ANDHRA PRADESH HIGH COURT

C. Suryanarayana

Vs.

Govt. of A.P

Writ Appeals Nos. 744 and 809 of 1981

(K. Madhava Reddy, Ag. C.J. and P.A. Choudary, J.)

23.04.1982

JUDGMENT

Madhava Reddy, Ag. C.J.

1. These two appeals are directed against the judgment of our learned brother Gangadhara Rao, J., allowing Writ Petition No. 5524 of 1978 in part.

2. The Land Acquisition Office, Nellore published a notification under Section 4 (1) of the Land Acquisition Act hereinafter referred to as the 'Act' in the Gazette on 7-10-1978 notifying the acquisition of an extent of ac.1-06 cents of lands in Survey No. 314/1 and 315/B1 of Reddigunta Village hamlet of Yellayapalem village belonging to the petitioners. The substance of the said notification was published in the locality on 17-11-1978. This land was proposed to be acquired for providing house sites to Scheduled Tribes and economically backward classes and for that purpose invoking the powers under Section 17 (4), the enquiry under Section 5-A of the Act was dispensed with. However, in view of the guidelines issued by the Government of Andhra Pradesh in their Memorandum No. 1952/G.76-4 Revenue (G) Department dated 24-7-1976 advising the Land Acquisition Officer to defer even after the Notification under Section 4(1) or Section 6 of the Act, acquisition of lands from surplus holders until the proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act are finalized, possession of the land in question was not taken. The petitioner had filed declaration under the Land Reforms (Ceiling on Agricultural Holdings) Act and the same was pending enquiry and disposed when the above notification was published. The petitioner, therefore, called in question the proposed acquisition.

3. It is their case that the Notification under Section 4 (1) was not published in the locality and he came to know of the proposed acquisition only when notice under Sections 9 (3) and 10 of the Land Acquisition Act dated 14-11-1978 was served on them on 4-12-1978 Calling upon him to file written statements regarding their interest in the land and the amount of compensation claimed by them. It is their further case that in the declaration C.C. No. 1317/75/KVR filed by them some land was declared as surplus and the matter was pending in a C.R.P. No. 6051/78 before the High Court. Even while the C.R.P., was pending, as per the determination of the

Appellate Tribunal, the surplus holding of Acs. 55-00 of dry land was surrendered to the Government and the Government took possession of the same. They submit that that land is available for assignment. They challenged the acquisition of the land primarily on two grounds; firstly that there was a delay of forty days in publishing the notification in the locality and that it vitiated the entire acquisition proceedings and secondly that the dispensing with of the enquiry contemplated under Section 5-A of the Act was invalid as there was no urgency warranting such action. Our learned brother Gangadhara Rao, J., while observing that the first point was not specifically taken in the affidavit, held that even if there was such a delay as is complained of, it was not fatal to the acquisition proceedings. The second contention however found favor with him and he held that the very fact that possession was not taken even up to the date of the judgment was proof positive of lack of urgency warranting dispensing with of enquiry under Section 5-A of the Act. In that view of the matter, while upholding the Notification under Section 4(1), he quashed the proceedings dispensing with the enquiry under Section 5-A and directed the Authorities concerned to make an enquiry under Section 5-A before proceeding further with the acquisition of that land.

4. Initially only the writ petitioners had filed Writ Appeal No. 744 of 1981. At the hearing of that appeal the Government Pleader stated that inasmuch as the learned single Judge had held against the Land Acquisition Authorities in so far as they dispensed with the enquiry under Section 5-A, the Government was also preferring an appeal. Accordingly Write Appeal No. 809 of 1981 was filed and both the appeals were heard together by us.

5. Before determining the question arising for consideration in Writ Appeal No. 744/81 it would be convenient to dispose of the issue that arises for consideration in Writ Appeal No. 809/81. The learned single Judge held that although the Notification under Section 4 (1) was published in the Gazette on 7-10-1978 even up to the date of judgment possession was not taken. That itself was proof positive of lack of urgency which alone could justify enquiry under Section 5-A of the Act being dispensed with.

6. Mr. Ramaswamy learned Government Pleader however contends that whether the acquisition of a Particular land is urgent or not has to be decided with reference to the date of notification and not with reference and the subsequent delay in or omission to take possession of the land acquired. He also contends that the urgency for the acquisition has to be adjudged having regard to the purpose for which it is acquired.

7. Section 5-A of the Land Acquisition Act envisages an opportunity to be given to every person interested in any land notified under Section 4. Sub-section (1) as being needed or likely to be needed for a public purpose, to file his objections, if any, in writing, within thirty days after the publication of the notification in the locality. It further envisages the Collector (Land Acquisition) giving an opportunity to the person filing objections, or being heard in person or by pleader and requires the Collector to hear the objections and make such further enquiry as he thinks fit and submit the case for the decision of the Government together with the record of proceedings held by him and a report containing his recommendations on the objections. It is on this material that the appropriate Government has to take a decision which is declared to be final. The objections referred to in Section 5-A are objections to the acquisition of the land itself. This procedure envisaged by Section 5-A for determining the objections raised by the person interested before the land is acquired may be dispensed with under Section 17, sub-section(4) of

the Act. If the enquiry under Section 5-A is dispensed with in exercise of the powers vested in the Government under sub-section(4) of Section 17, then immediate possession of the land may be taken. But then the power under sub-section (4) of Section 17 can be exercised as laid down therein only in the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable. The condition precedent for the application of three sub-sections is that it must be necessary to acquire the immediate possession of any land for any of the purposes mentioned therein. Otherwise the ordinary rule is that possession of the land may be taken only after making an award, and the various provisions of the Act envisages several steps to be taken prior to that which are intended to ensure an opportunity to the persons whose lands are being compulsorily acquired to raise objections, if any, against the proposed acquisition; on hearing which and on making an enquiry into the same the Land Acquisition Authorities may be satisfied that the acquisition of that particular land to be inappropriate or unnecessary. Before making an award notification under Section 6 has to be issued. Notices under Sections 9 and 10 have to be issued to the persons interested and an enquiry has to be made in regard to the claim made by the persons interested in the land. The Land Acquisition Collector has to determine the true area of the land, and the amount of compensation which in his opinion could be allowed to the land and the order of apportionment of the compensation among the persons interested. It is only after an award is made which is declared to be final under Section 12, that possession of the land may be taken as laid in Section 16 of the Act. It is therefore clear that the power to dispense with the enquiry envisaged by Section 5-A can be exercised only when there is such an urgency to take immediate possession of the land as not to brook the delay of even 30 days notice being issued to enable the persons interested to file objections to the acquisition itself, and the determination of such objections, by the Collector. If therefore after dispensing with the enquiry under Section 5-A under the plea of urgency, possession is not taken even after a lapse of nearly three years, that would certainly be a factor leading to the conclusion that there was no real urgency justifying the dispensing with of the enquiry under Section 5-A and that the Acquisition Authorities acted mechanically. It should be further noted that if enquiry under Section 5-A is not dispensed with, then not only the objections may be filed by the persons interested and the Collector has to determine those objections, but even if their objections are overruled and a notification under Section 6 is issued, until the enquiry into the claim for compensation made by the persons interested is disposed of by making an award, possession cannot be taken. The person interested would have a right to continue in possession until then. If the person entitled to remain in possession is to be immediately dispossessed there should unquestionably be such an urgency to take immediate possession of ï¿½? the land which alone justifies the invocation of the power under sub-section (4) of Section 17 as not to brook the delay of even a summary enquiry. That power cannot be lightly exercised.

8. Mr. Ramaswamy, learned counsel for the Government, however, contends that any subsequent delay in taking possession of the land after invoking the power under Section 17 (4) and dispensing with the enquiry under Section 5-A cannot vitiate the acquisition proceedings and relied upon certain judgments of the Supreme Court and of our own High Court to which we may now refer.

9. In *Jage Ram v. State of Haryana*[1], the Supreme Court held that "the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant

[1] AIR 1971 SC 1033

for deciding the question whether on the date on which the notification was issued, there was

urgency or not". That was a case where the delay in taking possession of the land was not subsequent to the invoking of the power under Section 17 and dispensing with the enquiry under Section 5-A but a case where the delay occurred in finalising the acquisition proposals and deciding upon the question of acquisition itself and issuing the notification under Section 4(1). It is not a case of post notification delay in taking possession of the land in respect of which the urgency clause was invoked in exercise of the emergency powers under Section 17 (4) of the Act.

10. In another case *Kasi Reddy Papaiah v. Govt. of Andhra Pradesh*[2], Chinnappa Reddy, J., held (at p. 269) :

> "Delay on the part of the tardy officials to take further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency ...."

That was a case in which Government took the decision to acquire the land on 19-5-1970 but did not publish the notification in the Gazette till 24-9-1970 and published the notification under Section 6 on 25-2-1971 but took no steps to take possession of the land and it was contended that there was no urgency whatsoever for invoking the power under Section 17 (4) of the Act and dispense with the enquiry under Section 5-A. What appears to have weighed with the learned single Judge in coming to the conclusion he did, was not the subsequent delay alone, but the delay in even issuing Section 4(1) Notification and invoking the urgency clause after the decision to acquire the land was taken by the Government. Though there was no reference therein to the decision of the Supreme Court in *Jage Ram v. State of Haryana,*[3] the judgment of the learned single Judge seems to have proceeded on the basis of the dicta laid down by the Supreme Court in that case in which the Supreme Court was concerned with pre-notification delay. In any event the learned single Judge did not lay down that the failure to take possession even after invoking the urgency clause cannot be a ground for holding that there was no real urgency.

11. Another decision relied upon for the appellants is of Gangadhara Rao, J., in *Tandu Vanamulu v. Govt. of Andhra Pradesh*[4], where the learned Judge sitting single observed that the pendency of the proposals for acquisition for several years prior to Section 4 (1) Notification does not vitiate invocation of the urgency clause and dispensing with of the enquiry under Section 5-A. This again is a case in which the question whether the delay in finalising the acquisition proposals culminating in the issue of Section 4(1) Notification vitiated the proceedings arose and not a case of delay in taking possession subsequent to the publication of Section 4(1) Notification. This decision purports to follow the view taken in W.A. 370/76 dated 20-9-1976 wherein a Division Bench of this Court dismissed the Writ Appeal purporting to follow the dicta laid down by the Supreme Court in *Jage Ram v. State of Haryana,*[5] But as already discussed above the Supreme Court in *Jage Ram v. State of Haryana* (supra) was concerned with the delay in finalising the acquisition proposals

[2](1975) 1 APLJ (HC) 70
[3] AIR 1971 SC 1033
[4](1977) 1 Andh WR (HC) 248
[5] AIR 1971 SC 1033

prior to the issuance of Section 4 (1) Notification and invoking the urgency provisions in Section 17 of the Act and not the delay in taking possession subsequent to Section 4(1) Notification and

exercise of emergency power.

12. Mr. Ramaswamy learned counsel for the Government placed reliance upon the judgment of our learned single Judge, Jeevan Reddy, J. in *T. Venkata Satya Murthy v. The State of A.P*[6]. (SN) wherein he observed :

> "Even if it is held that the reasons assigned by the officials explaining the delay in issuing Section 6 declaration or in taking possession of the land is not satisfactory, even then that cannot be a ground by itself to hold that there was no urgency on the date of Section 4(1) Notification."

This is a case which directly deals with the question of delay in taking possession subsequent to publication of Section 4 (1) Notification. Even in this case, the learned single Judge recognized :

> "......... The said question is essentially a question of fact, to be decided having regard to all the circumstances of the case. In this case, I am satisfied, on the basis of the facts and circumstances stated in the counter-affidavit that there existed a real urgency on the date of issuance of Section 4(1) Notification and that, the said urgency is in no way mitigated or obliterated by the unfortunate delay on the part of the concerned officials in issuing the declaration under Section 6 and in taking possession of the land."

Reliance was also placed by the learned Government Pleader on a judgment of the Division Bench of this Court in *N. Ramanna v. Collector, West Godavari*[7], in which approving the view taken by Gangadhara Rao, J., in *T. Vanamulu v. Government of Andhra Pradesh*[8], it was held :

> "........ The matter also has to be tested with regard to the need for urgency on the date when Section 5-A is dispensed with. If Section 5-A was dispensed with, if there is delay in the matter of either the declaration or the notice, under Sections 9 and 10 which should follow, the delay *ipso facto* does not vitiate the direction dispensing with Section 5-A. All that is to be seen is whether on the date of dispensing with Section 5-A there was urgency and the authority dispensing with Section 5-A felt it necessary to direct that Section 5-A enquiry be dispensed with. The fact that subsequently the concerned officers of the Government did not take further action by invoking the other provision of the Act expeditiously, by taking possession of the land, by issuing notices under Section 9 and 10 would not have the effect of rendering the dispensing with Section 5-A enquiry illegal or void."

In that decision the entire discussion proceeds on a consideration of the contention whether dispensing with of the enquiry under Section 5-A, which contemplates a summary enquiry by the Collector was valid merely because the acquisition is for providing house sites for Harijans. What was considered was how far, the long delay in

[6](W.P. No. 750/75 : (1976) 2 APLJ 39) [8](1977) 1 Andh WR (HC) 248

[7](1977) 2 APLJ (HC) 289

taking possession of the land acquired after dispensing with the summary enquiry under Section

5-A would vitiate the acquisition proceedings and what bearing it would have in deciding upon the propriety of the exercise of the discretion vested in the Government to dispense with the enquiry under Section 5-A of the Act. The Court expressed its agreement with what was stated in *Kasireddy Papaiah v. Govt. of A.P.* (supra). The Court did not lay down that the delay subsequent to dispensing with Section 5-A enquiry under no circumstance could vitiate the acquisition proceedings.

13. Ramachandra Rao, J., took a contrary view in W.P. No. 61/73*which is in consonance with the conclusion we have reached and observed thus :

> "........ that where there is a long delay in taking possession of the lands proposed to be acquired it demonstrates that there was no real urgency for the acquisition and that the order dispensing with the enquiry under Section 5-A by exercising the power under Section 17 (4) was passed mechanically and that the exercise of power under Section 17 (4) dispensing with the enquiry under Section 5-A is not proper or valid."

14. In W.A. No. 236/66 dated 3-10-1969 a Division Bench of this court to which one of us (Madhava Reddy, J. was a party), where the notification under Section 4 (1) and Notification dispensing with enquiry under Section 5-A were issued on 21-3-1963, but no steps were initiated to take possession until after the award was passed on 14-6-1966 observed :

> "....... If really, as is contended by Mr. Seetharamaiah the Government felt the urgency to establish an Industrial Estate and it could not brook the delay of having to go through the procedure prescribed under Section 5-A, there was no reason why it should not have taken steps to take possession of the land acquired till the appellants came up to this Court by way of a writ petition......
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> ... ...
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> If really as now put forward on behalf of the respondents there was urgency, the Government could have taken possession of the property."

In another W.P. No. 3513/71 dated 25-11-1974 where Section 4(1) notification was issued on 7-10-1971 and possession was sought to be taken after notices under Section 9 were issued on 1-12-1972, the Court held that when there is a long delay in taking possession of the lands proposed to be acquired, it demonstrates that there is no real urgency for the acquisition, and the order dispensing with the enquiry under Section 5-A by exercising the power under Section 17(4) was passed mechanically and improperly." In *K. Yanadi Reddy v. State of Andhra Pradesh*[9], a notification was issued on 19-6-1971 invoking the urgency clause. That acquisition was for providing house sites for Harijans of the village. But the declaration under Section 6 was issued on 30-12-1971 and possession was not taken. The Court, observing that enquiry under Section 5-A would not take even a month or two held that the delay in issuing Section 6 notification by itself and failure to take any steps in that behalf after dispensing with Section 5-A enquiry vitiates the acquisition proceedings and struck down the notification. The Kerala High Court in *Seshagiri v. Special Tahsildar for Land Acquisitions*[10], observed that

[9](1973) 2 APLJ 408 [10]1964 Ker LT 54

since the time allowed for filing objections by the affected parties under Section 5-A is only 30

days, the Government must invoke the urgency clause to dispense with the said inquiry only in cases where they cannot wait even for a period of two months or so required for conducting the enquiry.

15. To the same effect is the view expressed by the Gujarat High Court in *Natwarlal Jerambhai Patel v. State of Gujarat*[11], The learned Judges held that the Court must be able to deduce that the urgency in a given case was such that the period required for enquiry under Section 5-A of the Act would cause great prejudice or inconvenience so as to defeat the very purpose of requisition and the purpose cannot be fulfilled unless Section 5-A enquiry is dispensed with. The urgency must be such that the purpose of acquisition cannot await the period of thirty days for filing objections and the reasonable period of enquiry under Section 5-A of the Act. In the judgment under appeal too, Gangadhara Rao, J., held when the authorities thought it proper for whatever reason not to take possession of the land, it only means that there was really not that urgency as to dispense with enquiry under Section 5-A of the Act. In *Kasireddy Papaiah v. Govt. of A.P*[12]., Chinnappa Reddy, J. even though he was not prepared to agree with the submission that the delay on the part of tardy officials to take further action in the matter was sufficient to nullify the urgency which existed at the time of notification and to hold that there was never any urgency, recognized that "It may be a relevant circumstance to be taken into consideration in deciding whether there was any urgency at all or whether the emergency provision was invoked without the Government applying its mind to the circumstances of the case." Specifically referring to the opinion of Ramachandra Rao, J., in the above case. Chinnappa Reddy, J., observed that the question whether power under Section 17(4) was exercised mechanically or otherwise is a question of fact which can be decided on a consideration of all the relevant circumstances and no universal proposition can be laid down that long delay by itself is sufficient to prove that the power was exercised mechanically. I do not think my learned brother, Ramachandra Rao, J., laid down any such proposition." We too do not think that any of these decisions laid down that, however long the delay may be in taking possession of the land subsequent to the invoking of the power under Section 17 (4) for dispensing with the enquiry under Section 5-A which is precisely intended to enable the Authorities to take possession of the particular land immediately, does not indicate that there was no real urgency or that it does not even have a bearing on the question whether the Authorities concerned have acted mechanically or after a conscious application of their mind in regard to the existence of real urgency to take possession. However in this context, it must be noted that all these decisions relied upon by the learned Government Pleader were rendered prior to the decision of the Supreme Court in *Babu Singh v. Union of India*[13], wherein the Court clearly laid down that "It may be that after invoking the power under Section 17 proceedings for acquisition dragged on and possession is not taken, it may reflect upon the exercise of power under Section 17. It may indicate that there was no urgency and there was colourable exercise of power." This later decision of the Supreme Court clearly emphasizes that the failure to take possession after invoking the urgency clause is a very relevant consideration and cannot be ignored in deciding whether the urgency clause was invoked mechanically and without a proper application of the mind and whether there was a real urgency at all. The purpose may be urgent but the particular acquisition having

[11] AIR 1971 Guj 264
[12] AIR 1975 And Pra 269
[13] AIR 1979 SC 1713

regard to the several factors may not be urgent. As observed by Gangadhara Rao, J. in the judgment under appeal that "It is true in view of the Madras Amendment of sub-section (2) of

Section 17 acquiring lands for providing house sites for the poor is an urgent matter. Still when the Authorities thought it proper, for whatever reason, not to take possession of the land, it only means there was really not that urgency as to dispense with the enquiry under Section 5-A of the Act." The several factors may be, that there are no funds immediately available for payment of compensation to the person whose land is acquired or to spend for construction of houses for the poor for which purpose the land is being acquired or, as in this case, there may be likelihood of the land being declared as surplus and capable of being taken over by the Govt. under the Land Ceiling Act by paying nominal compensation as provided under that Act rather than the market value. The very basis or justification for invoking the power vested under Section 17(4) is the urgent necessity to take immediate possession of the land proposed to be acquired not merely the purpose for which it is being acquired and if after invoking that power possession is not taken even after lapse of several years, it would only demonstrate that there was no real urgency at all. When the Government has decided to take immediate possession of the land, the inaction of the Government or its subordinate officials cannot be brushed aside as lethargy on the part of the Officers.

16. In this context, it would be pertinent to note what Justice Krishna Ayyar stated in *State of Punjab v. Gurdial Singh*[14], with regard to the invoking of the emergency powers vested in the Government under Section 17 (4) to dispense with the enquiry under Section 5-A Krishna Ayyar, J. declared :

> "It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness in constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Article 14 (and 19) burke an enquiry under Section 17 of the Act.
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> Where the Government sought to acquire particular land for establishing a grain market then gave it up and selected another piece of land but ultimately acquisition of the latter was declared *mala fide* by the High Court and seven years thereafter the Government again sought to acquire the same land under emergency powers under Section 17, it could not be said that the invoking of the section is justified."

If that be the effect of the delay in finalizing the proposals for taking acquisition proceedings upon the decision to dispense with the enquiry under Section 5, the subsequent unexplained delay in taking possession of the land acquired after dispensing with the summary enquiry under Section 5-A must necessarily be so.

17. In a later decision in *Babu Singh v. Union of India*[15], the Supreme Court dealing with the contention that when the Government invoked the powers under Section 17 claiming

[14] AIR 1980 SC 319

[15] AIR 1979 SC 1713

that in view of the emergency, the urgency clause must be applied and thereby deprived the persons of their statutory right to put forth the objection against the proposed acquisition, but did

not take possession of the land involved in the dispute for a period of six years, the declaration under Section 6 was invalid and the power to take possession after complying with Section 9 got exhausted and on this count the acquisition itself must be declared illegal and invalid, the Court held (at pages 1716-1717) :

> "If the impugned notifications are valid and the declaration made under Section 6 has become final and an award under Section 12 is made even if possession is not taken, we fail to appreciate how thereby the notification under Section 6 would become invalid."
> The Court, however, went on to declare :
> "It may be that after notification the power under Section 17 proceedings for acquisition dragged on and possession is not taken, it may reflect upon the exercise of power under Section 17. It may indicate that there was no urgency and there is colourable exercise of power."

Though not specifically referring to its earlier decision in *Jage Ram v. State of Haryana* (supra) in this latter case the Supreme Court clearly stated that failure to take possession of the land after the exercise of power under Section 17(4) may indicate that there was no real urgency and that it was a colourable exercise of power.

18. In the instant case the enormous delay in taking possession itself demonstrates that there was no real urgency. Further while the notification in the Gazette was made on 7-10-1978 it was published in the locality on 17-11-1978 and notification under Section 6 is not issued at all so far and no further step was taken. Another feature of this case which must be taken note of is that the Government itself had issued a Memorandum No. 1952-G/76-4 Revenue (a) Dept. dated 24-7-1976 directing the Land Acquisition Officers to defer the acquisition of land from surplus landholders until the proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act are finalised and possession of the surplus land was taken from them, even if notifications under Section 4 (1) and Section 6 of the Land Acquisition Act were issued. It is immaterial to consider in this context whether that Memorandum overrides the power vested in the Land Acquisition Authorities under the Land Acquisition Act, for, the State Government Officers, acting under and subject to the control of the Government, are certainly bound by the directions issued in the matter of acquisition of the lands especially when such directions are based on a broad policy calculated to promote public interest and avoid acquisition of lands from surplus land holders at enormous cost where such lands could be taken possession of as surplus land by paying the compensation envisaged under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act which is very insignificant as compared to the market value of the lands which is required to be paid if the land is acquired under the provisions of the land Acquisition Act. The petitioner was a person who had filed his declaration under the Land Ceiling Act and the same was pending enquiry. In view of the above Government Memorandum, possession of this land could not have been taken by the land acquisition authorities who were bound by the Government Memorandum. This is a case which clearly demonstrates that the land acquisition authorities have mechanically exercised the power vested in them under sub-section (4) of Section 17 for dispensing with the enquiry under Section 5-A of the Act. In order that the power under Section 17 (4) may be invoked the urgency must be such as not to brook the delay of issuing 30 days notice and making an enquiry envisaged by Section 5-A and determine the

objections to acquisition, if any, filed. They have not applied their mind to any of these relevant circumstances which alone justify the exercise of that power. Such a mechanical exercise of the powers is not envisaged by the Act.

19. It was however argued that the purpose for which it was acquired viz., providing house sites for the weaker sections, scheduled castes and Scheduled Tribes is itself a public purpose recognised by sub-section (2) of Section 17 of the Act which empowers the land acquisition Authorities to exercise the power under sub-section (4) of Section 17 to dispense with the enquiry. So long as the acquisition is for that purpose no further justification or enquiry is needed for exercising the power and the same cannot be validly questioned in this Court. Reliance for this proposition is based upon a judgment of this Court in *P. Yerra Reddy v. Dist. Collector, Ongole*[16], to which one of us (Madhava Reddy, J.) was a party, where the acquisition of land was for the purpose of providing dwelling houses to poor Harijans and other weaker sections, and it was held that in order to justify the exercise of the power under Section 17 (4) and dispense with the enquiry under Section 5-A, it is not necessary to prove any other facts. The Madras Legislature itself, in amending sub-section (2) of Section 17 and providing therein that whenever in the opinion of the Collector it becomes necessary to acquire immediate possession of any land for the construction, extension or improvement of any dwelling houses for the poor had recognized and declared that acquisition of lands for that purpose is of sufficient urgency as to justify the invocation of the power under sub-section (4) of Section 17 and no further material need be placed on record. It is the satisfaction of the Government and its declaration under Section 17 (4) that is determinative of such an urgency. That judgment did not lay down that even if possession is not taken for several years after dispensing with the enquiry under Section 5-A the exercise of power under sub-section (4) of Section 17 and the acquisition would be valid. In that case the questions now canvassed were neither argued nor considered and decided. Further the Court did not hold that the purpose of the acquisition being of such nature as to call for urgent acquisition of the land, the Court cannot consider whether the particular acquisition challenged before it is such as not to brook the delay of thirty days notice and enquiry envisaged under Section 5-A. That decision only lays down that acquisition of land for the purpose of providing dwelling houses for the poor is a public purpose for which possession of the land could be immediately taken by dispensing with enquiry under Section 5-A. It does not declare anything beyond that.

20. In the circumstances of the present case, our learned brother, Gangadhara Rao, J. has held that the delay in taking possession certainly indicates that there was no real urgency as to dispense with the enquiry under Section 5-A of the Act and that they erred in dispensing with that enquiry. In that view, he quashed the said proceedings and directed an enquiry under Section 5-A of the Act. We find ourselves in agreement with the conclusion. This disposes of the Writ Appeal No. 809/1981 preferred by the Government, for no other point arises for consideration.

21. In view of the above discussion this Writ Appeal No. 809/81 fails and must be dismissed. In the other Writ Appeal No. 744/81, the principal contention of the learned

[16](1979) 1 APLJ (SN) 55 Writ Petition No. 5842 of 1978 judgment dated 22-3-1979

counsel for the appellants Sri M.V. Ramana Reddy is that the delay of forty days in publishing the substance of Section 4(1) notification in the locality after it was published in the Official Gazette, is fatal to the acquisition proceedings.

22. That the notification issued under Section 4 (1) should be published not only in the Gazette but that the substance thereof should be published in the locality is mandatory, no longer admits of any doubt. Failure to publish the substance of the notification in the locality renders the acquisition proceedings invalid. In *Khub Chand v. State of Rajasthan*[17], Subba Rao, C.J. dealing with the provisions of the Rajasthan Land Acquisition Act, held that "the provisions of a statute conferring power on the Government to compulsorily acquire land shall be strictly construed. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The provision is mandatory in terms.

23. In *Narinderjit Singh v. State of Uttar Pradesh*[18], Grover, J., affirmed the dicta laid down in *Khub Chand v. State of Rajasthan* (supra) and noticing that it is common ground that the Collector did not cause public notice of the substance of the notification to be given at convenient places in the locality where the land sought to be acquired is situated, in other words, there was no compliance whatsoever with the second part of sub-section (1) of Section 4 of the Act, declared that the law as settled by this Court is that such a notice under second part of Section 4 (1) is mandatory and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceedings would be vitiated.

24. In *State of Mysore v. Abdul Razak*[19], the question pointedly came up for consideration as to whether failure to publish the notification at convenient places in the concerned locality after publication of the same in the Gazette would render the acquisition proceedings invalid. Repelling the contention that publication in the official Gazette being presumed to be notice to all concerned, failure to publish substance of the notification in the locality, cannot be deemed to be mandatory. Hegde, J., speaking for the Bench, held (at p. 2362) :

> ".. ... .. in the case of a notification under Section 4 of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under Section 5-A which is very valuable right."

While stating the law thus, the Supreme Court declared that it entirely agreed with the Rule laid down by the High Court of Mysore in *Gangadharaiah v. State of Mysore*[20], that

[17] AIR 1967 SC 1074
[18] AIR 1973 SC 552
[19] AIR 1973 SC 2361
[20] (1961) 39 Mys LJ 883

there should be a notification in the Gazette as also a public notice in the locality in which the land proposed to be acquired is situate. It is only when the notification is published in the Official Gazette and it is accompanied by or immediately followed by the Public notice that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed acquisition. In that view of the matter, as the publication of the notification impugned

in that cast did not comply with the said requirement, the judgment of the High Court quashing the acquisition proceedings was upheld.

25. The question, however, that requires to be considered in this writ appeal is whether it is obligatory to publish the substance of the notification in the locality simultaneously with the publication in the Gazette or immediately thereafter, or is it sufficient to publish it at any time before taking possession of the land acquired. In dealing with this question, we have to bear in mind what the intendment of the provision requiring publication of the notification under Section 4(1) of the Act both in the gazette and the substance thereof in the locality is. The first intendment of the statutory requirement of publishing the notification in the Official Gazette and the substance thereof in the locality as emphasised in *Narinderjit v. State of Uttar Pradesh* (supra) is to enable the persons interested to make their representations as envisaged by Section 5-A and the second intendment of such publication of the substance of the notification in the locality as emphasized in *Khub Chand v. State of Rajasthan* (supra) is

> "... ... .. The object underlying the said direction in Section 4 is obvious. Under sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The Legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry."

This being the purpose of the publication of the substance of the notification in the locality, Section 5-A lays down that the persons interested in any land which has been notified under Section 4 may file their objections, if any, to the acquisition of the land within thirty days after issue of the notification. In other words, the persons interested must have full period of thirty days to file their objections. This is a statutory right conferred upon the persons interested and that period of thirty days cannot be curtailed. Such publication in the locality must therefore, necessarily be, if not simultaneously with the publication in the Gazette, at least immediately thereafter.

26. In *Narinderjit Singh v. State of Uttar Pradesh*[21], it is laid down in unequivocal and clear terms that "both things have to a notification has to be published in the Official Gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated. The scheme of Section 4 is that after the steps contemplated under sub-section (1) have been taken the officer authorised by the Government can do the various acts set out in sub-section(2).

27. In another case in *State of Mysore v. Abdul Razak* (supra) the Supreme Court declared (at p. 2362) :

[21] AIR 1973 SC 552

> "It is only when the notification is published in the Official Gazette and it is accompanied by or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed acquisition."

28. It is evidently to give effect to this mandate that Rule 1 of the Rules framed by the Governor of Andhra Pradesh under Section 55 of the Act also provides for issuance of notice giving thirty days time to the persons interested to file their objections, if any, to the proposed acquisition in the following words :-

> "1. Immediately after the publication of the notification under Section 4(1), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality and copies thereof fixed up in the office of the Collector, the Tahsildar and in the nearest Police Station."

Though Notification under Section 4(1) of the Act does not itself call upon the persons interested to file their objections, if any, to the acquisition, as contemplated by Section 5-A, objections can be filed only within thirty days of such publication. That period of thirty days is prescribed by the statute and whether any rule is framed under the Act or not, the persons interested have only thirty days time to file their objections. Neither by any statutory Rule nor by any rule of construction can this period be reduced.

29. It is, however, argued that Section 4 (1) does not fix the period within which local publication should be made; nor does it expressly provide for calling for objections from persons interested in the land propose to be acquired. No doubt if it is so. But in our view, that is the intendment of the publication under Section 4(1) emphasised by the Supreme Court in *Khub Chand v. State of Rajasthan* (supra) and *Narinderjit Singh v. State of Uttar Pradesh* (supra) and *State of Mysore v. Abdul Razak* (supra). The Act envisages that the persons interested must be aware of the proposed acquisition not merely by publishing the notification in the Gazette but by publication in the locality as well. It must be remembered that section 5-A envisage a period of thirty days from the date of application of Section 4(1) Notification within which the objections, if any, to the proposed acquisition must be filed. That being so, having regard to the vast illiteracy in the country and the non-availability of access to Official Gazette to all persons, the Legislature deemed it advisable to insist upon the publication of the substance of the notification as an indispensable mode to put the persons interested on notice of the compulsory acquisition of their land. It must, therefore, necessarily follow that the publication in the locality must be either simultaneous with the publication of the Gazette or in any event, immediately thereafter and not after a considerable delay.

30. However, referring to Rule 1 of the Rules, a Division Bench of this court in *Umamaheswara Rao v. State of Andhra Pradesh*[22], held that "the notification under Section 4 (1) does not call for any objections. Objections from the persons interested are

[22](1980) 2 Andh LT 374

called for under Section 5-A (1) only. It would therefore appear that Rule 1 is attracted only in cases where the enquiry under Section 5-A is not dispensed with. In cases where the enquiry under Section 5-A is dispensed with as in the case herein, the notice contemplated by Rule 1 would be meaningless and out of place". In that view of the matter, the Bench held that "no argument can be built up on Rule 1 to say that the local publication should take place

simultaneously, or, at any rate, immediately after the publication in the Gazette. However, the Bench hastened to observe (at p. 72) :

> ".. this does not mean that local publication need not be effected where the enquiry under Section 5-A is dispensed with. Local publication is provided for by Section 4 (1) itself and it has to be complied with in every case. It is equally clear that though Section 4 (1) itself does not prescribe any time limit for effecting publication in the locality it has to be done within a reasonable time. What is reasonable, is, of course, always, a question to be determined on the facts and circumstances of a given case."

31. In several other cases, the question whether failure to publish the substance of the notification in the locality simultaneously or immediately after the publication in the Gazette is fatal or not to the acquisition proceedings was considered having regard to whether enquiry under Section 5-A of the Act was dispensed with or not. The views expressed in this regard have not been uniform. But irrespective of whether Section 5-A enquiry is dispensed with or not for a valid initiation of land acquisition proceeding that the publication of the substance of the notification in the locality is absolutely mandatory, cannot now be denied.

32. It is now well settled that the publication of the substance of the notification in the locality is mandatory not only where enquiry under Section 5-A is contemplated but also where it is dispensed with in exercise of the power under Section 17 (4) of the Act.

33. The Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra) held :

> "In our judgment, the provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in another. Section 4(1) does not contemplate any distinction between those proceedings in which in exercise of the power under Section 17(4) the appropriate Government directs that the provisions of Section 5-A shall not apply and where such a direction has not been made dispensing with the applicability of Section 5-A. It lays down in unequivocal and clear terms that both things have to be published in the Official Gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated."

34. In ***T**. Vanamulu v. Govt. of Andhra Pradesh (1977-1 Andh WR (HC) 248)* (supra), Gangadhara Rao, J. also held :

> "Whether the provisions of Section 5-A are dispensed with or not under Section 4(1) the notification should be published in the Gazette and thereafter public notice of the substance of the notification should also be given in the locality."

This view was approved by a Bench of this Court in *N. Ramanna v. The Collector, West Godavari (1977-2 APLJ (HC) 289)* (supra). Where there was no local publication of the substance of the notification, in *G. Bheemappa v. State of Andhra Pradesh*[23], the proceedings were quashed even though enquiry under Section 5-A was dispensed with. Thus Section 4(1)

does not make any distinction in regard to the publication of the notification in the Gazette and the substance thereof in the locality on the basis whether enquiry is dispensed with or not. It is under Section 5-A mandatory in both the cases.

35. In determining whether local publication should be made simultaneously with the publication of the Gazette or not, we must bear in mind what the Supreme Court said in regard to the purpose of the local publication which is to make the persons interested in the land proposed to be acquired to consider the same and file their objections or representations, if any, against the proposed acquisition. It must also be not lost sight of that it is not required of the Government or the District Collector even at the time of publishing Section 4 (1) Notification to decide upon whether the enquiry under Section 5-A should be dispensed with. On the other hand, as emphasized by the Supreme Court, the necessity to make the local publication is a mandatory requirement of law irrespective of whether Section 5-A enquiry is dispensed with or not. When as laid down by the Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra), "it is not required under Section 17 (4) of the principal Act that when a notification under Section 4 is issued, the direction should be made simultaneously if the State Government so desires. Such an order or direction can be made even at a later stage .... and in a given case the appropriate Government may not consider it necessary to take action under Section 17 (4) simultaneously with the notification under Section 4 (1) and it may choose to invoke its provisions only at a later stage in view of any urgency that may crop up." Even then the period of thirty days for filing objections contemplated by Section 5-A of the Act begins to run from the date of the publication of the notification in the Gazette. That being so, in order that the persons interested may have thirty days' time to file their objections, the local publication, which is intended to put interested persons on notice and which is mandatory, must be simultaneously or immediately after the publication of the same in the Official Gazette; it cannot be dependent upon whether Section 5-A enquiry is dispensed with or not, which decision could be taken later and not necessarily at the time of publication of Section 4(1) notification itself.

36. If publication of the substance of the notification is mandatory both in case where enquiry under Section 5-A is dispensed with under Section 17(4) as well as when enquiry under Section 5-A is required to be made, then we are unable to see how the publication of the substance of the notification simultaneously with the Gazette publication or immediately thereafter, can be held to be fatal only in the latter set of cases but not fatal in the former. As already observed, the view taken by this Court has not been uniform; but all are agreed that it should be published in the locality within a reasonable time.

37. In *Tandu Vanamulu v. Government of Andhra Pradesh (1977-1 Andh WR (HC) 248)* (supra) Gangadhara Rao, J. observed that it does not mean that in a case where the provisions of Section 5-A are dispensed with, the public notice in the locality could be given whenever the Collector pleases. It should be given as early as possible after the notification is published in the Official Gazette. Whether the delay in such a case is fatal

[23](1979) 2 APLJ (HC) 253

and whether it has caused any prejudice to the party, has to be decided on the facts of each case. In that case, the learned Judge held that the delay of three days, in the circumstances, was not fatal and did not vitiate the proceedings. Gangadhara Rao, J. also observed that "the next question is :

> When should the substance of such notification be published in the locality, section does not prescribe any time limit. If so, it should be normally understood that it should be published in the locality within a reasonable time. As to what is reasonable time, it depends on the facts of each case."

38. With the above observations, a Division Bench of this Court in *Ramanna v. Collector, West Godavari*[24] expressed its agreement. That Bench further observed, referring to the earlier decision of the Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra) and *State of Mysore v. Abdul Razak* (supra), as under :

> "We are unable to hold that the Supreme Court in the aforesaid two decisions ....laid down the law that things which cannot possibly be done simultaneously must be done simultaneously. In other words, we do not understand their Lordships as laying down the law that where it is impossible to do two or more things simultaneously they should be so done. The language of Section 4(1) makes it abundantly clear that the Legislature contemplated firstly the publication of a notice in the Official Gazette and that the same should be followed by the Collector causing a public notice of the substance of the notification in the Official Gazette and that the same should be followed by the Collector causing a public notice of the substance of the notification in the Official Gazette to be given in the locality. Section 4(1) does not permit of any other interpretation. The causing of the public notice of the substance of the notification by the Collector shall be done within a reasonable time of the publication of the notice in the Official Gazette. In considering what is reasonable, the Court undoubtedly should bear in mind whether the provisions of Section 5-A have been dispensed with in a particular case of acquisition."

With this later observation, viz., that in considering what is reasonable the Court undoubtedly should bear in mind whether the provisions of Section 5-A have been dispensed with in a particular case of acquisition, we do not find ourselves in agreement. But for the fact that in the present case, we have come to the conclusion that dispensing with the enquiry under Section 5-A was not validly made and in all such cases, it was held that the publication of the notification in the locality should be made immediately after the Gazette publication, we would have been constrained to refer the matter for the consideration of a larger bench. Though we are expressing our disagreement with the view taken by an earlier Division Bench on this aspect, since the result of these writ appeals does not depend upon that, we proceed to record our disagreement on this aspect and dispose of the writ appeals in the light of our finding on the other contentions.

39. In *Umamaheswara Rao v. State of Uttar Pradesh* (supra) the Division Bench took the view that though Section 4(1) does not prescribe any time limit for effecting publication in the locality, it has to be done within reasonable time. What is reasonable time, is

[24](1977-2 APLJ (HC) 289)

always, of course a question to be determined on the facts and circumstances of a given case. In that case, the delay of one month and twenty six days in effecting local publication, was held to be not unreasonable and also that it did not vitiate the very notification. That was a case where enquiry under Section 5-A was dispensed with. The Bench in the very same judgment observed

(at p.73) :

> "Of course, where enquiry under Section 5-A has not been dispensed with, the local publication has to follow immediately upon the publication in the Gazette because in such a case, objections have to be filed within 30 days of the issuance of the notification." It is pertinent to note that the Bench did not deem it necessary to express any opinion on the question whether thirty days should be computed from the date of publication of the notification in the Gazette or the substance thereof in the locality. That question, in our view, assumes importance having regard to the observation of the Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra) that the publication of the notification in the Gazette and the substance thereof in the locality is mandatory irrespective of whether the Government subsequently decides to dispense with enquiry under Section 5-A or not.

40. In ***S**. Anjuman Ahmediyya, Muslim Mission v. State*[25], a Division Bench of this Court, in a case where enquiry under Section 5-A was not dispensed with, considered the delay of two-and-half months in publishing the substance of the notification in the locality after the publication of the same in the Gazette to be not unreasonable having regard to the fact that the State N.G.Os. were on strike during that period.

41. That the notification under Section 4 (1) should be published simultaneously was declared by the Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra) in the following words :

> "It lays down in unequivocal and clear terms that both things have to be simultaneously done (emphasis is supplied) under Section 4 (1) i.e., a notification has to be published in the official gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated."

Though this was so stated in the context of the contention that where Section 5-A enquiry is dispensed with publication of the substance of the notification in the locality is not mandatory. Still the obiter of the Supreme Court cannot be taken to have been made without considering the import of the words "both things have to be simultaneously done", and brushed aside.

42. That view has been followed by a Bench of this Court in *G. Bheemappa v. State of Uttar Pradesh* (supra). Referring to that decision the Court observed (at p.88) :

> "It follows from this decision that unless the notification in the Gazette is followed immediately by publication of the notification in the locality, the requirements of

[25] AIR 1980 And Pra 246

> Section 4 (1) cannot be said to have been complied with." That Bench then proceeded to consider what is the meaning to be given to the expression 'immediately' contained in Rule 21 of the Land Acquisition Rules and observed :
> ".. .. ... where it is impossible to publish a notification in the village immediately (in the

sense forthwith) after the notification is published in the Gazette. Even so it cannot be denied that it should be published as expeditiously as possible within a reasonable time."

In Writ Petition No.3030 of 1978 dated 3-1-1979, a similar view was taken.

43. A Full Bench of the Punjab and Haryana High Court in *Rattan Singh v. State of Punjab*[26], stating, that the object of giving publicity to the substance of the notification in the concerned locality is to make known to the affected persons the intention of the Government to acquire lands and give an opportunity to the land owners to file objections under Section 5-A of the Act against the proposed acquisition, observed that illiterate persons cannot be expected to have knowledge of the publication of the Gazette. Referring to the decisions of the Supreme Court that Court further observed that "the substance of the notification has to be published in the concerned locality simultaneously with the publication of the notification under Section 4(1) of the Official Gazette and in case if it is not possible to give notice of the substance in the concerned locality simultaneously, then at least it has to be done immediately after the publication of the notification in the Official Gazette.

44. In Writ Petition No. 2667 of 1978 dated 6-2-1979, a Division Bench of this Court held that the publication of the substance of the notification six months after its publication in the Gazette was fatal to the acquisition proceedings.

45. Another Division Bench of this Court in *S. Anjuman Ahmediyya, Muslim Mission v. State* (supra) referring to the observation in *G. Bheemappa v. State of Andhra Pradesh* (supra) in which it was held that "unless the notification in the Gazette is followed immediately by publication of the notification in the locality, the requirements of Section 4(1) cannot be said to have been complied with, observed (at p. 88) :

> "It was however pointed out in that very case that there may be circumstances where it is impossible to publish a notification immediately (in the sense forthwith) after the notification is published in the Gazette."

Then referring to the statement in the counter affidavit in the particular case that the notification could not be published immediately in the locality on account of the N.G.Os. strike, the Court held that "there is no reason not to accept this explanation" and in that view held that there was proper compliance of the requirements of Section 4(1) read with Rule 1 in regard to the publication of the substance of the notification in the locality.

46. In *Gowri Bheemappa v. State*[27], it was held that unless the notification in the Gazette is followed immediately by publication of substance thereof in the locality, the requirements of Section 4(1) cannot be said to have been complied with. In none of these

[26] AIR 1976 Pun and Hary 279

[27] AIR 1980 And Pra 85

cases, the question whether the publication of the substance of the notification more than thirty days after the publication of the same in the Gazette is fatal or not, was directly raised and considered. All that some of the decisions have held is that if having regard to the facts and circumstances of the case, the delay in making the local publication is found to be reasonable, the

proceedings are not vitiated. But they did not consider as to whether the publication of the substance of the notification within such a time as would not give thirty days' time to file objections where Section 5-A enquiry is contemplated, would or would not be fatal to the proceedings. In our view, if publication of the substance of the notification is mandatory, in every case, irrespective of whether Section 5-A enquiry is dispensed with or not, we do not find any basis for holding that the publication of the notification simultaneously or immediately after the publication in the Gazette to be mandatory in a case where the enquiry under Section 5-A is not dispensed with and not mandatory where it is dispensed with especially when, as held by the Supreme Court in *Narinderjit Singh v. State of Uttar Pradesh* (supra), the decision to dispense with enquiry under Section 5-A is not required by the statute to be taken when publishing the notification under Section 4(1) and could validly be taken later.

47. In our view, if thirty days' time is to be computed from the date of publication of the notification in the Gazette, any delay in publication of the substance thereof in the locality would deprive the person interested of the full period of thirty days allowed by the statute for filing his objections and such a delayed publication would vitiate the acquisition proceedings.

48. From the above discussion, it is clear that the publication of the substance of the notification in the locality is mandatory and it has to be done simultaneously, if possible but in any case, at least immediately after the publication of the notification in the Gazette. Whether in a given case local publication can be said to have been made immediately after the publication in the Gazette has to be judged on the facts and circumstances of each case. That has to be judged without reference to the fact whether enquiry under Section 5-A is dispensed with or not, for the decision to dispense with the enquiry under Section 5-A is not required by the enactment to be taken simultaneously or before the publication of the notification under Section 4 (1) of the Gazette unexplained Delay in publication of the substance of the notification in the locality would be fatal to the acquisition proceedings. In the instant case, the publication of the substance of the notification in the locality has been delayed by forty days and no reason whatsoever have been stated for this delay. In fact, no attempt has been made to explain that delay. Inasmuch as the Supreme Court has laid down that the requirement as to the publication in the Gazette being followed by publication of the substance of the notification in the locality does not depend upon the subsequent exercise of power of the Government under Section 17 (4) of the Act to dispense with enquiry under Section 5-A of the Act, the unexplained delay of forty days in publishing the substance of the notification in the locality in the instant case, in our view, is fatal to these acquisition proceedings. They are accordingly quashed. It is however made clear that this would not operate as a bar to the initiation of proceedings for acquisition of this land afresh.

49. We accordingly allow Writ Appeal No.744/81 with costs and quash the acquisition proceedings and dismiss the Writ Appeal No.809/81 but without costs. Advocate's fee Rs. 250/- in each.
Order accordingly.