

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

**WRIT PETITION No.25096, 24372, 25105, 25124, 25099 and 27147 of
2011**

COMMON ORDER:

W.P.Nos.25096, 24372, 25105, 25124 and 25099 are filed by NCC Blue Water products, questioning the action of the respondents in resorting to provisions of Land Acquisition Act for acquiring their land admeasuring (i) Ac.7.76 gts., in Sy.No.273/6A, 273/6B, 273/6C/ 273/6D, 273/6E, 273/6F, 275/1A, 275/1B and 275/1C of Rajaiahpet Village, (ii) Ac.270.00 in Sy.Nos. 131, 132, 133, 134, 135/P, 136/1, 136/2, 137/P, 140/P, 141, 142/P, 143, 175, 176/P, 177 of Chandanada Village and 204/P, 273/P, 274, 275/P, 276, 278, 286 and 287 of Rajayyapeta Village (iii) Ac.75.61 gts., in Sy.No. 131, 136/1, 136/2, 140/1, 141 and 142/1 of Chandanada Village, (iv) admeasuring Ac.50.31 gts., in Sy.Nos. 134, and 137/2 of Chandanada Village and Ac.1.40 gts., in Sy.No.204/2 situated at Rajayyapeta Village and (v) Ac.15.69 cents situated in Sy.Nos.175, 176 and 177 of Chandanada Village, Nakkapalli Mandal, Visakhapatnam District, as illegal, improper and contrary to the provisions of the Land Acquisition Act, 1894 (for short "the Act").

The facts in issue are as under:

The petitioner company acquired land to an extent of 270 acres at Chandanada Village, Nakkapally Mandal, in the year 1993 for the purpose of setting up of an aquaculture unit. After obtaining necessary permission, the petitioner company is said to have commenced business in aquaculture. But in view of the down turn in the business of aquaculture, the petitioner company claims to have decided to use the said land for the purpose of setting up a gas based power project. Necessary applications were said to have been submitted for permissions and also for acquisition of additional 340 acres, adjoining the land of the petitioner. While things stood thus, the Government of Andhra Pradesh represented by it's Principal Secretary, Industries, issued G.O.Ms.No.373, dated 24.05.2008, declaring the Visakhapatnam-

Kakinada corridor admeasuring 603.58 square kilo meters comprising of 110 revenue villages in 10 mandals, as urban area under the Andhra Pradesh Urban Area Development Act, 1975 (for short "the 1975 Act"). A Special Development Authority was said to have been constituted under Section 3-A of the 1975 Act and the fifth respondent was directed to prepare a comprehensive master plan for the said area. It is averred that much prior to the preparation of master plan, the third respondent ie. A.P.I.I.C.Ltd., Hyderabad, has purported to take steps for setting up of an industrial area covering about 5000 acres. In pursuit of the same, the third respondent is said to have asked the first respondent for initiating the proceedings under Land Acquisition Act. After obtaining the consent from the first respondent, the third respondent (A.P.I.I.C. Ltd.) through the Special Grade Collector, Land Acquisition (respondent No.4) initiated proceedings for acquisition of land in various survey numbers of Chandanada, Rajaiahpetta and nearby villages of Nakkapalli Mandal in Visakhapatnam District. The said acquisition was in pursuance to a policy announced by Government of India for setting up Petroleum, Chemical and Petro-chemical Investment Region (hereinafter referred to as PCPIR) in May, 2007. The record discloses that the State of Andhra Pradesh was the first State to come forward which was accepted by the Union Government in March, 2009. The averments in the affidavit further discloses that a notification under Section 4(1) of the Act, for acquiring land belonging to the petitioner, was notified on 24.07.2010 vide proceedings Rc.No.2277/2010/G1 (in all the writ petitions) and vide proceedings Reco.No.3544/2010 G-1, Reco.No.3694/2010-G1, Reco.No. 2200/2010-G1 dated 17.07.2010, 27.07.2010 and 26.08.2010 respectively in W.P.No.24372 of 2011. The notifications disclose that any objections to the proposed acquisition should be filed in the office of the fourth respondent within the time stipulated under Section 5 of the Act. The petitioner herein approached the respondents herein and submitted representations on various dates against initiation of acquisition of proceedings. Various objections were raised opposing the said process. The ryots and villagers of the neighbouring villages also submitted their

objections opposing the proposed acquisition. Treating the said representations as objections under Section 5-A of the Act, the authorities considered and rejected the same. Thereafter, a draft declaration under Section 6 of the Act came to be published in the Gazette on 24.07.2011 and thereafter on 30.07.2011, the office of the District Collector, Visakhapatnam, issued proceedings No.2278/2010-G-I, dated 30.07.2011, authorizing the Special Deputy Collector, Land Acquisition to proceed further with the land acquisition proceedings in respect of lands situated in the various villages. Challenging the said notifications, the above mentioned five writ petitions i.e. 25096, 24372, 25105, 25124, 25099 of 2011 came to be filed.

On 07.09.2011 this Court while issuing Rule-nisi ordered *status-quo* as on that day to be maintained for a period of four (04) weeks. However, on 12.10.2011, the interim order was directed to be continued until further orders. Though a vacate stay application was filed, the same was rejected by this Court on 14.11.2011.

The Special Deputy Collector (Land Acquisition, APIIC), Visakhapatnam, in his counter disputes the averments made in the affidavit filed in support of the writ petitions. It is said that notifications under Section 4 (1) of the Act was published by the Collector seeking acquisition of lands in Rajaiahpetta village to an extent of Ac.707.99 in the month of August and November, 2010 and within the time stipulated enquiry under Section 5-A of the Act was also considered. After issuing notices in Form-3, the said enquiry was conducted. It is stated that in respect of Rajaiahpetta village, the petitioner company and 168 ryots filed their objections. The objections received were sent to the requisition department for further remarks. Since the objections filed were almost identical, the Zonal Manager, sent remarks on the said objections, which were submitted to the Collector, who over ruled the same vide proceedings in Rc.No.2278/2010/G-I, dated 23.12.2010. As per the orders of the Collector, proposals under Section 6 of the Act were submitted to the Collector for approval. After approval of the same, a draft declaration was published in the gazette vide Gazette No.28/11 dated 25.07.2011 and

also in two local news papers.

In the counter filed by the third respondent ie., APIIC it is said that the Government of India has communicated a policy for PCPIR in May, 2007, duly calling for applications from different State Governments. The objective of PCPIR is to create world class infrastructure in the State of Andhra Pradesh within Visakhapatnam and Kakinada earmarked for Chemical and Petrochemical industries. It is averred that schemes worth Rs.19000 Crores were identified for infrastructure development, out of which, assistance to an extent of Rs.6334 crores would be provided by the Government of India. A memorandum of agreement was also signed between the Government of Andhra Pradesh and Department of Petrochemicals to that effect on 01.10.2009.

Reply affidavit came to be filed by the petitioner denying the averments made in the counter. However a new plea is raised in the reply affidavit stating that Form-3 notices were neither received by the registered office of the petitioner company nor by its authorized representative and as such, participation in the enquiry would not arise. It is further averred in the reply affidavit that the enquiry was conducted even prior to receiving the objections.

The first ground urged by the learned counsel for the petitioner is that the substantial right granted under Section 5-A of the Land Acquisition Act has been vitiated on account of Notification issued under Section 4 of the Act being vague. According to him, there is no clarity in the notification as to the exact purpose for which the government intends to put the land to use except stating that the same is acquired for an industrial park, which is for a public purpose. It is submitted that notification is silent as to the nature of industries which the government proposes to establish in the said land. According to him, the said argument assumes significance since the petitioner was using the land, which is under acquisition for industrial use, for aquaculture, and they have also started taking active steps to establish a gas based power project, for which proposals are pending with the Government. He pleads

that an effective reply could be given only if the notification issued under Section 4(1) of the Act contains all the details.

In support of the same, he places reliance on the following judgments.

1. ***Munshi Singh and others v. Union of India***^[1], was a case where the Apex Court was dealing with a notification issued by the Uttar Pradesh Government declaring Ghaziabad a regulated area under Section 3 of the Uttar Pradesh (Regulation of Building Operations) Act, 1958. In February, 1959 the controlling authority under Section 4 of the Regulation Act was constituted and in the month of July, 1960 a notification under Section 4 of the Land Acquisition Act was issued declaring its intention to acquire land measuring about 34,000 acres in 50 villages of Ghaziabad for planned development of the area. On 23.12.1961 a notification was issued under Section 6 read with 17 of the Land Acquisition Act in respect of land admeasuring 19.75 acres. Thereafter, piecemeal notifications came to be issued for the entire extent of land. On 04.07.1961, the aggrieved persons made an application to the Special Land Acquisition Officer, Ghaziabad, for a copy of the scheme of the planned development for which notification under Section 4 of the L.A.Act had been issued so as to enable them to make an affective objections under Section 5-A of the Act. The same was returned on the ground that “the scheme of planed development is not necessary for a notification under Section 4 of the Act. As such, no scheme of the planned development was made available in this office”. Thereafter, master plan was sanctioned which was challenged before the High Court. On 10.12.1965 the High Court allowed the writ petition and quashed the notifications under Section 6 of the L.A.Act invalidating the piecemeal notifications. Thereafter, the President of India promulgated the Land Acquisition (Amendment and Validation) Ordinance No.1 of 1967. The validity of the said Ordinance which was questioned before the Apex Court in ***Uday Ram Sharma v. Union of India***^[2] was upheld. On 26.03.1998 the High Court dismissed the writ petitions in view of the judgment of the Apex Court in ***Uday Ram***

Sharma's case (2 supra. One another point which was agitated before the High Court was that notification under Section 4 of the L.A.Act was too vague and afforded no adequate basis for lodging of objection under Section 5-A of the L.A.Act. Dealing with the said aspect, the Apex Court observed as under:

“Up to that time the view was that the wishes of the owners of the land were wholly irrelevant but after the insertion of Section 5-A the position has completely changed and it cannot be said that the owner's wishes are not relevant; and that he does not need an opportunity to file his objections. To take such a view would render Section 5-A of L.A.Act otiose. If it has any purpose and if it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can only if the notification under Section 4 (1) of the L.A.Act while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under Section 5-A of the L.A.Act which he has a right to do under that provision. We would accordingly hold that owing to the vagueness and indefiniteness of the public purpose stated in the notifications under Section 4 (1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question the appellants were wholly unable to object effectively and exercise their right under Section 5-A of the L.A.Act.”

2. In *Gajjela Narasimha Reddy and others v. Collector, Ranga*

Reddy District and another^[3] this Court was dealing with a notification issued under Section 4 (1) of the Act for acquisition of lands for development of township and future projects. Dealing with the expression “future projects”, the Court held that “it is absolutely vague, which does not give any cue as to what type of projects whether residential, commercial or industrial that are proposed to be taken up. In the absence of any indication, it was held that it is not possible for the owners of the lands to file meaningful objections. Even in the counter affidavits the respondents failed to elaborate the purpose mentioned in the notifications, except repeating the words mentioned in the impugned notification.” Under those circumstances, this Court held that the said notification is vague.

In ***D.Ramadevi V. District Collector, West Godavari District***^[4] a learned Single Judge of this Court was dealing with a case where the petitioner No.1 therein succeeded to the property under a gift deed executed by the original owner of the property. The said person claims to have purchased the said property in the year 1972 and gave away most of the land to the Andhra Pradesh Housing Board in the year 1994 while gifting Ac.0.24 cents to the petitioner. In the said case, the question was whether construction of houses by the Board and selling them to the general public can be termed as public purpose. Dealing with the said aspect, the learned Single Judge after referring to the judgments of the Apex Court in ***State of Madhya Pradesh v. Vishnu Prasad***^[5] and ***Khub Chand v. State of Rajasthan***^[6] held that acquiring land by the Board for construction of houses is too vague to be considered as a public purpose.

In ***C.Padmavathi v. District Collector, Chittoor***^[7] this Court was dealing with an issue as to whether acquiring land for providing house sites to the beneficiaries and also for future requirements, is too vague and whether the impugned notification is liable to be declared as invalid. In view of the judgment of this Court in ***Gajjela Narasimha Reddy case (3 supra)*** and ***D.Ramadevi case (4 supra)*** the learned Single Judge allowed the writ petition.

It is to be noted that the judgments of Gajjela Narasimha Reddy (3 supra) and D.Ramadevi (4 supra) may not apply to the case on hand since the notifications issued under Section 4-A of the L.A.Act does not say that the land is being acquired for future purpose. As observed earlier, the dictum in Gajjela Narasimha Reddy (3 supra) was allowed on the ground that Section 4(1) notification is vague since it refers to acquisition of land for a future project purpose. Similarly Ramadevi case (4 supra) also will not apply to the case on hand as the notification issued under Section 4 (1) of L.A.Act refers to acquisition of land by the Housing Board for construction of houses and the notification was silent as to the purpose for which the said houses were constructed.

In ***Suraram Pratap Reddy and others v. District Collector, Rangareddy***^[8] the Apex Court was dealing with a situation where the Government of Andhra Pradesh by reason of industrial policy took a decision to construct Information Technology Park and for the said purpose, the Government sought acquisition of land and initiated necessary proceedings. A.P.I.I.C. which is an instrumentality of the State was to pay the entire amount of compensation. In the said case, the Apex Court, while dealing with the aspect of eminent domain and the existence of public purpose for acquiring the lands for development of infrastructure, held as under:

“In case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose. The joint venture mechanism for implementing the policy, executing the project and achieving lawful public purpose for realizing the goal of larger public good would neither destroy the object nor vitiate the exercise of power of public purpose for development of infrastructure. The concept of joint venture to tap resources of private sector for infrastructural development for fulfillment of public purpose has been recognized in foreign countries as also in India in several decisions of the Supreme Court. And in such integrated infrastructure development projects acquisition of land and giving it to the company are legal and lawful and does not suffer from mala fides.

Development of infrastructure is legal and a legitimate “public purpose” for exercising power of *eminent domain*. Simply because a company has been chosen for fulfillment of the public purpose of infrastructure development project, does not mean that the larger public interest has been sacrificed, ignored or disregarded. It will also not make exercise of power bad, mala fide or for collateral purpose, vitiating the proceedings. It is clearly established in this case that the infrastructure development project conceived by the State and executed under the auspices of its instrumentality (APIIC) is one covered by the Act. Whereas the contention of the appellants is that the so called acquisition is for a private company and hence it would be governed by Part VII of the Act, the stand of the respondents is that it was in pursuance of the industrial policy of the State that land was to be acquired by APIIC and the entire amount of compensation was to be paid by APIIC and as such the acquisition covered by Part II of the Act. APIIC is an instrumentality of the State and works as “nodal agency” developing the project which

would facilitate socio-economic progress of the State by generating revenues, weeding out unemployment and bringing in new avenues and opportunities for public at large.

In deciding whether acquisition is for “public purpose” or not, *prima facie*, the Government is the best judge. Normally, in such matters, a writ court will not interfere by substituting its judgment for the judgment of the Government. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is dehors the Act, irrational or otherwise unreasonable or the so called purpose is “no public purpose” at all and fraud on statute is apparent, a writ court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising power under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes “public purpose”. The State of Andhra Pradesh in the background of “Word Tourism Organisation Report” and “Vision 2020 Document” took a policy decision for the development of the city of Hyderabad. For the said purpose, it decided to establish an integrated project which would make Hyderabad a major business-cum- leisure tourism infrastructure centre for the State. The project is both structurally as well as financially integrated. It is to be implemented through Andhra Pradesh Infrastructure and Investment Corporation (APIIC) which has taken all steps to make Hyderabad a world class business destination. Taking the facts in their entirety, the action of the State in initiating acquisition proceedings for establishing and developing infrastructure project cannot be held contrary to law or objectionable. The High Court was, therefore, right in dismissing the writ petition as also the writ appeals and we find no infirmity therein. All the appeals, therefore, are liable to be dismissed and are accordingly dismissed.”

Further a Division Bench of this Court in ***Konduru Padmavathi vs. District Collector, Nellore***^[9] dealt with the concept of public purpose and also as to whether the word industrial purpose mentioned in 4 (1) notification was really for industrial purpose or not. It was also a case where acquisition proceedings took place at the instance of APIIC. It was held that declaration by the State Government on the existence of 'public purpose' for land acquisition shall be conclusive evidence and that land is needed for a 'public purpose'. It would be relevant to extract para No.7 of the judgment, which reads as under:

“It appears to us that the concept of 'public purpose' connotes public welfare. With onward march of the concept of socio economic welfare of the people, notions as to the scope of general interest of the community are fast changing and expanding. The emphasis is

unmistakably shifted from the individual to the community. Therefore, we find that the concept of 'public interest' and 'public purpose' is not static and varies with time and needs of the society. 'Public purpose' does not always mean for benefit of the public at large. If public derives an advantage out of it, it would be treated as for public utility. The development of housing, establishment of industrial estates comes within the purview of 'public purpose'. Whether a public purpose existed or not was a justiciable matter. Prima facie, it is true that the Government is the best judge as to whether public purpose is served by requisitioning the land in question. But, at the same time, Courts have expressed that Government is not the sole judge and Courts have jurisdiction and authority to determine the matter whenever a question is raised whether a requisition order is for a 'public purpose' or not. The Courts, however, adopted a very liberal attitude on the question of public purpose and was rare indeed for a Court to hold that an acquisition of land was not for a public purpose. [Section 6\(3\)](#) of the LA Act provides that the declaration by the State Government on the existence of 'public purpose' for land acquisition shall be conclusive evidence and that land is needed for a 'public purpose'. This provision completely barred judicial review of acquisition proceedings where the land is acquired for a 'public purpose' under the Act, however, excepting where challenge to the notification was on the ground of colourable exercise of power. The finding of the Government under [Section 6\(3\)](#) of the Act is conclusive not only with regard to 'public purpose' but also with regard to its need and government's satisfaction.”

In ***Prathiba Nema and others vs. State of M.P. and others*** ^[10]

the Apex Court dealt with an issue as to whether the acquisition of land for establishment of diamond park was for a public purpose and also as to whether such notification should be struck down on the ground of vagueness of public purpose. After considering the judgments of the

Court ie. ***Madhya Pradesh Housing Board vs. Mohd. Shafi*** ^[11], ***Munshi Singh vs. Union of India (1 supra)*** and ***Aflatoon v. Lt. Governor of***

Delhi ^[12] the Apex Court held that the pleadings before the High Court does not point out as to how the alleged ambiguity or vagueness had resulted in prejudice, in the sense that they could not effectively object to the acquisition. In the said case also the objectors submitted detailed objections before the L.A.O. covering each and every aspect which indicate that they were aware about the purpose of acquisition. It has been held that raising the bogey of vagueness in public purpose is evidently a result of an after-thought. It has been further said that by

virtue of what is stated in the notices issued by the Land Acquisition Officer under [Section 5A](#) of the Act, no one could possibly have any doubt about the exact purpose of acquisition. The Apex Court categorically held that when no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the notification under [Section 4\(1\)](#) on the basis of a nebulous plea, in exercise of writ jurisdiction under [Article 226](#).

The view taken in Pratibha Nema's case (10 supra) was followed by another learned Single Judge of this Court in ***Pasala Padma Raghava Rao v. Collector, East Godavari District***^[13] and also by a Division Bench of this Court in ***Smt. Bijanbee Bee and others vs. District Collector, Ranga Reddy***^[14]. Infact in ***Jage Ram and others vs. State of Haryana***^[15] the Apex Court held that the question as to whether starting of an industry is in public interest or not is essentially a question that has to be decided by the Government, as it is a socioeconomic question. It was further held that the Court cannot go into that question so long as it is not established that the acquisition was sought to be made for some collateral purpose. It has been categorically held that the declaration of the Government that it was made for a public purpose cannot be challenged. After referring to Section 6 (3) of the L.A.Act, the Court held that unless it is shown that there was colorable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was for a public purpose or not.

In view of the judgments referred to above and having regard to the wordings used in the notification issued under Section 4 (1) of the L.A.Act, the argument of the learned counsel for the petitioner with regard to vagueness of Section 4 (1) Notification, thereby denying the petitioner to make an affective objections, cannot be accepted.

The next ground urged by the counsel for the petitioners is that land could not have been subjected to acquisition since the petitioner is using

the land which is sought to be acquired for aquaculture and there is also a proposal for setting up a gas based power project.

A reading of 4 (1) notification indicate the purpose for which the land was sought to be acquired i.e. for establishment of industrial park as per the policy of Central Government, which is a public purpose as defined in Section 3 (f) of the Act. Land Acquisition Act, 1894 and the objections to the said notifications were filed giving reasons as to why the said land should not be acquired. Since 4(1) Notification specifies that the acquisition of land is for a public purpose and the counter filed by the third respondent explains the purpose for which the said land is being acquired, the argument of the learned counsel for the petitioner that Section 4 (1) notification is vague, thereby denying to make an effective representation cannot be accepted. Further, the writ petitioner failed to demonstrate as to how prejudice is caused to them on account of land being acquired for an industrial park (PCPIR). As observed earlier, the objectors gave a detailed explanation before the Land Acquisition Officer covering all aspects of their objections, which demonstrate that they were aware about the purpose for which land was acquired. Hence, it can be said that no prejudice is caused nor could the same be inferred. Even the reply affidavit filed to the counter of the L.A.O. is silent on the said aspect.

As seen from the record, the petitioner in his objections admitted that his business ran into problems, but the details of turnover and employment furnished relate to Nagarjuna Construction Company Limited and not the petitioner company. Further the objections filed by the Nagarjuna Construction Company Limited show that the said company proposed to set up a gas based power project and a letter dated 10.08.2010 was addressed to APIIC in that regard. It is to be noted here that notification under Section 4 (1) of the Act was issued on 12.07.2010 and the proposal to set up a gas based power project was made on 10.08.2010 ie. after 4 (1) notification, definitely as an after thought. However, the issue is whether the land which is required for a public purpose can be exempted from acquisition merely because it was to be put to a particular use or was intended to be used for some other case.

Identical issue came up for consideration before the Apex Court in ***Sooraram case (8 supra) and Prathiba Nema's case (10 supra)***, wherein it has been held that it is for the Government to assess and determine, the nature and purpose of the acquisition and also as to whether the same would amount to a public purpose.

In ***Smt. Somavanti and others vs. the State of Punjab and others***^[16], the petitioner purchased land for establishment of paper mill which was sought to be acquired by the State for the purpose of setting up of Refrigeration Manufacturing Industry. Dealing with the said issue, the Apex Court held that it is for the Government to decide as to which particular industry was beneficial to the public and serve public purpose. Therefore, the question of discrimination would not arise from the fact that the Government declared establishment of a particular industry was for a public purpose.

Similar issue came up for consideration before the Apex Court in ***R.L.Arora vs. State of Uttar Pradesh***^[17]. It was a case where the petitioner, who was intending to use the land for establishment of a factory, could not do so since the rules did not permit him to build a factory adjacent to a military installations. While dealing the said issue, the Apex Court held as under:

“The intention of the previous owner whatever it may be does not in our opinion enter into the question at all, so far as the validity of the acquisition is concerned provided the acquisition is for a public purpose. Whether the land should be acquired or not is a matter which may be urged under Section 5-A of the Act, which gives the owner of the land the right to object to the acquisition, and it is for Government to decide whether the objection should be allowed or rejected. Once the Government decides that the objection should be rejected and that the acquisition is needed for a public purpose the validity of the notification under [Section 6](#) and the subsequent action thereafter cannot be challenged on the ground that the previous owner himself intended to use the land for some public purpose.”

In view of the judgments of the Apex Court referred to above, the argument of the petitioner that he was denied usage of land held by him

cannot be accepted.

The third ground raised by the learned counsel for the petitioner is that the District Collector is not empowered to act under Section 5-A of the L.A.Act and that he should have placed 5-A enquiry proceedings before the appropriate Government. It is further contended that the said authority has no jurisdiction to overrule the objections raised by the land owners/interested persons. In order to answer the above query it would be necessary to refer to Section 3-A of the State Amendment Act, which reads as under:

“Section 3-A : Delegation of functions: The State Government may, by notification in the Andhra Pradesh Gazette, direct that any power conferred or any duty imposed on them by this Act, shall in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged by the District Collector.”

A reading of the said provision clearly shows that the State Government has got the authority to delegate such power conferred on it or any duty that is imposed to be exercised or discharged by the District Collect. G.O.Ms.No.235, dated 10.03.1987 issued by the Government of Andhra Pradesh confers such a power on the District Collector. Therefore, the objection with regard to the exercise of power by the District Collector for considering the objections raised under Section 5-A of the L.A.Act falls to ground. Hence, there is no need to place the said proceedings before the State Government having regard to the delegation made by virtue of the said G.O.

The fourth ground raised by the learned counsel for the petitioner is that the District Collector should have independently examined the objections without calling for the comments from the requisitory agency, which act vitiates 5-A proceedings. The same is no more *res integra* in view of the judgment of this Court in **Syed Hussain and others vs. The Joint Secretary, PWD (R&B)**^[18]. In the said case, a Division Bench of this Court while considering Rule 3 (b) of the Rules framed under the Land Acquisition Act, took a view that if the objections are received from a

person interested in the land are within the time prescribed in sub-section (1) of Section 5-A of the Act, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as the Department or Company requiring the land, where such Department is not the Revenue department. In the said case, the requiring department was the third respondent and the purpose for acquisition was to establish a telephone exchange. It was held that the copies of the objections shall be forwarded to the requiring department, who may, if necessary file objections on the date fixed by the Collector. Since the said mandatory requirement of sending the objections to the requiring department was not complied with, the Division Bench of this Court quashed the entire proceedings. Therefore, the argument of the learned counsel for the petitioner that the District Collector should not have sent the objections to the requisitory department calling for their remarks cannot be accepted.

The fifth ground raised by the learned counsel for the petitioner is that the District Collector has not applied his mind to the objections submitted during the course of enquiry and that he was influenced by the decision of the officials of APIIC and Spl. Deputy Collector, L.A. in overruling the objections. It is the argument of the learned counsel for the petitioner that non application of mind is reflected in the order, having regard to the manner in which the objections made by the petitioner were recorded and also the manner in which the said objections were overruled.

The judgment of the Apex Court in ***Surinder Singh Brar and others v. Union of India and others***^[19], relied upon by the learned counsel for the petitioner to show that there was non-application of mind by the District Collector, will not apply to the case on hand. It was a case where the District Collector has not at all applied his mind to the objections raised by the land owners and merely created a façade of doing so. In the said case the counsel for the State could not produce any document to substantiate the statement contained in the report of the L.A. that he had conducted spot inspection. In view of the above, an inference was drawn that the Land Acquisition Officer had made a misleading and

false statement about seeing the revenue records and conducting a spot inspection.

But as observed earlier it is mandatory on the part of the District Collector to invite objections from the requiring authority by forwarding a copy of the objections received from the land owners. The material placed before the Court would show that the entire record namely the objections of land owners, remarks of the APIIC were placed before the Collector, who took a decision based on the material placed before him. It is not a case where there is no speaking order to the objections raised. A perusal of the material would show that the objections were overruled by giving reasons holding that exemption of land from acquisition will affect the compactness of total block of land under acquisition. Hence, the discretion exercised by the Collector, while overruling the objections cannot be found fault with on the ground that there was non-application of mind to the issues. It cannot also be said that he has merely created an impression of doing so.

The sixth ground raised by the learned counsel for the petitioner is that no opportunity of personal hearing, as required under Section 5-A of the Act, was provided to the petitioner. A reading of Section 5-A of the Act would show that if a person interested in any land which is subject matter of notification under Section 4 (1) of the Act, object to the acquisition of land, such objector should be given an opportunity of being heard in person or by any person authorized by him or by pleader. It further mandates the Collector to make a report in respect of the land covered by the notification under Section 4 (1) of the Act or make a different report in respect of different parcel of such land to the appropriate Government, after hearing all such objections and making further enquiry, if necessary.

From the above, it is clear that Section 5-A of the Act mandates giving personal hearing to the objectors or any representative of the objector. The question in the instant case is whether such an opportunity was given to the petitioner or not. The said plea was never raised in the

writ petition and as such the counter filed by the respondents is also silent on the said aspect. But in the reply affidavit, the plea of not providing a personal hearing was raised stating that no form-III notices was served either at the registered office of the company or on any representative of the petitioner company. It was further submitted that only after objections are received under Section 5-A of the Act read with Rule 3 (b) of the Rules framed under the Act, Form-3 notices are issued inviting the objector for personal hearing. Hence, it is strenuously contended by the learned counsel for the petitioner that even if a notice is alleged to have been given, the procedure followed in respect of personal hearing under Section 5-A of the Act is not in accordance with the statute and the same needs to be set aside.

As stated earlier, this issue was never raised in the writ petition and only in the reply affidavit the same is sought to be raised. Hence, the counter affidavit filed by the respondents does not answer the said query. However, the counsel appearing for the APIIC placed on record the documents to show that form-III notices were served on the petitioner fixing the date of hearing so as to enable the party to have an opportunity to personally appear and raise objections.

Section 5-A (1) of the Act indicates that person interested in any land notified for acquisition under section 4 (1) of the Act can object to such acquisition within 30 days from the causing of public notice of such notification. There cannot be any dispute to the said proposition. Section 5-A (2) of the Act does not postulate any time stipulation as to when an opportunity should be given to the objectors of being heard in person or through an advocate or through a person duly authorized by him. A conjoint reading of Section 5-A (1) and (2) postulates that 30 days time should be allowed in this regard from the date of causing a public notice of notification under Section 4 (1) of the Act.

In order to answer the query it would be useful to refer to the letter dated 04.10.2010 issued by the petitioner, wherein, the subject and reference column, reads as under:

“Sub: Submission of objections regarding proposed acquisition of land belongs to the company.

Ref: Notices issued by the Special Grade Deputy Collector (L.A.) Visakhapatnam.

Sl. No.	Notification No.	Date	Sy.No.	Extent of land (Ac.)
1.	180/2010/A	30.08.2010	273-6	2.03
2.	173/2010/R1-III	15.09.2010	131, 136-1, 136-2, 141, 142-2, 140-1	75.61
3.	172/2010/Rg./III	07.08.2010	132 & 133	46.60 & 22.50
4.	174/2010/Rg/III	09.08.2010	176 & 177	10.83 & 4.04
5.	208/2010/A	30.08.2010	204.2	1.40
6.	198/2010/R.I.IV	30.08.2010	134 & 137	35.25 & 15.06

The objection that was raised by the learned counsel for the petitioner is that Form-3 notice intimating the enquiry under Section 5-A of the Act, was not served on them. But the record and the letter dated 04.10.2010 amply establishes such notices were served on the representative of the petitioner company. A perusal of the back side of the said notice would show that it contain the signature of the representative of the petitioner company acknowledging the receipt of the said notice. Apart from that, the letter dated 04.09.2010 refer to submission of objections to the notice issued under section 5-A of the Act. Further the letter dated 04.10.2010 (referred to earlier) would show that the petitioner herein also submitted objections to the issuance of notices by the Special Grade Deputy Collector (Land Acquisition), Visakhapatnam. It is to be noted that even in the reply affidavit, which has been filed after perusing the record, is as vague as anything. It is bereft of even basic facts though it was filed after perusing the record. On the other hand, material placed before the Court would show that Section 5-A notice in Form-3 was issued and served not only on the petitioner but also on the ryots, pursuant to which the representatives of the petitioner company and the ryots appeared before the authority and submitted their objections on 26.08.2010. Therefore, the allegation that no

notices were served enabling them to participate in the enquiry and that they were not provided with any opportunity, cannot be accepted.

The second part of the argument that Form-3 notice can be given only after objections are received and not simultaneously came up for consideration before a Division Bench of this Court in ***Kunapareddy Prasad and others v. District Collector, West Godavari, Eludu and others***^[20]. In the said case, notification under Section 4 (1) of the Act was published in West Godavari District Gazette on 25.02.2007 and thereafter the same was published in Indian Express and Gopi Krishna Daily newspapers on 23.05.2007 and 22.05.2007 respectively. Public notice of the substance of the notification was given in the locality on 26.05.2007. Section 5-A notice in form-3 came to be issued on 26.05.2007 calling upon the land holders to submit their objections within the time stipulated and also informing them about the enquiry on 11.06.2007. Dealing with the said situation, the Bench held as under:

“From the above, it is clear that even before expiry of one month from the date of publication in the gazette or even before giving public notice in the locality, the land holders were asked to submit their explanations and also attend the enquiry. The objection raised with regard to the procedure followed was found to be in accordance with law and accordingly upheld the order passed by the learned single judge.”

Even in the instance case the material on record would show that notifications under Section 4 (1) of the Act came to be issued on 12.07.2010, 17.07.2010, 24.07.2010, 27.07.2010 and 13.08.2010. Section 5-A notices, in Form-3 were issued on 09.08.2010 calling upon the objectors to lodge their objections within the time stipulated and also informing them about holding of an enquiry on 26.08.2010. Thereafter, the District Collector after hearing all the necessary parties vide his proceedings Rc.No.2278/2010/G-1, dated 23.12.2010 over ruled the objections raised by ryots during 5(A) enquiry in respect of acquisition of lands measuring Ac.623.11 cents in 9 blocks of Chandanada Village, Nakkapalli Mandal, Visakhapatnam District for establishment of industrial park and requested the Special Deputy Collector (LA) APIIC, Visakhapatnam to proceed further with the land acquisition proceedings

as per the Land Acquisition Act. Hence, the procedure that has been followed cannot be found fault with.

The next ground urged by the learned counsel for the petitioner is that the Land Acquisition proceedings could not have been initiated without an amendment/modification to the statutory master plan/Zonal Plan. It is to be noted that the said ground was also not raised in the writ petition but only during the course of argument the same was advanced.

In ***Bhagat Singh v. State of U.P. and others***^[21] the Apex Court held as under:

“As pointed out there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permission by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time of acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the benefits.”

Similar such view was expressed by the Apex Court in Aflatoon case (12 supra). In the said case, a constitution Bench of the Apex Court held that actual development is permissible in an area other than a development area with the approval or sanction of the local authority and the same does not preclude the Central Government from acquiring the land for planned development under the Act. It has been held that Section 12 of the Act has nothing to do with acquisition of property and that acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12 (3) of the Act. It has been held that the Central Government could acquire any property under the Act and develop it after obtaining an approval of the

local authority.

In view of the two judgments referred to above, it can be said that change of master plan/zonal plan is not required before initiating the proceedings under the Land Acquisition Act and necessary changes can be made in accordance with law after acquisition of the land.

The last ground raised by the learned counsel for the petitioner was that in view of irregular exercise of power under Section 4 (1) and 5-A of the Act would result in declaration under Section 6 of the Act as illegal and void. In view of the above findings in holding that there is no irregularity in 4 (1) notification and the procedure that is followed while holding enquiry under Section 5-A, it has to be held that there is no merit in the said plea.

W.P.No.27147 of 2011:

W.P.No.27147 of 2011 is filed by Nakkapalli Industrial Park Nirvasitula Sankshema Sangham, represented by its president L.Chander Rao, assailing the notifications issued under Section 4 (1) and 5-A of the Act for acquisition of land belonging to its members situated in Chandanada and Rajayyapeta village.

It would be appropriate to refer to the contents of the affidavit which are as under:

The land losers/dispossessors of various revenue villagers formed themselves into an association and filed the present writ petition challenging the notifications issued under Section 4 (1) of the Act and the declaration under Section 6 on the ground that the same was done without conducting proper enquiry under Section 5-A of the Act. The averments in the affidavit filed in support of the writ petition show that pursuant to a scheme, the Andhra Pradesh Government intend to establish a pharma city and Special Economic Zone (SEZ), BRANDIX SEZ, Hetero-Drugs Pharma SEZ, Gangavaram port and ISPRL Crude oil. Three refineries with a total capacity of 45 MMTPA were sought to be established and for the said purpose an extent of 48,800 acres was sought to be acquired.

The lands proposed to be acquired from the villagers were identified for establishing a Petro, Pharma Industries as well as BRANDIX SEZ. It is further stated in the affidavit that Hetero-drugs Pharma SEZ has already commenced its operations and it proposes to expand its operations further. Insofar as D.L.Puram is concerned, the proposed acquisition is in five blocks. Out of the same, the land acquisition in respect of block Nos.2 to 5 is subject matter of the present writ petition. Various extents of lands are sought to be acquired in all the villages and 4 (1) notification was issued in the month of December, 2010 and declaration under Section 6 of the Act was issued in the month of August, 2011. Objections to the said notifications came to be submitted under Section 5-A of the Act. Insofar as Chandanada village is concerned, the respondents sought to acquire lands covered under 9 blocks. The land sought to be acquired varies from block to block. Section 4 (1) notification and Section 6 declaration were issued in inrespect of all blocks except block No.6. Similarly, lands in Vempadu and Amalapuram Panchayats, consisting of three blocks of different extents, were sought to be acquired and Section 4 (1) notifications were issued in the month of November and December, 2010. The villagers submitted their objections under Section 5-A of the Act and declaration under Section 6 of the Act came to be issued in the month of August, 2011. Insofar as acquisition of land in Rajayyapet village, which is in six blocks, Section 4 (1) notification was issued in the month of July, 2010 and declaration under Section 6 of the Act was issued in the month of July, 2011 in respect of all blocks. It is stated that huge extents of fertile lands completely covered with green belt, are sought to be acquired thereby affecting the day today living of every individual in the said region.

The averments in the affidavit also state that section 4 (1) notification is vague as it does not reflect the purpose and need for acquisition. It is further averred that as per the provisions of the Andhra Pradesh Agriculture Land (Conversion of Non-Agriculture Purpose) act, 2006 particularly Section 3 of the said Act, no agriculture land shall be put to non-agriculture purpose without prior permission from the competent

authority. It is stated that no such permission has been taken from any of the authorities, but notifications came to be issued for acquisition of the said land. It is further contended that it is mandatory on the part of the respondents to take necessary clearance under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and The Water (Prevention and Control of Pollution) Act, 1974 before initiating the proceedings. It is their case that before acquisition, the respondents ought to have obtained clearance under the Environmental law and no such effort was made before issuing the said notification. It is also stated that permission under the Andhra Pradesh Water, Land and Trees Act, 2002 was also not obtained. The averments further show that under Coastal Regulation Zone, the Government of India declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HITL as Coastal Regulation Zone putting various restrictions on setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ). It is thus contended that even the land which falls under Coastal Regulation Zone was included in the process of acquisition, which alone is sufficient to declare the proceedings as null and void.

A counter came to be filed by the third respondent denying the averments made in the affidavit filed in support of the writ petition. According to him, notices in Form-3 were issued to the ryots/interested persons to attend the enquiry under Section 5-A of the Act and enquiry under Section 5-A was conducted after giving specific dates and places of enquiry. It is further stated in the counter that the allegation of vagueness in section 4 (1) notification is incorrect. The counter further states that most of land owners/interested persons did not attend the enquiry held under Section 5-A and submit their objections. When the owners themselves failed to attend 5-A enquiry, the petitioner society has no locus standi to file the present writ petition. It is further averred that single writ petition for several cause of actions is not maintainable. The

counter refers to the dates as to when 4 (1) notifications were issued, dates when 5-A enquiry was conducted and also the dates on which the notices sent were returned. The averments in the counter further shows that objections received were sent to requisition department for further remarks and as the objections filed are almost identical, the Zonal Manager, sent his remarks on the said objections, which were submitted to the Collector, who overruled the same vide proceedings in Rc.No.2278/2010/G-I, dated 23.12.2010. As per the orders of the Collector, proposals under Section 6 of the Act were submitted to the Collector for approval and after approval, Section 6 declarations came to be issued. It is further stated that the authorities will obtain all necessary clearances from the competent authorities basing on the nature of industry which is sought to be set up and it is urged that it is not a condition precedent for acquiring the land. It is his case that the industries which are sought to be established will follow the rules and regulations under Coastal Regulation Zone, and obtain necessary clearances from the competent authority of CRZ. Hence, it is urged that there are no merits in the writ petition and the same is liable to be dismissed.

In the counter filed by the APIIC, it is stated that the Government of India has communicated a policy for PCPIR in May, 2007, duly calling applications from different State Governments. The objective of PCPIR is to create world class infrastructure in the State of Andhra Pradesh within Visakhapatnam and Kakinada earmarked for Chemical and Petrochemical industries. Schemes worth 19000 Crores were identified for infrastructure development, out of which assistance to an extent of 6334 crores is to be provided by the Government of India. A memorandum of agreement was also signed between the Government of Andhra Pradesh and Department of Petrochemicals on 01.10.2009.

While adopting the argument of the learned counsel for the petitioner in the above five writ petitions, Sri J.Satya Prasad, learned Senior counsel appearing for the petitioner in W.P.No.27147 of 2011 further submits that since the award has not been passed within two years

from the date of declaration under Section 6 of the Act, the entire proceedings gets lapsed. He submits that since no award under Section 11 of the Act has been made within two years, Section 24 (1) (a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force on 01.01.2014, would apply. In which event, he submits that the proceedings under the old Act get lapsed and only the provisions of the New Act have to be applied.

In support of his plea the counsel for the petitioner relied upon a judgment of the Apex Court in ***Soorajmul Nagarmull v. State of Bihar and others***^[22]. It was a case where the respondents issued acquisition proceedings invoking the urgency provisions contained in Section 17 of the Act and consequently proceedings under Section 5-A of the Act was made inapplicable by resorting to Section 17 (4). Possession of the land was taken after five months and thereafter the land was declared to be a protected forest. Proceedings were once again initiated by the respondent vide another Section 4 notification dated 24.05.1995 invoking urgency clause. Under those circumstances, the Court held that in light of the fact that 1981 acquisition proceedings have not been withdrawn by the respondent and the incontrovertible position being that the appellant has not challenged those proceedings, the possession of the land as well as the title thereof vests with the respondent, notwithstanding the avowedly delayed publication of the award. The Court further held that since the acquisition was initiated in 1981, there was no statutory obligation to pass an award within two years, as Section 11-A of the Act came to be introduced by way of an amendment in 1984. Since no award was passed either in 1986 or till 2006, thereby causing grave prejudice to the constitutional rights of the land owner, the respondents were directed to initiate fresh acquisition proceedings or take any other action available to it in accordance with law within six weeks. The said judgment in my view may not apply to the case on hand.

Explanation to Section 11-A of the Act states that in computing the

period of two years referred to in Section 11-A of the Act, the period during which any action or proceedings taken in pursuance of the notification is stayed by an order of Court, shall be excluded.

A perusal of the record would show that this Court by an order dated 29.09.2011 directed maintenance of status-quo with regard to possession. In view of the above, the Advocate General who is representing the respondents would submit that any order of dispossession or any order directing maintenance of status-quo would fall within the meaning of Explanation to Section 11-A of the Act and the plea of proceedings getting lapsed would not be available to the land owners. The said issue came up for consideration before the Apex Court in ***Yousufbhai Noormohmed Nendoliya v. State of Gujarat and another***^[23]. In the said case a Division Bench of Gujarath High Court took a view that Explanation to Section 11-A is not confined to staying of passing the award pursuant to Section 6 of the notification, but it is widely worded and takes within its sweep the entire period during which any action or proceeding to be taken in pursuance of the declaration under Section 6, is stayed by a competent correct. The correctness of the said view was assailed before the Apex Court.

Dealing with the said aspect, the Apex Court confirmed the judgment of the Gujarath High Court and dismissed the S.L.P., holding as under:

“Explanation to Section 11-A of the Act is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the Explanation. The Explanation covers only the cases of those landholders who do not obtain any order from a Court restraining any action or proceeding in pursuance of the declaration under Section 6 which would delay or prevent the making of the award or taking possession of the land acquired. It is further held that the Explanation is in the widest possible terms and there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11. Therefore, the period of injunction obtained by the landholder from High Court restraining the land acquisition authorities from making possession of the land has to be excluded in computing the period of two years referred to in Section 11-A of the Act by operation of the Explanation thereof.”

Similar view was taken by the Apex Court in ***Government of T.N. and another v. Vasantha Bai***^[24]. In the said case the Apex Court categorically held that the stay of dispossession would tantamount to stay of all further proceedings being taken under Section 11 of the Act and Explanation to Section 11-A of the Act, covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11-A of the Act. In ***M. Ramalinga Thevar vs. State of T.N. and others***^[25] the Apex Court held that even when dispossession alone is stayed by the Court, the period during which such stay operates, would stand excluded from the time fixed for passing the award.

In view of the judgments referred to above , the argument of the learned counsel for the petitioner that the proceedings under the Old Act get lapsed cannot be accepted.

Further a conjoint and harmonious reading of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for Short “Act 30 of 2013) more particularly 24 (1) (a) and Section 11-A of the Land Acquisition Act, 1894 would lead to an irresistible conclusion that the petitioners herein would be entitled for determination of compensation in terms of the New Act and they cannot claim the proceedings already undertaken would get lapsed by virtue of New Act.

The next ground that is urged by the learned Senior counsel for the petitioner is that the acquisition of land is in clear violation of the provisions of Environment Protection Act, 1986 and without initiating any such proceedings before the appropriate authorities it would be an exercise in futility for the authorities to acquire the land and then leave it fallow, if the Environment Authorities do not permit establishment of such unit. Though the learned counsel for the petitioner repeatedly stressed that about 17 to 18 thousand acres of land has been acquired but the Advocate General pointed out from the record that the acquisition was to

an extent of about 10,000 acres and the said ten thousand acres is not in a single place but is in pockets.

The counsel for the petitioner could not point out any specific provisions which mandate obtaining permission from the Environment Authorities before acquisition of land for industrial purpose. But the learned Advocate General states that all the permissions which are required either under the Environment Protection Act, 1986 or under any other Act in force would be obtained at an appropriate juncture.

The said issue came up for consideration before the Apex Court in ***Aflatoon (12 supra) and Bhagat Singh (22 supra)***. The findings in the two judgments referred to above equally applies to obtaining environment clearance permission and the same cannot be said to be a pre-requisite for acquisition of land under the provisions of the Act. Similar such objections were raised in ***Suraram Pratap Reddy and others v. District Collector, Rangareddy (8 supra)*** and ***Prathiba Nema (10 supra)***, but the Courts have held that acquisition cannot be stalled on the said ground since the Land Acquisition Act, 1894 does not contemplate making survey and also the feasibility of the land, project and area before taking steps for acquiring the land.

The next ground which has been urged by the learned Senior Counsel for the petitioner is with regard to personal hearing being not given to the land owners.

From the record it is clear that none of the land owners are before this Court. An association representing the land losers of D.L.Puram, Chandanada, Rajaiahpetta and Vempadu etc. preferred this writ petition. The strength of the said association is not reflected and the material which has been filed before the Court is also silent as to who its members are and what is the extent of land owned by each of its member. So, it is very difficult to address the grievance of each of the member of the association.

However a general argument was sought to be advanced stating

that the members of the society were not given personal hearing and that the acquisition was only to benefit few of the top industrialists. As stated earlier, the petitioner society has not specifically come forward stating as to whether all the members were deprived of personal hearing or only few of them. Hence, the counter filed by the respondents is silent on the said aspect, but the averments in the counter indicate certain factual aspects, more particularly with regard to the compliance of the provisions of the Act. As per the counter, the extents of land acquired in four villages was about 2542 acres. Section 4 (1) notifications were issued on different dates and notices in Form-3 were issued to the ryots asking them to attend the enquiry under Section 5-A which was held on different dates in different villages, as per the convenience of the land holders. For example in Chandanada village, 5-A enquiry was conducted on 26.08.2010 and 30.09.2010, in Rajayyapeta village 5-A enquiry was on 27.08.2010, 02.09.2010, 15.09.2010 and 30.09.2010, in Vempadu village it was on 28.12.2010, 23.12.2010 and 19.01.2011 and in D.L.Puram village it was on 20.12.2010, 19.01.2011 and 04.1.2011.

Though the writ affidavit is silent as to the persons who are aggrieved about the non-receipt of notices in Form-3, but the Advocate General was asked to produce Form-3 notices in respect of certain land owners whose names were given by the counsel for the petitioner, to show that notices under Section 5-A of the Act were served on the land owners. After taking down the names from the learned counsel for the petitioner the Standing Counsel for APIIC placed on record Form-3 notices in respect of those persons. A perusal of the same would show that all the notices were acknowledged by the land holders by signing on the back side of the notices mentioning the date of receipt of the said notices. Therefore, the endorsement made on the back side of the notices amply established that the land owners were served with Form-3 notices. It is also stated in the counter that notices were sent through V.R.O. for service on the interested persons, while some of the ryots have received the notice, some of them refused to receive them. Thereafter, notices were sent to ryots by Registered Post with Acknowledgment Due. The

details of notices sent through V.R.O., dates of notices returned to the office of V.R.O. and the dates sent by Registered Post are as under:-

Name of the Village	Block No.	Date of handed over of notices to V.R.O.	Date on which notices returned from V.R.O.	Date on which sent by R.P.	Date on which returned R.P.
Chandanada	1	09.08.2010	27.08.2010	29.08.2010	07.09.2010
	2	15.09.2010	18.09.2010	20.09.2010	10.10.2010
	3.	09.08.2010	27.08.2010	29.08.2010	07.09.2010
	4.	09.08.2010	27.08.2010	29.08.2010	07.09.2010
	5.	09.08.2010	27.08.2010	29.08.2010	07.09.2010
	6.	31.08.2010	17.09.2010	20.09.2010	27.09.2010
	7.	31.08.2010	17.09.2010	20.09.2010	27.09.2010
	8.	31.08.2010	17.09.2010	20.09.2010	27.09.2010
	9.	31.08.2010	17.09.2010	20.09.2010	27.09.2010
Rajayyapeta	1.	10.08.2010	17.08.2010	06.09.2010	20.09.2010
	2.	19.08.2010	26.08.2010	06.09.2010	20.09.2010
	3.	01.09.2010	07.09.2010	20.09.2010	30.09.2010
	4.	16.08.2010	All notices served		
	5.	01.09.2010	07.09.2010	20.09.2010	30.09.2010
	6.	01.09.2010	07.09.2010	20.09.2010	30.09.2010
D.L.Puram	1.	04.12.2010	10.12.2010	15.12.2010	23.12.2010
	2.	04.12.2010	10.12.2010	24.12.2010	03.01.2011
	3.	31.12.2010	06.01.2011	17.01.2011	27.01.2011
	4.	18.12.2010	19.12.2010	20.12.2010	24.12.2010
	5.	04.01.2011	10.01.2011	12.01.2011	21.01.2011
Vempadu	1.	10.12.2010	15.12.2010	20.12.2010	31.12.2010
	2.	04.12.2010	24.12.2010	26.12.2010	05.01.2011
	3.	03.01.2011	04.01.2011	13.01.2011	21.01.2011

The objections received from the land owners who participated in 5-A enquiry were sent to the requisition department i.e. APIIC for their remarks and the General Manager, APIIC sent his remarks on the objections received during 5-A enquiry in respect of the above villages. After examining the objections received during 5-A enquiry, the Collector passed orders overruling the said objections. The record reveals that the orders under Section 5-A (2) were communicated to the objectors and as per the orders of the Collector, Visakhapatnam, proposals under Section 6 of the Act were submitted to the Government for approval and after approval details of draft declarations were also published in the

gazette and in the news papers on different dates starting from June, 2011 to August, 2011. Hence, it cannot be said there was no compliance of the mandatory provisions.

The last ground which has been urged by the learned Senior Counsel was that huge funds from public exchequer are being extended for acquisition of land without knowing the nature of industry which is likely to be set up and also as to whether such industry is useful for public in general.

Dealing with the aspect of Eminent Domain, the Apex Court in **Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Tax, Karnataka, Bangalore**^[26], observed as under :

“It is in this connection appropriate to refer to the question of compulsory acquisition and this naturally leads to the problem of exercising eminent domain by the State. It is trite knowledge that eminent domain is an essential attribute, of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation. Nichols on Eminent Domain (1950 Edition) a classic authority on the subject, defines 'eminent domain' as 'the power of the sovereign to take property for public use without the owner's consent'.”

After analyzing the judgments on the subject, the Apex Court held that it is primarily for the State to decide whether there exists any public purpose or not. The Court held that the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised in a malafide manner or for collateral purposes or the purported action is de hors the Act, irrational or otherwise unreasonable or the so-called purpose is 'no public purpose' at all and where fraud on statute is apparent, a writ-court can undoubtedly interfere. Except in such cases, the declaration of the Government is not subject to judicial review. In the instant case, none of the said grounds are either established or traceable from the record.

The learned Advocate-General submits that sufficient guidelines have been issued by the Government vide G.O.Ms.No.68, dated 08.04.2005 in relation to rehabilitation and re-settlement of persons

displaced by virtue of said acquisition for development of infrastructure projects. It is his case that the said G.O. is a comprehensive one and the same would safeguard the interest of the displaced persons and their families. He submits that the State would take all steps to provide the statutory benefits to the persons who are affected and that suitable compensation would be paid at the earliest under the provisions of the New Act.

It has been stated that the lands abutting to sea will not be utilised for construction of building and the said lands would be utilised for development of green belt and back up area to the industries. It has been specifically stated that the construction of building will be taken up as per CRZ regulations. The Collector while overruling the objections further reiterated that the necessary permissions would be obtained from all the authorities and other precautionary measures will be taken as per the norms prescribed. No reply is filed disputing the averments in the counter.

In view of the above findings, it may not be necessary to go into the issue of maintainability of the writ petition by the petitioner society.

For the aforesaid reasons, all the writ petitions are liable to be dismissed and accordingly the same are dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.03.2016
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