

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2015

Delivered on: 05.08.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.27550 to 27553/2014, 30173 to 30177/2014,

39/2015, 150/2015, 993/2015 and 1524/2015

and M.P.Nos.1,1,1 & 1 of 2014

and M.P.Nos.1, 1, 1 & 2, 2 of 2015

1.A.Sankara Subbu .. Petitioner in WP.27550/14
2.T.P.Srikanth
3.T.P.Madhavan
4.G.Srinivasan
5.N.S.Surendran @ Suresh
6.B.Viswanathan
7.Nilakant Narayana .. WP.No.27551/14
8.S.Ekambaram
9.E.Sengutuvan
10.Promik Hari
11.Christian Assembly
Rep.by its Secretary
J.Jonathan Davin ..WP.No.27552/14
12.C.S.Rangavittalan ..WP.No.27553/14
13.G.Krishna Raja Reddiar ..WP.No.30173/14
14.K.Ethirajan ..WP.No.30174/14
15.K.Lalitha Ammal ..WP.No.30175/14
16.K.Velusamy ..WP.No.30176/14
17.K.Ramasundaram ..WP.No.30177/14
18.Shalini (minor)
19.Sharon (minor)
rep.by Natural guardian
Mr.Revathy ..WP.No.1524/15
20.G.Murthy ..WP.No.993/15
21.Leene Immaculate ..WP.No.39/15
22.Gerald Maxwell William ..WP.No.150/15

Vs

1) The District Collector
Rajaji Salai, Chennai

...R1 in WP.No.30173 to 30177/14

2) The Land Acquisition officer-cum
Special Tashildar
MRTS-II Extension
Mylapore Chennai-4

.. R2 in WP.No.30173 to 30177/14
..WP.NO.1524/15, WP.NO.39/15
R3 in WP.NO.27500 to 27553/14
R3 in WP.No.993/15 & 150/15

3) The Deputy chief Engineer-I
Metropolitan Transport Project (Railway 1)
Southern Railway, Mylapore Chennai-4..R3 in WP.NO.30173 to 30177/14

..R3 in WP.NO.1524/15 & 39/15
..R4 in WP.No.993/15,WP.NO.150/15
..R4 in WP.NO.27550 to 27553/14

(R4 impleaded as per order
dt 11.03.2015 in MP.NO.1/15, in
WPs.27550 to 27553/14, and 30173 to
30177/14, MP.NO.3/15 in WP39/15 and
MP.No.2 /15 in WPs 150 and 993/15 and
MP.NO.3/15 dt 23.07.2015 in WP.1524/15)

4) The District Collector
Kancheepuram District
Kancheepuram

...R1 in WP.1524/15,39/15
...R2 in WP.993/15, 150/14
...R2 in WP.27550 to 27553/14

5) The Secretary to Government
Housing & Urban Development Department
Fort St.George Chennai-9

...R1 in WP.No.27550/14 to 27553/14
...R1 in WP.No.150/14.993/15

1) These Writ Petitions are filing under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus calling for the third Respondent pertaining
to the impugned order dated 15/9/2014 made in Order No.5/14 and the
consequent impugned notice dt 18/9/2014 under reference No.Na.Ka
No.2/10 fixing Compensation to the Petitioner's land

(a) Situated at No.31/16, 3rd street, Thilli Ganga Nagar, Nanganallur
Measuring on Extent of 2640sq.ft Comprised in S.No.39 Blout No.8
Ward. E.(WP.NO.27550/14) Adambakkam Village, Alandur Taluk,
Kancheepuram District.

(b) Survey No.40/2 Block No.8, Ward E.Adambakkam Village, Alandur
Taluk, Kancheepuram District (WP.NO.27551/14)

(c) Survey No.3/8 Block No.9 Ward E. Adambakkam Village Alandur Taluk
Kancheepuram District (WP.NO.27552/14)

(d) measuring an Extent of 2810 sq.ft. Comprised in S.NO.72 Block No.9 Ward. E. Adambakkam Village, Alandur Taluk, Kancheepuram District (WP.No.27553/14) are concerned issued under Section 12(2) of the Land Acquisition Act 1894 and quash the same and direct the 3rd Respondent, to proceed under the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation 4 Resettlement Act 2013 respectively for fixing of Compensation.

2) Calling for the records of the 2nd Respondent herein relating to the award No.5/14 dt 15/9/14 Communication to the Petitioner Under Section 12(2) of the Land Acquisition Act 1894 Vide its Notice Na.Ka.No.2/10, dt.18/9/14 and quash the same and Consequently direct the 2nd respondent herein to determine the Compensation in respect of Petitioner's land

(a) of an Extent of 2,626 sq.ft. Comprised in S.No.46/1 (WP.NO.30173/14)
(b) 1620 sq.ft. Comprised in S.No.49/2 (WP.NO.30174/14)
(c) 1647 sq.ft. Comprised in S.No.45/2 (WP.NO.30175/14)
(d) 2,163 sq.ft./201 sq.meters comprised in S.NO.3/5/1 (WP.30176/14)
(e) 1270 sq.ft Comprised in S.No.48/2, (WP.No.30177/14)
in Adambakkam Village Chennai under the provision of the New Act Viz., Land Acquisition Rehabilitation and Re-settlement Act 2013 respectively.

Calling for the records of the 2nd respondent herein relating to the Award No.5 of 2014 dt 15.9.2014 communicated to the petitioner under Sec. 12 (2) of the Land Acquisition Act 1894 on dated 25.9.2014 and quash the same and consequently direct the 2nd respondent herein to determine the compensation in respect of petitioners land of an extent of 1 351 sq.ft. comprised in Survey No.73/1 & 2 Ward E Block 9 Adambakkam Village Alandur under the provisions of the new Act viz. Land Acquisition Rehabilitation and Re settlement Act 2013 (WP.No.39/15)

Calling for the records of the 3rd respondent pertaining to the impugned Award dated 15.9.2014 made No.5 of 2014 and the consequent impugned notice dated 18.9.2014 under reference No.Na.Ka.2/ 2010 dated 18.9.2014 fixing compensation to the petitioners lands comprised in part of Survey No.16/2 Block No.2 Ward E Adambakkam Village Alandur Taluk Kancheepuram District are concerned issued under Section 12(2) of the Land Acquisition Act 1984 and quash the same and direct the 3rd respondent to proceed under the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013 for fixing of compensation. (WP.No.150/15)

calling for the records of the 2nd respondent herein relating to the Award No.5 of 2014 dt 15.9.2014 under Section 12 (2) of the Land Acquisition Act 1894 and quash the same relating to the properties of the petitioners herein viz extent of 2530 sq.ft. in Plot No.11 2673 sq.ft. in Plot No.11A and 3520 sq.ft. in Plot No.12 which originally

form part of the larger extent of land in Survey No.66/3 Adambakkam Village Alandur Municipality (now Corporation of Chennai) Kancheepuram District under the provisions of the new Act viz. Land Acquisition Rehabilitation and Resettlement Act 2013(WP.NO.1524/15)

calling for the records of the 3rd respondent pertaining to the impugned order dated 15.9.2014 made in order No.5 of 2014 and the consequent impugned notice dated 18.9.2014 under reference No. Na. Ka.2/2010 dated 18.9.2014 fixing compension to the petitioner lands comprised in Part of Survey No.16/2 Block No.2 Ward E Adambakkam Village Alandur Taluk Kanchipuram District are concerned issued under section 12(2) of Land Acquisition Act 1894 and quash the same and direct the 3rd respondent to proceed under the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013 for fixing of compensation (WP.No.993/15)

For Petitioners : Mr.N.Anand Venkatesh
for W.P.Nos.27550 to 27553/2014,
150/2015 and 993/2015
Mr.A.R.L.Sundaresan, Senior Counsel
assisted by
Mrs.A.L.Gandhimathi,
for W.P.Nos.30173 to 30177/2014
39/2015, 1524/2015.

For Respondents : Mr.S.Gomathinayagam,
Additional Advocate General
assisted by
Mr.Rm.Muthukumar, Govt. Advocate
for State Govt. in all W.Ps.
Mr.P.T.Ramkumar
Standing Counsel for Southern Railways
in all W.Ps.

C O M M O N O R D E R

The primordial and core issue to be adjudicated in these writ petitions is to the applicability of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act No.30/2013) [in short "Right to Fair Compensation Act"] (new Act) viz-a-viz, Land Acquisition Central Act 1894 (old Act) and hence, all these writ petitions are disposed of by this common order.

2. Various land/property owners made a challenge to the notification issued under section 17(2) of Land Acquisition Act, 1894 (old Act), invoking the emergency clause to acquire their property for putting up Mass Rapid Transit System [MRTS] Phase-II extension from Velachery to St.Thomas Mount. One such writ petition in W.P.No.4794/2011, came to be dismissed on 03.07.2012 and challenging the same W.A.No.1548/2012 was filed by Tvl.Ekambaram and 10 others and while the writ appeal was pending, other property owners made individual challenge by filing W.P.Nos.68/2011, 31411/2012, 3383/2013, 8265/2013 and 9437/2013 and those writ petitions were taken up together along with W.A.1548/2012. The writ appeal as well as the writ petitions were dismissed by a Division Bench of this Court, vide common judgment dated 09.04.2014 and no further challenge has been made to the said judgment and it has become final. In the light of the said judgment, the decision taken by the concerned authority to invoke urgency clause under the old Act came to be sustained.

3. Thereafter, the Special Tahsildar (Land Acquisition) MRTS Phase-II Extension, Chennai-4, has issued notices under Section 12(2) of the old Act dated 18.09.2014 to the individual land owners stating among other things that compensation has been determined and called upon them to appear before the said official in person or through authorized agent along with necessary records such as Document of Title, Patta Passbook, Land Tax/Property Tax Receipts, Encumbrance Certificate for a period of 30 years, Family Card/Ration Card, PAN Card, Voters Identity Card and Approved Layout for the purpose of receiving the compensation. In some cases, Draft Award dated 15.09.2014 was also passed by the said official by taking into consideration G.O.(Ms.)No.88, Revenue [LA-I(1)] Department dated 21.02.2014. The power of the said official to invoke the provisions of the old Act to issue notices under Section 12(2) as well as interim compensation awarded by invoking the provisions of the old Act is put to challenge in these writ petitions.

4. Facts leading to the acquisition of lands/properties pertain to the above said project have been narrated in detail and in extenso in the common order dated 09.04.2014 made in W.A.No.1548/2012 etc., batch and for the sake of brevity, only relevant facts are stated for disposing of these writ petitions:

4.1. Initially some of the landowners filed W.P.No.30173 to 30177 of 2014 praying for issuance of a Writ of Certiorarified Mandamus to quash the draft/interim award dated 15.09.2014 communicated to them under Section 12(2) of the Land Acquisition Act, 1894, vide notification dated 18.09.2014 with a prayer to quash the same and for a further direction directing the Land Acquisition Officer/Special Tahsildar, MRTS Phase-II Extension, to determine the compensation under the provisions of Right to Fair Compensation Act, 2013/new Act. The writ petitioners, after receipt of the award as well as

individual notices, submitted representations praying for determination of the compensation under the new Act and taking into consideration of the same, the learned Judge has disposed of the writ petition with a direction directing the said official to consider the representation and pass orders in accordance with law after issuing notices to them and after conducting enquiry within a stipulated time frame. The land/property owners, aggrieved by the said order, filed W.A.Nos.1675 to 1679/2014 and a Division Bench of this Court, vide common judgment dated 16.02.2015, has set aside the said order and remanded the matter once again to the writ Court for fresh consideration and also observed that the project in question is a prestigious one for the City of Chennai and any delay would cause serious prejudice to them and hence, the matter needs to be considered by the learned Single Judge as an urgent one and made a request to take up the writ petitions and dispose of the same at an early date.

4.2. The petitioners in W.P.Nos.27550 to 27553/2014 had filed M.P.Nos.3, 3, 3 & 3 of 2014 to raise additional grounds as to the applicability of the new Act and those petitions were also ordered on 23.07.2015.

5. Mr.N.Anand Venkatesh, learned counsel appearing for the petitioners in W.P.Nos.27550 to 27553/2014, 150/2015 and 993/2015 and Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the petitioners in W.P.Nos.30173 to 30177/2014, 39/2015 and 1524/2015 made the following submissions:

(i) Right to Fair Compensation Act (new Act) came into force with effect from 01.01.2014 and the primary object of the said Act is to adopt a transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status.

(ii) Under Section 114 of the new Act, the Land Acquisition Act, 1894 (old Act) has been repealed and sub-section(2) of the said section says that save as otherwise provided in this Act, the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals and in addition, the extra benefit in terms of the new Act is to be provided to

the land/property owners and without extending the scope and purport of the new act, the Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-4, has applied the provisions of the old Act and issued notices under Section 12(2) and also passed interim awards detrimental to the interest of the land/property owners.

(iii) Section 24 of the new Act says that land acquisition process under Act No.1 of 1894 (old Act) shall be deemed to have lapsed in certain cases and as per sub-section(1)(a) of section 24, where no award under Section 11 of the Land acquisition Act, has been made, then, all provisions of this Act relating to the determination of compensation shall apply and admittedly, when the new Act came into force on 01.01.2014, award was not passed under the provisions of the old Act and therefore, the said official ought to have followed the provisions of the new Act for determination of compensation and other attendant benefits including rehabilitation and resettlement.

(iv) Section 40 of the new Act speaks about special powers in case of urgency to acquire land in certain cases and sub-section (3) says that before taking possession of the any land under sub-section (1) or sub-section (2), the Collector shall tender eighty percent of the compensation for such land as estimated by him to the person interested entitled thereto and sub-section (5) says that an additional compensation of seventy five percent of the total compensation as determined under Section 27, shall be paid by the Collector in respect of the land and property for acquisition of which proceedings have been initiated under sub-section (1) of this Section. Admittedly, the Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-4, has passed interim awards under the provisions of the old Act only and while doing so, has followed guidelines in G.O.(Ms).No.88, Revenue [LA-I(1)] Department dated 21.02.2014 in and by which executive instructions have been issued in respect of further action in cases where process under old Act has been initiated. The said Government Order is in total contravention of the provisions of the new Act and in any event, the said Government Order, which is in the nature of executive instructions, cannot override the Statute and the contents of the Government Order, which are against the provisions of the Statute, are to be declared as illegal and unconstitutional.

(v) Section 38 of the new Act grants power to take possession of the lands to be acquired and unless the said provision is complied with, the respondents cannot take decision for taking possession.

(vi) Admittedly, the State Government is yet to appoint an Administrator under Section 43 of the new Act and no Rehabilitation and Resettlement Committee at Project Level has been constituted in terms of Section 45 of the new Act and neither the Central Government nor the State Government has established the Monitoring Committee for rehabilitation and resettlement as contemplated under Section 50 of the new Act and importantly, rules are yet to be framed under the new Act.

In sum and substance, it is the submission of the respective learned counsel and the learned Senior Counsel appearing for the petitioners that since the old Act is repealed except to the extent of the applicability of Section 6 of General Clauses Act and that the new Act has come into force with effect from 01.01.2014, all proceedings including determination of compensation and taking possession have to be done strictly in accordance with the provisions of the new Act and unless and until it is done, it is not open to the respondents to dispossess the petitioners under the guise of taking possession of land/property in their occupation.

6. Per contra, Mr.S.Gomathinayagam, learned Additional Advocate General has invited the attention of this Court to the counter affidavit filed on behalf of the respondents in W.P.Nos.27550 to 27553/2014, 39/2015 and 150/2015 and made the following submissions:

(i) There are certain provisions in the new Act which are in paramateria with the old Act, namely Sections 5A, 6, 14, 12(2), 16, 17 and 93 and therefore, the intention of the legislature is to protect the certain Act which took place during the subsistence of the old Act.

(ii) Section 24(1)(a) of the new Act, in the facts and circumstances, is not attracted and it is to be read along with Sections 26 to 30 of the old Act and admittedly, urgency Clause has been invoked under the old Act and Section 40 of the new Act is in paramateria with the old Act and interim award passed by the Special Tahsildar is under Section 40(3) of the new Act, though calculations have been done under the old Act and therefore, it is open to the respondents to take possession of the lands/properties in question and on determination of additional compensation under Section 40(5) of the new Act, it will be paid to the land/property owners.

(iii) If the land/property owners refuse to accept the compensation awarded, they can seek reference under Section 64 of the new Act and if a person entitled to compensation has not given his consent or received it under protest, it is open to the Collector to invoke Section 77 of the new Act.

(iv) G.O.(Ms).No.88 dated 21.02.2014 is only clarificatory in nature with regard to initiation of proceedings under the old Act and further action to be taken under the new Act and para 3(i) of the Government Order also makes it very clear that interim compensation should be determined based on the procedures already in vogue subject to additional compensation being paid as per the new Act and interim compensation is to be determined accordingly.

(v) In the light of the above said Government Order read with Section 40(3) of the new Act, only interim compensation has been determined and some of the petitioners had received it and some of them have not received it and in that event, Section 77 of the new Act would come into operation.

(vi) Section 114 of the new Act also says that proceedings under the old Act is repealed and sub-section (2) makes it very clear that repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals and hence, notices under Section 12(2) of the old Act as well as interim compensation determined are perfectly in order.

(vii) The dispute is only in respect of ½ km, nearly 4530 sq.mtrs or thereabout and on account of the pendency of these writ petitions and interim orders, the project which is a prestigious one involving public interest, is getting delayed, which in-turn leads to time and cost overrun and taking into consideration the overwhelming public interest, the writ petitions are to be dismissed.

The learned Additional Advocate General, in support of his submissions, placed reliance upon the following decisions:

- (i) The State of Tamil Nadu and Another v. P.Kanagamani and Others [AIR 1975 Mad 303]
- (ii) Satendra Prasad Jain and Others v. State of U.P. and Others [(1993) 4 SCC 369]
- (iii) Ram Chand v. Union of India [(1994) 1SCC 44]

7. In response to the submission made by the learned Additional Advocate General, the respective learned counsel and learned Senior Counsel appearing for the petitioners would submit that Section 38 of the new Act, is to be applied with in letter and spirit before taking possession and the amount determined under the interim award is less than 80%, as mandated under Section 40(3) of the new Act and even when some of the landowners had received the compensation without raising any protest, they cannot be prevented from raising their plea

with regard to the applicability of the new Act as their right is guaranteed under the Constitution of India. It is further submitted that admittedly the Administrator is yet to be appointed and Rehabilitation and Resettlement Committee at the Central as well as State Level are also not yet constituted and more particularly the rules under the new Act are yet to be framed and unless and until, everything is in place as mandated under the new Act, the petitioner shall not be dispossessed and appropriate directions may also be issued to the Central as well as State Government to comply with the said provision.

8. The learned Standing Counsel appearing for the railways, on instructions, would submit that the railway authorities will abide by any orders to be passed by this Court as to the determination of compensation and other proceedings.

9. This Court has paid its best attention to the rival submissions and also perused the materials placed before it and the decisions relied on by the learned Additional Advocate General.

10. It is relevant to extract the following provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:

S.3(u). "market value" means the value of land determined in accordance with Section 26.

S.24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894).

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

.....

Section 29 of the said Act speaks about determination of value of things attached to land or building. Section 30 speaks about award of solatium. Section 31 speaks about rehabilitation and resettlement award for affected families by Collector. Section 38 speaks about power to take possession of land to be acquired.

11. It is also relevant to extract the following provisions of the said Act:

"40. Special powers in case of urgency to acquire land in certain cases.

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award

has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 22, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 20 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11.

(5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section:

Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States.

S.114. Repeal and saving.-(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General

Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

12. In Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki and Others [(2014) 3 SCC 183], the Hon'ble Supreme Court of India has considered the scope of Sections 24(2) of the new Act and in para 21 observed as follows:

"21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

(emphasis supplied)

13. In R.Radhakrishnan and Others v. The Secretary to Government of Tamilnadu and Others [2015 (1) Scale 590], promulgation of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement (Amendment) Ordinance, 2014, by inserting proviso to Section 24(2) of the new Act came up for consideration and the Hon'ble Supreme Court, taking note of its earlier decision in M/s.Magnum Promoters (p) Ltd., v. Union of India and Others [(2015) 3 SCC 327], held that the right conferred to the landholders/owners of the acquired land under Section 24(2) of the Act (new Act) is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same.

14. In Bimla Devi and Others v. State of Haryana and Others [2014 (7) Scale 215], the purport of the word "paid" occur in Section 24(2) of the new Act came up for consideration wherein it has been held that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court

where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act; in other words, the compensation may be said to have been "paid" within the meaning of 24(2) when the Collector (for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

15. This Court has also considered the decisions relied on by the learned Additional Advocate General. In *State of Tamil Nadu and Another v. P. Kanagamani and Others* [AIR 1975 Mad 303], reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer* [AIR 1961 SC 1500] and held that legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. Section 18 gives him (landowner) the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector and in that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of the nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property by his acceptance. In the said decision, it has been concluded that award made by the Collector under Section 11 of the Act cannot be questioned by way of a petition for the issue of a Writ of Certiorari under Article 226 of the Constitution of India.

16. There is no difficulty in accepting the said proposition. But the primordial question arises for consideration in these writ petitions is whether the interim compensation, vide proceedings dated 15.09.2014, is in consonance with Section 40(3) of the new Act ? and it is the stand of the petitioners that it is not so.

17. The decision in *Ram Chand v. Union of India* [(1994) 1 SCC 44] is not applicable to the facts of this case for the reason that this Court is not going to quash the land acquisition proceedings already initiated under the old Act and in fact the petitioners plea is that further proceedings shall take place only in accordance with the provisions of the new Act. The learned Additional Advocate General has placed reliance upon the decision in *Satendra Prasad Jain and Others v. State of U.P. and Others* [(1993) 4 SCC 369] and would contend that Section 40(3) of the new Act is equivalent to Section 17 (3-A) of the old Act and in the said decision it has been held that non-compliance with Section 17(3-A) regarding part payment of compensation before taking possession would also not render the possession illegal and entitle the Government to withdraw from acquisition. However, the said decision was subsequently considered in the decision in *Delhi Airtech Services Private Limited and Another*

v. State of Uttar Pradesh and Another [(2011) 9 SCC 354] and Hon'ble Mr. Justice A.K. Ganguly has opined that taking possession of land under emergency provision without making payment mandated under Section 17(3), is unsustainable and whereas the Hon'ble Mr. Justice Swatanter Kumar has held that non-compliance of obligation of payment of 80% of compensation would not render the decision taken under Section 17(1) of the old Act as illegal and in view of divergence of opinion on conclusions, the Hon'ble Judges has required the matter to be placed before the Hon'ble Chief Justice of India for reference to a larger Bench to resolve the divergent views and to answer the questions of law framed. It is brought to the knowledge of this Court that though larger Bench has been constituted to resolve the said issue, hearing is yet to take place and therefore, the decision is awaited.

18. This Court has also considered the effect of repeal of a Statute.

19. The mere right existing under the repealed Ordinance, to take advantage of the provisions of the repealed Ordinance, is not a right accrued. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right [M.S. Shivananda v. Karnataka State Road Transport Corpn. and Others -AIR 1989 SC 77].

20. The principle on which the savings clause in Section 6 of the General Clauses Act is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there was sufficient indication expressed or implied in the latter enactment designed to obliterate the earlier state of law. [State of Orissa v. M.A. Tulloch and Co., AIR 1964 SC 1284]

21. When a repeal is accompanied by a fresh legislation on the same subject the provisions of the new Act will have to be looked into to determine whether and how far the new Act protects or keeps alive the old rights and liabilities. [Manphul Singh Sharma v. Ahmedi Begum, 1994 (5) SCC 465].

22. When an existing Statute or Regulation is repealed and the same is replaced by fresh Statute or Regulation unless the new Statute or Regulation specifically or by necessary implication affects rights created under the old law those rights must be held to continue in force even after the new Statute or Regulation comes into force. [Jindas Oil Mill and Another v. Godhra Electricity Co. Ltd., AIR 1969 SC 1255]

23. Section 6 of the Indian General Clauses Act is on the same lines as Section 38(2) of the Interpretation Act of 1889. [M/s.Gammon India Ltd., v. Spl. Chief Secretary and Others, 2006 (3) SCC 354]

24. A saving clause preserves rights and duties that have already matured and proceedings that have already begun. The result of such a saving clause is that the pre-existing law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. [Hasan Nurani Malik v. Assistant Charity Commissioner, Nagpur and Others, AIR 1967 SC 1742].

25. Whenever there is a repeal of an enactment; the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears..... When the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. [State of Punjab v. Mohar Singh Pratap Singh, AIR 1955 SC 84]

26. This Court, keeping in mind the above cited decisions dealt with repeal of a Statute, has considered the relevant provisions of the Right to Fair Compensation Act (new Act). Section 24(1)(a) of the new Act says that where no award under Section 11 of the Land Acquisition Act (Old Act) has been made, then, all provisions of this Act relating to the determination of compensation shall apply. Admittedly, while the new Act came into force on 01.01.2014, no award has been passed. Section 40 of the new Act speaks about special powers in case of urgency to acquire land in certain cases and in the case on hand, urgency clause has already been invoked in terms of the old Act and the petitioners herein/landowners/property owners unsuccessfully made a challenge to the same and they failed and it has become final.

27. It is a well settled position of law that Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. [Siraj-ul-Haq Khan v. Sunni Central Board of Wakf, U.P., AIR 1959 SC 198]

28. While interpreting benevolent legislations, rules of interpretation requires that in cases of ambiguity, construction which advances the beneficent purpose should be accepted in preference to the one which defeats that purpose. [Mahadeolal Kanodia v. Administrator General of West Bengal, AIR 1960 SC 936]. Beneficial legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate.

29. In *State of Orissa v. M.A. Tulloch and Co.*, AIR 1964 SC 1284, (cited supra) principle of Section 6 of the General clauses Act came up for consideration and it has been held that the principle of the said provision is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there was sufficient indication expressed or implied in the latter enactment designed to obliterate the earlier state of law.

30. As already pointed out Section 40(3) of the new Act is in paramateria with Section 17(3-A) of the old Act and further taking into consideration the objects and reasons of the Right to Fair Compensation Act, 2013, this Court is of the view that the following order would meet the ends of justice to both the parties.

31. The Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-600 004, has passed the draft/interim award dated 15.09.2014 and while arriving at the quantum of interim compensation, the Special Tahsildar adopted the provisions of the old Act and for that purpose, has relied upon G.O.(Ms).No.88, Revenue [LA-I(1)] dated 21.02.2014, which he/she is under mandate to follow. Para 3(i) of the said Government Order would state among other things that 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 Act (new Act). In the considered opinion of the Court, in terms of Section 114(2) of the new Act, land acquisition proceedings already initiated under the old Act by invoking emergency provision is saved and admittedly, no award under Section 11 of the Act has been passed and the new Act came into force on 01.01.2014. Before taking possession, the Collector including Deputy Collector and any other officer specifically designated by the Government to perform the functions of the Collector defined under Section 3(g) of the new Act, is bound to follow Section 40(3) of the new Act and thereafter, he is under mandate to follow Section 40(5) and other provisions relating to rehabilitation and resettlement.

32. In the light of the said provisions, this Court is of the considered view that para 3(i) of the above said Government Order is not in consonance with the Statute and it cannot be applied to the facts of these cases. It is not in serious dispute that only a minimal extent of land is to be taken possession and as pointed out by the learned Additional Advocate General that it is only about 4530 sq.mtrs or thereabout and once it is taken possession, the project would be complete and the travelling public will be immensely benefited and traffic congestion in the ***City** of Chennai will also be eased. In some cases, interim award came to be passed on 15.09.2014 and notices dated 18.09.2014 were issued under Section 12(2) of the old Act and in the light of the legal position, as enunciated above, this Court is of the view that the interim/draft award as well as the

notices issued under the old Act have to be set aside/quashed with a consequential direction directing the jurisdictional District Collector/competent authority to proceed afresh in terms of Section 40(3) of the new Act. The Railway Authorities also are not having any serious objection for resorting to such a course. Adoption of such a course, not only advances public interest, but will also avoid further time and cost overrun in the implementation of the project.

33. In the result, all the Writ Petitions are partly allowed and the interim award dated 15.09.2014 passed by the Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-4 and the notices dated 18.09.2014 are set aside/quashed and the respondents are directed to follow Section 40(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and tender interim compensation to the respective land/property owners and thereafter, follow other provisions of the new Act and complete the exercise as expeditiously as possible and not later than three months from the date of receipt of a copy of this order. The appropriate Government shall take every endeavour to frame rules and follow the relevant provisions regarding appointment of Administrator, Commissioner for rehabilitation and resettlement, constitution of Rehabilitation and Resettlement Committee at project level, establishment of National and State Monitoring Committee for rehabilitation and resettlement, as expeditiously as possible to give complete effect to the benevolent provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)
Dated : 14.08.2015

***Corrected as per order
dated 21.08.2015**

**Sd/- Assistant Registrar (CS-III)
Dated : 30.09.2015**

/true copy/

Sub Asst. Registrar

jvm

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

To be substituted to
for the order already
despatched on
20.08.2015

2. The District Collector,
Kanchipuram District, Kanchipuram.
 3. The Special Tahsildar (Land Acquisition),
Mass Rapid Transit System,
Phase-II Extension,
Thirumayilal Railway Station,
Mylapore, Chennai-600 004.
 4. The Deputy Chief Engineer-I,
Metropolitan Transport Project (Railways),
Southern Railway,
Mylapore, Chennai-4.
 5. The District Collector,
Rajaji Salai Chennai-1
- +1 cc to Mr.Anand Venkatesh Advocate sr.40292
+2 cc to Mr.P.T.Ramkumar Advocate sr.40499
+1 cc to The Government Pleader sr.45728
+1 cc to M/s.AL.Gandhimathi advocate sr.44735

W.P.Nos.27550 to 27553/2014,
30173 to 30177/2014,
39/2015, 150/2015,
993/2015 and 1524/2015

rj(co)
aa14/08/2015

VGI [CO]
PSI 05.10.2015

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