

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION Nos.8380 and 9112 of 2010

Between:

Mahmood Bin Mohammed and others.

....Petitioners

and

The Government of Telangana,
Represented by its Principal Secretary to Govt.,
Revenue Department & Land Acquisition, Telangana,
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 04.01.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ WRIT PETITION Nos.8380 and 9112 of 2010

% 04.01.2017

Mahmood Bin Mohammed and others.

...Petitioners

vs.

\$ The Government of Telangana,
Represented by its Principal Secretary to Govt.,
Revenue Department & Land Acquisition, Telangana,
Secretariat, Hyderabad,
And others.

... Respondents

!Counsel for the Petitioners : Sri J.Prabhakar

^Counsel for the Respondents : GP for Land Acquisition

<Gist :

>Head Note :

? Cases referred

1. (2004) 1 SCC 497
2. (2004) 3 SCC 1
3. (2007) 2 SCC 355
4. (2007) 2 SCC 481
5. (2011) 10 SCC 543
6. 2012 (4) ALD 565
7. (2013) 1 SCC 403
8. (2015) 10 SCC 241
9. 2006 (2) ALD 342
10. (2010) 13 SCC 98
11. (2011) 3 SCC 408
12. 2012 (1) ALD 163
13. (1979) 2 SCC 34 : 1979 SCC (L&S) 99
14. (2005) 12 SCC 1
15. (2009) 2 SCC 315 : (2009) 1 SCC (Civ) 512

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.8380 and 9112 of 2010

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they relate to acquisition of land under the same notification.

The petitioners claim that they are the owners of various properties mentioned in the affidavits. The second respondent published a notification on 12.07.2005 under Section 4(1) of the Land Acquisition Act (for short, the Act) in Deccan Chronicle for acquiring a total extent 629.47 square yards of land including the properties of the petitioners for widening of the road from Charminar to Hari Bowli Junction (Reach I) under Charminar to Falaknuma (Charminar Road), situated at Shaher-e-Hyderabad Village, Bahadurpura Mandal of Hyderabad District. The petitioners were asked to submit their objections by issuing appropriate notices under Section 5A of the Act. They submitted their objections. When the petitioners were asked to attend for an award enquiry by issuance of appropriate notices under Sections 9(1), 9(3) and 10 of the Act, without furnishing a copy of the order passed under Section 5A of the Act, they filed W.P.Nos.23367 of 2008 and 9962 of 2006 respectively challenging the order dated 19.12.2005 passed under Section 5A of the Act. When W.P.No.9962 of 2006 was dismissed by

order dated 18.08.2008, W.A.No.932 of 2008 was filed. The said Writ Appeal along with W.P.No.23367 of 2008 was considered and both cases were allowed by order dated 12.12.2008 setting aside the order dated 19.12.2005 and directing the concerned authority to forward the objections with its remarks to the Collector and the Collector was directed to pass appropriate orders in accordance with law. In pursuance of the said order, the second respondent issued a notice on 26.02.2010 asking the petitioners to appear before him on 15.03.2010 and file written objections. It is the case of the petitioners that even before receiving the said notice, they filed their written objections on 26.02.2010. In those circumstances, they appeared before the second respondent on 15.03.2010 through their Counsel and submitted a memo requesting the second respondent to furnish the copy of remarks from the requisitioning department to the written objections filed by them on 26.02.2010 under Rule 3(b) of the Rules framed under Section 55 of the Act. On receiving the memo, the case was posted to 18.03.2010, the required para-wise remarks were served on 18.03.2010 and the case was adjourned to 22.03.2010. The petitioners sent an application on 22.03.2010 by registered post with acknowledgement due for summoning the record from the Greater Hyderabad Municipal Corporation and also submitted a representation on 23.03.2010 to the first respondent complaining about the highhanded action in not receiving their representation dated 22.03.2010 while

conducting the proceedings. In those circumstances, the second respondent passed an order on 23.03.2010 rejecting the objections filed by the petitioners. Challenging the same, the present Writ Petitions were filed.

This Court, by order dated 19.04.2010 in W.P.No.8380 of 2010 granted interim stay of dispossession for a period of ten days, which was later extended. While granting interim stay of dispossession on 28.04.2010 in W.P.No.9112 of 2010, this Court directed the said matter to be posted along with W.P.No.8380 of 2010.

The petitioners filed appropriate applications seeking amendment of the prayer challenging the notification dated 12.07.2005 issued under Section 4(1) of the Act and the applications for such amendments were allowed. Seeking vacation of the interim orders, vacate petitions were filed in both the Writ Petitions on similar lines, and the said petitions are also taken up for consideration along with the present Writ Petitions.

In the affidavit filed in support of the vacate petition in W.V.M.P.No.1672 of 2012 in W.P.M.P.No.11771 of 2010 in W.P.No.9112 of 2010 it is stated that the Assistant City Planner, Circle-I, GHMC, Hyderabad, placed a requisition on 19.02.2005 for acquisition of land from affected (29) properties for the purpose of proposed road widening from Charminar to Hari Bowli Junction (Reach I) under Charminar to Falaknuma,

(Charminar Road). The draft notification was published in the District Gazette dated 25.07.2005 and on publication of such notification, notices were issued on 31.08.2005 to the affected property owners to file their objections. Objections were filed and they were rejected by proceedings dated 19.12.2005. Thereafter draft declaration under Section 6 of the Act was published in the District Gazette dated 06.02.2006. At that stage, W.P.No.9962 of 2006 was filed challenging the proposed acquisition and when the said Writ Petition was dismissed, W.A.No.932 of 2008 was filed and the same along with W.P.No.23367 of 2008 was disposed of on 12.12.2008 as stated in the affidavit filed by the petitioners. After considering the objections filed by the petitioners, an order was passed on 02.01.2009 by the District Collector rejecting the objections and communicating the same to the petitioners. Thereafter, revised draft declaration was published in the District Gazette on 31.01.2009 in respect of 17 properties. Notices under Sections 9(3) and 10 of the Act were issued on 31.01.2009 to all the owners of the affected properties. The owners filed their claims and documents and on considering the same, an award was passed on 02.06.2009. By that time, W.P.No.4307 of 2006 was pending and three other Writ Petitions in W.P.Nos.2419, 3896 and 6165 of 2009 were filed and they were admitted along with the earlier Writ Petition. They were disposed of by a common order dated 15.02.2010. In the said common order, the proceedings dated 02.01.2009 passed by the District Collector

and the consequential declaration issued under Section 6 of the Act were quashed. The District Collector was directed to give an opportunity of being heard to the petitioners therein with regard to the objections raised by them and pass appropriate orders in accordance with law. Thereafter, notice was issued on 26.02.2010 and the enquiry was concluded on 22.03.2010. The Assistant City Planner submitted his remarks and the remarks were also communicated to the objectors on 18.03.2010. Ultimately, orders under Section 5A(2) of the Act were passed on 23.03.2010 and the same were served on the objectors. Thereafter, a draft declaration under Section 6 of the Act was published in the District Gazette on 27.03.2010. When notice under Section 9(3) and 10 of the Act was issued, the property owners/writ petitioners appeared in the award enquiry on 12.04.2010, but did not file their claim petition. At that stage, the above Writ Petitions were filed.

Heard the learned Counsel for the petitioners and the learned Government Pleader.

Learned Counsel for the petitioners submitted that at the time of issuance of the notification under Section 4(1) of the Act, the District Collector has no jurisdiction to issue the said notification and hence all subsequent proceedings should be held void. He further submitted that though such a plea was not raised in the earlier round of litigation, the petitioners are not precluded from raising such a plea in the present round of

litigation. He further submitted that the impugned order passed by the District Collector rejecting the objections on 23.03.2010 is bad in law.

Learned Government Pleader, on the other hand, submitted that the District Collector was having jurisdiction to issue the notification under Section 4(1) of the Act at the relevant point of time and, in any event, there was a subsequent amendment under which he was empowered to issue the notification. Even otherwise also, she submits that having not taken such a plea, the petitioners are precluded from taking the plea in this round of litigation.

Learned Counsel for the petitioners relied on **Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani¹, Ashok Leyland Ltd. v. State of T.N², Hasham Abbas Sayyad v. Usman Abbas Sayyad³, National Institute of Technology v. Niraj Kumar Singh⁴, Union of India v. Association of Unified Telecom Service Providers of India⁵, R.Pushpavathi v. Special Deputy Collector, L.A., GHMC, Hyderabad⁶, Surinder Singh Brar v. Union of India⁷ and Laxmi Devi v. State of Bihar⁸.**

¹ (2004) 1 SCC 497

² (2004) 3 SCC 1

³ (2007) 2 SCC 355

⁴ (2007) 2 SCC 481

⁵ (2011) 10 SCC 543

⁶ 2012 (4) ALD 565

⁷ (2013) 1 SCC 403

⁸ (2015) 10 SCC 241

Learned Government Pleader relied on **Kilarapu Satyavati v. District Collector, Kakinada, East Godavari District**⁹, **May George v. Special Tahsildar**¹⁰, **M.Nagabhushana v. State of Karnataka**¹¹ and **M.Rajender Kumar v. Greater Hyderabad Municipal Corporation, Hyderabad**¹².

In view of the rival contentions, the following points are framed for consideration:

i) Whether the District Collector was competent to issue a notification under Section 4(1) of the Act?

ii) If the District Collector who issued the notification was competent, whether the petitioners can raise the said point for the first time in the present litigation when they did not raise that point in the earlier round of litigation. Whether the point of res judicata is applicable to such a situation?

iii) Whether the order passed by the District Collector on 23.03.2010 pursuant to the order of this Court in W.P.No.4307 of 2006 and batch, dated 15.02.2010, is valid in law?

Issuance of notification under Section 4(1) of the Act:

As stated above, the notification under Section 4(1) of the Act was issued on 12.07.2005 by the District Collector in

⁹ 2006 (2) ALD 342

¹⁰ (2010) 13 SCC 98

¹¹ (2011) 3 SCC 408

¹² 2012 (1) ALD 163

respect of an extent of 629.47 square yards of land. The said land was sought to be acquired for widening of road from Charminar to Hari Bowli Junction (Reach I) under Charminar to Falaknuma (Charminar Road), situated at Shaher-e-Hyderabad Village, Bahadurpura Mandal of Hyderabad District. It is the submission of the learned Counsel for the petitioners that the District Collector, Hyderabad, was not competent to issue the said notification and it is the Government alone that can issue the notification. He drew the attention of this Court to Section 3A of the Act. The powers of the State Government are delegated to the District Collector under G.O.Ms.No.1131, dated 17.07.1986, but that power is confined to the acquisition of land “on behalf of all the Municipalities in the State” and “Kakatiya Urban Development Authority, Warangal, and Quli Qutubsha Urban Development Authority, Hyderabad”. Later on the Government issued another G.O.Ms.No.166, dated 24.02.2010, wherein the District Collector was conferred with the power to acquire the lands for the benefit of Greater Hyderabad Municipal Corporation. Those two Government Orders came up for consideration before this Court in **R.Pushpavathi**’s case (supra), and it was held that in respect of acquisition of land for road widening, the District Collector was not competent to issue a notification under Sec.4(1) of the Land Acquisition Act. Hence point No.1 is accordingly answered.

Res judicata:

Learned Government Pleader submitted her argument with regard to the challenge made to the competency of the District Collector to issue the notification under Section 4(1) of the Act by raising the ground of res judicata, since the petitioners did not raise such a plea in the earlier round of litigation. The fact of not raising such a ground is admitted by the learned Counsel for the petitioners, but he submitted that the principle of res judicata is not applicable where there is inherent lack of jurisdiction. He relied on **Ramnik Vallabhdas Madhvani's** case (supra), **Ashok Leyland Ltd.'s** case (supra), **Hasham Abbas Sayyad's** case (supra), **National Institute of Technology's** case (supra) and **Association of Unified Telecom Service Providers of India's** case (supra).

In **Ramnik Vallabhdas Madhvani's** case (supra) it was stated that principle of res judicata is a procedural provision and it has no application where there is inherent lack of jurisdiction. In **Ashok Leyland Ltd.'s** case (supra) the same learned Judge who was a party to the decision in **Ramnik Vallabhdas Madhvani's** case (supra) reiterated that the principle of res judicata is a procedural provision and it was further stated that a jurisdictional question, if was wrongly decided would not attract the principle of res judicata. In **Hasham Abbas Sayyad's** case (supra) and **National Institute of Technology's** case (supra) also the same learned Judge,

Hon'ble Sri Justice S.B.Sinha, who was the Member of the Bench in the above cases, reiterated the same principle.

In **Association of Unified Telecom Service Providers of India's** case (supra) the Supreme Court quoted with approval the decisions in **Chief Justice of A.P. v. L.V.A. Dixitulu**¹³, **Union of India v. Pramod Gupta**¹⁴, **National Institute of Technology's** case (supra) and **Chandrabhai K. Bhoir v. Krishna Arjun Bhoir**¹⁵, wherein it was held that an order passed without jurisdiction would be a nullity. It will be a coram non judice and non est in the eye of the law and the principles of res judicata would not apply to such cases.

This principle is taken aid to contend that since a notification under Section 4(1) of the Act was issued by the District Collector on 12.07.2005 when he was not competent to do so, the subsequent proceedings are liable to be quashed.

In **May George's** case (supra) the Supreme Court held that, when the land of negligible area is involved in a case when compared to the total land acquired, at the behest of only one person, the acquisition proceedings cannot be disturbed.

The Supreme Court in **M.Nagabhushana's** case (supra) considered the principle of res judicata in relation to the land acquisition proceedings and observed as follows:

¹³ (1979) 2 SCC 34 : 1979 SCC (L&S) 99

¹⁴ (2005) 12 SCC 1

¹⁵ (2009) 2 SCC 315 : (2009) 1 SCC (Civ) 512

“12. The principles of *res judicata* are of universal application as it is based on two age-old principles, namely, *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of *res judicata* is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of *res judicata* has been evolved to prevent such an anarchy. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties.

14. Tek Chand, J. delivering the unanimous Full Bench decision in **Lachhmi v. Bhulli** (ILR (1927) 8 Lah 384) traced the history of this doctrine both in Hindu and Mohammedan jurisprudence as follows: (ILR pp. 391-92)

"In the *Mitakshra* (Book II, Chapter I, Section V, verse 5) one of the four kinds of effective answers to a suit is 'a plea by former judgment' and in verse 10, *Katyayana* is quoted as laying down that 'one against whom a judgment had formerly been given, if he brings forward the matter again, must be answered by a plea of *purva nyaya* or former judgment' (Macnaughten and Colebrooke's translation, p.22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the *Smriti Chandrika* (Mysore Edn., pp. 97-98) and the *Virmitrodaya* (Vidya-Sagar Edn., p.77) base the defence of *prang nyaya* (former decision) on the following text of the ancient law-giver *Harita*, who is believed by some Orientalists to have flourished in the 9th Century BC and whose *Smriti* is now extant only in fragments-

"The plaintiff should be non-suited if the defendant avers: "in this very affair, there was litigation between him and myself previously", and it is found that the plaintiff had lost his case".

There are texts of *Prasara* (Bengal Asiatic Society Edn., p. 56) and of the *Mayukha* (Kane's Edn., p. 15) to the same effect.

Among Muhammadan law-givers similar effect was given to the plea of 'Niza-i-munfasla' or 'Amar Mania taqrir mukhalif'. Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of *exceptio rei judicatae* or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in *Roby's Roman Private Law* (Vol.II, p. 338) the general principle recognised was that 'one suit and one decision was enough for any single dispute' and that 'a matter once brought to trial should not be tried except, of course, by way of appeal."

15. The learned Judge in ***Bhulli case*** (ILR (1927) 8 Lah 384) also noted that in British India the rule of res judicata was first introduced by Section 16 of the Bengal Regulation 3 of 1773 which prohibited the Zila and City Courts from entertaining any cause which, from the production of a former decree or the record of the court, appears to have been heard and determined by any Judge or any Superintendent of a court having competent jurisdiction. The learned Judge found that the earliest legislative attempt at codification of the law on the subject was made in 1859, when the first Civil Procedure Code was enacted, whereunder Section 2 of the Code barred every court from taking cognizance of suits which, on the same cause of action, have been heard and determined by a court of competent jurisdiction. The learned Judge opined, and in our view rightly, that this was partial recognition of the English rule insofar as it embodied the principles relating to estoppel by judgment or estoppel by record. Thereafter, when the Code was again revised in 1877, the operation of the rule was extended in Section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition was extended against rearguing an issue, which had been heard and finally decided between the same parties in a former suit by a competent court. The learned Judge also noted that before the principle assumed its present form in Section 11 of the Code of 1908, the Section was expanded twice. However, the learned Judge noted that Section 11 is not exhaustive of the law on the subject.

16. It is nobody's case that the appellant did not know the contents of the FWA. From this it follows that it was open to the appellant to question, in the previous proceeding filed by it, that his land which was acquired was not included in the FWA. No reasonable explanation was offered by the appellant to indicate why he had not raised this issue. Therefore, in our judgment, such an issue cannot be raised in this proceeding in view of the doctrine of constructive res judicata.

17. It may be noted in this context that while applying the principles of res judicata the court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that:

"...the application of the rule by courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".

[See **Sheoparsan Singh v. Rammanandan Prasad Singh** (1915-16) 43 IA 91; ILR (1916) 43 Cal 694 (PC)].

18. Therefore, any proceeding which has been initiated in breach of the principle of res judicata is prima facie a proceeding which has been initiated in abuse of the process of court.

19. A Constitution Bench of this Court in **Devilal Modi v. STO** (AIR 1965 SC 1150), has explained this principle in very clear terms:

"7...But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Art. 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide **Daryao v. State of U.P.** (AIR 1961 SC 1457 : (1962) 1 SCR 574)."

20. This Court in **State of Karnataka v. All India Manufacturers Organisation (AIMO)** ((2006) 4 SCC 683) case explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in **AIMO** case (supra) relied on the following formulation of Somervell, L.J. in **Greenhalgh v. Mallard** (All ER P.257 H) : (**AIMO** case, SCC p. 700, para 39)

"39. ...I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that *it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.*"
(emphasis supplied in **AIMO** case)

The Bench in **AIMO** case also noted that the judgment of the Court of Appeal in **Greenhalgh** was approved by this Court in **State of U.P. v. Nawab Hussain** ((1977) 2 SCC 806 : 1977 SCC (L&S) 362)), SCC at p.809, para 4.

21. Following all these principles a Constitution Bench of this Court in **Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra** ((1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348) laid down the following principle: (SCC p.741, para 35)

"35. ...an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata"

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in **K.K. Modi v. K.N. Modi** ((1998) 3 SCC 573). In paragraph 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p.592)

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and

decided earlier against him. The reagitation may or may not be barred as res judicata.”

24. In coming to the aforementioned finding, this Court relied on *The Supreme Court Practice, 1995* published by Sweet & Maxwell (p.344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (**K.K.Modi case**, SCC p. 592, para 43)

"43. ... 'This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.' "

The above extensive extract is made only to put the principle in straight perspective. The challenge to lack of jurisdiction cannot be entertained in a pedantic manner disregarding the facts of the case and public interest involved. The jurisdictional principle of administrative law has to be applied with circumspection in the case of exercise of statutory power. The intention behind the action and the consequential prejudice caused to the affected party are also relevant factors to be taken into consideration while examining the jurisdictional fact. Though the District Collector was not having the required power, the said power was exercised by him by misunderstanding the delegation of power made in Section 3A of the Act. He issued the notification under Section 4(1) of the Act which merely declares the intention of the Government to acquire the land. The said intention crystallizes only after considering the objections and publishing a declaration in that

regard. In the instant case, the declaration is not under challenge and the Writ Petitions were filed after an order was passed under Section 5A considering the objections. In these circumstances, the lack of jurisdiction of the District Collector does not vitiate the subsequent proceedings, more so, when such a plea was not taken in the earlier round of litigation. The land involved in the present Writ Petitions is less than 500 square yards and the acquisition is intended for widening of crowded road from Charminar to Hari Bowli Junction.

The petitioners are not prejudiced by the issuance of notification under Section 4(1) of the Act in a substantial manner, but they want to take advantage of the pendency of the present cases and the enactment of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Except the stretch of the land involved, which is a small extent out of nearly 629 square yards involved in total acquisition, the rest of the land was acquired and the road was laid.

In the circumstances, this Court is of the opinion, that the principle of constructive res judicata is applicable and the petitioners cannot take such a plea after the matter was remanded for consideration of their objections in an enquiry under Sec.5A of the Land Acquisition Act. Point No.2 is accordingly answered.

This Court in **M.Rajender Kumar's** case (supra) held that in land acquisition proceedings, the interference on the ground of hardship is not permissible and the well settled principle of concern of the Court with the decision making process and not with the merits of the decision was reiterated.

Impugned Order:

With regard to the 3rd point, it is submitted by the learned Counsel for the petitioners that the objections raised by the petitioners are not properly considered. But, a perusal of the impugned order dated 23.03.2010 shows that the common objections filed by nine persons and five persons were individually dealt with and the individual objection of Dr.Md.Ahsan Quraishi, who claims to be the owner of premises No.23-2-653 was separately considered. The objection of Dr.Md.Ahsan Quraishi related to the correction of the name and for payment of compensation. The other common objections are elaborately dealt with in the impugned order. In view of the reasons given in the impugned order in respect of the common objections, it cannot be said that the objections were not properly considered. Hence, the order passed on 23.03.2010 by the District Collector was in accordance with the order passed by this Court in W.P.No.4307 of 2006 and batch dated 15.02.2010 and it is upheld.

In view of the above findings recorded, the Writ Petitions fail and are accordingly dismissed but without costs. The

miscellaneous petitions pending in these Writ Petitions, if any,
shall stand closed. There shall be no order as to costs.

04.01.2017
vs

(A.RAMALINGESWARA RAO, J)

