IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P. Nos.22448/2018, 10282/2015, 10283/2015, 11380/2017, 1139/2015, 12535/2018, 13248/2015, 13249/2015, 13250/2015, 13251/2015, 13252/2015, 13916/2016,13924/2018, 13925/2018, 13926/2018, 13927/2018, 16100/2018 to 16104/2018, 18625/2018, 18626/2018, 18627/2018, 18628/2018, 18629/2018, 18630/2018, 18631/2018, 18632/2018, 18633/2018, 18634/2018, 18635/2018, 18636/2018, 18637/2018, 18638/2018, 18639/2018, 18640/2018, 18641/2018, 18642/2018, 18643/2018, 18644/2018, 18645/2018, 18646/2018, 18647/2018, 18648/2018, 18649/2018, 18650/2018, 18651/2018, 18652/2018, 18653/2018, 18654/2018, 18655/2018, 18656/2018, 18657/2018, 18955/2018, 18956/2018, 18957/2018, 19912/2018, 19913/2018, 19914/2018, 21323/2015, 22449/2018, 22450/2018, 22451/2018, 22452/2018, 22453/2018, 22454/2018, 22455/2018, 22456/2018, 22457/2018, 22458/2018, 22459/2018, 22460/2018, 22461/2018, 22462/2018, 22463/2018, 22696/2018, 23506/2018 to 23508/2018, 23509/2018, 24182/2014, 24183/2014, 24184/2014, 24185/2014, 24186/2014, 24187/2014, 24188/2014, 25529/2018, 25591/2018, 25594/2018, 25599/2018, 25611/2018, 25614/2018, 25617/2018, 25624/2018, 25628/2018, 25630/2018, 25632/2018, 25636/2018, 25639/2018, 25645/2018, 25648/2018, 25654/2018, 25661/2018, 25665/2018, 25671/2018, 25672/2018, 25674/2018, 25675/2018, 25676/2018, 26028/2013, 26234/2013, 28605/2014, 28606/2014, 28607/2014, 28608/2014, 28609/2014, 28610/2014, 28611/2014, 28612/2014, 28613/2014, 28614/2014, 28615/2014, 28695/2017, 29478/2015, 33459/2017, 34022/2017, 34224/2015, 3721/2015, 3722/2015, 37584/2015, 38658/2015, 38659/2015, 38665/2015, 3973/2018, 3993/2016, 4397/2017, 44444/2016, 44473/2016, 5893/2018, 5979/2018, 6469/2015, 7222/2017, 7371/2015, 7372/2015, 7975/2018 and 8368/2017 and

W.P.(MD).Nos.20798 to 20810/2015, 20938/2015, 10378 to 10380/2016, 12350/2014, 13032/2014, 13593/2014, 14756/2014, 1519/2017,

and

W.M.P. Nos.12329/2017, 12330/2017, 14677/2018, 18928/2016, 18929/2016, 19133/2018, 19134/2018, 19135/2018, 19136/2018, 19137/2018, 19138/2018, 19139/2018, 19140/2018, 19141/2018, 19142/2018, 21961/2018, 21993/2018, 22358/2018, 22359/2018, 23347/2018, 23348/2018, 23349/2018, 23350/2018, 23351/2018, 26309/2018, 26310/2018, 26311/2018, 26312/2018, 26313/2018, 26314/2018, 26315/2018, 26316/2018, 26317/2018, 26318/2018, 26319/2018, 26320/2018, 26321/2018, 26322/2018, 26323/2018, 26324/2018, 26535/2018, 27442/2018, 27443/2018, 27622/2017, 29698/2018, 29736/2018, 29741/2018, 29750/2018, 29769/2018, 29771/2018, 29778/2018, 29788/2018, 29795/2018, 29802/2018, 29808/2018, 29814/2018, 29821/2018, 29827/2018, 29834/2018, 29838/2018, 29844/2018, 29848/2018, 29851/2018, 29854/2018, 29855/2018, 29856/2018, 29858/2018, 36949/2017, 36950/2017, 37738/2017, 37739/2017, 37740/2017, 38284/2016, 38317/2016, 4861/2018, 4862/2018, 7239/2018, 7240/2018 and 9932/2018) and

W.M.P.(MD).Nos.1/2015, 1/2015, 1/2016, 1935/2016, 900/2016, 4572/2016 and M.P.(MD).Nos.1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 1/2015, 20938/2015, 1/2015, 2/2015, 8843/2017, 8096/2016, 8097/2016

W.P. No.22448 of 2018

The Caritas India
Rep. by Diocesan Director Fr.Anthony Raj
S/o.Dornes Parish Priest
St.Judes Church, Asisi Nagar
Madhavaram
Chennai-600 060 ... Petitioner

Vs.

1.Union of India
Department of Law and Justice
rep by its Secretary
26 Mansingh Road
Jaisalmer House
New Delhi-110 011

2.The State of Tamil Nadu
Department of Law and Justice
rep by its Secretary
Fort St. George
Chennai-600 009

3.The Secretary to the
Government of Tamilnadu
Industries Department
Fort St. George
Chennai-600 009

4.The Chennai Metro Rail Ltd
rep by its Chairman Administrative Office
Chennai Metro Rail Dept.
Poonamallee High Road
Koyambedu-600 107

5.The Land Acqusition Officer
and Revenue Division Officer
Ambattur Divisional @ Anna Nagar West (Extn)
Chennai - 600 101 ...Respondents

Prayer in W.P. No.22448/2018: Writ petition filed under Article 226 of the Constitution of India for a writ of declaration, declaring The Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement (Tamil Nadu Amendment Act) 2014 (Tamil Nadu Act 1 of 2015) as ultra vires Article 14 of The Constitution of India and the Principal Act, namely The Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) and consequently declare the show cause notice dated 19.06.2018 issued by the 5th respondent herein under sub- section (2) of the Section (3) of The Tamil Nadu Acquisition of Land for Industrial Purpose Act 1997 (Tamil Nadu Act 10 of 1999) as null and void.

For Petitioners : Mr.P.Wilson, Senior Counsel,
Mr.K.M.Vijayan, Senior Counsel,
Mr.T.V.Ramanujun, Senior Counsel,
Mr.Ajmal Khan, Senior Counsel,
Mr.N.Subramaniyan
Mr.Suhirth Parthasarathy
Mr.M.S.Subramaniam

For Respondents : Mr.Vijay Narayan, Advocate General
Mr.P.H.Arvind Pandian,
Additional Advocate General
Mr.R.Thiagarajan, Senior Counsel

COMMON ORDER

SUBRAMONIUM PRASAD, J.

Writ Petitions have been filed challenging:-

a) Tamil Nadu Act 1 of 2015 by which Section 105-A was inserted into the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, hereinafter called as the new Land Acquisition Act;

b) The Tamil Nadu Highways Act, 2001; and

c) Tamil Nadu Industrial Purposes Act, 1997.

By consent of parties, all the writ petitions have been grouped together and disposed of by this common order.

Background of the case and the Central Enactments

2. Land Acquisition Act, 1894 (hereinafter referred to as the "Old Act")was enacted for the acquisition of land needed for public purposes/companies and for determining the amount/quantum of compensation to be paid to the landowners on account of such acquisition. Over the years, it was found that the lands were indiscriminately acquired

which resulted in drastic reduction of agricultural lands. Agriculturists were reduced to landless labourers. It was the grievance of the landless that there were no proper schemes for rehabilitation of persons, who were deprived of their land. Agriculturists were also aggrieved because their sole means of livelihood was lost, as a result of the acquisition for purposes which were admitted after a substantial lapse of time.

3. In the year 2003, National Policy on Resettlement and Rehabilitation was formulated and it was accepted that society should have a clear perception of the reason behind land acquisition, and the benefits that will flow from such acquisition. The adverse socio-economic and cultural impacts resulting from acquisition of land were also to be examined. This policy was replaced by the National Rehabilitation and Resettlement Policy of 2007, which also directed State Governments to acquire land, keeping in mind the new rehabilitation policy.

4. Despite these policies, large scale acquisition by the State Governments continued, and therefore the Parliament, thought it fit to bring out a new Legislation to govern the law relating to Land Acquisition,by enacting the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as the "New Act"). The statement of objects and reasons, which is self-

explanatory and reads as under:

"The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purpose and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed to repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of

rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence, the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December, 2007 and were referred to the Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October, 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing Committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Lok Sabha on 25th February, 2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mecahnism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mecanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their

land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from the socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February, 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and

benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the official gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also bee limited for the purposes of national

defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed, if multi-crop land is acquired. In districts where net sown area is less than 50 per cent of total geographical area, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners, a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased up to 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs.50,000/-; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play

grounds, health centres, roads and electric connects, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action and contravention of the provisions of the proposed legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to, and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to proivde or put in place greater benefit levels than those prescribed

under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

5. The object of the New Act, is therefore, to reduce the hardship faced by the owners of the land whose land is sought to be acquired and other persons dependent on the land, which is sought to be acquired. The new Act was brought to address the issues of rehabilitation and resettlement of displaced persons, and to obviate the concerns of farmers and those persons, whose livelihood was dependent on the land acquired. The New Act, at the same time, aimed to facilitate acquisition for industrialization and modernization in a much more transparent manner.

6. The new Land Acquisition Act, has been divided into 13 chapters.

Chapter II is dedicated to determination of social impact and public purposes. The Act postulates that, before the land is acquired, a social impact study has to be prepared, which has to be followed by a public hearing at the affected area, which is to be conducted after giving adequate publicity about the date, time and venue for the public hearing. This is to ascertain the views of the affected families. The social impact study has to be published and the social impact assessment report/study has to be evaluated by a multi-disciplinary expert group.

7. Under the new Act, only after the social impact is analyzed and the study is approved, the process of acquisition of land begins. The new Act, also provides for a strict time period within which the acquisition has to be completed. Section 14 of the new Act provides that, if Notification under Section 11 of the New Act (Section 4 of the Land Acquisition Act, 1894) is not issued within 12 months from the date of appraisal of the social economic assessment report, then the report lapses and a fresh report has to be published. Section 25 postulates that the award has to be made by the Collector within a period of 12 months from the date of publication of the declaration under Section 19. The period of two years provided under Section 11-A of the old Act has been reduced to one year. The mode of calculating the compensation is given in the first schedule to the New Act.

8. Chapter IV of the new Act deals with the process of acquisition, i.e. notification etc, Chapters V to VIII provide the provisions relating to Rehabilitation and Resettlement of the persons whose land is sought to be acquired. Chapters IX and X deal with determination of the compensation as well as the payment of the amount under the New Act.

9. Thus, the New Act aims to bring out more transparency in the process of Land Acquisition, and ensure that the land-losers, are suitably resettled, and that only those acquisitions which are truly necessary take place, and that land is not indiscriminately taken over by Governments.The phased manner in which this New Act is to apply, is that at the first stage a Survey has to be carried out which would be followed by a notification relating to the acquisition. Subsequently, the process of Rehabilitation and Resettlement as well as payment of compensation to take place, so that the farmers and other persons whose lands are being acquired are put to minimum disadvantage.

10. Interestingly, Section 105 of the new Land Acquisition Act provides that the provisions of the new Land Acquisition Act will not apply or would

apply with certain modifications to certain Central enactments under which lands can be acquired. Section 105 reads as under:

> *105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.–(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.*
>
> *(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.*
>
> *(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.*
>
> *(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case*

may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

11. This section is meant to ensure that provisions of the new Land Acquisition Act do not apply to acquisition made under certain Central enactments. The acquisitions made under Acts protected by Section 105 of the New Act, are not bound by the procedure of Survey of the New Act, but will still be mandated to provide compensation and rehabilitation which will be at par with the New Act. Thus the Parliament has deemed it fit to exempt the process of Survey and Notification in respect of acquisition of certain lands, under the specified enactments. Parliament has however made sure that any person who loses land is acquired under these statues, would not be worse off from a person whose land is acquired under the New Act. Persons whose lands are acquired under the enactment protected under the new Act would be entitled to appropriate compensation and rehabilitation. The only discernible difference between the two would be that the compulsory survey process under the new Act, would no longer be necessary, under the enactments found in the 4th Schedule to the new Act, 2013.

12. Government of India brought out an ordinance on 31.12.2014 substituting sub section (3) in Section 105 of the new Act. Clause 10 of the

ordinance which substitutes sub section (3) in Section 105 reads as under:

> *" (3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015."*

13. This ordinance lapsed and Government of India therefore brought out another ordinance on 3.4.2015 which was called "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (No.4 of 2015), once again bringing out the same substitution. Clause 12 of this Ordinance reads as under:

> *12. In the principal Act, in Section 105, -*
>
> *(i) for sub-section (3), the following sub-section shall be substituted, namely:-*
>
> *(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";*
>
> *(ii) sub-section (4) shall be omitted.*

14. This ordinance also lapsed, and the Government of India therefore brought out another ordinance on 30.5.2015, namely which was called "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015 (No.5 of 2015), once again bringing out the same substitution. Clause 12 of the said Ordinance reads as under:

> *12. In the principal Act, in Section 105, -*
>
> *(i) for sub-section (3), the following sub-section shall be substituted, namely:-*
>
> *(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";*
>
> *(ii) sub-section (4) shall be omitted.*

15. Ultimately, by exercising its power under Section 113(1) of the new Act, which gives power to Government to remove difficulties, the Government of India Ministry of Rural Development Order issued on 28.4.2015, which reads as under:

MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, the 28th August, 2015

S.O.2368(E) - Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter-alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (5 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (5 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

As whereas, as per the provisions of article 123 of the

Constitution, the RFCTLARR (Amendment) Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance.

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

16. Thirteen Acts which have been exempted from the applicability of the new Land Acquisition Act, 2013 have been placed in the IV Schedule to the new Land Acquisition Act. Thus, presently, 13 Central Legislations permit the appropriate government to acquire land without following the procedure for acquisition under the New Act, provided that the rehabilitation and compensation of the land losers is done at par with the New Act.

Tamil Nadu and its enactments

17. After the New Act came into force with effect from 1.1.2014, the Government of Tamil Nadu brought out G.O. (Ms) No.88 Revenue (LA-I(1)) Department dated 21.2.2014 stating that in all land acquisition cases where process under the Land Acquisition Act, 1894 has started i.e. notification under Section 4(1) had been issued, but the award not been passed, the Government directed the following actions as specified under Section 24(1)(a) of the new Act to be taken as under:

i) Process initiated under the Land Acquisition Act, 1894,

where notification under Section 4(1) has been issued, should be allowed to continue and declaration under Section 6 of the Land Acquisition Act, 1894, if not made, should be issued. However, the interim compensation should be determined based on the procedures already in vogue subject to additional compensation being paid as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

ii) Process initiated under the Land Acquisition Act, 1894, where the declaration under Section 6 of the Land Acquisition Act, 1894 has been made, should be allowed to continue and the interim compensation should be determined as specified in Para 3(i) above.

18. At this juncture, it is pertinent to note that the power to legislate on acquisition of property is specified in entry 42 in List III of the Seventh Schedule to the Constitution of India. Both the State and Centre has, power to enact Laws on acquisition of land. Entry 42 in List III in the seventh schedule to the Constitution of India reads as under:

"42. Acquisition and requisitioning of property."

19. State of Tamil Nadu has enacted various Acts providing for acquisition of land. Three of such Acts are: a) Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, b) Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and c) Tamil Nadu Highways Act, 2001. For the purpose of continuing the acquisition under the three special State Acts

mentioned above, it was decided to bring in an amendment for the State of Tamil Nadu by inserting Section 105-A in the new Act, 2013 in the same manner as envisaged under Section 105 of the new Act, whereby the new Act was not made applicable to thirteen Central enactments.

20. For this purpose, Bill No.5/2014, was passed by the Tamil Nadu Legislative Assembly on 22.2.2014 seeking to amend the new Act, for insertion of Section 105-A in the new Act, so as to continue the acquisition of lands under the three aforementioned Acts by excluding the applicability of the New Act to above 3 Acts. The statement of objects and reasons of Bill No.5 are as under:

> *Statement of Objects and Reasons*
>
> *Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) enables to continue acquisition of land under the enactments specified in the Fourth Schedule for a limited period of one year from the date of commencement of the Central Act 30 of 2013 and cast a duty upon the Central Government to issue a notification, before the expiry of the said period, to apply the provisions of the Central Act 30 of 2013, relating to compensation, rehabilitation and resettlement, with or without modifications or exceptions, as specified in that section.*
>
> *2. Similar to the Central enactments specified in the Fourth Schedule to the Central Act 30 of 2013, the following Tamil Nadu Acts are regulating the land acquisition for harijan welfare schemes, industrial purposes and for the purposes of any highway,*

respectively, in the State of Tamil Nadu:-

(i) Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978);

(ii) Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999);

(iii) Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002).

3. The Central Act 30 of 2013 repeals only the Land Acquisition Act, 1894. Section 103 of the Central Act 30 of 2013 specifically provides that the provisions of the Act shall be in addition to and not in derogation to any other Law for time being in force. There is a Saving Clause in the Central Act 2013 to enable the State Government to continue to provide or put in place greater benefit levels than those provided under the Land Acquisition (Amendment) Bill 2007 and the Rehabilitation and Resettlement Bill, 2007.

4. After the date of commencement of the Central Act 30 of 2013, the Government considered it necessary to continue acquisition of land under the said Tamil Nadu Acts for a period of one year from the date of commencement of the Central Act 30 of 2013 as it has been done in Section 105 of the Central Act 30 of 2013 in the case of Central Acts relating to land acquisition specified in the Fourth Schedule to the Central Act of 2013 and decided to amend the Central Act 30 of 2013 in its application to the State of Tamil Nadu so as to make a provision therein specifying that the provisions of the Central Act 30 of 2013 shall not apply to the above said Tamil Nadu Acts relating to land acquisition and authorising the State Government to issue Notification to apply the provisions of the Central Act 30 of 2013 to the cases of land acquisition under the said Tamil Nadu Act with

without modifications or exceptions, as may be specified in the notification.

5. Hence, the following bill is introduced."

Operative portion of the Bill reads as under:

2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), after section 105, the following section shall be inserted, namely:-

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Act or to apply with certain modifications:- (1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government may, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule, shall apply to the cases of land acquisition under the enactments specified in the Fifth schedule or shall apply with such exceptions or modifications as may be specified in the notification.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification of the Legislative Assembly agrees in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

3. After the Fourth Schedule to the principal Act, the

following Schedule shall be added, namely:-

"THE FIFTH SCHEDULE

(See Section 105-A)

LIST OF TAMIL NADU ENACTMENTS REGULATING LAND ACQUISITION IN THE STATE OF TAMIL NADU.

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999).

3. The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)."

21. Pending the assent of the President, a Government Order dated 14.5.2014 in G.O. No.45 Industries (SIPCOT - LA) Department was issued. The said Government Order reads as under:

GOVERNMENT OF TAMIL NADU

ABSTRACT

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act.30 of 2013) passed by the Government of India - Further action in cases where process under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 Initiated - Executive Instructions Issued.

INDUSTRIES (SIPCOT-LA) DEPARTMENT

G.O.(Ms)No. 45 *Dated: 14.5-2014*

Read:

G.O.(Ms) No.88, Revenue[LA-I(1)] Department, dated 21.2.2014.

***

ORDER:

The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Re-settlement Act 2013 (Central Act 30 of 2013) came into force on the January 1st, 2014. The above said Act repealed the Land Acquisition Act, 1894.(Central Act I of 1894).

2. Pursuant to the commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with effect from 1.1.2014, the Government in Revenue Department in G.O.Ms.No.88, Revenue (LA-I (1)) Department, dated 21.02.2014 have issued executive instructions on how to proceed with further action on the pending lend acquisition cases which were already initiated under the provisions of the Land Acquisition Act, 1894 (since repealed), based on the provisions laid down in section 24 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation end Resettlement Act, 2013 stating that interim compensation should be determined based on procedures already in vogue subject to additional compensation being paid as per the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Re-settlement Act, 2013. "

3. The state of Tamil Nadu has enacted three special State Acts for land acquisition, namely, Tamil Nadu Highways Act/ 2001, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

4. Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013 exempts 13 Central enactments specified in the Fourth Schedule and enables the continuation of the acquisition of land under the said enactments for a limited period of. one year from the date of commencement of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act,2013. It also cast a duty upon the Central Government to issue a notification, before the expiry of the said period, to apply the provisions of the Central Act 30 of 2013, relating to compensation, rehabilitation and resettlement, with or without modifications or exceptions, as specified in that section to the above said thirteen enactments. The State Government have considered it necessary to continue the Land Acquisition under the above said three States Acts also for a period of one year on the. same lines as the 13 exempted Central Acts.

5. To give effect to the said decision, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A.Bill 5 of 2014) has been passed by the Tamil Nadu State Legislature seeking to amend the Central Act 30 of 2013 so as to continue the acquisition of lands under the above said State Acts for a period of one year after the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by including the said three State Acts in the newly inserted Fifth Schedule and the Government of India has been requested to obtain the assent of the President to the said Bill. In the circumstances, the Government have decided as follows.

6. Inasmuch as section 105-A proposed to be Inserted to the Central Act 30 of 2013 by the Right to Fair Compensation and Transparency in Land Acquisition/ Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 has been given retrospective effect from 1.1,2014, and pending Issue of notification under section 105-A(2) of the said Central act 30 of 2013, interim compensation for all cases where acquisition of land is taken up under the Tamil Nadu Land Acquisition for Industrial Purposes Act, 1997 should be determined based on the procedure already in vogue subject to additional

compensation being paid as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(BY ORDER OF THE GOVERNOR)

C.V.Sankar

PRINCIPAL SECRETARY TO GOVERNMENT

22. G.O. Ms. No.59 dated 29.05.2014 was passed with a direction to the Director General, Highways Department, to proceed with acquisition process as per Tamil Nadu Highways Act, 2001 in view of the introduction of the bill for exemption of the applicability of the new Land Acquisition Act to the provisions of the Tamil Nadu Highways Act. The said Government Order reads as under:

GOVERNMENT OF TAMIL NADU

ABSTRACT

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act.30 of 2013) passed by the Government of India - Further action in cases where process under the Tamil Nadu Highways Act, 2001 Initiated - Executive Instructions Issued.

Highways and Minor Ports (HF1) Department

G.O.(Ms)No.59 *Dated: 29.5-2014*

Read:

1.G.O.(Ms) No.88, Revenue[LA-I(1)] Department,

dated 21.2.2014.

2.From the Director General, Highways Department,

Letter No.RFCTLARR/DG/2013, dated 11.4.2014

ORDER:

The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Re-settlement Act 2013 (Central Act 30 of 2013) came into force on the January 1st, 2014 repealing the Land Acquisition Act, 1894.(Central Act I of 1894).

2. In the G.O. first read above, Executive Instructions have been issued on how to proceed with further action on the pending land acquisition cases which were already initiated under the provisions of the Land Acquisition Act, 1894 (since repealed), based on the provisions laid down in section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 stating that "interim compensation should be determined based on the procedures already in vogue subject to additional compensation being paid as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The State of Tamil Nadu has enacted three special State Acts for land acquisition, namely, Tamil Nadu Highways Act, 2001, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

4. Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 exempts 13 Central enactments specified in the Fourth Schedule and enables the continuation of the acquisition of land under the said enactments for a limited period of one year from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It also cast a duty upon the Central Government to issue a notification, before the expiry of the said period, to apply the provisions of the Central Act 30 of 2013, relating to compensation, rehabilitation and resettlement, with or without modifications or exceptions, as specified in that section to the above said thirteen enactments. The State Government have considered it necessary to continue the Land Acquisition under the above said three States Acts also for a period of one year on the same lines as the 13 exempted Central Acts.

5. To give effect to the said decision, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A. Bill 5 of 2014) has been passed by the Tamil Nadu State Legislature seeking to amend the Central Act 30 of 2013 so as to continue the acquisition of lands under the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by including the said three State Acts in the newly inserted Fifth Schedule and the Government of India has been requested to obtain the assent of the President to the said Bill.

6. In his letter second read above, the Director General, Highways Department has reported that, the process of land acquisition for all the infrastructure projects being carried out through various wings of Highways department has come to a halt since the introduction of new RFCTLARR Act, 2013. The land acquisition for projects are carried out as per Tamil Nadu Highways

Act, 2001, wherein the determination of compensation is guided by the provisions of the old central Land Acquisition Act, 1894 which has now been repealed by the RFCTLARR Act, 2013. At present Highways Department is carrying out more than 250 projects at a value around Rs.5000 crore involving acquisition of 1090 Hectares of land. With the introduction of RFCTLARR Act, 2013, the Highways Act, 2001 needs to be amended for its validity. The new RFCTLARR Act, 2013 can be put into operation only after framing necessary rules and availing the flexibility admitted for states in the Government of India Act with the approval of State legislature. Also, the implementation of this act required establishment of various institutional structures, framing of norms for Social Impact Assessment and Procedure and manner for Rehabilitation and Resettlement and it will take minimum of 6 months.

7. The Director General, Highways Department has therefore requested instruction of the Government for proceeding further with Land Acquisition process as per Tamil Nadu Highways Act, 2001 without any hindrance where,

a) Process initiated under the Tamil Nadu Highways Act, 2001, where notification under Section 15(2) has been made, should be allowed to continue and declaration under Section 15(1) of the Tamil Nadu Highways Act, 2001, if not made should be issued. However, the interim compensation should be determined based on the procedures already in vogue subject to additional compensation being paid as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

b) Process initiated under the Tamil Nadu Highways Act, 2001, where the declaration under Section 15(1) of the Tamil Nadu Highways Act, 2001 has been made, should be allowed to continue and the interim compensation should be determined as specified

above.

8. The Government after taking into consideration of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) have decided as follows:

"In as much as section 105-A proposed to be inserted to the Central Act 20 of 2013 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 has been given retrospective effect from 1.1.2014, and pending issue of notification under section 105-A(2) of the said Central Act 30 of 2013, Interim compensation for all cases where acquisition of land is taken up under the Tamil Nadu Highways Act, 2001 should be determined based on the procedure already in vogue subject to additional compensation being paid as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

(By Order of the Governor)

Rajeev Ranjan,

Principal Secretary to Government

23. A similar Government Order was issued on 31.12.2014 in G.O. Ms. No.169 Highways and Minor Ports (HF1) Department dated for proceeding with acquisition under the Tamil Nadu Highways Act, 2001. The said Government Order reads as under:

"GOVERNMENT OF TAMIL NADU

Abstract

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) passed by the Government of India - Further action in cases where process under the Tamil Nadu Highways Act, 2001 initiated on or after 01-01-2014 - Executive instructions - Orders - issued.

Highways and Minor Ports (HF1) Department

G.O.(Ms)No.169 Dated. 31-12-2014

Read:

1.G.O.(Ms)No.88, Revenue Department, Dated: 21-02-14.

2.G.O.(Ms)No.59, Highways and Minor Ports Department,

Dated 29-05-2014.

ORDER:

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) came into force on 1.1.2014.This act repealed the Land Acquisition Act, 1894 (Central Act 1 of 1894).

2. In order to continue acquisition of land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) and the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), after the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and to apply the provisions of the Central Act 30 of 2013 for determination of compensation

Rehabilitation and Resettlement to the cases of Land Acquisition under the said Tamil Nadu Acts, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A.Bill No.30 of 2014) was passed by the Legislative Assembly seeking to amend the Central Act 30 of 2013 so as to continue the acquisition of lands under the above said State Acts after the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by including the said three State Acts in the newly inserted Fifth Schedule.

3. The Government have passed the above amendment Bill, (L.A.Bill No.30 of 2014) incorporating certain changes on the lines of Section 105 of the Central Act 30 of 2013 seeking to issue a notification within one year stating that any of the provisions of the Central Act 30 of 2013 relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the above Tamil Nadu Acts. The Government of India has been requested to obtain the assent of the President to the said Bill.

4. Accordingly, pending assent, to provide fair Compensation, Rehabilitation and Resettlement, the Government have now decided that the provisions of Central Act 30 of 2013 relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules being beneficial to the affected families, shall apply to the cases of Land Acquisition where the notice under section 15(2) of the Tamil Nadu Highways Act, 2001 have been published on or after 1.1.2014.

(BY ORDER OF THE GOVERNOR)

Rajeev Ranjan,

Principal Secretary to Government

24. Bill No.5 of 2014 was returned by the President. After curing the defects as pointed out by the President, another Bill was introduced, namely Bill No.30 of 2014, which reads as under:

> *"A Bill to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its application to the State of Tamil Nadu.*
>
> *Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-fifth Year of the Republic of India as follows:-*
>
> *1.(1) This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014*
>
> *(2) It extends to the whole of the State of Tamil Nadu*
>
> *(3) It shall be deemed to have come into force on the 1st day of January 2014.*
>
> *2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), after section 105, the following section shall be inserted, namely:-*
>
> *"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications:- (1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactment*

relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within oneyear from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the second and Third schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

3. After the Fourth Schedule to the principal Act, the following Schedule shall be added, namely:-

"THE FIFTH SCHEDULE

(See Section 105-A)

LIST OF TAMIL NADU ENACTMENTS REGULATING LAND ACQUISITION IN THE STATE OF TAMIL NADU.

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act,

1997 (Tamil Nadu Act 10 of 1999).

3. The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)."

25. This Bill was sent to the President for his assent. It is pertinent to mention that the new Bill was in tune with the new Act. The President gave his assent on 01.01.2015 and the Right to Fair Compensation and Rehabilitation and Resettlement (Tamil Nadu) Act, 2014 came into force. The Amendment Act reads as under:

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

CHENNAI, MONDAY, JANUARY 5, 2015 Margazhi 21, Jaya, Thiruvalluvar Aandu–2045

Part IV—Section 2

Tamil Nadu Acts and Ordinances

The following Act of the Tamil Nadu Legislative Assembly received the assent of the President on the 1st January 2015 and is hereby published for general information:—

ACT No. 1 OF 2015.

An Act to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its application to the State of Tamil Nadu.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-fifth Year of the Republic of India as follows:-

1. (1) This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall be deemed to have come into force on the 1st day of

January 2014.

2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), after section 105, the following section shall be inserted, namely:-

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications.—(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

3. After the Fourth Schedule to the principal Act, the following Schedule shall be added, namely:-

"***THE FIFTH SCHEDULE***.

(See section 105-A)

LIST OF TAMIL NADU ENACTMENTS REGULATING LAND ACQUISITION IN THE STATE OF TAMIL NADU.

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999).

3. The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)."

(By Order of the Governor)

26. Thus Section 105-A(3) was inserted by the Tamil Nadu Act 1 of 2015 into the new Land Acquisition Act, 2013. The Section, as inserted in the New Land Acquisition Act reads as under:

"***105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications.***—*(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.*

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce

the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

27. Thus Tamil Nadu Act No.1 of 2015 exempts the 3 Acts, namely a) Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, b) Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and c) Tamil Nadu Highways Act, 2001, in Schedule V from the applicability of the procedure in the New Act, provided that the provisions relating to Rehabilitation and Compensation payable under those acts are at par with the New Act. Section 105-A provides that the provisions of the new Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in Second and Third Schedule being beneficial to the affected families would apply to those Acts mentioned in the V Schedule and the compensation and provisions of rehabilitation and resettlement were not to be diluted.

28. This amendment act is principally challenged in this batch of writ petitions. By this Amendment Act, the three Acts, namely (i) The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978); (ii) The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999); and (iii) The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), are sought to be exempted from the applicability of the new Act. Independent writ petitions have been filed challenging vires of the Tamil Nadu Highways Act, Tamil Nadu Acquisition of Land for Industrial Purposes Act.

Submissions of the Petitioners

29. Mr.P.Wilson, learned senior counsel appearing for the petitioners in W.P. Nos.4397, 8368, 7222, 7223, 7224, 11380 of 2017, 5969, 23506 to 23509, 23462, 23463, 32886, 32891, 19912 to 19914, 18955 and 18956 of 2018, would submit that Section 105-A is contrary to the spirit of the new Land Acquisition Act. Mr.Wilson, learned senior counsel, would rely on the National Policy for Farmers, brought out in 2007 and more particularly paragraph 4.2.1 of this policy. He would also rely on the statement of objects and reasons and in particular, paragraphs 11 to 16 and would submit that the new Act was brought in, to ensure a comprehensive compensation package for the land owners, a scientific method for calculation of market value of the land, a comprehensive rehabilitation and resettlement package

for land owners including subsistence allowance, jobs, house, resettlement package for livelihood losers etc. He would submit that the three State Acts which are now sought to be brought back do not contain any such provision and therefore, it goes completely against the very purpose for which New Act, was brought into force.

30. Mr.Wilson, relied on the various provisions of the new Act and submitted that they are much more beneficial to the land owners. He would submit that the very purpose of bringing out the new Act stands defeated by inserting Section 105-A. He submitted that just because 105-A(2) provides the compensation and rehabilitation scheme should not be diluted, does not mean, all the issues have been answered. He further argued that if the entire scheme of the three Acts for acquiring the land are seen and a comparison is made with the new Act, then it can be seen that there are number of other provisions under the new Act, which are beneficial to the land owners in comparison to the Industrial Purposes Act.Mr.P.Wilson would rely on Sections 25, 29, 31, 38, 39, 41, 42, 43, 44 of the new Act and would submit that there are no provision akin to these provisions in the Tamil Nadu Acts and therefore Section 105-A which seeks to bring to life, the three enactments, would become discriminatory. To buttress this submission, Mr.Wilson would rely on ***P.VajraveluMudaliar and Another vs. Special Deputy Collector, Madras and others*** reported in ***1965 1 SCR 614 :***

AIR 1965 SC 1017. Mr.Wilson placed reliance on paragraphs 19 and 20 of the said judgment to contend that if there are adjacent lands belong to the same individual, which are being acquired, a portion of the land is acquired under a more beneficial Act, then the other portions, which is acquired under the less beneficial Act, is *per se* discriminatory. The Hon'ble Supreme Court in the said judgment has observed as under:

> *19.The last contention of Mr. ViswanathaSastri is that the Amending Act is hit by Article 14 of the Constitution. The law on the subject is well-settled. Under Article 14 the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But this does not preclude the Legislature from making a reasonable classification for the purpose of legislation. It has been held in a series of decisions of this Court that the said classification shall pass two tests, namely, (i) the classification must be founded on an intelligible differential which distinguishes persons and things left out of the group; and (ii) the differential must have a rational relation to the object sought to be achieved by the statute in question. To ascertain whether the impugned Act satisfies the said two tests, three questions have to be posed, namely, (i) what is the object of the Act ? (ii) what are the differences between persons whose lands are acquired for the housing schemes and these whose lands are acquired for purposes other than housing schemes or between the lands so acquired? and (iii) whether those differences have any reasonable relation to the said object. On a comparative study of the Principal Act and the Amending Act, we have shown earlier, that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a lesser value than he would get*

for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act. 'Me question is whether this classification between persons whose lands are acquired for housing schemes and persons whose lands are acquired for other public purposes has reasonable relation to the object sought to be achieved. The object of the Amending Act is to acquire lands for housing schemes. It may be, as the learned counsel contends, the Amending Act was passed to meet an urgent demand and to find a way out to clear up slums, a problem which has been baffling the city authorities for a long number of years, because of want of funds. But the Act as finally evolved is not confined to any such problem. Under the Amending Act lands can be acquired for housing schemes whether the object is to clear slums or to improve housing facilities in the city for rich or poor. It may be assumed that in the Madras city the housing problem was rather acute and there was abnormal increase in population and consequent pressure on accommodation, and that there was also an urgent need for providing houses for the middle-income groups and also to slum-dwellers. However laudable the objects underlying the Amending Act may be, it was so framed that under the provisions thereof any land, big or small, waste or fertile, owned by rich or poor, can be acquired on the ground that it is required for a housing scheme. The housing scheme need not be confined to slum clearance; the wide phraseology used in the Amending Act permits acquisition of land for housing the prosperous section of the community. It need not necessarily cater to a larger part of the population in the city it can be confined to a chosen few. The land could have been acquired for all the said purposes under the Principal Act after paying the market value of the land. Amending Act empowers the State to acquire land for housing schemes at a price lower than that the State has to pay if

the same was acquired under the Principal Act.

20. Now what are the differences between persons owning lands in the Madras city or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the Amending Act. To illustrate: the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the Principal Act and also for a housing scheme under the Amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the Amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the Principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the Principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the Principal Act and the other under the Amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one tying to say that the existing differences between persons

and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or ill. the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that, object, any land falling in any of the said categories can be acquired under the Amending Act. So too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Article 14 of the Constitution and is void."

31. He would also rely on paragraphs 27 to 31 of the judgment in ***Nagpur Improvement Trust and Another vs. Vittal Rao and others*** reported in ***1973 1 SCC 500***, which reads as under:

27. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.

28. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable thing,. If this argument were to be accepted it would be totally destructive of the protection given by Art.14. It would enable the State to have, one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for

clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New Delhi and another for acquiring lands in old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the un- earned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece-meal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owner are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.

29. It will not be denied that a statute cannot tax some owners of land leaving untaxed others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition? It is urged that if this were the, law it, willtic the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value due to development of a town. It; seems to us, as we have already said that to accede to the contentions of the appellant and e States would be destructive of the protection afforded by Article 14 of the Constitution. The

States would only have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principles of compensation.

30. In P. VajraveluMudaliar v. Special Deputy Collector, Madras(1) there were two Acts under which the land of an owner could be acquired. The land could have been acquired for various schemes under the Land Acquisition Act, referred to as the Principal Act, in the judgment, and the Amending Act (The Land Acquisition (Madras Amendment) Act, 1961). Court observed:

"The land could have been acquired for all the said purposes under the Principal Act after paying the market value of the land. The Amending Act empowers the State to acquire land for housing scheme at a price lower than that the State has to pay if the same was acquired under the Principal Act." The Court examined various justifications for the classi- fications which were put forth by the State, and then concluded:-

"From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the differences in the lands sought to be , acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the Amending Act. So, too, for a public

purpose any such land can be acquired under the principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principal of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Art. 14 of the Constitution and is void".

31. In ***Balammal&Ors. v. State of Madras*** *reported in* ***[1969] 1 SCR 90*** *in which the facts are substantially similar, the Board constituted under the Madras City Improvement Trust Act, (Madras Act 16 of 1945) was authorised by virtue of sec. 71, with the previous sanction of the Government, to acquire land under the provisions of the Land Acquisition Act, 1894 for carrying out any of the purposes of the Act which included Town Expansion Scheme (This sec. 71 is equivalent to see. 59 of the Improvement Act). For the purpose of acquiring land for the Board under the Land Acquisition Act, 1894 sec. 73 provided inter alia, that the, said Act shall be subjected to the modifications specified in the Schedule (This section 73 corresponds to sec. 61 of theImprovement Act). The Schedule to the Act provided for modification in the Land Acquisition Act for certain specific purposes. The Madras Act of 1945 as replaced by the Madras City Improvement Trust Act (Madras Act 37 of 1950) made an important change inasmuch as the result was that by the change persons whose lands were compulsorily acquired under the Madras Act 37 of 1950 were deprived of the right to the solatium which would be awardable if the lands were acquired under the Land Acquisition Act. In this connection this Court observed : "But, in our judgment, counsel for the owners is right in contending that sub-cl. (2) of cl. 6 of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands under S. 23 (2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on*

that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15% statutory under s. 23(2) of the Land Acquisition Act. But by acquiring the lands under the Land acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which is also a public purpose the owners are, it is claimed, deprived of the right to that statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market-value for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises, and the owners of the lands which are compulsorily acquired must on the decisions of, it his Court, be deemed invalid".

32. He, therefore, submitted that in the light of the Supreme Court judgments, Section 105-A ought to be struck down, as being discriminatory.

33. Mr.Wilson further submitted that though earlier discrimination was not one of the grounds available to strike down an enactment after the judgment of the Supreme Court in ***Shayaro Bano & Others vs. Union of India & Others*** reported in ***2017 (9) SCC 1***, if one Act results in discrimination, then that Act can be struck down. Mr.Wilson relied on Paragraph Nos.72, 73, 74, 75 and 85 to substantiate this submission that

Section 105-A(2) is *per se* discriminatory in nature because, it brings to life the State Acts, which are lesser beneficiary than the amended Land Acquisition Act, 2013.

> *72. Close upon the heels of this judgment, a discordant note was struck in State of A.P. v. McDowell & Co. [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] Another three-Judge Bench, in repelling an argument based on the arbitrariness facet of Article 14, held: (SCC pp. 737-39, para 43)*
>
> *"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of T.N. v. AnanthiAmmal [State of T.N. v. AnanthiAmmal, (1995) 1 SCC 519]. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways viz. the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter,*

the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness—concepts inspired by the decisions of the United States Supreme Court. Even in USA, these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately—an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in Hattie Mae Tiller v. Atlantic Coast Line Railroad Co., 87 L Ed

610 : 318 US 54 (1943), "A phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas", said the learned Judge.] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (see Council of Civil Service Unions v. Minister for Civil Service [Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R. v. Secy. of State for Home Deptt., ex p Brind [R. v. Secy. of State for Home Deptt., ex p Brind, 1991 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] , AC at pp. 766-67 and 762.) It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another

thing to say that the court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted."

73. This judgment in McDowell & Co. case [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] failed to notice at least two binding precedents, first, the judgment of a Constitution Bench in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] and second, the judgment of a coordinate three-Judge Bench in Lakshmanan [K.R. Lakshmanan v. State of T.N., (1996) 2 SCC 226]. Apart from this, the reasoning contained as to why arbitrariness cannot be used to strike down legislation as opposed to both executive action and subordinate legislation was as follows.

74. According to the Bench in McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] , substantive due process is not something accepted by either the American courts or our courts and, therefore, this being a reiteration of substantive due process being read into Article 14 cannot be applied. A Constitution Bench in Mohd. Arif v. Supreme Court of India [Mohd. Arif v. Supreme Court of India, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408] has held, following the celebrated Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , as follows: (Mohd. Arif case [Mohd. Arif v. Supreme Court of India, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408] , SCC pp. 755-56, para 27-28)

"27. The stage was now set for the judgment in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] . Several judgments were delivered, and the upshot of all of them was that Article 21 was to be read along with other fundamental rights, and so read not only has the procedure established by law to be just, fair and reasonable, but also the law itself has to

be reasonable as Articles 14 and 19 have now to be read into Article 21. [See at SCR pp. 646-48: SCC pp. 393-95, paras 198-204 per Beg, C.J., at SCR pp. 669, 671-74 &687 : SCC pp. 279-84 & 296-97, paras 5-7 & 18 per Bhagwati, J. and at SCR pp. 720-23 : SCC pp. 335-39, paras 74-85 per Krishna Iyer, J.]. Krishna Iyer, J. set out the new doctrine with remarkable clarity thus: (SCR p. 723: SCC pp. 338-39, para 85)

`85. To sum up, "procedure" in Article 21 means fair, not formal procedure. "Law" is reasonable law, not any enacted piece. As Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not be entitled to any procedural safeguard save such as a legislature's mood chooses.'

28. Close on the heels of Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] came Mithu v. State of Punjab [Mithu v. State of Punjab, (1983) 2 SCC 277 : 1983 SCC (Cri) 405] , in which case the Court noted as follows: (SCC pp. 283-84, para 6)

`6. … In Sunil Batra v. Delhi Admn. [Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155] while dealing with the question as to whether a person awaiting death sentence can

be kept in solitary confinement, Krishna Iyer, J. said that though our Constitution did not have a "due process" clause as in the American Constitution; the same consequence ensued after the decisions in Bank Nationalisation case [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248] and Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ….

In Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] which upheld the constitutional validity of the death penalty, Sarkaria J., speaking for the majority, said that if Article 21 is understood in accordance with the interpretation put upon it in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , it will read to say that: (SCC p. 730, para 136)

"136. 'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.' " '

The wheel has turned full circle. Substantive due process is now to be applied to the fundamental right to life and liberty."

75. Clearly, therefore, the three-Judge Bench in McDowell case [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] has not noticed Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] cited in Mohd. Arif [Mohd. Arif v. Supreme Court of India, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408] to show that the wheel has turned full circle and substantive due process is part of Article 21 as it is to be read with Articles 14 and 19.

85. The third reason given is that the courts cannot sit in judgment over parliamentary wisdom. Our law reports are replete with instance after instance where parliamentary wisdom has been successfully set at naught by this Court because such laws did not pass muster on account of their being "unreasonable", which is referred to in Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] . We must never forget the admonition given by Khanna, J. in State of Punjab v. Khan Chand [State of Punjab v. Khan Chand, (1974) 1 SCC 549] . He said: (SCC p. 558, para 12)

"12. It would be wrong to assume that there is an element of judicial arrogance in the act of the courts in striking down an enactment. The Constitution has assigned to the courts the function of determining as to whether the laws made by the legislature are in conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the courts discharge an obligation which has been imposed upon them by the Constitution. The courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the

remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the courts to declare a provision of an enactment to be unconstitutional if it contravenes any article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity."

This again cannot detain us.

34. Mr.P.Wilson, learned senior counsel would contend that Section 105-A is manifestly arbitrary and deserves to be struck down by applying the ratio of ***Shayaro Bano & Others vs. Union of India***.He further submitted that the judgment of a Hon'ble Division Bench of this court in ***K.Ramakrishnan vs. Government of Tamil Nadu represented by Secretary, Industries Department dated 02.03.2007*** which upheld the validity of the Tamil Nadu Land Acquisition for Industrial Purposes Act, 1997, would not be a binding precedent, as the judgment is contrary to the law laid down by the Hon'ble Supreme Court and should be ignored as *per incuriam*.

35. Mr.P.Wilson further submitted that Section 105-A is a piece of conditional legislation. According to him, Section 105-A(1) is subject to the

provisions of Section 105-A(2). Section 105-A(2) mandates that the State Government, shall, by notification, within one year from the date of commencement of this Act direct that the provisions of this Act relating to determination of compensation according to First schedule and provisions relating to rehabilitation and resettlement in the Second and Third schedules being beneficial to the affected families shall apply to all acquisitions under the acts specified in the Fifth Schedule. The provisions relating to compensation, rehabilitation and resettlement may be adopted with such some modification that does not reduce the compensation or dilute the provisions of this Act. According to Mr.Wilson, if Section 105-A(1) is to operate, it was mandatory on the part of the State Government to bring out a notification within one year from the date of commencement of this Act. According to Mr.Wilson, the term "This Act" refers to the amended Land Acquisition Act which came into force on 01.01.2014. He submitted that since there was no notification by 01.01.2015, section 105-A did not come into force at all. He would submit that Section 105-A is a still-born Act, which cannot be implemented. In the alternative, he would further submit that, in any event, no notification has been issued till date in accordance with Section 105-A(3). He would submit that issuance of notification is mandatory.

36. He would submit that Section 105A(3) mandates that the draft

notification so issued under Section 105-A(2) has to be placed before the Assembly. If the Assembly disapproves the notification, then no notification can be issued. If the Assembly suggests a modification in the notification, then the notification has to be modified and can be issued only in the modified form. He would state that Section 105-A (1) shall apply only if the conditions, namely, (i) a notification is issued in terms of Section 105-A(3) and (ii) the notification is placed before the assembly.

37. Mr.Wilson would further rely on the decisions of the Hon'ble Supreme Court in ***M.R.F. Limited vs. Manohar Parrikar and Ors. reported in 2010 (11) SCC 374, ShayaraoBano vs. Union of India and others*** reported in ***2017 (9) SCC 1, Vasu Dev Singh and Ors. vs. Union of India and Ors.*** reported in ***2006 (12) SCC 753, 1998 (1) SCC 318, Deena Alias DeenDayal and others vs. Union of India and others*** reported in ***1983 (4) SCC 645, M/s.Atlas Industries Ltd., and others vs. State of Haryana*** reported in ***1979 (2) SCC 196, B.K.Srinivasan and Ors. vs. State of Karnataka and Ors.*** reported in ***(1987) 1 SCC 658 and Collector of Central Excise vs. New Tobacco Co. and Ors.*** reported in ***1998 (8) SCC 250.***

38. Mr.Wilson would also submit that Land Acquisition Act being ex-proprietary in nature, could not be brought with retrospective effect. To

buttress the same, he would rely on the judgment of the Hon'ble Apex Court in ***Hindustan Petroleum Corporation Ltd., vs. Darius Shapur, Chennai*** reported in ***2005 (7) SCC 627*** and ***Lakshman Lal (Dead) through LRs vs. State of Rajasthan*** reported in ***2013 (3) SCC 764***,. Mr.Wilson would submit that even if Section 105-A is said to be a valid piece of legislation, then the Industrial Purposes Act has to be struck down as it discriminates between two land owners. He would rely on ***P.VajraveluMudaliar and Another vs. Special Deputy Collector, Madras and others*** reported in ***1965 1 SCR 614 : AIR 1965 SC 1017*** and ***Nagpur Improvement Trust and Another vs. Vittal Rao and others*** reported in ***1973 1 SCC 500***.

39. Mr.Wilson would state that Section 7(6) of the Industrial Purposes Act which is the provision for payment of compensation is unworkable. He would state that under Section 7(6) of the Industrial Purposes Act compensation is to be calculated on the basis of Section 23 of the Land Acquisition Act, 1894, which has not been repealed. Mr.Wilson would rely on Section 8 of the General Clauses Act, to contend that even if the Land Acquisition Act is repealed, compensation can be calculated only on the basis of the provisions mentioned under Sections 23 and 24 of the Land Acquisition Act, 1894 and therefore, Section 7(6) automatically becomes repugnant to Section 105-A(2) of the new Act, as inserted by Tamil Nadu Amendment Act. He would therefore submit that under Tamil Nadu Land

Acquisition for Industrial Purposes Act, 1997, compensation cannot be calculated because one cannot look into the new Land Acquisition Act (the inserted provisions) for calculating compensation for acquisition under the Tamil Nadu Land Acquisition for Industrial Purposes Act. Mr.Wilson would state that method of calculation of compensation is legislative in nature and that cannot be delegated to the executive. According to Mr.Wilson, Section 105-A(2) also suffers from the vires of excessive delegation.

40. Mr.N.Subramaniyan appearing in W.P. No.5893 of 2018 submitted that on and from 01.01.2014, Tamil Nadu Highways Act and Tamil Nadu Land Acquisition for Industrial Purposes Act have become void. According to him, by virtue of Article 254(1), Tamil Nadu Highways Act, stands impliedly repealed. For this proposition he relied on the judgments of the Hon'ble Supreme Court in ***M/s.Innoventive Industries Ltd. vs. ICICI Bank*** reported in ***2018 (1) SCC 407, ZaverbhaiAmaidas vs. State of Bombay*** reported in ***AIR 1954 SC 752 and T.Barai vs. Henry Ah Hoe and Another*** reported in ***1983 (1) SCC 177***. According to him, the new Act covers every aspect of land acquisition and therefore, once the new Act has come into force, Tamil Nadu State Highways Act stands impliedly repealed and once it is impliedly repealed,Section 105-A cannot bring life to an Act which is dead**.** According to him, it is well settled that whenever an Act is repealed it must be considered as if it never existed. Mr.N.Subramaniam

would rely on State of Uttar Pradesh & Others Vs. Hirendra Pal Singh, wherein the Hon'ble Supreme Court observed as under:-

> *"It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the Statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e., pro tanto repeal (vide Daig Ram Pindi Lal Vs. Thrilok Chand Jain 1992 (2) SCC 113, Gajraj Singh Vs. STAT, 1997 (1) SCC 650, Property Owners Association Vs. State of Maharashtra 2001 (4) SCC 455 and Mohan Raj Vs. Dinbeswari Saikia 2007 (15) SCC 115"*

41. He further submitted that Section 105-A is still born and cannot come into force at all.

42. Mr.N.Subramaniyan would also submit that the term "This Act" mentioned in Section 105-A(2) would mean the new Act and therefore, on 1.1.2015 i.e. on the date on which the President gave his assent since the State Government had not brought out a Notification as contemplated under Section 105-A(2) of the Act, it could not have come into force. He would reiterate the submissions of Mr.P.Wilson that Section 105-A(2) is completely arbitrary and deserves to be set aside. Mr.N.Subramaniyan further submitted that the assent granted by the President is not correct and reflects the complete non application of mind. According to him, entire materials have

not been placed before the President before the assent was granted. He reiterated that when it was repealed, it was construed that the State enactments never existed after 01.01.2015 and that since the whole Act stood was not in existence, it could not be resurrected by Section 105-A.

43. Mr.Suhirth Parthasarathy, expanded the proposition given by Mr.N.Subramaniyan. He would submit that, on 01.01.2014, all the State Acts stood repealed. To buttress his submission, he would place reliance on the decision of the Hon'ble Supreme Court in ***Zaverbhai Amaidas vs. State of Bombay*** reported in ***AIR 1954 SC 752***, paragraphs 9 to 11 and ***T.Barai vs. Henry Ah Hoe and Another*** reported in ***1983 (1) SCC 177***. He would further state that once the Act stood impliedly repealed, it could have been resurrected only by a fresh legislation. He would rely on the decision of the Hon'ble Supreme Court in ***PT.Rishikesh and Another vs Salma Begum (Smt.)*** reported in ***(1995) 4 SCC 718***, wherein, the Hon'ble Supreme Court has observed under:

> *"The ratio therein must be understood in the light of the facts therein. Rule 72 of Order 21 CPC was amended by the State legislature, equally the Central Act repealed the existing rule and re-enacted the rule so as to be self-operative and complete code consistent with the development of the law. Therefore, the Bench held that State amendment since was not consistent with the Central Act, the State amendment was declared repugnant to the Central Act. Therefore, it became void unless it was re-enacted by the State Legislature, reserved for consideration and received the assent of the President."(emphasis supplied)*

44. He would also rely on paragraph 9 of the judgment in ***M.Karunanidhi vs. Union of India*** reported in ***AIR 1979 SC 898***. According to Mr.Suhirth Parthasarathy, merely by inserting a Fifth Schedule and putting the State enactment in the Fifth Schedule, cannot bring back to life an Act which is dead. He would also place reliance on a Full Bench judgment of the Delhi High Court in ***P.L.Mehra vs. D.R.Khanna*** reported in ***AIR 1971 Del 1***, which states that when the State Act has become void, the only course open is to re-enact the whole of the said Act. He would adopt the arguments of Mr.P.Wilson and contended that the Highways Act and the Industrial Purposes Act, are manifestly arbitrary. He would also adopt the contention of Mr.P.Wilson that the Acts should be struck down on the grounds of arbitrariness for which purpose he also placed reliance on ***ShayaroBano's****case*.

45. Apart from the judgments cited by Mr.P.Wilson, Mr.Suhirth Parthasarathy, relied on the decisions of the Hon'ble Supreme Court in ***State of Kerala & Others vs. T.M.Peter and others*** reported in ***1980 3 SCC 554***, ***P.C.Goswami v. Collector of Darrang*** reported in ***(1982) 1 SCC 439*** and ***Nikesh Tarachand Shah v. Union of India & Another*** reported in ***(2018) 11 SCC 1*** for this purpose. He would also adopt the arguments of Mr.P.Wilson, that Section 105-A is a conditional legislation and that the condition prescribed in the legislation has not been fulfilled. The Act has not

come into force.

46. Mr.K.M.Vijayan, learned senior counsel appearing for the petitioner would also reiterate that the New Act could not be retrospectively amended and that shows complete non-application of mind by the President while granting assent. He would submit that Section 105-A is completely unworkable, since the three Acts which were sought to be inserted in Fifth schedule were dead. He further stateD that Section 105-A(2) suffers from the vires of excessive delegation and that the executive could not have been empowered to perform a legislative function which Section 105-A permits. According to Mr.K.M.Vijayan, there has to be corresponding amendment in the various sections of the State enactments that Section 105-A(2) to be unworkable. Section 7(c) of the Industrial Purposes Act, has to be amended to bring in line with Section 30 of the new Land Acquisition Act. According to Mr.K.M.Vijayan, Section 105-A(2) when the bill was forwarded, the President of India without being satisfied the exact repugnancy and therefore in the absence of material before the President, it would be stated that there was complete non-application of mind. To buttress his argument, Mr.K.M.Vijayan would rely on the decision of the Hon'ble Supreme Court in ***Kaiser-I-Hind Pvt. Ltd. and Others vs. National Textile Corporation*** reported in ***(2002) 8 SCC 182***.

47. He would also submit that Section 105-A is a conditional legislation and performance of those conditions was mandatory and since the notification, which is to be brought within one year of the commencement of the new Land Acquisition Act has not been brought out, section 105-A cannot be said to be in existence. According to Mr.Vijayan, the present property now sought to be acquired is in violation of Article 300-A of the Constitution of India.

48. Mr.Ajmal Khan, learned senior counsel would primarily reiterate the submissions of Mr.P.Wilson. He focused his submissions on the non-application of mind by the President. He would rely on the Covering Note by the Law Secretary along with the Bill would state that the nature of inconsistencies that were not brought to the knowledge of the President. He would rely on the judgment of the Hon'ble Supreme Court in ***Kaiser-Hind Pvt. Ltd. and Another vs. National Textile Corporation (Maharashtra North) Ltd. and others*** reported in ***(2002) 8 SCC 182***, to submit that the courts can go into the question as to whether such materials are placed or not, before the President. According to him, the nature of inconsistency should have been brought out before the President.

49. Mr.T.V.Ramanujun, learned Senior Counsel would adopt the submissions of other counsel and would submit that Section 105-A suffers from the vires of discrimination and has to be struck down. He would also submit that, if it is assumed that Section 105-A(2) is a valid legislation, then the provisions of calculation of compensation, at the time of passing award etc. under the State Act, would be inconsistent with the Central Act and therefore, these Acts are not workable and would suffer from arbitrariness.

50. Mr.M.S.Subramaniam, learned counsel would also broadly support the submissions made by the other counsel. He submitted that to state that the entire field of acquisition of land has been occupied by the Central legislation and there cannot be any such legislation governing the field. He would reiterate the arguments that the mandatory conditions under Section 105-A(2) has not been applied. Learned counsel relied on the decision of the Hon'ble Supreme Court in ***BishambarDayalChandramohan vs. State of UP*** reported in ***1982 (1) SCC 39***, and ***GovindlalChaggan Lal Patel vs. The Agricultural Produce Market Committee, Godhra & Others*** reported in ***1975 (2) SCC 482*** for this purpose. He would also state that the Government orders passed by the State Government is not the Law and therefore, the Government orders are violative of Article 300-A of the Constitution of India. He would also rely on (1995) 3 SCC 661 to support the arguments of non-application of mind on the part of the President.

51. One more argument which all the learned counsel made was that, the three Government orders extracted supra, cannot take the place of a notification. They would rely on Section (19-A) of the Tamil Nadu General Clause Act 1891, which defines notification as under:-

19-A "notification" shall mean a notification published in the Official Gazette;] :

52. They would also rely on Section 3(v) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which reads as under:-

" (v) -notification means a notification published in the Gazette of India or, as the case may be, the Gazette of a State and the expression -notify? shall be construed accordingly;"

53. According to the petitioners, the conditions specified in Section 105-A(2) have not been fulfilled inasmuch as (a) Government Order is not notification, as it does not fulfill the definition of notification; (b) the Government order has not been placed before the two houses of the Legislature, which is mandatory. The counsel for the petitioners would, submit that valuable properties would be taken away in violation of Article 300-A of the Constitution of India, which stipulates that no person can be

deprived of his property save by authority of law.

54. The learned counsel for the petitioners would also further submit that G.O. is only based on Article 162 of the Constitution of India, which states that the explicit power of the State is coexistence that the legislative power according to them once the Act is void and there is no legislation, the Government Order cannot operate in vacuum, more so when there is a legislation by the Central Government and the Government Order is contrary to the provisions of the new Land Acquisition Act.

Submissions of the State of Tamil Nadu:

55. Mr.Vijay Narayan, learned Advocate General, would submit that Bill No.5/2014, was introduced in the State of Tamil Nadu for enacting Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014. Section 105-A, which was sought to be introduced by the said Bill reads as under:

"l05-A. Provisions of this Act not to apply to certain. Tamil Nadu Acts or to apply with certain modifications.

(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government may, by notification within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the

First Schedule, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications as may be specified in the notification.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

3. After the Fourth Schedule to the principal Act, Addition of Fifth Schedule.

the following Schedule shall be added, namely:—

"THE FIFTH SCHEDULE.

(See section 105-A)

LIST OF TAMIL NADU ENACTMENTS REGULATING

LAND ACQUISITION IN THE STATE OF TAMIL NADU.

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978

(Tamil Nadu Act 31 of 1978).

2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999).

3. The Tamil Nadu Highways,Act, 2001

(Tamil Nadu Act 34 of 2002)"

56. The Bill did not get the assent of the President and a fresh Bill, namely Bill No.30/2014 was introduced. 105-A reads under:

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications.—(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

57. A comparison of two proposed sections would show that in the former bill introduced, it was the prerogative of the State Government to issue a Notification after one year from the date of commencement of the

principal Act and it only dealt with the determination of compensation in accordance with the schedule. In the latter bill, it became mandatory. The word used was 'shall' for the purpose of issuance of notification and it also provided not only compensation, but rehabilitation settlement in accordance with Second and Third schedule would also be taken into consideration and the provisions in the amended Land Acquisition Act, would be applicable. He further stated that the bill got the assent of the President and was gazetted, and Section 105-A was sought to be introduced.

58. The learned Advocate General would state that, Sub section (3)(i) of the amending Act states that the newly inserted provision shall be deemed to have come into force from 01.01.2014. According to the learned Advocate General, once Section 105-A is deemed to have come into effect on 01.01.2014 then, all the three State enactments are deemed to be in the V schedule on 01.01.2014 and therefore, the concept of implied repeal does not arise. According to the learned Advocate General, the contention that the three State enactments have become void to the extent of their being repugnant to the Central Act on the Central Act coming to force cannot hold water for the reason the amendment to the Land Acquisition Act by insertion of Section 105-A is deemed to have come to force from the day on which the Central Act came to force. The learned Advocate General would rely on Judgment of the Hon'ble Supreme Court in ***Gurupad Khandappa Magdum***

vs Hirabai Khandappa Magdum reported in ***1978 (3) SCC 383***, which quotes with the approval the proposition of law laid down by Lord Asquith in East End Dwellings Co. Ltd Vs. Finsbury Borough Council (1951) 2 All ER 587, as under:

> *"If you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

59. According to the learned Advocate General, if Section 105-A was in force on 01.01.2014 itself, then there was no question of implied repeal and the enactments mentioned in the V Schedule would be saved from the applicability of the Central Act, right from 1.1.2014. According to the learned Advocate General, Section 105-A(2) specifically provides that the method of calculation, compensation and the schemes of rehabilitation etc. would be applicable to the State enactments.

60. The learned Advocate General would contend that since the compensation payable under the three State enactments and the the schemes for rehabilitation and resettlement would also be in line with the

new Land Acquisition Act, there is no question of any repugnancy between the new Land Acquisition Act and three State enactments.

61. The learned Advocate General would further submit that there is no question of any discrimination in as much as the payment of compensation and the schemes of rehabilitation in the three State Acts which have been placed in Schedule V to the new Land Acquisition Act is not different from the new Land Acquisition Act. The learned Advocate General would submit that Article 254 of Constitution of India would not be attracted in the absence of any repugnancy. The learned Advocate General would further submit that in the absence of any repugnancy there can be more than one enactment for the purpose of acquisition of land. The learned Advocate General would rely on the judgment of 7 Judges Bench of the Hon'ble Supreme Court in ***MagganlalChhaganlal (P) Ltd. vs. Municipal Corporation of Greater Bombay and others*** reported in ***AIR 1974 SC 2009 : (1974) 2 SCC 402*** *to substantiate a submission that there can be more than one enactment in the same field*.

62. The learned Advocate General, submitted that the Government orders dated 31.12.1994 issued by the Highways, Minor Ports Department and Adi Dravidar and Tribal Welfare Department, must be read as a notification which is deemed to come into force on 1.1.2014. The Advocate General, therefore, submitted that, this would validate the actions taken by

the Government. He would say that Section 105-A takes care of the compensation that is to be awarded for acquisitions under three State enactments. He would state that Section 105-A(2) guides the purpose of the compensation and rehabilitation.

63. According to the learned Advocate General, Section 105-A(3) is not mandatory. According to the learned Advocate General the word 'shall' in the first portion of section 105-A(3) is only directory and that the Government may place the notification before the Houses of the Assembly. The learned Advocate General placed reliance on ***Atlas Cycle Industries vs. State of Haryana*** reported in ***1979 (2) SCC 196***, ***Quarry Owners' Association vs. State of Bihar*** reported in ***2000 (8) SCC 655*** and **The Prohibition & Excise Supdt., A.P. & Ors. vs. Toddy Tappers Coop. Society, Marredpally&Ors**reported in ***2003 (12) SCC 738***, and ***K.P. Plantations vs. State of Karnataka*** reported in ***2011 (9) SCC 1*** to substantiate his contention that the Hon'ble Supreme Court of India has held that failure to place the notification before the Assembly is not fatal and the notification does not cease to be in force, even if it is not placed before the Assembly. The learned Advocate General would state that the notification can be placed even now, before the House and the defect if any in not placing the notification before the Assembly, can be cured.

64. The learned Advocate General would rely on the judgment of the Hon'ble Supreme Court in the ***State of Tamil Nadu vs AnanthiAmmal*** reported in ***1995 AIR SC 2114*** to state that the validity of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme was upheld, as not being violative of Articles 14, 19 and 300-A of the Constitution of India. The learned Advocate General would rely on the judgment of the Madras High Court in a batch of writ petitions in ***K.Ramakrishnan vs. The Government of Tamil Nadu in W.P. No.40850 of 2005 (Batch) dated 02.03.2007***, upholding the validity of the Industrial Purposes Act. By this Judgement, the Madras High Court held that two Acts can operate in the respective fields and there is no repugnancy and that both the Acts considered in the light of the respective two natural characters. The learned Advocate General relied on ***N.Sathishkumar vs. Secretary to Government*** reported in ***2017 SCC online Mad 18861***, wherein this court observed as under.

> *"**14.** As discussed above, Sub Sections 1 and 3 of Section 105-A of the Act 1 of 2015 are distinct and different. If one reads Sub Section (1), there is no doubt that it exempts the enactments relating to land acquisition specified in the Fifth Schedule. Admittedly, the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997, comes under Fifth Schedule. The only exemption that is given is with respect to the provisions which are not made applicable to the enactments relating to the land Acquisition specified in the Fifth Schedule is to the contingency specified under Sub Section 2. Thus, when the provision dealing with the compensation, rehabilitation and resettlement under Act 30 of 2013 is beneficial and*

gives more succour to a land owner divested with the land than the one provided under the enactments mentioned in the Fifth Schedule, then such a provision will have to be applied notwithstanding an acquisition made under those enactments. As there is no dispute that the provisions governing compensation under Act 30 of 2013 are more beneficial than the one provided under the Tamil Nadu Acquisition of Land for Industrial Purposes 1997, a notification is sought to be made as mandated under Section 105-A sub clause 2 of Act 1 of 2015. Therefore, sub clause 2 of Section 105-A of the Act 1 of 2015, in specific terms, deals with the factors mentioned therein and thus, has got no direct connection with the "acquisition of land" under the Acts mentioned in the Fifth Schedule as such. In the case on hand, it is not necessary to go into the issue pertaining to the non-publication of the notification since the respondents have agreed to grant the benefit. Suffice it is to state that even assuming that a notification has not been issued and published by the State Government, that by itself will not set at naught or nullify the acquisition made.

15. *There is no repugnance involved. This is for the reason, Section 105-A of the Act 1 of 2015 itself gives a clearance for an acquisition under the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997. Though under Section 114 of the Act 30 of 2013, the Land Acquisition Act, 1894 (1 of 1894) has been repealed, the provisions of compensation available under the Tamil Nadu Act 10 of 1999, under Section 7(6) would not become inoperative. This provision as rightly submitted by the learned Senior Counsel appearing for the second respondent is a piece of legislation by incorporation. Thus, even though the provision contained under Sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 are made applicable to determine the compensation amount under Section 7 of Tamil Nadu Act 10 of 1999,*

the said section shall continue to be in statute. To put it otherwise, repealing of the Land Acquisition Act, 1894 would not have any bearing on the provisions of the Tamil Nadu Act 10 of 1999, though certain provisions of the earlier Act have been borrowed into it. This position of law has been held way back in the year 1963 in RAM SARUP v. MUNSHI (AIR 1963 Supreme Court 553) the following is fruitful recapitulation of relevant passage.

"(1) Definition of "agricultural land' under S.3(1): Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. The effect of incorporation is stated by Brett, L.J., in Clarke v. Bradlugh, (1881) 8 QBD 63.

"Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second."

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Preemption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it."

***16.** Therefore, the contention of the learned Senior Counsel appearing for the petitioner that there is neither a provision for compensation under Tamil Nadu Act 10 of 1999 nor under Act 30 of 2013 available to the petitioners and thus, the entire land acquisition proceedings would become nullity, cannot be sustained in the eye of law."*

65. However, this court held that it is to be noted that in the said

decision, the vires of Section 105-A had not been challenged. The learned Advocate General had also placed reliance on ***S.S.Thangatthevan vs. Government of Tamil Nadu in W.P. (MD) No.1329 of 2015 (Batch)dated 1.3.2018,*** observed as under:

> *"63. Therefore, this Court finds that the respondents have issued a notice under Section 15(2) of the Tamil Nadu Highways Act and the main point urged in these writ petitions by the petitioners is that instead of invoking the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill 2013, the respondents have issued a notice under the Tamil Nadu Highways Act. However, as rightly contended by the learned Additional Advocate General appearing for the State, the Tamil Nadu Act 1 of 2015 received the assent of the President of India on 01.01.2015 and accordingly, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 came into force on 01.01.2014 itself and thus, the repugnancy between the Central Act and the State Act, as alleged by the petitioners, is also cured. As per the amendment Act, the V Schedule is added. As per the Acts listed in the V Schedule, the operation of the Principal Act is dispensed with. The Tamil Nadu Highways Act 2001 also got inserted in the V schedule."*

66. The learned Advocate General would also rely on ***K.Ramakrishnan vs. The Government of Tamil Nadu in W.P. No.40850 of 2005 (Batch) dated 02.03.2007***, which held that Highways Act is not limited to application alone and is a composite Act, for all the

activities of the Highways and the acquisition is only explanatory. According to the learned Advocate General, the Highways Act, in pith and substance, is only for the purpose of Highways and the fact, which is incidental, it also provides for provision for acquiring land for the purpose of Highways, would not make this Act repugnant to the Central Act, because in pith and substance the Highways Act does not deal with acquisition, which is covered only under the Land Acquisition Act.

67. Mr.P.H.Arvindh Pandian, learned Additional Advocate General, appearing for SIPCOT and TANGEDCO submitted that, it cannot be argued that there was no material before the President and the President sans the material, has given his assent. He would further state that three Bills had been placed before the President of India. In Bill No.5 dated 22.2.2014, he would submit that the President of India did not grant his assent on that Bill and it was returned. It was only when the President was satisfied that the defects pointed out, while returning the said Bill were cured. The President gave his assent. All necessary information and material were furnished for specific reference with regard to three Acts.

68. With regard to repugnancy, the learned Additional Advocate General, would rely on the decisions of the Hon'ble Supreme Court in ***Engineering Kamgar Union vs. Electro Steels Castings Ltd. and***

Another reported in ***2004 (6) SCC 36*** and ***Dr.Krushna Chandra Sahu and others vs. State of Orissa and others*** reported in ***1995 (6) SCC 1***, to substantiate his contention. He would also state that for the three Acts, which are now sought to be put in the Fifth Schedule, the assent of the President has been given and it cannot be said that the three Acts were not there with the President.

69. It is the submission of the learned Additional Advocate General that both the Acts apply in their respective fields. According to him, judgment of ***ShayaroBano's*** case is not applicable to the facts of the case. He placed reliance on the decisions of the Hon'ble Supreme Court in ***State of Mysore & Another vs D.Achiah Chetty etc***. reported in ***1969 (1) SCC 248*** and ***Subramanian Swamy vs. Director, CBI & Another*** reported in ***2014 (8) SCC 682,*** to buttress his contention.

Submissions in rejoinder:

70. Mr.Suhirth Parthasarathy, in his rejoinder submitted that the contention of the Advocate General on the deeming provision, cannot be accepted. He would even state that assuming that the Act came into force on 1.1.2014, yet it cannot be restituted. Mr.Parthasarathy will contend that the Central Act (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) received the assent

on 27.9.2013 and the moment the President gave his assent, Article 254 comes in, and thereafter the three Acts became repugnant on that very day. He would say that making Section 105-A, as deemed to have come into force from 1.1.2014 is of no consequence. Mr.Parthasarathy would place reliance on ***State of Kerala vs. Mar AppraemKuri Co. Ltd.*** reported in ***2012 (7) SCC 106***, wherein the Hon'ble Supreme Court held that repugnancy arises on the making and not from the commencement of the Act. He would further argue that the moment the President gives his assent to the Bill, the law is made and once the law is made, then all the State Acts which operate in concurrent list, would become repugnant to the Central Act and therefore, he contends that though the State Act comes into force only on 1.1.2014, the date on which the Central Act came into force, the deeming fiction still not validate section 105-A. Introducing Section 105-A in the Central Legislation even after obtaining the assent of the President is no answer to the question of repugnancy.

71. To respond to these submissions, Mr. Arvindh Pandian, Learned Additional Advocate General has placed reliance on the decision of the Supreme Court in the case of ***Jagannath v. Authorised Officer, Land Reforms, (1971) 2 SCC 893*** to submit that it is not necessary to re-enact the three state enactments for them to have the force of law.

"18. *In M.P.V. Sundararamier and CO. v. State of Andhra*

Pradesh13Venkatarama Aiyar, J. speaking for the majority of the Court discussed at some length the different aspects of the unconstitutionality of a statute. Speaking for the Court he said (at p. 1468):

"In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State of an Entry in List I, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the View that while a law on a matter not within the competence of the legislature is a nullity, a law on a topic within its competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what

was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment."

23. *Apart from the question as to whether fundamental rights originally enshrined in the Constitution were subject to the amendatory process of Article 368 it must now be held that Article 31-B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights, and by the express words of Article 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Article 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule, read with Article 31-B of the Constitution. The States could not, at any time, cure any defect arising from the violation of the provisions of Part III of the Constitution and therefore the objection that the Madras Ceilings Act should have been re-enacted by the Madras legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted.*

Summary of Arguments Advanced:

72. Contentions of the petitioners can be summarized as under:

i) Even though the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, new Act came into force on 1.1.2014 it got the assent of the President on 27.09.2014. On that date itself, the three Acts, namely Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and Tamil Nadu Highways Act, 2001, had become repugnant in the light of the judgment of the Hon'ble Supreme Court in ***Pt. Rishikesh v. Salma Begum*** reported in ***(1995) 4 SCC 718*** and ***State of Kerala v. Mar AppraemKuri Co. Ltd.*** reported in ***(2012) 7 SCC 106***. The amended Act, therefore, could not bring to life to the three Acts which were not in existence on 1.1.2014.

ii) Section 105-A(2) mandates that the Government has to by notification within one year from the date of commencement of this Act i.e. from 1.1.2014 bring out a Notification relating to the determination of compensation in accordance with the new Act. The Government has not brought out the notification and therefore Section 105-A(1) which is subject to sub section (2) could never have come into force.

iii) The notification has not been laid before the Assembly under Section 105(3). Section 105(3) is mandatory and therefore Section 105-A could never have come into force. Even assuming without admitting that the three Acts have come in back to force, they have to be struck down as being discriminatory. The stand of the Government is as under "pithily put".

73. The arguments of the State of Tamil Nadu can be summarized as follows:

i) Section 1 (3) of the amending Act states that it shall be deemed to have been come into force on 1.1.2014. The courts must give fullest efforts to the deeming provision.

ii) The Government orders dated 31.12.2014 is sufficient compliance of Section 105(2) which states that the compensation payable under the three State Enactments shall at no cost will be lesser than the amount and the rehabilitation schemes will also be in tune with the new Land Acquisition Act.

iii) 105-A(3) which states that the notification should be placed before the assembly is only directory and not mandatory.

Issues:

74. The issues therefore, which arise for our consideration are:

1) Are the State Enactments void because of inherent Arbitrariness?

2) Did the President of India fail to apply his mind while granting assent to Section 105A?

3) Did the Impugned State Enactments become repugnant once the Parliament 'made' the New Land Acquisition Act. If so, did the presidential assent to Section 105A inserted by Tamil Nadu Act No. 1 of 2015, revive the three acts?

4) Are the provisions of Section 105A(2) and (3) mandatory, and if so, whether non-compliance of these provisions fatal to the validity of these enactments.

Arbitrariness of the Impugned State Enactments:

75. It has been extensively argued at the bar, that the three state enactments ought to be struck down on account of the fact that they violate Article 14 of the Constitution of India, and they suffer from the vice of arbitrariness.

76. The argument as to whether the three State enactments have to be struck down because of the fact that they will be hit by Article 14 of the Constitution of India, need not deter us. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was upheld by the Hon'ble Supreme Court in *State of Tamil Nadu and Others vs AnanthiAmmal and Others* reported in *AIR 1995 SC 2114.* In the said judgment, the Hon'ble Supreme Court held as under:

> *"28. This is an appeal by the owner of land whose land was sought to be acquired under the provisions of the Land Acquisition Act for the purpose of a Harijan Welfare Scheme after the coming into force of the said Act, that is the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978 the appellant filed a writ petition in the Madras High Court for a direction to the State to for bear from continuing with the proceedings under the Land Acquisition*

Act having regard to the provisions of Section 20 of the said Act which required that for such purpose land could be acquired only in accordance with the provisions of the said Act. The learned single Judge dismissed the writ petition and the Division Bench the appeal filed therefrom, both on the ground that said Act, had been struck down as unconstitutional. Hence this appeal.

29. We have held the provisions of the said Act to be valid legislation except in so far as they provide for payment of the compensation amount in instalments. The said Act being valid legislation,its provisions preclude the State from acquiring land for the purpose of a Harijan Welfare Scheme under the Land Acquisition Act. The appeal is allowed and the proceedings under the Land Acquisition Actto acquire the appellant's land for the purpose of a Harijan Welfare Scheme are, therefore, quashed and set aside."

77. Similarly, the validity of the State Highways Act is upheld and the validity of Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997 in a batch of writ petitions in W.P. No.29555 etc. ***N.Sathish Kumar &Ors. vs. Secretary to Government, Industries Department, Government of Tamil Nadu and Ors.*** reported in ***MANU/TN/1116/2017***, wherein it was argued that the Act should be struck down has been violative of Article 14, this court rejected the contention in paragaraphs 14 to 16 quoted supra. Similarly, the question as to whether the Tamil Nadu Highways Act, is repugnant to the new Act, this court in ***S.N.Sumathi vs. State of Tamil Nadu and Ors.*** reported in ***MANU/TN/0882/2015*** observed as under :

"13. Now the contentions raised by the petitioners is that though there is no provision under the Tamil Nadu Highways Act 2001 on par with either under Sec.11A of the Land Acquisition Act, 1894 or under Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the proceedings initiated for acquiring the lands belonging to the petitioners under the Tamil Nadu Highways Act 2001 were deemed to have lapsed, since even after lapse of four years, the respondents have not determined the compensation.

14. As per Sec.11A of the Land Acquisition Act, 1894, the Collector shall make an Award under Sec.11 within a period of two years from the date of the publication of the declaration and if no Award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

15. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force w.e.f.1.1.2014. As per Sec.114 of the said Act, the Land Acquisition Act, 1894 was repealed . The Tamil Nadu Highways Act 2001 came into force on 1.12.2002. As per Sec.68 of the Tamil Nadu Highways Act, the provisions of the Land Acquisition Act, 1894 shall cease to apply to any land, which is required for the purpose specified in Sec.15(1) of the Act and any such land shall be acquired by the Government only in accordance with the provisions of the Tamil Nadu Highways Act. However, in Sec.19(6) of the Act in determining the compensation, the Collector shall be guided by the provisions contained in Secs.23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 subject to modification that in sections 23 and 24, the reference to the

date of publication of the Notification under Sec.4(1) and the date of publication of the declaration under Sec.6 of the said Act shall be construed as reference to the date of publication of the notice under sub sections (2) and (1) respectively, of Sec.15 of the Tamil Nadu Highways Act.

16. Secs.23 and 24 of the Land Acquisition Act, 1894 shall apply for the guidance of the determination of the amount for the lands acquired subject to modification contained in Section 19(6) of the Tamil Nadu Highways Act. The provisions similar to Sec.11(a) of the Land Acquisition Act, 1894 has been incorporated in Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, whereby the Collector shall make an Award within a period of twelve months from the date of publication of the declaration under Sec.19 and if no award is made wtihin that period, the entire proceedings for the acquisition of the land shall lapse. However, the Government shall have the power to extend the period of 12 months if in its opinion, circumstances exist justifying the same and any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

17. Under Sec.19(11) of the Tamil Nadu Highways Act, the Collector shall dispose of every case referred to him under sub-section (3) for determination of amount as expeditiously as possible and in any case within six months from the date of such reference. Though the time limit has been fixed for determination of compensation under Sec.19(11) of the Tamil Nadu Highways Act, the main diffference between the Tamil Nadu Highways Act and the other two Acts is that after the

expiry of the period of two years under the Land Acquisition Act, 1894 and after the expiry of 12 months period Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire proceedings will lapse. But in the Tamil Nadu Highways Act, even after the expiry of six months period contemplated under Sec.19(11) of the Act, it will not lapse. However, under Sec.24 of the Tamil Nadu Highways Act, when the amount is not paid or deposited on or before taking possession of the land, the Government shall pay the amount determined with interest thereon at the rate of nine percent per annum from the time of so taking possession until it shall have been so paid or deposited.

19. It is also pertinent to note that in the Acquisition of Land for Harijan Welfare Scheme Act 1978 and in the Tamil Nadu Acquisition of Land for Industrial Purposes Act also, there is no provision similar to Sec.11A of the Land Acquisition Act 1894 or Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been incorporated. Vires of the Acquisition of land for Harijan Welfare Scheme Act was also challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court in the judgment reported in AIR 1995 SC 2114 (State of Tamil Nadu and Others vs AnanthiAmmal and Others) upheld the validity of the provisions contained in the Act except the provisions contained under Sec.11 providing for payment of compensation amount in instalments.

22. In the case on hand, under Sec.19(11) of the Tamil Nadu Highways Act, the Collector should determine the compensation within six months. If the Collector does not determine the compensation within six months, under Sec.24 of

the Act, the land owners are entitled to the interest at the rate of 9% p.a which has been included for compensating any disadvantage that may be caused to the land owners.

36. Before parting with, since it is for the Legislature to modify, amend or repeal the provisions of the Tamil Nadu Highways Act, I would like to suggest that the Legislature may consider amending the Act by incorporating an outer time limit for determination of the compensation by the District Collector and in the case of not completing the determination within the stipulated period, the legislature may consider introducing the deemed provisions as found in Sec.11A of the Land Acquisition Act 1894 and also in Sec.25 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which will be advantageous to the land owners, who were deprived of their lands in the acquisition proceedings under the Tamil Nadu Highways Act, for getting a higher compensation. The authorities may do the needful in this regard."

78. Similarly, a Hon'ble Division Bench of this court in K.Ramakrishnan vs. Government of Tamil Nadu reported in 2007 W.L.R. 372, while dealing with the challenge to Tamil Nadu Acquisition of Land for Industrial Purposes Act and the Rules, upheld the Industrial Purposes Act, by holding as under:

"30. Resultantly,

(i)the T.N.Acquisition of Land for Industrial Purposes Act and the Rules framed thereunder does not suffer from lack of legislative competency of the State Government and therefore, the same are held constitutionally valid;

(ii)the impugned acquisition proceedings initiated under the T.N.Acquisition of Land for Industrial Purposes Act does not suffer any illegality, irrationality, or procedural impropriety; and

(iii)the writ petitions and connected miscellaneous petitions are dismissed. No costs."

79. The argument of the learned counsel for the parties, more particularly, Mr.P.Wilson that the three State enactments ought to be struck down on the ground of discrimination in the matter of computation and payment of compensation cannot be accepted. Section 105-A(2) and the Government orders categorically states that the compensation has to be paid under the three State enactments will not be lesser than the compensation awarded under the new Land Acquisition Act. Similarly, it is also observed and accepted that a rehabilitation scheme and resettlement scheme would also be not lesser than the new Land Acquisition Act. It can therefore be said that the three State enactments are governed completely by new Land Acquisition Act for the purpose of grant of compensation and for resettlement/rehabilitation. Therefore, it cannot be said that there is discrimination. A Bench of seven Judges ***MaganlalChhaganlal (P) Ltd. vs. Municipal Corporation of Greater Bombay & Others*** reported in ***AIR 1974 SC 2009 : (1974) 2 SCC 402***, has held that there could be two Acts in the same field if it is not direct conflict to each other. The Hon'ble

Supreme Court has remarked as under:

> ***"45.*** *It would on this view appear to be unnecessary to consider whether the special procedure set out in Chapter VA of the Municipal Act is substantially more drastic and prejudicial than the ordinary procedure of a civil suit. That is one more requirement which must be satisfied before the special procedure provided in Chapter VA of the Municipal Act can be condemned as discriminatory. We should not have ordinarily proceeded to consider whether this requirement is satisfied or not as it is unnecessary to do so, but since we find that there is some confusion in regard to this question which needs to be cleared up and the mist of uncertainty surrounding this question needs to be dispelled, we propose to deal with this question.* ***We may point at the outset — and this must be constantly borne in mind, for otherwise it is likely to distort the proper perspective of Article 14 — that mere minor differences between the two procedures would not be enough to invoke the inhibition of the equality clause****. The equality clause would become the delight of legal casuistry and be shorn of its real purpose which is to provide hope of equal dispensation to the common man — "the butcher, the baker and the candle stick maker" — if we indulged in weaving gossamer webs out of this guarantee of equality or started meticulous hunt for minor differences in procedure. What the equality clause is intended to strike at are real and substantial disparities, substantive or processual and arbitrary or capricious actions of the executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of prejudice into legislative inequality or executive discrimination. Our approach to Article 14 must be informed by a sense of perspective and proportion based on robust*

understanding and rejection of over refined distinctions. The whole dimension of protection against discrimination in the processual sphere relates to real and substantial disparities in procedures. What is necessary to attract the inhibition of Article 14 is that there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial than the other and not mere superfine differences which in this imperfect world of fallible human instruments are bound to exist when two procedures are prescribed. We should avoid dogmatic and finical approach when handling life's flexible realities."

80. The purpose of acquisition under all the four Acts, namely new Act and three State Acts are different. The compensation provided under all the four Acts is going to be identical, the rehabilitation and resettlement scheme too shall be identical. In view of the above, the judgment of the Hon'ble Supreme Court in ***P.VajraveluMudaliar and Another vs. Special Deputy Collector, Madras and others*** reported in ***1965 1 SCR 614 : AIR 1965 SC 1017*** and ***Nagpur Improvement Trust and Another vs. Vittal Rao and others*** reported in ***1973 1 SCC 500*** will not apply to the facts of the case. The purpose of the new Act is not going to be defeated by placing the three State Acts in the V Schedule and stating that the new Act will not apply to them. The argument is therefore not accepted, and the Acts cannot be struck down on the ground of arbitrariness.

81. Learned Counsel for the Petitioners have also contended that in

view of the Judgement of the Hon'ble Supreme Court in the case of **ShayaraBano v. Union of India, (2017) 9 SCC** 1, this Court can strike down the impugned state enactments on the ground of "manifest arbitrariness." We therefore deem it appropriate to examine the scope of Manifest Arbitrariness. The Supreme Court in the case of **ShayaraBano** has held as under:

> ***"101.*** *It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India89 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14.* ***Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary****. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.*
>
> *[Emphasis Supplied]"*

82. The Judgement of the Hon'ble Supreme Court in **Shayara Bano's** case is clear insofar as it lays down that the only when the legislature does

something capriciously, irrationally or without adequate determining principle, the action so done can be struck down as being manifestly arbitrary. From the facts of this case, the enactment of the three impugned State Acts, can in no way be held to irrational, capricious, or without adequate determining principle, and therefore this argument of the Petitioners deserves to be rejected.

Did the President of India apply his mind while granting assent to the Tamil Nadu Act no. 1 of 2015

83. Submissions were made at great length at the bar contending that the President of India has failed to apply his mind while granting assent to Tamil Nadu Act No. 1 of 2015. We will now proceed to deal with these submissions.

84. The State Government have obtained assent of the President on 5.1.2015. The assent of the President was obtained because of the fact that Entry 42 List III deals with acquisitions and requisitions of the property. Since the new Act has come into force the three state enactments were impliedly repealed. The State Government, have, therefore, obtained the assent of the President to ensure that the provisions of the three State enactments would be applicable to the State of Tamil Nadu.

85. Mr.P.Wilson and Mr.M.S.Subramaniam, both strenuously argued that the copies of the three Acts which were repugnant to the Central Act had not been placed before the President. On 15.12.2014, the Law Secretary sent a letter to the President of India for consideration of the President. The said letter along with all the annexures read as under:

MOST IMMEDIATE Law Department,
STATE LEGISLATION Secretariat
Chennai - 600 009

Letter No.22018/Rev-Dfs/2014, dated 15.12.2014

From
Dr.G.Jayachandran, M.A., M.L., Ph.D.,
Secretary to Government

To
The Joint Secretary (Judicial)
Ministry of Home Affairs
Government of India
NDCC-II Building
Jai Singh Road
New Delhi - 110 001 (w.e.)

Sir,

Sub : The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 - Reserved for the consideration of the President - Regarding
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I am directed to state that the Governor has reserved the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014, which was passed by the Tamil Nadu Legislative Assembly, for the

consideration of the President. Three authentic copies of the Bill bearing appropriate endorsements made by the Speaker of the Legislative Assembly and the Governor are enclosed.

2. In order to continue acquisition of land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) and the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), after the date of commencement of the Rights to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and to apply the provisions of the Central Act 30 of 2013 for determination of compensation to the cases of land acquisition under the said Tamil Nadu Acts, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A. Bill No.5 of 2014) was passed by the Legislative Assembly on 20.02.2014 and reserved by the Governor for the consideration of the President. The Government have now decided to apply the provisions of Central Act 30 of 2013 relating to rehabilitation and resettlement also to the cases of land acquisition under the said Tamil Nadu Acts, in addition to compensation. Accordingly, the Government have taken a policy decision to withdraw the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A. Bill No.5 of 2014) and to introduce a fresh amendment Bill, incorporating certain changes, on the lines of the provisions of Section 105 of the Central Act 30 of 2013. The Bill authorises the State Government to issue a clarification to apply the provisions of Central Act 30 of 2013 relating to determination of compensation, rehabilitation and resettlement to the cases of land acquisition under

the above said Tamil Nadu Acts. The Bill seeks to given effect to the above decision.

3. The Bill falls, mainly, within the scope of the following entries of the State and Concurrent Lists in the Seventh Schedule to the Constitution, namely:-

STATE LIST

Entry 18:- Land, that is to say, rights in or over land.....

CONCURRENT LIST
Entry 42:- Acquisition and requisitioning of property and is intra-vires the State Legislature.

4. The law made by the Parliament on the subject "Acquisition and requisitioning of property", namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) contains procedure for acquisition of land for the purposes specified therein. Besides that, the said Act contains provisions relating to compensation, rehabilitation, resettlement, etc. The Bill seeks to amend the said Central Act 30 of 2013 so as to insert a new section 105-A in the said Act on the lines of the provisions of Section 105 of the Central Act 30 of 2013, in its application to the State of Tamil Nadu. The proposed new section 105-A seeks to provide that the provisions of the said Central Act 30 of 2013 will not apply to the Tamil Nadu enactments relating to land acquisition specified in the Fifth Schedule and authorise the State Government to issue a notification to apply the provisions of Central Act 30 of 2013 relating to determination of compensation, rehabilitation and resettlement to the cases of land acquisition under the said Tamil Nadu Acts. The provisions of new Section 105-A may be said to be repugnant to the

provisions of the said Central Act 30 of 2013. Therefore, the Bill has been reserved for the consideration of the President under Article 254(2) of the Constitution.

5. I am also directed to enclose a Certificate, as required by the Government of India, Ministry of Home Affairs, New Delhi in their D.O. Letter No.F.17/23-72/Judl., dated the 3rd August 1972.

6. I am, therefore, directed to request that the Government of India will be so good as to obtain the assent of the President to the Bill and to return two authentic copies of the Bill to the Government with the assent of the President signified thereon, expeditiously.

Yours faithfully,
for Secretary to Government

Copy to:

1.The Secretary to Government
Revenue Department
Chennai - 9

2.The Principal Resident Commissioner,
Tamil Nadu House, No.6, Kautilya Marg
Chanakyapuri, New Delhi - 110 021

LAW DEPARTMENT

CERTIFICATE FOR OBTAINING ASSENT OF THE PRESIDENT

Sub :- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Second Amendment) Bill, 2014 - Reserved for the consideration of the President - Regarding
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Certified that the following documents in connection with the above

mentioned Bill are attached herewith:-

(1) Six copies of the letter of the State Government forwarding the Bill

(2) Three authentic copies of the Bill printed on parchment paper, each endorsed by the Governor, reserving the Bill for the consideration of the President.

(3) Six copies of the Bill, as passed by the Tamil Nadu Legislative Assembly

(4) Six copies of the Bill with Statement of Objects and Reasons, as introduced in the Tamil Nadu Legislative Assembly

(5) Six copies of the comparative Statement showing the relevant section as it exists and as it would read after the proposed amendment.

G.JAYACHANDRAN
SECRETARY TO GOVERNMENT

//Forwarded By Order//

Section Officer.

86. According to the learned senior counsel appearing for the petitioners since the three Acts were not sent to the President, it cannot be said that the President could have applied its mind on the Acts in question. The petitioner relied on the decision of the Hon'ble Supreme Court in

Kaiser-I-Hind Pvt. Ltd. And Another vs. National Textile Corpn. (Maharashtra North) Ltd. & Others reported in ***(2002) 8 SCC 182,*** wherein the Hon'ble Supreme Court at paragraph 65 observed as under:

> ***"65.*** *The result of the foregoing discussion is:*
>
> *1. It cannot be held that summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.*
>
> *2. (a) Article 254(2) contemplates "reservation for consideration of the President" and also "assent". Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.*
>
> *(b) The word "assent" used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.*
>
> *(c) In case where it is not indicated that "assent" is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.*
>
> *3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require assent of the President in case of repugnancy."*

87. It is argued that consideration by the President is not an empty

formality when attention of the President was drawn to the repugnancy between the law made and the law contemplated by State legislation and the reasons for having such law, despite the enactment by Parliament. The submissions of the learned counsel for the petitioner is that the very fact that the President has granted assent to the Tamil Nadu Act No. 1 of 2015, without considering the repugnancy in the State enactments, shows that he has not applied his mind, and that if the President had applied his mind, assent would not have been given.

88. We are afraid that the arguments of the learned counsel can be accepted. The letter of the Secretary categorically states that in order to continue the acquisition of the lands under the three Acts, the Government have decided to seek the assent of the President. Paragraph 4 of the said letter specifies as to why Section 105-A has been inserted. The copies of the Bills, as introduced in the Assembly, and copies of the deemed submissions showing relevant sections exists and after the proposed amendment, has been given. It is also important to mention that the three Acts, namely (i) The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978); (ii) The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999); and (iii) The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), under which lands are sought to be acquired by putting them in the V Schedule had also

obtained the assent of the President on 21.7.1978, 25.5.1999 and 16.9.2002 respectively. Copies of the Acts were therefore available with the President. All the materials were available with the President and thus therefore it cannot be said that there was non-application of mind on the part of the President while granting assent. It is also to be remembered that the First Bill was returned only on the ground of inconsistency between the three Acts. The submission that the President has not applied his mind to the repugnancy while granting assent to the bill, therefore cannot be accepted, and is rejected by this Court.

89. Repugnancy, effect of deeming provisions in the Amendment Act and *did the Impugned State Enactments become repugnant once the Parliament 'made' the New Land Acquisition Act. If so, did the presidential assent to Section 105A inserted by Tamil Nadu Act No. 1 of 2015, revive the three acts?*

90. Before Adverting to rival submissions, it is important to examine the law relating to repugnancy, in the context of the power to legislate of the Centre and the State. Article 246 of the Constitution of India deals with the distribution of legislation powers as between the Union and the State Legislatures with reference to the different lists in the Seventh schedule. The Parliament has full and exclusive power to legislate in respect of matters in

List 1. States however, exercise exclusive powers to legislate in respect of matters in List 2. The Parliament has the power to legislate on matters in respect of list 3. The State government too enjoys concurrent power with respect to matters included in List 3. Issues arise when there is inconsistency between laws made by the Legislatures and laws made by the Parliament in respect of matters enumerated in List 3.

91. Article 254 deals with resolution of such inconsistencies. Article 254 reads as under:

> *"254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*
>
> *(2) Where a law made by the Legislature of a State 1 *** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter*

including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

92. A reading of Article 254 reveals that Article 254(1) gives overriding effect to the provisions of law made by the parliament, which the parliament is competent to enact or to any provision or to any existing law in respect of matters enumerated in List 3 and if a law made by a State Legislature is repugnant to the provisions of the law made by the Parliament, then the law made by the legislature of the State is treated to be void to the extent of the repugnancy. It could be seen that so far as clause (1) of Article 254 is concerned, which clearly sets out where any provision of law made by the legislation of the State, is repugnant to any provision of law made by the Parliament then to the extent of repugnancy, the State law would be void. This means that when law is made by both the states and Parliament under their power to legislate under List 3, then the Act passed by the Parliament whether made prior in point of time or later, will prevail and consequently, the state Act will have to yield to the Central Act.

93. However, Article 254(2) contemplates that where a law made by the Legislature of a State contains any provision repugnant to the provisions of the earlier law made by the parliament, then the law made by the legislature of the State, shall, if it has been reserved for the consideration of

the President and has received his assent will prevail in the State.

94. The result of obtaining the assent of the President would be that insofar as the State Act is concerned, it will prevail in the State and will override the law made by the Parliament in its applicability to the State. Land acquisition falls in the concurrent list meaning thereby both the State legislature and the parliament are competent to enact laws. The Land Acquisition Act, 1894, is the law made by the parliament, which covers the entire field in all matters relating to acquisition of land, payment of compensation and other subjects. Various state governments have enacted laws for acquiring land in their respective States for different purposes after obtaining the assent of the President and these laws are applicable in the respective States even if they contained provisions which are inconsistent with the provisions contained in the Land Acquisition Act. The State of Tamil Nadu has also enacted (i) Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, (ii) Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and (iii) Tamil Nadu Highways Act, 2001. The State obtained assent of the President on 21.7.1978, 25.5.1999 and 16.9.2002 in respect of these three statutes, respectively.

95. As already discussed, the Parliament was of the view that the Old Act, 1864 Act is resulting in drastic reduction of agricultural lands, and ensuring that agriculturalists were turned into landless poor. There were was

no scheme for rehabilitating persons who have lost their livelihood/land, and the Parliament thought it fit to bring out the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the New Act. The effect of the New Act is that on the date when the said Act was made, the three State enactments, namely Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and Tamil Nadu Highways Act, 2001, which contained provisions inconsistent to the new Land Acquisition Act, would become void, insofar as repugnancy is concerned.

96. The Government of Tamil Nadu brought out G.O. Ms. No.45 dated 14.5.2014 stating that pursuant to the commencement of the New Act, executive instructions were issued in G.O. No.88 and how to proceed with further action on pending land acquisition cases which had already been initiated under the Old Act, based on the provisions laid down in Section 24(1) of the New Act. The Government order states that the State of Tamil Nadu had enacted three State Acts, namely Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition for Land for Industrial Purposes Act, 1997 and Tamil Nadu Highways Act, 2001. The Government Order states that the State Government had considered it necessary to continue with the acquisition of land under the State Acts for a period of one year on the same lines as provided under Section 105 of the

new Act, which exempts 13 Central enactments specified in the Fourth schedule and enables continuation of the acquisition of land under the State enactments for a limited period of one year from the date of commencement of new Land Acquisition Act.

97. The said G.O. No.45 further states that, to give effect to the decision to new Land Acquisition Act, Tamil Nadu Amendment Bill 2014 (LA 5/2014) has been passed to amend the new Act, so as to continue acquisition of lands under the above mentioned Acts for a period of one year from the date of commencement of the new Land Acquisition Act, by including the three State Acts, in a newly inserted Fifth Schedule and the Government of India has been requested to obtain the assent of the President.

98. In pursuance to the said GO, the State Government issued three Government Orders dated 31.12.2014 in G.O. Ms. No.169 Highways and Minor Ports (HF1) Department, G.O. Ms. No.251 Industries (SIPCOT-LA) Department and G.O. (Ms) No.110, Adi Dravidar and Tribal Welfare (LA2) Department.

99. Bill No.5/2014 stated above was sent to the President for effecting the amendment under the new Land Acquisition Act. The bill has been

extracted above.

100. The said bill, as stated earlier, was returned with defects. The bill was redrafted after curing the defects and once again sent to the President for his assent. The said bill was sent with a covering letter dated 15.12.2014. The President gave his asset on 1.1.2015 and the amendment came into effect from 1.1.2015. Amendment Act has already been extracted.

101. It is the contention of the petitioners that all the State enactments have been repealed by the New Act. The petitioners for this proposition, placed reliance on ***ZaverbhaiAmaidas vs. State of Bombay*** reported in ***AIR 1954 SC 752 : (1955) 1 SCR 779***, wherein the Hon'ble Supreme Court has observed as under:

> ***"7.*** *This is, in substance, a reproduction of Section 107(2) of the Government of India Act, the concluding portion thereof being incorporated in a proviso with further additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that under Section 107(2) of the Government of India Act, it was observed by Lord Waston in Attorney-General for Ontario v. Attorney-General for the Dominion [(1896) AC 348] that though a law enacted by the Parliament of Canada and within its competence would override Provincial legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any Provincial statute. That would appear to have been the position under Section 107(2) of the Government of India Act with*

reference to the subjects mentioned in the Concurrent List. Now, by the proviso to Article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under Section 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can, acting under the proviso to Article 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament.

8. *In the present case, there was no express repeal of the Bombay Act by Act 52 of 1950 in terms of the proviso to Article 254(2). Then the only question to be decided is whether the amendments made to the Essential Supplies (Temporary Powers) Act by the Central Legislature in 1948, 1949 and 1950 are "furthers legislation" falling within Section 107(2) of the Government of India Act or "law with respect to the same matter" falling within Article 254(2). The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.*

11. *It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against*

a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that Section 2 of Bombay Act 36 of 1947 cannot prevail as against Section 7 of the Essential Supplies (Temporary Powers) Act 24 of 1946 as amended by Act 52 of 1950.

102. Similarly, the petitioners placed reliance on ***T.Barai vs. Henry Ah Hoe and Another*** reported in ***(1983) 1 SCC 177***, wherein the Hon'ble Supreme Court, at paragraph Nos.15 and 19, observed as under:

"15. *There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the*

Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the "same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter", the West Bengal Amendment Act stood impliedly repealed.

19. *The question that falls for consideration in the appeal is whether a "contrary intention" appears from the provisions of the*

Central Amendment Act so as to exclude the applicability of Section 8 of the Bengal General clauses Act. Anil Kumar Sen, J. in B Manna case [(1977) 81 Cal WN 1075] , mentions several reasons why the Central Amendment Act was not really intended to be retrospective in operation so that it would not cover cases of offences committed prior to the enactment itself. In the first place, he observes that the Central Amendment Act had not expressly repealed the West Bengal Amendment Act nor dealt with the Act or any of its provisions in any manner. It was enacted with reference and having regard to the provisions of the Act as it stood before the Central Amendment Act came into force. Even if the Central Amendment Act had not expressly repealed the West Bengal Amendment Act, it would still be repealed by necessary implication under the proviso to Article 254(2) as it conflicts with a later law with respect to the same matter enacted by Parliament".

103. According to the petitioners, the moment, the new Act, came into force, all the three State enactments to the extent of repugnancy with the new Land Acquisition Act, have become void. They would therefore submit that the three Acts cannot be said to be in force. The learned counsel for the petitioners would state once the three Acts became void, the same cannot be given life by inserting an amendment in the new Act and declare that it would apply to the enactments mentioned in the Fourth Schedule. According to the learned counsel for the petitioners, once the three Acts to the extent of repugnancy have become void, then all the provisions in the three enactments which are repugnant to the Central enactment, have been struck

down and once these provisions have been struck down, they cannot be saved by bringing in an amendment by stating that the new Land Acquisition Act, would not apply to these three enactments for the only reason that the three State enactments were not in existence at all.

104. Mr.Suhirth Parthasarathy, learned counsel for the petitioner, placed reliance on a Full Bench judgment of a Delhi High Court in ***P.L.Mehra vs. D.R.Khanna*** reported in ***AIR 1971 Del 1***, wherein the High Court of Delhi observed as under:

> *"80. The contention urged on behalf of the petitioners is that the whole of the Principal Act prior to its amendment in 1968 was void. Section 5 and Section 7(2) have been declared void by two High Courts. Section 7(1) though not formally declared so, was none-the-less void for the same reason. The remaining provisions of the Act were merely incidental and were intended to subserve and/or effectuate the proceedings for the recovery of rent, damages and possession which were instituted under Sections 7(1), 7(2) and 5. These other provisions could not separately exist as their existence depended on Sections 7(1), 7(2) and 5 which constituted the core of the Act and were its only raison d'etre. Without these provisions Parliament would not have enacted the other provisions at all.* ***The Whole Act was, therefore, void and as such it could not have been amended because there was nothing to amend. The only course open to Parliament was to re-enact the whole of the Principal Act with the amendment added to it. The amendment of a void Act which***

was dead the moment it was born and therefore non-existent, was ineffective. The proceedings for eviction of the petitioners could not, therefore, be taken even under the Amended Act.

94. My learned brother is of the view that when it is said that a void statute is a dead statute, it is merely a figure of speech which is being taken to be a reality. What is really meant by the expression is that a statute which is void within the meaning of Article 13(2) of the Constitution is 'ineffectual, nugatory and without legal force or binding effect' and the Courts will not enforce it in deciding rights of the parties. But such a statute very much exist on the statute book and Parliament is bound to take notice of it for further legislation to repeal or amend it. This indeed appears to be the major premise for the view taken by my learned brother who also finds support for his view in the following passage in the judgment in Mahendra Lal Jaini's case, . It was there said: "The meaning of the word 'void' for all practical purposes is the same in Article 13(1) as in Article 13(2) namely, that the laws which were void were ineffectual and nugatory and avoid of any legal force or binding effect. But the pre-Constitution laws could not become void form their inception on account of the application of Article 13(1). The meaning of the word 'void' in Article 13(2) is also the same viz., that the laws are ineffectual and nugatory and devoid of any legal force or binding effect, if they contravene Article 13(2)."

Although my learned brother has quoted from the judgment the sentence following the above passage, he does not seem to be willing to concede the full implications of the statement of law laid down therein. It was there said: "But there is one vital difference between pre-Constitution and post-Constitution laws in this matter. ***The voidness of the pre-Constitution laws is not from***

inception. Such voidness supervened when the Constitution came into force; and so they existed and operated for some time and for certain purposes*; the voidness of post-Constitution laws is from their very inception and they cannot therefore continue to exist for any purpose."*

96. According to my learned brother, the decision in Mahendra Lal Jaini's case "confirms the view that the statute itself continues to exist on the statute book but has become ineffectual, nugatory and devoid of any legal force or binding effect.

The thrust of these words is that such a law cannot be given effect to by the Courts in deciding upon the rights of the parties. these words are significant only for the purposes of the Courts vis-a-vis the rights of the parties. they would be meaningless if applied to the power of the legislature to re-enact, repeal or amend a statute."

My learned brother is also of the opinion that "the continuance of existence of a statute" is synonymous with "its operativeness or enforceability" and is different from "continuance of its existence on the statute book."

97. I find it exceedingly difficult to put faith in the continued existence of a statute which the Supreme Court says was 'dead' or 'still-born' when it was enacted. The concept of a dead statute being still in 'existence for the purpose of amendment reminds me of the metaphysical concept of 'non-existence' being regarded as a form of 'existence'. I am also unable to share my learned brother's interpretation of what has held in Mahendra Lal Jaini's case, . That decision in no way supports the view taken by him and is entirely against it.

103. It is true that a decision of the Supreme Court, much less a decision of any other Court, much less a decision of any other Court, holding a statute to be void does not repeal the statute and

that it is only a legislature having requisite competence which can repeal a statute. But that is by no means the entire statement of law on the point. ***What the Court does when it holds a statute to be void under Article 13(2) is to declare that such a statute had not been enacted at all. It existed neither in the past nor shall it exist in future.*** *Having been born dead there is nothing except its reversal that can revitalise it. The activities of the two organs of State, namely, the legislature and the Courts, though complementary and in no way antagonistic to each other, have their own allotted functions. The function of the legislature is to enact, amend or repeal a statute. The courts, especially the Supreme Court and the High Courts, do not have any such function. They only test the statute enacted, amended or repealed by the legislature in the light of the organic law of the land, namely, the Constitution, and if they find that the statute enacted after coming into force of the Constitution, contravenes Part Iii of the Constitution or any other Constitutional provision which limits the power of the Legislature, they simply say that the statute should be held never to have been enacted at all. It neither was nor shall it be.*

104. It would also not be correct to say that the voidness of a statute under Art. 13 is the result of a judicial decision. If a statute contravenes the provisions of the Constitution it is void because the Constitution says so. A statute is either void or not void. A Court only adjudges whether it is so in terms of the Constitution. Legislature only repeals a statute which is in existence. it is correct that no statute can go out of existence unless the legislature repeals it; but vis-a-vas a statute which is void ab initio it is begging the question to say that it remains on the statute-book till it is repealed.

105. In that view of the matter I fail to understand what difference it would make to the statute still remaining physically on the "statute-book", a circumstance which appears to have registered such a profound impression on the mind of my learned brother it cannot be denied that even in the case of a statute which is repealed by the legislature it is only in subsequent editions that the repealed statute is not printed. it may be that once a statute is repealed, a red line is drawn across it in the statute-book to show that it is not longer there. The same result will follow or at any rate, should follow, when a statute is declared void by the Supreme Court for a note can certainly be made to identify such a statute from others with respect to which no such declaration has been made".

105. A perusal of the above-mentioned judgments, especially the last paragraph quoted above, the Delhi High Court, has taken a view that the once a statute is declared ultra vires, or repealed, or even for that matter repugnant under Article 254, it is as if a red line is drawn across the statute book to show that it is no longer there. If this is so, then the question is that, whether can it be saved? It is argued by the learned counsel for the petitioner that once the statute has been declared as void, it cannot be saved by the State Government by inserting it in the fifth Schedule because according to him, only when a legislature is valid, it could be saved by inserting into the Fifth Schedule. According to Mr.Suhirth Parthasarathy, learned counsel, the fact that the Central Act saved the 13 Central Acts by inserting it into the Fourth schedule cannot help the State Government to adopt the same procedure, because the Central Acts had become void after

the commencement of the new Land Acquisition Act. Article 254(2) applies only when there is a conflict between the State enactment and a Central enactment, in matters which are enumerated in List 3 of the Seventh Schedule to the Constitution of India. It does not apply to legislations made by Parliament. According to the learned counsel, therefore, what was open to the Central Act under 105 cannot be made applicable to the State Acts by inserting 105-A in the light of Article 254.

106. Learned counsel for the petitioners would further contend that the Hon'ble Supreme Court in ***PT. Rishikesh and Another vs. Salma Begum (Smt)*** reported in ***(1995) 4 SCC 718*** at Paragraph Nos.20 and 21, which reads as under:

> *"20. The contention of the learned counsel proceeded on the assertion that the Central Act is a Consolidation Act intended to repeal Act 5 of 1908 and re-enact Act 104 of 1976 to be a complete code is misconceived. The title of the Act itself manifests the intention of Parliament that it is an "Amending Act" to various provisions of the CPC by only 96 sections to the main Code. It is also true that Section 97(1) of the Central Act says that any amendment, made, or any provision inserted to the principal Act by a State Legislature or a High Court before the commencement of the Central Act shall, except insofar as amendment or provision is consistent with the provisions of the principal Act as amended by the Central Act, stood repealed. The contention advanced by the learned counsel for the appellants is that all pre-existing amendments stood obliterated unless fresh amendment, by the State Legislature or a High Court, is made after 1-2-1977 reserved for consideration and received the assent of the President. In support thereof, they placed reliance on the ratio in Ganpat Giri case [(1986) 1 SCC 615 : (1986) 1 SCR 15] . It may be mentioned at once that Justice Venkataramiah (as he*

then was) who rendered the judgment in Ganpat Giri case [(1986) 1 SCC 615 : (1986) 1 SCR 15] , on behalf of a Bench of two Judges, himself referred the cases for consideration by a three-Judge Bench. In that case, some observations made would lend support to the contention of the appellant. It was observed thus : (SCC p. 618, para 5)

(i) The object of Section 97 of the Amending Act appears to be that on and after 1-2-1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil courts subject of course to any future local amendment that may be made either by the State Legislature or by the High Court, as the case may be, in accordance with law. Until such amendment is made the Code as amended by the Amending Act alone should govern the procedure in civil courts which are governed by the Code. We are emphasising this in view of the decision of the Allahabad High Court which is now under appeal before us.

(ii) Section 97(1) of the Amending Act takes note of the several local amendments made by a State Legislature and by a High Court before the commencement of the Amending Act and states that any such amendment shall except insofar as such amendment or provision is consistent with the provisions of the Code as amended by the Amending Act stands repealed. It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operative on the commencement of the Amending Act, i.e., on 1-2-1977.

(iii) The repealing provision in Section 97(1) is not confined in its operation to provisions of the Code including the Orders and Rules in the First Schedule which are actually amended by the Amending Act.

The ratio therein must be understood in the light of the facts therein. Rule 72 of Order 21 CPC was amended by the State Legislature, equally the Central Act repealed the existing rule and re-enacted the rule so as to be self-operative and complete code consistent with the development of the law. Therefore, the Bench held that State Amendment since was not consistent with the Central Act, the State Amendment was declared repugnant to the Central Act. Therefore, it became void unless it was re-enacted by the State Legislature, reserved for consideration and received the assent of the President. The ratio on the facts in that case is unexceptionable but observations which we have noted above, gave rise to a construction advanced by the counsel. The wide construction put up by the Bench with due respect does not appear to be sound. It is seen that Order 15 of the Central Act, as it stood before to the Amendment Act, consists of only Rules 1 to

4. Since the special need arose in Uttar Pradesh to maintain equilibrium between the rights of the tenants of their fixity of tenures subject to compliance with the provisions of the Rent Act and of the landlord to receive rent from the tenant, even pending proceedings, enacted Rule 5 and received the assent of the President and became a statute. Three Explanations were made by U.P. Act 57 of 1976 to remove ambiguities and doubts. As stated earlier, the Central Act being an Amending Act and not a repealing Act and only Rule 2 of Order 15 was amended by the Central Act and the State Act made no amendment to Order 15, Rule 2. Rule 5 as was pre-existing was not dealt with in the Central Act. On the other hand, Section 35-B of the Code empowers the Court to strike down the defence if costs are not paid as directed by the Court. Equally, Order 6, Rule 16 empowers the Court to strike down the pleading on conditions mentioned in the said rule. Order 11, Rule 21 empowers the Court to strike down the defence in case the party fails to comply with any order to answer interrogatories for discovery or inspection of the documents. The Code, thus, by itself envisages striking off the defencein the stated circumstances. Similar provision made by the State Legislature is also consistent with the policy and principles of Act 5 of 1908 as amended by the Central Act. In other words, there is no repugnancy in that behalf.

21. The condition precedent to bring about repugnancy should be that there must be an amendment made to the principal Act under the Central Act and the previous amendment made by a State Legislature or a provision made by a High Court must occupy the same field and operate in a collision course. Since the State Act as incorporated by Act 37 of 1972 and the Explanations to Rule 5 by Act 57 of 1976, Rule 5 was not occupied by the Central Act in relation to the State of U.P., they remain to be a valid law. We may clarify at once that if the Central law and the State law or a provision made by the High Court occupy the same field and operate in collision course, the State Act or the provision made in the Order by a High Court being inconsistent with or in other words being incompatible with the Central Act, it becomes void unless it is re-enacted, reserved for consideration and receives the assent of the President after the Central Act was made by Parliament i.e. 10-9-1976.

107. According to the learned counsel, the only way to resurrect a State enactment which has become void is to get it re-enacted and then

send it to the President for assent.

108. On the other hand, the learned Advocate General has contended that sub section (1)(3) of Section 105-A of Act 1/2015 states that the amendment shall deem to have come into force on 1.1.2014 on the date when the new Land Acquisition Act came into force. Therefore, according to him, the State Acts never have been rendered as void. According to him on 1.1.2014 simultaneously the State Acts were kept in the 4th schedule of the new Land Acquisition Act. According to the learned Advocate General since the Amendment Act has received the assent of the President. Article 254(2) would be attracted and these three State enactments cannot be declared as void and they will prevail over the new Land Acquisition Act in the State of Tamil Nadu. The learned Advocate General will place reliance on the apt-quoted judgment of Lord Asquith in the celebrated judgment of ***East End Dwellings Co. Ltd. v. Finsbury Borough Council*** reported in ***1952 AC 109 : (1951) 2 All ER 587***, wherein Lord Asquith has observed as under.

> *"If you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

109. According to the learned Advocate General, this principle has

been followed in a number of judgments of the Hon'ble Supreme Court. According to him, there is no question of any repugnancy. He would also state that a reading of Section 105-A would show that the compensation under the three State enactments would be the same in respect of the three State enactments and that the compensation would never be reduced. He would also state that the three State enactments will also not dilute the provisions regarding rehabilitation and resettlement as was specified in the Notification. According to the learned Advocate General the fact that the Amendment Act had received the assent of the President on 1.1.2015 does not have any impact as the State Act cannot be held to be repugnant to the Central enactment because of the deeming provision in the Amendment Act which deems that the amendment has come into force on 1.1.2014, on which date, the new Land Acquisition Act came into force.

110. Mr.Suhirth Parthasarathy would state that the argument of the learned Advocate General cannot be accepted because even though the new Land Acquisition Act came into force on 1.1.2014, it received the assent of the President on 27.9.2013 and was published in Part II Section 1 of the Gazette India Extraordinary Issue No.40 dated 27.9.2014. According to him, repugnancy kicks when the moment the law is made and not when the law comes into force. According to him since the Law was made on 27.9.2013, the three State enactments to the extent of repugnancy to the new Land

Acquisition Act had seized to have any force on that day itself. It was struck of the statute books on 27.9.2013 itself and therefore the deeming provision as argued by the State Government would not have any effect. A perusal of Articles 254(1) and 254(2) brings out the following:

> *(i) Repugnancy under Article 254 arises only if both the parliamentary law and the state law are referrable to List 3 of the 7th schedule of the Constitution.*
>
> *(ii) In order to determine whether the parliamentary law is also referable to the concurrent list and whether the State Law is also referable to the concurrent list, the doctrine of pith and substance must be applied.*

111. Applying the above principles, it is clear that both Parliament and the State Legislature are competent to enact these laws. The three State enactments received the assent of the President on 21.7.1978, 25.5.1999 and 16.9.2002 respectively and therefore, prevailed in the State of Tamil Nadu even when the Old Act, 1894 covered the entire field. Contention of the petitioner is that when the new Act came into force, the three state enactments have become void. In order to save the acquisitions made under the three State enactments, the State of Tamil Nadu brought out an amendment to the Central Act by inserting Section 105-A in order to save the acquisitions made under the three State enactments from 1.1.2014 to the insertion of 105-A. The State Government also brought out three Government Orders dated 31.12.2014, clearly mentioning that the acquisitions made under the three State enactments would be saved by

amendment to the new Land Acquisition Act and for this purpose the amending Act even though received the assent of the President on 1.1.2015 was deemed to have come into force on 1.1.2014. Article 254 kicks in when there is repugnancy in any provision of the law made by the Legislature of the State to any provision of law made by the Parliament which the Parliament is competent to enact.Therefore, these state enactments are rendered void, the moment the New Act was "made." i.e. when it received the presidential assent, as on 27.09.2013.

112. The only protection in this sense offered to law made by the States in case of repugnancy is under Article 254(2). Importantly, the repugnancy is noted only in respect of an *earlier law* laid down by the Parliament. The provisions of Article 254(2) would not apply in the case of a law already made by the State, which has become repugnant as a result of a new enactment of Parliament. Article 254(2) does not offer any protection to laws made by States before the Central Legislation, which leads them to be repugnant,comes into force. It requires the entire repugnant law to be reserved for the consideration of the President, afresh, and the President must give his consent to the entire law. This law which otherwise would be repugnant, is then specifically saved. These laws must receive his assent in the present sense. Thus, in order to bring any act within the purview of Article 254(2) it must necessarily be re-enacted, and reconsidered by the

President afresh. Merely inserting Section 105A in the New Act, shall not fulfil the requirements of Article 254(2), and the laws would remain repugnant.

113. The Hon'ble Supreme Court in the case of ***State of Kerala and others vs. Mar AppraemKuri Company Limited and Another*** reported in ***(2012) 7 SCC 106,*** considered the following question:

> *Whether Kerala Chitties Act 23 of 1975 became repugnant to the (Central) Chit Funds Act 40 of 1982 under Article 254(1) upon making of the (Central) Chit Funds Act 40 of 1982 (i.e. on 19-8-1982 when the President gave his assent) or whether the Kerala Chitties Act 23 of 1975 would become repugnant to the (Central) Chit Funds Act 40 of 1982 as and when the notification under Section 1(3) of the (Central) Chit Funds Act 40 of 1982 bringing the Central Act into force in the State of Kerala is issued?*

114. While answering the issue as to at what time the State Act becomes repugnant to the Central Act, the Hon'ble Supreme Court has clearly stated the State Act becomes repugnant to the Central Act the moment the President gives assent to the Central Act. The Hon'ble Supreme Court in the said case has observed as under:

> ***"34.*** *Article 254 deals with inconsistency between laws made by Parliament and laws made by the legislatures of States. It finds place in Part XI of the Constitution. Part XI deals with relations between the Union and the States. Part XI consists of two chapters. Chapter I deals with Distribution of Legislative Powers. Articles 245 to 255 find place in Chapter I of Part XI.*

35. *Article 245 deals with extent of laws made by Parliament and by the legislatures of States. The verb "made", in past tense, finds place in the Head Note to Article 245. The verb "make", in the present tense, exists in Article 245(1) whereas the verb "made", in the past tense, finds place in Article 245(2). While the legislative power is derived from Article 245, the entries in the Seventh Schedule of the Constitution only demarcate the legislative fields of the respective legislatures and do not confer legislative power as such. While Parliament has power to makelaws for the whole or any part of the territory of India, the legislature of a State can make laws only for the State or part thereof. Thus, Article 245 inter alia indicates the extent of laws made by Parliament and by the State Legislatures.*

36. *Article 246 deals with the subject-matter of laws made by Parliament and by the legislatures of States. The verb "made" once again finds place in the Head Note to Article 246. This article deals with distribution of legislative powers as between the Union and the State Legislatures, with reference to the different Lists in the Seventh Schedule. In short, Parliament has full and exclusive powers to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III, whereas the State Legislatures, on the other hand, have exclusive power to legislate with respect to matters in List II, minus matters falling in List I and List III and have concurrent power with respect to matters in List III. (See SubrahmanyanChettiar v. MuttuswamiGoundan [AIR 1941 FC 47 : (1940) 2 FCR 188] .)*

37. *Article 246, thus, provides for distribution, as between Union and the States, of the legislative powers which are conferred by Article 245. Article 245 begins with the expression "subject to the provisions of this Constitution". Therefore, Article 246 must be read as "subject to other provisions of the Constitution".*

38. *For the purposes of this decision, the point which needs to be emphasised is that Article 245 deals with conferment of legislative powers whereas Article 246 provides for distribution of the legislative powers. Article 245 deals with extent of laws whereas Article 246 deals with distribution of legislative powers. In these articles, the Constitution Framers have used the word "make" and not "commencement" which has a specific legal connotation. [See Section 3(13) of the General Clauses Act, 1897.]*

39. *One more aspect needs to be highlighted. Article 246(1) begins with a non obstante clause "Notwithstanding anything in clauses (2) and (3)". These words indicate the principle of federal supremacy, namely, in case of inevitable conflict between the Union and State powers, the Union powers, as enumerated in List I, shall prevail over the State powers, as enumerated in Lists II and III, and in case of overlapping between Lists III and II, the former shall prevail. (See Indu Bhushan Bose v. Rama Sundari Devi [(1969) 2 SCC 289 : (1970) 1 SCR 443] , SCR at p. 454.)*

40. *However, the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. The said conflict has to be a "real"*

conflict. The non obstante clause in Article 246(1) operates only if reconciliation is impossible. As stated, the parliamentary legislation has supremacy as provided in Articles 246(1) and (2). This is of relevance when the field of legislation is in the Concurrent List. The Union and the State Legislatures have concurrent power with respect to the subjects enumerated in List III. [See Article 246(2).] Hence, the State Legislature has full power to legislate regarding subjects in the Concurrent List, subject to Article 254(2) i.e. provided the provisions of the State Act do not come in conflict with those of the Central Act on the subject. [See Amalgamated Electricity Co. (Belgaum) Ltd. v. Municipal Committee, Ajmer [AIR 1969 SC 227 : (1969) 1 SCR 430] .] Thus, the expression "subject to" in clauses (2) and (3) of Article 246 denotes supremacy of Parliament.

***41.** Further, in Article 246(1) the expression used is "with respect to". There is a distinction between a law "with respect to" and a law "affecting" a subject-matter. The opening words of Article 245 "Subject to the provisions of this Constitution" make the legislative power conferred by Article 245 and Article 246, as well as the legislative Lists, "subject to the provisions of the Constitution". Consequently, laws made by a legislature may be void not only for lack of legislative powers in respect of the subject-matter, but also for transgressing constitutional limitations. (See Para 22.6 of Vol. 3 at p. 2305 of the Constitutional Law of India by H.M. Seervai, 4th Edn.) This aspect is important as the word "void" finds place in Article 254(1) of the Constitution. Therefore, the Union and State Legislature have concurrent power with respect to subjects enumerated in List III. Hence, the State Legislature has full power to legislate regarding the subjects in List III, subject to the provision in Article 254(2) i.e. provided the provisions of the State Act do not conflict with those of the Central Act on the subject. Where Parliament has made no law occupying the field in List III, the State Legislature is competent to legislate in that field. As stated, the expression "subject to" in clauses (2) and (3) of Article 246 denotes the supremacy of Parliament. Thus, Parliament and the State Legislature derive the power to legislate on a subject in List I and List II from Articles 246(1) and (3) respectively. Both derive their power from Article 246(2) to legislate upon a matter in List III subject to Article 254 of the Constitution. The respective Lists merely demarcate the legislative fields or legislative heads.*

***42.** Further, Article 250 and Article 251 also use the word "make" and not "commencement". If one reads the Head Note to Article 250 it refers to power of Parliament **to legislate** with respect to any matter in the State List if a Proclamation of Emergency is in operation. The word "made" also finds place in Article 250(2). In other words, the verb "make" or the verb "made" is equivalent to the expression "to legislate". Thus, making of the law is to legislate with respect to any matter in the State List if Proclamation of Emergency is in operation. The importance of this discussion is to show that the Constitution Framers have deliberately used the word "made" or "make" in the above articles.*

***43.** Our Constitution gives supremacy to Parliament in the matter*

of making of the laws or legislating with respect to matters delineated in the three Lists. The principle of supremacy of Parliament, the distribution of legislative powers, the principle of exhaustive enumeration of matters in the three Lists are all to be seen in the context of making of laws and not in the context of commencement of the laws.

44. *Under clause (1) of Article 254, a general rule is laid down to say that the Union law shall prevail where the State law is repugnant to it. The question of repugnancy arises only with respect to the subjects enumerated in the Concurrent List as both Parliament and the State Legislatures have concurrent powers to legislate over the subject-matter in that List. In such cases, at times, conflict arises.*

45. *Clause (1) of Article 254 states that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. Thus, Article 254(1) also gives supremacy to the law made by Parliament, which Parliament is competent to enact. In case of repugnancy, the State legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254(1) and both the Acts would prevail. Thus, Article 254 is attracted only when legislations covering the same matter in List III made by the Centre and by the State operate on that subject; both of them (Parliament and the State Legislatures) being competent to enact laws with respect to the subject in List III.*

46. *In the present case, Schedule VII List III Entry 7 deals with the subject of "Contracts". It also covers special contracts. Chitties are special contracts. Thus, Parliament and the State Legislatures are competent to enact a law with respect to such contracts.*

47. *The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1).*

48. *Article 254(2) deals with a situation where the State legislation having been reserved and having obtained the President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation.*

49. *In clause (1) of Article 254 the significant words used are "provision of a law made by the legislature of a State", "any provision of a law made by Parliament which Parliament is competent to enact", "the law made by Parliament, whether passed before or after the law made by the legislature of such State", and "the law made by the legislature of the State shall, to the extent of repugnancy, be void". Again, clause (2) of Article 254 speaks of "a law made by the legislature of a State", "an earlier law made by*

Parliament", and "the law so made by the legislature of such State". Thus, it is noticeable that throughout Article 254 the emphasis is on law-making by the respective legislatures.

***50.** Broadly speaking, law-making is exclusively the function of the legislatures (see Articles 79 and 168). The President and the Governor are a part of the Union or the legislatures of the States. As far as Parliament is concerned, the legislative process is complete as soon as the procedure prescribed by Article 107 of the Constitution and connected provisions are followed and the Bill passed by both the Houses of Parliament has received the assent of the President under Article 111. Similarly, a State legislation becomes an Act as soon as a Bill has been passed by the State Legislature and it has received the assent of the Governor in accordance with Article 200. It is only in the situation contemplated by Article 254(2) that a State legislation is required to be reserved for consideration and assent by the President. Thus, irrespective of the date of enforcement of a parliamentary or State enactment, a Bill becomes an Act and comes on the statute book immediately on receiving the assent of the President or the Governor, as the case may be, which assent has got to be published in the Official Gazette.*

***51.** The legislature, in exercise of its legislative power, may either enforce an Act, which has been passed and which has received the assent of the President or the Governor, as the case may be, from a specified date or leave it to some designated authority to fix a date for its enforcement. Such legislations are conditional legislations as in such cases no part of the legislative function is left unexercised. In such legislations, merely because the legislature has postponed the enforcement of the Act, it does not mean that the law has not been made.*

***52.** In the present case, the (Central) Chit Funds Act, 1982 is a law made. The Chit Funds Bill was passed by both the Houses of Parliament and received the assent of the President on 19-8-1982. It came on the statute book as the Chit Funds Act, 1982 (40 of 1982). Section 1(2) of the said Act states that the Act extends to the whole of India, except the State of Jammu and Kashmir whereas Section 1(3) states that:*

*"**1. (3)** It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States."*

The point to be noted is that the law-making process ended on 19-8-1982. Section 1(3) is a piece of conditional legislation. As stated, in legislations of such character, merely because the legislation has postponed the enforcement of the Act, it does not mean that the law has not been made.

***53.** In the present case, after enactment of the Chit Funds Act, 1982 on 19-8-1982, the said Act has been applied to 17 States by the notifications issued from time to time under Section 1(3). How could Section 1(3) operate and make the said Act applicable to 17 States between 2-4-1984 and 15-9-2008 and/or postpone the commencement of the Act for certain other States including the States of Kerala, Gujarat, Haryana, etc. unless that section*

itself is in force?

54. *To put the matter in another way, if the entire Act including Section 1(3) was not in operation on 19-8-1982, how could the Central Government issue any notification under that very section in respect of 17 States? There must be a law authorising the Government to bring the Act into force. Thus, Section 1(3) came into force immediately on the passing of the Act (see A. Thangal Kunju Musaliar v. M. Venkatachalam Potti [AIR 1956 SC 246 : (1955) 2 SCR 1196]). Thus, the material dates, in our opinion, are the dates when the two enactments received the assent of the President which in the case of Central Act is 19-8-1982 while in the case of the Kerala Chitties Act, 1975, it is 18-7-1975.*

55. *There is one more way in which this problem can be approached. Both the courts below have proceeded on the basis that there are conflicting provisions in the Central Act, 1982 vis-à-vis the State Act, 1975 (see paras 13, 14 and 15 of the impugned judgment). In our view, the intention of Parliament was clearly to occupy the entire field falling in Entry 7 of List III. The 1982 Act was enacted as a Central legislation to*

"ensure uniformity in the provisions applicable to chit fund institutions throughout the country as such a Central legislation would prevent such institutions from taking advantage either of the absence of any law governing chit funds in a State or exploit the benefit of any lacuna or relaxation in any State law by extending their activities in such States".

56. *The background of the enactment of the (Central) Chit Funds Act, which refers to the report of the Banking Commission has been exhaustively dealt with in Shriram Chits and Investment (P) Ltd. v. Union of India [1993 Supp (4) SCC 226] as also in the Statement of Objects and Reasons of the 1982 Act. The clear intention of enacting the Central 1982 Act, therefore, was to make the Central Act a complete code with regard to the business of conducting chit funds and to occupy the legislative field relating to such chit funds.*

57. *Moreover, the intention to override the State laws is clearly manifested in the Central Act, especially Section 3 which makes it clear that the provisions of the Central Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. Similarly, Section 90 of the Central Act providing for the repeal of State legislations also manifests the intention on the part of Parliament to occupy the field hitherto occupied by State legislation.*

58. *Each and every aspect relating to the conduct of the chits as is covered by the State Act has been touched upon by the Central Act in a more comprehensive manner. Thus, on 19-8-1982, Parliament in enacting the Central law has manifested its intention not only to override the existing State laws, but to occupy the entire field relating to chits, which is a special contract, coming under Entry 7 of List III. Consequently, the State Legislature was divested of its legislative power/authority to enact Section 4(1)(a) vide the Kerala Finance Act 7 of 2002 on 29-7-2002, save and except under Article 254(2) of the Constitution. Thus, Section 4(1)(a) became void*

for want of assent of the President under Article 254(2).

59. *Let us assume for the sake of argument that the State of Kerala were to obtain the assent of the President under Article 254(2) of the Constitution in respect of the insertion of Section 4(1)(a) by the Kerala Finance Act 7 of 2002. Now, Article 254(2) deals with the situation where State legislation is reserved and having obtained the President's assent, prevails in the State over the Central law. However, in view of the proviso to Article 254(2), Parliament could have brought a legislation even to override such assented-to State Finance Act 7 of 2002 without waiting for the Kerala Finance Act 7 of 2002 to be brought into force as the said proviso states that nothing in Article 254(2) shall prevent Parliament from enactingat any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the State Legislature [emphasis supplied].*

60. *Thus, Parliament in the matter of enacting such an overriding law need not wait for the earlier State Finance Act 7 of 2002 to be brought into force. In other words, Parliament has the power under the said proviso to override the Kerala Finance Act 7 of 2002 even before it is brought into force. Therefore, we see no justification for construing Article 254(2) read with the proviso in a manner which inhibits Parliament from repealing, amending, or varying a State legislation which has received the President's assent under Article 254(2), till that State legislation is brought into force. We have to read the word "made" in the proviso to Article 254(2) in a consistent manner.*

61. *The entire above discussion on Articles 245, 246, 250, 251 is only to indicate that the word "made" has to be read in the context of the law-making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement.*

62. *In T. Barai v. Henry Ah Hoe [(1983) 1 SCC 177 : 1983 SCC (Cri) 143] this Court has laid down the following principles on repugnancy: (SCC pp. 186-87, para 15)*

"*15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent*

of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy ***is made****. A State law would be repugnant to the Union law when there is* ***direct conflict*** *between the two laws. Such repugnancy may also arise* ***where both laws operate in the same field*** *and the two cannot possibly stand together e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law* ***made*** *by Parliament shall prevail over the State law under Article 254(1).*"

(emphasis supplied)

63. *In I.T.C. Ltd. v. State of Karnataka [1985 Supp SCC 476] this Court vide para 18 stated as under: (SCC p. 496)*

"*18. Thus, in my opinion, the five principles have to be read and construed together and not in isolation—where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that where two Acts, one passed by Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail.*"

(emphasis supplied)

64. *In M. Karunanidhi v. Union of India [(1979) 3 SCC 431 : 1979 SCC (Cri) 691] , the test for determining repugnancy has been laid down by the Supreme Court as under: (SCC pp. 436-38, 444 & 448-49, paras 8, 24-25 & 35)*

"*8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State Legislature and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First,*

regarding the matters contained in List I i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II i.e. the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

(1) Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

(2) Where however a law passed by the State Legislature comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

(4) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to that State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

***

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before

any repugnancy can arise, the following conditions must be satisfied:

(1) That there is a clear and direct inconsistency between the Central Act and the State Act.

(2) That such an inconsistency is absolutely irreconcilable.

(3) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

25. In Colin Howard's Australian Federal Constitutional Law, 2nd Edn., the author while describing the nature of inconsistency between the two enactments observed as follows:

'An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts.'

***

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

(1) That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

(2) That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

(3) That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

(4) That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

(emphasis supplied)

***65.** Applying the above tests to the facts of the present case, on the enactment of the (Central) Chit Funds Act, 1982 on 19-8-1982, intending to occupy the entire field of chits under Entry 7 of List III, the State Legislature was denuded of its power to enact the Kerala Finance Act 7 of 2002. However, as held in numerous decisions of this Court, a law enacted by the State Legislature on a topic in the Concurrent List which is inconsistent with and repugnant to the law made by Parliament can be protected by obtaining the assent of the President under Article 254(2) and that the said assent would enable the State law to prevail in the State and override the provisions of the Central Act in its applicability to that State only.*

115. Since the President has given the assent to the New Act on 27.9.2013, all the three State Acts had become repugnant to the Central

enactment. They had therefore become void on 27.9.2013. By introducing Section 105-A and putting the three Acts which had become void, in the fifth schedule would not resurrect the Acts which had become void and a dead letter as observed in ***PT.Rishikesh vs. Salma Begum (Smt.)*** reported in ***(1995) 4 SCC 718***, the only way by which the Acts could have been given life so as to re-enact them, get fresh assent from the President of India, so as to attract Article 254(2) of the Constitution of India, for it to be applicable in the State of Tamil Nadu. The deeming fiction as argued by the learned Advocate General would not apply in this case because the deeming fiction only goes back up to 1.1.2014 i.e. the date on which the new Land Acquisition Act becomes operative. The three State Enactments have already become void on the date on which the new Act become operative and therefore, even if the deeming fiction the fullest effect, it would still not revive the three State enactments, which had become void on 27.9.2013.

116. Reliance of Mr. Arvindh Pandian on the Judgement of the Supreme Court in the case of ***Jagannath v. Authorised Officer, Land Reforms (supra)*** is misplaced. It is important to note that the observations relied upon by Mr. Arvindh Pandian were in the context of a law becoming void, because it violated part III of the Constitution of India, and were not in respect of laws becoming repugnant because of the operation of Article

254(1). The case law relied upon will have no bearing on the facts of the present case.

117. It must also be noted that the analogy of Section 105 cannot be extended to 105-A. Section 105 applies only to Central enactments. Article 254 applies only in case of repugnancy between the Central enactment and a State enactment, regarding a subject covered under the List 3 in the Seventh Schedule to the Constitution of India. Section 105 only enumerates the Central enactment to which the provision of the Land Acquisition Act does not apply. Section 105-A, which has been inserted by an amendment, namely Tamil Nadu Act 1 of 2015, is an attempt by the State to save the three State enactments, which became void on 1.1.2014, the date on which the Tamil Nadu Act 1 of 2015 was to come into force. The three State enactments, therefore, cannot be said to be operative in the State of Tamil Nadu by virtue of Section 105-A, and were null and void as on the date on which the New Act was made.

118. It is also important to remember that the Acts saved under Section 105 of the New Act, are all Central Legislations which did not become void/repugnant by virtue of the New Act being brought into force. These Legislations were never subject to Article 254, and the issue of repugnancy did not arise. It is for this reason, that the Central Acts covered

under Section 105 of the New Act, and the Impugned State Enactments cannot be equated.

119. Thus we hold that the impugned three state enactments were rendered repugnant as on the date the New Act, was made, i.e. the date of which the President of India gave the New Act his assent, i.e. 27.09.2013. We further hold that in order to revive these acts it is necessary to re-enact these laws, in accordance with the provisions of Article 254(2). Mere insertion of Section 105A in the new Act, would not save these acts from repugnancy.

Mandatory nature of 105-A(2)

120. We have already held that merely by inserting Section 105A in the New Act, the State could not be revived three state enactments. Submissions have however been made across the bar at great length, that even if Section 105A has the effect of reviving the three state enactments, the fact that the requirements of Section 105A(2) and (3) have not been made is fatal, to these acts. We deem it appropriate to deal with these submissions.

121. Section 105-A(2) mandates the State Government to bring out a Notification within one year from 1.1.2014 and direct that the provisions of

the Central Act relating to the determination of compensation in accordance with the first schedule and rehabilitation and resettlement specified in 2nd and 3rd Schedule being beneficial to the affected families shall apply to the case of the land acquisition and the enactment specified the 5th Schedule. Section 105-A(2) therefore mandates that the State Government has to bring out a Notification. Admittedly, no Notification has been brought out by the State Government. Notification has been defined in the new Act under Section 3(v), which reads as under:

> (v) -***notification*** means a notification published in the Gazette of India or, as the case may be, the Gazette of a State and the expression -notify shall be construed accordingly;

122. The New Act, therefore, specifies that a Notification should be one which has been published in the Gazette of India or as the case may be in the Gazette of State.

123. Similarly Section 2(19-a) of the Tamil Nadu General Clause Act defines Notification as under:

> ***"Notification"*** shall mean a notification published in the official Gazette.

124. The learned Advocate General would submit that the Government have brought out three Government orders dated 31.12.2014, which have been extracted earlier. According to the learned Advocate General, the said Government Orders categorically state that the compensation would be only in accordance with the first schedule and the rehabilitation and resettlement would be in accordance with the 2nd and 3rd schedules. He would state that these copies of these Government Orders have been given to all the Principal Secretaries/Secretaries to Government, Additional Chief Secretary/Commissioner, Revenue Administration, Principal Secretary, Land Reforms, all Heads of the Departments for the various departments, namely Industries Department, the Director, Adi Dravidar and Tribal Welfare Department, Highways Department and all the Collectors of the State. He would state that these Government orders, is sufficient compliance on the mandate of Section 105-A(2). He would also state that the rules and plan, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 and **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Development Plan Rules, 2015,** have also been framed. He would

therefore state that since these rules have been brought out, Section 105-A(2) has been substantially complied with.

125. Section 105-A(3) states that a copy of the Notification proposed to be issued under sub section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly.

126. Section 105-A(1) categorically states that the provisions of the new Act shall not apply to the enactments relating to land acquisition specified in 5th schedule. However,Section 105-A(1) also clearly states that Section 105-A(1) is only subject to Section 105-A(2). Section 105-A(2) in no uncertain statement states that the State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or

modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. Section 105-A(2), therefore stipulates that the State Government have to (a) issue a notification; (b) within one year from the date of commencement of this Act; and (c) the notification has to state that the compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, would be applicable to the three enactments specified in Fifth Schedule.

127. The learned Advocate General has contended that the State Government have issued Government orders relating to three enactments on 31.12.2014 and all the three enactments specifically states that the compensation shall be calculated in accordance with the new Act and that the rehabilitation scheme also be only in accordance with the new Act. The question for determination is as to whether the Government issued orders dated 31.12.2014 is sufficient compliance of Section 105-A(2) of the new Land Acquisition Act.

128. Admittedly no notification has been issued. Notification as stated earlier has been defined in the new Act and also under the Tamil Nadu General Clauses Act. The Government Orders dated 31.12.2014 cannot be

said to be a notification within the definition of Section 3(v) of the new Land Acquisition Act or Section 2(19-a) of the Tamil Nadu General Clause Act.

129. When Section 105-A has been made subject to Section 105-A(2), section 105-A(1) can work only when the conditions specified in 105-A(2) are satisfied. Section 105-A(2) mandates that a notification has to be published. The notification as stated earlier is defined in the Act itself to mean that it has to be in the official gazette and shall to come within one year from the commencement of this Act. The purpose of the notification is to inform the general public about how the compensation is to be calculated and how the rehabilitation scheme will be worked out.

130. It is well settled and has been laid down by a number of judgments that if there is power coupled with a duty mandating that the particular act must be done by the executive in a particular way, then it shall be done in that way or not at all.

131. A perusal of Section 3(v) of the new Act, where notification means a notification published in the Gazette of India or, as the case may be, Gazette of a State. It is well established that when a term which is defined under the Act, the same meaning has to be given for the term occurring throughout the Act. Therefore, when Section 105-A(2) stipulates

the State Government have to issue a notification within one year, the notification has to be only in the official Gazette of the State Government. Unless and until the notification is published in an official Gazette, there is no notification in the eye of law. The Government orders therefore, cannot take the place of a notification, which is a defined term. Further Section 105-A(2) mandates that the State, 'shall', issue a notification within one year. No doubt, it has been consistently laid down that no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered. Crawford, on statutory construction has observed; which has been followed by a number of judgments by the Hon'ble Supreme Court;

> *"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. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.*

132. The further issue which arises is as to whether 105A(2) and (3) is a piece of conditional legislation or delegated legislation. The Hon'ble Supreme Court of India in re Delhi Laws Act, 1912, Ajmer - Merwara

(Extensions of Laws) Act, 1947 Vs. Part 'C' States (Laws) Act, 1950, 1951 SCR 747:AIR 1951 SC 332, has observed as under:-

> *"**302.** In a conditional legislation, the law is full and complete when it leaves the legislative chamber, but the operation of the law is made dependent upon the fulfilment of a condition, and what is delegated to an outside body is the authority to determine, by the exercise of its own judgment, whether or not the condition has been fulfilled. "The aim of all legislation", said O'Conner, J. in Baxter v. Ah Way [8 CLR 626 at 637] "is to project their minds as far as possible into the future and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases and therefore legislation from the very earliest times, and particularly in more modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied or to what its operation shall be extended, or the particular class of persons or goods or things to which it shall be applied". In spite of the doctrine of separation of powers, this form of legislation is well recognised in the legislative practice of America, and is not considered as an encroachment upon the anti-delegation rule at all. As stated in a leading Pennsylvania case [Locke's Appeal, 1873 72 Pa. 491] , "the legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of Government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law-making power and must, therefore, be a subject of inquiry and determination outside the halls of legislation".*

133. The difference between a conditional legislation and delegated legislation has been very succinctly explained in the case of Vasu Dev Singh & Others Vs. Union of India & Others, (2006) 12 SCC 753, has observed as under:-

> ***16.*** *We, at the outset, would like to express our disagreement with the contentions raised before us by the learned counsel appearing on behalf of the respondents that the impugned notification is in effect and substance a conditional legislation and not a delegated legislation. The distinction between conditional legislation and delegated legislation is clear and unambiguous. In a conditional legislation the delegatee has to apply the law to an area or to determine the time and manner of carrying it into effect or at such time, as it decides or to understand the rule of legislation, it would be a conditional legislation. The legislature in such a case makes the law, which is complete in all respects but the same is not brought into operation immediately. The enforcement of the law would depend upon the fulfilment of a condition and what is delegated to the executive is the authority to determine by exercising its own judgment as to whether such conditions have been fulfilled and/or the time has come when such legislation should be brought into force. The taking effect of a legislation, therefore, is made dependent upon the determination of such fact or condition by the executive organ of the Government. Delegated legislation, however, involves delegation of rule-making power of legislation and authorises an executive authority to bring in force such an area by reason thereof. The discretion conferred on the executive by way of delegated legislation is much wider. Such power to make rules or regulations, however, must be exercised within the four corners of the Act. Delegated legislation, thus, is a device which has been*

fashioned by the legislature to be exercised in the manner laid down in the legislation itself.....

17. *In Hamdard Dawakhana v. Union of India [AIR 1960 SC 554 : (1960) 2 SCR 671 : 1960 Cri LJ 735] this Court stated: (AIR p. 566, para 29)*

"The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; Hampton & Co. v. U.S. [276 US 394 : 72 L Ed 624 (1928)] and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend;"

(See also M.P. High Court Bar Assn. v. Union of India [(2004) 11 SCC 766 : 2005 SCC (L&S) 27] ; State of T.N. v. K. Sabanayagam [(1998) 1 SCC 318 : 1998 SCC (L&S) 260] and Orient Paper and Industries Ltd. v. State of Orissa [1991 Supp (1) SCC 81])":

134. Similarly, the Hon'ble Supreme Court of India in the case of Tulsipur Sugar Co. Ltd Vs. Notified Area Committee, (1980) 2 SCC 295, at page 305, has observed as under:-

*"**14.** The essential distinction between conditional legislation and delegated legislation was considered for the first time by this Court in In Re The Delhi Laws Act, 1912 [AIR 1951 SC 332 : 1951 SCR 747] . After considering the decision in Queen v. Burah [5 IA 178] , Mukherjee, J., observed at p. 980:*

"The same principle was applied by the Judicial Committee in King v. Benoari Lal Sharma [72 IA 57] . In that case, the validity of an emergency ordinance by the Governor General of India was challenged inter alia on the ground that it provided for setting up of special criminal courts for particular kinds of offences, but the actual setting up of the courts was left to the Provincial Governments which were authorised to set them up at such time and place as they considered proper. The Judicial Committee held that 'this is not delegated legislation at all. It is merely an example of the not uncommon legislative power by which the local application of the provisions of a statute is determined by the judgment of a local administrative body as to its necessity'.

Thus, conditional legislation has all along been treated in judicial pronouncements not to be a species of delegated legislation at all. It comes under a separate category, and, if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers."

***15.** In Basant Kumar Sarkar v. Eagle Rolling Mills Ltd. [AIR 1964 SC 1260 : (1964) 6 SCR 913, 916-917] this Court was required to consider the question whether Section 1(3) of the Employees' State Insurance Act, 1948 was valid. One of the contentions urged by the appellants in that case was that the said provision sufferred from the*

vice of excessive delegation on the ground that the power given to the Central Government to apply the provisions of that Act by notification, conferred on the Central Government absolute discretion, the exercise of which was not guided by any legislative provision and was, therefore, invalid. Gajendragadkar, C.J., rejected the above contention with the following observations:

"We are not impressed by this argument. Section 1(3) is really not an illustration of delegated legislation at all; it is what can be properly described as conditional legislation. The Act has prescribed a self-contained code in regard to the insurance of the employees covered by it; several remedial measures which the Legislature thought it necessary to enforce in regard to such workmen have been specifically dealt with and appropriate provisions have been made to carry out the policy of the Act as laid down in its relevant sections. Section 3(1) of the Act purports to authorise the Central Government to establish a Corporation for the administration of the scheme of Employees' State Insurance by a notification. In other words, when the notification should be issued and in respect of what factories it should be issued, has been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation. What Lord Selborne said about the powers conferred on the Lieutenant Governor by virtue of the relevant provisions of Act 22 of 1869 in Queen v. Burah [5 IA 178] , can be said with equal jurisdiction about the powers conferred on the Central Government by Section 1(3)."

135. As is evident from the above discussions, in case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an

outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfiled. In case of delegated legislation proper, some portion of the legislative power of the legislature is delegated to the outside authority in that, the legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary functions of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation proper does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation.

136. As stated earlier, a reading of Section 105-A(1) says that it is subject to Section 105-A(2) and 105-A(2) mandates of a notification. Therefore, 105-A can come into force only if the notification as stated in Section 105-A(2) is issued. Section 105-A(1) therefore depends upon the fulfillment of the condition in 105-A(2). It is well settled that enforcement of the law would depend upon the fulfillment of the condition and what is delegated to the executive, is the authority to determine, by exercising its own judgment as to whether such a condition has been fulfilled/ within the

time, that has given, when such legislation should be brought into force. When the effect of the legislation is depends upon the determination of a condition by the executive organ of the State, it becomes a conditional legislation and as observed in ITC Bhadrachalam's case, a conditional legislation is mandatory. The condition that is required for Section 105-A(1) to be active is that the notification as contemplated under Section 105-A(1) must be published within one year from 1.1.2014.

137. In this regard, learned counsel for the Petitioners have relied on a judgment of the Hon'ble Supreme Court in Reserve Bank of India vs. Peerless Co. reported in (1987) 1 SCC 424, wherein, at paragraph No.33, the Hon'ble Apex Court held as follows:

> ***"33.*** *Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase*

and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasonsfor it that the Court construed the expression "Prize Chit" in Srinivasa and we find no reason to depart from the Court's construction."

138. According to the learned Advocate General, Government order issued amounts to substantial compliance with the provisions of Section 105-A(2) and the same were issued were only for the benefit of the Government officers to whom the orders were sent. The purpose of this notification is just not for the officials to calculate compensation but to inform the general public that the effect of introduction of Sec.105-A(1) of the Act and the procedure set out in the New Act 2013 regarding Social Impact study etc would not be followed and that the compensation would be calculated only in accordance with the First Schedule and the rehabilitation Scheme would not be lesser than that specified in the Second and Third Schedules. The purpose of just bringing out a Government Order cannot therefore be said to be a compliance of Section 105-A(2), and the argument of the Learned Advocate General must be rejected. The Hon'ble Supreme Court in ***I.T.C. Bhadrachalam Paperboard and Another vs. Mandal Revenue Officer,***

A.P. and others reported in ***(1996) 6 SCC 634,*** while considering the effect of non-publication of an order/rule in official gazette has observed as under:

> ***"12.*** *On the other hand, Shri Ram Kumar, learned counsel for the State of Andhra Pradesh, urged the following submissions in support of the judgment under appeal: GOMs No. 201 is not valid or enforceable since it was not published in the Gazette nor was it laid before the legislature as required by Section 11. The requirement of publication in the Gazette is mandatory and not directory. The power of exemption is not a species of delegated legislation; it is an instance of conditional legislation. The power under Section 11 can be exercised only in the manner and in accordance with the requirements of Section 11 and in no other manner. It does not take effect and become enforceable until and unless it is published in the manner prescribed, i.e., in the Gazette. The power of exemption should be strictly construed. The order which is not in conformity with the requirements of Section 11 cannot be treated as an order thereunder, nor can it give rise to or form a foundation for the pleas of promissory/equitable estoppel or to legitimate expectations. It is already held by this Court that no exemption notification is effective until and unless it is published in the Gazette as required by the Act. Public interest demands strict compliance with the said requirement. Moreover, GOMs No. 386 has been validly issued and the retrospective effect given to it on and from 17-12-1976 is equally valid. It means that GOMs No. 386 must be deemed to have been issued on 17-12-1976; it is admittedly a statutory GO. If so, there cannot be another non-statutory GO on the same subject inconsistent with the terms of the statutory GO covering the same period. For this reason too, GOMs No. 201 is neither effective nor enforceable.*

13. *The first question we have to answer is whether the publication of the exemption notification in the Andhra Pradesh Gazette, as required by Section 11(1) of the Act, is mandatory or merely directory? Section 11(1) requires that an ordermade thereunder should be (i) published in the Andhra Pradesh Gazette and (ii) must set out the grounds for granting the exemption. The exemption may be on a permanent basis or for a specified period and shall be subject to such restrictions or conditions as the Government may deem necessary. Shri Sorabjee's contention is that while the requirements that the power under Section 11 should be expressed through an order, that it must contain the grounds for granting exemption and that the order should specify whether the exemption is on a permanent basis or for a specified period are mandatory, the requirement of publication in the Gazette is not. According to the learned counsel, the said requirement is merely directory. It is enough, says the counsel, if due publicity is given to the order. He relies upon certain decisions to which we shall presently refer. We find it difficult to agree. The power under Section 11 is in the nature of conditional legislation, as would be explained later. The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media (See Pankaj Jain Agencies v. Union of India [(1994) 5 SCC 198]). In other words,*

the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day (where the order or rule takes effect from the date of its publication) and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an Act, Rule or Order. Section 83 of the Evidence Act, 1872 says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount of inconvenience, delay and unnecessary controversies. It is for this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one — directory requirement — is, in our opinion, unacceptable. Section 21 of the Andhra Pradesh General Clauses Act says that even where an Act or Rule provides merely for publication but does not say expressly that it shall be published in the Official Gazette, it would be deemed to have been duly made if it is published in the Official Gazette [Section 21 reads:"21. Publication of Orders and Notifications in the Official Gazette.—Where in any Act or in any rule passed under any Act, it is directed that any order, notification or other matter shall be notified or published, that notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Official Gazette."] . As observed by Khanna, J., speaking for himself and Shelat, J.

in Sammbhu Nath Jha v. Kedar Prasad Sinha [(1972) 1 SCC 573 : 1972 SCC (Cri) 337] the requirement of publication in the Gazette (SCC p. 578, para 17) "is an imperative requirement and cannot be dispensed with". The learned Judge was dealing with Section 3(1) of the Commissions of Inquiry Act, 1952 which provides inter alia that a Commission of Inquiry shall be appointed "by notification in the Official Gazette". The learned Judge held that the said requirement is mandatory and cannot be dispensed with. The learned Judge further observed: (SCC p. 578, para 17)

> *"The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the various allegations in the present case was a part of the notification, dated 12-3-1968 and specified definite matters of public importance which were to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the statutory requirement. The object of publication in an Official Gazette is twofold: to give publicity to the notification and further to provide authenticity to the contents of that notification in case some dispute arises with regard to the contents."*

139. In the said judgment in paragraph 14, the Hon'ble Supreme Court, with approval quoted a passage from ***B.K.Srinivasan v. State of Karnataka*** reported in ***(1987) 1 SCC 658***, held as under:

> ***14.*** *To the same effect are the observations in B.K. Srinivasan v. State of Karnataka [(1987) 1 SCC*

658] . While pointing out the importance of subordinate legislation in the affairs of the modern State, Chinnappa Reddy, J., speaking for himself and G.L. Oza, J., made the following observations: (SCC pp. 672-73, para 15)

"But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication."

140. This judgment would apply squarely to the cases on hand. As stated earlier, Section 105-A(1) is dependent upon Section 105-A(2) and therefore until the condition of Section 105-A(2) is satisfied with, Section

105-A cannot be given effect.

141. The Hon'ble Supreme Court, in ***State of Tamil Nadu vs. K.Sabanayagam and Another*** reported in ***(1998) 1 SCC 318*** has held that conditional legislations are mandatory. In the said judgment, the Hon'ble Apex Court at paragraph Nos.14 and 15 held as under:

> ***"14.*** *This takes us to the last contention canvassed on behalf of the appellants. It is true that Section 36 of the Act is held by a Constitution Bench of this Court to be a piece of conditional legislation. In the case of Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Sabha [AIR 1967 SC 691 : (1967) 1 SCR 15 : (1966) 2 LLJ 546] the majority of the Constitution Bench speaking through J.C. Shah, J. while interpreting Section 36 of the Act has made the following pertinent observations:*
>
> *"By Section 36 the appropriate government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Condition for exercise of that power is that the government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate government in implementing the provisions of Section 36. The power so conferred does not amount to delegation of*

legislative authority. Section 36 amounts to conditional legislation, and is not void. Whether in a given case, power has been properly exercised by the appropriate government would have to be considered when that occasion arises."

The said observations have been made for repelling the challenge to the vires of Section 36 of the Act on the ground that it amounted to excessive delegation of legislative power or was violative of Article 14 of the Constitution of India. The question with which we are concerned in the present proceedings was not on the anvil of scrutiny before the Constitution Bench of this Court in that case, namely, whether before exercising powers under Section 36 as a delegate of conditional legislative function the appropriate government was estopped from considering the rival version or rebuttal evidence that may be offered by the employees whose employer seeks exemption from the Act under Section 36 thereof. The distinction between delegated legislation and conditional legislation is a clear and well-settled one. In this connection we may usefully refer to a Constitution Bench decision of this Court in the case of Hamdard Dawakhana(Wakf) v. Union of India [AIR 1960 SC 554 : (1960) 2 SCR 671] . Kapur, J. speaking for the Constitution Bench has made the following pertinent observations at pp. 695-96 of the Report:

"The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; Hampton & Co. v. U.S. [276 US 394 : 72 L Ed 624 (1928)] and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In

other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend; (R. v. Burah [(1878) 3 AC 889, PC] ; Russell v. R. [(1882) 7 AC 829 : 51 LJPC 77, PC] , AC at p. 835; King Emperor v. Benoari Lal Sarma [(1944) 72 IA 57 : AIR 1945 PC 48] ; Sardar Inder Singh v. State of Rajasthan [AIR 1957 SC 510 : 1957 SCR 605]). Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation."

It is thus obvious that in the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the legislature is delegated to the outside authority in that, the legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted.

The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation. In this connection we may also refer to a decision of this Court rendered in the case of Sardar Inder Singh v. State of Rajasthan [AIR 1957 SC 510 : 1957 SCR 605] wherein it is laid down that when an appropriate legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation.

***15.** A number of decisions of this Court were pressed into service by the learned Senior Counsel for the appellants to submit that there is no question of giving any hearing to the affected parties by an agent who exercises conditional legislative power. We may briefly refer to them."*

142. Apart from Section 105-A(2), 105-A(3) mandates that the draft of the Notification has to be placed before the two Houses for approval. If the assembly rejects the proposed notification or suggested changes, then the notification cannot be brought out. It is well settled that when a power is given by a statute to do a particular thing in a particular manner, the thing shall be done only in that manner or not at all. The Privy council in Nazir Ahmad vs. King Emperor reported in AIR 1936 Privy Council 253(2) has observed as under:

" The rule which applies is a different and not less well recognized

rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all."

143. A perusal of Section 105-A(3) would show that the purpose of keeping the Notification before the House is to satisfy the elected members of people that the new Act, exempts a procedure in the matter of acquiring lands, for thepurpose mentioned in the three Acts, and that the compensation for the land and rehabilitating/resettlement schemes which have been offered is in no way inferior or rater is equal to the mode specified in Schedules I and II respectively. This shows that Section 105-A(3) is not a subordinate legislation for making rules, which could be delegated to the authorities. The judgments relied on by the learned Advocate General, namely ***(1) Prohibition & Excise Supdt. A.P. and others vs. Toddy Tappers Co-Op. Society, Marredpally and Ors*** reported in ***(2003) 12 SCC 738***; ***(2) K.T.Plantation Private Limited and Another vs. State of Karnataka*** reported in ***(2011) 9 SCC 1***; and ***(3) Accountant General, State of Madhya Pradesh vs. S.K.Dubey and Another*** reported in ***(2012) 4 SCC 578***, deal with subordinate legislation i.e. placing the rules before the two Houses. Section 105-A(3) affects the rights of parties. The very purpose of bringing this new enactment is to ensure that certain procedure constituted in the New Act 2013, would not be applicable when acquisition of lands is taken for the purpose of the three

Acts and also includes that people whose lands are acquired get adequate compensation and are effectively resettled. The Act came into force primarily as stated earlier because it was found that lands are being acquired without providing adequate rehabilitation and turning agriculturists, into landless labourers. To make matters worse, the Land so acquired was not put to use for substantial period of time. It is only to remedy all these ills; the new Act was brought into force. In the said context, it is impossible for us to hold that the notification to be issued under Section 105-A(2) and placed before the Houses in Section 105-A(3) subordinate legislation can be delegated to rule making authorities, by issuing Government orders, Notification has to be issued and placed before the legislative house for approval.

144. 'Notification' as envisaged in the Act 2013 and General Clause Act, 1897, a subordinate legislation, cannot be equivalent to Government Order, which according to the learned Advocate General issued to the officers. Even if we are to accept the argument of the Advocate General that the G.O. Ms. No.251, 169 and 110, all dated 31.12.2014 are "notifications", all these G.O.'s would have to be placed before the assembly in the draft stage and if the assembly after considering the Government Orders was not satisfied then the notification of the Government Orders will not come into force. Assuming that they are notifications for the purposes of the New Act, the question to then be determined by us, is whether the placing of these

notifications in the draft stage, is mandatory or directory?

145. The learned Advocate General has placed reliance on several judgments to substantiate the contention that the condition to place the notification before the Houses is only directory and non-fulfillment of the condition will not make the act ineffective. In ***Atlas Cycle Industries vs. State of Haryana*** reported in ***1979 (2) SCC 196***, the Hon'ble Supreme court was dealing with the provisions of Essential Commodities Act, 1955. Section 3(6) of the Act, mandated every order made under Section 3 of the Essential Commodities Act, 1955 by Central Government are by an officer or authority of a Central Government shall be laid before both the Houses of the Parliament made after it was made. The Hon'ble Supreme Court in paragraphs 20 and 21 observed as under:

> ***"20.*** *Thus two considerations for regarding a provision as directory are: (1) absence of any provision for the contingency of a particular provision not being complied with or followed, and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non-compliance with the particular provision.*
>
> ***21.*** *Now, the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the*

aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the Legislature may like to exercise. As evident from the observations made at pp. 305 to 307 of the 7th Edn. of Craies on Statute Law and noticed with approval in Hukam Chand v. Union of India [(1972) 2 SCC 601 : AIR 1972 SC 2427 : (1973) 1 SCR 896] there are three kinds of laying which are generally used by the Legislature. These three kinds of laying are described and dealt with in Craies on Statute Law as under:

> *"(i) Laying without further procedure,*
>
> *(ii) Laying subject to negative resolution,*
>
> *(iii) Laying subject to affirmative resolution.*

(i) Simple laying.—The most obvious example is in Section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc. for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, Section 417; Inebriates Act, 1898, Section 21) but this is not used now.

(ii) Negative resolution.—Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament". This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by promising some modification.

(iii) Affirmative resolution.—The phraseology here is normally no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament. Normally, no time limit is fixed for obtaining approval — none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval — but Section 16(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be made but not to become operative until a resolution of both Houses of Parliament had been obtained. This form was used in Section 10(4) of the Road Traffic Act, 1930 [cf. Road Traffic Act, 1960, Section 19(3)] .... The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected.

Sometimes where speedy or secret action is required (e.g. the imposition of import duties), the order is laid with immediate operation but has to be confirmed within a certain period [cf. Import Duties Act, 1958, Section 13(4)]. This process of acting first and getting approval after has also been adopted in the Emergency Powers Act, 1920 under which a state of emergency can be proclaimed and

regulations made. The proclamation must be immediately communicated to Parliament and does not have effect for longer than a month; but it can be replaced by another proclamation. Any regulations made under the proclamation are to be laid before Parliament immediately and do not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for their continuance."

146. Reading of paragraph 21 would show that the policy and object underlying Section 3(6) relates to laying the delegated legislation made by the subordinate law making authorities/orders passed by subordinate executive instrumentalities, before both the Houses of parliament was to keep the supervision and control over the aforesaid authorities and instrumentalities. The underlying purpose was only to keep a check. The court found that by not laying it before the Houses does not vitiate the subordinate legislation.

147. Similarly, in ***Quarry Owners' Association vs. State of Bihar*** reported in ***2000 (8) SCC 655***, dealing with Section 28 of the Mines and Minerals (Regulation and Development) Act, 1957, the Hon'ble Supreme Court at paragraph No.45 held as under:

"45. *It is true that the language of both sub-section (1) and sub-section (3) of Section 28 is different. They are reproduced below:*

"28. Rules and notifications to be laid before Parliament and certain rules to be approved by Parliament.—(1) Every rule and every notification made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

***

(3) Every rule and every notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House."

There is no difficulty for us to uphold their submissions that in view of difference in the language of sub-section (3), the same meaning to it as that of sub-section (1) cannot be given. This difference has been carved out for a purpose to give different projection to the said two provisions. In the case of major minerals which play important role in the national growth and wealth and where the delegatee is the Central Government, Parliament retained its full control but for the minor minerals, Parliament felt for the minor minerals as the subject

is of local use and the State Government being well versed in dealing with it in the historical background, mere placement of rules, notifications framed by it before the State Legislature would be a sufficient check on the exercise of its powers. Thus, this difference of language gives two different thrusts as intended by Parliament. Any act of Parliament, far less when it introduces any new provision through amendment, it could be said for it to be in futility. The purpose has to be found. What could be the purpose for such an amendment? One of the reasons is that this was brought in, in view of the observation made by this Court in D.K. Trivedi [1986 Supp SCC 20] . This Court records: (SCC p. 62, para 51)

"It was, therefore, for Parliament to decide whether rules and notifications made by the State Governments under Section 15(1) should be laid before Parliament or the legislature of the State or not. It, however, thought it fit to do so with respect to minerals other than minor minerals since these minerals are of vital importance to the country's industry and economy, but did not think it fit to do so in the case of minor minerals because it did not consider them to be of equal importance."

Parliament through its wisdom, apart from the above brought this amendment also to keep a check on the exercise of power by the State Government as delegatee. The question is whether mere laying of rules and notifications before the legislature, as in the present case, can be construed as a check on the State Government's power. Laying before the Houses of Parliament is done in three different ways. Laying of any rule may be subject to any negative resolution within a specified period or may be subject to its confirmation. This is

spoken of as negative and positive resolution respectively. Third may be mere laying before the House. In the present case, we are not concerned with either the affirmative or negative procedure but consequence of mere laying before the legislature."

148. The Hon'ble Supreme court, while deciding as to when in not placing the rule before the parliament would make the rule inoperative, held as under:

"55. *However, since we have upheld the impugned notifications issued by the State to be within the ambit of delegation and that delegation is not excessive as there are enough guidelines and control over the State Government, notwithstanding its check on the State under sub-section (3) of Section 28, it would not have any effect on its validity. But we make it clear that when a statute as under sub-section (3) of Section 28 requires its placement, it is the obligation of the State Government to place such with this specific note before each House of State Legislature. Even if it has not been done, the State shall now do place before each House of the State Legislature at the earliest, the notification dated 28-9-1994 and will also do so in future while framing rules or issuing any notifications under the Rules framed under sub-section (1) of Section 15 of the Act."*

149. The Hon’ble Apex Court made these observations in the context of the serious general inconvenience and prejudice that will be result to the general public by not placing the notifications before Parliament. In the present case, as stated, the land owners are losing land, by not resorting to a procedure which is contemplated in Act 2013. The mandate on the

Government is that the rehabilitation and resettlement package and the compensation will not be lesser than which is to be paid under the new Land Acquisition Act. When the nature, scope and ambit of the Act is to deviate from the procedure set out in 2013 Act, one cannot say that the provision is only directory. If the learned Advocate General's argument is accepted, then the substantial rights of the parties will be affected. If Section 105-A(3) has to be interpreted as directory, then the elected members / representatives of people who are the lawmakers will not have any say in with respect to procedure to be followed compensation and rehabilitation schemes. Leaving the notification entirely to the executive without the legislature having any say in it, will make the notification susceptible to the challenge of excessive delegation.

150. The Learned Advocate General has also relied on the Judgement of the Hon'ble Supreme Court in the case of**The Prohibition & Excise Supdt., A.P. & Ors. vs. Toddy Tappers Coop. Society, Marredpally&Ors**reported in ***2003 (12) SCC 738***, wherein the court was dealing with Section 72(3) and 72(4) of the Andhra Pradesh Excise Act, 1968, which action was dealing only with rule making powers. Section 72(3) and 72(4) of the said Act reads as under:

(3) Any rule under this Act may be made with retrospective effect and when such a rule is made the reasons

for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(4) Every rule made under this Act, shall, immediately after it is made be laid before each House of State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

151. In the said case, the Hon'ble Supreme Court at paragraph Nos.28, 30 and 31, held as under:

28. *Sub-section (3) of Section 72 of the Act merely provides for laying down the rules before both the Houses of the legislature with the reasons for giving a retrospective effect. The said provision does not speak of the necessity to obtain permission or prior approval therefor by the Houses of the legislature. Only in the event the legislature is not satisfied with the sufficiency or otherwise of the reasons assigned, it may direct that the same would operate prospectively. Sub-sections (3) and (4) of Section 72 must be read in such a manner that both may be given effect to. Sub-section (3) deals with only a special situation, whereas sub-section (4) is general in nature.*

In the event, a negative resolution is adopted the rules will cease to have the force of law. Difference between sub-sections (3) and (4) of Section 72 lies in the fact that whereas in case the rule is given retrospectivity, the members of both the Houses of the legislature shall be apprised of the reasons therefor, whereas in case of a rule which is prospective in nature, simple laying down before both the Houses would serve the statutory object.

30. *In that case, therefore, laying of the rules before both the Houses was held to be subject to affirmative resolution.*

31. *Interpreting the said provision, it was observed: (SCC p. 310, para 8)*

"Mere perusal of sub-section (2) shows that there has to be a positive act of approval by Parliament to the issuance of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time-limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for."

(emphasis sought for)

152. Here again, the Hon'ble Supreme Court was dealing only with the rule making power and not dealing with the substantive rights of the parties. Further the said judgment was dealing with acts where rule has been made

and that rule which has been made was not placed before the Houses. Importantly, no substantive rights of individuals are adversely affected by not placing the rules before the Legislature, and therefore, this case therefore will not come to the aid of State of Tamil Nadu.

153. The Learned Advocate General has also placed reliance on ***K.T.Plantation Private Limited and Another vs. State of Karnataka*** reported in ***(2011) 9 SCC 1,*** the Hon'ble court, while dealing with Section 140 of the Roerich and Devikarani Roerich Estate (Acquisition and Transfer) Act, 1996, at paragraphs 76 and 80, observed as under:

> ***76.*** *For easy reference Section 140 is extracted hereunder:*
>
> *"**140.Rules and notifications to be laid before the State Legislature**.—Every rule made under this Act and every notification issued under Sections 109, 110 and 139 shall be laid as soon as may be after it is made or issued before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the*

case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."
(emphasis supplied)

80. *Section 140 does not require the State Legislature to give its approval for bringing into effect the notification, but a positive act by the legislature has been contemplated in Section 140 to make the notification effective, that does not mean that failure to lay the notification has affected the legal validity, its effect or the action taken precedent to that notification. We, therefore, hold that non-laying of the Notification dated 8-3-1994 before the State Legislature has not affected its validity or the action taken precedent to that notification.*

154. The observation of the Hon'ble Supreme Court in paragraph 80 is to the effect that Section 140 does not require state legislature to give its approval for bringing into effect to the notification. The Hon'ble Supreme Court held that the fact that the State Legislature did not by any positive act approve of the impugned notifications/rules, would not affect the legal validity of those impugned notifications and rules. However, if we look at Section 140, quoted in the judgment it is not parimateria to Section 105-A(3), and therefore does not come to the aid of the State of Tamil Nadu, in the present case. The language employed by the Legislature in Section 105-

A, cannot be construed in a manner that laying of the notifications before the State Legislature is only directory. So even if the G.O.'s are to be taken to be "notifications" the failure to lay these before the State Legislature is fatal, and therefore the provision of Section 105A-(3) has not been complied with.

155. The learned Advocate General has also contended that the failure to lay these Government Orders is a curable defect, and that they can still be laid before the State Legislature. However, this Court has already taken the view that these G.O.s cannot be construed as "notifications" under the New Act. Thus this argument of the Learned Advocate Generalcannot be sustained in view of the fact that the Government orders are not notifications and there is no notification as postulated under Section 105-A(2) which can be laid. By issuig Government orders, there is not even substantive compliance of the conditions. As pointed out notification is to inform the general public as to how the procedure would be followed, resettlement will be fixed and how the compensation was to be calculated. Merely by saying that the compensation calculated will not be lesser than one arrived at in the new Act would not make the Government Order equal to a notification.

156. We therefore are of the unequivocal view, that the mandatory provision of Section 105-A has not been complied and therefore Section 105-A cannot be said to have come into force in the absence of the notification as stipulated in Section 105-A(2) and also non-placing the notification before the Assembly.

157. The learned Advocate General also made a submission that, large extent of lands which have been acquired under the three State enactments after 01.01.2014, have been put to use and projects have, on those lands and now it will be impossible to return the lands. In those lands where the purpose for which the land was acquired and to put to use, it will be impossible to return those lands to the land owners. Issuing any direction to the land owners, now would be unscrambling a scrambled egg. In such cases, we can only direct that the compensation and the rehabilitation must be strictly made in accordance with the New Land Acquisition Act.

Conclusions:

158. In view of the discussion, the net result of Writ Petitions before us is as follows:

158.1. Contention of petitioners that the President failed to apply his mind while granting assent to Section 105-A of the New Act, cannot be accepted.

158.2. The Petitioners have also not demonstrated, how and why the impugned State Acts were arbitrary in nature, and liable to be stuck down on the ground of being manifestly arbitrary.

158.3. However, the Writ Petitioners before us ultimately succeed because, Article 254(1) by its operation rendered the impugned Tamil Nadu Legislations repugnant, and null and void, as on the date on which the New Act was made, i.e. 27.09.2013, the date of making of the New Act, as held in the case of ***State of Kerala v Maar AppraemKuri Co. (Supra)*** *and therefore the impugned Acts do not survive.*

158.4. By enacting Section 105-A of the New Act, the State of Tamil Nadu could not have revived the three state Acts, that had become repugnant as on 27.09.2013.

158.5. In order to revive these acts, the State must re-enact these statutes, in accordance with Article 254(2) of the Constitution of India, and obtain the assent of the President. Merely, by inserting Section 105-A and the 5th Schedule, in the new Act, these impugned enactments do not get revived. Since this had admittedly not been done, the Acts remain repugnant,

and Article 254(1) renders them inoperative.

158.6. In view of the requirements of Article 254(2) of the Constitution of India, Section 105-A of the New Act, is virtually otiose. Since We have already held that Section 105-A has not revived the State Acts, the validity of Section 105-A per se, need not be examined by us.

158.7. The provisions of Section 105A(2) and (3) are mandatory in view of the necessity of complying with these provisions. The State Government has failed to make the necessary notifications, as contemplated under 105A(2) and as such the provisions of Section 105A(2) have not been satisfied. Since the notifications have not been made under sub-section (2) the requirement of sub-section (3) i.e. placing the draft notifications before the State Legislature has also obviously not been met. We therefore hold, that the requirements of Section 105A(2) & (3) have not been satisfied, and as such the insertion of the enactments in the 5th Schedule of the new Act, was not done in accordance with law.

158.8. Consequently, all the acquisitions made under the three impugned enactments made on or after 27.09.2013, are held to be illegal and quashed save those lands which have already been put to use and the purpose for which the land was acquired has been accomplished.

159. All the writ petitions are allowed as indicated above. The connected writ miscellaneous petitions and other miscellaneous petitions are closed. However, there shall be no order as to costs.

(S.M.K., J.) (S.P., J.)
3.07.2019

Asr
Index : Yes
Internet : Yes
Speaking Order / Non-Speaking Order

To

1.The Secretary,
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