

*THE HON'BLE SRI JUSTICE S.V.BHATT

+ LAAS.MP.Nos.827, 1011 OF 2015 AND LAAS No.136 OF 2009

&

WPMP.Nos.10813 OF 2011, 43075 OF 2015 AND

W.P. No. 27925 OF 2010

%16.12.2015

#SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION)
SOMASILAR PROJECT, UNIT-IV, RAJAMPET,
KADAPA DISTRICT

...APPELLANT.

Vs.

\$ NARAYANA NELLORE SUBBNARAYUDU
& OTHERS

...RESPONDENTS.

<GIST

>HEAD NOTE:

! COUNSEL FOR APPELLANT/: MR.P. KRISHNA PRAKASH,
PETITIONER GP FOR APPEALS FOR
APPELLANT &

RESPONDENTS 1 TO 4 IN
W.P.No.27925 OF 2010

MR.D.V.SITARAM MURTHY,
SENIOR COUSNEL FOR

PETITIONER IN

W.P.No.27925 OF 2010

^COUNSEL FOR RESPONDENTS:MR.E.MANO HAR, SENIOR
COUNSEL FOR RESOPDNENTS
IN APPEAL AND RESPONDENTS
5 & 6 IN W.P.No.27925 OF 2010

?CASES REFERRED:

1989 LACC (3) SC1
(1994) 4 SCC 180
(1997) 11 SCC 218
2006 (4) ALD 81 (DB)
(2003) 10 SCC 529
(1992) 4 SCC 400
(2014) 3 SCC 183

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE S.V.BHATT**

**LAAS.MP.Nos.827, 1011 OF 2015 AND LAAS No.136 OF 2009
&
WPMP.Nos.10813 OF 2011, 43075 OF 2015 AND
W.P. No. 27925 OF 2010**

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr. Krishna Prakash Patnaikuni, learned Government Pleader for the appellant in LAAS No.136 of 2009 and respondents 1 to 4 in W.P.No.27925 of 2010, Mr. D.V.Sitaram Murthy, learned senior counsel for petitioner in W.P.No.27925 of 2010 and Mr. E.Manohar, learned senior counsel for respondents/claimants in LAAS No.136 of 2009 and respondents 5 and 6 in W.P.No.27925 of 2010.

LAAS No.136 of 2009 is filed by the Special Deputy Collector

(Land Acquisition), Somasila Project, Unit-IV, Rajmapet against the Award dated 27.11.2008 in LAOP No.1013 of 2001 in the Court of I-Additional District Judge, Kadapa from Land Acquisition Officer/appellant.

The claimants/respondents filed E.P.No.12 of 2009 in LAOP No.1013 of 2001 in the Court of I-Additional District Judge, Kadapa to recover compensation determined as on 09.03.2009 at **Rs.29,03,50,903/-** (Rupees Twenty Nine Crores, Three Lakhs, Fifty Thousand Nine Hundred and Three only).

While matters stood thus and in anticipation of execution of Award in LAOP No.1013 of 2001, one R.Thippa Reddy, a practising Advocate from Kadapa filed in public interest W.P.No.27925 of 2010 for Mandamus declaring the inaction of respondents 1 to 4 in desisting the fraudulent acts of claimants/respondents 5 and 6 in the writ petition from realizing fraudulent compensation for 89 alleged structures in Survey Nos.127/A and 128/2 of Madhavaram Village, Vontimitta Mandal, YSR Kadapa District and in trying to withdraw compensation, as illegal, arbitrary and detrimental to the interest of the State Exchequer. The writ petitioner complains that the claim for compensation or withdrawal of compensation is in derogation of provisions of the Land Acquisition Act, 1894 (for short 'the Act'). The petitioner further prays for a direction to order enquiry under the Andhra Pradesh Revenue Enquiries Act, 1983 and by a suitable order prohibit financial scam from being perpetuated by respondents 5 and 6.

The subject matter in LAAS No.136 of 2009 and the complaint against withdrawal of compensation made in W.P.No.27925 of 2010 admittedly relate to Survey No.127/A of an extent of Ac.2-54 cents and Survey No.128/2 of an extent of Ac.2-36 cents and alleged structures (89) therein (for short 'the subject structures').

The learned counsel appearing for all the parties have made

elaborate submissions in LAAS No.136 of 2009 and W.P.No.27925 of 2010. The issues i.e., either determination of compensation or alleged financial scam relate to one and the same subject matter.

We propose to dispose of the LAAS, W.P., and the pending miscellaneous petitions referred above by this common judgment.

LAAS No.136 of 2009:

On 09.12.1999, the Special Deputy Collector (Land Acquisition), Somasila Project, Unit-IV, through Award No.47/99-2000 rejected the claim of claimants for payment of any compensation for acquisition of alleged (89) subject structures. The relevant portion of the Award reads as follows:

“The issue regarding compensation in respect of the 89 (eighty nine) structures of the Writ Petitioners in Contempt case No.1025 of 99, evidence was produced particularly in the form of House Tax Receipts and demand notices which relates to the years 1983-84, 1984-85, 1985-86 and 1986-87 only in respect of 5 structures, which were subsequent to the Notification under Section 4(1) of L.A. Act, (i.e.) 1981. It reveals that the Writ Petitioners have failed to produce evidence, in support of the existence of the structures as on date of Notification or earlier to the Notification i.e. in 1981. Hence, it is believed that the structures were raised subsequent to the Notification. The existence of structures is not proved. Hence the claim of the following 5 writ petitioners who filed the documentary evidence of 1981 onwards is hereby rejected.

1. Amanchela Subbanna
2. Putta Eswaraiah
3. Bitta Yerikalaiah
4. Bandi Ramaiah and
5. Chapuri Venkata Subbamma

Regarding remaining 84 structures for which the Writ Petitioners have failed to produce any evidence in support of their claim though they were given opportunity. Hence awarding compensation for the 84 structures is also rejected.”

Thus, the Land Acquisition Officer for the above reasons rejected the claim of respondents in the appeal for awarding any

compensation for the alleged acquisition of structures in Survey Nos.127/A and 128/2 of Madhavaram Village.

Before advertng to the findings of the reference Court in LAOP No.1013 of 2001, we deem it appropriate to refer to the chronology of events which led to passing of award dated 09.12.1999 under the Act.

The Government of Andhra Pradesh, as part of implementation of Somasila Project, acquired various extents of lands all along Telugu Ganga Project. In the appeal, we are concerned with the acquisition of land at Madhavaram Village, Reach No.6, more particularly Survey Nos.127/A and 128/2 of Madhavaram Village. The total extent of Ac.49-50 cents in Reach No.6 is intended to be utilized as foreshore area of Somasila Project. Prior to acquisition, on 07.08.1980 and 22.08.1980, the Special Deputy Collector (Land Acquisition), Somasila Project, Unit-III had inspected various survey numbers, including subject matter falling within Reach No.6 of Madhavaram (Ex.B.17). The Land Acquisition Officer prepared the inspection note, physical features of land under acquisition, classification of land in revenue records, particulars of ownership, existence of trees/houses etc., in all the survey numbers covered by Reach No.6. The inspection notes insofar as the subject matter of appeal reads thus:

“Sl.No.	Sy.No.	Extent	
12.	127/A	2-54	Houses
13.	xx	xx	xx
14.	128/2	2-36	Houses and Waste land”

Section 4 (1) notification dated 20.02.1981 for acquiring lands covered by Reach No.6 was issued. From the proceedings dated 07.07.1988 (challenged in W.P.No.11794 of 1988), it appears that on 17.01.1981, the Special Deputy Collector (Land Acquisition) had inspected the land in Survey Nos.127/A and 128/2 and noted the structures in existence in these survey numbers. On 18.04.1981, notification under Section 4(1) of the Act was issued for acquisition of

land and structures in Survey Nos.127/A and 128/2. On 15.09.1986, Award No.5/86 was passed in respect of the lands covered by Section 4(1) notification dated 20.02.1981. The subject matter of appeal was not covered by this Award and the reasons of the Land Acquisition Officer for not including the subject matter in the instant Award read thus:

1	2	3	4	5
15	127/A	G.D.	1.58 <u>0.96</u> houses 2.54	

The land stands registered in the names of Iragamreddy Sidda Reddy and 2.Avvaru Subbarayudu. It is under the enjoyment of the following two persons.

- 1. Iragamreddi Subbi Reddy
- 2. Avvaru Venkatramaiah S/o.Venkatramaiah

Both the patadars are no more. The enjoyers are the sons of the pattadars, enjoying the land byway of inheritance. The enjoyers have stated that they have sold away the entire extent for house sites, and the entire extent is covered by houses and that they do not want any compensation. Award is being passed by an another Land Acquisition Officer separately for the structures. Hence no compensation is awarded.”

1	2	3	4	5
17	128/2	G.D.	2.36	---

Iregareddy Sidda Reddy is the pattadar. Iragamreddy Subbireddi son of the pattadar is the enjoyer. He has stated that he has sold away the entire extent of house sites, and he did not want any compensation. Award is being passed separately by another Land

Acquisition Officer for the structures in this survey number. Hence no compensation is awarded.”

We consider it contextual to refer to the inspection of Special Deputy Collector, Land Acquisition on 17.01.1981 and issuance of Section 4 (1) notification dated 18.04.1981. On 18.09.1986, the Special Deputy Collector (Land Acquisition) passed Award for structures covered by various survey numbers, including Survey Nos.127/A and 128/2 of Madhavaram Village. These details viz., publication of Section 4(1) notification dated 18.04.1981 and passing of Award No.18/86 dated 18.09.1986 are primarily referred, to complete the factual narration of passing of Awards in respect of lands, structures, trees etc., covered by lands in Reach No.6 of Madhavaram Village.

A.C.Bayyapu Reddy (RW.1) and 98 others filed W.P.No.1002 of 1987 for Mandamus directing respondents therein to issue fresh notification under Section 4(1) followed by Section 6(1) of the Act for the houses/ structures in existence in Survey Nos.127/A and 128/2 of Madhavaram Village, conduct Award Enquiry and pay compensation for acquisition of these structures. On 28.12.1987, the writ petition was disposed of as follows:

“In S.Nos. 127-A and S.No.128/2 of Madhavaram village which was admittedly acquired under the notification under Section 4(1) of the Land Acquisition Act on 20.2.1981 by which only landed area was acquired. Again an other notification was issued on 18-4-1981 pertaining to the structures that were available on the said two survey numbers. The two awards have been finalized. But in so far as the houses pertaining to the petitioners who are 99 in number are concerned, no award has been passed and no notices have been given to them. The further contention of the learned counsel for the petitioners is that even today the houses are in existence and they have not been inundated as yet and, therefore, a direction may be given to the Authorities concerned to inspect the land by visiting the same as if the houses are inexistence, compensation may be determined.

In these circumstances, it is eminently a fit case where a mandamus will have to be issued to the respondent. Land Acquisition Officer to visit the place where these two survey numbers are situated and if there are any **structures that have escaped the attention of the Land Acquisition Officer earlier in respect of which compensation has not been determined**, after due notice to the owners petitioners, and value the structures and determine the compensation in consequence thereof. The entire exercise including the determination of compensation will have to be made within eight months from the date of receipt of this order. In so far as the inspection of the site is concerned it must be done within two months from the date of receipt of the order. So that it may avoid inundation of the structures.” *(emphasis applied)*

The Land Acquisition Officer on enquiry and by reference to available material, through proceedings dated 07.07.1988, rejected the claim for grant of compensation for structures in Survey Nos.127/A and 128/2 of Madhavaram Village. The findings of Special Deputy Collector (LA) T.G.P. in proceedings dated 07.07.1988 read thus:

“ Enquiry of the structures of petitioners with reference to records:

Madhavaram village comes under the submergeable area of Somasila Project. During the year 1981, the then Land Acquisition Officer and Special Deputy Collector, Somasila Project unit-III, Sidhout having jurisdiction over Madhavaram village first inspected the lands in Reach No.6 of Madhavaram village on 7-8-1980 and 22-8-1980. Since the S.Nos.127/A and 128/2 were originally patta dry lands adjacent to the village, they figured in his inspection report dated 7-8-1980 and 22-8-1980 and he mentioned “houses” against S.Nos.127/A and 128/2 without mentioning their number. Accordingly Section 4(1) notification and Section 6 notification of L.A. Act were published in the A.P.Gazette, dated 20-2-1981. Subsequently, the Special Deputy Collector (L.A.), Telugu Ganga Project, Cuddapah who was given the jurisdiction over the lands of Madhavaram village passed award No.5/86, dated 15-9-1986 for the lands in Reach No.6 excluding the S.Nos.127/A and 128/2 wherein structures existed.

The same Land Acquisition Officer and Special Deputy Collector, Somasila Project, Unit-III, Sidhout, inspected the structures in Reach No.6 of Madhavaram on 17-1-1981 and in his inspection report he mentioned the structures as 34 in S.No.127/A, 6 in S.No.128/2, 9 in S.No.239/2 and 2 in S.No.239 as per the requisition given by the Engineering Department and accordingly Section 4(1)

notification and Section 6 notification under L.A. Act were approved by Government and published in the A.P. Gazette, dated 18-4-1981. As the L.A. operations came to award stage in the year 1986, the award work relating to lands and structures was divided by the Government authorizing the Special Deputy Collector, Telugu Ganga Project, Cuddapah to deal with lands reaches and authorizing the Special Deputy Collector, Telugu Ganga Project, Nellore to deal with structures reaches of Madhvaram village. Accordingly the Special Deputy Collector, Telugu Ganga Project, Nellore passed award No.18/86, dated 18-9-1986 for structures in Reach No.6 covering 34 structures in S.No.127/A 6 structures in S.No.128/2 9 structures in S.No.239/2 and 2 structures in S.No.239. This was done as per the 4(1) notification published in A.P. Gazette dated 18-4-81. Hence *compensation was paid accordingly.*

Thus the houses of petitioners did not find place either in the 4(1) notification for lands published in the A.P. Gazette dated 20-2-1981 or in the 4(1) notification for structures published in the A.P. Gazette dated 18-4-1981 or in the requisition given by the Engineering Department as they did not exist at that time. It is therefore evident that these structures were constructed after the publication of 4(1) notification on 18-4-1981.”

The claimants filed W.P. No.11794 of 1988 challenging the proceedings of Special Deputy Collector (Land Acquisition) dated 07.07.1988. On 24.07.1995, the writ petition was allowed with these directions:

“ The stand of the respondents in both the writ petitions is that as these structures do not find place in the notification, they must have been constructed after issue of notification. This is obviously begging the question and contrary to the direction of this Court in W.P.No.1002 of 1987. In view of this, I hold that the petitioners are entitled to compensation for the 99 structures and quash the proceedings dated 7-7-1988. The Land Acquisition Officer is directed to pass award and determine compensation payable to the petitioners under the Land Acquisition Act for the 99 structures keeping in view the valuation statement prepared by Engineering Department. This shall be done within two months from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs.”

The State against the order dated 24.07.1995 in W.P.No.11794 of 1988 filed W.A.No.590 of 1996. On 13.06.1996, the writ appeal was allowed and the order in W.P.No.11794 of 1988 was set aside.

The claimants filed Review WAMP.No.2155 of 1997 against the order dated 13.06.1996 in W.A.No.590 of 1996 and on 04.09.1998, the review was ordered. To avoid repetition, we propose to excerpt these orders while considering the legal effect of the orders in determining the issue of fact or law.

Complaining disobedience of order of Division Bench, the claimants filed C.C.No.1025 of 1999. The appellant, as already noted, having regard to the order of this Court in writ appeal/the Review WAMP and failure of claimants to place evidence on existence of structures, passed 'Nil' award dated 09.12.1999.

The text of award is not adverted to, to avoid repetition for the same reasons stated above.

On 30.01.2001, the claimants prayed for reference under Section 18 of the Act. The claimants while requesting for reference under Section 18 of the Act asserted as follows:

“The fact of passing of Award No.45/99-2000 and Supplementary Award No.47/99-2000 had come to our knowledge only when the learned Advocate General handed over the copy of the Supplementary Award No.47/99-2000 to our advocate in the Hon'ble High Court when the C.C.No.1822/99 came up for admission on 14.12.99. It is further submitted that finally on 17.1.2000 when the C.C.No.1822/99 came up for hearing, the Hon'ble Chief Justice of High Court of A.P. closed the contempt case and directed us to file objection petition before you and thereafter you have to refer the matter to Civil Court U/s.18 of the L.A. Act for determination of the market value of our structures and the land in question, as we have not accepted your Award No.45/99-2000 and supplementary Award No.47/99-2000. The requisition department itself valued our structures adopting the very low rates than the S.S.R.Rates of the Government, for the year 1980 and 1981. **The valuation and rates adopted by the requisition department is very low, inadequate and the same has to be enhanced by 80% over and above the valuation fixed by the Engineering Department of the requisition department, which will over-all arrive at around Rs.23 lakhs and the same has to be enhanced at 80% i.e. around Rs.42 lakhs and we hereby claim the same.**”

(Emphasis added)

The reference is taken on file as LAOP.No.1013 of 2001 by the Court below.

Briefly stated, the averments in claim petition are that an extent of Ac.49-50 cents of land in Reach No.6 of Madhavaram Village, Vontimitta Mandal, Kadapa District was acquired through Section 4(1) notification dated 10.11.1980, published on 20.02.1981, whereunder by dispensing with Section 5-A enquiry, Section 6 draft declaration was published. The claimants refer to the inspection of the Special Deputy Collector (Land Acquisition) on 07.08.1980 and 22.08.1980. The structures for which compensation is claimed, it is stated, are referable to the structures identified in the inspection dated 07.08.1980 and 22.08.1980, but no compensation is paid upon acquisition of subject structures by the State.

The claimants refer to various legal proceedings and the orders of this Court in writ petitions/writ appeal. The claimants refer to agreements of sale alleged to have been executed by the land-holders in favour of claimants for small extents of house plots on which structures are allegedly raised and compensation is payable for acquisition and submersion under water. It is necessary to comment that these agreements are not exhibited in evidence by the claimants. The claimants assert that Award Nos.45 and 47/99-2000 dated 09.12.1999 are ante dated. The claimants got the valuation of these structures done through a private licensed valuer and claimed compensation accordingly. The rates as applicable for 1980-81 and 1999 are ascertained and compensation claimed by reference to these standard rates. The claimants claim at Rs.150/- per square metre for vacant land/for structures at the rate determined by the reference Court in similar matters under acquisition for Somasila Project. The concluding paragraphs of the claim petition read thus:

“The claimants further submit that they have also

entitled for additional market value at 12% P.A. U/s. 23(1)(a), Solatium at 30% U/s 23(2) and interest at 9% P.A. for one year from the date of taking possession and thereafter 15% p.a. till the payment is made U/s.28 and 34 of the L.A. Act on the compensation amount awarded under all the sub-sections of Sec.23 of the L.A. Act.

The Claimants, therefore, pray that the Hon'ble Court may be pleased to pass an award awarding the compensation for their structures and the land taking into consideration of all the material on record based on the valuation statement of the Irrigation and Power Department dated 5.6.1989 and also as per the S.S.R. rates prevailing as on the date of fresh notification of the year 1999 and to further enhance of the same basing on the valuation statements of the claimants which are got prepared by the Private Licenced Valuer and site value at Rs.150/- per Sq.Meters along with all the benefits entitled under the L.A.Act as stated supra in para 14 and costs of this reference, in the interest of justice.”

Annexure-I is enclosed to claim petition claiming total compensation of Rs.2,97,81,100/- (for the year 1999-2000) and Rs.76,80,100/- (for the year 1981-82).

Before the reference Court, one M.Venkatadri was examined as PW.1 and Exs.A.1 and A.2 were marked on behalf of the Land Acquisition Officer. RWs.1 to 3 were examined and Exs.B.1 to B.27 were marked on behalf of the claimants. The reference Court framed the following point for consideration:

“Whether the claimants are entitled for the Award, awarding compensation for their structures as per the valuation statement of the Irrigation and Power Department dated 5.6.1989 and also as per the S.S.R. rates prevailing as on the fresh notification of the year, 1989, and if so, to what relief?”

The reference Court determined the compensation payable for the structures to the claimants as follows:

“Considering the facts and circumstances of the case, the case laws relied on by the learned Government Pleader and also the case Laws relied on by the learned counsel for the claimants it would be just and proper to fix the market value of the structures of the claimants herein at 80% over and above the market value estimated by the Revenue Department as per S.S.R. rates 1999. The point is answered accordingly.

In the result, the market value of the structures covered under this reference is fixed as per Ex.B.8 estimates and further enhanced 80% over and above the value estimated by the Revenue Department as per S.S.R. rates 1999. The Land Acquisition Officer is directed to pay the same after deducting 15% depreciation as per the following table which ever is applicable to the structures of the claimants.

S.No.	Nature of Structure	R a t e fixed per square metre as per Ex.B.8
1.	M.T.L.R.	Rs.2,000-00.
2.	G.I.Sheet Vasara	Rs.1,200-00
3.	Thatched House	Rs.1,680-00
4.	Thatched Pandal	Rs.500-00
5.	A.C.S.R.	Rs.2,000-00
6.	G.S.I.R.	Rs.2,000-00
7.	K a d a p a Slab Floor C.S.F.	Rs.1,000-00
8.	Compound Wall	R s . 3 5 0 - 0 0 per running meter
9	Low Middle	Rs.3,000-00

(The above table is prepared taking into consideration the rates mentioned in Ex.B.8 on average.) Further the claimants are entitled to Additional market value of 12% under Section 23(1)(a) of the L.A.Act from the date of 4(1) notification i.e. 20.2.1981 till the date of possession ie., 24.1.1988 and Solatium at 30% under Section 23(2) of the L.A.Act on the entire market value fixed in this reference and further LAO is directed to pay interest at 9% per annum as per Section 34 of the L.A.Act for a period of one year from the date of taking possession and thereafter at 15% per annum till the date of

realization on the enhanced market value, Additional Market value and Solatium”

Hence, the appeal.

On 25.02.2009, the Special Deputy Collector (Land Acquisition) filed the appeal and valued the appeal as Rs.1,48,04,280/- and claimed exemption from payment of Court fee under Section 67 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. The appellant/Land Acquisition Officer filed LAASMP.No.827 of 2015 to permit appellant to raise additional grounds to challenge the impugned award on all fours. The claimants/respondents oppose the prayer for raising additional grounds and we propose to consider this aspect of the matter at appropriate stage of our judgment.

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W.P.No.27925 of 2010:

On 27.11.2008, L.A.O.P.No.1013 of 2001 was allowed.

On 26.02.2009, L.A.A.S.No.136 of 2009 was filed by the Land Acquisition Officer questioning the award dated 27.11.2008. On 02.03.2009, E.P.No.12 of 2009 was filed for realization of compensation amount to a sum of **Rs.29,03,58,983/- (Rupees Twenty Nine Crores Three Lakhs Fifty Eight Thousand Nine Hundred and Eighty Three only)**. In LAASMP.No.805 of 2009, this Court granted stay of all further proceedings pursuant to the Award dated 27.11.2008.

On 02.02.2010, in LAASMP.Nos.38 and 39 of 2010, the stay order was modified by the following conditional order:

“We have heard the learned counsel.

This Court on 2.09.2009 passed interim stay of all further proceedings.

Now the learned counsel appearing for the petitioners-respondents filed these two applications to vacate the interim stay granted on 2-9-2009 stating that pursuant to the order passed in WAMP No.2115 of 1997 in WA.No.590 of 1996, the

Special Deputy Collector, Land Acquisition, Somasila Project, Unit IV, Rajampet, Kadapa District, conducted an enquiry and an inspection report was submitted to the concerned authority and subsequently notification under Section 4 (1) was issued . It is also stated that this Court in ASMP No.771 of 2008 in AS.No.1286 of 2002 by order dated 18.04.2008 permitted the petitioners/claimants to withdraw the amount lying to the credit of O.P.No.364 of 2000, on the file of the District Judge, Kadapa, which was deposited as per the orders dated 13-6-2003 made in CMP No.6312/03 in AS No.1286 of 2002 & CMP. Nos.22206/02 & 6312/03 without furnishing any security. Aggrieved by the same, the matter was carried to the Apex Court by way of civil Appeal. The Apex Court disposed of the Civil Appeal directing that the impugned order in the Civil appeal shall be maintained subject to the modification that the claimants shall give an undertaking to refund the amount in case the compensation awarded ultimately is found to be less than what has been withdraw by them.

In view of the above and also in the facts and circumstances of the case, interim order granted on 2-9-2009 is modified by directing the appellant to deposit 1/3rd of the compensation amount awarded by the reference Court within a period of 10 weeks from today and on such deposit, the claimants are permitted to withdraw the same subject to the undertaking given by them to refund the amount in case the compensation awarded ultimately is found to be less than what has been withdrawn by them.”

The LAO/appellant carried this order to the Hon’ble Supreme Court in S.L.P.No.12648-12650/2010 and on 07.05.2010, the S.L.P. was dismissed. When the Land Acquisition Officer was confronted with the situation of implementing the conditional order in LAASMP Nos. 38 and 39 of 2010 dated 02.02.2010, one Thippa Reddy, a practising advocate from Kadapa on 08.11.2010 filed the instant writ petition for Mandamus declaring the inaction of respondents in desisting the fraudulent acts of respondents 5 and 6 from claiming compensation for 89 alleged structures in Survey Nos.127/A and 128/2 of Madhavaram Village, Vontimitta Mandal, YSR Kadapa District and the further attempts of respondents 5 and 6 to withdraw the compensation amount, as arbitrary, illegal and detrimental to the

interest of the State and prays for enquiry under the Andhra Pradesh Revenue Enquiries Act, 1983. The petitioner in short complains against respondents 1 to 4 in preventing a financial scam.

In the PIL, the petitioner alleges that compensation amount of Rs.4,50,78,301/- (Rupees Four Crores Fifty Lakhs Seventy Eight Thousand Three Hundred and One only) was disbursed for the houses/structures numbering 1457 in Reach No.6 of Madhavaram. For fictitious and non-existing 89 structures in Survey Nos.127/A and 128/2, a whopping compensation of Rs.31,86,07,107/- (Rupees Thirty One Crores Eighty Six Lakhs Seven Thousand One Hundred and Seven only) is determined by the reference Court in LAOP No.1013 of 2001 on 27.11.2008 and steps were taken by respondents to pay the compensation in E.P.No.12 of 2009. The petitioner complains that the enhancement of compensation from Nil award to Rs.31,86,00,000/- (Rupees Thirty One Crores Eighty Six Lakhs only) and odd is a scam. The petitioner in support of such assertion submits that Section 4(1) notifications dated 20.02.1981 and 18.04.1981 were issued for structures and land in various reaches, including Survey Nos.127/A and 128/2 of Madhavaram Village.

In the notification dated 18.04.1981, eighty seven (87) structures were identified and notified for acquisition in Reach No.6 of Madhavaram Village. Award No.5/1986 dated 15.09.1986 was passed in respect of the land/structures covered by Section 4(1) notification dated 20.02.1981. Award No.18 of 1986 dated 18.09.1986 was passed by the Special Deputy Collector, Telugu Ganga Project, Nellore for 87 structures covered by Reach No.6. Out of Eighty Seven (87) structures, Thirty seven (37) structures were identified and covered by Survey Nos.127/A and 128/2 of Madhavaram Village. In other words, the assertion of petitioner is that all identified structures at the time of acquisition were notified by the Department and Award No.18/1986 dated 18.09.1986 was passed and thus compensation was paid to

then existing/eligible structures and there was no legal obligation to pay any compensation to subject structures.

The petitioner further alleges that thereafter ninety nine (99) individuals filed W.P.No.1002 of 1987 complaining that structures in existence in Survey Nos.127/A and 128/2 of Madhavaram Village do not find place in Award No.5/1986 dated 15.09.1986 and prayed for payment of compensation to these structures as well. On 28.12.1987, the said writ petition was ordered by this Court directing the respondents therein to inspect lands in these survey numbers, assess the value of structures and determine the compensation payable to the claimants.

Through Proceedings Rc.No.A-587/87 dated 07.07.1988 of the Special Deputy Collector (Land Acquisition) Telugu Ganga Project, Kadapa, the claims for payment of compensation for the alleged structures were rejected. According to the Land Acquisition Officer, the structures were raised subsequent to 4(1) notification.

To appreciate the findings recorded by the Land Acquisition Officer for rejecting the claim for disbursement of compensation to these disputed structures, we prefer quoting the relevant paragraphs of the proceeding dated 07.07.1988.

“ Enquiry of the structures of petitioners with reference to records:

Madhavaram village comes under the submergeable area of Somasila Project. During the year 1981, the then Land Acquisition Officer and Special Deputy Collector, Somasila Project unit-III, Sidhout having jurisdiction over Madhavaram village first inspected the lands in Reach No.6 of Madhavaram village on 7-8-1980 and 22-8-1980. Since the S.Nos.127/A and 128/2 were originally patta dry lands adjacent to the village, they figured in his inspection report dated 7-8-1980 and 22-8-1980 and he mentioned “houses” against S.Nos.127/A and 128/2 without mentioning their number. Accordingly Section 4(1) notification and Section 6 notification of L.A. Act were published in the A.P.Gazette,

dated 20-2-1981. Subsequently, the Special Deputy Collector (L.A.), Telugu Ganga Project, Cuddapah who was given the jurisdiction over the lands of Madhavaram village passed award No.5/86, dated 15-9-1986 for the lands in Reach No.6 excluding the S.Nos.127/A and 128/2 wherein structures existed.

The same Land Acquisition Officer and Special Deputy Collector, Somasila Project, Unit-III, Sidhout, inspected the structures in Reach No.6 of Madhavaram on 17-1-1981 and in his inspection report he mentioned the structures as 34 in S.No.127/A, 6 in S.No.128/2, 9 in S.No.239/2 and 2 in S.No.239 as per the requisition given by the Engineering Department and accordingly Section 4(1) notification and Section 6 notification under L.A. Act were approved by Government and published in the A.P. Gazette, dated 18-4-1981. As the L.A. operations came to award stage in the year 1986, the award work relating to lands and structures was divided by the Government authorizing the Special Deputy Collector, Telugu Ganga Project, Cuddapah to deal with lands reaches and authorizing the Special Deputy Collector, Telugu Ganga Project, Nellore to deal with structures reaches of Madhavaram village. Accordingly the Special Deputy Collector, Telugu Ganga Project, Nellore passed award No.18/86, dated 18-9-1986 for structures in Reach No.6 covering 34 structures in S.No.127/A 6 structures in S.No.128/2 9 structures in S.No.239/2 and 2 structures in S.No.239. This was done as per the 4(1) notification published in A.P. Gazette dated 18-4-81. Hence *compensation was paid accordingly.*

Thus the houses of petitioners did not find place either in the 4(1) notification for lands published in the A.P. Gazette dated 20-2-1981 or in the 4(1) notification for structures published in the A.P. Gazette dated 18-4-1981 or in the requisition given by the Engineering Department as they did not exist at that time. It is therefore evident that these structures were constructed after the publication of 4(1) notification on 18-4-1981.”

The unsuccessful claimants filed W.P.No.11794 of 1988 challenging the proceedings of Land Acquisition Officer dated 07.07.1988. In this background, it is the case of petitioner herein that A.C.Bayyapu Reddy/5th respondent in the instant writ petition raised

tilled houses/thatched sheds in Survey Nos.127/A and 128/2 subsequent to Section 4 (1) notification and prayed for acquiring the structures and for payment of compensation in accordance with law. As already noted, on 27.04.1995, the writ petition was allowed and W.A.No.590 of 1996 filed by the Government was allowed setting aside the order of the learned Single Judge. The petitioner alleges review petition was closed in view of the proceedings already issued in Award Enquiry. The petitioner refers to the order in C.C.No.1025 of 1999 and C.C.No.1822 of 1999.

It is pertinent to refer to the undertaking of learned Advocate General in C.C.No.1822 of 1999 that if against the Award dated 09.12.1999 objections are filed by the claimants, the objections will be referred to civil Court for decision on merits. Thus, on reference under Section 18 of the Act, LAOP No.1013 of 2001 was taken on file.

Coming to the alleged falsity of 89 structures, the petitioner states that the respondents for having acquired houses/structures in various survey numbers, including Survey Nos.127/A and 128/2, paid compensation of Rs.4,58,78,301/-. Now, for eighty nine (89) structures, the reference Court determines compensation at **Rs.31,86,07,107/-** and such determination of compensation by a reference to Court is vitiated and is unsustainable. The petitioner alleges that the structures identified and notified are covered by Award No.18/1986 and the structures for which now compensation is claimed were not in existence at the time of Section 4(1) notification and without a 4(1) notification under the Act, the compensation is awarded and being paid to claimants. It is further averred that the supposition on which fresh land acquisition proceedings are initiated is on the strength of draft 4(1) notification dated 08.06.1996, and according to petitioner, the Secretary to the Government of Andhra Pradesh vide Memo dated 08.10.2010 requested the Special Collector GNSS Kadapa/Special Deputy Collector, Somasila Project Unit-IV to send

the proof of publication of draft notification and draft declaration in respect of 89 structures of Madhavaram Village in Vontimitta Mandal.

Through letter dated 12.10. 2010, the Special Deputy Collector replied to Memo dated 08.10.2010, as follows:

“I invite kind attention to the reference cited, wherein, the Government has asked to send the proof of publication of Draft Notification and Draft Declaration in respect of 89 structures in Madhavaram Village, Vontimitta Mandal.

I submit that, the Draft Notification and Draft Declaration (Gazette Notification/ News paper Publication etc.,) was not published in respect of 89 structures of Madhavaram Village of Vontimitta Mandal in Y.S.R.District.

The Drafts were got approved by the Special Collector to initiate action to comply the orders of the Hon'ble High Court in C.C.No.395 of 95 in W.P.No.11794 of 1988.

In meantime the Hon'ble High Court set aside the above orders in writ appeal vide W.A.No.590/96, Dt.30.07.1996 and therefore notification earlier approved was found not necessary. No further action was taken on that. It was not admitted before any Court that the D.N. & D.D. was published for the 89 structures.

This is for kind information.

Encl: Letter of the Spl. Collector l/c.Dt.12-06-1996.”

Therefore, it is alleged that the structures for which exorbitant compensation of Rs.31 crores is paid is a financial scam by itself and official respondents are not taking prompt and diligent steps to desist the fraudulent acts of respondents 5 and 6 from realizing compensation. The petitioner filed WPMP.Nos.10813 of 2011 and 43075 of 2015 to receive additional documents viz., the report of Anti-Corruption Bureau submitted to the Principal Secretary through proceedings C.9/RE-TCD/2004/3-16 dated 28.03.2006, the copy of Award No.18/1986 dated 18.09.1986 and the notification under Section 4(1) dated 20.02.1981 respectively.

On behalf of respondents 1 to 4, the Secretary to Government,

Irrigation and CAD Department/respondent No.2 filed counter affidavit.

It is averred that Section 4(1) notifications were issued on 20.02.1981 and 18.04.1981 proposing to acquire land and structures in Survey Nos.127/A and 128/2 of Madhavaram Village. It is stated that through the notification dated 18.04.1981, the structures, in existence, in Survey Nos.127/A and 128/2 have been notified. The counter affidavit further refers to proceeding No.RC.A.587/87 dated 07.07.1988 of the Special Deputy Collector, Telugu Ganga Project, Nellore and filing of W.P.No.11794 of 1988, order dated 27.04.1995 and the order in W.A.No.590 of 1986 dated 13.06.1996. It is further stated that in view of what was agreed in CC.No.1822/1999, reference under Section 18 of the Act was made against the supplementary Award No.47/99-2000 dated 09.12.1999. He refers to the disciplinary enquiry initiated by the High Court in Roc.No.77/2009 dated 20.09.2010 against the Presiding Officer/

I-Additional District Judge, Kadapa, who disposed of LAOP No.1013 of 2001 and the enquiry by the Anti-Corruption Bureau against Officers of Revenue Department, for granting compensation to subject structures. The sum and substance of the counter affidavit is that firstly the Government/Land Acquisition Officer set out their views for not paying compensation to 89 structures before the competent Courts for decision and that the orders of this Court were implemented from time to time, reference to civil Court was made in LAOP No.1013 of 2001, the Award of compensation by reference Court is subject matter of appeal in LAAS No.136 of 2009 and legal remedies are being pursued within the four corners of law. Therefore, he replies that there is no collusion whatsoever between the Department and the claimants.

Respondents 5 and 6 filed counter affidavit. In the counter affidavit, respondents 5 and 6 refer to the inspection of subject structures by the Land Acquisition Officer in the year 1980, the non-payment of compensation by Land Acquisition Officer to then existing structures and the resultant orders passed by this Court in the cases

referred to above. For brevity and to avoid repetition of very same details, we are not reproducing the details already adverted to.

According to respondents 5 and 6, once the issue is referred to civil Court, the civil Court has considered the material available on record and determined compensation payable to 89 structures and no exception can be taken. The Award is subject matter in LAAS No.136 of 2009 and, therefore, the writ prayer in PIL is misconceived.

Respondents 5 and 6 question the maintainability of writ petition to set aside award of reference Court, for LAAS No.136 of 2009 is pending in this Court against the award in LAOP No.1013 of 2001 and issues are thrashed out in LAAS. Respondents 5 and 6 question the *bona fides* of petitioner in filing the writ petition. It is alleged that the credentials of writ petitioner are doubtful and many criminal cases are pending against him and therefore pray for dismissal of the public interest litigation.

Submissions:

Mr. Krishna Prakash, learned Special Government Pleader, vehemently contends that the Award impugned in LAAS No.136 of 2009 is illegal and unsustainable. According to him, the reference Court granted exorbitant and excessive compensation for

non-existing structures on the date of issue of Section 4(1) notification. The entire approach of reference Court is illegal and the reference Court committed a grave illegality by framing the presumptuous point for consideration. Thus the award is vitiated. The point reads thus:

“ Whether the claimants are entitled for the Award, awarding compensation for their structures as per the valuation statement of the Irrigation and Power Department dated 5.6.1989 and also as per the S.S.R. rates prevailing as on the fresh notification of the year, 1989, and if so, to what relief?”

According to him, the point framed pre-supposes several

aspects without pleading and proof by the claimants and the point framed by reference Court appears as if what is required to be decided in the LAOP, is awarding compensation for the structures of the claimants as per the statement of Irrigation and Power Department dated 05.06.1989 and what are the SSR rates prevailing on the fresh notification of the year 1989 and non else. Therefore, the point framed by the trial Court has substantially pre-judged the reference and caused huge financial loss to the exchequer. According to him, the complicity or collusion among beneficiaries and officers of various departments is writ large and this Court must take note of subtle aspects in evidence to appreciate the collusion. To illustrate the collusive conduct between the officers and the claimants, he points out that Ex.B.21 draft notification dated 08.06.1996 without proper objection has been accepted as a notification issued under Section 4(1) covering subject structures. According to him, the draft notification dated 08.06.1996 cannot be a notification in law, unless the notification satisfies the requirements of law. He contends that Ex.B.1, inspection notes dated 07.08.1980 and 22.08.1980, are completely misread by reference Court

or claimants to presume the existence of subject structures.

The burden of proof of existence of structures by the date of issuance of 4(1) notification rests on the claimants and claimants must prove the extent of structures held by each one of them as a matter of fact, the mode and manner of acquisition of ownership to the plotted area, nature of construction, age of structures etc. These details can neither be matters of conjecture nor presumption, but have to be decided by the first principles of pleading burden of proof, oral and documentary evidence. According to him, the claimants have failed to place any material on these crucial aspects.

He vehemently contends that neither the appellant nor the acquiring department accepted the existence of eighty nine (89) structures for which compensation is claimed by the claimants herein.

Therefore, the findings recorded by the Land Acquisition Officer in supplementary Award No.47/1999-2000 dated 02.12.1999 namely, the claimants failed to produce evidence of existence of structures as on the date of notification in the year 1981. Such finding by Land Acquisition Officer gives rise between the State and the claimants, a fact in issue, namely whether the structures for which compensation is claimed were in existence on the date of Section 4(1) notification and that the Land Acquisition Officer failed to include in notification then existing structures for payment of compensation to the claimants. Therefore, the crucial point for decision is the existence of 89 structures as on the date of Section 4(1) notification and thereafter the quantum of compensation payable to these structures could be considered by the reference Court, but not otherwise.

He further contends that the orders of this Court in W.P.No.1002 of 1987, W.P. No.11794 of 1988 and W.A. No.590 of 1996 are thoroughly misunderstood by the reference Court and framed a presumptuous point for consideration on an erroneous view of the matter. To bring home his submissions, the Special Government Pleader draws our attention to the findings recorded in W.A. No 590 of 1996 dated 13.06.1996 and the review order dated 04.09.1998. According to him, even the claimants, while accepting passing of supplementary Award dated 02.12.1999, while getting C.C.No.1822 of 1999 closed, prayed for reference of their claims under Section 18 of the Act. Therefore, the grant of compensation on claims statement, unpublished notification dated 08.06.1996 (Ex.B.21) and applying SSR rates for these structures and granting enhancement etc., is impermissible in law and prays for setting aside the Award.

The Special Government Pleader further contends that at the time of filing of the appeal, on account of inexplicable circumstances or lack of instructions on the magnitude of financial implication on exchequer, complicity of the officers in the determination of compensation, the grounds have been raised in the Memorandum of

appeal limiting the scope of appeal as shown in the Memorandum of Valuation. Therefore, to cure the defect and to permit the appellant to raise additional grounds, including the very grant of compensation to non-existing structures, LAASMP No.827 of 2015 is filed. Having regard to inadvertence of officers either by choice or design, the huge financial burden involved on the exchequer, the Land Acquisition Officer requests the Court to permit the appellant to raise the following grounds.

“The Court below erred in enhancing the value of the structures despite there being serious controversy as to their sanctity and legality in respect of their existence prior to issuance of 4(1) notification.

The Court below failed to appreciate that the Special Deputy Collector/Land Acquisition Officer vide his Supplementary Award No.47/99-2000, dated 2.12.1999 categorically held that out of 89 structures of the Writ Petitioners in Contempt Case No.1025 of 1999, evidence was produced in the form of House Tax Receipts and Demand Notices relating to the years 1983-84, 1984-85, 1985-86 and 1986-87, only in respect of 5 structures and all these documents are subsequent to the Notification under Section 4(1) of the Land Acquisition Act, 1981 and therefore, it strengthens the case of the Land Acquisition Officer that the structures were raised subsequent to the Notification resulting their claim being rejected. As regards the remaining 84 structures, the Writ Petitioners have failed to produce any evidence in support of their claim despite being given opportunity and therefore, their claim was rightly rejected.

The Reference Court failed to appreciate as to why the Land Acquisition Officer refused compensation for the subject structures by passing Nil Award and thereby erred in enhancing the compensation to such an exorbitant extent, when the very structures deserve no compensation at all.”

He further submits that the appellant being the Land Acquisition Officer enjoys exemption from payment of Court Fee under Section 67 (XVI) of the A.P. Court Fees and Suits Valuation Act, 1956 as amended Act 20 of 1992. Even if the additional grounds go to the very root of the matter or for any reason the valuation of appeal changes by virtue of exemption granted in payment of Court fee, the grounds can

be permitted to be urged. He prays for permitting the appellant to raise these additional grounds against the Award dated 27.11.2008 to meet the ends of justice.

Against the impugned Award, the counsel contends that the burden is on the claimants to prove the structures which are allegedly acquired by the Government and that no compensation was paid to eligible claimants. He contends that the claimants have to prove ownership and age of these structures for awarding compensation. In LAOP, except RW.1, no other claimant entered the witness box or exhibited documentary proof for the ownership of plot or structures claimed by each one of the claimants, but the reference Court still accepted all claims without any material whatsoever. Under Ex.B.17, the Inspecting Officer has specifically stated existence of a few houses in these survey numbers and it does not mean that 90 structures missed the attention of Inspecting Officer while issuing Section 4(1) notifications. According to the Special Government Pleader, Exs.B.1 to B.5 are not relevant to the fact in issue either on existence of structures or for payment of compensation and must be excluded from consideration, as irrelevant. The reliance on Exs.B.8, B.11, B.12, B.13, B.14 and B.25 by reference Court is not relevant and does not determine the existence of structures in these survey numbers. Likewise, reliance on Ex.B.16 for deciding valuation of scattered structures based upon the evidence of RW.2 read with Ex.B.16 is impermissible in law and the reference Court committed serious illegality by granting compensation for non-existing structures and prays for allowing the appeal.

Mr. E.Manohar, learned senior counsel, appearing for claimants takes preliminary objection that the subject matter of the appeal is not against the grant of compensation, but is against grant of enhanced compensation over and above SSR rates. According to senior counsel, the existence of structures is accepted with the issue of draft

notification dated 08.06.1996 (Ex.B.21) and that the supplementary Award dated 02.12.1999 is contrary to the orders of this Court in W.A. No.590 of 1996 dated 13.06.1996 and the order in review dated 04.09.1998 in WAMP No.2155 of 1997. It is further contended that the Land Acquisition Officer did not give sufficient opportunity while conducting enquiry under Section 11 of the Act and the Award cannot be treated as evidence. According to him, the structures were in existence in Survey Nos.127/A and 128/2 and the compensation is correctly determined by the reference Court and determination of compensation in LAOP No.1013 of 2001 does not warrant interference. The claimants oppose the prayer in LAASMP No.827 of 2015 to raise additional grounds and pray for restricting the appeal to the grounds stated in the memorandum of appeal. The learned senior counsel draws the attention of the Court to the counter affidavit filed in LAASMP No.827 of 2015 and prays for dismissal of the LAASMP No.827 of 2015. Mr. E.Manohar relies upon the judgment of this Court in

A.S.No.1286 of 2002 where payment of compensation for house property covered by Survey Nos.127/A and 128/2 of Madhavaram Village is considered and compensation granted by reference Court and modified by this Court. The learned senior counsel places reliance on **Nand Ram v. The State of Haryana**^[1], **K.Periasami v. Sub-Tehsildar (Land Acquisition)**^[2], **Special Land Acquisition Officer, Kheda v. Vasudev Chandrashankar**^[3], **Special Deputy Collector, Cuddapah v. G.Malikarjuna**^[4], **Bhim Singh v. State of Haryana**^[5], **Pal Singh v. Union Territory of Chandigarh**^[6] and unreported judgments in A.S. No 3922 of 2003 and batch, A.S.No.2144 of 2003 and batch, A.S.No.875/2003 and batch and ASSR No.94589 of 2002 and batch for sustaining the Award under challenge.

The learned senior counsel further contends that the proof of existence of structures is evidenced by Ex.B.21. The copy of supplementary Award dated 02.12.1999 was handed over to the counsel appearing for the claimants in C.C.No.1822 of 1999 and on 31.01.2000, request for reference under Section 18 of the Act was made. On 22.02.2002, the claims statement was filed claiming compensation. However, the exemption from payment of Court fee, having regard to Section 67 of the A.P. Court Fees and Suit Valuation Act, 1956 is not disputed by him in the course of arguments.

Mr. D.V.Sitarammurthy, learned senior counsel appearing for petitioner in W.P.No.27925 of 2010, forcibly contends that the payment of compensation to non-existing structures in LAAS No.136 of 2009 is a scam in its very nature. The petitioner, a practising Advocate at Kadapa, thought it fit to bring to the notice of this Court the commissions and omissions in determination of compensation through the instant writ petition. He contends that there is complicity or collusion of officials with claimants in reference Court and the exorbitant quantum of compensation determined to the non-existing structures in Survey Nos.127/A and 128/2 of Madhavaram Village speaks of collusion of officials with claimants.

According to him, the Land Acquisition Officer prior to issuing Section 4(1) notification inspected Reach No.6 at Madhavaram Village and on 20.02.1981, Section 4(1) notification of the Act was issued in respect of Ac.49.50 cents and Section 4(1) notification dated 18.04.1981 in respect of 89 structures covered by land in Reach No.6, was issued. Insofar as, Section 4(1) notification dated 20.02.1981 is concerned, it is contended that the compensation is determined and covered by Award No.5 of 1986. According to him, Award No.18 of 1986 dated 18.09.1986 covers structures notified in Section 4(1) notification dated 18.04.1981. Therefore, the Government paid compensation amount of Rs.4,50,78,301/- (Rupees Four Crores Fifty

Lakhs Seventy Eighty Thousand Three Hundred and One only) for various structures comprising 1473 houses identified and notified in 19 reaches and the reference Court determines Rs.31,88,07,107/- (Rupees Thirty One Crores Eighty Eight Lakhs Seven Thousand One Hundred and Seven only) compensation for eighty nine (89) structures.

According to him, the structures identified and notified in Survey Nos.127/A and 128/2 are about 37 structures for which compensation was already paid and nothing was left out from payment of compensation. The structures now claimed, according to him, were not in existence and a collusive claim without there being Section 4(1) notification for structures was made and entertained by the authorities and adjudicated by the reference Court. Learned senior counsel in support of his contention that there is collusion in payment of compensation between claimants and officials and complicity in conduct of legal proceedings relies upon the inspection report dated 07.08.1980 and 22.08.1980 to show that the following structures were in existence in subject survey numbers.

“Sl.No.	Sy.No.	Extent	
12.	127/A	2-54	Houses
13.	xx	xx	xx
14.	128/2	2-36	Houses and Waste land”

Even assuming that at the time of inspection by Land Acquisition Officer a few structures were in existence in these two survey numbers, the compensation was already paid through Award No.18 of 1986 dated 18.09.1986. According to him, “few houses have become a few houses” and compensation was determined and paid. Therefore, he contends that the determination of compensation amount of Rs.31 crores to the non-existing structures is an impending scam due to the inaction of respondents 1 to 4. The structures for which compensation was determined and paid vide Award No.18 of 1986 in Survey Nos.127/A and 128/2 are as follows:

S.No.	Survey No.	D.No.	Type of structure	Plinth Area	C.Well area	Notified house owner
(1)	(2)	(3)	(4)	(5)	(6)	(7)
20	127/A	87B	Pantiled	47-60		Chintagunta Chengaiah, s/o Reddaiah
20	127/A	6/89	Mtiled Pandal	32-30 8-0		Chakali Chatti Subbaiah, s/o Mallaiah
21	127/A	6/89	BRR	16.80		Penagaluri Lakshmamma, w/o Narsaiah
22	127/A	6/90	Mtiled	36.50		Solleti Penchalaiah, s/o Gangulaiah
23	127/A	6/91	Mtiled	51.40	4-80	Nara Nellore Santaiah, s/o Subbaiah
24	127/A	6/94	Mtiled Pantiled BHI	39.90 31.90		Nellore Siddiah, s/o Subbaiah
25	127/A	6/96	RBH Mtiled	29.30 20.70	14.40	Soleti Narasimhulu, s/o Subbaiah
40	127/A	6/108	Mtiled BHR BHR Pandal	24-00 4-20 11-22 11-10	3.19	Nara Nellore Ramaiah
41	127/A	6/106	Mtiled Pandal	30.20 13.50		Nellore Subbaiah, s/o Siddaiah
42	127/A	6/105	BRH Pandal	35.60 111.00	31.45	Nara Nellore Narasimhulu
53	127/A	6/129	Mtiled Pandal	52.60 12.40		Mamilla Mastanaiah, s/o Subbanna
54	127/A	119B	BHR	45.60		A.Raghu Ramaiah, s/o Venkataramaiah
55	127/A	6/114	GISR AC Sheet CSF	327.40 74.40 59.70 1		Madhavaram Power Looms Society

56	127/A	6/113	MTR RCC MTR Mtilcd Cl sheet WC Mtilcd Ac sheet Ist floor	133.30 35.30 71.10 28.10 37.80 2.70 27.60 39.80		Madhavaram Weavers Cooperative Society
57	127/A	6/114	HTR PTR BRS PEND Ntile	28.40 19.40 21.30 4.30 27.30	15.37 3.64 Ist Floor	Jallupati Narasimhulu, s/o Subbaiah
58.	127/A	6/145	Mtilcd	115.60	13.86	Avvaru Ramakrishnaiah, s/o subbarayudu
59	127/A	6/146	RCC	57.20	9.00	Duggiseti Subbarayudu
60	127/A	6/147	ACC	40.30		Vakati Narsaiah, s/o Penchalaiah
61	127/A	6/148	RCC	65.40		Yeturi Nagaraju, s/o Subbarayudu
62	127/A	6/149	Mtilcd	47.00	1.50	Yeturi Rajeswari, w/o Nagaraju
63	127/A	6/150	Mtilcd	30.20	12.48	Siddavatam Venkata Subbaiah, s/o Karssaiah
64	127/A	6/151	PCC Mtilcd	45.60 22.20	24.00	Thiruveedhula Venkata Narasaiah, s/o Lingaiah
65	127/A	6/152	RCC	71.50	16.15	Jinka Radhakrishnaiah, s/o Venkata Krishnaiah
66	127/A	6/153	RCC MTC CGF	54.00 13.70 16.70	7.60 19.08	Bodagala Venkata Subbaiah, s/o Venkata Subbaiah
67	127/A	6/154	NTR MTIR	63.40 4.40		Mittakayala Narasaiah, s/o Penchalaiah

68	127/A	6/155	NTR NTLR MTLR 1 st floor	29.60 24.00 32.50		Rayavarapu Penchalaiah, s/o Penchalaiah
69	127/A	6/157	RCC Pendal	60.00 10.50		Vakati Tayaramma, s/o Venkata Narsaiah
70	127/A	6/157	MTLR BRT Pendal	32.40 5.50 5.70		Bukkayapalli Thirupal Narasaiah
71	127/A	6/164	PCC GISR CST ACSR	109.30 374.00 58.48 15.10	30.08 69.36 25.47 18.52	Cinema Hall G.Brahmaiah and others
72	127/A	6/165	MTIR	15.20		Shaik Mahaboob Sahib, s/o Budan Sahib
73	127/A	6/166	MTLR	61.70		Khasim Peera, s/o Mahaboob Saheb
74	127/A	6/166	PTR Pendal	48.50 24.	3.52 27.15 5.46 100.96	Mahaboob Sahib, s/o Budhan Sahib

Learned senior counsel further contends that the petitioner complains against collusion or inaction in preventing collusive compensation claims for non-existing structures. According to him, the collusion or complicity is evident from the fact that none of the details concerning Award No.18/1986 is placed before the trial Court or stated at least in the counter affidavit filed in this public interest litigation. He further draws the attention of the Court to the report of the Director General, ACB addressed/forwarded to the Principal Secretary to Government vide proceedings C.No.9 RE-TCD/2004/3-16 dated 28.03.2006. He draws the attention of the Court to the relevant portion of the ACB report. Senior counsel specifically draws the attention of this Court to various Awards passed in the year 1986-87 wherein compensation to structures was paid,

which were subject matter of reference and confirmation by this Court.

He contends that, had it been a case where structures were in existence and no compensation was paid, there is justification to move the Court, but not when there were no structures and still compensation is claimed and determined by the Court. He prays the Court to allow the prayers in W.P.M.P.Nos. 10813 of 2011 and 43075 of 2015. He finally contends that this Court has taken note of the alleged misconduct of the Presiding Officer who disposed of LAOP No.1013 of 2001, by issuing Memo Roc.No.77 of 2009, Vigilance Cell, dated 20.09.2010. The outcome of such vigilance enquiry is matter of record and needs to be taken judicial note by this Court while deciding the very same matter in appeal.

Mr. Krishna Prakash, Special Government Pleader, having regard to the submissions made in the substantive appeal filed against the Award in LAOP No.1013 of 2001, submits that the issue of payment of compensation for acquisition of structures of claimants herein is not properly conducted by the officers and the complicity of officers, if any, according to him, is on account of pendency of contempt cases or fear of orders in contempt cases. According to him, the substantive appeal is pending in LAAS No.136 of 2009 where all available grounds have been taken and he prays that this Court considers passing appropriate orders to prevent abuse of process, adjudication by reference Court or by the parties to the reference.

Mr. E. Manohar, learned senior counsel, vehemently opposes consideration of the prayer in the instant PIL on the ground that the credentials of petitioner are doubtful and petitioner cannot cast aspersions on the adjudication of reference Court with oblique designs. He specifically raises a contention that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot/ought not have set aside the judgment and decree of the competent Court made under Section 18 of the Act. Likewise, no

direction can be issued to respondents for conducting enquiry etc. He prays for dismissal of the writ petition.

We have carefully perused the material available on record and taken note of the rival submissions of learned counsel appearing for the parties. The following points are framed for consideration.

- 1) Whether the issue/point framed for consideration in LAOP No.1013 of 2001 is correct, valid and legal in the facts and circumstances of the case?
- 2) Whether the structures for which compensation is claimed in LAOP No.1013 of 2001 were in existence by the date of issuance of Section 4(1) notification dated 20.02.1981 or any date on which the claimants claim that a notification was issued?
- 3) Whether the claimants are entitled for payment of compensation for acquisition of any of the structures in Survey Nos.127/A and 128/2, if so, what is the compensation payable to claimants?
- 4) Whether the prayer in W.P.No.27925 of 2010 can be examined, and if so to what extent?

Point No.1:

The subject matter of LAAS is determination of compensation for eighty nine (89) structures covered by Survey Nos.127/A and 128/2 in Reach No.6 of Madhavaram Village.

The writ prayer opposes payment of compensation to alleged non-existing structures in Survey Nos.127/A and 128/2.

The admitted circumstances as evidenced by record are as follows:

The Government acquired foreshore submersion area in an extent of Ac.49.50 cents in Reach No.6 of Madhavaram of Somasila Irrigation Project. The Special Deputy Collector (Land Acquisition), Somasila, (Unit III), had undertaken inspection of Madhavaram Village in Reach No.6 on 07.08.1980, 22.08.1980 (Ex.B.17) and on 17.01.1981 (proceedings dated 07.07.1988).

The inspection report (Ex.B.17) deals with the classification of land,

structures/houses, wells, trees etc., of the land proposed to be acquired. Serial Nos.12 and 14 of the inspection report dated 07.08.1980 and 22.08.1980 read as follows:

“Sl.No.	Sy.No.	Extent	
12.	127/A	2-54	Houses
13.	xx	xx	xx
14.	128/2	2-36	Houses and Waste land”

Award No.5 of 1986 dated 15.09.1986 dealt with Survey Nos.127/A and 128/2 as follows:

1	2	3	4	5
15	127/A	G.D.	1.58 <u>0.96</u> houses 2.54	

The land stands registered in the names of Iragamreddy Sidda Reddy and 2.Avvaru Subbarayudu. It is under the enjoyment of the following two persons.

- 3. Iragamreddi Subbi Reddy
- 4. Avvaru Venkatramaiah S/o.Venkatramaiah

Both the patadars are no more. The enjoyers are the sons of the pattadars, enjoying the land byway of inheritance. The enjoyers have stated that they have sold away the entire extent for house sites, and the entire extent is covered by houses and that they do not want any compensation. Award is being passed by an another Land Acquisition Officer separately for the structures. Hence no compensation is awarded.”

1	2	3	4	5
17	128/2	G.D.	2.36	---

Iregareddy Sidda Reddy is the pattadar. Iragamreddy Subbireddi son of the pattadar is the enjoyer. He has stated that he has sold away the entire extent of house sites, and he did not want any compensation. Award is being passed separately by another Land

Acquisition Officer for the structures in this survey number. Hence no compensation is awarded.”

The claimants filed W.P.No.1002 of 1987 complaining non-payment of compensation or non-consideration of claims for subject structures in Survey Nos.127/A and 128/2 of Madhavaram Village. This Court, as already noted, disposed of the said writ petition as follows:

“In S.Nos. 127-A and S.No.128/2 of Madhavaram village which was admittedly acquired under the notification under Section 4(1) of the Land Acquisition Act on 20.2.1981 by which only landed area was acquired. Again an other notification was issued on 18-4-1981 pertaining to the structures that were available on the said two survey numbers. The two awards have been finalized. But in so far as the houses pertaining to the petitioners who are 99 in number are concerned, no award has been passed and no notices have been given to them. The further contention of the learned counsel for the petitioners is that even today the houses are in existence and they have not been inundated as yet and, therefore, a direction may be given to the Authorities concerned to inspect the land by visiting the same as if the houses are inexistence, compensation may be determined.

In these circumstances, it is eminently a fit case where a mandamus will have to be issued to the respondent. Land Acquisition Officer to visit the place where these two survey numbers are situated and if there are any **structures that have escaped the attention of the Land Acquisition Officer earlier in respect of which compensation has not been determined**, after due notice to the owners petitioners, and value the structures and determine the compensation in consequence thereof. The entire exercise including the determination of compensation will have to be made within eight months from the date of receipt of this order. In so far as the inspection of the site is concerned it must be done within two months from the date of receipt of the order. So that it may avoid inundation of the structures.” (*emphasis applied*)

The order in W.P.No.1002 of 1987 for any reason cannot be construed as recording a finding on the existence of structures for which compensation was claimed but not paid.

In our view, the order in W.P.No.1002 of 1987 at best directs the Land Acquisition Officer to inspect Survey Nos.127/A and 128/2

and verify whether the attention of department was not drawn to structures and compensation was not paid in the pending acquisition, if so, the Land Acquisition Officer was directed to pass award. (*emphasis added*). The Special Deputy Collector, Telugu Ganga Project, on verification of record issued proceedings No.Rc.587/87 dated 07.07.1988. The findings of the Special Deputy Collector (Land Acquisition) in proceedings dated 07.07.1988 go to show that the Land Acquisition Officer and Special Deputy Collector, Somasila Project, Unit-III, Sidhout, inspected structures in Reach No.6 of Madhavaram on 17.01.1981 and noted the existence of 34 structures in Survey No.127/A; 6 structures in Survey Nos.128/2; 9 structures in Survey No.239/2 and 2 structures in Survey No.239 which is in line with the details given by the Requisition Department. On 18.04.1981, Section 4(1) notification and draft declaration under Section 6 were published. Therefore, Award No.18 of 1986 dated 18.09.1986 was made determining compensation for structures in Reach No.6 covering 34 structures in Survey No.127/A and 6 structures in Survey No.128/2, 9 structures in Survey No.239/2 and 2 structures in Survey No.239. The proceedings dated 07.07.1988 refer to Section 4(1) notification dated 18.04.1981 issued for the structures in existence in several survey numbers and determination of compensation payable to owners of these structures. The claimants challenged the proceedings dated 07.07.1988 in W.P.No.11794 of 1988. This Court allowed the writ petition and directed payment of compensation to structures in subject Survey Nos.127/A and 128/2. Aggrieved by the order in W.P.No.11794 of 1988, the State preferred Writ Appeal No.590 of 1996. The order in W.A.No.590 of 1996 has bearing on the point framed by reference Court. For immediate reference the order is reproduced hereunder:

“Heard.

It seems most unusual that writ petitioners-respondents have received compensation for the land acquired and are claiming separately compensation for the structures thereon by moving this Court under Article 226 of the Constitution of India. “Land” is defined under Section 3(a) of the Land Acquisition Act, 1894 to include benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Section 11 of the Act states that the Collector shall proceed to enquire into the objections, 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 and shall make an award under his hand of the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims he has information whether or not they have respectively appeared before him. Section 18 of the Act gives to any person interested who has not accepted the award, a right to seek reference by the Collector by written application to him for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. In case any such application is filed, Collector is required to prepare a statement for the information of the court in writing on the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon, etc. On such reference, the Civil Court is required to proceed to determine whether compensation awarded for the land acquired is reasonable or not and whether any damages are required to be awarded or not. In all cases, however, in which an award is made by the Collector and no reference is sought for and compensation is accepted without protest, no further proceedings are contemplated under the Act, as provided under Section 31 thereof.

It is not understandable how, after the land acquisition proceedings have been completed and writ petitioner- respondents have received compensation, they are claiming a separate compensation for the super-structures or any building upon the land already acquired, and for which compensation has already been paid. Even assuming that there is some cause for making a

demand for compensation by way of damages or for the property which formed part of the land as the definition aforementioned indicates, it will be necessary to see whether petitioners- respondents accepted the award without any protest and whether they did file any objections as contemplated under Section 18 of the Act objecting to the quantum of compensation. If there has been any objection to the quantum of compensation and the Collector, it is found, has failed to act as required under Sections 18 and 19 of the Act, the petitioner-respondents may have some case to plead.

In view of the above, the only course in our view, which this Court can adopt in a proceeding of this nature **is to direct the petitioner-respondents to make an application before the Collector and bring to his notice that there has been some objection by them on the ground that for structures they were entitled to additional compensation than the compensation awarded by him under Section 11 of the Act and that notwithstanding such objection reference to the Civil Court has not been made.** If they are able to demonstrate before the Collector that they had filed any such objection within the stipulated time, the Collector may consider making a reference in accordance with law; otherwise, petitioner-respondents cannot have any claim at all. In view of the above, it is not possible to sustain the impugned order under which a direction has been issued to award compensation for the structures to the petitioner-respondents. (emphasis added)

The claimants filed Review WAMP No.2155 of 1997. The order dated 04.09.1998 reads as follows:

“Upon hearing the submissions made on behalf of the parties, we do deem it fit to direct the Land Acquisition Collector to deal with the matter in accordance with Law upon affording opportunity of hearing within a period of two months from the date of communication of this order. While dealing with the matter, **the claim for compensation on account of structures shall also be considered and the Land Acquisition Collector shall offer necessary opportunity to adduce documentary evidence in support of the applicants contentions.** The award the passed with utmost expedition immediately thereafter, and all steps be taken to make available the compensation as may be determined by the Land Acquisition Collector, within a period of six months from the date of the award.” (emphasis

added)

It is evident from the order in W.A.No.590 of 1996 or the order dated 04.09.1998 in Review WAMP No.2155 of 1997 that the findings recorded by the learned Single Judge in W.P.No.11794 of 1988 are reversed and, therefore, the findings in W.P.No.11794 of 1988 cannot or could not be treated as findings on the existence of structures in Survey Nos.127/A and 128/2 of Madhavaram Village and in LAOP proceed to take up for determination of compensation payable to claimants. On the other hand, the review orders dated 04.09.1998 direct consideration of claims by Land Acquisition Officer for payment of compensation to the structures in accordance with law. The Land Acquisition Officer by this order was directed to afford opportunity to claimants

to adduce documentary evidence in support of applicants' contentions for grant of compensation. It is to be noted that the order dated 04.09.1998 in WAMP No.2155 of 1997 has not reviewed the order dated 13.06.1996 in writ appeal or set aside the order in writ appeal. At best, by a combined reading of orders in writ appeal and review, it can be said that the Deputy Collector while dealing with the matter in dispute considers the claim of compensation for structures and the Land Acquisition Officer/Deputy Collector shall afford to applicants opportunity to adduce documentary evidence in support of applicants' contentions. Further, it is held that the Award is passed with utmost expedition immediately thereafter and all steps be taken to make available the compensation as may be determined by the Land Acquisition Officer/Deputy Collector within six months.

The twin aspects discussed above provide opportunity to the claimants to adduce documentary evidence in support of the applicants' (claimants) contentions for compensation.

The Land Acquisition Officer, as already noted, issued notice of enquiry under Sections 9(3) and 10 of the Act on the Advocate appearing for the claimants. The finding recorded by the Land Acquisition Officer is that the claimants failed to produce any evidence in support of their claim for compensation to structures, though they were given opportunity. The sufficiency of opportunity allegedly given by the Land Acquisition Officer was, however, contested by claimants and we are not immediately recording a finding on the failure of claimants to prove their case for compensation. The copy of supplementary Award dated 02.12.1999, even assuming, was made available to the claimants on 14.12.1999 in C.C.No.1822 of 1999. The claimants on 31.01.2000 requested for reference under Section 18 of the Act. It is very apt to re-produce the objections of claimants to supplementary Award No.49 of 1999-2000 dated 02.12.1999.

“The fact of passing of Award No.45/99-2000 and Supplementary Award No.47/99-2000 had come to our knowledge only when the learned Advocate General handed over the copy of the Supplementary Award No.47/99-2000 to our advocate in the Hon'ble High Court when the C.C.No.1822/99 came up for admission on 14.12.99. It is further submitted that finally on 17.1.2000 when the C.C.No.1822/99 came up for hearing, the Hon'ble Chief Justice of High Court of A.P. closed the contempt case and directed us to file objection petition before you and thereafter you have to refer the matter to Civil Court U/s.18 of the L.A. Act for determination of the market value of our structures and the land in question, as we have not accepted your Award No.45/99-2000 and supplementary Award No.47/99-2000. The requisition department itself valued our structures adopting the very low rates than the S.S.R.Rates of the Government, for the year 1980 and 1981. The valuation and rates adopted by the requisition department is very low, inadequate and the same has to be enhanced by 80% over and above the valuation fixed by the Engineering Department of the requisition department, which will over-all arrive at around Rs.23 lakhs and the same has to be enhanced at 80% i.e. around Rs.42 lakhs and we hereby claim the same.”

From the above, it is clear that no material whatsoever

is annexed/referred on the existence of structures, but compensation for structures was claimed at Rs.42 lakhs. Therefore, in the fact situation of this case, dispute arises in the form viz., whether the structures for which compensation is claimed were in existence on the date of Section 4(1) notification? and if so, what is the nature and age of structures, ownership of structures and the quantum of compensation payable for these structures. On 22.02.2002, comprehensive claim petition is filed on behalf of all the claimants and the concluding portion reads thus:

“The Claimants, therefore, pray that the Hon'ble Court may be pleased to pass an award awarding the compensation for their structures and the land taking into consideration of all the material on record based on the valuation statement of the Irrigation and Power Department dated 5.6.1989 and also as per the S.S.R. Rates prevailing as on the date of fresh notification of the year 1999 and to further enhance of the same basing on the valuation statements of the claimants which are got prepared by the Private Licenced Valuer and site value at Rs.150/- per Sq.Meters along with all the benefits entitled under the L.A.Act as stated supra in para 14 and costs of this reference, in the interest of justice.”

The alleged dispute for payment of compensation relates to structures in Sy.Nos.127/A and 128/2. But curiously enough the alleged structures in Survey No.239 are included in the annexure filed along with claim petition. Further, in the application for reference to civil Court, claimants claimed Rs.42,00,000/- (Rupees Forty Two Lakhs only) towards compensation for the structures, whereas in the claim statement dated 22.02.2002, Rs.2,97,81,100/- (Rupees two crores ninety seven lakhs eighty one thousand and one hundred) (SSR 1999-2000) is claimed as compensation for the same structures. No explanation or averment whatsoever is available on record, objection worth the fact situation is adverted to by the Department and this evidences either collusion or complicity in the conduct of case before the reference Court.

Sections 18 to 21 of the Land Acquisition Act read thus:

Section 18: Reference to Court:-

- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
- (2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within two months from the date of service of the notice from the Collector under Section 12, sub-section (2).

Section 19: Collector's statement to the court:-

- (1) In making the reference, the Collector shall state for the information of the court, in writing under his hand,-
 - (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
 - (b) the name of the persons whom he has reason to think interested in such land;
 - (c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11.
 - (cc) the amount paid or deposited under sub-section (3-A) of Section 17; and
 - (d) if the objection be to the amount of the compensation the grounds on which the amount of compensation was determined.
- (2) To the said statement shall be attached a schedule given the particulars of the notices served upon and of the statements in writing made or delivered by, the parties interested respectively.

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Section 20: Service of notice:-

The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served, on the following persons, namely:-

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded;

- (c) If the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Section 21: Restriction on scope and proceedings:-

The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Under the scheme of Act, reference Court is a Court and not person designate. In exercise of eminent domain, the State acquires the property as per the scheme of Act and the bargain of acquisition or transfer of title in property normally is not by consent of the owner. The L.A.O after conducting award enquiry passes Award under Section 11 of the Act and award is communicated under Section 12. The award is held as an offer by the State to the owner of the property. A person interested in property and who does not accept the award requires the Collector/LAO to refer his objection on measurement of land, amount of compensation and apportionment thereof to the Court for decision. Thus, the reference Court adjudicates the objections between the parties to acquisition in accordance with law.

The reference Court does not sit as a Court of appeal against award and need not confine itself to the material brought on record before the LAO. The reference Court deals with the *lis* between the parties as if the reference resembles an original proceeding, receives evidence on all matters in disputes and thereafter pronounces award on the objections referred to Court for adjudication.

This being so, the reference Court cannot and should not act like final arbiter and pronounce award in an arbitrary, capricious and illegal manner. The reference Court must evaluate the objections in a golden scale and ensure that the deprivation of proprietary right is adequately compensated and paid to owner. If that be the case, in a matter where acquisition of property is not in dispute, in a fact situation, like the present *lis*, can it be accepted that without determining whether

structures were in existence or covered by one notification or other. Straightaway the reference Court can frame a point on compensation and decide it accordingly. The answer neither takes time nor detailed reasoning to hold that no such discretion vests in reference Court. The reference Court has no power to determine and award whimsical amount as compensation. The determination of compensation must be based on legal and relevant evidence.

The reference Court while adjudicating a reference under Section 18 of the Act is under obligation to take note and decide each one of the stages covered by Section and the fact situation of case and pronounce the award. The reference Court examines the offer of Land Acquisition Officer, objections of claimants in reference under Section 18 of the Act, the documentary evidence brought on record by claimants etc. and decides the issues. These are very fundamental.

But the reference Court failed in discharging this duty. Thus examined the Award of reference Court under challenge, without hesitation, it can be concluded that the reference Court did not attempt to enquire into whether the subject structures were in existence in Survey Nos.127/A and 128/2 by the date of notification of claimants choice. The reference Court without any material presumed that the claimants have title as on the date of Section 4(1) notification in distinct plots for which compensation is claimed. The registered owners of the agricultural lands are not the claimants before the Court, but their alleged vendees of small extents of plot are the claimants. The reference Court cannot frame a point for consideration pre-judging every aspect in favour of the claimants. The basic aspects referred to above have to be put to issue between parties and tested from the material placed on record by the contesting parties. Admittedly, such procedure is not followed by the reference Court and the Award under appeal is certainly vitiated by illegalities. In our considered view, we hold that the point for consideration framed by the reference Court is

completely illegal and unavailable in the peculiar facts and circumstances of this case and consequently the findings on point for consideration in the Award under challenge are vitiated and are set aside as illegal.

The claimants rely upon Ex.B.21 i.e., second draft notification dated 08.06.1996 to show the applicable date or existence of structures. The claimants assume and proceed that the Land Acquisition Officer in the inspection of Reach No.6 dated 07.08.1980 and 22.08.1980 (Ex.B.17), noted existence of structures/houses in Survey Nos.127/A and 128/2 in Reach No.6 of Madhavaram Village and rely upon notification dated 20.02.1981 to claim compensation for structures. Admittedly, the said notification on which a claim for compensation is made is not exhibited. The claimants in trial of O.P rely upon Ex.B.21, Draft Notification dated 08.06.1996 for compensation. *Prima facie*, Ex.B.21 cannot be relied upon for any purpose, for Ex.B.21 is intended for issuing a notification under Section 4(1) of the Act and without the official act of gazetting the notification, Ex.B.21 cannot be considered for any purpose. Section 4(1) of the Act reads as follows:

“Section.4: Publication of preliminary notification and powers of officers thereupon:-

(1) Wherever 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 circulated in that locality of which at least one shall be in the regional language, and the Collector shall within 40 days from the date of publication of such notification cause publish notice of the substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon, it shall be lawful for any officer, either generally or specifically authorized by such

Government in this behalf and for his servants and workmen.

to enter upon and survey and take levels, of any land in such locality; to dig or borne 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 make 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 of 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."

The ingredients of Section 4 (1) are that the Government publishes a notification in the official gazette and two daily newspapers and Collector causes public notice of substance of such notification at convenient places in the locality where land is acquired. The public purpose so gazetted/notified and made known to public at convenient places in the locality can be treated as a notification made or issued under the Act. But in the case on hand, we are compelled to observe that even without considering the material brought on record by the petitioner in W.P.No.27925 of 2010 Ex.B.21 does not appear to have been gazetted/notified in gazette or in the locality much less and the substance of such draft notification at least published in the locality. It is axiomatic that in cases where the dispute is not about acquisition of property, but the dispute is about the quantum of compensation payable to the claimants, even in such cases, the Award at best is treated as an offer by the Land Acquisition Officer to

the claimants on the compensation payable to the claimants for acquisition of property for public purpose. The Award cannot be treated as a piece of evidence for determining the quantum of compensation payable to claimants. Likewise, even if 4(1) notification is issued, the significance of 4(1) notification is limited to the extent of determination of market rate for acquired property. Beyond that, 4(1) notification cannot be treated as evidence of existence of structures for which now the compensation is claimed by the claimants. We are not in agreement with the contention of learned senior counsel Mr .E.Manohar that Ex.B.21 evidences the existence of structures and no further point is needed. Accordingly, the said contention is rejected.

In LAOP No.1013 of 2001, eighty nine (89) individuals claimed compensation for structures allegedly in existence in Survey No.127/A and 128/2 of Madhavaram Village. The land in Survey No.127/A and 128/2 was registered in the names of Iragamreddi Sidda Reddy and Avvaru Subbarayudu. It is the case of these individuals that no compensation for the acquired land in Survey Nos.127/A and 128/2 was paid to the owners. The individuals are purchasers of small extents of land from the owners and are entitled for payment of compensation in these survey numbers for the land and the structures. The claimants did not place any material on record to evidence acquisition of title to small plots of land or existence of structures. The reference Court pre-supposes flow of title and existence of structures in answering the point framed for decision.

We are satisfied that the facts and circumstances presented in LAAS No.139 of 2009 are singular and, therefore, we are not following the judgment in A.S.No.1286 of 2002 dated 18.09.2014. Further, the facts and circumstances of that case appear to be different and for the structures identified and notified, compensation was considered and paid in LAAS No.136 of 2009. We are not persuaded by the fact situation of this case to rely upon a judgment of this Court in

A.S.No.1286 of 2012.

As already noticed, Exs.B.21 to B.27 are marked on behalf of the claimants. The orders passed in LAOP No.364 of 2000 (Ex.B.8) and LAOP No.2449 of 1998 (Ex.B.11) are not similar or comparable situations to Land Acquisition Officer Petition No.1013 of 2001 and consequently the awards in other O.Ps do not guide the reference Court but still much deliberation had gone into the award in LAOP No.1013 of 2001 on these aspects of the matter which should have been avoided by reference Court.

There are as many as 89 claimants in LAOP and one of the claimants was examined as RW.1. RW.1 did not file any document to show how he possesses right and interest to a small extent of land by way of house plot and no one was examined to prove conveyance of title in his favour or other claimants. If that be the infirmity in the case of RW.1, still bad is the case of other claimants who have not entered the witness box at all. The reference Court, based upon details in claim petition, has passed the Award impugned in LAAS. The reference Court treated effective date for determination of compensation as dated '22.01.1981'. Having regard to these circumstances either singularly or considered together, we are satisfied that the learned I-Additional District Judge, Kadapa, passed the Award dated 27.11.2008 without any material and granted exorbitant and exemplary compensation by merely stipulating the rate payable to various structures shown in the annexure to claim petition. These *prima facie* very glaring commissions/omissions are pointed out to review the award under appeal for a limited purpose, having regard to the view we propose to take in these matters and not beyond.

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LAASMP No.827 of 2015:

The appellant State through the instant petition prays to permit to raise the additional grounds against impugned Award dated

27.11.2008. The claimants no doubt are opposing the prayer on all fours. From the findings already recorded, *prima facie*, we are satisfied that to meet the ends of justice and prevent an illegal and laconic Award of reference Court from being executed, the prayer ought to be considered and the Land Acquisition Officer permitted to raise additional grounds. It is not disputed that the appellant enjoys exemption from payment of Court Fee under Section 67 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 and thereby it is not very material whether the value of appeal is shown as **Rs.1,48,04,280/-** or for the total value determined by the reference Court. The claimants while seeking reference to civil Court claimed Rs.43 lakhs towards compensation. The claim was enhanced to Rs.76,80,100/- (SSR 1981-82), Rs.2,97,81,100/- (SSR 1999-2000) and reference Court grants market value and solatium etc., amounting to Rs.7,07,76,108/-. It is matter of record that enquiry against the I-Additional District Judge was initiated vide Roc.No.77/2009 for his decision in the very same case and enquiry culminated in imposition of punishment of penalty of 25% cut in the pension of the Officer vide G.O.Ms.No.13 Law (LA&J SC.F) Department dated 13.02.2013. We are of the view that there is more collusion and complicity than what meets the eye. From the insufficient material available on record, the objection of claimants to additional grounds does not conform to their conduct in

claiming compensation, because as already noted the claim for compensation changes from time to time and still considered by the reference Court without regard to law. The collusion between the Irrigation department and Revenue department with claimants is discernable enough and we are satisfied that to prevent abuse or perpetuation of collusive efforts by the parties, the prayer to raise additional grounds is allowed and to the extent required, the additional grounds are considered while deciding the appeal.

LAASMP No.1011 OF 2015:

The claimants are the petitioners in this miscellaneous petition and pray for the following relief:

“.... Permit the petitioners to file this petition and permit us to raise the above legal and jurisdictional point ‘that the land acquisition proceedings initiated by respondent deemed to have been lapsed by virtue of Section 24 of the Act 30/ 2013, in the above appeal...”

The averments in support of the instant prayer are that Supplementary Award No.47/99-2000 dated 02.12.1999 was passed and on 27.11.2008 in LAOP No.1013 of 2001 compensation is fixed at 65% more than the SSR rates. Be that as it may, the premise on which the instant application is filed, is referable to non-payment of compensation to claimants within the time stipulated under Section 24 of the Act 30 of 2013. In our considered view, Section 24 of Act 30 of 2013 has no application to the facts and circumstances of this case. As already discussed and held, the Land Acquisition Officer passed Nil Award as no structure was in existence. Therefore, hardly any obligation arises to pay compensation to the claimants under Award dated 09.12.1999. The reference Court for the first time awarded compensation and the same is set aside through the instant judgment. Thereby the Award of the Land Acquisition Officer dated 02.12.1999 stays for the present. Further, on account of submission of land in Survey Nos.127/A and 128/2 of Reach No.6, possession cannot be inferred with petitioners. The decision of the Apex Court in **Pune Municipal Corporation v. Harakchand Misirimal Solanki** ^[7] has no application to the facts and circumstances of this case. The prayer is misconceived. The petition is dismissed.

WPMP Nos.10813 of 2011 and 43075 of 2015

Prayers:

“permit the Petitioner to file Additional Material Paper i.e. A.C.B. Report submitted by Director General, A.C.B. to the Principal Secretary to Government, Irrigation & C.A.D. Department, vide Proceedings C.No.9/RE-TCD/2004/3-16, Dated 28.03.2006...”

“permit the petitioner to file the additional material papers i.e., (1) copy of the Award No.18/1986 dated 18.9.1986 and (2) copy of the gazette notification dated 20.2.1981 issued under Section 4(1) of the Land Acquisition Act in W.P. No. 27925 of 2011...”

The writ petitioner has filed these two applications to place on record additional material papers (a) the report submitted by the Director General, ACB to the Principal Secretary to Government, Irrigation and Command Area Development on alleged corrupt practices committed by officials concerned with acquisition vide proceedings C.No.9/RE-TCD/2004/3-16, dated 28.03.2006 (b) copy of Award No.18 of 1986 dated 18.09.1986 and (c) copy of gazette notification dated 20.02.1981 under Section 4(1) of the Act.

We are satisfied from the material on record that the prayer needs to be accepted, for the petitioner is not a person interested in the litigation or a party to the proceedings referred to above. The petitioner with the available details in anticipation of a financial scam likely to occasion in determination and payment of compensation, has filed the writ petition. The petitioner may not have knowledge of these documents at the time of filing of the writ petition. The documents now sought to be placed on record as additional material papers are public documents and are in a way helpful to demonstrate the alleged collusion between the claimants and the departments. These documents are useful to appreciate the complicity in which the Award in LAOP No.1013 of 2001 was passed by the reference Court. For the reasoning already recorded, we have set aside the Award dated 27.11.2008 in LAOP No.1013 of 2001. Therefore, in the fitness of things and to protect public interest, to meet the ends of justice and prevent abuse of process of Court by interested parties, we deem it fit to allow these applications. The applications are ordered. The same is received as additional material papers in the writ petition.

For writing this judgment, we make it clear, we have perused

the additional material in the course of hearing for the limited purpose of examining alleged collusion or complicity in the conduct of these cases.

Point Nos. 2 and 3:

We have examined and recorded our findings on point No.1 against claimants. These points 2 and 3 are substantial in nature and instead of deciding these two points through this judgment and to afford opportunity to parties to address their case before the reference Court, as we are remanding LAOP No.1013 of 2001 to the reference Court, these points are directed to be framed for decision by the reference Court upon remand and decide on merits.

Point No.4: The prayer in PIL, as already noticed is one against the inaction of respondents in preventing the scam perceived by the petitioner in disbursement of compensation to non-existing structures. The Award of the reference Court if had become final, and thereafter, collusion etc., are brought to the notice of the Court through a public interest litigation, this Court would have considered exercising its discretion in accordance with law either to independently consider the prayer of the petitioner or treat the petition as a petition filed to recall the alleged collusive orders. But, in the case on hand, the Award in LAOP No.1013 of 2001 has not become final as LAAS No.136 of 2009 is filed and pending in this Court. By examining the material available on record in LAOP, we have already set aside the Award in LAOP No.1013 of 2001. Thus, the prayer of petitioner is substantially answered. The prayer of petitioner cannot be shut out on the mere ground that the credentials of the petitioner are doubtful and petitioner has criminal record. Even if the petitioner by reference to alleged credentials pointed out by respondents 5 and 6, is kept aside, still the Court is concerned with the public cause stated in P.I.L. Further, deliberation is not required on the objection of respondents 5 and 6, for the purpose of writ is examined to the limited extent for disposal of appeal/writ. The point is answered accordingly.

In the circumstances, we pass the following order:

- (i) The Award dated 27.11.2008 in LAOP No.1013 of 2001 is

set aside and the matter is remanded to the reference Court for disposal in accordance with law.

- (ii) The claimants as well as the Land Acquisition Officer/State are at liberty to place on record the material in support of their case.
- (iii) The writ petition is ordered and the copy of the common order is directed to be sent to respondents 1 to 4 for appropriate action against the erring officers in conducting LAOP No.1013 of 2001 and also to ensure a fair and objective participation in LAOP No.1013 of 2001 upon remand by this Court.
- (iv) The Registry is directed to file a copy of the common order in the LAAS and the WP in the disciplinary case initiated against the Presiding Officer in Roc.No.77 of 2009, Vigilance Cell, dated 20.09.2010 which resulted in imposition of penalty.
- (v) The reference Court on remand is directed to complete the enquiry and shall positively dispose of the LAOP No.1013 of 2001 within three months from the date of receipt of a copy of this order.
- (vi) The Registry is directed to return the record in LAOP No.1013 of 2001 forthwith to the reference Court.

LAAS is allowed and LAOP No.1013 of 2001 is remanded to reference Court for disposal, as stated above. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B.BHOSALE, ACJ

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S.V.BHATT,J
Date:16.12.2015
Stp

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- [\[1\]](#) 1989 LACC (3) SC1
 - [\[2\]](#) (1994) 4 SCC 180
 - [\[3\]](#) (1997) 11 SCC 218
 - [\[4\]](#) 2006 (4) ALD 81 (DB)
 - [\[5\]](#) (2003) 10 SCC 529
 - [\[6\]](#) (1992) 4 SCC 400
 - [\[7\]](#) (2014) 3 SCC 183