

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT APPEAL No. 1134 of 2023

Between:

Kolla Sambasiva Rao

.....APPELLANT

AND

The Union of India and 5 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **12.12.2024**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

+ WRIT APPEAL No. 1134 of 2013

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Between:

Kolla Sambasiva Rao

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AND

The Union of India and 5 others

.....RESPONDENTS

! Counsel for the Appellant : Sri Ghanta Rama Rao, Sr. Counsel
Assisted by Sri Ghanta Sridhar

Counsel for the Respondents No.1 to 4: Sri P. Veera Reddy, Sr.counsel
Assisted by Ms. Sodum Anvesha

Counsel for the Respondent No.5 : GP for Land Acquisition

Counsel for the Respondent No.6 : Smt. Adarshitha Kilaru, Jr.SC for
APCPDCL

< Gist :

> Head Note:

? Cases Referred:

1. (2011) 12 SCC 69
2. (2005) 13 SCC 477
3. MANU/TN/2028/2008
4. 2012 SCC OnLine AP 148
5. 2017 (2) ALD 704 (DB)
6. 2023 SCC OnLine AP 180
7. 2003 (67) DRJ 578
8. (2010) 5 SCC 388
9. 1962 SCC OnLine Bom 60
10. (2009) 10 SCC 63
11. (2023) 6 SCC 1
12. (2023) 8 SCC 35

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE NYAPATHY VIJAY**

WRIT APPEAL No. 1134 of 2023

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Ghanta Rama Rao, learned senior counsel appearing for Sri Ghanta Sridhar, learned counsel for the appellant, Sri P. Veera Reddy, learned senior counsel, assisted by Ms. Sodum Anvesha, learned counsel for the National Highways Authority of India (in short 'NHAI'), appearing for respondents 1 to 4, learned Government Pleader for Land Acquisition, appearing for the 5th respondent, Smt. Adarshitha Kilaru, learned junior standing counsel for APCPDCL, has accepted notice for the 6th respondent.

2. This Writ Appeal has been filed by the appellant (petitioner in the writ petition) challenging the judgment and order dated 18.10.2023 passed by the learned single Judge in W.P.No.12336 of 2023 , by which, the writ petition was dismissed.

3. Writ Petition No.12336 of 2023 was filed challenging the proceedings of the competent authority, Land Acquisition and Revenue Divisional Officer, Guntur (in short 'Competent Authority'), dated 21.04.2023, rejecting the petitioner's objections under Section 3C of the National Highways Act, 1956 (in short 'NH Act 1956').

4. The challenge was primarily on the ground that while rejecting the petitioner's objections, the report of the Project Director, NHAI P14, Amaravati, dated 11.03.2023 was relied upon, but the copy thereof was not supplied to the

petitioner. The structural stability report for petitioner's 'S. Convention Hall' submitted by the petitioner was not considered, in which it was opined that if the proposed acquisition was proceeded with it would affect the structures including generators, sump, borewell, power house etc., and the petitioner would not be able to operate the function hall. The petitioner's objections were not considered in correct perspective. The order dated 21.04.2023 was passed in violation of the principles of natural justice.

I. Facts:

5. Briefly stated, the facts of the case are, that the petitioner claimed to be the absolute owner of the land in an extent of 2387 square yards situated in Sy.Nos.930/A and 930/B, having purchased the same from its previous owners under different sale deeds and out of the said extent, previously, the respondent authorities acquired an extent of 193.75 square yards in Sy.No.930/A for the purpose of road widening. The possession and enjoyment of the remaining extent remained with the petitioner, in which there was a functional hall. Possession of the said extent was handed over to the authorities and the petitioner had been in possession and enjoyment of the remaining extent and was running a functional hall.

6. The petitioner's further case is that the respondent authorities proposed to acquire some more extent from the remaining property for the purpose of providing an exit from the national highway. The Notification under Section 3A (1) of NH Act 1956 was published in the Gazette on 01.10.2019 and in the newspapers, Hindu and Sakshi, publication was made on 31.10.2019. He

approached the authorities and made representation/objections on 03.02.2020 and 04.02.2020, but the Competent Authority rejected the objections on 07.02.2020 on the ground that those were not filed within 21 days from the date of publication of notice under Section 3A of NH Act 1956.

7. Being aggrieved, the petitioner preferred W.P.No.14333 of 2020. In the writ petition, interim order was granted on 19.08.2020 staying all further proceedings. However, as per the case of the respondents in W.P.No.14333 of 2020, the 4th respondent was unaware of the interim order and its extension, and pursuant to the proposal sent by the Competent Authority for publication of declaration under Section 3D of NH Act 1956, vide reference dated 25.08.2020, Section 3D (1) declaration was published in Government of India Gazette on 15.09.2020. However, acquiring knowledge of the interim order, the further publication of the public notice under Section 3G (3) (Award Enquiry) was kept pending with respect to the land of the petitioner.

8. After contest, Writ Petition No.14333 of 2020 was disposed of by the learned single Judge, vide judgment dated 30.12.2022, setting aside the endorsement dated 07.02.2020 in Rc.No.1706/2019-M. The competent authority, the 5th respondent in the said writ petition, was directed to consider the objections of the petitioner dated 03.02.2020 and 04.02.2020 as if they were filed within the period stipulated under Section 3C (1) of the NH Act and pass a reasoned order by following the procedure contemplated under Section 3C (2) of the NH Act 1956, within a period of 2 (two) months from the date of receipt of copy of that order and also providing, "and further consequential

steps afresh". The learned single Judge in W.P.No.14333 of 2022, recorded that the action of the competent authority in rejecting the petitioner's objections on the sole ground that they were not filed within the stipulated time was unsustainable for the reasons recorded in the judgment dated 31.12.2012.

The operative part of the judgment in W.P.No.14333 of 2020 reads as under:

"18. Accordingly, the writ petition is disposed of, setting aside the impugned endorsement dated 07.02.2020 in Rc.No.1706/2019-M passed by the 5th respondent and the 5th respondent-competent authority is directed to consider the objections filed by the petitioner on 03.02.2020 and 04.02.2020 as if they were filed within the period stipulated under Section 3C (1) of the Act and pass a reasoned order by following the procedure contemplated under Section 3C (2) of the Act, within a period of two (02) months from the date of receipt of copy of this order and further consequential steps afresh. There shall be no order as to costs."

9. After the judgment, dated 30.12.2022, the Competent Authority issued notice under Section 3C (2) of the NH Act 1956, dated 21.02.2023, to the petitioner to appear on the date fixed for hearing on his objections dated 03.02.2020 and 04.02.2020. The petitioner filed response to the notice. Objection was raised, *inter alia*, submitting that, after the previous notification a building was constructed in the appurtenant land. But, as it was difficult to run the function hall due to space congestion, the said building was removed and the space made available therefrom was utilized for construction of power room and for installation of two generator sets. If the land was acquired as proposed, not only the power room and generator sets, but also the bore well and sump, which were relocated, after previous acquisition, would have to be

removed and there was no other available vacant land for relocating the same, and as such the entire function hall could not be run, which would need to be closed then. The petitioner requested to exempt the aforementioned property. He also submitted the structural stability report for S-Convention Hall.

10. The petitioner's objections were rejected by Order dated 21.04.2023 vide proceedings Rc.No.1706/2019-M by the competent authority.

11. The rejection order dated 21.04.2023 shows that in response to the petitioner's objections, as the objections involved technical issues, the objections were sent to the Project Director, National Highway Authority of India, PIU, Amaravati for offering comments and in response, the Project Director vide Ref.No.NHAI/PIU-Amaravati/11018/02/2016/Vol./361, dated 11.03.2023 submitted the report. The order states that after going through all the objections of the petitioner and the report of the Project Director, and inspected the land on 04.02.2023, agreeing with the report of the Project Director, the area of the petitioner's land proposed for acquisition was the minimal and was required to develop Entry point as per IRC standards, hence it was inevitable to acquire the land measuring 149 square meters in the interests of the public at large.

12. The petitioner filed W.P.No.12336 of 2023. After contest from the respondents, the writ petition was dismissed by Order dated 18.10.2023.

13. Challenging the judgment and order dated 18.10.2023, the present Writ Appeal No.1134 of 2023 was filed.

14. Initially, the writ appeal was allowed by a coordinate Bench of this Court on 28.11.2023, holding that the proceedings initiated by way of Notification under Section 3A (1) of the Act on 01.10.2019 stood abated even before the publication of the notification under Section 3D (1), on 01.07.2023 and as such, the entire proceedings had abated and no further steps could be taken under the acquisition process. The coordinate Bench however observed that, it would be open to the respondent authorities to initiate fresh acquisition proceedings if they were so inclined and such proceedings should be conducted strictly in accordance with law. Operative part of the initial judgment dated 28.11.2023 in W.A.No.1134 of 2023 is as under:

“11. A perusal of the stay orders and subsequent proceedings would show that the stay of all further proceedings were granted by this Court, on 19.08.2020, in W.P.No.14333 of 2020. This Writ Petition was dismissed on 30.12.2022. Sri Ghanta Rama Rao would submit that even if this period was taken into account, the period of one year had elapsed by 15.03.2023 itself and as such, the proceedings would have to be declared to have abated.

12. This Court finds substantial merit in the contentions raised by Sri Ghanta Rama Rao and holds that the proceedings initiated by way of notification under Section 3A (1) of the Act, on 01.10.2019 stand abated even before the publication of the notification under Section 3D (1) on 01.07.2023 and as such, the entire proceedings have abated and no further steps can be taken under this acquisition process.

13. However, it would be open to the respondent authorities to initiate fresh acquisition proceedings, if they are so inclined. Needless to say, the said proceedings shall be conducted strictly in accordance with law.

14. Accordingly, the Writ Appeal is allowed. There shall be no order as to costs.”

15. The respondents filed I.A.Nos.1 & 2 of 2024 for review. The review was allowed vide Order dated 01.04.2024. In the review Order, it was observed that the notification under Section 3D had been published in the gazette on 15.09.2020, which would be within a period of one year from the date of notification dated 01.10.2019 issued under Section 3A of NH Act 1956. The matter was posted for fresh hearing of the writ appeal by order dated 01.04.2024. Operative portion of the review order dated 01.04.2024 is as under:

“A perusal of the record shows that a notification under Section 3 (D) had been published in the gazette on 15.09.2020, which would be within a period of one year from the date of notification dated 01.10.2019 issued under Section 3 (A) of the National Highway Authority of India Act. In the circumstances, the contention raised by the review petitioner would have to be accepted.

Accordingly, this review petition is allowed and the order dated 28.11.2023 of this Court is set aside and the matter is posted for fresh hearing.”

16. In the writ appeal, interim order was granted to maintain *status quo*. The writ appeal was allowed on 28.11.2023. Review application was allowed on 01.04.2024. Thereafter, on 20.09.2024 in the writ appeal, by way of interim order, it was provided that no coercive action will be taken till the next date, which was extended on 24.09.2024 till delivery of the judgment.

II. Submissions of the learned counsels:

(i) For the appellants:-

17. Sri Ghanta Rama Rao, learned senior counsel for the writ appellant submitted that the notification under Section 3A (1) of NH Act 1956 was

published in the Gazette on 01.10.2019. It was published in newspapers on 31.10.2019. Any declaration under Section 3D (1) of the NH Act 1956, afresh, had not been published within a period of one year from the date of publication of notification under Section 3A (1) of NH Act 1956, even excluding the period of interim stay granted in W.P.No.14333 of 2020, in view of Section 3D (3) proviso, and so, the notification under Section 3A (1) would lapse. In his submission, as per the calculation made, from 31.10.2019 onwards till the date of the interim order dated 19.08.2020, 291 days were completed. The writ petition No.14333 of 2020 was disposed of on 30.12.2022. One year of 364 days, would come to an end on 14.03.2023. So, with effect from 15.03.2023 the notification issued under Section 3A (1) of the NH Act became ineffective and pursuant thereto no further action could be taken. His submission was that there should be a fresh declaration under Section 3D (1), in view of the judgment dated 30.12.2022 in W.P.No.14333 of 2020, which *inter alia*, provided, "*.....and further consequential steps afresh*".

18. Sri Ghanta Rama Rao, learned senior counsel, next submitted that the impugned order of rejection of the petitioner's objections suffered from violation of the principles of natural justice. He submitted that while rejecting the objections, the competent authority placed reliance on the report of the Project Director, which was called for by the competent authority and was submitted pursuant thereto, in view of the objections filed by the petitioner which were sent to the Project Director for his report. He submitted that the report of the Project Director formed the very basis of the impugned order, and

was a material adverse to the petitioner, but any opportunity of hearing to the petitioner was not afforded there against, and copy of the said report was also not supplied to the petitioner. The contents thereof were never intimated, except reproducing in the order of rejection of objections. The structural stability report filed by the petitioner was also not considered. In his submission, there was no sufficient opportunity of hearing before passing the order and hence it suffered from violation of the principles of natural justice.

19. Learned counsel for the appellant placed reliance in the cases of (1) ***Union of India v. Kushala Shetty***¹, (2) ***Competent Authority v. Barangore Jute Factory***², (3) ***Shanmugha Arts, Science, Technology and Research Academy v. Union of India (UOI)***³, and (4) ***Bhimavarapu Giridhar Kumar Reddy v. the Union Government of India***⁴.

(ii) For the Respondents:-

20. Learned senior counsel for the respondents, the National Highway Authority of India, Sri P. Veera Reddy, assisted by Ms. Sodum Anvesha, submitted that the notification under Section 3D (1) was issued and published in gazette on 15.09.2020. The same was within a period of one year from the date of notification dated 01.10.2019 under Section 3A of the NH Act 1956. He submitted that considering the said fact that there was declaration dated 15.09.2020, the review was allowed. Consequently, he submitted that the notification under Section 3A (1) was operative and it did not become

¹ (2011) 12 SCC 69

² (2005) 13 SCC 477

³ MANU/TN/2028/2008

⁴ 2012 SCC OnLine AP 148

ineffective and in furtherance thereof, the further proceedings could be taken, which were taken. He submitted that after rejection of the petitioner's objections, further proceedings were taken and award was also passed under sub-Section (1) of Section 3G of the NH Act 1956, dated 01.07.2023 and in those proceedings (award enquiry), the petitioner had also participated.

21. Sri P. Veera Reddy, learned senior counsel, further submitted that it was not necessary to provide the report of the Project Director. He submitted that in view of the objections raised by the petitioner in his objection, it was considered necessary to call for the report from the Project Director, on technical issues. The contents of the said report, he submitted, were reproduced in the impugned order. Even in the enquiry proceedings for award, the contents of the said report were made known to the petitioner and consequently, there was no violation of the principles of natural justice. The petitioner's objections were duly considered and rejected in the public interest for construction of exit from the National Highway.

22. Learned counsel for the respondents placed reliance in the cases of (1) ***Marella Marithi Prasada Rao v. Union of India***⁵ and (2) ***A.V.K.Viswanatha Raju v. Union of India***⁶.

(iii) Govt.Pleader for 5th Respondent:-

23. Learned Government Pleader, appearing for the 5th respondent supported the rejection of the objections of the petitioner submitting that the rejection was by a reasoned order after affording due opportunity of hearing to

⁵ 2017 (2) ALD 704 (DB)

⁶ 2023 SCC OnLine AP 180

the petitioner, also refuting the petitioner's contention of violation of the principles of natural justice.

III. Points for determination:

24. We have considered the aforesaid contentions of the learned counsels for the parties and perused the material on record.

25. The following points arise for our consideration and determination:

- A.** Whether the notification dated 01.10.2019 under Section 3A (1) of the National Highways Act, 1956 ceased to be operative on expiry of one year period, if any declaration was not published in the notification under Section 3D (1) of the National Highways Act, 1956 within the said period, in view of Section 3D (3) of National Highways Act, 1956?
- B.** Whether the Order dated 21.04.2023 impugned in the writ petition No.12336 of 2023, suffers from violation of the principles of natural justice and deserves to be set aside?
- C.** Whether the judgment dated 18.12.2023 passed in W.P.No.12336 of 2023 by the learned single Judge under challenge in the writ appeal deserves to be maintained or calls for interference?

IV. Analysis:

Point - A:

26. We would first refer to certain provisions of the National Highways Act, 1956.

27. Section 3A of the National Highways Act reads as under:

“3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building,

maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.”

28. Section 3C of the National Highways Act reads as under:

“3C. Hearing of objections.—(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.”

29. Section 3D of the National Highways Act reads as under:

“3D. Declaration of acquisition.—(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on

receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.”

30. Section 3G of National Highways Act, 1956 read as under:

“3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal

practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

31. A reading of the aforesaid provisions make it clear that Section 3A of the NH Act confers the power on the Central Government to acquire land if it is satisfied that for a public purpose any land is required, *inter alia* for maintenance, management or operation of a national highway or part thereof. For such acquisition, notification in the official gazette declaring its intention to acquire such land is to be issued by the Central Government, giving a brief

description of the land. The substance of the notification is to be published in two local newspapers, one of which will be in a vernacular language. Any person interested in the land, is granted the opportunity under Sub-Section (1) of Section 3C of NH Act, to file objection within 21 days from the date of publication of the notification under Section 3A (1) of NH Act. The objection shall be made to the use of the land for the purpose or purposes mentioned in sub-section (1) for which the notification under Section 3A is issued. The objection is to be filed before the competent authority in writing, setting out the grounds thereof. The competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and after hearing the objections and after making such further enquiry, if any, as the competent authority thinks necessary to make, shall pass an order, either allowing or disallowing the objections. Section 3C (3) of NH Act makes such an order of the competent authority as final. If the objection is not filed within the period specified by the statute of 21 days from the date of notification under Section 3A (1), or where the objection though filed but was disallowed by the competent authority under sub-section (2) of Section 3C, the competent authority shall submit a report as soon as may be to the Central Government and on receipt of such report, the Central Government shall declare by notification in the official gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A (1). It is on such publication of declaration that, the land shall vest absolutely in the Central Government free from all encumbrances. If no declaration under sub-section (1) of Section 3D is

published within a period of one year from the date of publication of the notification under sub-section (1) of Section 3A, with respect to that land i.e., for which the publication under Section 3D (1) is not made, the notification under Section 3A (1) shall cease to have any effect. As per the proviso to sub-section (3) of Section 3D in computing the period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under Section 3A (1) is stayed by an order of a Court that shall be excluded. In other words, the period of stay, granted within the period of one year from the date of notification under Section 3A (1) is to be excluded for computing one year period, so as to find out if the publication of declaration under Section 3D (1) is within a period of one year or not. After vesting of the land in the Central Government, as per the provision of Section 3D and after deposit of the amount of such land by the Central Government as determined by the competent authority under Section 3G, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorized on its behalf within a period of 60 days of the service of the notice. In case of refusal or failure to comply with the direction, the competent authority shall enforce the order of possession. Section 3G of NH Act provides for determination of the amount payable as compensation and Section 3H of NH Act refers to the deposit and payment of amount as determined in the manner prescribed.

32. The undisputed facts are that, the notification under Section 3A (1) was published in the official gazette on 01.10.2019 and it was published in the newspapers 'Hindu' and 'Sakshi' on 31.10.2019. The endorsement under Section 3C (2) was issued by the competent authority rejecting the objections on 07.02.2020. It was submitted that the rejection of the objections was on the ground that the objections were filed after the statutory period of 21 days.

33. At this stage, we deem it appropriate to refer paragraphs 12 & 13 of the judgment dated 30.12.2022 in W.P.No.14333 of 2020 which is on the point of the endorsement dated 07.02.2020, and reads as under:

“12. The objections filed by the writ petitioner were rejected. For clarity, the impugned endorsement is extracted hereunder:

“With reference to your letter in the reference cited it is to inform you that the 3A(1) under NHAI Act 1956 was published in the daily News papers “The Hindu” and “Sakshi” on 31.10.2019 **and there are no objections received in this regard to be filed within 21 days as per 3C(1) of NH Act, 1956.**

Therefore, your application in the reference cited requesting for exemption of acquisition the land in RS.No.930/A1, of Pedakakani village is hereby rejected.”

13. Thus, it shows that the objections filed by the petitioner were rejected on the sole ground that they were not submitted within 21 days as stipulated in Section 3C(1) of the Act.”

34. The declaration under Section 3D (1) was published in the notification on 15.09.2020.

35. The said Declaration dated 15.09.2020 reads as under, the schedule thereto, we reproduce only with respect to the writ petitioner/appellant at Sl.No.19:

**“MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NOTIFICATION**

New Delhi, the 15th September, 2020

S.O. 3154(E).—Whereas by the notification of the Government of India in the Ministry of Road Transport and Highways number S.O. 3575 (E), dated the 26th September, 2019, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) issued under sub-section (1) of section 3A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the land specified in the Schedule annexed to the said notification for building (widening / six-laning, etc.), maintenance, management and operation of National Highways No.16 on the stretch of land from Km.380/600 to Km.432/650 (Chilakaluripet – Vijayawada Section) in District Guntur in the State of Andhra Pradesh;

And whereas the substance of the said notification has been published in –The Hindu (English) and –Sakshi (Telugu), both dated 31st October 2019; under sub-section (3) of section 3A of the said Act;

And whereas no objection has been received from any person by the competent authority;

And whereas, in pursuance of sub-section (I) of section 3D of the said Act, the competent authority has submitted its report to the Central Government;

Now, therefore, upon receipt of the said report of the competent authority and in exercise of the powers conferred by sub-section (1) of section 3D of the said Act, the Central Government hereby declares that the land specified in the said Schedule should be acquired for the aforesaid purpose;

And further, in pursuance of sub-section (2) of section 3D of the said Act, the Central Government hereby declares that on publication of this notification in the Official Gazette, the land specified in the said Schedule shall vest absolutely in the Central Government, free from all encumbrances.

SCHEDULE

Brief description of the land to be acquired, with or without structure, falling within the stretch of land from Km.380/600 to Km.432/650 (Chilakaluripet - Vijayawada section) on the National Highways No.16 in the State of Andhra Pradesh.

State: ANDHRA PRADESH			District: GUNTUR		
Sr. No.	Survey Number	Type of Land	Nature of Land	Area in Hectare	Name of the Land Owner/Interested Person Part Survey No:
1	2	3	4	5	6
	Taluk: Peddakakani				
	Viilage: Peddakakani				
19.	930/A1	Private	Dry	0.0149	K. Sambasiva Rao 930/A1B3

[F. No. NHAI/15021/6-lane/BOT/2008/Tech/GM(CK-I)/3A/3D]

RAJESH GUPTA, Dy. Secy.”

36. We may state that there is mention of the aforesaid declaration Under Section 3D (1) being published on 15.09.2020, in the judgment dated 30.12.2022 passed in W.P.No.14333 of 2020. Further, on the ground that, there was declaration under Section 3D (1) on 15.09.2020, the review in I.A.No.1 of 2024 in the present writ appeal was also allowed. So, we do not find force in the submission of the learned senior counsel for the appellant that there was no publication under Section 3D (1) within a period of one year from

the date of notification published under Section 3A (1) of NH Act. The publication of declaration under Section 3D (1) was made, and it is also evident from the declaration itself that, the same was issued after the competent authority submitted the report to the Central Government under sub-section (1) of Section 3D of NH Act. The competent authority had already rejected the objections on 07.02.2020 being beyond the period of limitation of 21 days, though the declaration states that "And whereas No Objection has been received from any person by the competent authority". We take it for the present that no objections were received within the statutory period of 21 days.

37. The order of rejection of the objections beyond 21 days, dated 07.02.2020 was set aside by the learned single Judge in W.P. No.14333 of 2020 on 30.12.2022 with direction to decide the objections treating them as within limitation and to take 'further consequential steps afresh'. We are of the view that though the very basis of the publication of the notification under Section 3D (1) of NH Act, dated 15.09.2020, i.e., rejection of the objections on the ground of being beyond 21 days statutory period, vide endorsement dated 07.02.2020, goes, in view of the judgment in W.P.No.14333 of 2020, but even then, it cannot be said that no notification of declaration under Section 3D (1) of NH Act was published, within one year. As a fact such publication was made. It is absolutely not a case of no publication/notification under Section 3D (1) of the NH Act. The notification was made within the period of one year from the date of publication of notification under Section 3A (1) of NH Act, and that too after rejection of the objections filed after statutory period i.e., no

objections received in time, as also the submission of the report by the competent authority to the Central Government, as contemplated under Sub-Section (1) of Section 3D of NH Act.

38. The submission of Sri Ghanta Rama Rao, learned senior counsel, appearing for the appellant, is that a notification under Section 3D (1), afresh, would be necessary, in view of the directions issued in W.P.No.14333 of 2020 "*to take further action afresh*". His further submission is that excluding the period of stay in W.P.No.14333 of 2020 which was decided on 30.12.2022, the period of 364 days from the date of notification under Section 3A (1) came to an end on 14.02.2023, and in the meantime no fresh publication under Section 3D (1) having been made pursuant to the Order dated 30.12.2022, the notification under Section 3A (1) then became ineffective. The further proceedings therefore, now cannot be taken.

39. Sri P. Veera Reddy, learned senior counsel, for the National Highways Authority of India, on the other hand, submitted that a notification under Section 3D (1) of NH Act afresh, was not required. Such a notification had already been issued, within one year and under the Order of the Writ Court in W.P.No.14333 of 2020, on consideration, the objection was rejected on merit. The notification under Section 3D (1) was not challenged in W.P.No.14333 of 2020 and the same was also not set aside. So, the same notification holds good. He submitted that if the objection had been allowed, then the consequential steps were to be taken afresh. On rejection of the objection under Section 3C, the publication under Section 3D, which had

already been made, on rejection of the previous objection being beyond the statutory period will stand and the further consequential step, would be to hold award enquiry under Section 3G, which was held. The petitioner participated in such enquiry. In his submission, a fresh publication, under Section 3D, as submitted by the learned counsel for the petitioner, would be an exercise only in futility. He submitted that the petitioner having participated in the award enquiry, now cannot raise the plea of no fresh publication under Section 3D.

40. The question therefore is, what is the direction "to take further action afresh" in judgment dated 30.12.2022 in W.P.No.14333 of 2020. What is that further action? And what is afresh? Whether fresh publication under Section 3D (1) is required, and if so, in the absence of any fresh publication, which admittedly has not been issued yet, the notification under Section 3A (1) became ineffective?

41. In ***Kashi Nath Singh (Sq.Ldr.) v. Union of India***⁷ the application of the petitioner therein pursuant to an advertisement for allotment of LPG dealership, on consideration, was not granted, another person was granted. That petition was decided, *inter alia* quashing the allotment in favour of the other person with direction that the question of allotment of LPG agency would be decided afresh by the Indian Oil Corporation. Subsequently, fresh advertisement was made inviting applications from eligible candidates from different locations. As per the fresh advertisement, the petitioner of the writ petition could not be covered by any of the categories as mentioned in that

⁷ 2003 (67) DRJ 578

fresh advertisement, though he was covered under the previous advertisement. He filed the writ petition. The expression 'afresh' as was in the direction in the previous writ petition pursuant to the first advertisement, came for consideration. The first question was whether the allotment of LPG agency was to be decided by inviting the applications all over again or fresh look had to be given by examining the applications already invited pursuant to the first advertisement. Referring to the dictionary meaning of the word 'afresh', the Delhi High Court observed that 'afresh' means again, anew, newly, freshly, once more, once again etc., and held that by the direction to decide afresh, it was meant that the applications were to be invited again and the consideration could not be confined to the applications which had already been invited.

42. Paragraphs-13 to 17 of ***Kashi Nath Singh*** (supra) as under:

“13. A direction was therefore given to decide the question of allotment of LPG dealership at Buxar 'afresh'.

14. Dictionary meaning of the word 'afresh' is : again, anew, newly, freshly; once more, once again, encore, bis, over, over again, denovo (Latin). Oxford dictionary defines 'afresh' to mean: 'with a new beginning; new'. Oxford dictionary thus makes it clear that afresh' means 'new beginning'. Further, 'afresh' is treated as synonym of 'denovo' Denovo clearly means all over again whether that material has to be discarded and decision is to be taken on the basis of fresh material.

15. Black's Law Dictionary defines Denovo: "Anew; afresh; a second time. A venire de novo is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial."

16. However, 'denov trial' is defined as: 'Trying a matter anew as if it had not been heard before and as if no decision had been previously rendered'. (*Farmingdale Supermarket, Inc. v. U.S.*, DCNJ, 336 F.Supp. 534,536, (Ref.

Hearing denovo cases : *Ray v. Illinois Bd.*, 1 Dist, 113 Ill.App,3d 510, 69 /// Dec.451, 454, 447, N.E.2d 886, 889, *Collier & Wallis v. Astor*, 9 Cal.2d 202, 70, P.2d, 171, 173).

17. Learned counsel for the petitioner therefore is not correct in his submission that pursuant to the aforesaid directions, respondent was to examine the applications which had already been invited pursuant to advertisement dated October 9, 1985. When Division Bench passed the Order directing that the question of allotment of this LPG agency would be decided afresh, it clearly meant that applications are to be invited again. If the Court meant what petitioner is arguing, it would have specifically directed the respondent to consider the remaining applications already received pursuant to advertisement dated October 9, 1985 after excluding the name of respondent No. 9-Janardan Chaubey. No such directions were given. Therefore, the issue is decided against the petitioner.”

43. We are not oblivious of the fact that the words used in a judgment of a Court are not to be construed as the words used in the statute. However, the assistance can be taken from the dictionary meaning of the words used in the judgment to understand an order of the Court in regard to the text and context in which the Order has been passed. In ***Goan Real Estate & Construction Ltd. v. Union of India***⁸ the Hon'ble Apex Court held that it is well settled that an order of a Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of the Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made.

⁸ (2010) 5 SCC 388

Observation made in a judgment, it is trite, should not be read in isolation and out of context.

44. In the present case, from the direction as issued, including that the objection to be treated as under Section 3C (1) of the NH Act within the statutory period and to decide such objection by following the procedure under Section 3C (2) of the NH Act, we are of the considered view that, the direction for 'further consequential steps afresh' was certainly the steps contemplated by the statute after the stage of deciding the objections under Section 3C and that first consequential step is the stage of declaration of publication under Section 3D (1). In ***Barangore Jute Factory*** (supra), the Hon'ble Apex Court held that the declaration is the result of disposal of objections under Section 3C. Each step is a consequence of earlier. The publication though had already been issued on 15.09.2020, which fact was on record and also mentioned in the judgment, but in spite thereof, when the Court directed the consequential steps afresh, it was clearly meant to notify the publication under Section 3D (1) again. The respondents in that writ petition, therefore, had to issue publication under Section 3D (1) afresh consequent upon the decision of the competent authority on the objection of the petitioner under Section 3C. At the cost of repetition, the order dated 30.12.2022 passed in W.P.No.14333 of 2020 had attained finality. So, the respondents had to follow the said judgment and the directions issued therein. Admittedly no fresh publication under Section 3D (1) of the NH Act was made with respect to the petitioners' land.

45. We find it difficult to accept the contention of Sri P. Veera Reddy, learned senior counsel, that as the publication dated 15.09.2020 under Section 3D was not under challenge and was not set aside in W.P.No.14333 of 2020, the same publication continued to be good and there would be no requirement to issue fresh publication under Section 3D (1). His submission that, issuance of a fresh publication would be an exercise in futility, is also not acceptable to us, for the reasons more than one, to state, may be at the cost of repetition.

“(i) The judgment made it very clear that the objections were to be considered as if they were filed within the statutory period of 21 days under Section 3C (1) and the same were directed to be considered and decided following the procedure under Section 3C (2). So, the stage of hearing of objections, pursuant to the order of the Writ Court dated 30.12.2022, in our view, was brought again. Though, it is rightly submitted that the publication dated 15.09.2020 was not put to challenge and it was also not set aside, but the effect of the judgment and the consequences following therefrom, in the light of the specific direction, which attained finality, certainly cannot be ignored. At the most, because of not setting aside of the publication dated 15.09.2020 but directing to take ‘further consequential steps afresh’, it can be said that the notification dated 15.09.2020, till the judgment dated 30.12.2022, stood and so it being within a period of one year from the notification under Section 3A (1) dated 01.10.2019, the notification under Section 3A (1) did not become ineffective for proceeding further.

(ii) The land vested pursuant to the publication dated 15.09.2020 would stand divested in view of judgment dated 30.12.2022 in W.P.No.14333 of 2020. If publication afresh is not done, there would be no vesting of the land in the Central Government, absolutely free from all encumbrances under Section 3D (2). Any further steps pursuant to the same publication dated 15.09.2020, could also not be legally taken, without first complying with the judgment in W.P.No.14333 of 2020, i.e., the declaration of acquisition by publication under Section 3D of the Act afresh. So, fresh publication would be required.

(iii) The publication dated 15.09.2020, as noted in the earlier part of this judgment mentioned "And whereas no objection has been received from any person by the competent authority". In view of the direction in W.P.No.14333 of 2020, to treat the objection as received in time and decide under Section 3C (2), now based on publication dated 15.09.2020, it cannot be said that 'no objection was received'. Consequentially, fresh publication stating the correct position would be required. The authorities had to take further consequential steps of publication under Section 3D (1) afresh, and then only further steps as provided under the Statute i.e., possession, award etc., could be taken."

46. We are also not in acceptance of the submission of Sri Ghanta Rama Rao, learned senior counsel for the appellant that the publication dated 15.09.2020 was void. He so submitted placing reliance in ***Bhimavarapu Giridhar Kumar Reddy*** (supra). He submitted that in that case, the violation of the mandatory provisions of Section 3C (2) in failing to provide an opportunity of hearing to the petitioner therein despite his specific request vide

memorandum of objections dated 27.11.2008 and 04.01.2010 was established, it was held that all the proceedings subsequent to the stage under Section 3C (1) would be void and inoperative and the fact of publication of a declaration under Section 3D (1) would not cure that fatal infirmity.

47. In ***Bhimavarapu Giridhar Kumar Reddy*** (supra), the facts were that public notice under Section 3G of NH Act, 1956 was given. The same was challenged as arbitrary and illegal. The learned single Judge upheld the grievance of the writ petitioner therein with respect to serious transgression of his rights under Section 3C of NH Act, 1956 whereunder his objections were required to be considered. However, the learned single Judge held that even assuming that the writ petitioner's right under Section 3C was violated, since the writ petitioner failed to question the declaration under Section 3D whereby the land was held vested in the Government, the writ petitioner could not gainfully challenge the notification issued under Section 3G of NH Act, 1956 which dealt with the quantum of compensation. In the writ appeal, the Division Bench of Andhra Pradesh High Court held that the violation of the mandatory provisions of Section 3C (2) was established and on account of this illegality, all the proceedings subsequent to the stage under Section 3C (1) were void and inoperative and the fact of publication of a declaration under Section 3D (1) would not cure that fatal infirmity. The Writ Appeal was allowed. The notification under Section 3D and the public notice under Section 3G to the extent of the writ petitioner in that case were declared as invalid and inoperative.

48. In the present case, in the prevision writ petition No.14333 of 2020 which order had attained finality, for the appellant as well, the publication dated 15.09.2020 has not been declared as void or invalid, but a direction was given to take further consequential steps afresh, i.e., consequent upon deciding the objections treating them in time. Declaration of publication void or invalid as in ***Bhimavarapu Giridhar Kumar Reddy*** (supra) and the direction as in the case of the present petitioner cannot read as same. It might have been open for the petitioner in the previous writ petition, the earlier round of litigation, to contend that, but that argument is not open to be raised in the present appeal. Besides, admittedly, the objection was not filed within the statutory period and after rejection as barred by limitation, the publication dated 15.09.2020 was made, which could be made under Section 3D (1) of N.H.Act. There is no scope for the argument that the publication dated 15.09.2020 was void or invalid. It is under the judgment in W.P.No.14333 of 2020, that the publication dated 15.09.2020, would cease to have effect, which is not the same as being declared void. We are however of the view that though the petitioner had participated in the enquiry for the award for grant of compensation under Section 3G, but that would not take away the petitioner's right for consideration of his objections, in accordance with law, with due opportunity of hearing and observance of the principles of natural justice nor would absolve the respondents from complying with the directions of this Court issued in W.P.No.14333 of 2020 vide judgment dated 31.12.2012 in letter and spirit which judgment has already attained finality.

49. We further do not find force in the submission of Sri Ghanta Rama Rao, learned senior counsel that even after exclusion of the period of stay in W.P.No.14333 of 2020, no fresh publication under Section 3D (1) having been made within one year from the notification under Section 3A (1), the notification under Section 3A (1) ceased to be effective. The reasons are that we have already held and factually correct also that the publication under Section 3D (1) was made within the statutory period of one year.

50. We are of the view that the said period applies for 'Publication under Section 3D (1)' and not for 'Publication afresh' under the directions of the Court.

51. Additionally, the petitioner's objections were rejected on 21.04.2023. That Order of rejection was challenged in the Writ Petition No.12336 of 2023 and out of the writ proceedings, the present proceedings in the writ appeal are pending, presently, with stay order. Consequently, we are of the view that in any case, it cannot be said that, for the purposes of counting the period of one year from the date of the notification under Section 3A (1) of NH Act, such period of one year, has come to an end after excluding the period of stay granted in the Writ Petition No.14333 of 2020. Still the proceedings on the objection are on. So, in any case, we are of the considered view that the notification under Section 3A has not come to an end nor ceased to have any effect under Section 3D (3) of NH Act.

52. There is another aspect on the aforesaid point. The petitioners did not raise the plea of the notification under Section 3A (1), having become ineffective in the writ petition before the learned single Judge. Sri Ghanta

Rama Rao, learned senior counsel for the appellant, fairly submitted that such a plea was not taken before the learned single Judge.

53. In ***Hussainbhai Mulla Fida Hussain v. Motilal Nathulal Agarwal***⁹ the Bombay High Court held as under in paragraphs-8 and 9:

“8. Similarly, in *Sattappa Gurusattappa v. Md. Appalal*, the point was not taken in any of the lower Courts and, therefore, the learned Judges said (p. 241):

“...and in accordance with the usual practice we have declined to allow it to be taken in the Letters Patent appeal.”

9. In *S. Kankaiyalal v. Jerome D';Costa* the language employed is somewhat strong and the learned Chief Justice said that a new plea is not allowed to be raised in a Letters Patent appeal if it was not raised before the single Judge. He further said:

“Once a case is decided by a single Judge, it is his judgment which is the subject-matter of an appeal under clause 10 of the Letters Patent on a leave given by him. **If a particular topic was not considered fit for argument before the learned single Judge, or a point was abandoned before him, it is not right or proper for the Division Bench in the Letters Patent appeal to allow it to be urged. Further, it is the judgment and what arises therein which is under appeal, and not a matter which was not urged before the single Judge.**”

54. In ***SAIL v. Gupta Brother Steel Tubes Ltd.***¹⁰ the Hon'ble Apex Court in paragraphs-32 and 34 observed as under:

“32. We are not persuaded by the aforementioned submission of the learned Senior Counsel for the appellant for more than one reason. **For one, the aforesaid argument was not at all canvassed before the High Court.** A perusal of the judgment of the High Court would show that only two

⁹ 1962 SCC OnLine Bom 60

¹⁰ (2009) 10 SCC 63

contentions were raised there, namely, (i) that the arbitrator committed error of jurisdiction when he entered a time-barred claim; and (ii) that the arbitrator awarded damages to the claimant under Categories A, AA and C by exercising his power beyond Clause 7.2 of the agreement. **We are afraid that the appellant cannot be permitted to raise a contention before this Court in an appeal by special leave which was not raised before the High Court.** This contention is not even indirectly or remotely connected with the plea of limitation that was canvassed before the High Court.

34. The learned Senior Counsel for the appellant also urged that Claim A pertaining to difference in price has come to be determined by the arbitrator dehors contract stipulations. In this regard the learned Senior Counsel referred to Paras 20.21 and 20.22 of the award. **We are afraid, this contention too, cannot be permitted to be raised before us since no such contention was raised before the High Court. There has to be some sanctity and finality attached to the decision of the arbitrator and new plea cannot be allowed to be raised in an appeal under Article 136 which was not raised before the High Court.”**

55. However, we have considered the said aspect as the present appeal, was previously allowed, holding that, the notification under Section 3A (1) ceased to have effect and the subsequent proceedings stood abated. That judgment was reviewed and the writ petition came for hearing again. In our view, it is not so. The notification under Section 3A (1) is effective. Further, this argument does not furnish a ground, not having been raised before the learned single Judge, to challenge the judgment under appeal.

56. On Point No.A, we hold that the notification under Section 3A (1) of N.H.Act, did not become ineffective or ceased to have any effect under Section 3D (3) of N.H.Act.

Point – B:

57. So far as the submissions on the violation of the principles of natural justice in deciding the objections are concerned, Section 3C of NH Act provides for hearing the objections. In ***Marella Marithi Prasada Rao*** (supra), this Court held that Section 3C deals with hearing of objections. Under sub-section (1) thereof, any person interested in the land may, within 21 days from the date of publication of the notification under sub-section (1) of Section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section. Section 3C (2) of NH Act stipulates that every objection, under Section 3C (1), shall be made to the competent authority in writing and shall set out the grounds thereof, and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, by order, either allow or disallow the objections. The right to submit objections is conferred on a person interested in the land, i.e., the person whose lands are sought to be acquired. The person interested in the land has not only the right to submit his written objections, but also the right to an oral hearing, either in person or through a legal practitioner and during hearing of the objections, under Section 3C (1) of the Act, the person, whose lands are sought to be acquired, would be entitled to put forth all such contentions as are available in law.

58. So, the principles of natural justice of affording opportunity of hearing are also statutorily recognized under Section 3C of N.H.Act.

59. In ***Barangore Jute Factory*** (supra), the Hon'ble Apex Court observed that Section 3C (1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A (1). The Act confers no right to object to acquisition as such. Under the National Highways Act, there is no right to object to acquisition of land except on the question of its user. The Hon'ble Apex Court further observed that where a Statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. In ***Barangore Jute Factory*** (supra) the notification under Section 3A (1) did not meet the requirement of giving brief description of land sought to be acquired. There was absence of a plan. It was observed that the absence of a plan also renders the right to file objections under Section 3C (1), nugatory.

60. The principle of law, which we derive from ***Barangore Jute Factory*** (supra) is that the right to file objections cannot be rendered nugatory and so the right to it's consideration in consonance with principles of natural justice.

61. In ***Shanmugha Arts, Science, Technology and Research Academy*** (supra) it was held that conducting enquiry under Section 3C of the NH Act should not be an empty formality.

62. In ***Shanmugha Arts, Science, Technology and Research Academy*** (supra), with respect to non-furnishing copy of the remarks, it was observed and held as under in para-25:

“It is therefore clear from the aforesaid two Full Bench decisions that even though in the statute, there is no express provision for furnishing copy of the said remarks referred to above, yet the principles of natural justice warrant such furnishing of the copy of the remarks to the Petitioner so as to enable them to effectively put forth their case before the second Respondent.”

63. In ***Shanmugha Arts, Science, Technology and Research Academy*** (supra) it was held that the principles of natural justice require furnishing copy of the Project Director’s report. The objections could not be rejected simply based on the technical opinion given by the Project Director. It was so observed and held in paragraph-28 of the judgment as under:

“28. The learned Senior Counsel for the petitioner also placed reliance on decision of this Court in AL.Ranathan Amutha & Co, Indian Oil Dealer, Tiruchirapalli -vs- Government of India, rep.by its Secretary Ministry of Road Transport and Highways, New Delhi and others reported in 2008 5 MLJ 888. An excerpt from it, would run thus:

"20)It is trite that any authority, particularly quasi-judicial authority, who exercises his powers is required to spell out the reasons for his conclusion irrespective of the fact whether the conclusion is subject to appeal, revision or judicial review. The extent and nature of reasons would depend on particular facts and circumstances and those reasons must be clear and explicit so as to indicate that the authority concerned has given due consideration to the points in controversy. More so, the need for recording reasons is greater in a case where his order is based by an order of other authority. **The requirement of consideration of objection mandated in the Act is not an empty formality and as such, the second respondent ought not to have rejected the petitioner's objections simply based on the technical opinion given by the Project Director.**

To put it otherwise, the second respondent should have restrained himself from considering the petitioner's objections simply for the sake of doing. This is because **it is not sufficient if the rule of law is followed in letter and it should be followed in spirit as well in a constructive manner. In addition to relying on the Project Director's technical opinion, the second respondent should have also applied his mind and dealt with the petitioner's objections one by one and should have arrived at his conclusion with due reasoning in a speaking manner.** It has been held in a catena of decisions of the Supreme Court and this Court that spelling out of reasons in an administrative decision is a rule of natural justice. It is a well settled principle that reasoning is the heartbeat of every conclusion becomes not only meaningless but also lifeless....”.

64. In ***Bhimavarapu Giridhar Kumar Reddy*** (supra) it was held that affording of opportunity to persons whose lands are proposed for acquisition under the 1956 Act, mandated by Section 3C (1) was neither a ritual nor an empty formality. It was a salutary provision akin to the provisions of Section 5A of the Land Acquisition Act. The opportunity of hearing to the land owners to object to acquisition of their lands is a valuable right which could not be jettisoned for jejune reasons and that such opportunity and compliance with rules of natural justice was a small price which the State should always be prepared to pay before it could deprive any person of his property.

65. In ***SBI v. Rajesh Agarwal***¹¹ the Hon'ble Apex Court elaborately explained on the principles of natural justice. Paragraph-36 of the report is reproduced as under:

“36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be

¹¹ (2023) 6 SCC 1

followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) *nemo iudex in causa sua*, which means that no person should be a Judge in their own cause; and (ii) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. **Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.** [*Union of India v. J.N. Sinha*, (1970) 2 SCC 458].

66. The Hon'ble Apex Court in ***Rajesh Agarwal*** (supra) held that *Audi alteram partem* has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected and be informed of the proposed action and be allowed to represent why the proposed action should not be taken. Paragraph-81 of ***Rajesh Agarwal*** (supra) reads as under:

“81. *Audi alteram partem*, therefore, entails that an entity against whom evidence is collected must: (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF,

have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, **principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.**”

67. In *Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey*¹² with respect to the order passed by the National Green Tribunal, the Hon’ble Apex Court observed that the National Green Tribunal was a judicial body and therefore exercises adjudicatory function. It further observed that the very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The National Green Tribunal though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice. The Hon’ble Apex Court referred to the doctrine of “official notice” and observed that it would be useful to refer to what was known as the ‘official notice’ doctrine, which was a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against

¹² (2023) 8 SCC 35

whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. The Hon'ble Apex Court observed that this doctrine applies with greater force to a judicial/adjudicatory body. The Hon'ble Apex Court found that the National Green Tribunal relied upon an Expert Committee report. It observed that if the National Green Tribunal intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which came to the knowledge of National Green Tribunal on the basis of the report of the Committee constituted by it, if so relied upon by the National Green Tribunal, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal. The Hon'ble Apex Court observed that in the said case, experts' opinion as also the recommendations were made basis of the directions though the opinion was only by way of assistance and such an approach was held to be improper.

68. Paragraphs-21 to 25 of ***Singrauli Super Thermal Power Station*** (supra) are reproduced as under:

“**21.** A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. **The NGT though is a special adjudicatory body constituted**

by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

22. In this context, it would be useful to refer to what is known as the “official notice” doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial/adjudicatory body.

23. Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

24. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the Expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

25. We have perused the impugned order [*Ashwani Kumar Dubey v. Union of India*, 2022 SCC OnLine NGT 120] of the NGT and particularly para “16” which has been extracted above. **It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to**

file their objections to the recommendations made by the Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15-1-2022 and the final order [*Ashwani Kumar Dubey v. Union of India*, 2022 SCC OnLine NGT 120] of the NGT was passed three days later on i.e. 18-1-2022. **Thus, this is a clear case of there being non-compliance with the principles of natural justice.** On the said ground alone the impugned order [*Ashwani Kumar Dubey v. Union of India*, 2022 SCC OnLine NGT 120] is set aside, the matter is remanded to the NGT for re-consideration from the stage of the recommendations filed by the Expert Committee constituted by the NGT. The appellant(s) herein are permitted to file their objections, if they are so advised. The NGT shall consider the objections, if any, filed to the recommendations and thereafter dispose of the applications in accordance with law and after giving a reasonable opportunity to all parties.”

69. The proposition of law is well settled that opportunity of hearing as mandated by Section 3C of the NH Act is to be provided and the same is not ritual or empty formality. That is a valuable right and such opportunity is to be provided in consonance with the principles of natural justice.

70. We are therefore inclined to accept the submission of the learned counsel for the appellant that there was violation of principles of the natural justice on account of non-supply of the report of the Project Director. In fact, the Project Director’s report was called for in the light of the objections of the petitioner to consider the same and to find out the substance in the objections with respect to the ‘blind spot’ and ‘change of entry point’ and whether prone to accidents or not which were the objections raised. To consider those objections, the authority was required to look into that aspect and for that purpose, once the report was called for, it should have been furnished to the

petitioner, giving an opportunity to explain that adverse material, to represent against the same, and to give a different perspective.

71. **On point No. B**, we therefore hold that the Order impugned in the writ petition suffered from violation of the principles of natural justice and deserved to be set aside with further directions.

Point-C:

72. We find that before the writ Court, before the learned single Judge in W.P.No.12336 of 2023, any plea of lapse of the notification under Section 3A (1) was not raised. The submission as advanced before us in the writ appeal that publication of declaration under Section 3D (1) was not made within a period of one year was never advanced before the learned single Judge as is evident from the judgment under Appeal, which further makes it evident that the challenge was made to rejection of the petitioner's objections by order dated 21.04.2023 on the ground that the Project Director's report was not considered and that the copy of the Project Director's report as mentioned in the Order dated 21.04.2023 was not furnished to the petitioner and thus, there was violation of the principles of natural justice. The challenge was made by the present writ appellant in the writ petition before the learned single Judge only on the ground of violation of principles of natural justice. The learned single Judge did not accept the contention that there was such violation though not furnishing the report of the Project Director was not disputed.

73. The learned single Judge, appears to us, was much impressive to the fact that there was publication of declaration under Section 3D (2) of the NH

Act, 1956 by virtue of which the land vested with the Central Government and there was no challenge to that notification, as also that after publication of such declaration, the competent authority proceeded further in the matter and passed the order on 01.07.2023 under Section 3G (1) of the Act in respect of the petitioner's land, in which enquiry the petitioner had participated. The learned single Judge in paragraph-12 observed that therefore the writ petition has practically become infructuous. We are of the view that the dismissal of the writ petition, proceeding with such an approach, was not justified.

74. The learned single Judge was of the view and accepted the contention of the learned standing counsel of the National Highways Authority of India that the objections of the petitioner were technical in nature. The same were referred to the Project Director and on the basis of his report, the objections of the petitioner were rejected. The learned single Judge placed reliance in the case of **Kushala Shetty** (supra) to reject the contention of the writ petitioner on the point of violation of the principles of natural justice.

75. In **Kushala Shetty** (supra) the challenge to the acquisition was on the ground that the declaration under Section 3D (1) was published even before communication of the decision taken by the competent authority in terms of Section 3C (2). In the said case, the judgment of the learned single Judge of the High Court was reversed by the Division Bench and the process of reasoning was that the Division Bench assumed that the objection of the landowners had not been decided till the issue of declaration under Section 3D (1). The Hon'ble Apex Court found as a fact that the competent authority after

giving opportunity of hearing, had rejected the objections, prior to the declaration of the notification under Section 3D.

76. At this stage, we would further refer to paragraph-28 of ***Kushala Shetty*** (supra), upon which learned counsels for both the sides also placed reliance, and which reads as under:

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. **In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained.**”

77. In the case of ***Kushala Shetty*** (supra), it was observed by the Hon'ble Apex court that detailed project reports were prepared keeping in view the relative factors including intensity of heavy vehicular traffic and large public

interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest, and in such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and in the rarest of rare cases, the particular project, if it was found to be *ex facie* contrary to the mandate of law or tainted due to *mala fides*.

78. In ***Marella Marithi Prasada Rao*** (supra), also the coordinate Bench of this Court observed that while exercising jurisdiction under Article 226 of the Constitution of India, this Court would not sit in appeal over the decisions of the executive, more so, where examination of the technical matters in issue, require expertise of a high order. As this Court lacks the required expertise, to decide questions such as whether the existing alignment is proper, or an alternative alignment would serve larger public interest, it must necessarily defer to the wisdom of the experts in the field, and not take upon itself the task of determining whether a road should be laid in one particular alignment or another. While loss to the public exchequer is undoubtedly one of the considerations which the authorities are bound to bear in mind, while deciding on the nature of alignment of a road, there are several other factors which may also weigh in their decision to prescribe a particular alignment for the proposed national highway.

79. In ***A. V. K. Viswanatha Raju*** (supra), a coordinate Bench of this Court held that it is settled law that writ Court should be slow in interfering with the decision taken by experts. Before proceeding to acquire land for

construction of National Highways or widening thereof, a detailed Project Report is prepared by experts considering the extent of land required for acquisition. Therefore, an individual cannot be allowed to raise objection that the alignment prepared by experts should be changed only for the reason that his lands will be affected by acquisition.

80. We are of the view that there is no dispute on such proposition of law that the Courts are not at all equipped to decide upon the viability and feasibility of the particular project nor as to whether the particular alignment would subserve public interest. There is also no dispute that the scope of judicial review is very limited in such matters and that the Court can nullify the acquisition of land in rarest of rare cases.

81. But, here, the question is whether the authority which is equipped to decide upon the viability and feasibility of particular project, decided the same in consonance with the principles of natural justice by affording opportunity of hearing with respect to the material that was relied upon against the petitioner. The authorities while deciding such factors have to decide the same in consonance with the principles of natural justice, as, such decisions result in deprivation of valuable property of an individual, of which the individual cannot be deprived except in accordance with law, which is a constitutional right guaranteed under Article 300A of the Constitution of India.

82. For the discussion made hereinbefore, under Point-B and even applying the doctrine of 'official notice', the petitioner was entitled to an opportunity against the report of the Project Director, which admittedly was not

provided to him, the act of the respondents is not in consonance with the principles of natural justice.

83. **On Point No.C**, we hold that the judgment under appeal deserves to be set aside.

84. **Result:**

In the result,

- i) We allow the Writ Appeal and set aside the judgment dated 18.10.2023 in Writ Petition No.12336 of 2023;
- ii) We also allow the Writ Petition No.12336 of 2023 and set aside the Order/proceedings dated 21.04.2023 of the competent authority, Land Acquisition and Revenue Divisional Officer, Gutntur, only on the ground of violation of the principles of natural justice, as the Project Director's Report was not provided nor its contents were made known to the petitioner before rejecting the objections;
- iii) We issue the further directions as follows:
 - a) The copy of the report of the Project Director be supplied to the petitioner within one week from the date of receipt of copy of this judgment;
 - b) The petitioner shall file objections within a period of 2 (two) weeks thereafter before the Competent Authority;
 - c) Granting opportunity of personal hearing to the petitioner either in person or by his legal practitioner, by fixing a date(s)

the objection will be considered and decided by the Competent Authority afresh, within a further period of 4 (four) weeks;

d) After such decision, consequent thereupon, necessary consequential steps as under the National Highways Act will be taken expeditiously, afresh;

iv) No order as to costs;

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: 12.12.2024
Dsr

Note:
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