ANDHRA PRADESH HIGH COURT

S.N.D. and B.C. Development Sangh

Vs.

Dist. Collector

Writ Appeal No. 253 of 1982 and Writ Petn. No. 5601 of 1981

(Ramachandra Rao and Sriramulu, JJ.)

19.08.1982

JUDGMENT

Ramachandra Rao, J.

1. As common questions arise in both the writ appeal and the writ petition, they are heard together and disposed of by this common judgment.

2. The relevant facts leading to the filing of the writ petition are as follows :- The District Collector, Hyderabad by Memo No. D4/1977/1978 dated 4-5-1979 published a notification in the Hyderabad District Gazette dated 12-5-1979 tinder Section 4(1) of the Land Acquisition Act 1/1894 (hereinafter called 'the Act) as amended by the Land Acquisition (Amendment) Act 38/1923 and by Ordinance No. 12/75, that they proposed to acquire for a public purpose, viz., for providing house sites to Scheduled Castes, Scheduled Tribes, Backward Classes and landless workers the following lands in East Marredpally, Secunderabad Taluk, Hyderabad district :

Dry S. No 9 5.01 Acres
Acres Dry S. No. 59 4.09 "
Dry S. No. 60 3.21 "
Total : 12.31 Acres

3. Under sub-section(4) of Section 17 of the Act, the District Collector directed that in view of the urgency of the case, the provisions of Section 5-A of the Act should not apply to the case. In the same Gazette dated 12-5-1979, a declaration made under Section 6 of the Act was also published with regard to the said lands. Under the said notification, the District Collector appointed the District Social Welfare Officer, (Landless Workers Scheme), Hyderabad District to take possession of the lands notified on the expiry of 15 days from the date of publication of the notice mentioned in Section 9 (1) of the Act. A notice was published under Section 9 (1) of the Act on 12-6-1979.

4. At this stage, it is necessary to refer to the rival claims of the petitioners in each of the writ petitions W. P. Nos. 5601/81 and 1189/82. The petitioner in W. P. No. 5601/81 is Seshachala Cooperative Housing Society (hereinafter called "the Society") which was registered on 16-8-1976 and it consists of 124 members, who are alleged to be employees in various concerns and belonging to the backward class. The said society entered into an agreement on 18-2-1978 for purchase of Ac. 10.35 guntas of land including Ac. 5-01 gunta in S.No. 9 of East Marredpally village. The society applied for exemption to the Ministry of Defence and got exemption by order dated 19-5-1980 as the said land is situated in Cantonment area. On 23-12-1980, a regular sale deed was executed by the owner of the land in favor of the society for a consideration of Rs. 6,83,982/- and an amount of Rupees 50,000/- was incurred towards stamp duty and registration charges for the said sale deed.

5. It appears that some of the members of the Sanjeevayanagar Depressed and Backward Classes Development Sangh (hereinafter called "the Sangh") who were occupying the lands adjacent to S. No. 9 attempted to occupy the land in S. No. 9. whereupon the society filed a suit O.S. No. 2628/78 on the file of the Court of the First Assistant Judge, City Civil Court, Secunderabad and obtained an interim injunction in I. A No. 885/78 restraining the said Sangh and three others from interfering with the possession of the society of the land in S. No. 9. Thus, the society has been in possession of the said land in S. No. 9 by virtue of the purchase of the land and also by virtue of the injunction order of the Civil Court.

6. Now the Sangh with 500 members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes was registered on 19-1-1978. The Sangh made representations to the Government for assignment of land for house sites to their members, and the Government proposed to acquire the lands in S. Nos. 9, 59 and 60 in Secunderabad Cantonment area of East Marredpally village for providing house sites to the members of the Sangh. As the land was situated in cantonment area, correspondence took place between the State Government and the Government of India, Ministry of Defence; and the Government of India appears to have relaxed the restrictions imposed on construction of the buildings in Secunderabad cantonment area by their letters dated 24-5-1978 and on 7-12-1977 the District Collector, Hyderabad issued a notice to the landlord of S. No. 9 that his land would be acquired by the Government and a sub-division appears to have been made. The District Social Welfare Officer intimated the Sangh in his letter dated 24-8-1978 that the lands in S.No. 9 and other lands were proposed to be acquired for providing house sites to the weaker sections of the Sangh. It is thereafter that a notification was published by the Collector in the District Gazette on 12-5-1979 proposing to acquire the lands as already mentioned above.

7. At that stage, the society by letter dated 12-9-1978 intimated the District Social Welfare Officer that after verifying from the office of the 2nd respondent that no acquisition proceedings were pending in respect of the lands in S. No. 9, they entered into an agreement to purchase the said land from the land owner and initiated steps for getting exemption under the Urban Land Ceiling Act from the Government of India. On 6-6-1979, the 2nd respondent issued a notice under Sections 9 (1), 9 (3) and 10 of the Act to the owner of the land of S. No. 9 with a copy to the Military Estate Officer, Urban Land Ceiling, Secunderabad. The Military Estate Officer informed the 2nd respondent that the owner of the land in S.No. 9 had filed a statement under Section 6 (1) of the Urban Land Ceiling Act seeking exemption under Section 20 of the Act on the ground that he had entered into an agreement of sale with the society before the

commencement of the Act, and that it was under consideration of the State Government. Thereafter, it appears that exemption was also granted by the Central Government to the owner of Section No. 9 on 19-5-1980. The State Government then addressed a letter to the Cantonment Board on 26-11-1980 not to approve the layout submitted by the society and another letter to the Sub-Registrar, Secunderabad to defer registration of the sale deed, However, as already mentioned, the sale deed was executed and registered in favor of the society on 23-12-1980 and the layout sanctioned on 1-9-1981. Thereafter there was further correspondence between the State Government and the Central Government, and the State Government was directed to go ahead with the acquisition of the lands including S. No. 9. Accordingly the District Collector, Hyderabad by his letter dated 16-7-1981 called upon the 2nd respondent to take necessary action, and the 2nd respondent issued a notice on 24-7-1981 calling upon the society and the vendor of the society to deliver possession of the lands in S.No. 9 on or before 12-8-1981. The society thereupon filed the writ petition W. P. No. 5601/1981 challenging the notification under Section 4 (1) of the Act proposing to acquire the lands in Section No. 9 and the further proceedings sought to be taken pursuant to the said notification, and obtained on 6-8-1981 in W.P.M.P. No. 7742/ 81 stay of taking possession of the said land.

8. The Sangh impleaded itself as 3rd respondent in the said writ petition and moved for vacating stay and the matter was pending decision of this Court. While the matters were pending the society made a representation to the Government on 9-9-1981 that as it had entered into an agreement with the pattedar of the land in Section No. 9 measuring Ac. 5-01 gunta on 18-2-1978 with a view to allot the same for house sites to its members, the proceedings for acquisition of the said land should be dropped. On the aforesaid representation, the Government issued a Memo No. 3460/C2/81-2 dated 6-2-1982 to the Collector stating that it was proper and appropriate that the proceedings for acquisition of the said land should be dropped subject to the withdrawal of the writ petition filed by the society challenging the acquisition proceedings. The relevant portion of the memo reads as follows :

> "Government have examined the request of the Seshachala Co-operative Housing Society in consultation with the Collector, Hyderabad and they observe that the object of the Government in proposing the acquisition of land is to provide house sites to the weaker sections, the society is also performing the same object. In all fairness it is propel and appropriate that the Seshachala Cooperative Housing Society which has already spent considerable amount and is in physical possession of the land is allowed to go ahead with the allotment of plots to its members and the land in S.No. 9 measuring 5.01 guntas which has been notified for acquisition is dropped from acquisition subject to the withdrawal of the writ petition filed by the Seshachala Co-operative Housing Society against acquisition proceedings in respect of the above said land in the High Court, Government also consider that provision of house sites to Scheduled Castes and other weaker Sections of the society is essential which is being delivered for one reason or the other. The Collector, Hyderabad is, therefore, requested to bestow personal attention to this case and make special efforts to secure alternate land, if necessary, by taking advance possession and provide house sites on priority basis and also go ahead with the acquisition of the land in S.No. 60 which has already been occupied by the Scheduled Caste beneficiaries.
> The Collector, Hyderabad is requested to take action accordingly in the matter."

This memo of the Government is challenged in the writ petition W.P. No. 1189/82 filed by the Sangh. When this writ petition came up for admission, our learned brother Raghuvir, J. dismissed the same on the ground that there was no notice to denotify the lands, and that it was for the State Government or the authorities under the Act to take a decision whether the land should be denotified or not, and that the powers of the Government to acquire a land or to denotify a land were not justifiable.

9. Against the dismissal of the said writ petition the Sangh has preferred the writ appeal W. A. No. 253/82 While in the writ petition W.P. No. 5601/81 the notification issued by the Collector for acquisition of the land in S.No. 9 is being challenged, in Writ Appeal No_ 253/82 preferred against the dismissal of W.P. No. 1189/82 the memo of the Government issued to the Collector requesting him to take action to drop the proceedings for acquisition of the land, is being challenged.

10. We shall first take up the contentions urged in W.P. No. 5601/81 challenging the notification for acquisition of the land Sri M. Jagannadha Rao, the learned counsel for the society, firstly sought to contend that the land situated in cantonment area vests in the Central Government and, therefore, the notification for acquisition of the said land by the State Government or the Collector was without jurisdiction. But after advancing considerable arguments by both sides on this question, Sri Jagannadha Rao submitted that he was not pressing this point and, therefore, it is not necessary to go into the said question.

11. The next contention urged by Sri Jagannadha Rao, the learned counsel for the society, is that under Section 4(1) of the L.A. Act the publication of the notification in the Gazette and the publication of the substance of the notification in the locality has to be simultaneous or the later publication should immediately follow the Gazette notification, and that this mandatory requirement has not been fulfilled and, therefore, the entire acquisition proceedings are vitiated. In the instant case, the notification in the Gazette was made on 12-5-1979, and the substance of the said notification was published in the locality on 2-6-1979. Thus there is a time gap of 20 days between the Gazette publication and the publication of its substance in the locality. In support of this contention. Sri Jagannadha Rao relies upon a recent ruling of a Division Bench of this Court in *Suryanarayana Reddy v. Govt. of A.P*[1]*.,*

12. On the other hand, it is contended by Sri P. Babulu Reddy, the learned counsel for the Sangh, as well as by the learned Government pleader that the publication of the substance of the notification under Section 4 (1) in the locality need not be simultaneous with or need not immediately follow the publication of the notification in the Gazette, and that it is enough if it is done within a reasonable time, and what is reasonable time depends on the facts and circumstances of each case, and that in the instant case, the publication was made in the locality within a reasonable time and, therefore, the provisions of Section 4 (1) have been fully complied with.

13. The learned counsel relied upon several rulings in support of their rival contentions. It

[1](1982) 2 Andh LT 55

is now well-settled that the twin requirements of publication of the notification in the Gazette and the publication of the substance of the notification in the locality are mandatory, *vide Khub*

Chand v. State of Rajasthan[2]

14. In *State of Mysore v. Abdul Razak*[3], it was held that (at p. 2362);

> "In the case of a notification under Section 4 of the L.A. 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 L. A. Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement."

Again, their Lordships observed in paragraph (5), AIR 1973 Supreme Court 552 that;

> "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."

15. In a later case decided *on 24-10-1972 in Narinderjit Singh v. State of U.P*[4]., their Lordships of Supreme Court held that the twin requirements of publication in the Gazette and in the locality are mandatory, whether an enquiry under Section 17 (4) of the Act is dispensed with or not.

16. The interpretation of the aforesaid rulings of the Supreme Court came up for consideration in several cases before this Court. In *T. Vanamulu v. Govt. of A.P*[5]., the question that arose for consideration was whether the publication in the Gazette and the publication of the substance in the locality should be done simultaneously. The learned Judge Gangadhara Rao, J. held as follows :

> "The next question is whether both should be done simultaneously. The section does not say so. Apart from that, it is well nigh impossible. The Government should first publish the notification in the Official Gazette. It is only thereafter, the Collector, can cause public notice of the substance of such notification in the locality. Both cannot be done simultaneously. So I am of the opinion that the publication of the substance of such notification in the locality only follows the publication of the notification in the Official Gazette. The next question is as to when the substance of such notification should be published in the locality. The 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 a reasonable time, depends on the facts of each case."

After referring to the Supreme Court decisions mentioned above, the learned Judge held that :

[2] AIR 1967 SC 1074
[3] AIR 1973 SC 2361 decided on 11-8-1972
[4] AIR 1973 SC 552
[5](1977) 1' Andh WR 248

> "But, 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 cases is fatal and whether it has caused any prejudice

to the party, has to be decided on the facts of each case. In this case I am of the opinion that the delay of three days is not fatal and does not vitiate the proceedings."

17. The same question came up again for consideration in *N. Ramanna v. Collector, West Godavari*[6], where a Division Bench of this Court consisting of A.V. Krishna Rao and Punnayya, JJ. elaborately considered the provisions of the Act and the rulings of the Supreme Court and other Courts, and the practice that was generally followed by the Government before taking proceedings for acquisition of land for a public purpose. The said practice set out in para 8, is as follows :

"Before we deal with the several contentions raised, it will be useful to refer to the practice that generally obtains with regard to what precedes before land acquisition proceedings are initiated and which practice is warranted by the procedure indicated in the Land Acquisition Manual published by the Government of Andhra Pradesh. Whenever a representation is made by the poor of any locality requiring the acquisition of lands for allotments as house sites, the Government officer concerned makes an enquiry, locally finds out whether the need exists and whether there are suitable lands to satisfy the need. If he is so satisfied, he prepares what is called a draft notification under Section 4 and simultaneously a draft declaration also under Section 6. A plan of the land proposed to be acquired also is prepared. The officer concerned then submits it to the Collector who sends it on to the Government. The Government thereafter proceeds to act under Section 4 and invoke the other relevant provisions."

18. The learned Judges then dealt with the Contention urged on behalf of the petitioners before them, whether the Gazette publication and the public notice of the substance of such notification should be done simultaneously or immediately thereafter and observed as follows :

"We have already adverted to the fact that the land in any locality being required or its likelihood of being required is intimated to the Government by the Collector. On such intimation it may appear to the Government that the land in any locality is required or may be required for a public purpose. Then only a notification 'to that effect, viz., that the land in any locality is likely to be needed or is needed for a public purpose shall be published in the Gazette. Once that is done, public notice of the substance 'of such notification' is to be given at convenient places in the said locality. In order to enable the Collector to cause public notice of the substance of 'such notification' to be issued it is manifest that there must be a proper publication of the notification in the Gazette. The Collector shall only give a public notice of the substance of such notification, meaning the notification, in the Official Gazette to the effect that land in any particular locality is needed or likely to be needed for any public purpose. It is significant that Section 4 does not provide for any

[6](1977) 2 APLJ 289

simultaneous publication of the notification in the Official Gazette and the substance of such notification at convenient places in the locality where the land to be acquired is

situated. The language of Section 4 (1) clearly implies that the public notice of the substance of the notification which shall be caused to be given by the Collector can only happen after the publication in the Official Gazette. That they cannot be simultaneous and indeed it is impossible that they can be simultaneous would be clear from the fact that while the official Gazette of the State Government is published from Hyderabad, copies thereof would normally reach the Collectors in the districts later. It is only on the receipt of the copy of the notification published in the Official Gazette that the Collector can make a substance of such notification' in the Gazette and cause public notice of the substance to be given in the locality. A mere order of the Government directing that a notification shall be published in the Gazette and the sending of the copy of such an order to the Collector and the receipt by the Collector of such a copy of the order directing the publication in the official Gazette of the requirement for a public purpose of any particular land in any locality does not satisfy the requirements of Section 4(1). What is imperative is the receipt of the copy of the publication in the Gazette by the Collector. Once that is done, it shall be followed by the issuance of a public notice of the substance of such notification by the Collector in the locality. The simultaneous publication contended for, may perhaps be possible in the city of Hyderabad. But it is impassible that there can be a simultaneous publication in the official Gazette and a public notice of the substance thereof by the Collectors in the Districts."

19. These observations clearly go to show that simultaneous or immediate publication of the substance of the notification in the locality along with the Gazette notification is impossible of performance, and we do not think the provisions of Section 4(1) can be interpreted as to make it unworkable and impossible of compliance and thus disable the Government from acquiring property for a genuine public purpose.

20. The learned Judges then referred to the ruling of the Supreme Court in *State of Mysore v. Abdul Razak* (supra), and observed as follows :

"Having regard to the practice obtaining admittedly in the State of Andhra Pradesh it is not possible to state that the notification in the Official Gazette can be accompanied by the public notice to be issued by the Collector. The official notification in the Gazette may no doubt be followed by the publication of the substance of the said Gazette publication by a public notice that the Collector should cause to be issued in the locality. What their Lordships stated in the above Supreme Court decision would in our opinion, amount to their stating that the public notice that has to be caused to be issued by the Collector shall follow the notification in the Gazette as soon as possible, in other words, within a reasonable time. In a given case, there may be very valid and sound reasons why the publication in the official gazette and the notification cannot be immediately followed by the public notice. What is stated by their Lordships in paragraph 5 of the report does not lay down that there must be a simultaneous publication of the notification in the official Gazette and the issuance of the public notice by the Collector in order to render them

valid. In the very nature of things, accepting the contention that there should be simultaneous publication is tantamount to requiring the authorities to do an impossible act. The only case where that may be possible, we have already indicated is where the lands proposed to be acquired are in the city of Hyderabad or contiguous urban area. In such a case as soon as the Gazette publication is made in the city, it is just possible that there may be time to issue public notice of the substance of such notification in the city or in the particular locality nearabout."

21. Reliance was placed upon the observations made in the Supreme Court decision in *Narinderjit Singh v. State of U.P.* (supra), that the provisions of Section 4(1) could not be held to be mandatory in one situation and directory in another, and it did not contemplate any distinction between proceedings under Section 17(4) in which an enquiry under Section 5-A was dispensed with and proceedings where the enquiry was not so dispensed with, and that Section 4(1) "lays down in unequivocal and clear terms that both things have to be simultaneously done 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 situate." Referring to the aforesaid observations, the learned Judges held as follows :

"Apparently what their Lordships said supports the argument, of the learned counsel for the petitioners. The ratio decidendi of the case before their Lordships is that the provisions of Section 4 (1) cannot be held to be mandatory in one situation and directory in another. That is, their Lordships said that Section 4 (1) is mandatory in both cases, viz., where the provisions of Section 5-A are dispensed with and in cases where they are not dispensed with. Counsel relied upon Article 141 of the Constitution which states that the law declared by the Supreme Court shall be binding on other courts within the territory of India. The law declared in the above decision is that whether the provisions of Section 5-A are dispensed with or not, under Section 17 (4) of the Act, the requirements of Section 4(1) must be complied with. The admitted fact in the case before their Lordships was that the Collector did not cause a public notice of the substance of the notification to be given at convenient places in the locality and therefore, the second part of sub-section(1) of Section 4 was not complied with. The question was considered and decided from that angle."

22. The learned Judges then referred to the decision of Gangadhara Rao, J. in *T. Vanamulu v. Govt. of A.P.* (supra), where the learned Judge after referring to the above Supreme Court decisions cited before him, held that Section 4 (1) did not provide for simultaneous publication in the Gazette and in the locality, and that it was well nigh impossible, and that the publication of the substance could only follow the publication of the notification in the Gazette and that the section did not prescribe any time limit for publication of the substance of the notification in the locality, and that it should normally be understood that it should be published in the locality within a reasonable time, and that what is reasonable time depended on the facts of each case. The learned Judges Krishna Rao and Punnayya. JJ. agreed with the view of the learned single Judge and came to the conclusion that they were unable to hold that the Supreme Court decisions

referred to above laid down the law that things which could not possibly be done simultaneously must be done simultaneously. Accordingly, the learned Judges rejected the contention that the Gazette publication and the public notice caused to be issued in the locality by the Collector should be done at one and the same time or that the timings should so synchronies as to describe the two things as being done under Section 4 (1) simultaneously. The learned Judges, however held that both the requirement of Section 4(1) publication of the notification in the Gazette and publication of the substance of the notification in the locality were mandatory, and the fact trial Section 5-A enquiry was dispensed with or not was immaterial, and that the public notice of the substance of the notification by the Collector should follow the publication of the notification in the Gazette, and that the same should be done within a reasonable time, and that what is a reasonable time must be decided on the facts of each case.
The learned Judges further observed :

> "Where *prima facie* the gap between the two dates of the publication of the notification, viz., the one in the Official Gazette and the substance of the notification in the locality is unreasonable, it is of course for the appropriate Government or authority to explain the reason for the unreasonable delay between the two publications."

23. The attention of the learned Judges was invited to the Full Bench ruling of Punjab High Court in *Rattan Singh v. State of Punjab*[7], where the Full Bench after referring to the two decisions of Supreme Court mentioned above, came to the opinion that under Section 4(1) there should be simultaneous publication of the notification in the Gazette and also substance of the notification in the locality. But, the learned Judges observed that in the view expressed by them already after discussing the rulings of Supreme Court they were not inclined to follow the aforesaid Full Bench decision.

24. This question again came up for consideration before a Division Bench of this Court in *G. Bheemappa v. State of A.P*[8]. where Kuppuswamy, J. (as he then was and P. Ramachandra Raju, J, after referring to the two Supreme Court decisions in Abdul Razak's case AIR 1973 Supreme Court 2361 and Narinderjit Singh's case (supra), held that unless the notification in the Gazette was followed immediately by publication in the locality, the requirements of Section 4 (1) could not be said to have been complied with. The learned Judges then considered the question as to the meaning to be given to the expression "immediately" and observed that (at p. 88) :

> "It is no doubt true that there may be circumstances where it is impossible to publish a notification in the village immediately (in the sense forthwith) after the notification it published in the Gazette, Eeven so, it cannot be denied that it should be published as expeditiously as possible within a reasonable time."

On the facts of that case, the learned Judges found that the notification under Section 4 was published in the Gazette on 20-7-1978, whereas the substance was published in the village on 16-1-1979 after 5 months 26 days, and that no valid explanation was given for not publishing the notice immediately and, therefore, the acquisition proceedings were quashed.

[7] AIR 1976 Pun and Har 279

[8](1979) 2 APLJ 253

25. This question was again considered in *Umamaheswara Rao v. State of A.P*[9]. where there was

a delay of about two months in effecting the local publication. The learned Judges Alladi Kuppuswami, Acting Chief Justice and Jeevan Reddy, J. observed as follows (at p. 72) :

> "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 a reasonable time, is of course, always a question to be determined on the facts and circumstances of a given case. No hard and fast rule can be laid dawn in that behalf. Indeed, when the Act itself has not chosen to prescribe a time limit, the court cannot, by a process of construction, evolve a time limit."

26. Referring to the two decisions of Supreme Court in Abdul Razak, AIR 1973 Supreme Court 2361 and Narinderjit Singh's case (supra), the learned Judges observed as follows (at p. 73) :

> "While there can be little doubt, as held by the Supreme Court that publication of the substance of the notification under Section 4 (1) in the locality is mandatory, no particular time limit can be prescribed for that purpose, except to say that it must be done within a reasonable time. Of course, where the 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 thirty days of the issuance of the notification."

27. In S. Anjuman Ahmediyya, *Muslim Mission v. State*[10], it was contended that the publication of notice in the locality was made nearly 2 1/2 months after the publication of the notification in the Gazette. In the counter of the Government it was stated that the notification could not be published immediately in the locality in view of the N.G.Os strike. The learned Judges held after referring to Bheemappa's case (supra), in which it was pointed out that there might be circumstances where it was impossible to publish a notification immediately (in the sense forthwith) after the notification was published in the Gazette, held that in view of the explanation given by the Govt. it could not be said that there was no compliance with the provisions of Section 4 (1) read with Rule 1, and that the proceedings for acquisition could not be said to be illegal.

28. In an unreported decision rendered on 6-2-1979 in *Satyavathi v. Govt. of A.P. judgment*[11] *in* by a Division Bench of this court of which one of us, Ramchandra Rao, J. was a party, it was held that the publication of the substance of the notification in the village six months after the publication of the notification in the Gazette was bad, and that no valid reasons were given as to why the public notice in the locality could not be given immediately after the Gazette notification and, therefore, the proceedings for acquisition were held to be illegal.

29. The question whether there should be simultaneous publication of the notification in

[9](1980) 2 Andh LT 374 [11] W. P. No. 2667/78 dt 6-2-1979

[10] AIR 1980 And Pra 246

the Gazette and its substance in the locality came up for consideration before a Full Bench of this court in *Smt. Shahnaz Salima v. Govt. of A.P. judgment in*[12] The learned Judges after referring to the

ruling of the Division Bench of this court in Ramanna's case (1977) 2 APLJ 289 (supra), agreed with the view that Section 4 (1) did not envisage simultaneous publication. The Full Bench further observed as follows :

> "There is no warrant for the contention that the publication in the official Gazette and the publication of the substance of the notification at convenient places in the said locality should be simultaneous and be done precisely at the same time. If that were the intention of the Legislature, it could have sold so. Something which is not in the section cannot be imported into it. The publication of the substance of Section 4 (1) notification at convenient places in the locality is required out of anxiety of the Legislature to make it certain that it is brought to the notice of the affected person. What all that is required is that before any thing is done as contemplated by sub-section(2), the substance of Section 4 (1) notification must be published in the locality of the land Several times it may prove to be a physical impossibility if simultaneous publication is insisted upon. It is not possible to think that the Legislature has provided for an impracticable and at the same time unnecessary task. What Section 4 (1) requires is that Section 4(1) notification must be published in the official Gazette and its substance at convenient places in the said locality. Therefore, we are in agreement with the view taken by the Division Bench in the aforesaid decision."

30. Thus, the aforesaid Full Bench decision has clearly laid down that Section 4 (1) of the Act does not lay down that the publication of the substance of the notification in the locality has to be done simultaneously or immediately after the publication in the Gazette and that several times it might prove to be a physical impossibility if simultaneous publication was insisted upon and it was not possible to think that the Legislature has provided for such an impracticable task.

31. Thus, the aforesaid ruling of the Full Bench which has approved of the view taken by the Division Bench in Ramanna's case ((1977) 2 APLJ 289) (supra), wherein the rulings of Supreme Court were fully considered and explained, clearly lays down that Section 4 (1) does not provide for or contemplate that the publication of the substance of the notification under Section 4 (1) in the locality should be simultaneous or immediately follow the publication of the notification In the Gazette, and that the publication in the locality can be made within a reasonable time after publication in the Gazette, and what is reasonable time depends on the facts and circumstances of each case. The Full Bench ruling, which has approved of the Division Bench decision in Ramanna's case (1977) 2 APLJ 289) (supra) is binding on us.

32. Sri M. Jagannadha Rao, the learned counsel for the society relied upon the ruling in *Suryanarayana Reddy v. Govt, of A.P.* (supra) in support of his contention that there could be no delay at all in publishing the substance of the notification in the locality, and that both the publication in the Gazette and in the locality should be made simultaneously or the publication in the locality should immediately follow the publication in the Gazette. In that case, the learned Judges after referring to the Supreme Court rulings and the

[12] W. P. No. 3353/76 and Batch dt. 26-9-1978

several rulings of this court summarized their conclusions in para 51 as follows :

> "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 Act in the Gazette. Unexplained delay in publication of the substance of the notification in the locality would be fatal to the acquisition proceedings."

In that case, the learned Judges held that the delay of 40 days in publication of the substance of the notification in the locality was not at all explained and, therefore, it was fatal to the acquisition proceedings. But, we do not think this ruling lays down any principle contrary to the earlier Division Bench rulings of this court referred to supra. In the earlier rulings of this court, it was held that while publication of the notification in the Gazette and its substance in the locality were mandatory, the publication of the substance in the locality need not be simultaneous with or immediately follow the publication in the Gazette, and that the publication in the locality could be made within a reasonable time after the publication in the Gazette, and that what was "reasonable time" depends on the facts and circumstances of each case.

33. In Suryanarayana Reddy's case (supra) also, the learned Judges held that the publication in the locality has to be done simultaneously, if possible; if not, at least immediately after the publication of the notification in the Gazette, and that 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, and that unexplained delay in the publication of the substance of the notification in the locality would be fatal to the acquisition proceedings. Thus, this ruling also accords with the view taken by the earlier Bench rulings of this court.

34. Further, the decision of the Full Bench in *Shahnaz Salima v. Govt. of A.P.* (supra) rendered on 26-9-1978 was apparently not brought to the notice of the learned Judges. The Full Bench had approved of the law laid down by the Division Bench in Ramanna's case ((1977) 2 APLJ 289) (supra). We do not think we will be justified in interpreting the decision in Suryanarayana Reddy's case (supra) as laying down the law differently from that laid down in Ramanna's case ((1977) 2 APLJ 289) (supra) which has been approved by the Full Bench in Shahnaz Salima's case supra.

35. It is contended that inasmuch as Rule 1 of the Rules framed by the Governor of Andhra Pradesh under Section 55 of the Act provides for issue of a notice giving 30 days time to the persons interested for filing their objections to the proposed acquisition, the substance of the notification should be published at least within 30 days from the date of Gazette publication and any delay in publishing the notice of the substance of the notification in the locality will vitiate

the entire acquisition proceedings. On the other hand, it is contended by Sri Jagannadha Rao, the learned counsel for the society that inasmuch as Section 4(1) contemplates that the substance of the notification should be made in the locality simultaneously with or immediately after the publication of the notification in the Gazette, the question of publication in the locality within a reasonable time, or explaining the delay in such publication of the notice in the locality does not arise.

36. Our attention has been invited to a recent decision delivered on 8-7-1982 by P.A. Choudary, J. in *Mohd. Khaja v. Government of A.P. (Reported in*[13] (Andh. Pra) where the learned Judge, after referring to two Supreme Court rulings in Abdul Razak's case AIR 1973 Supreme Court 2361 and Narinderji Singh's case, AIR 1973 Supreme Court 552) (supra) held that wherever local publication was not made simultaneously with the Gazette notification, the entire land acquisition proceedings would be illegal. The learned Judge also observed that the decision in *Suryanarayana Reddy v. Govt. of A.P.* (supra) decided by a Division Bench, of which, he was a Member along with Madhava Reddy, Acting Chief Justice, ruled that;

> "Local publication should be simultaneous or immediate".

37. Firstly, we do not think the decision in Suryanarayana Reddy's case (supra) ruled that where the local publication was not made simultaneously with or immediately after, the Gazette publication, the entire acquisition proceedings would become illegal. Secondly we have held that the aforesaid ruling in Suryanarayana Reddy's case (supra) did not depart from the earlier Division Bench rulings of this Court and the Full Bench decision in Shahnaz Salima's case (supra), that the publication of the substance of the notification in the locality can be made within a reasonable time after the publication of the Notification in the Gazette. Thirdly, several Division Bench rulings of this court including the Full Bench decision in Shahnaz Salima's case (supra) which approved of the law laid down in Ramanna's case ((1977) 2 APLJ 289) (supra) which is binding on the Division Bench, have not been considered in the said decision of Choudary, J., in Mohd. Khaja's case AIR 1982 NOC 270 (Andh Pra) (supra). In view of the Division Bench rulings and the Full Bench decision of this Court referred to supra approving the law laid down in Ramanna's case ((1977) 2 APLJ 289) (supra), with respect, we are unable to agree with the view taken by Choudary, J. in the aforesaid decision; and we hold that the said decision taking contrary view to the Division Bench rulings and the Full Bench decision of this court mentioned above, does not lay down the correct law.

38. For all the reasons aforesaid we are unable to agree with the contention of Sri Jagannadha Rao that the publication of the substance of the notification in the locality should be simultaneous or immediately follow the publication of the notification in the Gazette, or that it should be made within 30 days as contended by Sri R. Babulu Reddy. In our opinion, the publication of the substance of the notification in the locality can be made within a reasonable time after the publication in the Gazette and what is reasonable time depends on the fact and circumstances of each case.

[13] AIR 1982 NOC 270

39. The next question for consideration is, whether in the instant case, the publication in the locality was made within a reasonable time after the publication of the notification in the Gazette. As already noticed, the notification under Section 4(1) of the Act was published in the

Hyderabad District Gazette on 12-5-1979 whereas public notice of the substance of the notification was given in the locality on 2-6-1979. Thus, there is a time gap of 20 days between the Gazette notification and the local publication. In the additional counter-affidavit filed by the District Social Welfare Officer, it is stated that the notification was published in the Hyderabad District Gazette, Extraordinary on 12th May, 1979. copy of the said Gazette was received from the Government press by the office of the District Collector, Hyderabad on 26-5-1979, who by letter dated 30-5-1979, communicated the same to the District Social Welfare Officer, and it was received by the latter on 31-5-1979, and the Revenue Inspector got it locally published on 2-6-1979 by affixing copies in the notice board of the Tahsil office, Secunderabad and at the lands duly drawing up a panchanama in the presence of the witnesses of the locality, and that the delay in publication of the substance of the notification had become inevitable due to administrative exigencies. These facts are not controverted and there are no valid reasons for rejecting the aforesaid facts stated in the additional counter affidavit. We hold that, in the circumstances, the publication in the locality was made within a reasonable time and the reasons given for the time gap of 20 days between the Gazette notification and the local publication has been properly explained. Therefore, we hold that in the instant case the twin requirements of Section 4 (1) of the Act, viz., notification in the Gazette and the publication in the locality have been duly made, and it cannot be said that there was no compliance with the provisions of Section 4 (1) of the Act.

40. We therefore, hold that no grounds are made out in W. P. No. 5601/81 for quashing the notification in Memo No. D4/77/78 dated 4-5-1979 of the Collector, Hyderabad District published in the Hyderabad District Gazette Extraordinary dated 12-5-1979 and we, therefore, dismiss the writ petition, but in the circumstances, without costs.

41. We shall now take up the contentions urged in Writ, Appeal No. 253/82 filed by the Sangh challenging the proceedings issued by the Government of Andhra Pradesh in its Memo No. 3460/ C2/81-2 dated 6-2-1982 requesting the Collector to take action for dropping the proceedings for acquisition of the lands in Section No. 9. As already mentioned this writ appeal has been preferred against the order of our learned brother Raghuvir. J. dismissing the Writ Petition, W. P. No. 1189/82, at the admission stage on the ground that there was no decision taken yet by the Government or the other authorities for denotification of the lands notified for acquisition under Section 4 (1) of the Act.

42. Sri P. Babulu Reddy, the learned counsel for the Sangh contended that the Government mentioned two grounds in the impugned memo for dropping the proceedings for acquisition of S.No. 9 viz., (1) that the Government proposed to acquire the lands to provide house sites to the weaker sections and that the society was performing the same object; and (2) that the society had already spent considerable amounts and was in physical possession of the land and, therefore, it should be allowed to go ahead with the allotment of plots to its members.

43. Sri Babulu Reddy as well as Sri G.M. Anjiah, the learned counsel for the Sangh as well as Sri M. Jagannadha Rao have taken us to the correspondence that took place between the parties and the several governmental authorities with regard to their rival claims for acquiring the lands. But, we do not think it necessary to go into the said correspondence, as we are only concerned in this case with the validity or otherwise of the proceedings of the Government dated 6-2-1982 calling upon the Collector to take action to drop proceedings for acquisition of the lands in S. No. 9. Sri Babulu Reddy, the learned counsel for the Sangh contended that the District Collector issued the

notification for acquisition of the land under Sections 4 (1) and 6 of the Act as amended by A.P. Act No. 22/76, and that the power to withdraw the notification for acquisition can only be exercised by the Collector in exercise of the powers conferred by Section 48 read with G. O. Ms. No. 217 dated 9-5-1980, under which the powers under Section 48 have been delegated to the District Collectors. On the other hand, it is contended by Sri Jagannadha Rao, the learned counsel for the society that delegation of statutory power, does not denude the delegating authority of its power to act concurrently. In support of this contention, he has referred in the following rulings in *Godavari S. Parulekar v. State of Maharashtra*[14], where it was contended that the Government of Maharashtra having delegated its power under Rule 30 of the Defense of India Rules, 1962 to all District Magistrates to order detention to detain a person from acting in a manner prejudicial to the defence of India, the public safety and maintenance of public order, the State Government was not competent to pass an order of detention under the said rule. That contention was negatived by His Lordship Sikri, J. speaking for the court holding that by issuing the notification delegating the powers under Rule 30 to the District Magistrates the State Government did not denude itself of the power to act under Rule 30. His Lordship referred to the decision in *Huth v. Clarke*[15] where it was observed :

> "Delegation, as the word is generally used, does not imply parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

44. Similar observations occur in the rulings in *Kesavananda v. State of Kerala*[16], *Gwalior Rayon Mills v. Asstt. Commr. S.T*[17]., and *Manton v. Brighton Corporation*[18], But, it is unnecessary for us to go into this question, because, in the instant case, neither the State Government nor their delegate, the Collector, has yet made any notification in exercise of the powers under Section 48 withdrawing the notification made in the District Gazette on 12-5-1979 for acquisition of the lands in S. No. 9 The learned counsel for the Sangh has invited our attention to a letter dated 27-2-1982 addressed by the Collector, Hyderabad District to the Secretary to Government Social Welfare Department, seeking review of the earlier order of the Government. There is thus no final order made by the Government under Section 48 or by its delegate, the Collector with regard to dropping of the proceedings for acquisition of the lands in S. No. 9. Hence, this court cannot at this stage interdict or interfere with the action that the Government or the District Collector might take with regard to the dropping of the proceedings for acquisition of the lands in S. No. 9.

45. As already mentioned, Sri Babulu Reddy sought to contend that the reasons given by

[14] AIR 1966 SC 1404 [16] AIR 1973 SC 1461 [18] 1951(2) All Eng Rep 101
[15] 1890 (25) QBD 391 [17] AIR 1974 SC 1660

the Government in the impugned memo for dropping the proceedings for acquisition of the lands in S. No. 9 are not valid. But, these are all matters to be considered by the Government or the Collector. It is not appropriate for this court at this stage to go into the validity or otherwise of the reasons given by the Government in the impugned memo for dropping the proceedings for acquisition in respect of the lands in S. No. 9.

46. Sri Jagannadha Rao, the learned counsel for the Society, contended that in the impugned letter dated 6-2-1982, the Government proposed to withdraw the acquisition proceedings in

respect of the lands in S. No. 9 subject to the condition of the society withdrawing the writ petition filed by it, and that the society had actually filed a letter in this court on 20-2-1982 for withdrawal of the writ petition W. P. No. 5601/81, but inasmuch as the Sangh has filed a writ petition challenging the said memo of the Government, the society could not withdraw the writ petition, and that in the event of the writ appeal being dismissed and if the acquisition proceedings relating to S. No. 9 are dropped, the society is prepared to withdraw the writ petition W. P. No. 5601/81. Now that both the writ petition and the writ appeal have been disposed of on merits, it is not necessary for us to go into the question whether the society has complied with the condition mentioned in the impugned memo dated 6-2-1982 of the Government. Sri Jagannadha Rao wanted us to record the society's willingness to withdraw the writ petition mainly to obviate any possible objection that might be raised that the society had not complied with the conditions imposed in the memo dated 6-2-1982.

47. Sri Jagannadha Rao also contended that the Sangh is already in possession of considerable extent of land in other survey numbers, whereas the society is in possession of only the lands in S. No. 9 and has expended considerable amounts, and, therefore, even on the grounds of equity, the Sangh cannot be allowed to challenge the dropping of the proceedings for acquisition of the lands in S. No. 9. But, as already mentioned by us, final decision as to whether the proceedings for acquisition of the lands in S. No. 9 should be dropped or not has to be made by the Government or the Collector taking all the relevant circumstances into consideration, and we do not think it appropriate for us to express any opinion on this question.

48. Though an allegation is made in the affidavit that the impugned memo dated 6-2-1982 of the Government is vitiated by *mala fides*, no material has been produced to substantiate the said allegation.

49. Before parting with the case, we have to mention that in the writ appeal and in the writ petition neither the Government nor the District Collector have filed any counter-affidavit. But, the District Social Welfare Officer purported to file a counter-affidavit on behalf of himself as well as the Government and the District Collector in Writ Appeal No. 253/82. In writ petition No. 5601/81, no counter has been filed. In these proceedings, the notification for acquisition made by the District Collector under Section 4 (1) and the impugned memo dated 6-2-1982 issued by the Government for dropping proceedings for acquisition are being challenged. But, neither of them has chosen to file any counter-affidavit traversing the several allegations made in the affidavits filed by the Society and the Sangh in each of the writ petitions filed by them. It would have been more appropriate if counter-affidavits had been filed by the District Collector and the Govt. instead of leaving it to the District Social Welfare Officer who cannot be expected to have knowledge of the matters relating to the notification for acquisition by the collector or the impugned letter of the Government addressed to the collector for taking action for dropping the acquisition proceedings. Consequently, this Court has been denied the benefit of knowing what stand the District Collector or the Government were taking with regard to the several averments made by the parties in the affidavit and counter-affidavits filed by them.

50. For all the foregoing reasons, the writ appeal also fails and is dismissed. No costs. Advocate's fee Rs. 200/- in the writ appeal and in the writ. Petition.
Petition and appeal dismissed.