding the litigation for issue of patta under Section 11(a) of the Act in favour of Petitioner No.1 by sriA.D.V. Reddy, Settlement Officer, Nellore and finally confirmed by the Division Bench of this Court in W.A.Nos.1582 & 1644 of 2003 and affirmed by the Hon'ble Apex Court, while dismissing S.L.P Nos.12594-12595 of 2016 is not in quarrel.

Filing of writ petition challenging the inaction of the respondents in implementation of the patta issued in favour of Petitioner No.1 under Section 11(a) of the Act and orders passed thereon, including the contempt case filed by Petitioner No.1 in C.C.No.378 of 2018, implementation of the same, mutating the name of petitioner No.1 in the revenue records is also equally not in dispute.

The only dispute is with regard to validity of the patta issued by Sri A.D.V. Reddy, Settlement Officer, Nellore; impact of the Government Memo No.486/J2/84-6 dated 25.04.1984, directing the District Collectors not to implement the orders of the Settlement Officer, Nellore and imposition of punishment on the Settlement Officer in the departmental enquiry finding him guilty for the misconduct are to be examined by this Court while deciding the legality of the action of the respondents in issuing the impugned endorsement.

Patta granted in faovur of Petitioner No.1 under Section 11(a) of the Act is admitted by the third respondent in his counter affidavit. The allegations made in the affidavit filed in support of the writ petition are even not disputed specifically in the counter affidavit. Granting of patta in favour of Petitioner No.1 by the Settlement Officer, Nellore, its confirmation by the Division Bench of the High Court in W.A. Nos.1582 of 2003 and 1644 of 2003 dated 18.09.2005 and affirmation by the

34. We find that nothing has been elicited from the eye-witnesses insofar as the aforesaid accused are concerned to impeach through their evidence. Merely because the witnesses are family members apart from being chance witnesses, their testimonies cannot be rejected. P.W.'s 4 and 21 are likely to be seen near the place of occurrence. P.W. 21 was working in the theatre nearby, and P.W.4 was a neighbour. Though they would not have seen the occurrence from inside the house, their presence cannot be doubted to the extent of being present there. Therefore, their evidence as applicable to A-2, A-4, A-5, A-8 and A-9 must be approved. Both the courts have considered the entire evidence available in drawing their conclusion, which we do not find to be perverse. In such a view of the matter, Criminal Appeal Nos. 450-451 of 2015 and Criminal Appeal No. 959 of 2015 stand dismissed.

35. This takes us to the remaining criminal appeals being Criminal Appeal Nos. 430-431 of 2015. We find considerable force in the submission made by Mr. R. Basant, learned senior counsel. The Trial Court has given cogent reasoning for acquitting these accused. It found the witnesses struggling and going back and forth to identify these accused persons. Incidentally, it found that two material objects in which A-8 and A-11 were involved either by travelling to the place of occurrence or by owning are not proved by duly connecting them. Very exhaustive reasons have been given for coming to the said conclusion.

36. The High Court found fault with the Trial Court by relying on Section 149 IPC. To attract Section 149, the prosecution has to prove its foundational facts. The Trial Court has taken a possible view that the evidence rendered by the eyewitnesses does not satisfy the Court qua the presence of A-10 to A-13. As recorded by us, adequate reasons have been given for coming to this conclusion. In that context, the Trial Court held that P.W.1 and P.W.2 did not state that A-11 inflicted injuries. The Trial Court had the advantage of seeing the witnesses as they deposed. The appellate forum cannot change the conclusion arrived at thereafter by substituting its views. It seems to us that the High Court has adopted the principle of preponderance of probability as could be applicable to the civil cases to the case on hand when more scrutiny is warranted for reversing an order of acquittal.

37. The reasoning of the Trial Court for not going with the evidence of P.W. 21 and P.W. 46 as against A-11 and A-13 appears to be an acceptable one as it was extremely doubtful on the evidence rendered by the eye-witnesses who actually saw the occurrence from outside the house. Furthermore, these witnesses, P.W.21 and P.W.46, have given their statements under Section 161 Cr.PC only after nine days and two days delay subsequently. Therefore, we can draw our analogical reasoning since the evidentiary arguments raised on behalf of the statements provided by these witnesses raise suspicion and are likely to mislead or, at any rate, not firm enough to support a seriously contested conclusion. Thus, to the Trial Court's decision, we give our approval.

38. The High Court placed its reliance

also on the recovery coupled with the scientific evidence. We believe that such recoveries are expected to be proved if relied upon by the Court. As against P.W. 35, who signed the recovery mahazar, he was not even acquainted with the place and lived in a far distant area. Similarly, P.W. 33 is not a resident of the locality. Except for P.W.4, the other witnesses have not identified the material object recovered.

39. P.W.40, who signed the recovery mahazar qua A-11, turned hostile. Furthermore, the arrest of A-11 was made on 05.08.2002, while the recovery was made on 13.08.2002, creating a serious doubt.

40. For the recovery made from A-12 also, there is no confirmation from P.W.1 to P.W.3. P.W.34, who signed a mahazar is also a CPI(M) party member. We may also hasten to add that P.W.64, Investigating Officer, feigns ignorance of the witnesses who signed the recovery mahazar pertaining to A-10 and A-11 as to whether they belong to the said party or not as he did not even know as to where they hail from. On the recovery made from A-12, mahazar was signed by P.W.50, who was also incidentally a CPI(M) member and the other attesting member was not examined. It is also improbable that A-12 could wear the same dress for more than 10 days with the bloodstains. The same logic would also apply to A-10 as well.

41. The blood-stained dress was stated to have been recovered from A-13 from the hospital. It is not known as to how the said dress reached the hospital, and there is no evidence forthcoming on that count, apart from correlating the said dress to that of the accused.

42. From the above, we can find a structured pattern in the recovery of A-10 to A-13. There appears to be some anxiety on the part of the prosecution to make compulsory recoveries. The recoveries are said to have been made from the house of P.W.21, having no connection with A-10. The fallacious notion that the recovery of such an incriminating article was made from a place that might also be accessible to the P.W.21, is also one of the doubts we sense in the following factual analogy of this case. P.W. 21 is also the same witness who has given his 161 Cr.PC statement nine days after the incident pertaining to the accused. This further raises the question on the credibility of the prosecution case.

43. Upon the discussion made as aforesaid, we are inclined to dismiss the appeals filed being Criminal Appeal No. 450-451 of 2015 and Criminal Appeal No. 959 of 2015 confirming the conviction rendered by the High Court. The conviction rendered by the High Court against the appellants in Criminal Appeal No. 430-431 of 2015 arrayed as A-10 to A-13 stands set aside. Consequently, the appeals filed by accused nos. A-10 to A-13 being Criminal Appeal No. 430-431 of 2015 are allowed by setting aside the judgment rendered by the High Court and restoring the acquittal rendered by the Trial Court. Bail bonds, if any, pertaining to A-10 to A-13 stand discharged. Pending application(s), if any, stand(s) disposed of.

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2021 (2) L.S. 57 (S.C)

IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Chief Justice of India
N.V. Ramana
The Hon'ble Mr.Justice
Krishna Murari &
The Hon'ble Ms.Justice
Hima Kohli

Deepak Yadav ..Petitioner
Vs.
State of U.P. & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.439(1) - Whether High Court was justified in exercising jurisdiction for grant of regular bail - Appeal against the Judgment passed by the High Court in Bail Application filed by Respondent No.2 - Accused with a prayer to release him on bail for offences registered under Sections 302 and 34 of the Indian Penal Code during pendency of trial - By the said judgment, the High Court granted bail to Respondent No.2/Accused on furnishing a personal bond and two sureties.

HELD:Grant of bail to the Respondent No.2/Accused only on the basis of parity shows that the impugned Order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable - High Court has not taken into consideration the criminal history of the Respondent No.2/ Accused, nature of crime, material evidences available, involvement of Respondent No.2/Accused in the crime and recovery of weapon from his possession - Impugned Order passed by the High Court is not liable to be sustained and stands set aside - Bail bonds of Respondent No.2/Accused stand cancelled and he is directed to surrender within one week.

J U D G M E N T
(per the Hon'ble Mr.Justice
Krishna Murari)

Leave granted.

2. The present appeal is directed against the judgment and order dated 22.10.2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench (hereinafter referred to as "**High Court**") in Bail No. 11848 of 2021 filed by Respondent No.2 - Accused with a prayer to release him on bail in Case Crime No. 16 of 2021 registered at PS Para, Lucknow under Sections 302 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as "**IPC**") during pendency of trial. By the said judgment, the High Court granted bail to Respondent No.2/Accused on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the trial court subject to certain conditions.

3. Briefly, the facts relevant for the purpose of this appeal are that the Appellant/ Informant Deepak Yadav lodged an FIR being Crime Case No. 16/2021 on 09.01.2021 at PS Para, Lucknow under Section 307 IPC against Respondent No.

2/Accused Harjeet Yadav, co-accused Sushil Kumar Yadav and two unknown persons. The allegations against the said accused persons were that on the night of 08.01.2021, at around 8.30 PM, Appellant's father Mr. Virendera Yadav (deceased) was on way to his home from the lawn located near Jaipuria School and at the same time, the accused persons took position on Kulhad Katta Bridge and fired at him with the common intention to kill the deceased. The bullet shot hit his right cheek and made its exit through the other side leaving him severely injured. In view of his serious condition, the people present on the spot informed the local police station and admitted him at the Trauma Centre, Medical College, Lucknow. The Appellant/Informant, on receiving the information about his injured father rushed to the Trauma Centre with his mother Smt. Sunita Yadav and elder sister Ms. Jyoti Yadav. The Appellant's mother asked her husband about the incident to which he replied that he was shot by Respondent No.2/Accused Harjeet Yadav and one, Sushil Yadav and that they were accompanied by two other persons as well. The statement given by the deceased was noted down by Sri Mahesh Kumar Chaurasia, DSP/ACP Chowk, Lucknow and Sri. Ashok Kumar Singh, SI/First Investigating Officer.

4. Respondent No. 2/Accused was arrested by the police on 13.01.2021 and one country made pistol with two live cartages were recovered from him. The Appellant/Informant's father passed away on 14.01.2021 on account of which the case was converted to one under Section 302 IPC. The co-accused, Sushil Kumar Yadav surrendered before the Judicial Magistrate, Lucknow on 16.01.2021.

5. After completion of investigation and upon finding sufficient evidence, charge sheet was filed before the trial Court on 06.04.2021 against Respondent No.2/ Accused and co-accused Sushil Kumar Yadav under Sections 302 and 34 IPC. Furthermore, investigation against two unknown accused persons is pending.

6. Respondent No.2/Accused filed Bail Application No. 3340/2021 before the Sessions Judge, Lucknow and the same was rejected vide order dated 28.06.2021 on the ground that he has been named on the basis of the information provided by the deceased himself and that the same has been clarified after the perusal of the documents/forms that the bullet was shot by Respondent No. 2/Accused himself.

7. Respondent No. 2/Accused then moved the High Court for grant of regular bail vide Bail No. 11848/2021 wherein Counsel for the Respondent No.2/Accused contended that the co-accused, Sushil Kumar Yadav has been granted bail by the High Court on 18.10.2021 in Bail No. 8501 of 2021 and that the case of the Respondent No. 2 stands on identical footing making him entitled for bail on the ground of parity. The said bail application was allowed vide impugned judgment/order dated 22.10.2021. The operative portion of the judgment reads as under : -

"Keeping in view the nature of the offence, arguments advanced on

behalf of the parties, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of **Dataram Singh Vs. State of U.P. & Anr (**(2018) 3 SCC 22)and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial;

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment;

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail;

4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant;

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law;

7. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad;

8. The concerned court/authority/ official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail."

8. We have heard Mr. Awanish Sinha, learned counsel appearing for the Appellant and Mr. Siddharth Dave, learned Senior Counsel appearing for Respondent No. 2.

9. Mr. Awanish Sinha, learned counsel appearing for the Appellant vehemently submitted that the High Court has granted bail to the Respondent No. 2/ Accused, who is a known criminal with criminal antecedents in a very casual manner only on the ground of parity without any focus on the role of the accused. It was further submitted that the arrest of the Respondent No.2/Accused was made on the statement of the deceased made to his wife in the presence of IO. It was further pointed out that the Respondent No.2/ Accused has been named in the FIR as the person who had fired at the deceased leading to his untimely death and on commission of such a heinous crime, bail cannot be granted.

10. It was further submitted that the High Court has erred in granting bail to the Respondent No. 2/Accused on the very first day of being listed without granting any opportunity to the Appellant/Informant or the State to respond and that the State was not even given any opportunity to file a counter or even the present status of the case.

11. Heavy reliance was placed on the decisions of this Court in **Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana(Koli) & Another (**(2021) 6 SCC 230)**, Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another (**(2004) 7 SCC 528)**.**

12. Mr. Siddharth Dave, learned Senior Counsel appearing on behalf of the Respondent No.2/Accused submitted that the Respondent No.2/Accused was a young student, pursuing the course of D.Pharma from Himalayan Garhwal University, Uttarakhand having no criminal antecedents and the case registered against him under Sections 3 and 25 of the Arms Act, 1959 is an off-shoot of the instant case and has been lodged on the basis of erroneous recovery in the instant case.

13. It was further submitted that no particular role has been attributed to the Respondent No.2/Accused, nor has he been expressly mentioned by the deceased in his statement, which simply states that Ratilal's younger son shot the deceased. Furthermore, granting bail on the first day of hearing does not violate any established legal concept, statutory requirement or precedent.

14. It was further submitted that while granting bail to the Respondent No.2/ Accused, the High Court has weighed all relevant factors, including the nature of the charge, the gravity of the offence and penalty, the nature of evidence and the criminal history of the accused.

15. Heavy reliance was placed on the decisions of this Court in **Babu Singh & Ors. Vs. State of U.P. (**(1978) 1 SCC 579)and **Dataram Singh Vs. State of Uttar Pradesh and Another (**(2018) 3 SCC 22)**.**

16. We have carefully considered the submissions made at the Bar and perused the materials placed on record.

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