

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2313 OF 2011
(Arising out of SLP (C) NO. 21828 OF 2007)

Pesara Pushpamala Reddy

..... Appellant

Versus

G. Veera Swamy and Others

..... Respondents

WITH
CIVIL APPEAL No. 2314 OF 2011
(Arising out of SLP (C) NO. 23821 OF 2008)

R.S. Murthy

..... Appellant

Versus

German Reddy & Anr.

..... Respondents

J U D G M E N T

A. K. PATNAIK, J.

Delay in filing of SLP (C) No.23821 of 2008 is condoned.

2. Leave granted.

3. These appeals are against two separate orders dated
04.06.2007 and 05.06.2007 passed by the Division Bench

of the High Court of Andhra Pradesh in Writ Petition No.8613 of 2002 and Writ Petition No.18642 of 2004 respectively and raise two common questions of law whether it is mandatory for the Special Tribunal or the Special Court to call for a report of the Mandal Revenue Officer before taking cognizance of a case under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') and whether it is mandatory for the Special Tribunal or the Special Court to publish a notification in the Gazette notifying the fact of cognizance of a case under the Act.

4. The facts in Civil Appeal arising out of SLP (C) No.23821 of 2008 are that the appellant R.S. Murthy filed L.G.O.P. No.570 of 1992 before the Special Tribunal, Ranga Reddy District, alleging that the respondents German Reddy and Tresa German Reddy had demolished the compound wall of the appellant constructed over his land measuring 606 sq. yards in Plot No.439 in Survey No. 33 of Guttalabegumpet Village in Ranga Reddy District, with a view to grab the same and was raising structures thereon and prayed *inter*

alia that the appellant be declared as the owner of the land and be given possession of the land and the respondents be declared as land grabbers and punished under the Act. Respondents filed a counter affidavit and denied the allegations made by the appellant. The Special Tribunal framed issues and commenced the trial. The Special Tribunal appointed an Advocate Commissioner to demarcate the property of the appellant and the Advocate Commissioner submitted a report dated 28.12.1996 which revealed that the respondents had encroached upon the property of the appellant. By order dated 18.04.1996, the Special Tribunal declared the respondents as land grabbers and directed delivery of possession of the land to the appellant and also directed prosecution of the respondents. Respondents filed an appeal along with an application for condonation of delay of 221 days before the Special Court. By order dated 13.03.1997, the Special Court refused to condone the delay and dismissed the appeal. Aggrieved, the respondents filed Writ Petition No.12610 of 1997 in the High Court of Andhra Pradesh and the High Court allowed

the Writ Petition and condoned the delay in filing the appeal by the respondents before the Special Court. The Special Court then heard the appeal of the respondents on merits and dismissed the same. The respondents filed Writ Petition No.27848 of 1998 and by an order dated 13.10.2001 the High Court remanded the matter to the Special Court again and the Special Court remitted the matter to the Special Tribunal to give an opportunity to the respondents to file objections to the Advocate Commissioner's report and to adduce evidence. The Special Tribunal again passed orders on 18.09.2002 declaring the respondents as land grabbers. The respondents filed appeal before the Special Court and by order dated 16.08.2004 the Special Court dismissed the appeal. Aggrieved, the respondents filed Writ Petition No.18642 of 2004 and by the impugned order, the High Court allowed the Writ Petition on the grounds that the Special Tribunal had not called for a report of the Mandal Revenue Officer under Rule 6 of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 (for short 'the Rules')

and had also not issued a notification under Rule 7 of the Rules in the Andhra Pradesh Gazette after taking cognizance of the case.

5. The facts of Civil Appeal arising out of SLP (C) No.21828 of 2007 are that the appellant Pesara Pushpamala Reddy filed Land Grabbing Case No.5 of 1990 under the Act against the respondents G. Veera Swamy and others before the Special Tribunal, Warangal, alleging that the respondents G. Veera Swami and others illegally grabbed and occupied his land measuring 0.23 guntas in Survey No.568 (old) and 579 (new) situated at Waddepalli village on the P.W.D. Main Road from Hanamkonda to Hyderabad. The Respondents G. Veera Swamy and others filed their counter affidavits in the said case denying the allegations of land grabbing. The parties produced their oral and documentary evidence and by order dated 03.07.1996, the Special Tribunal allowed the land grabbing case and directed the Revenue Officer, Warangal, to evict the respondents from the land and put the appellant in possession of the land. Aggrieved, the respondents filed

appeal before the Special Court at Hyderabad and the Special Court dismissed the appeal on 29.10.1997. The respondents then challenged the orders passed by the Special Tribunal in Writ Petition No.8613 of 2002 in the High Court. The High Court after holding that no report had been called for from the Mandal Revenue Officer under Rule 6 of the Rules and no Gazette notification had been published under Rule 7 of the Rules by the Special Tribunal allowed the Writ Petition by the impugned order dated 04.06.2007 and set aside the impugned orders of the Special Court and the Special Tribunal and remitted the matter to the Special Tribunal, Warangal, for a fresh disposal on merits.

6. Mr. P.S. Narasimha, learned counsel for the appellant in Civil Appeal arising out of SLP (C) No.23821 of 2008, and Mr. P. Vishwanatha Shetty, learned counsel for the appellant in Civil Appeal arising out of SLP (C) No.21828 of 2007, submitted that Section 7-A of the Act deals with the powers and procedure of the Special Tribunal and Section 8 of the Act deals with the procedure and powers of the

Special Court and there is nothing in these two sections to show that before taking cognizance, the Special Tribunal or the Special Court has to call for a report of the Mandal Revenue Officer. They submitted that sub-rule (1) of Rule 6 of the Rules, however, provides that the Special Court or the Special Tribunal may refer the applications filed before the Special Court or the Special Tribunal for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area and sub-rule (2) of Rule 6 of the Rules further provides that such Mandal Revenue Officer to whom the application has been referred under sub-rule (1) shall make or cause to be made an inspection or verification or both, as soon as may be practicable, and shall submit a full and complete report within two weeks from the date of receipt of order with reference to Revenue Records and facts on ground as to the matters enumerated in sub-rule (2). They submitted that the word 'may' in sub-rule (1) of Rule 6 indicates that it is not mandatory for the Special Court or the Special Tribunal to refer the application to the Mandal Revenue Officer and

call for his report. They submitted that the High Court has erroneously held that calling for report from the Mandal Revenue Officer was mandatory for the Special Court or the Special Tribunal before taking cognizance because of the Full Bench judgment of the High Court of Andhra Pradesh in Mohd. Siddiq Ali Khan & Others v. Shahsun Finance Ltd., Chennai & Another [2005 (2) ALD 675 (FB)] holding that reference of every application under sub-section (1) of Section 8 of the Act or under sub-section (1) of Section 7-A of the Act for local inspection or verification or both by the Mandal Revenue Officer before the Special Court or the Special Tribunal taking cognizance is a mandatory requirement. They relied on a Division Bench judgment of the Andhra Pradesh High Court in Vonkela Subramanyam and Others v. Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad and Others [2007 (5) ALD 184 (DB)] holding that Rule 6 of the Rules does not contain a mandate to refer the application to the Mandal Revenue Officer and failure to refer the application to the Mandal Revenue Officer for verification and calling for his report

would not have any impact on the facts of that case and would not vitiate the entire proceedings.

7. Mr. Narasimha and Mr. Shetty next submitted that the proviso to sub-Section (4) of Section 7-A of the Act states that the Special Tribunal shall by notification specify the fact of taking cognizance of the case under the Act and accordingly Rule 7 of the Rules provides that the Special Court or the Special Tribunal shall after taking cognizance of the case under the Act give notice in Form II-A or Form II-B by publishing it in the Andhra Pradesh Gazette, but the use of the word 'shall' in the proviso to Section 7 of the Act or in Rule 7 of the Rules does not make the requirement of publication of the case in the Gazette after the Special Court or Special Tribunal takes cognizance of the case mandatory. They cited the decisions of this Court in P.T. Rajan v. T.P.M. Sahir & Ors. [(2003) 8 SCC 498] and Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors. [(2006) 2 SCC 777] in support of their argument that the word 'shall' in the proviso to Section 7 of the Act or in Rule 7 of the Rules does not make the requirement of

notification or publication of notice in the Gazette of a case after the Special Court or the Special Tribunal takes cognizance mandatory. Mr. Narasimha and Mr. Shetty submitted that the respondents in this case had been impleaded as parties in the application filed under sub-section 1 of Section 7-A before the Special Tribunal and had filed their replies before the Special Tribunal and had also participated in the proceedings before the Special Tribunal and at the instance of the respondents, therefore, the High Court should not have held that the proceedings before the Special Tribunal were vitiated because no notification or notice of the case was published in the Andhra Pradesh Gazette under the proviso to Section 7 of the Act or Rule 7 of the Rules after the Special Tribunal took cognizance of the case.

8. Mr. Bharat J. Joshi, learned counsel appearing for the respondents, in reply, submitted that under sub-section (1) of Section 7 of the Act, the Government has been empowered to make rules and in exercise of this power the Government of Andhra Pradesh has made the rules

providing in sub-rule (1) of Rule 6 that every application filed under sub-section (1) of Section 8 of the Act or every case taken cognizance of *suo motu* by the Special Court or an application filed under sub-section (1) of Section 7-A of the Act before the Special Tribunal, may be referred for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area. He argued that the word 'may' used in sub-rule (1) of Rule 6 actually means 'shall' relying on the decision in State of Uttar Pradesh v. Jogendra Singh [1963 (2) SCR 197] in which this Court has held that the word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which the word is used and where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' which denotes discretion should be construed to mean a command. He submitted that this Court has further held in the case of *Jogendra Singh* (supra) that the legislature uses the word 'may' out of deference to the high status of the authority on whom the power and obligation are intended to be conferred and imposed. He also relied

on Govindlal Chhaganlal Patel v. The Agricultural Produce Market Committee, Godhra and Others [(1975) 2 SCC 482] wherein this Court has held that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed and, therefore, the use of the word 'shall' or 'may' is not conclusive on the question where the particular requirement of law is mandatory or directory. He cited the decision of this Court in V. Laxminarasamma v. A. Yadaiah (Dead) and Others [(2009) 5 SCC 478] holding that a report of the Revenue Officer who is the man on the spot is required to be obtained by the Special Court or by the Special Tribunal under the Act. He submitted that the view taken by the Full Bench of the Andhra Pradesh High Court in *Mohd. Siddiq Ali Khan v. Shahsun finance Ltd.* (supra) that reference of every application under sub-section (1) of Section 8 of the Act or under sub-section (1) of Section 7-A of the Act for local inspection or verification or both by the Mandal Revenue Officer before the Special Court or the Special Tribunal

taking cognizance is a mandatory requirement, is therefore correct. He submitted that this view has also been taken by a Division Bench of the Andhra Pradesh High Court in Sekharamahanti Nagabhushanarao (died) per L.R. v. Andhra University, rep. by its Registrar and Others [2009 (2) ALT 260].

9. Regarding publication of notice in the Andhra Pradesh Gazette after taking cognizance by the Special Court or by the Special Tribunal, he submitted that in sub-section (4) of Section 7-A of the Act and Rule 7 of the Rules it is clear that the Special Tribunal 'shall' after taking cognizance of the case publish a notice in the prescribed form in the Andhra Pradesh Gazette. He submitted that this provision has been made in the public interest and cannot be waived. He cited the decision of this Court in Graphite India Ltd. and Another v. Durgapur Projects Ltd. and Others [(1999) 7 SCC 645] that where a statutory provision is made in the interest of public, it cannot be waived by a party. He submitted that even though the respondents have filed their replies denying the allegations made in the

application filed under Section 7(1) of the Act before the Special Tribunal by the appellant, they can raise the objection that the mandatory requirement of notification or publication of a notice in the Andhra Pradesh Gazette as provided in sub-section (4) of Section 7 of the Act and sub-rule (1) of Rule 7 of the Rules has not been followed after the cognizance of the case by the Special Tribunal and therefore the entire proceedings before the Special Tribunal stand vitiated.

10. Sections 7-A, 8 and 9 of the Act and Rules 6 and 7 of the Rules, which are relevant to decide the two questions of law in this case, are extracted hereinbelow:

“Section 7-A. Special Tribunals and its powers, etc.:—(1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special Court relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit:

Provided that if, in the opinion of the Special Tribunal, any case brought before it is prima facie frivolous or vexatious it shall reject the same without any further enquiry:

Provided further that if in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special Court it may for reasons to be recorded by it transfer the case to the Special Court for its decision in the matter.

(2) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(3) An appeal shall lie, from any judgment or order not being interlocutory order of the Special Tribunal, to the Special Court on any question of law or of fact. Every appeal under this sub section shall be preferred within a period of sixty days from the date of Judgment or order of the Special Tribunal;

Provided that the Special Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

(4) Every finding of the Special Tribunal with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing and every judgment of the Special Tribunal with regard to the determination of the title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Tribunal shall by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it:

Provided further that where the custodian of evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property:

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under the Act served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(5) It shall be lawful for the Special Tribunal to pass an order in any case decided by it, awarding compensation in terms of money for wrongful possession, which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct the redelivery of the grabbed land to its rightful owner. The amount of compensation and profits so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue if the Government are the owner and as a decree of a Civil Court, in any other case:

Provided that the Special Tribunal shall, before passing an order under this sub-section, give to

the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence.

(6) Any case, pending before any Court or other authority immediately before the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 as would have been within the jurisdiction of a Special Tribunal, shall stand transferred to the Special Tribunal, having jurisdiction, as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

(7) Every case brought before the Special Tribunal shall be disposed of finally by the Special Tribunal, as far as possible, within a period of six months from the date of its having been brought before it.

(8) The Special Tribunal shall have all the powers of a Civil Court for purposes of review.

Section 8. Procedure and powers of the Special Courts:— (1) The Special Court may, either *suo motu* or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;

(1-A) The Special Court shall, for the purpose of taking cognizance of the case, consider the location or extent or value of the land alleged to

have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter:

Provided that the Special Court shall not take cognizance of any such case without hearing the petitioner.

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 [the Code of Criminal Procedure, 1973] or in the Andhra Pradesh Civil Courts Act, 1972, (Act 9 of 1972) any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, [shall, subject to the provisions of this Act, be triable in the Special Court] and the decision of Special Court shall be final.

(2-A) If the Special Court is of the opinion that any case brought before it, is not a fit case to be taken cognizance of, it may return the same for presentation before the Special Tribunal: Provided that if, in the opinion of the Special Court, any application filed before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry:

Provided further that if on an application from an interested person to withdraw and try a case pending before any Special Tribunal the Special Court is of the opinion that it is a fit case to be withdrawn and tried by it, it may for reasons to be recorded in writing withdraw any such case from such Special Tribunal and shall deal with it as if the case was originally instituted before the Special Court.

(2-B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.

(2-C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence or oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.]

(3) [* * * Omitted]

(4) Every case under sub-section (1) shall be disposed of finally by the Special Court, as far as possible, within a period of six months from the date of institution of the case before it.

(5) [* * *Omitted]

(6) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land

[* * * Omitted]

[Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(7) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the

land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a civil Court, in any other case to be executed by the Special Court:

Provided that the Special Court shall, before passing an order under this subsection, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider such representation and evidence.]

(8) Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court [omitted] as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.

Section 9. Special Court to have the powers of the Civil Court and the Court of Sessions:—

Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, (Central Act 5 of 1908), the Andhra Pradesh Civil Courts Act, 1972 (Act 19 of 1972) and the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the

purpose of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

Rule 6. Verification of Application:- (1) Every application filed under sub-section (1) of Section 8 of the Act or every case taken cognizance of *suo motu* by the Special Court or an application filed under sub-sect.(1) of Section 7-A of the Act, before the Special Tribunal, may be referred for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area or by any other Officer of the Government authorized by the Court in this behalf.

(2) The Mandal Revenue Officer or the other Officer to whom the application has been referred under sub-rule (1) shall make or cause to be made an inspection or verification or both, as soon as may be practicable and shall submit a full and complete report within two weeks from the date of receipt of order with reference to Revenue Records and facts on ground as to the following:-

- (i) the correctness of the statements made in the application with regard to columns 1 to 15 and 19 in Forum-1;
- (ii) the facts relating to ownership, actual possession and use of the land concerned; and

(iii) such other particulars and information as would be useful to the Court to arrive at a correct decision on the claims made in the application.

(3) The Mandal Revenue Officer or the other Officer to whom the application has been referred under sub-rule (1) shall also furnish copies of the extracts of the Government records to show the survey number and sub-division number and proof of possession, ownership and use of the land and the payment of dues to the Government.

(4) A copy of the report referred to in sub-rule (2) may be furnished to the applicant, to the respondents and other persons, if any having interest in the land on payment of copying charges.

Rule 7. Notice of taking cognizance of a case:-

(1) The Special Court shall after taking cognizance of the case under the Act give notice in Form II-A by publishing it in the Andhra Pradesh Gazette.

(2) The Special Tribunal shall after taking cognizance of the case under the Act give notice in Form-II-B by publishing it in the Andhra Pradesh Gazette.”

11. A reading of the provisions of Sections 7-A and 8 of the Act would show that neither of the two Sections requires the Special Tribunal or the Special Court to refer any application or a case for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction

over the area. Sub-rule (1) of Rule 6 of the Rules, however, provides that every application filed under sub-section (1) of Section 8 of the Act or every case taken cognizance of *suo motu* by the Special Court or an application filed under sub-section (1) of Section 7-A of the Act, before the Special Tribunal, 'may' be referred for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area or by any other Officer of the Government authorized by the Court in this behalf. This Court has held in State of Uttar Pradesh v. Jogendra Singh (supra) that the word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which the word is used and where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' should be construed to mean a command. Hence, we are called upon to decide whether the word 'may' used in sub-rule (1) of Rule 6 of the Rules confers only a discretion upon the Special Tribunal or the Special Court to refer an application filed before it or a case to the Mandal Revenue Officer or whether this discretion of the Special Tribunal or

the Special Court is coupled also with a duty or an obligation to refer the application filed before it or the case to the Mandal Revenue Officer and we have to decide this question by examining the context in which the word 'may' has been used and the context would mean Rule 6 of the Rules and Sections 7-A and 8 of the Act and the object of these statutory provisions.

12. A reading of Rule 6 of the Rules and, in particular, sub-rules (1) and (2) thereof, indicates that the object of referring the application under sub-section (1) of Section 7-A or sub-section (1) of Section 8 of the Act to the Mandal Revenue Officer is to get full and complete report from the Mandal Revenue Officer after local inspection or verification on the correctness of the statements made in the application and the facts relating to ownership, actual possession and use of the land concerned and such other particulars and information as would be useful to the Court to arrive at a correct decision on the claims made in the application. Sub-rule (3) of Rule 6 of the Rules further indicates the nature of the report the Mandal Revenue Officer is required to submit and it states that the

Mandal Revenue Officer or the other Officer to whom the application has been referred under sub-rule (1) shall also furnish along with his report copies of the extracts of the Government records to show the survey number and subdivision number and proof of possession, ownership and use of the land and the payment of dues to the Government. The report of the Mandal Revenue Officer, therefore, is to be based on Government records and on proof of possession, ownership and use of the land and the payment of dues to the Government and/or local inspection. Where an applicant before the Special Tribunal or the Special Court furnishes certified copies of Government records to show proof of possession, ownership and use of the land and also payment of dues to the Government, in support of the statements made in the application and the Special Tribunal or the Special Court is satisfied about the truth of the statements made in the application, it may not be necessary for the Special Tribunal or the Special Court to refer the application to the Mandal Revenue Officer for inspection or verification. Moreover, the Special Tribunal or the Special Court can

ascertain the truth or otherwise of the statements made in the application made under Sections 7(1) or 8(1) of the Act on the basis of oral and documentary evidence adduced before it. Sub-section (2) of Section 7-A provides that save as otherwise provided in the Act, a Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908. Hence, all the provisions of the Code of Civil Procedure, 1908 relating to trial including examination and cross-examination of witnesses and production and acceptance of documentary evidence are available to the Special Tribunal to be followed for the purpose of ascertaining the truth or otherwise of the statements made in the application under sub-section (1) of Section 7-A of the Act. Similarly, Section 9 of the Act provides that save as expressly provided in the Act, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 insofar as they are not inconsistent with the provisions of the Act, shall apply to the proceedings before the Special Court. The provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 relating to trials, such as

examination and cross-examination of witnesses and production and acceptance of documents are also available to the Special Court for ascertaining the truth or otherwise of the statements made in the application.

13. We are thus of the considered opinion that the object of Rule 6 of the Rules is to assist the Special Tribunal or the Special Court to arrive at a correct decision on the claims and allegations made in the application under sub-section (1) of Section 7-A and sub-section (1) of Section 8 of the Act to the Special Tribunal or the Special Court and if this very object can be achieved without referring the application of the case to the Mandal Revenue Officer, it may not be necessary for the Special Tribunal or the Special Court to make a reference to the Mandal Revenue Officer and therefore there is no compelling duty on the Special Tribunal or the Special Court to refer the application under Section 7-A (1) or under Section 8 to the Mandal Revenue Officer. In other words, under the Act and the Rules, it is not mandatory for the Special Tribunal or the Special Court to call for a report of the Mandal Revenue Officer. We, however, hasten to make it clear that while there

is nothing in the statutory provisions in Section 7-A or Section 8-A of the Act or Rule 6 of the Rules to indicate that the power vested in the Special Tribunal or the Special Court is coupled with a duty to refer the application filed before it to the Mandal Revenue Officer, the facts of a particular case before the Special Tribunal or the Special Court may cast a judicial duty on the Special Tribunal or the Special Court to refer the application filed before it to the Mandal Revenue Officer for the purpose of verifying the truth of the statements made in the application and deciding the land grabbing case before it in a just and reasonable manner. In The Official Liquidator v. Dharti Dhan (P) Ltd. [(1977) 2 SCC 166], this Court referring to the word ‘may’ used in Sections 442 and 446 of the Companies Act, 1956 held:

“If the applicant can make out, on facts, that the objects of the power conferred by Sections 442 and 446 of the Act, can only be carried out by a stay order, it could perhaps be urged that an obligation to do so has become annexed to it by proof of those facts. That would be the position not because the word “may” itself must be equated with “shall” but because judicial power has necessarily to be exercised justly, properly, and reasonably to enforce the principle that rights created must be enforced.”

14. The next question, which we are called upon to decide in this case, is whether it was mandatory for the Special Tribunal or the Special Court to issue notification specifying the fact of taking cognizance of the case under the Act in accordance with the proviso to sub-section (4) of Section 7 or sub-section (6) of Section 8 of the Act and Rule 7 of the Rules. The proviso to sub-section (4) of Section 7-A and the proviso to sub-section (6) of Section 8 of the Act provide that the Special Tribunal and the Special Court shall by notification specify the fact of taking cognizance of the case under the Act. Similarly, sub-rules (1) and (2) of Rule 7 of the Rules provide that the Special Court and the Special Tribunal shall after taking cognizance of the case under the Act give notice in Form II-A/II-B by publishing it in the Andhra Pradesh Gazette. The word 'shall' used in the proviso to sub-section (4) of Section 7-A and the proviso to sub-section (6) of Section 8 of the Act as well as in sub-rules (1) and (2) of Rule 7 of the Rules indicates that compliance with requirement of notification or publication of the notice in the Andhra Pradesh Gazette of the case after the

Special Tribunal or the Special Court takes cognizance is mandatory. The use of the word “shall” in these provisions, however, is not conclusive of the mandatory nature of the provisions and we must look at the main provisions of sub-section (4) of Section 7-A and sub-section (6) of Section 8 of the Act to find out the purposes for which such notification or publication of notice is to be made. As has been explained by Justice G.P. Singh in Principles of Statutory Interpretation, 12th Edition 2010 at page 406-407:

“The use of word ‘shall’ raises a presumption that the particular provision is imperative; but this *prima facie* inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.”

The object of the proviso to sub-section (4) of Section 7-A will be clear from the main provision which states that every judgment of the Special Tribunal with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land. Similarly, the object of the proviso to sub-section (6) of Section 8 will be clear from the main

provision which states that every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land. Hence, all persons who may not have been impleaded as a party in the applications filed under sub-section (1) of Section 7-A or sub-section (1) of Section 8 of the Act are sought to be given notice by a notification in the Andhra Pradesh Gazette of the fact of the Special Tribunal or the Special Court taking cognizance of a case to enable them to appear before the Special Tribunal or the Special Court and protect their interest in the land, if any. Considering this object of Sections 7-A and 8 of the Act, we are of the opinion that the notification or the publication of the notice of the fact that cognizance of a case has been taken in the Andhra Pradesh Gazette as required by the proviso to sub-section (4) of Section 7-A and the proviso to sub-section (6) of Section 8 and sub-rules (1) and (2) of Rule 7 is mandatory and cannot be dispensed with by the Special Tribunal and the Special Court.

15. This requirement of a notification or publication of notice in the Andhra Pradesh Gazette of the fact that cognizance of a case has been taken by the Special Tribunal or the Special Court has been made mandatory by the Act and the Rules not in the public interest but in the interest of persons who may claim title, ownership or lawful possession of the land which is the subject-matter of the proceedings under Section 7-A or Section 8 of the Act before the Special Tribunal or the Special Court. If, therefore, a person who claims title, ownership or lawful possession of any such land is already a party in the proceedings under Sections 7-A or 8 of the Act in the Special Tribunal or the Special Court and he has notice of such proceedings and has had due opportunity to participate in the said proceedings and assert his title, ownership or lawful possession over the land, he cannot challenge the proceedings of the Special Tribunal or the Special Court on the ground that the notification or the publication of the notice has not been made in accordance with the Act and Rules. In State Bank of Patiala & Ors. v. S. K. Sharma [(1996) 3 SCC 364] this Court

relying on *Dhirendra Nath Gorai v. Sudhir Chandra Ghosh* [AIR 1964 SC 1300] has held in para 29 at page 387:

“But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived in his interest and not in public interest.”

In the aforesaid case at para 33 at page 389, this Court has further held:

“33.

(1)

(2)

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under – “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice.”

16. The provisions of the Act and Rules mandatorily requiring notification or publication of the notice of the case after the Special Tribunal or the Special Court takes cognizance are

procedural provisions and the law laid down by this Court in State Bank of Patiala & Ors. v. S. K. Sharma (supra) is that violation of such procedural provisions will not vitiate the proceedings unless prejudice is caused to the party complaining of the violation. The respondents in the two cases before us not only had notice of the application under Section 7-A of the Act before the Special Tribunal but also filed their replies to the application and got the opportunity to adduce evidence in support of their case and had not suffered any prejudice for non-compliance of the provisions of the proviso to sub-section (4) of Section 7-A of the Act or Rule 7 of the Rules. The High Court was, therefore, not right in quashing the proceedings before the Special Tribunal in the present case on the ground that a notification or notice in terms of Rule 7(2) of the Rules had not been issued after the case was taking cognizance of by the Special Tribunal.

17. In the result, we allow these appeals, set aside the impugned orders of the High Court and remand the matter to the High Court for consideration whether in the facts of the two cases reference to the Mandal Revenue Officer was at all

necessary to ascertain the truth of the statements made in the applications and to arrive at a just decision and for consideration of the Writ Petitions on merits. There will be no order as to costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
March 04, 2011.