

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

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**Writ Appeal No.1048 of 2016**

Between:

Palaniswamy and another

.... Appellants/Petitioners

And

The State of A.P. Revenue (Land Acquisition) Department,  
Secretariat, Hyderabad rep., by its Principal Secretary and two  
others.

.... Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED: 07.03.2018.

**SUBMITTED FOR APPROVAL:**

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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

**RAMESH RANGANATHAN, ACJ**

**\* HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
\* THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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.... Respondents

! Counsel for Appellants/Petitioners: Sri O. Manohar Reddy

^Counsel for respondents: Advocate-General for the State of  
Andhra Pradesh

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> HEAD NOTE:

? Citations:

- 1) (Judgment in W.A. No.933 of 2017 dated 29.12.2017)
- 2) (2012) 2 SCC 327
- 3) (2012)12 SCC 675
- 4) (2013) 1 SCC 403
- 5) (2013) 3 SCC 764
- 6) (2013) 8 SCC 99
- 7) (2013) 11 SCC 578
- 8) (2007) 13 SCC 186
- 9) (1992) 3 SCC 1
- 10) AIR 2001 A.P. 226 = 2001 (1) ALD 443 = 2001(1) ALT 438
- 11) (1996 (3) ALT 1047
- 12) 1987 (67) STC 424 = 1994 (1) ALT 227
- 13) 2012 (6) ALD 458 (DB)
- 14) (2011) 5 SCC 553
- 15) (1980) 2 SCC 471
- 16) (2012) 2 SCC 25
- 17) AIR 1964 SC 1217
- 18) (1973) 2 SCC 337
- 19) (1977) 1 SCC 133
- 20) (1993) 4 SCC 255
- 21) (2004) 8 SCC 14
- 22) (2004) 8 SCC 453
- 23) (2005) 7 SCC 627
- 24) (2009) 2 SCC 377
- 25) (2009) 10 SCC 115
- 26) (2010) 11 SCC 2422
- 27) (2011) 4 SCC 769
- 28) (2012) 1 SCC 792
- 29) (2013) 4 SCC 210
- 30) AIR 1964 SC 1419
- 31) (2005) 6 SCC 138
- 32) (2000) 2 SCC 617
- 33) AIR 1987 SC 2235
- 34) AIR 1989 SC 1972

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Appeal No.1048 of 2016**

**JUDGMENT:** (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the Learned Single Judge in W.P. No.31263 of 2016 dated 16.09.2016. The appellants herein filed W.P. No.31263 of 2016 seeking a writ of *mandamus* to declare the notification issued by the Joint Collector cum Special Land Acquisition Officer, Ananthapuramu under Section 11, and the declaration issued by him under Section 19, of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called the "2013 Act"), published in Eenadu Telugu daily on 12.04.2016, and Sakshi Telugu daily on 22.07.2016, in so far as the lands of the petitioners are concerned, as illegal, arbitrary and without jurisdiction.

W.P. No.31263 of 2016 was dismissed by the Learned Single Judge holding that the appellants-writ petitioners did not object regarding social impact assessment in both the representations/objections; the crux of the matter was that, after construction of the canal, the total land, except the building area, would become unusable for house/residential construction; they had sought compensation for the total area of Ac.2.16 cents; and there was no occasion before the Special Deputy Collector/Competent Authority, as prescribed under Section 15 of the 2013 Act, to consider and grant a personal hearing to the petitioners. Aggrieved thereby, the present appeal.

Before taking note of the rival submissions, urged on behalf of the appellants by Sri O. Manohar Reddy, learned counsel for the appellants, and on behalf of the respondents by the learned Advocate General for the State of Andhra Pradesh, it is necessary to note the facts in brief. The preliminary notification, under Section 11(1) of the 2013 Act, was issued on 12.04.2016 proposing to acquire the subject lands. This notification was published in Eenadu Telugu Daily on 12.04.2016. A notice, under Section 15(1) of the 2013 Act, is said to have been served on the petitioners who submitted their representations-objections by their letter dated 23.06.2016. Thereafter a declaration, under Section 19 of the 2013 Act, came to be passed on 11.07.2016. It is, however, not in dispute that no award has been passed in so far as the appellants-writ petitioners lands are concerned.

Sri O. Manohar Reddy, learned counsel for the appellants-writ-petitioners, would submit that the subject project did not have environmental clearance when the preliminary notification, under Section 11(1) of the 2013 Act, was issued; the earlier environmental clearance, granted by the Government of India in its letter dated 08.05.2006, had expired long before the preliminary notification was issued on 12.04.2016; the State Government has failed to conduct a social impact assessment study as stipulated under Sections 6(1) and (2) of the 2013 Act; against the order passed by the Division Bench of this Court, in **State of A.P. v. Mummaneni Venkataramudu**<sup>1</sup>, the matter was carried in appeal and the Supreme Court, by its order in SLP No.3371 of 2018 dated 05.02.2018, stayed the operation of the judgment and order

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<sup>1</sup> (Judgment in W.A. No.933 of 2017 dated 29.12.2017)

passed in W.A. No.933 of 2017 dated 29.12.2017; since, admittedly, no social impact assessment study was conducted, the impugned notification issued under Section 11(1), and the subsequent declaration issued under Section 19(1), of the 2013 Act must be set aside; even otherwise, the petitioners' objections, made under Section 15(1) of the 2013 Act, has not been considered; the appellants-Writ Petitioners were not afforded an opportunity of personal hearing as mandated by Section 15(2) of the 2013 Act; as a final decision, on the objections raised by the appellants under Section 15(1), is required to be taken by the appropriate Government, it is only if the Joint Collector had given the petitioners an opportunity of a personal hearing, as stipulated in Section 15(2), could they have satisfied the competent authority that their objections to the acquisition, made in terms of Section 15(1) of the Act, necessitated acceptance; with respect to acquisition of lands, after the 2013 Act came into force on 01.01.2014, land owners are entitled to the rehabilitation and resettlement benefits as stipulated under the 2013 Act; even if this Court were not to be convinced with any of the contentions, urged on behalf of the appellants, they should be given an opportunity to put forth their claim, for grant of rehabilitation and resettlement benefits, before the Land Acquisition Officer; and the respondents should be directed to comply with Sections 21 to 23 of the 2013 Act, and pass an award strictly in accordance with Section 26 thereof. Learned counsel would rely on **Darshan Lal Nagpal v. Govt. (NCT of Delhi)**<sup>2</sup>; **Bharat Sewak Samaj v. Lt. Governor**<sup>3</sup>;

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<sup>2</sup> (2012) 2 SCC 327

<sup>3</sup> (2012) 12 SCC 675

**Surinder Singh Brar v. Union of India**<sup>4</sup>; **Laxman Lal v. State of Rajasthan**<sup>5</sup>; **Women's Education Trust v. State of Haryana**<sup>6</sup>; and **Hukam Chand v. State of Haryana**<sup>7</sup> in this regard.

On the other hand, the Learned Advocate General for the State of Andhra Pradesh would submit that the petitioners are not claiming ownership over the subject lands which are sought to be acquired for the purpose of the project; there is no statement or averment, in the writ affidavit, regarding the extent of land which the petitioners have retained, after alienating a part thereof to others; except to state that they had purchased Ac.2.37 cts, and had sold it to various persons, the writ affidavit does not state as to how much of the acquired land the appellants still hold; the Writ Petition is not filed in a representative capacity or in public interest; there is no averment in the writ affidavit that a particular piece of land or plot is owned by the appellant-writ petitioners; the ownership details of the second appellant has not even been stated; the right conferred by Section 15(1) of the 2013 Act, to file objections to the preliminary notification issued under Section 11(1), is to be exercised within sixty days from the date of its publication; the preliminary notification, under Section 11(1) of the 2013 Act, was issued on 12.04.2016, and was published in Eenadu Telugu daily on 13.04.2016; the sixty day period, stipulated in Section 15(1) of the 2013 Act, expired by 13.06.2016; the appellants-writ petitioners filed their objections only on 23.06.2016, well beyond the prescribed sixty day time limit specified in Section 15(1); the respondents were, therefore, under

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<sup>4</sup> (2013) 1 SCC 403

<sup>5</sup> (2013) 3 SCC 764

<sup>6</sup> (2013) 8 SCC 99

<sup>7</sup> (2013) 11 SCC 578

no obligation to consider these objections; the fact that they were considered, does not confer any right on the appellants-writ petitioners to claim that they should have been afforded an opportunity of a personal hearing; the objections, which the appellants were entitled to put forth, is only in respect of the matters enumerated in clauses (a) to (c) of Section 15(1) of the 2013 Act; except to state that the respondents should consider acquiring the total area of Ac.2.16 cents, the objections made by the appellants-writ petitioners do not relate to clause (a) of Section 15(1); since the respondents have obtained environmental clearance, clause (c) of Section 15(1) has also no application; no objections were, admittedly, made under clause (b) of Section 15(1); the contentions regarding non-compliance of Section 6(1) and (2) of the 2013 Act has been dealt with, in relation to the very same project and with respect to the very same preliminary notification, by a Division bench of this Court in **Mummaneni Venkataramudu**<sup>1</sup>; the aforesaid order of the Division bench would apply to the facts of the present case; the interim order passed by the Supreme Court is only to stay the operation of the judgment passed in W.A. No.933 of 2017; the law declared by the Division bench, in the said judgment, would continue to bind a co-ordinate bench unless and until it is finally reversed by the Supreme Court; since the Division bench, in its order in W.A. No.933 of 2017 dated 29.12.2017, had set aside the order under appeal therein, and had restored W.P. No.30383 of 2016 to file, directing the Learned Single Judge to consider the matter afresh, a similar order should be passed in this appeal also; in case this Court comes to the conclusion that the objections made by the appellant-writ

petitioners fall within the ambit of clause (a) of Section 15(1), the respondents are ready and willing to deposit the compensation, for the remaining extent of Ac.2.16 cts of land, in this Court, besides depositing the amount as directed in W.A. No.933 of 2017 dated 29.12.2017; the notice, under Section 15(1) of the 2013 Act, was served on the appellants representative Sri Babu; the fact that the notice was served on Sri Babu has not been denied in the reply affidavit; and, though a notice of the award enquiry was served on the appellants-writ petitioners, they failed to avail the opportunity to put forth their objections within the time stipulated in Section 15(1) of the 2013 Act. He would rely on **Talson Real Estate (P) Ltd. v. State of Maharashtra**<sup>8</sup> and **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat**<sup>9</sup>.

It is convenient to examine the rival submissions put forth by Sri O. Manohar Reddy, Learned Counsel appearing on behalf of the appellants-writ petitioners, and the Learned Advocate-General for the State of Andhra Pradesh on behalf of the respondents, under different heads.

#### **I. REHABILITATION AND RESETTLEMENT BENEFITS:**

We find considerable force in the submission of Sri O. Manohar Reddy, Learned Counsel for the petitioners, that, after the 2013 Act came into force on 01.01.2014, it is the rehabilitation and resettlement provisions of the 2013 Act, and not the 2005 rehabilitation and resettlement policy framed by the Government of Andhra Pradesh as referred to in the Government of India letter dated 08.05.2006, which is applicable. On the entitlement of

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<sup>8</sup> (2007) 13 SCC 186

<sup>9</sup> (1992) 3 SCC 1

families affected by the very same HNSS project, for the rehabilitation and resettlement benefits under the 2013 Act, the Division bench, in **Mummaneni Venkataramudu**<sup>1</sup>, opined:-

“.....Unlike the 2013 Act which contains specific provisions for rehabilitation and resettlement of affected families, and requires the Collector to pass a rehabilitation and resettlement Award under Section 31 thereof, along with the Award made under Section 23 of the said Act, the 1894 Land Acquisition Act did not contain any provision for rehabilitation and resettlement of families affected by the Land Acquisition. When environmental clearance was given to the HNSS project by the Central Government, by its letter dated 08.05.2006, it was the 1894 Act which was in force, and there was no law which provided for the rehabilitation and resettlement of families affected by the Land Acquisition. As the Government of Andhra Pradesh had framed a rehabilitation and resettlement policy in the year 2005, the letter of the Government of India dated 08.05.2006, (whereby environmental clearance was granted), refers to the said 2005 R&R policy.

That does not, however, mean that, even after the 2013 Act came into force on 01.01.2014, families, affected by the Land Acquisition proceedings initiated on or after 01.01.2014, would still be required to be paid only the rehabilitation and resettlement package under the 2005 R&R policy of the Government of A.P. While all the provisions of the 2013 Act including the provisions relating to rehabilitation and resettlement would apply, it is only because of the proviso to Section 6(2) of the 2013 Act that the provisions of the 2013 Act, relating to social impact assessment, are not applicable with respect to irrigation projects where the process of environmental impact assessment is required under the provisions of any other law for the time being in force. Suffice it to make it clear that, notwithstanding reference in the GOI letter dated 08.05.2006 that the rehabilitation and resettlement package of the year 2005 would apply, the provisions of the 2013 Act, relating to rehabilitation and resettlement, would apply to land acquisition proceedings for which a preliminary notification, under Section 11(1) of the 2013 Act, has been issued on or after 01.01.2014 when the 2013 Act came into force.....”

It is evident, therefore, that, for lands acquired after the 2013 Act came into force on 01.01.2014, the project affected families are entitled for the rehabilitation and resettlement benefits under the 2013 Act, and the State Government cannot thereafter rely on the 2005 Rehabilitation and Resettlement policy for payment of the rehabilitation and resettlement benefits to families affected by the HNSS project.

## II. IS FAILURE TO CONDUCT SOCIAL IMPACT ASSESSMENT, BEFORE ISSUING THE PRELIMINARY NOTIFICATION, FATAL?

The contention of Sri O. Manohar Reddy, Learned Counsel for the petitioners, that failure to conduct a social impact assessment would render the preliminary notification issued under Section 11(1) of the 2013 Act invalid, is not tenable. The HNSS project is an irrigation project. The proviso to Section 6(2) of the 2013 Act stipulates that, in respect of irrigation projects where the process of environment impact assessment is required under the provisions of any other law for the time being in force, the provisions of the 2013 Act, relating to social impact assessment, shall not apply. As held by the Division bench of this Court, in **Mummaneni Venkataramudu**<sup>1</sup>, the subject HNSS project required environmental clearance from the Government of India, under the Environment Protection Act, and was granted such a clearance, in terms of the 1996 Environment Impact Assessment notification, by the Government of India vide letter dated 08.05.2006. As the proviso to Section 6(2) of the 2013 Act is applicable, if the Environmental clearance granted by the Government of India is held to subsist on the date the subject preliminary notification was issued, under Section 11(1) of the 2013 Act, with respect to the HNSS project, the provisions relating to social impact assessment, as stipulated under the 2013 Act, would have no application.

On the question whether it is the 1994 or the 2006 environment impact assessment notification which is applicable, and whether or not the Government of India letter dated 08.05.2006 granting environmental clearance required the HNSS project to be completed within five years from the date on which

environmental clearance was granted i.e on or before 08.05.2011, the Division Bench of this Court, in **Mummaneni Venkataramudu**<sup>1</sup>, observed:-

“.....As noted hereinabove, Para 2(II)© of the 1994 EIA notification stipulates five years as the period of validity of site clearance for commencement of construction. As the GOI letter dated 08.05.2006 was issued by the Central Government under the 1994 EIA notification, prior to the 2006 EIA notification coming into force on 14.09.2006, construction of the HNSS project should have commenced on or before 07.05.2011 ( i.e within the five year period stipulated in the GOI letter dated 08.05.2006). As the 2006 EIA notification supersedes the 1994 EIA notification except in respect of things done before such supersession, the environmental clearance, granted by the Government of India on 08.05.2006, is a thing done before the 2006 EIA notification came into force; and, consequently, the requirement of commencement of construction of the project is in terms of the letter of environmental clearance dated 08.05.2006.

The contention that construction of the HNSS project should also have commenced before 14.09.2006 (when the 2006 EIA notification came into force) does not merit acceptance. Accepting such a submission would render the very prescription of five years for commencement of construction of the irrigation project, both under the 1994 EIA notification, and the environmental clearance letter of the Government of India dated 08.05.2006, redundant, since the five year period for commencement of construction, as stipulated in the 1994 EIA notification and the letter dated 08.05.2006, would not be available, even though just a little more than four months had elapsed by the time the 2006 EIA notification was issued on 14.09.2006. It is evident, therefore, that if construction of the HNSS project had commenced within five years from the date on which environmental clearance was granted i.e. 08.05.2006, it would fall outside the ambit of the 2006 EIA notification, and it is not necessary that the State Government should have actually commenced construction of the HNSS project, before 14.09.2006 when the 2006 EIA notification came into force.....”

Having so held, the Division bench further observed:-

“....What, however, remains to be considered is whether or not construction of HNSS project commenced before 07.05.2011 (i.e within five years from 08.05.2006), and whether the conditions, subject to which environmental clearance was granted by the Central Government, vide its letter dated 08.05.2006, have been complied with. If acquisition of the subject land falls within the scope of the HNSS project for which environmental clearance was granted by letter dated 08.05.2006, and the appellants had commenced construction, in terms of the letter dated 08.05.2006, on or before 07.05.2011, then the appellant cannot be said to have committed any illegality in acquiring the subject lands, without complying with the conditions, stipulated in the 2013 Act, of a social impact assessment being made....”

**III. WOULD THE DIVISION BENCH JUDGMENT, IN MUMMANENI VENKATARAMUDU, CEASE TO BE A PRECEDENT BINDING ON A CO-ORDINATE BENCH AS ITS OPERATION HAS BEEN STAYED BY THE SUPREME COURT?**

Sri O. Manohar Reddy, Learned Counsel for the appellants-writ petitioners, would submit that, since operation of the judgment of the Division Bench of this Court in **Mummaneni Venkataramudu**<sup>1</sup> has been stayed by the Supreme Court, no reliance can be placed by the respondents on the said judgment. It is no doubt true that an appeal was preferred against the order passed by the Division Bench of this Court in **Mummaneni Venkataramudu**<sup>1</sup> and, by its order in SLP (Civil) C.C. No.3371 of 2018 dated 05.02.2018, the Supreme Court granted stay of operation of the said judgment and order.

Stay of the operation of an order only means that the order, which has been stayed, would not be operative from the date of the passing of the stay order, and does not mean that the said order has been wiped out from existence. (**M/s. Sree Chamundi Mopeds Ltd**<sup>9</sup>; **Government of A.P. v. N. Rami Reddy**<sup>10</sup>). The ratio of a judgment is the reasons assigned in support thereof. When a Court of appeal stays the operation of the judgment it stays the further implementation, as between the parties, of the operative portion thereof. When a question of law is decided, its ratio cannot be said to be wiped out merely because the operation of the said order is stayed. The dicta laid down in a judgment cannot be ignored by a co-ordinate bench. (**N. Rami Reddy**<sup>10</sup>; **K. Yella Reddy v. Registrar APAT**<sup>11</sup>). The law declared in **Mummaneni**

<sup>10</sup> AIR 2001 A.P. 226 = 2001 (1) ALD 443 = 2001(1) ALT 438

<sup>11</sup> (1996 (3) ALT 1047

**Venkataramudu**<sup>1</sup> would continue to bind a coordinate Bench unless and until it is set aside by the Supreme Court.

In **K. Venkata Reddy v. Land Acquisition Officer**<sup>12</sup>, a Division Bench of this Court observed:

“ ..... When the matter came up before our learned brother Kodandaramayya, J., he felt a doubt **whether, having regard to the fact that the judgment of the Full Bench is the subject-matter of an appeal before the Supreme Court and the operation of the said judgment is suspended, the dicta laid down by the Full Bench would be binding on this Court and has to be followed, and referred the matter to the Bench. We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended the only effect of such suspension is that that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein are binding on all Courts including the single Judges and Division Benches of this Court.** The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. We, however, do not feel any such doubt that in so far as the acquisition of the land of a person, whose holding is less than the ceiling area and is personally cultivating the same, is concerned, he is entitled to the payment of market value in lump sum. Payment of compensation in instalments is violative of the provisions of clause (2) of article 31-A(1) of the Constitution. .... ” (emphasis supplied)

In **N. Rami Reddy**<sup>10</sup>, a Division Bench of this Court observed that, when a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the said decision cannot be said to be wiped off. The observations of the Division Bench, in this regard, are:-

**“..... It is now a well settled principle of law that the ratio of a judgment is the reason assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped off.**

.....This aspect of the matter is no longer res integra in view of the decision of a Three-Judge Bench of the Apex Court in **M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association (AIR 1992 SC 1439)**, wherein the Apex Court has laid down the law in the following terms:

**"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result**

<sup>12</sup> 1987 (67) STC 424 = 1994 (1) ALT 227

would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because inspite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.....” (emphasis supplied)

Again in **Government of Andhra Pradesh v. P. Gautam**

**Kumar**<sup>13</sup> a Division Bench of this Court observed:

“ ..... **The other aspect of the contention, ie., that on account of “stay of operation of the judgment”, the Prakash Singh’s case (supra), directive is itself not binding, is a contention that is wholly misconceived. Acceptance of this contention would lead to utter chaos and a deconstruction of the principle of stare decisis, an essential integer of our system of law.**

To illustrate, if a judgment of the Supreme Court is referred to and relied upon for conclusions or grant of relief in a judgment by a High Court; and the High Court judgment is appealed against and a stay granted by the Supreme Court, according to the learned Advocate-General the binding authority of the earlier judgment of the Supreme Court is rendered inoperative and the earlier Supreme Court judgment ceases to have a precedential value, during currency of the order of stay. Such a proposition is productive of universal and unmitigated mischief and therefore does not merit acceptance.

**From the guidance derived from the precedents referred to, we are of the view that the stay of operation of the Yadav’s case (supra), judgment only disables execution of the consequences of the judgment to the parties thereto. Grant of stay does not extinguish the norm(s) predicated in the judgment ..... ”** (emphasis supplied).

In the light of the law declared in the aforesaid judgments, stay of operation of the judgment of the Division Bench, in **Mummaneni Venkataramudu**<sup>1</sup>, would not permit a co-ordinate bench to ignore the law declared therein. We must, therefore, express our inability to agree with the submission of Sri O. Manohar Reddy, Learned Counsel for the appellants-writ petitioners, that, on the questions of law which have already been decided by the Division bench in the aforesaid judgment, we must take a different view.

#### **IV. SECTIONS 15(1) & 15(2) OF THE 2013 ACT: ITS SCOPE:**

The scope of Sections 15(1) of the 2013 Act was also considered in **Mummaneni Venkataramudu**<sup>1</sup> wherein the Division bench opined:-

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<sup>13</sup> 2012 (6) ALD 458 (DB)

“.....The right to submit objections under Section 15(1) is conferred on any person interested on the land which has been notified under Section 11(1) of the 2013 Act. The objection which such a person is entitled to make are with reference to (a) the area and suitability of land proposed to be acquired; (b) justification offered for public purpose; and (c) the findings of the Social Impact Assessment Report. In the present case, as the appellant has been granted environmental clearance by the Government of India, the provisions of the 2013 Act, with respect to social impact assessment, has no application. Consequently, the question of the respondent-writ petitioner filing their objections, on the findings of the social impact assessment report, under Section 15(1)(c) of the 2013 Act, does not arise. The fact that the HNSS project, an irrigation-cum-drinking water project, is for a public purpose is also evident. The only objection which the petitioner could have raised, under Section 15(1) of the Act, is regarding the area and suitability of the land proposed to be acquired.

It has not even been contended before us, by Sri O. Manohar Reddy, Learned Counsel for the petitioner, that the petitioner's land, and the area in which these lands are located, are not suitable for the purpose of the HNSS project. The dispute, in the present Writ proceedings, mainly relates to the failure of the appellant to comply with the requirements of Chapter-II of the 2013 Act, of a social impact assessment to be conducted. As noted hereinabove, the requirement of conducting a social impact assessment is inapplicable, since the appellants fall within the ambit of EIA 1994 Notification. As shall be detailed hereinafter, a substantial part of the HNSS project has already been completed. It would, therefore, not be open to the petitioner to now be heard to contend that his lands are not suitable for establishment of the said project. Consequently, the respondent-writ petitioners' right to submit their objections, under Section 15 of the 2013 Act, cannot be said to have deprived, nor can they have been said to have suffered prejudice thereby.....”

Sri O. Manohar Reddy, Learned Counsel for the petitioners, would submit that Section 15 of the 2013 Act is more or less identical to Section 5-A of the Land Acquisition Act, 1894 (hereinafter referred to as the “1894 Act”); the attention of the Division Bench, in **Mummaneni Venkataramudu**<sup>1</sup>, was not drawn to the judgments of the Supreme Court in (i) **Laxman Lal**<sup>5</sup>; (ii) **Women's Education Trust**<sup>6</sup>; (iii) **Darshan Lal Nagpal**<sup>2</sup>; (iv) **Surinder Singh Brar**<sup>4</sup>; (v) **Bharat Sewak Samaj**<sup>3</sup>; and (vi) **Hukam Chand**<sup>7</sup> all of which arose under Section 5-A of the 1894 Act; the petitioners have not been afforded an opportunity of a personal hearing as mandated by Section 15(2) (similar to Section 5-A(2) of the 1894 Act); as a result the Section 19(1) declaration dated 11.07.2016, and all subsequent proceedings, are vitiated and are rendered illegal; and they are all liable to be set aside.

As the aforesaid judgments of the Supreme Court, relied on by Sri O. Manohar Reddy, learned Counsel for the petitioners,

dealt with the scope and ambit of Section 5-A of the 1894 Land Acquisition Act, whereas acquisition of the subject lands is under the 2013 Act, it is necessary to read Section 5-A of the 1894 Act in juxta-position with Section 15 of the 2013 Act.

| <b>Section 5-A of the 1894 Act</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Section 15 of the 2013 Act</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>(1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for a public purpose, may within objections, sixty days from the date of the publication of the preliminary notification, object to—</p> <p>(a) the area and suitability of land proposed to be acquired;</p> <p>(b) justification offered for public purpose;</p> <p>(c) the findings of the Social Impact Assessment report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government. The decision of the appropriate Government] on the objections shall be final.</p> | <p>(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.</p> |
| <p>(3). For the purposes of this section a person, shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

The questions, which necessitate examination, are whether the appellants-writ petitioners had submitted their objections, to the preliminary notification issued under Section 11(1) of the 2013 Act, in accordance with the conditions stipulated in Section 15(1) of the

2013 Act; whether the objections raised by the appellant-writ petitioners, in their letter dated 23.06.2016, relates to the area of the land proposed to be acquired falling within the ambit of Section 15(1)(a) of the 2013 Act; and whether, in the facts and circumstances of the present case, failure to give the appellants-writ petitioners an oral hearing, would render the declaration under Section 19(1) of the 2013 Act invalid?

Before dealing with these questions it is useful to examine the scope of Section 15(1) and (2) of the 2013 Act (which is similar to Section 5-A(1) and (2) of the 1894 Act). The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the 1894 Act (**Radhey Shyam v. State of U.P.**<sup>14</sup>; **Bharat Sewak Samaj**<sup>3</sup>) which is similar to Sections 11(1), 15 and 19(1) of the 2013 Act. It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious it is. Hearing him, before depriving him of his property, is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is a constitutional anathema except for good reasons. (**State of Punjab v. Gurdial Singh**<sup>15</sup>; **Surinder Singh Brar**<sup>4</sup>). If the property belongs to the economically disadvantaged segment of the society, or of people suffering from other handicaps, the Court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless, and is deprived by the

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<sup>14</sup> (2011) 5 SCC 553

<sup>15</sup> (1980) 2 SCC 471

acquisition of the only source of his livelihood and/or shelter.

**(Radhy Shyam<sup>14</sup>; Bharat Sewak Samaj<sup>3</sup>).**

Proceedings under the Land Acquisition Act are based on the principle of eminent domain, and Section 5-A of the 1894 Act (similar to Section 15 of the 2013 Act) is the only protection available to a person whose lands are sought to be acquired. It is the minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The provisions of the Land Acquisition Act, an expropriatory legislation, should be strictly construed. **(Kamal Trading (P) Ltd. v. State of W.B.<sup>16</sup>; Women's Education Trust<sup>6</sup>).** Section 5-A of the 1894 Act (or Section 15 of the 2013 Act), which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A of the 1894 Act, (or Section 15 of the 2013 Act), is given to the owner/person interested to object to the acquisition proceedings. The strong arm of the Government is not meant to be used, nor should it be used, against a citizen in appropriating the property against his consent without giving him the right to file objections as incorporated under Section 5-A of the 1894 Act (or Section 15 of the 2013 Act) on any ostensible ground. **(Laxman Lal<sup>5</sup>).**

Section 5-A of the 1894 Act (or Section 15 of the 2013 Act) represents the statutory embodiment of one of the facets of the rules of natural justice i.e. audi alteram partem. **(Women's**

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<sup>16</sup> (2012) 2 SCC 25

**Education Trust<sup>6</sup>; Nandeshwar Prasad v. State of U.P.,<sup>17</sup> Munshi Singh v. Union of India<sup>18</sup>, Narayan Govind Gavate v. State of Maharashtra<sup>19</sup>, Shyam Nandan Prasad v. State of Bihar<sup>20</sup>, Union of India v. Mukesh Hans<sup>21</sup>, Union of India v. Krishan Lal Arneja<sup>22</sup>, Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai<sup>23</sup>, Essco Fabs (P) Ltd. v. State of Haryana<sup>24</sup>, Babu Ram v. State of Haryana<sup>25</sup>, Anand Singh v. State of U.P.<sup>26</sup>, Dev Sharan v. State of U.P.<sup>27</sup>, Radhey Shyam<sup>14</sup>, Raghbir Singh Sehrawat v. State of Haryana<sup>28</sup>, Kamal Trading (P) Ltd<sup>16</sup>, Surinder Singh Brar<sup>4</sup> and Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana<sup>29</sup>**. The rule of audi alteram partem, engrained in the scheme of Section 5-A of the 1894 Act, (and in Section 15 of the 2013 Act), ensures that, before depriving any person of his land by compulsory acquisition, an effective opportunity is given to him to contest the decision, taken by the State Government/competent authority, to acquire the particular parcel of land. (**Women's Education Trust<sup>6</sup>; Raghbir Singh Sehrawat<sup>28</sup>**).

The proceeding before the Collector is a blend of a public and an individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notice, to be given an opportunity of objecting to the acquisition, and awakening him to such a right. That the objection is to be in writing, is

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<sup>17</sup> (AIR 1964 SC 1217

<sup>18</sup> (1973) 2 SCC 337

<sup>19</sup> (1977) 1 SCC 133

<sup>20</sup> (1993) 4 SCC 255

<sup>21</sup> (2004) 8 SCC 14

<sup>22</sup> (2004) 8 SCC 453

<sup>23</sup> (2005) 7 SCC 627

<sup>24</sup> (2009) 2 SCC 377

<sup>25</sup> (2009) 10 SCC 115

<sup>26</sup> (2010) 11 SCC 2422

<sup>27</sup> (2011) 4 SCC 769

<sup>28</sup> (2012) 1 SCC 792

<sup>29</sup> (2013) 4 SCC 210

indicative of the fact that the enquiry into the objection is to focus on his individual cause as well as the public cause. At the time of enquiry, for which prior notice is essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. (**Hukam Chand**<sup>7</sup>; **Shyam Nandan Prasad**<sup>20</sup>).

Any person interested in the land, which has been notified under Section 4(1) of the Act, can file objections under Section 5-A(1) of the 1894 Act and show that the purpose specified in the notification is really not a public purpose or that his land is not suitable for the particular purpose; that other more suitable parcels of land are available, which can be utilised for execution of the particular project or scheme or that, in the guise of acquiring the land for a public purpose, the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated by mala fides. (**Women's Education Trust**<sup>6</sup>).

Like Section 5-A of the 1894 Act, Section 15 of the 2013 Act is also in three parts. Under sub-section (1) thereof, any person interested in the land, which has been notified for acquisition under Section 11(1), may submit his objections. While Section 5A(1) of the 1894 Act prescribes a period of 30 days, from the date of publication of notification, within which objections must be submitted, Section 15(1) of the 2013 Act prescribes 60 days as the period within which the objections should be submitted. Unlike Section 5-A(1) of the 1894 Act which does not specify matters relating to which objections can be submitted, Section 15(1) of the 2013 Act stipulates that the objections can be submitted with

regards (a) the area and suitability of the land proposed to be acquired; (b) the justification offered for the “public purpose”; and (c) the findings of the social impact assessment report. It is with respect to these three matters alone, can objections be filed under Section 15(1) of the 2013 Act.

Before examining whether the objections submitted by the appellant-writ petitioners fall within anyone or more of clauses (a) to (c) of Section 15(1), the scope of Section 15(2) necessitates examination. Sub-section (2) of Section 5-A of the 1894 Act (and Section 15(2) of the 2013 Act) makes it obligatory on the Collector to give the objector an opportunity of being heard. After hearing all objections, and making further inquiry, he is required to make a report to the appropriate Government containing his recommendation on the objections. The legislature has made complete provision for the persons interested to file objections against the proposed acquisition, and for the disposal of their objections. (**Darshan Lal Nagpal**<sup>2</sup>; **Hukam Chand**<sup>7</sup>; **Munshi Singh**<sup>18</sup>; **Darius Shapur Chenai**<sup>23</sup>; **Surinder Singh Brar**<sup>4</sup>). The hearing, contemplated under Section 5-A(2) of the 1894 Act (or Section 15(2) of the 2013 Act), is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition, and to make a report. The report of the Collector is not an empty formality as it is required to be placed before the appropriate Government together with his recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections, and make the declaration under Section 6 of the 1894 Act (or Section

19(1) of the 2013 Act). **(Women's Education Trust<sup>6</sup>; Kamal Trading (P) Ltd<sup>16</sup>).**

Section 5-A(2) of the 1894 Act (i.e., Section 15(2) of the 2013 Act) gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) (or Section 11(1) of the 2013 Act), or that there are other valid reasons for not acquiring the same. **(Usha Stud and Agricultural Farms (P) Ltd<sup>29</sup>; Women's Education Trust<sup>6</sup>).**

At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land, proposed to be acquired, is not suitable for the purpose specified in the notification issued under Section 4(1) of the 1894 Act (or Section 11(1) of the 2013 Act). Not only this, he can produce evidence to show that another piece of land is available, and the same can be utilised for execution of the particular project or scheme. **(Raghubir Singh Sehrawat<sup>28</sup>; Women's Education Trust<sup>6</sup>).** The Collector should give a fair opportunity of hearing to the objector, and objectively consider his plea against the acquisition of land. Only thereafter, should he make recommendations, supported by brief reasons, as to why the particular piece of land should or should not be acquired, and whether or not the plea put forward by the objector merits acceptance. **(Raghubir Singh Sehrawat<sup>28</sup>; Women's Education Trust<sup>6</sup>).**

The hearing required to be given, under Section 5-A(2) of the 1894 Act (or Section 15(2) of the 2013 Act), to a person who is

sought to be deprived of his land and who has filed objections under Section 5-A(1) of the 1894 Act (or Section 15(1) of the 2013 Act), must be effective and not an empty formality. The Collector, who is enjoined with the task of hearing the objector, has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make a report in respect of the land notified under Section 4(1) of the 1894 Act (or Section 11(1) of the 2013 Act) or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) of the 1894 Act (or Section 15(1) of the 2013 Act), and submissions made at the hearing given under Section 5-A(2), of the 1894 Act (or Section 15(2) of the 2013 Act), will denude the decision, of the appropriate Government, of statutory finality. **(Surinder Singh Brar<sup>4</sup>).**

Like Section 5-A(2) of the 1894 Act, Section 15(2) of the 2013 Act also requires the objections, under sub-section (1) of Section 15, to be made to the Collector in writing. The Collector is required to give the objector an opportunity of being heard in person or by any person authorised by him in this behalf, or a pleader/advocate. What falls within the ambit of sub-section (2) (be it under Section 5-A of the 1894 Act or Section 15 of the 2013 Act) is only an objection made in writing. The opportunity of being heard is required to be provided by the Collector to the objector. Unlike Section 15(1) which refers to any person interested in the

land under acquisition, sub-section (2) uses the word “*objector*”. It is evident, therefore, that it is only a person interested in the land under acquisition, who has submitted his objections in writing, under Section 15(1) of the 2013 Act (or under Section 5-A of the 1894 Act), who is required to be given an opportunity of being heard. This opportunity of being heard is required to be provided to such of the persons, interested in the land, who have submitted their objections, in writing, to the acquisition of their land. The opportunity of being heard is required to be provided either (i) to the objector himself or (ii) to any person authorised by the objector; or (iii) to his advocate/pleader. It is only if objections are filed in writing, by the person interested in the land under acquisition, can he complain of denial of an opportunity of being heard as the hearing under Section 15(2) of the 2013 Act would, necessarily, be confined to the objections filed by the person interested in the land under acquisition.

Bearing these factors in mind, let us now examine whether, on the facts and circumstances of the present case, the appellants-writ petitioners can claim to have suffered prejudice on their not being afforded the opportunity of being heard under Section 15(2) of the 2013 Act (similar to Section 5-A(2) of the 1894 Act). As noted hereinabove, the objection, which can be made to the preliminary notification issued under Section 11(1) of the 2013 Act, is confined to clauses (a) to (c) of Section 15(1). Acquisition of land, in the present case, is for the construction of the HNSS project, and its canals etc, which are undoubtedly for a “*public purpose*”. Neither have the appellants-writ petitioners contended otherwise, nor is it their case that construction of an irrigation

project is not for a public purpose. Clause (b) of Section 15(1) of the 2013 Act is, therefore, not applicable to the case on hand. As has been referred to earlier, the proviso to Section 6(2) exempts social impact assessment from being conducted, where the process of environmental impact assessment is required under the provisions of any other law in force. As held by the Division Bench, in **Mummaneni Venkataramudu**<sup>1</sup>, environmental clearance is required to be obtained for irrigation projects in terms of the provisions of the Environmental Protection Act, and environmental clearance was sanctioned, to the HNSS project, by the Government of India in its letter dated 08.05.2006. As a social impact assessment report is not required in cases where environmental clearance is obtained, clause (c) of Section 15(1) is not applicable to irrigation projects for which such a clearance is granted. That leaves Section 15(1)(a) which relates to the area and suitability of land proposed to be acquired. It is not even the case of the appellants-writ petitioners that the subject lands, which are sought to be acquired, are not suitable for the HNSS project.

In the counter-affidavit, filed in W.P. No.31263 of 2016, (against the order in which the present appeal has been preferred), the Joint Collector and Special Land Acquisition Officer, HNSS-II would submit that the preliminary notification, for acquisition of Ac.37.96 cts, was approved by the Land Acquisition Officer; Form 6B notices were served on the concerned pattadars inviting objections and claims regarding the lands published in the preliminary notification; the persons interested were informed that objections, to the acquisition, could be filed within sixty days from the date of publication of the preliminary notification, as stipulated

under Section 15 of the 2013 Act; Sri Babu had received the 6B notices, in respect of the lands in Sy. No.422-4 and 422-5 of Kammavaripalli village, on behalf of the first appellant and others; the first appellant Sri Palaniswamy had sent a letter on 23.06.2016, through the Tahsildar, which had reached their office on 08.07.2016, after expiry of the stipulated time of 60 days from the date of publication of the preliminary notification, and hence it was not considered; moreover he had only requested that, after construction of the canal, the whole land, except the building area, would become unusable for house construction; and that land acquisition compensation, as per law, be paid for the remaining area of Ac.2.16 cts; the Special Deputy Collector had reported that nine objections were received regarding publication of the preliminary notification; out of the nine objections received, seven were accepted and two were rejected, under Section 15 of the 2013 Act, based on the revenue records, enjoyment over the lands, apportionment amongst the rightful owners of the respective lands and the Land Acquisition Rules; and the Collector had, in his report dated 11.07.2016, referred to the objections approved by him for preparation of the draft declaration proposals under Section 19(1) of the 2013 Act.

In his reply affidavit, filed in the Writ Appeal on 04.02.2018, the first appellant stated that he had different extents of land admeasuring a total extent of Ac.2.37 cts; after demarcation of the property into house plots, he had sold them in favour of various persons who wanted to settle down at Puttaparty; in the said area, they had constructed a multi-storied building within an extent of Ac.0.21 cts wherein he and others were residing in the apartments;

the proposed canal was sought to be excavated at a distance of 10 metres from the existing building; in respect of the land situated in Sy. No.367/1 and Sy. No.340 of Kammavaripally village, the Land Acquisition Officer had awarded Rs.6,45,22,315/- for an extent of Ac.3.98 cts, as the said plots were approved layouts; the appellant-writ-petitioners lands are also located in Kammavaripally, and the lands, for which an award was passed earlier, are located at a distance of 500 metres from the land belonging to the first appellant and others; a total extent of Ac.2.37 cts of land was divided into house plots, and the only difference was that the plots of the appellants were not approved whereas, in respect of the lands acquired, the same were approved layouts; the respondents were fixing compensation arbitrarily; and as per the market value report, taken from the office of the Sub-Registrar on 09.08.2016, the value of the land was shown as Rs.2,700/- per square yard.

Even in this reply affidavit, filed at the stage of hearing of the Writ Appeal, the first appellant-writ petitioner has not denied receipt of the notice, inviting their objections under Section 15(1) of the 2013 Act, by Sri Babu-his representative; and he has also not alleged that Sri Babu was not his representative. It is evident, therefore, that the first appellant received the Form 6B notice, issued under Section 15(1) of the 2013 Act, whereby his objections, to the preliminary notification issued under Section 15(1) of the 2013 Act, was invited. Section 15(1) of the 2013 Act requires objections to be filed within sixty days from the date of publication of the preliminary notification. As the preliminary notification, in the present case, was published in the newspapers on 12.04.2016 and 13.04.2016 respectively, any person interested in the land was

required to file his objections, under Section 15(1) of the 2013 Act, within sixty days from 13.04.2016 i.e., on or before 11.06.2016. The objections filed by the appellant-writ petitioners, by their letter dated 23.06.2016 which was received in the office of the Special Deputy Collector only on 08.07.2016, is far beyond the sixty day period stipulated under Section 15(1) of the 2013 Act. As noted hereinabove, while the time limit specified under Section 15(1) of the 2013 Act, for filing the objections, is 60 days from the date of publication of the preliminary notification, the time stipulated under Section 5-A of the 1894 Act, for submission of objections, is 30 days from the date of publication of the preliminary notification.

In **Talson Real Estate (P) Ltd**<sup>8</sup>, the Supreme Court held that the provisions of Section 5-A of the Act are attracted only when a person interested in any land, which has been notified under Section 4(1), makes objection in writing to the Collector within 30 days from the date of the publication of the notification; and the period of 30 days should be counted from the last day of publication of the notification under Section 4 of the Act. As the obligation to provide an opportunity of hearing to the objector, under Section 15(2) of the 2013 Act, would arise only if he had filed his objections within 60 days from the date of publication of the preliminary notification, the respondents cannot be faulted for not considering his objections, and in not affording him an opportunity of a personal hearing, for it is only a person interested in the land, who has filed his objections under Section 15(1), who is entitled to an opportunity of a personal hearing under Section 15(2) of the 2013 Act.

Even if the first appellant-writ petitioner had been afforded such an opportunity, the hearing would be confined only to the objections filed by him, as Section 15(2) requires only the objector to be given an opportunity of being heard, and not any person interested in the land. Consequently it is only in respect of the objections filed by him could the first appellants-writ petitioners have claimed an opportunity of oral hearing to satisfy the Land Acquisition Officer that the objections raised by him necessitated acceptance. As noted hereinabove, except to dispute the market value of the land, all that the first appellant has stated, in his letter dated 23.06.2016, is that the remaining extent of land, apart from the land acquired, would become unusable; and, therefore, the remaining extent of Ac.2.16 cts should also be acquired, and compensation should be paid for these extents also. None of these objections relate to clauses (b) and (c) of Section 15(1) of the 2013 Act. While the suitability of the subject land, for construction of the HNSS project, has also not been put in issue by the appellants in their letter dated 23.06.2016, Sri O. Manohar Reddy, Learned Counsel for the appellants, would submit that the appellants' contention, that the remaining extent of Ac.2.16 cents would become unusable on acquiring Ac.0.21 cents of their land, is referable to clause (a) of Section 15(1) as it relates to the "*area of the land proposed to be acquired*". It is doubtful whether the appellants' contention, of the remaining extent of Ac.2.16 cents of land becoming unusable would fall within the ambit of Section 15(1)(a) of the 2013 Act. It is also not certain as to how much of this extent of Ac.2.16 cents of land, the appellant-writ petitioners still

own as, it is their stated case, in their writ affidavit, that they have divided this land into plots, and have sold them to others.

What then should be the nature of relief which should be granted in these proceedings. In similar circumstances the Division bench, in **Mummaneni Venkataramudu**<sup>1</sup>, held:-

“.....The questions which remain to be considered are: (a) whether the subject lands fall within the scope of the project for which environmental clearance was granted vide GOI letter dated 08.05.2006 and (b) whether the appellant had commenced construction in terms of the GOI letter dated 08.05.2006 within five years i.e., on or before 07.05.2011. While it does appear, from a reading of G.O.Ms.No.186 dated 15.10.2005, that the findings of the Learned Single Judge that the environmental clearance granted on 08.05.2006 was confined only to Kurnool District, and did not relate to Ananthapur District where the subject lands, which are sought to be acquired, are located, are erroneous, we are satisfied that these matters should be examined afresh in the Writ Petition, after parties on either side are permitted to file additional affidavits placing/rebutting these facts. We consider it appropriate, therefore, to set aside the order of the Learned Single Judge, and restore the Writ Petition to file. The appellants are permitted to file an additional counter-affidavit, furnishing details regarding the HNSS project, for which environmental clearance was granted vide letter dated 08.05.2006, to establish that (i) the subject lands, which are sought to be acquired, fall within the scope of the project for which environmental clearance was granted vide letter dated 08.05.2006; and (ii) they commenced construction of the HNSS project on or before 07.05.2011. After the petitioners are given the opportunity to file their reply affidavits, the Learned Single Judge shall examine the aforesaid questions in accordance with law. The Principal Secretary, Revenue (Land Acquisition) Department, shall, at the earliest, also identify those officials who were responsible for not bringing all relevant facts, to the notice of this Court, in the counter-affidavits filed in the Writ Petition; and initiate disciplinary proceedings against them, for such negligent acts, in accordance with law.....”

As held by the Division Bench, in **Mummaneni Venkataramudu**<sup>1</sup>, it is only if construction of the HNSS project had actually commenced before 07.05.2011 (i.e within five years from 08.05.2006 when the Government of India granted environmental clearance) would the said environmental clearance have enabled the respondents to avoid conducting a social impact assessment; and as this question can only be examined, on the respondents being called upon to file an additional affidavit and produce documentary evidence to show that the construction

actually commenced on or before 07.05.2011, the order under appeal must be set aside, and W.P. No.31263 of 2016 restored to file.

## V: CONCLUSION:

On the nature of the order to be passed, on the order under appeal being set aside and the Writ Petition being remanded to the Learned Single Judge for his consideration afresh, the Division bench, in **Mummaneni Venkataramudu**<sup>1</sup>, observed:-

“.....In cases where economic interest competes with the rights of other persons, there is a need to strike a balance between the two competing interests. (**Shiva Shakti Sugars Ltd.**<sup>3</sup>). While passing/modifying an interim order, the Court should consider the balance of convenience, the public interest involved and the financial impact of the interim order. (**Raunaq International Ltd.**<sup>9</sup>; **Shiva Shakti Sugars Ltd.**<sup>3</sup>; **CCE v. Dunlop India Ltd** : (1985) 1 SCC 260). The court should arrive at a proper balance of competing interests, and grant stay of execution of the project only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused thereby. The Court should also satisfy itself whether the public interest, in holding up the project, far outweighs the public interest in carrying it out within a reasonable time. *The Court must take into account the cost involved in staying the project, and whether the public would stand to benefit by incurring such cost.* (**Ramnislal N. Bhutta**<sup>10</sup>; **Raunaq International Ltd.**<sup>9</sup>; **Shiva Shakti Sugars Ltd.**<sup>3</sup>).

The adverse economic impact, including cost overruns and the cost of providing drinking water and irrigation facilities from other sources, should be borne in mind while considering the manner in which the interim order, in force during the pendency of the Writ Petition, should be moulded to safeguard the constitutional rights of individuals who have approached the Court as also to protect the larger public interest involved in ensuring early completion of the project, conceived and established in the larger public interest of providing drinking water and irrigation facilities to the parched districts of the Rayalaseema Region of Andhra Pradesh.

The Supreme Court, in **Raunaq International Ltd.**<sup>9</sup>, observed that the petitioner, asking for interim orders, in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered in consequence of an interim order; otherwise public detriment may outweigh public benefit in granting such interim orders; and stay order or injunction order, if issued, must be moulded to provide for restitution. As held by the Supreme Court, in **Ramnislal N. Bhutta**<sup>10</sup>, there are many ways of affording appropriate relief and redressing a wrong. It would even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement, that the persons interested in the land should also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of the compensation payable.....”

The HNSS project is envisaged in the larger public interest of providing irrigation facilities, and to supply drinking water, to the chronically drought affected upland areas in Kurnool, Kadapa, Ananthapur and Chittoor Districts of Andhra Pradesh. The submission of the Learned Advocate-General is that, from out of 345 K.Ms length of HNSS minor canal in Phase-II, construction of a length of 342.25 K.Ms has already been completed; only works for a length of 2.75 K.Ms alone are pending; and acquisition of the subject lands is necessary to complete the remaining works for a length of 2.75 K.Ms of the HNSS minor canal.

The extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, and is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**<sup>30</sup>), and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**<sup>31</sup>; **Air India Ltd v. Cochin International Air Port Ltd**<sup>32</sup>; **Rashpal Malhotra v. Mrs. Saya Rajput**<sup>33</sup>; **Council of Scientific and Industrial Research v. K.G.S. Bhatt**<sup>34</sup>). Even if a legal flaw might be electronically detected, this Court would not interfere

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<sup>30</sup> AIR 1964 SC 1419

<sup>31</sup> (2005) 6 SCC 138

<sup>32</sup> (2000) 2 SCC 617

<sup>33</sup> AIR 1987 SC 2235

<sup>34</sup> AIR 1989 SC 1972

save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra**<sup>33</sup>; **K.G.S. Bhatt**<sup>34</sup>).

The HNSS project, an irrigation and drinking water project constructed to cater to the parched districts of the Rayalaseema region of the State of Andhra Pradesh, is undoubtedly in larger public interest, and it would be wholly inappropriate to set aside proceedings, for acquisition of lands for the purpose of the said project, on mere technicalities. While we must ensure that the appellants-writ petitioners are not denied their constitutional right under Article 300-A of the Constitution of India, and are not deprived of their property save by authority of law, we should also not hinder early completion of a project, of significant public importance, merely because some Government officials have not been diligent in placing all necessary facts before the Court.

As the cost overruns, in staying execution of the project, would far outweigh the benefit which the petitioners would be entitled even in case the Writ Petition were to be allowed later, we consider it appropriate to pass the following interim order in the restored W.P. No.31263 of 2016 bearing in mind that the only objection which the appellant-writ petitioners had taken to the acquisition of land, vide their letter dated 23.06.2016, was that the remaining extent of Ac.2.16 cts of land would also become unusable and should also be acquired.

We consider it appropriate, in such circumstances, to direct the respondents to (1) determine the compensation payable to the appellants-writ petitioners under the award to be passed for acquisition of the lands notified in the preliminary notification, issued under Section 11(1) of the 2013 Act dated 12.04.2016, as

also the compensation payable for the other extent of Ac.2.16 cents of land referred to in the appellant-writ petitioners' letter dated 23.06.2016; (ii) pay the appellants-writ petitioners, the compensation they are entitled to receive for their lands which are being acquired pursuant to the preliminary notification, issued under Section 11(1) of the 2013 Act dated 12.04.2016, without prejudice to their right to avail their statutory remedies for seeking enhancement of such compensation; (iii) in addition thereto, to deposit the compensation determined, for the un-acquired extent of Ac.2.16 cents of land plus 50% of the compensation being paid to the appellant-writ petitioners, in terms of the award to be passed, with the Registrar (Judicial) of this High Court, who shall invest the said amount in an interest bearing cumulative fixed deposit to be kept alive, and periodically renewed, during the pendency of the Writ Petition. In case the Writ Petition is allowed later, the Learned Single Judge may also consider determining the nature and extent of damages to be paid to the appellants-writ petitioners for their being illegally deprived of their lands, and direct its payment from the amounts kept in fixed deposit. It is made clear that we have neither stipulated the quantum of damages to be paid in such an eventuality to the appellants-writ petitioners, nor have we restricted the damages, if any, to be paid only to the amount deposited with the High Court; (iv) in case the Writ Petition were to be dismissed later, the amount kept in deposit, along with the interest accrued thereon, shall be returned to the State Government; and (v) it is only after compensation, in terms of the award passed, is paid to the appellants-writ petitioners and, in addition thereto the compensation determined

for the un-acquired extent of Ac.2.16 cents of land plus 50% of the compensation payable to the appellant-writ petitioners in terms of the award passed for acquisition of their lands pursuant to the Section 11(1) notification dated 12.04.2016, is deposited with the Registrar (Judicial) of the High Court, shall the respondents herein, that too after complying with Sections 21 to 23 of the 2013 Act and passing an award strictly in accordance with Section 26 thereof, be entitled to take steps to dispossess the petitioners from the subject lands.

The order under appeal is set aside, W.P. No.31263 of 2016 is restored to file and shall be listed for hearing, before the appropriate bench, along with W.P. No.30383 of 2016. The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed. There shall be no order as to costs.

**RAMESH RANGANATHAN, ACJ**

**KONGARA VIJAYA LAKSHMI, J.**

Date: 07-03-2018.

Note: L.R. copy to be marked.

B/o  
MRKR/CS