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***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NOs.23660 and 25298 of 2013

% 31-07-2014

W.P.No.23660 of 2013

Bondada Suryanarayana, s/o. B.Venkanna,
Aged 58 years, r/o. Thurupu Veedhi,
Dwaraka Tirumala, West Godavari District.

Petitioner

...

Vs.

\$ The Government of Andhra Pradesh, rep.by its
Principal Secretary, Revenue (Endowments)
Department, Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri P.Durga Prasad

Counsel for the Respondents: 1)Government Pleader for
Land &

Acquisition

for Respondent Nos.1 to 3

2)Sri V.Venugopala Rao,
standing counsel for
Endowments for respondent
No.4

<Gist :

>Head Note:

? Cases referred:

1. (2009) 5 SCC 242
2. 2002(1) LACC 158
3. AIR 1959 Punjab 538
4. (2010) 10 SCC 677
5. (1971) 3 SCC 20
6. (2000) 6 SCC 622
7. (2001) 2 SCC 160
8. (2002) 3 SCC 496

9. (2003) 6 SCC 545

10. (2010) 5 SCC 235

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.23660 and 25298 of 2013

Date: 31.07.2014

W.P.No.23660 of 2013

Between :

Bondada Suryanarayana, s/o. B.Venkanna,
Aged 58 years, r/o. Thurupu Veedhi,
Dwaraka Tirumala, West Godavari District.

... Petitioner

and

The Government of Andhra Pradesh, rep.by its
Principal Secretary, Revenue (Endowments)
Department, Secretariat, Hyderabad and others.

... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.23660 and 25298 of 2013

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COMMON ORDER:

In these two writ petitions, the acquisition of the land of the petitioner to

an extent of Ac.2.93 cents in R.S.No.51/1C, 50/1B and 50/6B of Dwaraka Tirumala Village and Mandal in West Godavari District for the purpose of Dwaraka Tirumala temple is under challenge. In W.P.No.23660 of 2013, notification was issued under Section 4 (1) of the Land Acquisition Act (Repealed Act), 1894 (for short, 'the Act') and Section 6 declaration dated 09.05.2013 are under challenge and in W.P.No.25298 of 2013, Section 12(2) notice dated 23.08.2013 and Award No.13 of 2013, dated 23.8.2013 are under challenge.

2. With the consent of the learned counsels appearing for respective parties, these writ petitions are considered and disposed of at the admission stage.

3. Heard Sri P.Durga Prasad, counsel for the petitioner, learned Government Pleader for Land and Acquisition for respondent No. 1 to 3 and Sri V.Venugopala Rao, standing counsel for Endowments for respondent no.4 in both the writ petitions.

4. Learned counsel for petitioner contended that Land Acquisition Officer was not competent to conduct enquiry under Section 5A of the Act and such enquiry is not valid. According to Section 3(c) of the Act, the District Collector alone is competent to conduct an enquiry. Any other person, other than the District Collector, can conduct an enquiry, provided he is authorized to conduct such enquiry by an order in accordance with the provision contained in Section 3(c) of the Act. No such order was passed authorizing the Land Acquisition Officer to conduct enquiry and, therefore, the enquiry under Section 5A is vitiated and accordingly, all the consequential steps taken are also vitiated.

5. He further contended that the award was passed without affording an opportunity of hearing. Petitioner appeared before the Land Acquisition Officer in pursuant to the notice issued under Sections 9(3) and 10 of the Act. On 01.08.2013 petitioner requested adjournment of award enquiry. Accordingly, enquiry was adjourned to 17.08.2013. Due to on going Samaikya Andhra strike, petitioner could not attend the award enquiry on the last date of enquiry. Petitioner was also under the impression that the Land Acquisition Officer would not conduct enquiry due to Samaikya Andhra

agitation where employees have also participated. It was for genuine reason the petitioner did not attend the enquiry. The respondents ought to have given further opportunity of hearing and could not have closed the award enquiry and pass an award without affording further opportunity. Thus, the award is vitiated on that ground.

6. It is further contended that award was passed by the Land Acquisition Officer, whereas according to the mandate of Section 11 read with Section 3(c) of the Act, the award has to be passed by the District collector. The authorization dated 7.7.2012 is to the District Collector and as the Land Acquisition Officer is wholly incompetent to pass an award, the award is vitiated on this ground also.

7. As it is compulsory acquisition and taking away the right of ownership of the holder of the property, land acquisition proceedings have to be strictly in compliance with the provisions of the Act. Not conducting enquiry by the competent authority, not affording opportunity of hearing and passing of an award by the incompetent authority vitiate the entire proceedings and, therefore, the award impugned in the writ petition is bad in the eye of law.

8. It is mandatory for the competent authority to consider the objections filed during Section 5A enquiry and while passing the final orders, deal with all the objections. One of the objections raised by petitioner was with reference to the competence of the Land Acquisition Officer to conduct enquiry under Section 5A. It was also contended that there was no approved plan which was the basis for initiation of land acquisition proceedings and without approved plan by the competent authority, the land could not have been acquired. It was further contended that there were acquisitions of properties of the petitioner's family earlier and repeated acquisition of properties of the same family and dislocating the petitioner from only piece of land owned by his family is *ex facie* illegal. None of these contentions raised by the petitioner were adverted while finalizing the Section 5A enquiry and while passing the award.

9. Learned standing counsel Si Venugopal Rao representing the 4th respondent temple submitted that all provisions of the Act were duly complied

and acquisition is for public purpose. Learned counsel further contended that petitioner is estopped from raising all these pleas as he has consented for the acquisition of the land. He has submitted a representation in writing agreeing for acquisition of the land, but requested for appropriate compensation and provision of employment to his son in Devasthanam service. Petitioner has handed over the possession of land voluntarily.

10. Learned counsel further contended that master plan was approved by the Commissioner vide his proceedings dt.11.11.2005. The acquisition of land was for the purpose of development of the land as per the master plan approved by the Commissioner of endowments. The land of the petitioner is situated within 100 meters of the temple and is very much needed for providing basic amenities to the devotees visiting the temple. Learned counsel contended that during festivities, large numbers of devotees converge and present facilities are not adequate to cater to the needs of the devotees. Master plan was drawn up to provide basic amenities to the devotees. The surrounding lands were already acquired and developed. Various facilities were brought in. Because of continuous litigation pursued by the petitioner, several developmental activities were adversely affected, causing lot of inconvenience to the administration of the temple as well as to the devotees.

11. Learned counsel further contended that no land of the petitioner was acquired earlier, but the land of the relations of the petitioner was acquired. Petitioner cannot compare the acquisition of the properties of his relations with that of the petitioner. His relations have parted with their share voluntarily and only petitioner is litigating. On the total land of the petitioner now acquired compensation amount of Rs.20,95,231/- was determined. In addition to the compensation as determined in accordance with the provisions of the land acquisition act, as requested by the petitioner, employment was provided to his second son as early as in the year 2007. His elder son is also provided employment on 04.04.2014. The record would disclose that the appointments were made because of the request of the petitioner and because of acquisition of his land. Petitioner is also working as Servicedar and is paid handsomely. Petitioner having agreed for acquisition of the land and having handed over the possession and having requested for provision of employment, it is not permissible for the petitioner to prosecute litigation and cause hardship to

devotees. Petitioner is estopped from raising such contentions.

12. Learned Assistant Government Pleader representing the respondents 1 to 3 contended that there was valid delegation to the Land Acquisition Officer to conduct Section 5A enquiry and order is a speaking order. Except on the allegation of competence of land acquisition officer, all other allegations were considered by the Land Acquisition Officer while finalizing the enquiry under section 5A and the orders passed by the Government thereon in G.O.Ms.No.125 dated 6.3.2012. Learned Assistant Government Pleader further contended that petitioner did not attend the award enquiry. Having appeared on 01.08.2013 and having sought for an adjournment, he did not appear on the next date of hearing i.e., 17.08.2013. There was no communication for his non appearance. Since no one appeared on the date fixed for enquiry, the award enquiry was concluded and orders were passed. There was no illegality in the procedure followed by the respondents warranting interference by this Court. He further contended that petitioner having consented for the acquisition, it is not open for him to raise the contentions subsequently. He submitted that award was approved by the Joint Collector and the Land Acquisition Officer notified the award.

13. Learned Government Pleader placed reliance on the following decisions:-

i) **Urmila Roy and Others v. Bengal Peerless Housing**

Development Company Limited and others ^[1]

“ Para 60. It is significant that this letter written by the Attorney Urmila Roy, on behalf of all the landowners spells out that the owners had in fact been willing to negotiate the price for the land at the time when the acquisition were still incomplete as only the notification under Section 4 of the Act had, at that stage, been issued (4-12-2000). It is also significant that the declaration under Section 6 had been issued on 29.11.2001 and the award rendered on 27.12.2003. It is, therefore, evident that the landowners had, in fact, acquiesced to the acquisition and cannot now turn around to say that the acquisition was bad in law.”

ii) W.P.No.35768 of 2013 dt.28.3.2014 as affirmed in W.A.No.921 of 2014.

14. In reply, learned counsel for the petitioner submitted that the record discloses that possession was given only after 23.8.2013. Thus, the contention that petitioner had already handed over the possession is not

correct. He further contended that the request made by the petitioner in the year 2007 would not be relied upon to validate the subsequent land acquisition proceedings. The representation dt.09.05.2007 was when the earlier land acquisition proceedings were in progress, but those proceedings were subsequently set aside and fresh proceedings were initiated and, therefore, representation dated 09.05.2007 cannot be relied upon to nullify the claim of the petitioner.

15. All the provisions of the Act are to be complied with fully and any violation thereof, vitiates proceedings as held by this Court in the judgment in W.P.No.20480 of 2006.

16. Learned counsel further contended that order authorizing the land acquisition officer to conduct enquiry under Section 5A must be notified in the Gazette. Several notification were issued in similar manner, whereas no such notification was issued on this occasion and it also shows arbitrary action of the respondents. Learned counsel relied on the decision of Rajasthan High Court in the case of **Lalita Ben vs. State of Rajasthan & others**^[2] in support of the contention that if an award is passed by incompetent authority, the entire proceedings get vitiated.

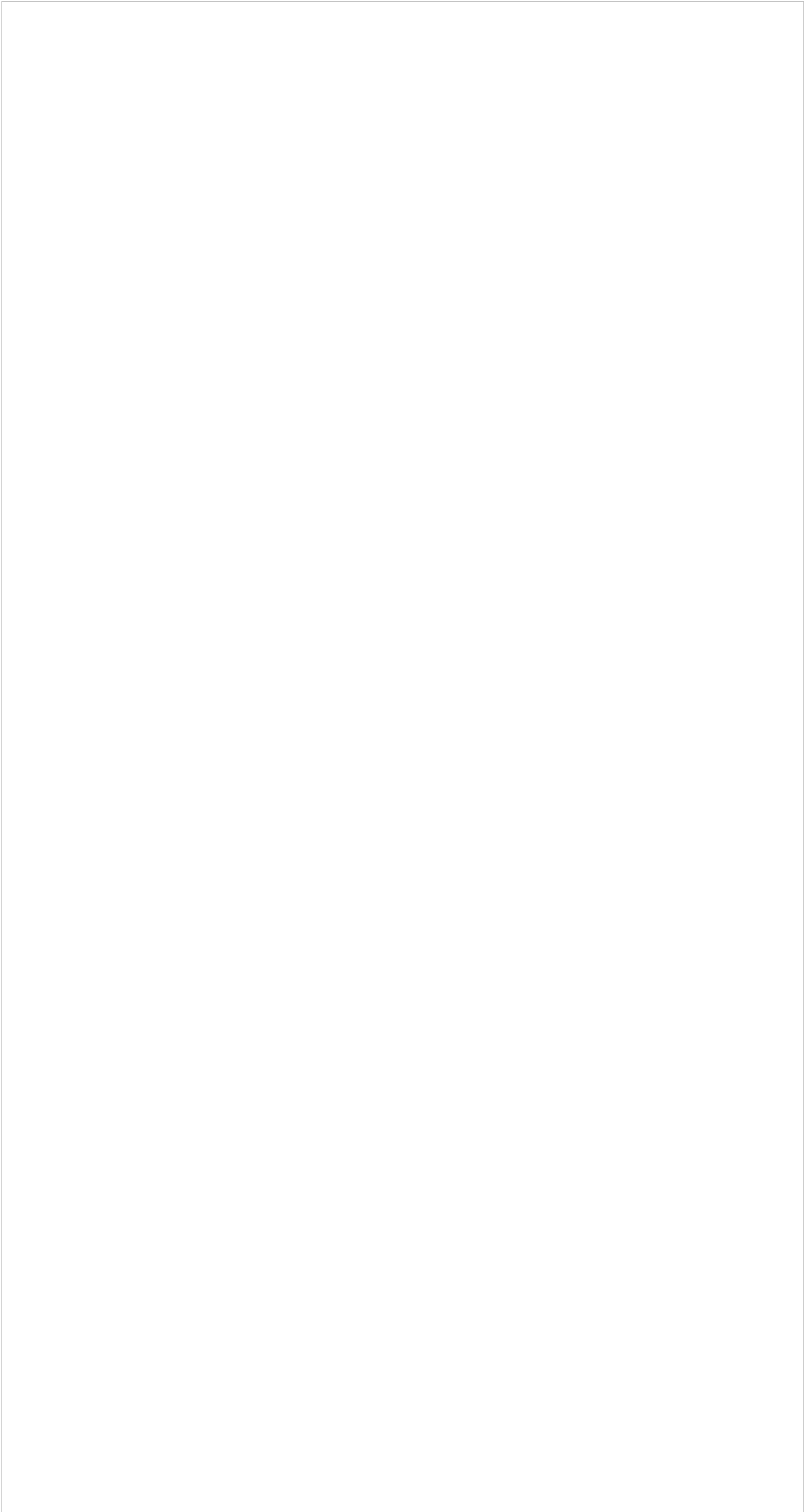
17. Learned counsel relied on the decision of High Court of Punjab and Haryana in the case of **Major S.Arjun Singh vs. the State of Punjab**^[3] for the proposition that officer not having appointed to perform the functions of a Collector under the Act, has no jurisdiction to take proceedings under Sections 9 & 10 or pass an award.

18. Leaned counsel relied on the decision of the Supreme Court in **AIR 2013 SC 1282** (para 33) in support of his contention that Section 5A enquiry has to be strictly complied.

19. Brief recapitulation of dates and events is necessary to appreciate the rival contentions.

20. On 2.2.2005, notification under Section 4(1) was issued. The respondents invoked urgency clause as per section 17(4) of the Act. Invoking

urgency clause and dispensing with the section 5A enquiry was assailed in WP No.4834 of 2005. By judgment dated 29.8.2005 the writ petition was allowed holding invoking of urgency clause as bad. On 12.04.2007, Section 6 declaration was issued. This declaration was challenged in W.P.No.29720 of 2011 contending that section 6 declaration was issued beyond one year from the date of section 4(1) notification. By judgment dt.29.12.2011, the writ petition was allowed holding that notification has lapsed to the extent of the petitioners land. On 7.7.2012 fresh notification was issued under section 4(1) proposing to acquire the land of the petitioner. On 10.8.2012 notice under Section 5A was issued. Challenging the orders in G.O.Ms.No.436, dt.7.7.2012, initiating fresh land acquisition proceedings, petitioner instituted W.P. No.26502 of 2012. The writ petition was disposed of by order dt.27.8.2012 granting liberty to the petitioner to raise all objections in Section 5A enquiry. On 23.8.2012 petitioner filed objections. On 19.09.2012, petitioner filed additional objections. By orders dt. 6.3.2013, the objections filed by the petitioner were rejected. Section 6 declaration was issued on 9.5.2013 and on 23.8.2013 Joint Collector has approved



him on consolidated pay basis. He also refers to the actual value of the land and on account of fixation of lower compensation, he has to sell other lands to

perform the marriage of his daughter and, therefore, prays for regularization of the services of his son.

23. Sri Pavan Kumar also submitted a representation on 04.02.2009 to regularize the services. In the representation, he also states that compensation determined on the land is very meager, whereas the market value of the property is very high. His representation would disclose that by surrendering their land, the family sacrificed financially and, therefore, provision of regular employment is imminent.

24. The continuous correspondence made by the petitioner and his son negate the stand of the petitioner in this Court that representation submitted by him in the year 2007 was prior to setting aside of earlier land acquisition proceedings and cannot be taken as a basis to hold him not entitled to prosecute litigation. This would show that petitioner was acquisitioned with the land acquisition proceedings. On the one hand petitioner was asking for employment to his son in lieu of surrender of land for the development of Devasthanam, on the other hand, he was continuously prosecuting the litigation on some pretext or the other and protracting the finalization of the land acquisition proceedings.

25. Along with the counter filed by the second respondent, colored map of the area around the temple is enclosed. This map would disclose that the lands surrounding the land of the petitioner was already acquired and as contended by the learned standing counsel for the Temple, the land was developed for the purpose of providing various amenities to the devotees. The small bit of the land of the petitioner stands in the center of such acquisition proceedings. Learned standing counsel contended that on account of protracting the litigation pursued by the petitioner, the plan envisaged for development of the land around the temple premises to provide various amenities to the devotees has severely affected, more particularly because the land of the petitioner is very nearer to the temple and it is apparent that because of legal proceedings, this particular piece of land could not be developed. Thus, on account of petitioner continuously litigating from the year 2005, though on more than one occasion, he has agreed for foregoing his land and has, in fact, in his own words, surrendered the land to the temple and

requested for provision of employment in lieu of giving his land for the development of the temple, the plan to develop the land to provide better amenities to devotees is not achieved till date.

26. The Land acquisition proceedings at various stages, such as, order under Section 5A enquiry, draft declaration and award were challenged on various grounds. As noticed above, the contention of the petitioner against the order under Section 5A is that the Land Acquisition Officer was not competent to conduct enquiry under Section 5A. This contention is based on the provision contained in Section 3(c) of the Act, which defines 'Collector'. Government issued orders in G.O.Ms.No.436 Revenue (Endts.IV) Department, dated 07.07.2012 permitting the District Collector to issue notification under Section 4(1) of the Act and directing the District Collector to follow the provisions of the Act scrupulously. The notification is enclosed to the G.O. In the notification approved by the Government, which was to be published in the District Gazette, the Government authorized the Land Acquisition Officer to conduct enquiry under Section 5A. Section 3(c) defines the word 'District Collector'. As per this provision, the word 'Collector' means the 'District Collector' and also includes any Officer specially appointed by the appropriate Government to perform the functions of the Collector under the Act. Thus, the power of the Government to appoint the Land Acquisition Officer to conduct Section 5A enquiry is traceable to Section 3(c) of the Act. In valid exercise of power vested by Section 3(c) of the Act, the Government authorized the Land Acquisition Officer to conduct enquiry under Section 5A. Thus, there was no illegality in Land Acquisition Officer conducting enquiry.

27. The Land Acquisition Officer has conducted enquiry under Section 5A and based on his report, Government passed orders under Section 5A vide G.O.Ms.No.125 Revenue (Endowments.IV) Department, dated 06.03.2011. Government considered all the objections raised and upheld the acquisition of the land of the petitioner. Though there is no specific reference to the objections of the petitioner regarding the competence of the Land Acquisition Officer to conduct enquiry under Section 5A, the very fact that in the notification issued under Section 4(1) in Form-2A published in the District Gazette, Government authorized the Land Acquisition Officer to conduct Section 5A enquiry, and in view of specific authorization the infirmity is not so

fatal to set aside the proceedings on that ground and more particularly, at this stage.

28. It is further contended that award was passed by the Land Acquisition Officer, whereas according to Section 11 of the Act, award has to be passed by the Collector. Several amendments were carried out to the provisions of the Land Acquisition Act by the State of Andhra Pradesh and in accordance with the powers vested by the Act as applicable to State of Andhra Pradesh, Government passed orders delegating the powers of passing an award to various authorities. One such decision was notified vide G.O.No.1843 Revenue (k), dated 13.12.1984. As per this notification, the Joint Collector is authorized to accord approval of the awards for payment of compensation in all land acquisition cases. In the instant case, the draft award drawn by the Land Acquisition Officer was approved by the Joint collector vide his order in proceedings Roc.No.G2/5211/2004 (General), dated 23.08.2013. The award as approved by the competent authority was announced by the Revenue Divisional Officer. Thus, the award is passed by the competent authority and is valid in law. Therefore, the objection of the learned counsel for the petitioner on the validity of the award has no merit.

29. In the facts of this case, it cannot be said that there was violation of mandate of Section 5A of the Act. It needs no reiteration to state that whenever there is compulsory acquisition of a private property, for public purpose, the statutory requirements are to be complied with strictly. The provision in Section 5A being a substantive provision vesting right in the property holder for proper hearing, the same has to be fully complied with. Except for the fact that in the order under Section 5A, the particular objection was not dealt with, the other parameters are satisfied and, therefore, it cannot be said that the mandate of section 5A is breached with fatal consequence in order to set aside the entire proceedings.

30. Furthermore, as records would disclose after passing of an award, notice was issued to the petitioner on 23.8.2013 asking him to present at the land for the purpose of handing over the possession of land on 26.08.2013.

Since there was no one to receive the notice in the address given, it was pasted on the door of the residence of the petitioner. On 26.8.2013,

possession of the land was taken over after conducting panchanama in the presence of independent witnesses and possession was handed over to the Devasthanam on the same day. As early as in the year 2007 itself, petitioner has agreed to handover the possession and physical possession in accordance with the mandate of Act was taken on 26.8.2013.

31. The records also disclosed that his elder son who is working on honorarium basis as 'Sruthi' is also provided regular employment by order dated 04.04.2014. The second son of the petitioner was appointed as Attender in the year 2007. Thus, two sons of the petitioner were provided employment in the services of the temple in lieu of giving his land to the temple in addition to the compensation payable in accordance with the provision of the Act. The records produced on behalf of Devasthanam would disclose that sons of petitioners were picked up for provision of employment without subjecting to any selection process and without following due selection procedure, in lieu of acquisition of his land. Thus, the petitioner was adequately rewarded, if not more, on account of giving his land to the Devasthanam.

32. As noticed above, except to the minor infirmity of not reflecting fully the objections of the petitioner raised during the course of Section 5A enquiry, which is not fatal, in the facts of this case, warranting interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India.

33. It is settled principle of law that the jurisdiction vested in this Court under Article 226 of the Constitution of India is a discretionary jurisdiction and High Court acts as court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of statutory provision, noticed hereinabove, would not result as a matter of course to issue a writ.

34. In **Ritesh Tewari v. State of U.P.**^[4], Supreme Court held as under:

"26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a

person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary; the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (vide

Champalal Binani v. CIT^[5]; **Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance co. Ltd.**^[6]; **LIC v. Asha Goel**^[7]; **Haryana Financial Corpn. V. Jagadamba Oil Mills**^[8] **Chandra Singh v. State of Rajasthan**^[9] and **Punjab Roadways v. Punja Sahib Bus and Transport Co.**^[10]).”

35. As noticed above, petitioner has been prosecuting litigation on one hand and blocking the development activity since the year 2005 on one pretext or the other though he voluntarily agreed for surrender of his land, requested for payment of appropriate compensation and also requested for provision of employment to his son. The request of the petitioner was immediately agreed upon and his younger son was provided employment in the year 2007. Recently the other son was also provided employment. Continuously he has submitted representations to regularize services of his younger son referring to the market value of the property that was proposed for acquisition as compared to the compensation that was determined. Thus, the conduct of the petitioner all along disentitles him to claim relief under Article 226 of the Constitution of India.

36. For all the above said reasons, there is no merit in the contentions urged by the learned counsel for petitioner and writ petitions are liable to be dismissed.

37. Accordingly, the writ petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions if any in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 31.07.2014
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Oval:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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[2] 2002(1) LACC 158

[3] AIR 1959 Punjab 538

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[5] (1971) 3 SCC 20

[6] (2000) 6 SCC 622

[7] (2001) 2 SCC 160

[8] (2002) 3 SCC 496

[9] (2003) 6 SCC 545

[10] (2010) 5 SCC 235