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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10-04-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY
W.P.Nos.34150, 34152, 34153, 34155, 34156, 34157,
34158, 34159, 34160, 34227, 34228, 34229, 34230,
34231, 34232, 34233, 34234 of 2014,
871, 872, 873, 874, 875, 876, 877,
2433, 2434, 2435, 2493, 2494, 2495,
2708, 2709, 2710, 2711, 2969, 2970,
3815, 3816, 3826 and 4276 of 2015
M.P.Nos.1 of 2014 and 2015 (toally 40 nos.)

S.N. Sumathi ..Petitioner in W.P.No.34150 of 2014
Thangavel ..Petitioner in W.P.No.34152 of 2014
Palaniammal ..Petitioner in W.P.No.34153 of 2014
Pongianna Gounder ..Petitioner in W.P.No.34155 of 2014
S.Arumugam ..Petitioner in W.P.No.34156 of 2014
Valliammal ..Petitioner in W.P.No.34157 of 2014
S.Palaniappan ..Petitioner in W.P.No.34158 of 2014
S.Padmapriya ..Petitioner in W.P.No.34159 of 2014

1.Nallappan ..Petitioner in W.P.No.34227 of 2014
2.Tulasimani ..Petitioner in W.P.No.34227 of 2014

1.S.P.Palaniappan ..Petitioner in W.P.No.34228 of 2014
2.Pongiannan ..Petitioner in W.P.No.34228 of 2014

1.Duraisamy ..Petitioner in W.P.No.34229 of 2014
2.Sivakumar ..Petitioner in W.P.No.34229 of 2014
3.Kannan ..Petitioner in W.P.No.34229 of 2014

1.T.Gopal ..Petitioner in W.P.No.34230 of 2014
2.M.Natarajan ..Petitioner in W.P.No.34230 of 2014
3.V.K.Chenniappa Gounder ..Petitioner in W.P.No.34230 of 2014
4.V.V.parvathi ..Petitioner in W.P.No.34230 of 2014
5.P.Kavitha ..Petitioner in W.P.No.34230 of 2014

1.Arunachalam ..Petitioner in W.P.No.34231 of 2014
2.Murugesan ..Petitioner in W.P.No.34231 of 2014
3.K.Marappan ..Petitioner in W.P.No.34231 of 2014
4.K.Balasubramanian ..Petitioner in W.P.No.34231 of 2014

1.G.Shanmugam ..Petitioner in W.P.No.34232 of 2014
2.G.Ravichandran ..Petitioner in W.P.No.34232 of 2014

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1.Muthulakshmi
2.Sivaboopathy
3.Anitha ..Petitioner in W.P.No.34233 of 2014

1.Nallasivam
2.Kalaivani
3.Sathyavani
4.S.Chitra ..Petitioner in W.P.No.34234 of 2014

1.Saraswathi
2.S.P.Palaniappa ..Petitioner in W.P.No.871 of 2015

S.Venkatachalam
rep by its Power agent
S.Nallasivam ..Petitioner in W.P.No.872 of 2015

Banumathi ..Petitioner in W.P.No.873 of 2015
Ramasamy ..Petitioner in W.P.No.874 of 2015
S.Raja Selvakumar ..Petitioner in W.P.No.875 of 2015

1.Lakshmi
2.D.Rajesh Kumar
3.Krithika ..Petitioner in W.P.No.876 of 2015

1.Ramasamy
2.N.vivekanandan
3.Kannamal ..Petitioner in W.P.No.877 of 2015

S.Dhanapal ..Petitioner in W.P.No.2433 of 2015
P.Murugesan ..Petitioner in W.P.No.2434 of 2015
Arunthathi ..Petitioner in W.P.No.2435 of 2015
L.S.Ramamoorthy ..Petitioner in W.P.No.2493 of 2015
R.Chinnasamy ..Petitioner in W.P.No.2494 of 2015
C.Eswaran ..Petitioner in W.P.No.2495 of 2015
S.Muthusamy ..Petitioner in W.P.No.2708 of 2015
S.Balasubramani ..Petitioner in W.P.No.2709 of 2015
R.Eswaramoorthy ..Petitioner in W.P.No.2710 of 2015
Saraswathiammal ..Petitioner in W.P.No.2711 of 2015

1.S.Muthusamy
2.L.S.Ramamoorthy ..Petitioner in W.P.No.2969&2670 of 2015

1.L.S.Sengottaian
2.L.S.Chenniappan ..Petitioner in W.P.No.3815 of 2015

P.Nirmal Kumar
rep by Power Agent
V.Palanisamy,S/o.Vaiyapuri Gounder ..Petitioner in W.P.No.3816 of 2015

K.K.Thangaraj

..Petitioner in W.P.No.3826 of 2015

1.M.Ramathal

2.M.Kalaiselvi

3.M.Arunkumar 3rd petitioner is

rep by Power Agent M.Ramathal ..Petitioner in W.P.No.4276 of 2015

vs

1. State of Tamil Nadu

rep by its Principal Secretary,
Highways Department,
Secretariat, Chennai-600 009

2. The District Collector,
Erode District, Erode.

3. Land Acquisition Officer cum
The District Revenue Officer,
Land Acquisition Office,
Erode District, Erode

...Respondents

Kandasamy (R4 in WP.874/15)

Palaniammal (R4 in WP.2435/15)

Dharmalingam (R5 in 2435/15)

S.Rajendran (R4 in WP.2970/15)

W.P.No.34150 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of Declaration declaring the Land Acquisition Proceedings initiated under the Tamil Nadu Highways Act, 2001 by the respondents regarding the property of the petitioner situated at Erode Taluk 35 Erode "C" village in R.S.No.966/6B measuring an extent of 01810 sq.meters

RS.Nos.623/14,624/2A measuring on extent of 00031 sq.meters.01900 sq.meters,

935/3B measuring an extent of 01135 sq.meters

654/9A1, 654/9B1 and R.S.No.654/9B2 measuring an extent of 00354 sq.mts.

00056 sq.meters and 00070 sq.meters

623/3A measuring an extent of 01065 sq.meters

660/4B2 measuring an extent of 00735 sq.meters

976/6B measuring an extent of 00735 sq.meters

631/1A measuring an extent of 00003 sq.meters

661/10B measuring an extent of 01175 sq.meters

660/7B and 660/11B measuring an extent of 01884 sq.meters & 01150 sq.meters
942/19A and 942/20A measuring an extent of 00197 sq.meters & 00034 sq.meters
661/1B measuring an extent of 01275 sq.meters
665/2B measuring an extent of 01500 sq.meters
631/3A measuring an extent of 00434 sq.meters
660/3B measuring an extent of 00122 sq.meters
631/2A measuring an extent of 00256 sq.meters
661/6B measuring an extent of 00290 sq.meters
942/1B measuring an extent of 01218 sq.meters
653/2 and 653/3 measuring an extent of 3000 sq.ft.meters
653/1A2 measuring an extent of 01060 sq.meters in respect of petitioner property only
935/1A measuring an extent of 100 sq.meters & in RS.No.935/2B measuring an extent of 3734 sq.meters.
658/3B measuring an extent of 1900 sq.meters
653/1B2 measuring an extent of 01839 sq.meters in respect of petitioners property only
653/2B and RS.No.653/3B measuring an extent of 01880 sq.meters in respect of petitioner property only in WP.Nos.34150, 34152 to 34160/14, 34227 to 34234/14 and WP.871/15 to 877/15 respectively as void, unconstitutional and illegal.

Declaring the Land Acquisition proceedings initiated under the T.N.H.Act 2001, by the respondents regarding the property of the petitioner situated at Erode District, Erode Taluk, 41 Punjai Lakkapuram Village, measuring 02300 sq.meter in RS.155/3B, measuring the extent of 0.23.00 Punja Hectors all further proceedings as void, unconstitutional & Illegal, Erode dt. measuring the extent of 0.12.50 punjai hectors.

Erode District to extent of 00410 sq.meters out of 02550 sq.meters bearing in RS.156/2B to be acquired in Erode District, 41 Punjai lakkapuram Village, and all further proceedings.

Erode District measuring 01850 sq.meters in RS.No.152/5A measuring the extent of 017.85 Punjai Hectors and measuring 00154 sq.meter in RS.152/2B, measuring the extent of 0.18.50 & 0.0154 punjai hectors respectively all further proceedings.

Erode District 46 Pudur B Village, measuring 01990 sq.meter in RS.465/11A2, and an extent of 00110 sq.meters in RS.465/2B2 and all further proceedings.

Erode District 46 Pudur B Village, measuring 01530 sq.meter in RS.467/1B, measuring the extent of 0.15.30 punja Hectors and all further proceedings.

41 Punjai Lakkapuram Village, measuring 01785 sq.meter in RS.152/1B, measuring the extent of 0.17.85 Punja Hectors and all further proceedings.

41 Punjai Lakkapuram Village, (1) an extent of 00300 sq.meters bearing RS.178/3B, and (2) an extent of 01869 sq.meters in RS.178/4B and punjai hectors 0.03.00 and 0.18.69 respectively all further proceedings.

46 Pudur B Village, measuring 01700 sq.meter in RS.485/1A2 measuring the extent of 0.17.00 punja hectors and all further proceedings.

41 Punjai Lakkapuram Village, (1) measuring 01850 sq.meter in RS.181/3B to the extent of Punja Hector 0.18.50 and (2) measuring 00004 sq.meter in RS.181/8A to the extent of punja hector 0.00.04 punjai hectors respectively all further proceedings.

41 Punjai Lakkapuram Village, an extent of 0500 sq.meters bearing RS.152/3B to the extent of punja hector 0.05.00 and all further proceedings.

41 Punjai Lakkapuram Village, an extent of 01200 sq.meters bearing RS.152/4B, measuring punja hector 0.18.00 all further proceedings.

41 Punjai Lakkapuram Village, measuring 01250 sq.meter in RS.151/2B to the extent of punja hector 0.12.50 and all further proceedings.

46 Pudur B Village, measuring 0017 sq.meter in RS.458/1G2, 0913 sq.meter in RS.458/1G3, 0690 sq.meter in RS.458/2B and 050 sq.meter in RS.494/2B 3A to the extent of punja hectors 0.00.17, 0.09.13, 0.06.90 & 0.00.50 and all further proceedings.

46 Pudur B Villge, measuring 01080 sq.meter in RS.458/1C2 measuring the extent of 0.10.80 punja hectors all further proceedings.

41 Punjai Lakkapuram Village (1) an extent of 02650 sq.meters bearing RS.155/4B measuring punja hector 0.26.50 (2) an extent of 00316 sq.meters in RS.181/2B, measuring punja hector 0.03.16 and (3) an extent of 00947 sq.meters in RS.181/7B, measuring punja hector 0.09.47 all further proceedings respectively in WP.Nos.2433 to 2435/15, 2493 to 2495/15, 2708/15 to 2711/15, 2969, 2670/15, 3815, 3816/15, 3826/15 and 4276/2015.

For petitioners in : Mr.N.M. Shanmugasundaram
W.P.Nos.3815 & 3816
of 2015

For petitioner in all : Mr.K. Ramasamy
other writ petitions

For respondents 1 to 3 in: Mr.S. Gomathinayagam
the writ petitions Addl. Advocate General
assisted by Mr.V. Subbiah
Spl. G.P in W.P Nos.
34227 to 34234/14, 34155
to 34160/14, 2433 to 2435,
2493 to 2495, 2708 to 2711,
2969, 2970, 3815, 3816 and
3826 of 2015

For respondents 1 to 3 in : Mr.S. Gomathinayagam
WP Nos. Addl. Advocate General
assisted by
Mr.R. Lakshmi Narayanan
AGP in W.P.Nos.
34150, 34152, 34153, 34227 to
34234/2014, 871 to 877 and 4276
of 2015

COMMON ORDER

Since the issues involved in all these writ petitions are common, the learned counsel on either side advanced common arguments in all these writ petitions. Hence all the writ petitions are disposed of by this Common Order.

2. Heard Mr. N.M. Shanmuga Sundaram and Mr. K. Ramasamy, learned counsel appearing for the petitioners and Mr.S. Gomathinayagam, learned Additional Advocate General for the respondents.

3. The petitioners in all these writ petitions have sought for a Writ of Declaration to declare the Land Acquisition Proceedings initiated under the Tamil Nadu Highways Act, 2001 by the respondents regarding their properties situated at Erode Taluk, "C" village, Punjailakapuram village and Pudur B village, as void, unconstitutional and illegal.

4. It is the case of the petitioners that they are the owners of their respective lands, which were acquired by the respondents under the Tamil Nadu Highways Act, 2001. The lands belonging to the petitioners situate very near to Erode Town Limit and that they are suitable for conversion of house sites. The third respondent issued

Sec.15(2) notice under the Tamil Nadu Highways Act, 2001 on 8.9.2010 and the Notification was published in the Newspaper on 13.10.2010. The purpose of acquisition was for formation of Outer Ring Road at Erode. Though the proceedings commenced way back in 2010, the petitioners have not been paid the compensation till today. Since the respondents have not passed the Award even after a lapse of four years, the petitioners contended that the entire acquisition proceedings had lapsed.

5. According to the respondents, the land acquisition proceedings under the Tamil Nadu High Ways Act were initiated by issuing individual notice dated 23.9.2010 under section 15(2) of the Act and an opportunity was provided to appear before the third respondent on 15.10.2010. A Notification under Sec.15(2) of the Act was published on 15.12.2010 in Tamil and English dailies. On 3.4.2012, the High ways Department approved the Notification under Sec.15(1) of the Act and the same was published in the Gazette on 2.5.2012. Thereafter, the lands, to which the said Notice was issued, vest absolutely with the Government, free from all encumbrances. The State Government brought out the new Highways Act to expedite the process of land acquisition for developments of its highways by legislating a new Highways Act. The Act cannot be read and interpreted to mean that the provisions of Land Acquisition Act 1894 apply " mutatis mutandis" to the Tamil Nadu Highways Act 2001. As such, the mandate prescribed under Section 11A of the Land Acquisition Act 1894 is not applicable to the present cases. The Tamil Nadu Highways Act does not stipulate any period of limitation, between Notification under Section 15(1) of the Act and passing of orders under Section 19(11) of the Act. Hence the question of lapse does not arise. The petitioners cannot compare the provisions of Land Acquisition Act with the Tamil Nadu Highways Act. There is no time limit prescribed in the Tamil Nadu Highways Act 2001 to pass an Award.

6. Mr.K. Ramasamy, learned counsel appearing for the petitioners in all these writ petitions made his submissions raising the following points:

(a) That Sec.19(6) of Tamil Nadu Highways Act, prescribes for determination of compensation amount which should rely upon the provisions of Land Acquisition Act 1894, thus the provisions of Land Acquisition Act apply " mutatis mutandis" to the Tamil Nadu Highways Act 2001 and in case any provision of the Tamil Nadu Highways Act is silent and ambiguous, the provisions of the Land Acquisition Act shall govern and be applicable. Therefore, the present proceedings are governed by Land Acquisition Act and the mandate prescribed under Sec.11A should have been strictly complied with. Since the provision of Sec.11A has not been complied with, the acquisition proceedings initiated under the Tamil Nadu Highways Act are said to be lapsed.

(b) The respondents have not followed the procedure prescribed in the Tamil Nadu Highways Act 2001 as well as the provisions of the Land Acquisition Act 1894.

(c) Since the mandatory provisions of Sec.11A has not been followed, the entire proceedings initiated under the Tamil Nadu Highways Act had lapsed.

(d) As per Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force on 1.1.2014, the concerned authorities are mandated to make an Award within a period of twelve months from the date of publication under Sec.19, which is corresponding to Sec.6 of the Land Acquisition Act, 1894. The respondents should have followed the provisions of Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the failure to follow the provisions would vitiate the acquisition proceedings initiated by the respondents under the Tamil Nadu Highways Act.

(e) that the omissions to include a similar provision to that of Sec.11A of Land Acquisition Act 1894 in the Tamil Nadu Highways Act could be supplied by the Court by taking resort to the doctrine of casus omissus.

7. The learned counsel for the petitioners fairly submitted that the intention of the petitioners is not to block the development project, which will be useful for public, but they are interested only in getting higher compensation for the lands acquired. Further, the learned counsel for the petitioners submitted that the petitioners are not litigating for getting back the possession of their respective lands.

8. In support of his contention, the learned counsel relied upon the following judgments:

(i) (2010) 3 SCC 97 (R. Kolandaivelu vs Govt of Tamil Nadu), wherein the Hon'ble Supreme Court held as follows:

21. By the provision of Section 11A, the State authorities are required to pass a final award within two years from the date of publication of declaration under Section 6 of the Act failing which, the acquisition proceedings would lapse, and it would clearly show the intention of the legislature that the benefit of this provision would be in favour of the land owner if the award could not be passed within two years from the date of declaration when no order was obtained by the land owner from the Court staying the acquisition and the land would revert

back to the land owner because of expiry of the period of two years from the date of declaration or notification within the meaning of Section 11A of the Act.

22. As noted herein earlier, initially the interim order of stay was granted staying the notifications for four weeks, but from the record and the conduct of both the parties and after considering the fact that the State/respondents had to file an application for vacating the stay order thinking that stay order was continuing and the appellants having contested the said application for stay till the disposal of the same, there cannot be any doubt in our mind that both the parties proceeded on the basis that the interim order of stay passed initially for four weeks continued till the final order of interim stay passed by the High Court on the application for vacating the interim order of stay. Such being the stand taken by us, we are, therefore, of the view that the award was passed in accordance with Section 11A of the Act, that is to say, the award was passed within two years from the date of publication of declaration under Section 6 of the Act.

23. There is another aspect of the matter. The purpose for which the Land Acquisition Act was amended and Section 11A was enacted, was to prevent inordinate delay being caused by the Land Acquisition Officer in making an award which deprived the land owners of their enjoyment of their land or dealt with the land whose possession was already taken. The delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act.

24. By the introduction of this explanation and Section 11A of the Act, the Legislature intended to emphasize that the Collector shall make his

award under the Act within two years from the date of publication of declaration under Section 6 of the Act, failing which the acquisition proceeding itself shall lapse. In this connection, reliance can be made to a decision of this Court in Bailamma (supra) as noted herein earlier. In this decision, this Court had considered the effect of the amendment of the Act introducing Section 11A with explanation and observed in this connection as follows :

16. "This Court emphasized the fact that Section 11- A was enacted with a view to prevent inordinate delay being made by Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act". The emphasis, therefore, was on the Collector making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11-A was meant to deal with situations of this kind. The explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a land-owner alone. One can conceive of cases where apart from land- owners others may be interested in stalling the land acquisition

proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame."

ii) (2008) 4 SCC 755 (Gujarat Urja Vikas Nigam Ltd vs Essar Power Ltd), wherein the Hon'ble Supreme Court has held as follows:

53. In the chapter on 'Exceptional Construction' in his book on 'Interpretation of Statutes' Maxwell writes :

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what the words signify, and that the modifications thus made are mere

corrections of careless language and really give the true intention."

54. Thus, in S.S. Kalra vs. Union of India 1991(2) SCC 87, this Court has observed that sometimes courts can supply words which have been accidentally omitted.

55. In G.P. Singh's 'Principles of Statutory Interpretation' Ninth Edition, 2004 at pages 71-74 several decisions of this Court and foreign Courts have been referred to where the Court has added words to a statute (though cautioning that normally this should not be done).

56. Hence we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174 and Section 175.

57. In our opinion the principle laid down in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. Hence Section 174 will prevail over Section 175 in matters where there is any conflict (but no further).

iii) 2004 (6) SCC 672 (Maulavi Hussein Haji Abraham Umarji vs State of Gujarat and another), where the Apex Court has held as follows:

21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference

to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in *Artemiou v. Procopiou*, [1966] 1 QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. IRC*, [1966] AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

22. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*." "But", on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fenton v. Hampton*, 11 Moore, P.C. 345). A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - *Casus omissus et oblivioni datus dispositioni communis juris relinquitur*; "a *casus omissus*", observed

Buller, J. in Jones v. Smart, I.T.R. 52,
"can in no case be supplied by a court of
law, for that would be to make laws."

(iv) (2007) 11 SCC 92 (U.P State Electricity Board vs Pooran Chandra Pandey and Others), wherein the Hon'ble Supreme Court has held as follows:

12. As observed by this Court in State of Orissa vs. Sudhansu Sekhar Misra (AIR 1968 SC 647 vide para

13):-A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901 AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

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(v) 2009 (5) SCC 313 (Bank of India and another vs K. Mohandas and others), wherein the Apex Court has held as follows:

54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in Quinn vs. Leathem, 1901 AC 495, is worth recapitulating first:

"Before discussing Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before -that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all."

55. This Court has in long line of cases followed the aforesaid statement of law. In State of Orissa vs. Sudhansu Sekhar Misra, AIR 1968 SC 647, it was observed:

".... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Lord Denning:

" Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. It was highlighted by this Court in Ambica Quarry Works Vs. State of Gujarat, (1987) 1 SCC 213:

"18....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

vi) 2013 7 SCC 554 (Jayamma and others vs Deputy Commissioner, Hassan District, Hassan and Others), wherein, the Hon'ble Supreme Court has held as follows:

7. Under Section 11A of the Land Acquisition Act, the Collector is to pass the award under Section 11 within a period of two years from the date of the publication of the declaration and, in case no award is made within that period, the entire proceedings for acquisition of the land would lapse. In the instant case, the declaration under Section 6 dated 15.10.2008 published on 23.10.2008 had already lapsed by the time the writ petitioners had approached the High Court. This crucial factual position, unfortunately, has not been taken note of by the High Court. The Court cannot compel the land acquisition collector to pass awards in respect of the land acquisition proceedings which had already lapsed.

12. Yet with all these, the fact remains that the residential houses of the petitioners are in the seepage affected area in Mukundur village coming under 6th District Minor Hemavathi Left Bank Canal. Despite decades long efforts made by the petitioners, it appears even the cement concrete lining to the canal has been done only recently and that too in order to avoid the acquisition for which twice notifications had already been issued. It has to be noted that the agricultural land of the petitioners had already been acquired and what remained was only the residential part. Petitioners had the grievance that on account of the seepage, there was dampness resulting also in cracks on the building. In view of the miseries suffered by these poor persons, we are of the view that it will not be just and fair to relegate them to workout their remedies before the civil court for damages, at this instance of time. Therefore, in the interests of justice and in order to do complete justice, we order that each of the petitioners shall be paid a

lump sum amount of Re.1 lakh each towards damages for the hardships they have already undergone on account of seepage resulting in dampness and cracks to their residential buildings. The respondents 7/8 shall see that the amount as above is deposited in the bank account of the respective petitioner within three months. We, however, make it clear that this Judgment shall not stand in the way of the respondents, if so required or warranted in public interest, acquiring the disputed lands.

9. Countering the submissions made by the learned counsel for the petitioners, Mr.S. Gomathinayagam, learned Additional Advocate General, appearing for the respondents, submitted that the provisions of the Land Acquisition Act 1894 are not applicable to the Tamil Nadu Highways Act, 2001. Since there is no stipulation of limitation between publication of the Notification under Sec.15(1) and the date of determination of amount under Section 19 of the Act, acquisition proceedings will not lapse. The mandate prescribed under Sec.11A of the Land Acquisition Act 1894 will not apply to the petitioner's cases, since no period of limitation is prescribed under the Tamil Nadu Highways Act. The petitioners cannot interpret the provisions according to their convenience and there is no lapse in the land acquisition proceedings.

10. Further, the learned Additional Advocate General submitted that in the present writ petitions, the petitioners cannot question the vires of the Act and from the plain reading of the provisions of Sec.19(6) of the Tamil Nadu Highways Act, it is evident that application of the provisions contained in Sections 23 and 24 of the Land Acquisition Act 1894 would be restricted to the method and procedure of fixing the compensation to the lands, under acquisition. Further, the learned Additional Advocate General submitted that by filing these writ petitions, the petitioners have stalled a public project, by creating a bottle neck in the formation of road. In these circumstances, the learned Additional Advocate General prayed for dismissal of all these writ petitions. In support of his contention, the learned Additional Advocate General has relied upon the following judgments:

i) 2008 (2) L.W. 989 ((J. Parthiban and 14 others vs State of Tamil Nadu and 2 others), wherein, the Division Bench of this Court has held as follows:

" 14. It is thus a settled position of law that the power of acquisition is an independent power

emanating from Entry 42 of List III in the Seventh Schedule of the Constitution and it is not ancillary or incidental to any of the Entries in List I, List II or List III, Entry 29 (List I) does not include power of acquisition and such power of acquisition flows independently from Entry 42 of List III.

20. The contention advanced is that the State Government cannot resort to the T.N.Acquisition Act, as airport is not an industry for the purpose of the said Act. This contention also proceeds on the premise that the airport being a Union subject the State lacks competence to acquire the land. We have already seen that the State Act in question is in pith and substance a law for acquisition under Entry 42 of List III of the 7th Schedule. It can hardly be disputed that the State Government is primarily interested in development of the industries and in order to ensure industrial growth, infrastructural facilities like airport, railways, etc., are vitally important. In the broad sense, the purpose of expansion of the airport is also a State purpose or in other words a general public purpose. In this view also the acquisition in this case must be held to have been validly made.

(ii) 1995 (1) SCC 519 (State of Tamil Nadu and Others vs Ananthi Ammal and Others), wherein the Hon'ble Supreme Court has held as follows:

7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.

9. By reason of section 5, the land in respect of which notice under section 4(1) is published

vests absolutely in the State Government on and from the date of such publication. Every person having an interest in such land is, by reason of section 6, entitled to receive compensation. Section 12 says that where the amount thereof is not paid or deposited on or before the taking of possession of the land, interest thereon is payable at the rate of 6% per annum from the time of taking of possession until payment or deposit.

10. Section 7 states that the amount payable in respect of land that is acquired under the said Act "shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4". What is payable as compensation is the market value of the land and it is to be determined as on the date on which the notice under section 4(1) is published. To that extent the provisions of the said Act are more favorable than those of the Land Acquisition Act for, under that statute, market value as on the date of the Section 4 notification is payable, not on the date of the Section 6 notification.

11. It is true that the said Act provides for matters which are to be ignored in determining the amount under section 8 but does not make provision, as the Land Acquisition Act does, in determining the amount. It has, however, to be realised that the concept of market value and how it is to be determined is well established. In *State of Gujarat v. Shantilal Mangaldas & Ors.* (1969) 3 S.C.R. 341, this Court said, "Specification of principles within the meaning of Article 31(2) as it then read means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of "market value" of the land on the date of the notification under section 4(1) of the Act. That is a specification of principle. Compensation determined on the basis of market value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified". It is, therefore, of no great consequence that

the said Act does not go on to specify what is to be taken into account in determining the amount payable as compensation for land that is acquired thereunder.

12. Sub-section (1) of section 7, as aforesaid, states that the amount payable in respect of the land that is acquired under the said Act shall be its market value on the date of publication of the notice under section 4(1). Sub-section (2) of section 7 states that, in addition to the market value of the land, the prescribed authority shall in every case award a sum of 15 per centum on such market value as solatium in consideration of the compulsory nature of the acquisition. Sub-section (3) of Section 7 states that the prescribed manner, determine by order the amount payable under sub-section (1) and a copy of the said order shall be communicated to the owner of such land and every person interested therein. The purport of section 7, read as a whole, is that the market value of the land is payable as compensation and subsection (3) states that the market value shall be determined after holding an inquiry contemplates notice to the owner and other person interested in the land and consideration of their claims for compensation and the basis thereof, namely, the evidence they adduce. Upon determination of the market value of the land after inquiry, the prescribed authority is obliged under sub-section (2) of section 7 to award as compensation for the acquisition the market value and as additional 13% as solatium.

(iii) 2002(3) SCC 533 (Padma Sundara Rao (Dead) and Others vs State of Tamil Nadu and Others), wherein the Apex Court has held as follows:

14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd. (2000 (5) SCC 515)]. The legislative casus omissus cannot

be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges."]

(iv) 1997 (1) SCC 134 (Ramniklal N. Bhutta and another vs State of Maharashtra and Others), wherein the Hon'ble Supreme Court has held as follows:

" 10. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

(v) 2011 (1) SCC 640 (Bajaj Hindustan limited vs Sir Shadi Lal Enterprises Limited and another), wherein the Hon'ble Apex Court has held as follows:

39. We should not be understood to have meant that the judiciary should never interfere with administrative decisions. However, such interference should be only within narrow limits e.g., when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal.

45. In our opinion there should be judicial restraint in fiscal and economic regulatory

measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially adhoc and experimental: Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

46. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise."

(vi) (2011) 12 SCC 69 (Union of India vs Kushala Shetty and Others), wherein the Hon'ble Supreme Court has held as follows:

24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the

particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

Vii) 1996 (1) SCC 250 (State of Tamil Nadu and others vs L. Krishnan and Others), wherein the Hon'ble Supreme Court has held as follows:

40. There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6 were made. As stated above, the declarations under Section 6 were made in the Year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in Aflatoon that laches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations :

"Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non- specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under s.6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under s.9 were issued to them.....

Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under s.6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under s.4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under s.4 and the declaration under s.6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the laches and delay on the part of the petitioners (See Tilokchand Motichand and Ors. V. H.B.Munshi and Another (1969 (2) S.c.R.824); and Rabindranath Bose and Others v. Union of India & Ors (1970 (2) S.C.R.697)).

From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court."

41. The above observations speak for themselves-and are fatal to the writ petitioners.

42. We may next take up the other ground assigned by the High Court for quashing the notifications, viz., the delay in passing the award after the declaration under Section 6 were published. While we agree that there has certainly been delay in passing the award, but this circumstance must be weighed against the beneficial counter-vailing provision contained in Section 48-A, added by the Tamil Nadu Legislature in the Land Acquisition Act. Section 48-A reads:

"48-A. Compensation to be awarded when land not acquired within two years.--

(1) Where the Collector has not made an award under Section 11 in respect of any land within a period of two years from the date of the publication of the declaration under Section 6 or of the issue of a notice under clause (c) of sub-section (3) of Section 40 of the Madras City Improvement Trust Act, 1950, or of the publication of a notification under Section 53 of that Act as the case may be, the owner of the land shall, unless has been responsible for the delay to a material extent be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

43. According to this provision, if the award is not made within two years of the declaration under Section 6, the owner of the land shall be entitled to receive compensation for the damages suffered by him in consequence of the delay unless he is himself responsible for the delay to material extent. Subsection (2) further says that for determination of the compensation under the said section, the provisions in Part-III of the Land Acquisition Act shall apply. Even apart from this provision, there is yet

another circumstance which should be taken note of in these appeals. In these cases, the land acquisition proceedings were pending on 30th day of April, 1982 and if so, the persons interested would be entitled to the additional amount by sub-section (1-A) of Section 23 of the Land Acquisition Act. According to the said sub-section, "(I)n addition to the market value of the land..... the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier." The provisions in this sub-section are designed to compensate the owners of the land for the rise in prices during the pendency of the land acquisition proceedings. It is a measure to off-set the effects of inflation and the continuous rise in the values of properties over the last few decades and appears to be more beneficial to the claimants. In view of Section 48(A) [supra], the provision in Section 23(1-A) and the delay on the part of the writ petitioners in not approaching the Court within a reasonable time, we are of the opinion that the delay in passing the awards after the publication of the declaration under Section 6 cannot be held to be fatal.

44. We may append a note of caution. This holding of ours may not be understood as saying that land acquisition proceedings can be delayed indefinitely and that the provision in Section 23(1-A) is an adequate recompense for such delay. No such proposition can be countenanced. These proceedings must be concluded with due expedition. It is this concern which has led the Parliament to enact various time limits for making the declaration under Section 6 and for making the award by way of Amendment Act 68 of 1984. The person who is deprived of the land must be given his due compensation without avoidable delay. This obligation flows from the duty to exercise the

statutory power in a reasonable and fair manner, more particularly where the subject-matter is acquisition of land/property. [See Ram Chand and others V. Union of India and Others (1994 (1) S.C.C.44.)]. It is only in the particular facts and circumstances of this case, mentioned above, that we are disinclined to interfere.

viii) 2011 (3) SCC 139 (Offshore Holdings private limited vs Bangalore Development Authority and others), wherein the Hon'ble Supreme Court has held as follows:

125. Having said so, now we proceed to record our answer to the question referred to the larger Bench as follows:

"For the reasons stated in this judgment, we hold that the BDA Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of the BDA Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof, including lapsing of acquisition proceedings, cannot be read into the BDA Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under the provisions of the BDA Act."

(ix) (1981) (3) SCC 628 (Babu Singh vs Union of India), wherein the Apex Court has held as follows:

12. Before we conclude, it must be pointed out that the writ petition was filed on 22nd April, 1969 i.e. nearly six years and one month after the publication of the impugned notification and about 5 years after the award. No explanation is offered why writ

petition was filed after such an inordinate delay and after the entire process of acquisition was over. The High Court dismissed the writ petition in limine presumably on account of delay. This Court in *Aflatoon v. Lt. Governor of Delhi and Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan* that if a person allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then attacked the notification on the grounds which were available to him at the time when the notification was published, it would be putting a premium on dilatory tactics. The length of the delay is an important circumstance because of the nature of the acts done within the interval on the basis of the notification and declaration and, therefore, a challenge to a notification under Section 4 and a declaration under Section 6 of the Act should be made within a reasonable time thereafter. If it is not so done the petition is liable to be dismissed. This appeal must fail for this additional reason because the challenge to two notifications was after a period of six years and after the whole process of acquisition was over and the State Government had spent a considerable amount in carrying out the public purpose.

(x) 2008 (5) CTC 788 (*K. Rakianna Gounder vs The State of Tamil Nadu, Social Welfare Department*, wherein this Court has held as follows:

" 7. The Writ Petition shall be disposed of on the short point. The validity or constitutionality of Act 31/1978 is under challenge. In *Ananthi Ammal's case*, AIR 1995 SC 2114, while reversing the decision of the Madras High Court, upholding the validity of the provisions contained in the Act, except the provisions contained in Section 11 providing for payment of the compensation amount in instalments, the Supreme Court has held thus:

14,. That no reference as in Section 18 of the Land Acquisition Act in regard to the amount of compensation for land that is acquired is provided for does not, in our view, make the said Act unreasonable. Under the provisions of the Land Acquisition Act the award is no more than an offer. If the landowner or other person interested in the land does not accept the offer, Section 18 gives him the right of having the compensation amount decided by the court. (See Raja Harish Chandra Raj Singh vs Dy Land Acquisition Officer, 1962 (1) SCR 676: AIR 1961 SC 1500). In the reference Court compensation has to be established In the case of the said Act an Appeal is provided under Section 9 from the award, that is, the market value of the land and solatium, under Section 7. The market value is required to be determined, by reason of sub-section (3) of Section 7, upon an enquiry as herein above explained. The land owner or other person interested in the land has, therefore, the opportunity to establish its market value before the prescribed authority. Such evidence as he places before the prescribed authority becomes a part of the record of the Court in Appeal under Section 9. The Court in Appeal under Section 9 would also, in appropriate cases, have the right to call for additional evidence".

When the Supreme Court has upheld the validity of the statute, it is not necessary again to consider the vires of repugnancy of Section 9 of the Act with Sections 18 and 28-A of the Central Act."

(xi) 2008 Writ Law Reporter 1001 (A. Sivaji and others vs The Union of India and others), (Madurai Bench) wherein this Court held as follows:

8. The argument advanced by the counsel is that the National Highways Act 1956 is unconstitutional based upon the comparative provisions found in Central Act 1 of 1984. Such an argument is impermissible. In State

of M.P vs G.C. Mandawar (1955) 1 SCR 599; AIR 1954 SC 493, a Constitution Bench of the Supreme Court held that Article 14 does not authorise the striking down of the law of one State on the ground that in contrast with the law of another State on the same subject, its provisions are discriminatory, nor does it contemplate the law of the Centre or of a State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two. The sources of authority for the two being different. Article 14 can have no application".

11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the Notice under Sec.15(2) of the Tamil Nadu Highways Act was published in the Newspapers on 15.12.2010. The Notice under Sec.15(1) of the Act was published on 2.5.2012 and thereafter the lands belonging to the petitioners, which were sought to be acquired, vest with the Government, free from encumbrances.

12. On 1.10.2012, the Notice under Sec.16(2) of the Act was issued calling upon the land owners to surrender or deliver possession of the lands acquired within thirty days. On 15.10.2014, the respondents issued Notice under Sec.19(2) of the Act calling upon the land owners to express their willingness to enter into an agreement with regard to valuation of the lands. On 24.12.2014, the Government published errata to the Notification issued under Sec.15 (1) of the Act. On 31.12.2014, a Notice under Sec.19(5) of the Act was issued to the land owners calling upon them to state their objections as to the determination of the compensation.

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 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 within 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 difference 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.

18. Therefore, in the case of any delay in determining and paying the compensation to the land owners, they are entitled to get interest at the rate of 9% p.a. When the Land Acquisition Act 1894 has been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the provisions of the Land Acquisition Act 1894 cannot be made applicable to the Tamil Nadu Highways Act. That apart, Sec.68 of the Tamil Nadu Highways Act also bars the application of the provisions of the Land Acquisition Act.

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 Ananthi Ammal 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.

20. When there is no provision incorporated in the Acquisition of Land for Harijan Welfare Scheme Act 1978, and the same was also upheld by the Apex Court, the contentions of the petitioners that failure to incorporate similar provisions found in the Land Acquisition Act 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the Tamil Nadu Highways Act affected the vires of the Highways Act cannot stand. That apart, in the present writ petitions, the petitioners have not challenged the vires of the Act at all.

21. The Hon'ble Supreme Court in the judgment reported in 2011 (3) SCC 139 (Offshore Holdings Private Limited vs Bangalore Development Authority and Others) cited supra held that when the Bangalore Development Authority Act is a self-contained code, hence, the provision of Sec.11A of the Land Acquisition Act cannot be applied to the acquisitions under the provisions of the Bangalore Development Authority Act.

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.

23. It cannot be disputed that the person, who is deprived of the land must be given due compensation without avoidable delay. This obligation flows from the duty to exercise the statutory power in a reasonable and fair manner, more particularly where the subject matter is acquisition of land/property. But in the absence of a specific provision to make the acquisition proceedings as lapsed, this Court cannot introduce a new Provision, which is not there in the Act. The introduction of such a provision in the Act is for the Legislature to decide.

24. When there is no violation of the provisions of the statute or of a constitutional provision or in the absence of arbitrariness, the Court should not interfere with the administrative decisions. It is the administrators and legislature, who are entitled to frame policy and entitled to take decisions as they think necessary in the public interest.

25. It is settled position that the Courts should not ordinarily interfere with the policy decisions unless they are clearly illegal or unconstitutional. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.

26. While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

27. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

28. A casus omissus ought not to be created by interpretation, save in some case of strong necessity, where, however, a casus omissus does really occur through the inadvertence of the legislature. In the absence of any enabling provision either in Section 11A of the Land Acquisition Act or in the Limitation Act, there is no room for borrowing the principles either from the Land Acquisition Act or from Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. It has been held in several decisions that casus omissus cannot be supplied except in the case of clear necessity and when reason for it is found within the four corners of the statute itself.

29. It is a well settled principle of law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The question is not what may be supposed and has been intended but what has been said.

30. In the cases on hand, in the absence of a provision on par with Sec.11A of the Land Acquisition Act or Sec.25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), applying the principles laid down by the Hon'ble Supreme Court in the judgments cited above, I am of the considered view that the contentions raised by the learned counsel for the petitioners that the acquisition proceedings had lapsed in respect of the petitioners' respective lands for the reason that the respondents have not determined the compensation even after lapse of four years, cannot be accepted.

31. Apart from these aspects, the State has undertaken a project in providing Outer Ring Road with a view to ease traffic congestion in Erode City, thereby preventing accidents causing loss of human lives. Therefore, public interest requires that such an activity should be allowed to proceed and cannot be stalled.

32. It is also brought to the notice of this Court by the learned Additional Advocate General that due to the pendency of these writ petitions, the respondents are not in a position to complete the project. The Courts have to weigh the public interest vis-a-vis the private interest, while exercising the power under Article 226 of the Constitution of India.

33. The petitioners have filed the above writ petitions nearly after four years from the date of issuance of the publication of Section 15(2) Notice. The petitioners have not explained the reasons for the delay in filing the writ petitions. After a lapse of five years, the project of Outer Ring Road, which will be of much use to the public, cannot be stalled at this stage.

34. In these circumstances, I am of the considered view that the contentions raised by the learned counsel for the petitioners are liable to be rejected and accordingly, the same are rejected.

35. In the result, all the writ petitions are dismissed. No costs. Consequently, connected MPs are closed.

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.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

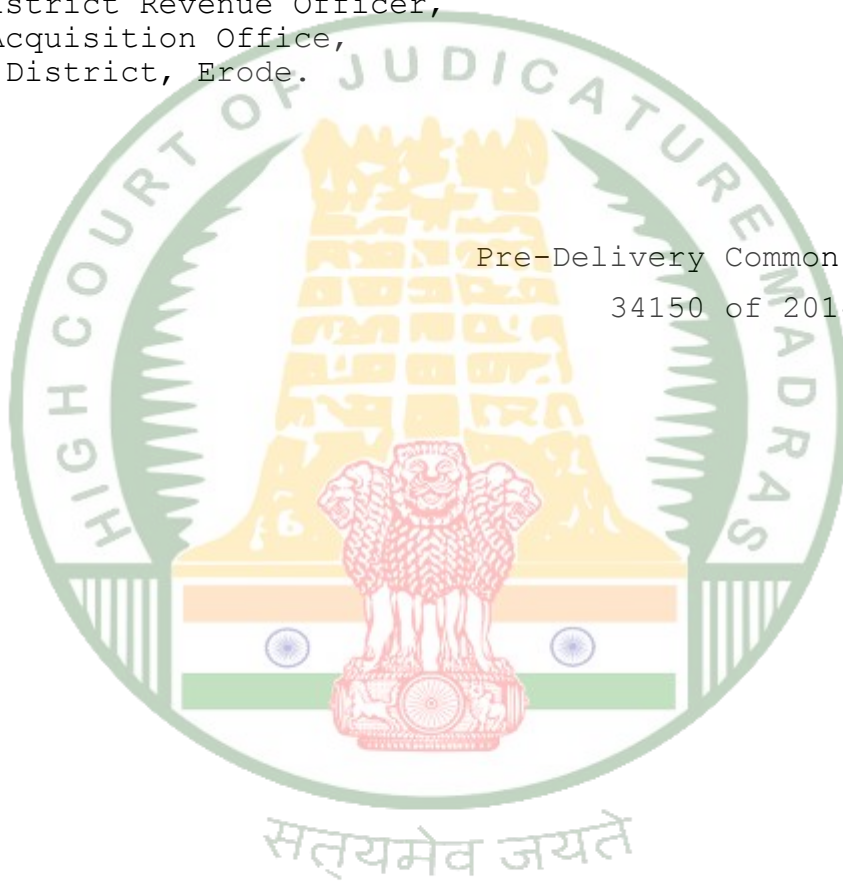
To

1. State of Tamil Nadu
rep by its Principal Secretary,
Highways Department,
Secretariat, Chennai-600 009
2. The District Collector,
Erode District, Erode.
3. Land Acquisition Officer cum
The District Revenue Officer,
Land Acquisition Office,
Erode District, Erode.

rv(co)

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Pre-Delivery Common order
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