

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.08.2015 and Pronounced on:08.9.2015

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and

The Hon'ble Mr.Justice K.RAVICHANDRABAABU

W.A.Nos.826 of 2013, 847 of 2013, 1366 of 2014,
Review Application No.195 of 2015 and
Contempt Petition No.915 of 2013

Tamil Nadu Arasu Kooturuvuthurai
Paniyalargal Sangam rep. by its
General Secretary P.Soundarrajan ... Appellant/third-party
Chepauk, Chennai - 600 005. in WA No.826/13

The Secretary,
Association of Tamil Nadu Highways Engineers,
rep. by its General Secretary,
No.35, Taluk Office Road, Saidapet, ... Appellant in WA 847/13
Chennai - 600 015. ... R10 in WA No.826/13
... R9 in WA.1366/14 & Rev.A.195/15

The Chief Engineer (General)
Highways Department, ... Appellant in WA 1366/14
Chepauk, Chennai - 600 005. ... R9 in WA No.826/13
... R9 in WA.847/13 &
R8 in Rev.A.195/15

The State of Tamil Nadu rep. by
its Secretary, The Cooperation, Food &
Consumer Protection Department, ... Applicant in RA 195/15
Fort St. George, Chennai - 600 009. ... R6 in WA No.826/13
... R6 in WA.847/13 & 1366/14

Vs.

1. M.R.Srinivasan
2. M.R.Suseela
3. M.P.Kanni Ammal
4. M.R.Chithra Rajasekaran ... R1 to R5 in all W.As & Rev.A/
5. P.Vijaya Krishnan Petitioners in Cont.P.No.915/13

6. The District Collector,
Chennai Singaravelar Maligai
Rajaji Salai, Chennai-600 001.
7. The Tahsildar, Mambalam Guindy Taluk,
Chennai - 600 078. ... R7 & R8 in WA No.826/13,
847/13,1366/14
... R6 & R7 in Rev.A.195 of 2015
8. Smt.MP.Nirmala I.A.S,
The Secretary to Government,
The Co-Operation Food and Consumer
Protection Department,
Fort St.George, Chennai - 600009 ... Respondent in Cont.P.No.915/13

Prayer in WA.826, 847/13 & 1366/14:-

Writ Appeals filed under Clause 15 of the Letters Patent, against the order passed by a Single Judge in W.P.No.19228 of 2008 dated 27.8.2012.

W.P.No.19228 of 2008 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the first respondent in relation to its order dated 4.7.2008 made in letter Ms.No.123 and quash the same and consequently direct the respondents to re-convey the lands to an extent of 1.62 acres of land comprised in pymash No.72/Part Survey No.19 corresponding to present T.S.No.22/Part in Block No.5, Venkatapuram Village in the Taluk of extended areas, Madras District in the Registration Sub-District of saidapet to the Petitioners.

Prayer in Rev.A.195 of 2015 :

Application files to review the order dated 23.01.2013 made in WA.180 of 2013.

WA.180 of 2013 : Writ Appeal against the order 27.08.2012 passed in W.P.No.19228 of 2008.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the first respondent in relation to its order dated 4.7.2008 made in letter Ms.No.123 and quash the same and consequently direct the respondents to re-convey the lands to an extent of 1.62 acres of land comprised in pymash No.72/Part Survey No.19 corresponding to present T.S.No.22/Part in Block No.5, Venkatapuram Village in the Taluk of

extended areas, Madras District in the Registration Sub-District of saidapet to the Petitioners.

Cont.P.No.915 of 2013 : Filed under Section 11 of Contempt of Courts Act 1971 to punish the Respondent for wilful and deliberate disobedience of the Order of this Hon'ble Court made in WA.180 of 2013 dated 23.01.2013.

WA.180 of 2013 : Writ Appeal against the order 27.08.2012 passed in W.P.No.19228 of 2008.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the first respondent in relation to its order dated 4.7.2008 made in letter Ms.No.123 and quash the same and consequently direct the respondents to re-convey the lands to an extent of 1.62 acres of land comprised in pymash No.72/Part Survey No.19 corresponding to present T.S.No.22/Part in Block No.5, Venkatapuram Village in the Taluk of extended areas, Madras District in the Registration Sub-District of saidapet to the Petitioners.

	Appellant/Petitioners	Respondent
REV.A.195 of 2015 (WA.180 of 2013)	Mr.A.L.Somayaji, Advocate General Asst. by Mrs.A.Sri Jayanthi,S.G.P	Mr.P.S.Raman,Sr.Counsel for Mr.R.Syed Mustafa R1 to R5, R6 to 9 Given up- SR Stage
WA.1366 of 2014	Mr.P.H.Arvinth Pandian, Addl. Advocate General, Asst. by Mr.Sailendra, GA	Mr.P.S.Raman,Sr.Counsel for Mr.R.Syed Mustafa for R1 to 5 Mr.A.L.Somayaji, Advocate General Asst. by Mrs.A.SriJayanthi,S.G.P for R6 to 8 Mr.P.H.Arvinth Pandian, Addl. Advocate General, Asst. by Mr.Sailendra, GA for R9

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	Appellant/Petitioners	Respondent
WA.826 of 2013	Mr.L.Chandra Kumar	Mr.P.S.Raman,Sr.Counsel for Mr.R.Syed Mustafa for R1 to 5
		Mr.N.Subramaniyan for R10 (SR-Stage)
		Mr.A.L.Somayaji, Advocate General Asst. by Mrs.A.SriJayanthi,S.G.P for R6 to 8
		Mr.P.H.Arvinth Pandian, Addl. Advocate General, Asst. by Mr.Sailendra, GA for R9
WA.847 of 2013	Mr.N.Subramaniyan	Mr.P.S.Raman,Sr.Counsel for Mr.R.Syed Mustafa for R1 to 5
		Mr.A.L.Somayaji, Advocate General Asst. by Mrs.A.SriJayanthi,S.G.P for R6 to 8
		Mr.P.H.Arvinth Pandian, Addl. Advocate General, Asst. by Mr.Sailendra, GA for R9
Cont.P.No.915 of 2013	Mr.P.S.Raman,Sr.Counsel for Mr.R.Syed Mustafa	Mr.A.L.Somayaji, Advocate General Asst. by Mrs.A.SriJayanthi,S.G.P

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COMMON JUDGMENT

V.RAMASUBRAMANIAN, J

A prime property in the heart of the city of Chennai, now valued even as per the Government guidelines, at more than Rs.100 crores, measuring an extent of Acres 1.62 (or about 70,632 sq.feet), located in Sardar Patel Road, running from Adyar upto Guindy and situate just opposite to the State Raj Bhavan and adjoining the famous Guindy Engineering College (now known as Anna University), has been directed to be reconveyed to the original land owners, after more than 45 years of acquisition and payment of compensation, on the only condition that the land owners re-pay to the Government, a pittance of Rs. 33,947.60 which they received as compensation 4 decades ago. This has generated lot of controversy both inside and outside the court room. What we have on hand is a part of it, in the form of 3 writ appeals, one petition for review and one contempt petition.

2. By a Notification dated 31.8.1960 issued under Section 4(1) of the Land Acquisition Act, 1894, the State Government sought to acquire a land of an extent of Acres 1.62 situate in Venkatapuram Village, in the Taluk of extended areas of the District of Madras, for the purpose of construction of a hostel and buildings for the Central Co-operative Institute, Madras. The acquisition was made invoking the emergency provision under Section 17(1) of the Act and hence after dispensing with the enquiry under Section 5-A, a declaration under Section 6 was issued on 16.11.1960. The possession of the land was also taken on 24.11.1960. Thereafter, an award was passed in Award No.4 of 1961 on 15.3.1961 fixing the compensation payable at Rs.33,941/-.

3. The land owner by name Manali Ramakrishna Mudaliar, received compensation amount and did not even seek any reference under Section 18 of the Act for enhancement. It is relevant to note that the land owner neither challenged the acquisition proceedings nor questioned the quantum of compensation, but received the amount of compensation as fixed in the award passed under Section 11 on 15.3.1961.

4. Exactly after 45 years of the issue of the Notification under Section 4(1) and after 44 years of the payment of compensation, the wife and son of the original owner Manali Ramakrishna Mudaliar and the wife and children of the brother of Manali Ramakrishna Mudaliar joined together and gave representations on 19.4.2005 and 19.6.2005, seeking re-conveyance of the lands under Section 48-B of the Land Acquisition Act, 1894, inserted by way of Tamil Nadu Amendment Act 16 of 1997. The re-conveyance was sought on the ground that the lands

were never put to use for the purpose for which they were acquired.

5. Subsequently, they also gave another representation on 16.11.2006 and thereafter came with a writ petition in W.P.No.49265 of 2006, seeking the issue of a writ of mandamus to direct the Government to consider their representation dated 16.11.2006.

6. On 2.1.2007, this Court passed an innocuous order, in the said writ petition, directing the first respondent to consider the representation and pass orders in accordance with law, within a period of 8 weeks, in the light of a decision of this Court in R.Shanmugam v. State of Tamil Nadu [2006 (4) CTC 290].

7. But by a letter dated 20.3.2007, the Government rejected the request for re-conveyance, on the ground that the land had already vested in the Government and that the Government was in possession for more than 47 years.

8. Challenging the order of rejection dated 20.3.2007, the legal heirs of the original owner filed a fresh writ petition in W.P.No.26990 of 2007. It appears that the said writ petition was allowed by a learned Judge of this Court by an order dated 10.9.2007, even at the stage of admission. By the said order, the learned Judge set aside the order of rejection dated 20.3.2007 on the short ground that an application under Section 48-B ought to have been considered with reference to two parameters namely (i) whether the acquired land was not required for the purpose for which it was acquired; and (ii) whether the land acquired was required for any other public purpose. Pointing out that the order of rejection dated 20.3.2007 did not take into account these two parameters, the learned Judge set aside the order of rejection dated 20.3.2007 and directed the Government to reconsider the matter after giving an opportunity to the legal heirs of the land owners.

9. Pursuant to the order passed in the said writ petition, the Government reconsidered the matter and heard the learned counsel for the original owners and passed a detailed order in Letter (MS) No.123 dated 14.7.2008. It was stated in the said order that though the land was originally acquired for the purpose of construction of a hostel and buildings for Central Cooperative Institute, the same could not be constructed due to financial constraints and that when they decided to go ahead, the lands had already been handed over to the Highways Department. There was a tussle between the 2 departments and after it was resolved and the Highways Department had agreed to the demarcation of boundaries, the Cooperative Department was ready to

put up construction. Therefore, in the light of these facts, the Government letter dated 4.7.2008 indicated that there was no question of reconveyance.

10. Challenging the second order of rejection dated 4.7.2008, the land owners filed a fresh writ petition in W.P.No.19228 of 2008. In the said writ petition, the land owners impleaded (i) The State of Tamil Nadu represented by Secretary to Government, Cooperation, Food and Consumer Protection Department; (2) The District Collector, Chennai; (3) The Tahsildar of Mambalam Guindy Taluk; (4) The Chief Engineer (General) of the Highways Department and (5) The Secretary of the Association of Highways Engineers, as respondents. It is relevant to note that in the first two writ petitions namely W.P.Nos.49265 of 2006 and 26990 of 2007, the Chief Engineer of the Highways Department as well as the Secretary of the Association of Highways Engineers were not made parties. These two persons were newly impleaded as parties only in the third writ petition, on account of the fact that the Department of Highways was stated to be in possession of a major portion of the land and also on account of the fact that the Association of Highways Engineers were occupying one portion of the land and had also put up a construction.

11. By a final order dated 27.8.2012, a learned Judge of this court allowed the writ petition and issued a positive mandamus directing the Government to re-convey the land, upon repayment of the compensation amount of Rs.33,947/-.

12. As against the said order of the learned Judge, the State of Tamil Nadu represented by its Secretary to Government, Cooperation, Food and Consumer Protection Department filed a writ appeal in W.A.No.180 of 2013. The appeal was dismissed by a Division Bench, even at the stage of admission, by an order dated 23.1.2013. The State of Tamil Nadu represented by its Secretary to Government, Cooperation, Food and Consumer Protection Department filed an application for review in R.A.No.76 of 2013, seeking a review of the order of dismissal of W.A.No.180 of 2013. But the Division Bench dismissed the Review Application by an order dated 29.4.2013.

13. As against the dismissal of the writ appeal W.A.No.180 of 2013 on 23.1.2013 and as against the dismissal of the Review Application on 29.4.2013, the State of Tamil Nadu represented by its Secretary, Cooperation, Food and Consumer Protection Department filed two Special Leave Petitions in SLP (Civil) Nos. 19684 and 19685 of 2013. These Special Leave Petitions were dismissed by the Supreme Court in limine, by an order dated 15.7.2013.

14. The State of Tamil Nadu represented by its Secretary to Government, Cooperation, Food and Consumer Protection filed two Review Applications in Review Petition(Civil) Nos. 2637 2638 of 2013. These Review Petitions were also dismissed by the Supreme Court by an order dated 26.11.2013.

15. In the meantime, the Chief Engineer, Highways Department, in whose actual physical possession the land was, filed an independent appeal as against the original order of the learned Judge dated 27.8.2012. While it was pending at the stage of condonation of delay, the Association known as the Tamil Nadu Arasu Kooturavuthurai Paniyalargal Sangam, which is an association of Employees of the Cooperative Department, filed a third-party appeal as against the original order of the learned single Judge dated 27.8.2012, along with an application for Leave to file appeal. A Division Bench of this Court granted Leave and hence the third-party appeal filed by the said Association was numbered as W.A.No.826 of 2013.

16. The Association of Highways Engineers which was the 5th respondent in the writ petition W.P.No.19228 of 2008, came up with an independent appeal in their own right, as against the order of the learned single Judge dated 27.8.2012. This appeal was numbered as W.A.No.847 of 2013.

17. Thereafter, the independent appeal filed by the Chief Engineer of the Highways Department got numbered as W.A.No.1366 of 2014, after the delay in filing the said appeal got condoned.

18. In the meantime, the land owners came up with a Contempt Petition in Contempt Petition No.915 of 2013, seeking to punish the respondents for wilful disobedience of the order for re-conveyance.

19. Thereafter, the State of Tamil Nadu represented by the Secretary to Government, Cooperation, Food and Consumer Protection Department, which had lost the battle up to the Supreme Court, not only in the main line but also in the loop line (in the sense that Review Applications were also dismissed), came up with a second application for review in R.A. No.195 of 2015 on the ground that fresh materials had been unearthed from the archives of the Government and that therefore the first order of the Division Bench in W.A.No.180 of 2013 required to be reviewed.

20. Therefore, all the petitions and appeals were taken up together for disposal and we have heard Mr.A.L.Somayaji, learned Advocate General, appearing for the State of Tamil Nadu,

Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing for the Chief Engineer of Highways Department, Mr.L.Chandrakumar, learned counsel appearing for the Association of Employees of the Cooperative Department, Mr.N. Subramanian, learned counsel appearing for the Association of Highways Engineers and Mr.P.S.Raman, learned Senior Counsel appearing for the land owners.

21. For the purpose of easy appreciation, the details such as the nature of the petitions and appeals, the array of parties and the orders out of which each one of them arises, are presented in a tabular column as follows:-

Petition/Appeal	Petitioner/Appellant	Arising out of
1. W.A.No.826 of 2013 (filed as third-party appeal)	Association of Employees Cooperative Department.	challenging the order of the single Judge in W.P.No. 19228/2008dated 27.8.2012.
2. W.A.No.847 of 2013	Association of Highways Engineers (who were R.5 to the writ petition itself)	challenging the order of the single Judge in W.P.No. 19228/2008dated 27.8.2012.
3. W.A.No.1366 of 2014	The Chief Engineer of the Highways Department (R-4 in the main writ petition)	challenging the order of the single Judge in W.P.No. 19228/2008dated 27.8.2012.
4. Review Application No. 195 of 2015	State of Tamil Nadu represented by Secretary to Government, Cooperation, Food and Consumer Protection Department.	For a review of the order of the Division Bench dated 23.1.2013 in W.A.No.180 of 2013.
5. Contempt Petition No.915 of 2013.	Land owners	Alleging disobedience of the order of the Division Bench dated 23.1.2013 in W.A.No. 180 of 2013.

22. In other words, there are three writ appeals, one filed by the Chief Engineer of the Highways Department, another filed by the Association of Highways Engineers and the third filed by a third-party, challenging the order of the learned single Judge passed on 27.8.2012 in the main writ petition W.P.No.19228 of 2008, directing the Government to re-convey the acquired land to the original owners. Apart from these three writ appeals, there is a Review Application filed by the State of Tamil Nadu represented by the Secretary to Government, Cooperation, Food and Consumer Protection and there is a Contempt Petition filed by the land owners.

23. The very maintainability of the 3 writ appeals as well as the Review Application are opposed by the respondents on the grounds inter alia-

(a) that the Review Application filed by the State of Tamil Nadu is actually a second application for review and hence it is nothing but an abuse of the process of law and an attempt at re-litigating the same issue over and over, after the dismissal of the first Review Application by the Division Bench, after the dismissal of the two Special Leave Petitions (arising out of the dismissal of the writ appeal and the dismissal of the first Review Application) and after the dismissal of the two Review Petitions by the Supreme Court itself;

(b) that the writ appeal filed by the Chief Engineer of the Highways Department, is also an abuse of the process of law and is not maintainable, in view of the fact that after the State Government had lost before all forums up to the Supreme Court, both on the original line as well as in Reviews, the officer who is part of the Government, cannot independently maintain an appeal;

(c) that the writ appeal filed by the Association of Highways Engineers is liable to meet with the same fate as the appeal filed by the State of Tamil Nadu in W.A.No.180 of 2013, for three reasons namely (i) that they have no independent right than that of the State Government to sustain the land for the Government (ii) that the Government Order passed way back on 17.3.2009 directing this Association to vacate and hand over possession was challenged by the Association unsuccessfully before this Court in a writ petition thereby resulting in the total loss of any semblance of even a possessory right and (iii) that the order passed by the single Judge out of which their writ appeal arises, has already merged with the orders of the Supreme Court; and

(d) that the writ appeal filed by the Association of Employees of the Cooperative Department is not maintainable inasmuch as their Department itself had lost the battle in several rounds and hence the

servant cannot take up the battle that was lost by its master.
MAINTAINABILITY OF THE REVIEW APPLICATION

24. The application for review filed by the State of Tamil Nadu represented by Secretary to Government, Cooperation, Food and Consumer Protection Department is actually a second application for review, filed by the State, after their first review application was dismissed by a Division Bench of this Court and also after the dismissal of a Special Leave Petition and a review petition by the Supreme Court. Therefore the maintainability of the review application is questioned on three grounds namely (a) that a second application for a review is not permissible in law; (b) that such an application is nothing but an attempt at re-litigating the same issue over and over and (c) that it is not maintainable on account of merger.

25. In support of the contention that a second application for review is not maintainable, Mr.P.S.Raman, learned Senior Counsel for the land owners, rely upon the decisions of the Supreme Court in M.Satyanarayana Murthy v. Mandal Revenue [1998 (7) SCC 445] and K.G.Arumugham v. K.A.Chinnappan [2005 (2) SCC 793].

26. However, Mr.A.L.Somayaji, learned Advocate General submitted that there is a distinction between (i) an application for a review of an order passed on a review application and (ii) a second application for a review of the original order. It is his contention that what is prohibited by law is only an application for a review of an order passed on a review application and not a second application for a review of the original order. After inviting our attention to the provisions of Order 47 Rule 9 of the Code of Civil Procedure, the learned Advocate General relied upon the following decisions in support of his contention:

- (i) Gobinda Ram Mondal v. Bholanath Bhatta (1888) ILR 15 Cal 432
- (ii) Pallia v. Mathura Prasad (1916) ILR 38 All 280
- (iii) Hari Singh v. Muhammad Said and others (1927) ILR 8 LAH 54
- (iv) Jaya Chandra Mohapatra v. Land Acquisition Officer, [(2005) 9 SCC 123]

27. We have carefully considered the above submissions.

28. It is true that Order 47 Rule 9 of the Code makes it clear that "No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained." Order 47 Rule 9 does not deal with a second application for a review of the original decree or order.

29. In so far as the power of review of civil courts is concerned, even under the Civil Procedure Code of 1859, (Act VIII of 1859) and the Civil Procedure Code of 1882 (Act XIV of 1882), the language used in the provision for review appears to have been the same, as used in Order 47 Rule 9 of the Code of 1908. While construing the scope of a second application for review under the old Code, a Division Bench of the Calcutta High Court held in Gobinda Ram Mondal v. Bholanath Bhatta [(1888) ILR 15 Cal 432] that if the Legislature wanted to prohibit a second application for review, they would have said "no second application for a review shall be entertained" and that it is not possible to construe the words "no application to review an order passed on review or on an application for a review shall be entertained" to be wide enough to bar a person from filing a second application for a review.

30. In Pallia, relied upon by the learned Advocate General, a Division Bench of the Allahabad High Court quoted with approval, the aforesaid decision of the Calcutta High Court to come to the same conclusion.

31. After the advent of the Code of 1908, a Division Bench of the High Court of Lahore, interpreted the scope of Order 47 Rule 9, in Hari Singh, relied upon by the learned Advocate General, in the same manner as did the Calcutta and Allahabad High Courts in the aforesaid decisions.

32. Though in M.Satyanarayana Murthy, relied upon by Mr.P.S. Raman, learned Senior Counsel for the land owners, the Supreme Court said in one sentence that "the filing of the second review petition is an abuse of the process of the court", it was only a passing reference and it cannot be taken to be an authoritative pronouncement of the law on the point, for the simple reason that there was no discussion on the scope of Order 47 Rule 9 CPC in the said judgment. As a matter of fact, the review was dismissed in that case, both on the ground that the huge delay of 2 years and 321 days was unexplained and also on the ground that no error apparent on the face of the record was brought out.

33. In K.G.Arumugham relied upon by Mr.P.S.Raman, learned Senior Counsel for the land owners, the Supreme Court was not concerned either with a second application for review or with an application for review of an order passed on a review. The Supreme Court was concerned in that case with an order passed in a second round of litigation, after the issues were settled in the first round. Therefore, the decision in K.G.Arumugham is not on the point.

34. But, the decision in *Jaya Chandra Mohapatra*, relied upon by the learned Advocate General, appears to be on the point. In para 8 of the said decision, the Supreme Court remarked "In law, there is no bar in filing applications for review successively if the same are otherwise maintainable in law." Therefore, prima facie it appears that both by virtue of the express language of Order 47 Rule 9 and by virtue of the pronouncement of the Supreme Court, a second application for review is maintainable.

35. In any case, we are not dealing with an application for review filed in a civil dispute, so as to invoke Section 114 read with Order 47 of the Code. We are dealing with an application arising out of a proceeding under Article 226 of the Constitution. Though Section 141 of the Code made the procedure prescribed in the Code applicable, to all proceedings in any Court of civil jurisdiction, the Explanation inserted by CPC (Amendment) Act 104 of 1976 made it clear that the proceedings under Article 226 would not come within the meaning of the expression "proceedings" appearing in Section 141.

36. The High Court, while exercising jurisdiction under Article 226, has jurisdiction to pass appropriate orders and such a power is neither controlled nor affected by the provisions of the C.P.C., unless the Rules framed by the High Court for regulating the proceedings under Article 226, limit the exercise of jurisdiction to review an order, on par with the same limitations imposed under Order 47. A useful reference in this regard can be made to the decision of the Supreme Court in *Commissioner of Endowments v. Vittal Rao* [AIR 2005 SC 454].

37. In exercise of the powers conferred by Article 226 of the Constitution, the High Court of Madras has framed a set of Rules known as the "High Court Rules to regulate the proceedings under Article 226 of the Constitution". These Rules do not contain any provision either making Order 47 Rule 1 of the Code applicable to a petition for review of an order passed in a writ petition under Article 226 or prescribing any limitation for dealing with applications for review of an order passed in a writ petition. Therefore, any application for review of an order passed in a writ petition is also filed only under Article 226, though by force of habit, few advocates make a mention also of Order 47 Rule 1 without any statutory sanction.

38. As a matter of fact, many of the other High Courts have removed this anomaly by making a special provision in the Rules. For instance, the Punjab and Haryana High Court has framed a set of Rules

known as "Writ Jurisdiction (Punjab and Haryana) Rules 1976". Interestingly, some of the Rules issued by the High Court of Punjab and Haryana specifically deal with the maintainability of a second writ petition after the dismissal of a first writ petition, for the very same relief. In Rule 32 of the Punjab and Haryana High Court Rules, it is specifically provided that in respect of all matters for which no separate provision is made in the Rules, the provisions of the CPC will automatically apply.

39. Similarly, the High Court of Karnataka has issued a set of Rules known as "The Writ Proceedings Rules, 1977". In Rule 39 of the Rules, it is made clear that the provisions of CPC shall apply, as far as may be, to proceedings under Article 226. Therefore, in the absence of any provision in these Rules, which deal with petitions for review of the orders passed in the writ petitions, the provisions of Order 47 of the Code would not per se apply. But we must add a note of caution. In so far as certain fundamental principles such as res judicata are concerned, the Supreme court has repeatedly pointed out that those principles would apply to a limited extent, to writ proceedings, not because the CPC says so, but because they are founded upon equity, fair play and good conscience.

40. It must be pointed out that the High Court of Madras was established in pursuance of the Letters Patent of 1862, issued by the Crown in exercise of the power conferred under the Indian High Courts Act, 1861. But, the Letters Patent of 1862 was replaced by the Amended Letters Patent of 1865. Clause 37 of the Amended Letters Patent of 1865 conferred power upon the High Court of Judicature at Madras to make Rules and Orders for regulating all proceedings in civil cases, which may be brought before the High Court. It must be remembered that the Amended Letters Patent of 1865 conferred a power upon the High Court of Judicature at Madras, under Clause 7 even to issue writs. But, after the coming into force of the Constitution, this Clause 7 became redundant and stood eclipsed by Article 226.

41. But, the rule making power of the Madras High Court conferred by Clause 37 of the Amended Letters Patent of 1865, was preserved by virtue of Article 225 of the Constitution. This is why the Rules to regulate the proceedings under Article 226 of the Constitution, were issued by the Madras High Court, by virtue of Article 225 of the Constitution. The High Courts which came into existence after the commencement of the Constitution, do not trace their rule making power to Article 225.

42. By virtue of the power not conferred, but recognised and continued to be given effect to by Article 225, the High Court of Madras issued a set of Rules known as "The Rules to regulate the proceedings under Article 226 of the Constitution of India". These Rules do not contain any provision making Order 47 of the Code applicable to writ proceedings. These Rules do not also contain any stipulation about the procedure to be followed while dealing with a petition for review of an order passed in a writ petition.

43. In order to remove this anomaly and to have a more comprehensive procedure for regulating the proceedings under Article 226, the High Court of Madras issued a new set of Rules under a Notification bearing Roc.No.2572-A/2001/F1, which were published in the Tamil Nadu Government Gazette dated 02.01.2002. These Rules contain a stipulation in Rule 24 that no application for review can be entertained except on the grounds mentioned in Order 47 of the Code.

44. But unfortunately, these Rules were put on hold by a subsequent Notification. However, an attempt was made under the High Court Notification No.146/2013 dated 29.4.2013 to restore these Rules with effect from 03.6.2013. But, by a next notification bearing No.152/2013 dated 05.6.2013, the coming into force of these Rules was suspended for four weeks. By another notification bearing No.188/2013 dated 02.7.2013, the suspension of the coming into force of these new set of Rules, was directed to be continued until further orders. Therefore, the attempt made by the High Court to make the provisions of Order XLVII of the Code applicable to writ proceedings, has become a non-starter.

45. It may be of interest to note that in the new set of Rules published in the Government Gazette on 02.01.2002 (but which has been kept on hold till date), there are two provisions, one under Rule 24 making the provisions of Order XLVII of the Code applicable to writ proceedings and another under Rule 27 which is much larger in scope than Order XLVII, Rule 9 of the Code. As we have seen earlier, Order XLVII, Rule 9 of the Code merely prohibits an application for review of an order passed on a review and not a second application for a review of the original order. But, Rule 27 of the new set of Rules issued by the Madras High Court, to regulate proceedings under Article 226, bars a second application in respect of the same subject matter. Therefore, if these new set of Rules have actually come into force, the present review application, filed by the State of Tamil Nadu could have been thrown out on the basis of Rule 27. But, since

they have not come into force, the respondents cannot seek umbrage under general principles of law.

46. Article 145 (1) of the Constitution empowers the Supreme court to make rules regulating the practice and procedure of the Court. The rules so made may include the matters enumerated in sub-clauses (a) to (j) of the said Article. Sub-clause (e) of clause (1) of Article 145 relates to rules governing the procedure for review of an order of the Supreme court.

47. Article 137 of the Constitution, which empowers the Supreme court to review its own orders or judgments, provides that the power of review available to the Supreme court, is subject to provisions of any law and rules made under Article 145.

48. In exercise of the power conferred by Article 145, the Supreme court has made a set of rules known as "The Supreme Court Rules, 1966". ORDER XL of those rules regulate the procedure for review before the Supreme court. Rules 1 and 5 of Order XL of those rules read as follows:-

1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule I of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter.

49. Two important aspects are to be noted in the above rules. The first is that the Supreme Court Rules make Order 47 of the Code applicable to a review before the Supreme court. The second aspect is that under rule 5 of Order XL, the Supreme court Rules seek to remove the anomaly (if there was any) in Order 47, Rule 9. Under Order XLVII, Rule 9 of the Code, what is barred is only an application for review of an order passed on a review, but not a fresh application for review of the original order. But under Rule 5 of Order XL of the Supreme court Rules, any further application for review, after the disposal of the first application for review, is barred in the same matter. Rule 27 of the new set of Rules issued by the Madras High Court and published in the Tamil Nadu Government Gazette on 02.01.2002, is in pari materia with Rule 5 of Order XL of the Supreme Court Rules. Therefore, if the new set of Rules of the Madras High Court had come

into force, the respondents could have successfully argued, irrespective of the applicability of the provisions of the CPC that a second application for review is not applicable. But, since the new set of Rules have been kept in abeyance for the past 13 years, the respondents could not pitch their defence on the basis of any statutory prescription.

50. But, in any case, despite the fact that the provisions of Order XL of the Supreme court Rules, 1966 present a more improvised version of Order 47 of the Code, the Supreme court pointed out in S. Nagaraj and Ors. v. State of Karnataka [1993 (Supp.4) SCC 595]:-

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the

courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords."

51. Explaining the basis for the exercise of such a power, the Supreme court stated further in the same decision as under:

"Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. and Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Code of Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

52. Therefore, the Supreme court has taken a view that neither the provisions of Order 47, CPC, nor the provisions of Order XL of the Supreme court Rules, 1966, would curtail its power to do complete justice, when it is apparent from the record that a gross injustice had been done to a party.

53. Therefore, what follows from the above discussion, can be summarised as follows:

(i) As held by the Supreme Court in *Puran Singh & Ors vs State Of Punjab & Ors* [1996 (2) SCC 205], which followed a decision of the Constitution Bench in *State of U.P. Vs. Vijay Anand*, [AIR SC 1963 946], the High Court in exercise of its power under Article 226 of the Constitution exercises original jurisdiction, but the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. When the High Court exercises extraordinary jurisdiction under Article 226 of the constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings, the very object and purpose is likely to be defeated. After the introduction of the explanation to Section 141 of the Code, the provisions of the Code are not per se applicable to a proceeding under Article 226, though some of the principles that could be traced to equity, justice, fair play and good conscience, could be applied even to those proceedings.

(ii) But, by virtue of the power conferred upon the High Courts to frame Rules, some High Courts have framed Rules, making the provisions of Order XLVII of the Code, applicable to writ proceedings. But, insofar as the High Court of Madras is concerned, the Rules as they stand as on date, do not contain such a provision. An attempt made in the year 2002 to re-frame the Rules and to insert a provision therefor, became unsuccessful. Therefore, in the Rules framed by the Madras High Court to regulate the proceedings under Article 226, there is no provision as on date, to make applicable Order XLVII of the Code.

(iii) There is a distinction between the power of review conferred upon the Supreme Court by Article 137 of the Constitution and the power of review available to the High Court under Article 226. The Supreme Court's power of review, which stems from Article 137, is specifically made subject to any Rule framed under Article 145.

(iv) Though the Supreme Court has issued a set of Rules under Article 145 and though Order XL of those Rules (i) not only makes Order XLVII of the Code applicable to the proceedings for review before the Supreme Court, (ii) but also improvises upon Order XLVII, Rule 9 of the Code by stipulating that a further application for review cannot be entertained in respect of the same matter, the Supreme Court expressed in no uncertain terms in *S.Nagaraj* cited supra that the anxiety to do justice, should not get obfuscated by the anxiety to maintain finality to litigation.

54. Therefore, we are of the considered view that -

- (i) in the absence of a specific provision in the High Court Rules regulating the proceedings under Article 226, providing for the application of Order XLVII of CPC to writ proceedings,
- (ii) in the light of the express language of Order XLVII, Rule 9 of the Code, barring only an application for a review of an order passed on a review, but not barring a second application for review of the original order,
- (iii) in the absence of a provision in any of the Rules of the High Court, similar to the one in Order XL, Rule 5 of the Supreme Court Rules, 1966, barring a second application for review in the same subject matter, and
- (iv) in the light of the fact that this Court was constituted by virtue of the Letters Patent of 1862, issued by the Crown in exercise of the power conferred under the Indian High Courts Act, 1861 and the High Court continues to exercise a plenary jurisdiction in terms of the Letters Patent of 1862, later replaced by Amended Letters Patent of 1865, the power of the High Court to entertain a second application for a review of the original order passed by the Division Bench in an appeal arising out of an order passed in a writ petition under Article 226, is not curtailed.

55. The question as to whether we would exercise such a power in a given case is completely different, from the pure and simple fundamental question of law as to the very existence of the power. We may choose to exercise the power to entertain a second review petition only in extraordinary situations, where a gross injustice, so palpable to a normal person, had been done to the party and it is seen that remedying such an injustice is far more important than the sanctity of the rules of procedure. Therefore keeping these principles in mind, we shall take up at a later point of time (i) the parameters subject to which we would exercise such a power and (ii) the question as to whether the State of Tamil Nadu satisfies those parameters in the case on hand.

MAINTAINABILITY OF THE WRIT APPEAL BY THE CHIEF ENGINEER OF THE HIGHWAYS DEPARTMENT

56. The maintainability of the writ appeal independently filed by the Chief Engineer of the Highways Department in W.A.No.1366 of 2014 is questioned on the ground that the State Government is one single entity and that merely because the Executive Power of the State is exercised through various departments, it may not be open to each of the Departments to file independent appeals against one single order, especially after one appeal filed by the State against the very same order has been thrown out.

57. In support of this contention, Mr.P.S.Raman, learned senior counsel appearing for the legal heirs of the land owners, placed heavy reliance upon the decision of the Supreme Court in Villianur Iyarkkai Padukappu Maiyam v. Union of India [(2010) 15 SCC 230]. In the said case, an application for review was filed by the Union of India through the Ministry of Home Affairs, on the ground that they were the affected parties and that they were not heard, either before the High Court or in the Supreme Court, as they were not even made parties. But, the Union of India represented by the Secretary to Government, Ministry of Surface Transport, was the first respondent in the writ petition and they not only contested the case before the High Court, but also the appeal before the Supreme Court. Therefore, the Supreme Court rejected the review petition filed by the Union of India through the Ministry of Home Affairs. While doing so, the Court observed that "the Union of India is a legal entity and that it cannot be split into various departments for the purpose of being arrayed as a party in a litigation before a Court of law".

58. Therefore, on the basis of this decision, it is contended by the learned senior counsel for the land owners that after the dismissal of (i) the writ appeal, (ii) the review application, (iii) the two Special Leave Petitions, one arising out of the writ appeal and another arising out of the review application, and (iv) the review applications of the State of Tamil Nadu represented by the Secretary to Government, Food, Cooperation and Consumer Protection Department, it was not open to the Chief Engineer of the Highways Department to come up with an independent writ appeal.

59. We have carefully considered the above submissions.

60. It is true that the Government is a single unity and it is also expected to be a cohesive entity. The Constitution itself expects the Executive of the Union and the Executive of the States to be single cohesive units by themselves. Article 53(1) vests the Executive power of the Union in the President and it authorises the President to exercise such power either directly or through officers. Similarly, the Executive power of the State is vested with the Governor under Article 154(1) and it authorises the Governor to exercise the said power either directly or through officers subordinate to him in accordance with the Constitution. This is why Article 166(1) mandates that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. Clause (3) of Article 166 empowers the Governor to make Rules for the convenient transaction of the business of the Government of a State and for the allocation among Ministers of the

said business. Therefore, for the purpose of convenient administration, the State Executive is divided into several departments, each of which is administered through a Member of the Council of Ministers and the Secretary concerned. However, as per Article 166(1) of the Constitution, the Executive action of the Government is expressed to be taken only in the name of the Governor.

61. Keeping this in mind, if we come back to the position of the Government as a litigant, it could be seen that the Civil Procedure Code attempted to resolve this conundrum long before the advent of a democratic form of Government by stipulating in Section 79 that in a suit by or against the Central Government, the authority to be named as plaintiff or defendant shall be the Union of India. In a suit filed by or against the Government, the authority to be named as plaintiff or defendant will be the State.

62. For the purpose of service of notice as required by Section 80 of the Code of Civil Procedure, the Code mandates that such notice should be delivered to or left at the office of the Secretary to Government, if the suit would be against the central Government. If the suit be against any State Government, the notice should be left at the office of either the Secretary to the Government or the Collector of the District. Sub-section (3) of Section 80 of the Code also addresses the issue of any error or defect in the notice issued under Section 80(1). While ensuring that a suit instituted against the Government is not dismissed merely by reason of any error or defect in the notice referred to in Sub-section (1), clauses (a) and (b) also delineate the types of errors or defects in respect of which the protection is extended. Clause (a) takes care of a wrong description of the person who is the proposed plaintiff. If the particulars furnished about the proposed plaintiff in the notice under Section 80(1) are sufficient for the appropriate authority to identify such person, then the wrong description is saved. Similarly, if there is any mistake or defect in identifying the cause of action or in indicating the relief claimed, then such a defect or error should also be condoned if the cause of action and relief claimed are substantially indicated in the notice. But, the service of notice on a wrong officer, say for instance, on the Collector of one particular District instead of another District or on the Secretary of one particular department, instead of the Secretary of another department, is not saved by any of the two clauses (a) or (b).

63. In the light of what is provided in Sections 79 and 80 of the Code of Civil Procedure, it will be clear that a notice has to be served upon the Secretary to Government or the Collector of the

District, if the proposed suit is against a State Government. Now, let us take a hypothetical case where a notice under Section 80(1) is served on the Secretary to Government of the Public Works Department in a suit proposed to be instituted in respect of a dispute relating to the ownership of a land or in respect of a dispute with respect to the registration of a document. The very object of Section 80(1) of the Code of Civil Procedure would stand defeated as the person on whom such notice is served will have nothing to do with the dispute and yet, there would have been satisfactory compliance of the provisions of Section 80(1). It is this difficulty that we have to keep in mind while testing the correctness of the contentions raised by the learned senior counsel for the land owners with regard to the maintainability of an independent appeal by the Chief Engineer of the Highways Department.

64. Coming to the facts of the case, the land owners made (1) the State of Tamil Nadu represented by its Secretary, Co-operation, Food and Consumer Protection Department, (2) the District Collector of Chennai, and (3) the Tahsildar of Mambalam-Guindy Taluk alone as the parties to the earliest writ petition filed by them in W.P.No.49265 of 2006.

65. But, in the third writ petition W.P.No.19228 of 2008, the land owners impleaded (1) the Chief Engineer of the Highways Department, and (2) the Secretary of the Association of Highways Engineers as respondents 4 and 5, along with the three respondents who were parties to the earlier two writ petitions. This was on account of the fact that in Letter.Ms.No.123, Co-operation, Food and Consumer Protection Department dated 04.7.2008, which came to be impugned in the third writ petition W.P.No.19228 of 2008, the Co-operation Department took a stand that part of the lands had already gone into the possession of the Highways Department. In the light of such a stand taken by the Secretary to Government, Co-operation Department, the land owners themselves thought fit to implead the Chief Engineer of the Highways Department as the fourth respondent in their writ petition. After having done so, it is not open to the land owners now to contend that the Chief Engineer of the Highways Department has no independent right to file an appeal.

66. Under the Business Rules of Practice of each of the Departments, the files emanate at a particular level depending upon the importance of the subject matter and it travels from Under Secretary to the Deputy Secretary to the Joint Secretary to the Secretary and eventually to the Minister concerned. The business carried on by the Government through the Heads of various departments

are like the rays that emanate from a common source of lighting, but each of them travel through a different path. Therefore, it is not possible in the present context of the expanded functions of the Government to make one department know or keep track of what every other department does. Having chosen to implead the Chief Engineer of the Highways Department as a party to the writ petition, we do not know why the Secretary to Government of the Highways Department was not impleaded by the land owners in their writ petition.

67. There are several items of business where more than one department gets involved. In such of those cases, a collective decision is taken in a joint meeting of the Secretaries to Government of the respective departments. At least in such cases, it is possible to import knowledge upon one department, of what the other department has done.

68. The role of the Government in the discharge of its executive functions or in the discharge of its business, is completely different from the role of the Government as a litigant. For the purpose of discharging the executive power of the State in terms of the provisions of the Constitution, the State is definitely one single cohesive entity. But, it is impossible to import the same logic into the role of the Government as a litigant.

69. If this distinction is lost sight of, the Secretary to Government of any department can be made to answer the claim of any litigant before Court as against any other department. This is impermissible in law.

70. The decision rendered in Villianur Iyarkkai Padukappu Maiyam arose out of an application filed by the Ministry of Home Affairs for recalling an order passed by the Supreme Court, in a litigation which was pursued meticulously by the Ministry of Surface Transport, right from the High Court up to the Supreme Court. The Ministry of Home Affairs was not a party to the proceedings either in the High Court or before the Supreme Court. The Ministry of Surface Transport which contested the case from the High Court to the Supreme Court did not bring to the notice of the High Court or the Supreme Court that it was the Ministry of Home Affairs which was actually concerned with the issue on hand. Therefore, the Supreme Court refused to review its order passed against the Ministry of Surface Transport at the behest of the Ministry of Home Affairs. The said decision is clearly distinguishable.

71. As we have pointed out earlier, the land owners themselves realised the need for impleading the Highways Department as a party to the third writ petition, in view of the claim made by the Department of Co-operation that there was a dispute between them and the Highways Department. After having impleaded, the Chief Engineer of the Highways Department (and not even the Secretary to Government of the Highways Department) as a party to the writ petition, it is not open to the land owners to raise a contention that the right of appeal which inheres in every party to a litigation stands forfeited merely because one other party whom this party was supporting, has already filed an appeal and lost it.

72. At the cost of repetition, we would point out (i) that the role of the State Government as a litigant is different from the role played in the discharge of its executive functions, and (ii) that the consequences of treating the State Government as a single cohesive unit for the purpose of a litigation would be disastrous inasmuch as the Secretary to Government of one department cannot be made to answer the claim arising in respect of matters dealt with by the other departments. The right of a party to a litigation to file an appeal against an order, cannot be defeated on the sole ground such as the one raised by the land owners. Hence, the objection relating to the maintainability of an independent appeal by the Chief Engineer of the Highways Department is also rejected.

MAINTAINABILITY OF APPEAL BY TAMIL NADU ARASU KOOTURAVUTHURAI PANIYALARGAL SANGAM

73. The writ appeal, W.A.No.826 of 2013 is filed by an Association of employees of the Co-operative Department. They have filed the appeal by way of a third party appeal, after taking leave of this Court. The ground on which they have come up with the writ appeal is that the land had already vested in the Co-operative Department and that as employees of the Co-operative Department, they owe a duty to defend the action of the Government.

74. But, we do not think that the Association of employees of the Co-operative Department have any right. The original notification under Section 4(1) of the Land Acquisition Act, 1894, stated that the land was acquired for the construction of Hostel and Building for the Central Co-operative Institute. The employees of the Co-operative Department do not constitute the requisitioning body. They cannot even be construed as the beneficiaries of the acquisition. At least in cases where the acquisition of land is made for the purpose of providing house sites to Adi-dravidars, the persons identified as potential allottees could be called as beneficiaries. But, the

Association of employees of the Co-operative Department cannot even be considered to be beneficiaries in the strict sense of the term.

75. In any case, the beneficiaries or even the requisitioning body would have no right even to participate in an enquiry under Section 48-B. Section 48-B proceeds on a fundamental premise that the land had not been put to use for the purpose for which it was acquired. The beneficiaries would enter into the picture only if the acquired property is put to use for which it was acquired. Therefore, we are of the considered view that the appeal filed by the Tamil Nadu Arasu Kooturavuthurai Paniyalargal Sangam was not at all maintainable. Hence, W.A.No.826 of 2013 is dismissed.

MAINTAINABILITY OF THE WRIT PETITION FILED BY THE ASSOCIATION OF HIGHWAYS ENGINEERS

76. The writ appeal filed by the Secretary of the Tamil Nadu Highways Engineers is opposed on the ground that they have no locus to question the correctness of the order passed by the learned Judge. This objection is based upon a Government Order in G.O.Ms.No.24, Cooperation, Food and Consumer Protection Department dated 17.3.2009, whereby the Government, even while rejecting the request of the land owners for re-conveyance, directed the Chief Engineer of the Highways Department to vacate and hand over possession of the lands and building in their possession to the Government to facilitate the survey and fencing work in and around the land. Pursuant to the Government Order G.O.Ms.No.24, the Principal Secretary to Government, Highways Department sent a letter to the Association asking them to vacate the lands and buildings in their possession in T.S.No.22. The Association of Highways Engineers came up with a writ petition in W.P.No.12209 of 2009 challenging the said Government order G.O.Ms.No.24 dated 17.3.2009 on the ground that the Association is in possession of a part of the land. But this writ petition was dismissed by a learned Judge, by an order dated 5.10.2010, on the ground that when the patta for the land stands in the name of the Cooperative Department, neither the Highways Department nor the association can stake any claim or right over the lands. Nevertheless, the learned Judge also recorded a finding that the Association of Highways Engineers was in occupation of a building with a plinth area of 1550 secured matters (equivalent to about 16,000 sq.ft.) in the land in question. However, the learned Judge opined that once the Government have acquired the land for a specific purpose, it is for the Government to decide as to how it should be utilized. The learned Judge held that merely because the Association put up a construction on the land, they do not have a right to question the propriety of the Government in handing over the entire

land to the Cooperative Department.

77. Therefore, the contention of Mr.P.S.Raman, learned senior counsel for the land owners is that the Association of Highways Engineers which is the appellant in W.A.No.847 of 2013, does not have a right to challenge the order of the learned Judge directing reconveyance of the land under Section 48B of the Act, to the land owners, and that the Association of Engineers is bound by the order of the learned Judge in W.P.No.12209 of 2009. According to him, the Association, which was only in permissive occupation of a part of the property, cannot have a much better right than either the Government or the land owners.

78. We have carefully considered the above submissions.

79. As we have stated earlier, the Association of Highways Engineers was not made a party to the first writ petition in W.P.No.49265 of 2006, filed by the land owners. They were not made parties even to the second writ petition in W.P.No.26990 of 2007. The Association of Highways Engineers were made parties only to the third writ petition in W.P.No.19228 of 2008. The reasons stated by the land owners in Ground (G) in para 8 of their affidavit in support of the writ petition, for impleading the association of the Highways Engineers is that the Highways Department had leased out the lands to the Association of Highways Engineers. It is only after the land owners impleaded the Association of Highways Engineers as the 5th respondent to their third writ petition in W.P.No.19228 of 2008 that the Government chose to pass G.O.Ms.No.24 dated 17.3.2009. Therefore, what happened after the institution of W.P.No.19228 of 2009, cannot defeat the rights of the Association of Highways Engineers, to challenge an order passed in the Writ Petition to which they were made parties.

80. By the time the writ petition filed by the land owners in W.P.No.19228 of 2008 came up for final hearing before the learned single Judge in August 2012, the Government Order G.O.Ms.No.24 dated 17.3.2009 passed after the filing of the writ petition got upheld by a judgment dated 5.10.2010 in W.P.No.12209 of 2009. But the land owners did not give up the Association of Highways Engineers from the array of parties on the ground that during the pendency of the writ petition, the Association of Highways Engineers lost whatever semblance of right that they had. Consequently, the Association of Highways Engineers participated in the proceeding in the writ petition W.P.No.19228 of 2008 and suffered an order. Once they were made parties to a writ petition and once they are found to be

aggrieved by the order of the learned Judge, the appeal filed by them cannot be held to be not maintainable.

81. As a matter of fact, the learned Advocate General brought our notice another Government Order in G.O.Ms.No.40, Cooperation, Food and Consumer Protection Department, dated 19.3.2015, by which the Government had rescinded G.O.Ms.No.24 dated 17.3.2009. Therefore, today G.O.Ms.No.24 dated 17.3.2009 and the order of the learned single Judge in W.P.No.12209 of 2009 upholding the said Government Order, have no value. Just as the right of the Association of Highways Engineers was said to be defeated after the institution of the writ petition in W.P.No.19228 of 2008, the right has been restored during the pendency of the above writ appeal. Hence, we hold that W.A.No.847 of 2013 is maintainable.
ISSUE OF MERGER

82. The maintainability of the Review Application and the Writ Appeals is questioned by the Legal Heirs of the original land owners, also on the ground that (i) after the dismissal of the two Special Leave Petitions, one arising out of the dismissal of the writ appeal and another arising out of the petition to review the order passed in the writ appeal and (ii) after the dismissal of two Review Petitions by the Supreme Court itself, the original order passed by the learned single Judge cannot be tested either in writ appeals or in a petition for review of the order passed in the writ appeal. Moreover, the manner in which the Supreme Court disposed of the Review Petitions also, according to the learned senior counsel for the respondents left no room for any doubt about the merger of the orders passed by this Court into the orders of the Supreme Court.

83. Before we go into the legal question as to when a merger takes place, it may be necessary to recall the relevant facts. The writ petition W.P.No.19228 of 2008 filed by the land owners was allowed by a learned Judge, by an order dated 27.8.2012. The writ appeal filed by the State of Tamil Nadu, represented by the Secretary to Cooperation, Food and Consumer Protection Department, in W.A.No.180 of 2013 was dismissed by a Division Bench, even at the stage of admission. But unfortunately, the order dated 23.1.2013 passed by the Division Bench, dismissing W.A.No.180 of 2013 proceeds on the basis as though the counsel on both sides were heard. But, who were actually heard were (i) the Special Government Pleader appearing for the State of Tamil Nadu and (ii) the learned senior counsel for the land owners. There were other parties to the writ appeal. They were (i) the District Collector (ii) the Tahsildar (iii) the Chief Engineer of the Highways Department and (iv) the Association of

Highways Engineers. But the Division Bench perhaps thought that these parties need not be put on notice, as the Special Government Pleader was appearing for the appellant.

84. When the State of Tamil Nadu filed a petition for Review in R.A.No.76 of 2013, the same was also dismissed in limini, on the erroneous assumption that all the parties were heard, while dismissing W.A.No.180 of 2013. It was not brought to the notice of this court that all the parties were not heard before dismissing W.A.No.180 of 2013.

85. The Special Leave Petitions S.L.P. (Civil) Nos. 19684 and 19685 of 2013 arising respectively out of (i) the dismissal of W.A.No.180 of 2013 and (ii) the dismissal of R.A.No.76 of 2013, were dismissed by the Supreme Court in limini, by an order dated 15.7.2013 which reads as follows:-

"The Special Leave Petitions are dismissed".

86. Thereafter, the State of Tamil Nadu filed two Review Applications in R.A.Nos. 2637 and 2638 of 2013 before the Supreme Court, seeking a Review of the order dated 15.7.2013. It appears that the Advocate on record for the State of Tamil Nadu made a request for a oral hearing in open court, on the ground that fresh material which were not earlier available, but which would change the complexion of the game, had been unearthed.

87. But the request for oral hearing, made on the basis of fresh material, was rejected, by the Supreme Court on 26.11.2013, by an order which reads as follows:

"Delay condoned.

The application for oral hearing is rejected.

The Review Petitions are dismissed in terms of the signed order."

88. The signed order by which both the Review Petitions were dismissed, reads as follows:-1

"1. Delay condoned.

2. The application for oral hearing is rejected.

3. These petitions have been filed for review of order dated 15.07.2013 passed in the special leave petitions.

4. We have gone through the review petitions and the record of the special leave petitions and are convinced that the order of which review has been sought does not suffer from any error apparent warranting its reconsideration.

5. Hence, the review petitions are dismissed."

89. The doctrine of merger is pressed into service by the respondents, primarily on the basis of the order passed by the Supreme Court on 26.11.2013, which we have extracted above. The contention of the respondents is that the dismissal of the review petitions was not, either by a one word order or by a one line order, but by an order where the Supreme Court has recorded the fact that they had gone into the records and found that their previous order did not suffer from any error apparent on the face of the record. Therefore, it is contended by the respondents that the original order of the learned Judge out of which the three writ appeals on hand arise as well as the order of the Division Bench out of which the one Review Petition on hand arises, have all merged with the order of the Supreme Court. Hence, the respondents contend that the appeals as well as the Review Application deserve to be dismissed.

90. We have carefully considered the above submissions.

91. At the outset, it should be pointed out that the doctrine of merger is neither founded upon the Constitution nor statutorily recognized. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. The underlying principle behind the doctrine of merger is that there cannot be more than one decree.

92. It is not necessary for us to trace the development of law on the issue in India, since the Supreme court had already carried out such an exercise in *Kunhayammed vs State Of Kerala* [2000 (6) SCC 359]. After taking note of almost all its earlier decisions, including those in (i) *Commissioner of Income Tax v. Amritlal Bhogilal* [AIR 1958 SC 868], (ii) *State of Madras v. Madurai Mills Co. Ltd.*, [AIR 1967 SC 681], (iii) *Gojer Brothers Private Limited v. Shri Ratanlal* [AIR 1974 SC 1380] (iv) *S.S.Rathor v. State of Madhya Pradesh* [AIR 1990 SC 10], (v) *Indian Oil Corporation Ltd V. State of Bihar* [AIR 1986 SC 1780] (vi) *Rup Diamonds v. Union of India* [AIR 1989 SC 674] (vii) *Supreme court Employees' Welfare Association v. Union of India* [1989 (4) SCC 187] (viii) *Yogendra Narayan Chowdhury v. Union of India* [1996 (7) SCC 1] and (ix) *V.M.Salgaocar v. Commissioner of Income Tax* [2000 (3) Scale 78], the Supreme court summarised in *Kunhayammed vs State Of Kerala* [2000 (6) SCC 359], the following principles: -

- (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior

forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order

is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.

93. The principles summarised as above, by the Supreme Court in Kunhayammed vs State Of Kerala, to our knowledge, have not been doubted or diluted or even whittled down so far. In one paragraph of the said decision, the Supreme Court dealt directly with the very same question that has arisen before us, concerning the Doctrine of merger and the right of review. It was stated in the said paragraph that "The doctrine of merger and the right of review are concepts which are closely inter-linked". The Court pointed out that if the judgment of the High Court was taken to the Supreme Court by way of a special leave petition and special leave is granted and the appeal is disposed of with or without reasons, the judgment of the High Court merges with that of the Supreme Court. In such an event, it is not permissible for the parties to move the High Court by way of review because the judgment of the High Court has merged with the judgment

of the Supreme Court. But where the special leave petition is dismissed - there being no merger, the aggrieved party is not deprived of any statutory right of review, if it was available.

94. Again in *DSR Steel Private Limited v. State of Rajasthan* [2012 (6) SCC 782], the Supreme Court pointed out that there could be three different situations namely (i) a case where a review application is allowed and the proceedings are reheard and a fresh decree is passed; (ii) a case where a review is allowed and the original decree or order is modified or reversed; and (iii) a case where the Court simply dismisses a review application. In the third type of cases, no merger takes place and a person aggrieved should only challenge the original order.

95. Keeping these fundamental principles in mind, if we come back to the facts of the case, it will be clear that in the first instance, the Supreme Court dismissed the Special Leave Petitions S.L.P.(C) Nos.19684 and 19685 of 2013, by a one line order reading "the special leave petitions are dismissed". Therefore, the judgment of the Division Bench of this Court in W.A.No.180 of 2013 cannot be taken to have merged with the order of dismissal of the Special Leave Petitions.

96. Once it is clear that the order of the Division Bench in W.A. No.180 of 2013 did not merge with the order passed by the Supreme Court in S.L.P.(C) Nos.19684 and 19685 of 2013, it follows as a natural corollary that the dismissal of the review petitions by the Supreme Court, cannot improve the situation for the respondents. At the most, the order of dismissal of the Special Leave Petitions can be taken to have merged with the order of dismissal of the review petitions and nothing more.

97. Whether the order of dismissal of the Special Leave Petitions merged with the order of dismissal of the review petitions or not, is not a question with which we are concerned. We are only concerned with the question whether the order of the Division Bench of this Court merged with the order of dismissal of the Special Leave Petitions or not. Our answer to this question could only be in the negative, in view of the principles laid down by the three member Bench of the Supreme Court in *Kunhayammed*, which was also cited with approval in a later decision in *Omprakash Verma v. State of Andhra Pradesh* [2010 (13) SCC 158].

98. Therefore, the contention of the respondents that due to the applicability of the doctrine of merger, the orders appealed against

are actually non-existent in the eye of law and that therefore, the appeals are not maintainable, cannot be accepted.
GROUNDS OF REVIEW AND APPEALS

99. Once the objections relating to the maintainability of the petition for review and the maintainability of the writ appeals are found to be unsustainable, then it is imperative that we deal with the grounds of appeal and the grounds for review.

100. As we had indicated earlier, the legal heirs of the original land owners came to this Court seeking a direction to the Government to re-convey the land in terms of Section 48B of the Land Acquisition Act, 1894, on the short ground that despite a lapse of more than 40 years from the date of acquisition, the Government did not put the land to the use for which it was acquired. Therefore, more than anything else, the Learned Judge dealing with such a Writ Petition, was obliged to consider two issues namely (i) as to whether, as a statement of fact, the land was not put to use either for the purpose for which it was acquired or for any other purpose and (ii) as to whether, as a question of law, the land owner will be entitled automatically to the re-conveyance of the land, if the answer to the first issue was in the affirmative.

101. Before we see whether the learned single Judge dealt with these two issues in accordance with law, it is necessary to take note of the statutory prescription.

102. It is needless to point out that the Central Act does not contain any provision for re-conveyance of an acquired land. The Central Act contains only a provision in Section 48, for withdrawing any land, whose possession has not been taken, from acquisition. Once possession is taken, the land vests absolutely with the Government, free of all encumbrances, on account of Section 16.

103. But by an amendment under the Tamilnadu Act 16 of 1997, to the Central Act, Section 48B was inserted. Section 48B reads as follows-

"48B. Transfer of land to original owner in certain cases:

Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition

of such land inclusive of the amount referred to in sub section (1-A) and (2) of Section 23, if any, paid under this Act."

104. Despite the fact that it had been extracted in several decisions of this Court and of the Supreme Court, on earlier occasions, we are constrained to extract Section 48B, for the simple reason that the earlier decisions have not taken note of some historical reasons. Once those historical reasons are looked into, it will be clear as to how far the Court could go while considering an application under Section 48B.

HISTORICAL REASONS BEHIND SECTION 48-B

105. About two years before India attained independence, the then Governor of Madras, by a proclamation issued under Section 93 of the Government of India Act, 1935, assumed to himself of the powers vested in the Provincial Legislature and issued an Act known as The Madras City Improvement Trust Act, 1945 (Madras Act No. XVI of 1945). This Act contained a few provisions in Chapter IV for the "Acquisition and disposal of land". Under Section 71 of the said Act, the Board was vested, subject to the previous sanction of the Government, the power to acquire land under the provisions of the Land Acquisition Act, 1894. In fact, Section 72 of the Act empowered the Government to constitute a Tribunal for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894. Section 73 of the Act declared that for the purpose of acquiring land for the Madras City Improvement Trust Board, the provisions of the Land Acquisition Act, 1894 shall be subject to certain modifications as specified in the Schedule to Madras Act XVI of 1945.

106. Madras Act XVI of 1945 contained two important features. The first was a power under Section 90 (2) to offer the acquired land for sale or lease to the very same owner, on a priority basis, provided he was willing to pay the rate as fixed by the Board. The second feature of the said Act was an amendment to the Land Acquisition Act, 1894. By the Schedule to Act No. XVI of 1945 read with Section 73(a) of the Act, Section 48-A was inserted into Land Acquisition Act, 1894.

107. Section 90 of Madras Act, XVI of 1945 reads as follows:-

"90. (1) The Board may retain, or may lease, sell, exchange, let on hire, or otherwise dispose of, any land vested in or acquired by it under this Act.

(2) Whenever the Board decides to lease or sell

any land acquired by it under this Act from any person, it --

(a) shall give notice by advertisement in the local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board considers that such an offer can be made without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to have the prior right referred to in clause (b) of sub-section (2), preference shall be given to the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause."

108. Section 48-A inserted into Land Acquisition Act, 1894, by the Schedule read with Section 73(a) of Madras Act XVI of 1945 reads as follows:-

"48-A. (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, 1945, 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 he 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 provisions of Part III of this Act shall apply, so far as may be, to the declaration of the compensation payable under this section."

109. But the Madras Act XVI of 1945 was repealed and replaced by the Madras City Improvement Trust Act, 1950 (Madras Act No. XXXVII of 1950. Madras Act XXXVII of 1950, retained Section 90 of the 1945 Act as such, only with minor alterations. It also directed the retention of Section 48-A, inserted into the Land Acquisition Act, 1894 by the Schedule to the Act.

110. But then the 1950 Act was repealed and replaced by The Madras State Housing Board Act, 1961. Chapter VIII of the 1961 Act

deals with "Acquisition and disposal of land". Under Section 70 of The Madras State Housing Board Act, 1961, it was stipulated that any land or any interest therein, required by the board, may be acquired under the provisions of the Land Acquisition Act, 1894. Section 70 of the 1961 Act stood in contrast to section 71 of the 1945 and 1950 Acts. Under the 1945 and 1950 Acts, the Board for City Improvement Trust itself was vested with the power of acquisition, in terms of the Land Acquisition Act, 1894, though with the previous sanction of the Government. But under section 70 of the 1961 Housing Board Act, it was just stated that any land or any interest therein, required by the board, may be acquired under the provisions of the Land Acquisition Act, 1894.

111. Section 71 of the Housing Board Act, 1961 empowered the Housing Board to enter into agreements with the land owners, either for the purchase, or for lease or for exchange of any land, with the approval of the Government in some cases and without the approval in some cases.

112. Like Section 90 of the Madras City Improvement Trust Acts of 1945 and 1950, Section 72 of The Madras State Housing Board Act, 1961, also conferred power upon the Housing Board to dispose of the acquired land in a particular manner. This Section reads as follows:

"72. Power to dispose of land: (1) The Board may retain or may lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act.

(2) Whenever the Board decides to lease or sell any land acquired by it under this Act from any person, it

(a) shall give notice advertisement in one of the leading local newspaper in the State, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land for an amount or at a rate to be fixed by the Board, if the Board considers that such an offer can be made without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to have the prior right referred to in clause (b) of sub-section

(2) preference shall be given to the person who agrees to pay the highest amount or rate for the land, not being less than the amount or rate fixed by the board under that clause."

113. Therefore, from the days of the City Improvement Trust to the days of the Madras Housing Board (now Tamil Nadu Housing Board),

what was conferred upon a requisitioning body like the Housing Board, was only a power to dispose of the acquired land, either by way of a sale or by way of lease or exchange or otherwise. But the exercise of this power was circumscribed by the following limitations:-

(i) The Board should advertise the intention to dispose of the acquired land, in a leading local newspaper.

(ii) It should also offer, to the original owner a prior right to make an offer.

(iii) The offer made by the original owner cannot be for any amount, but should be for a rate to be fixed by the Board.

(iv) In any case, the acceptance of such offer by the Board is subject to the satisfaction of the Board that it would be without detriment to the carrying out of the purposes of the Act.

114. It must also be remembered that under the Land Acquisition Act, 1894, a land may be acquired for any public purpose including the purpose of providing housing to a section of the population. The land owner was conferred a very limited right under the Madras City Improvement Trust Act and under the Madras State Housing Board Act. It was a pre-emptive right to purchase the land at a rate as fixed by the Board and that too only after making an advertisement in a newspaper to see that the amount offered by the original owner is not less than the offers made by outsiders. This facility or limited right for the land owner was not available in the Land Acquisition Act itself but available only in cases where the acquisition was for the purposes of the Madras City Improvement Trust or the Madras State Housing Board.

115. However, in 1997 the State Legislature thought fit to extend a similar benefit, to all land owners, irrespective of whether the acquisition was for carrying out the purposes of the Madras City Improvement Trust Act or the Madras State Housing Board Act. Hence the Legislature amended the Land Acquisition Act, 1894 itself under Tamil Nadu Amendment Act XVI of 1997, incorporating Section 48-B.

116. Thus, the insertion of Section 48B into the Land Acquisition Act, 1894, under Tamilnadu Amendment Act 16 of 1997, was nothing but an attempt to import into the Central Enactment, a provision similar to Section 72 of The Madras State Housing Board Act, 1961. Unless this historical reason is taken note of, it would not be possible to understand the legislative intent behind Section 48B.

117. Keeping in mind, the genesis of Section 48-B, let us take a plain and fresh look at Section 48-B. Though the "Statement of Objects and Reasons" to the Tamil Nadu Act XVI of 1997 merely states

that the object of incorporating Section 48-B was to fill up the vacuum in the Land Acquisition Act, 1894, as it did not contain a provision for re-conveyance, the motive force behind the insertion of Section 48-B was to provide a level playing field between the acquisition for the purpose of Housing Board and acquisition for other purposes.

118. But nevertheless, Section 48-B was worded in such a manner that for the exercise of the power conferred therein, the Government should be satisfied that the acquired land was not required (i) either for the purpose for which it was acquired; (ii) or for any other public purpose. A plain reading of Section 48-B would disclose the following essential features.

(A) Section 48-B is not worded in such a manner conferring an indefeasible right upon the original owner to seek a re-conveyance.

(B) The section is also not worded in such a manner as to impose an indefensible obligation upon the State, to re-convey the land necessarily.

(C) Section 48-B does not use the expression "Where the land is not put to use for the purpose for which it was acquired". The section uses the expression "Wherethe landis not required for the purpose for which it was acquired or for any other public purpose".

(D) The fact that the land had not been put to use for the purpose for which it was acquired (even if true in a given case), would not lead to the automatic presumption that the land was not required either for the purpose for which it was acquired or for any other purpose.

(E) The true test for the application of Section 48-B, is only to see if the land is required for the purpose for which it was acquired or for any other public purpose. The plain language of Section 48-B does not call for the application of any test to see if the land had actually been put to use for the purpose for which it was acquired.

119. Apart from the fact that the foregoing principles could be culled out even from the plain language of Section 48-B, it could be seen that those principles are in sync with the law laid down by the Supreme Court. On the right of the land owner to seek re-conveyance, the Supreme Court held in Northern Indian Glass Industries v. Jaswant Singh [(2003) 1 SCC 335], that "if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action, but that did not confer any right on the respondents to ask for restitution of the land".

120. In Tamil Nadu Housing Board v. Keeravani Ammal [(2007) 9 SCC 255], the Supreme Court cautioned in para 16 that "Section 48-B is an

exception to the Rule and that such a provision had to be strictly construed and strict compliance with its terms insisted upon". As a matter of fact, the Supreme Court expressed doubts about the validity of Section 48-B, but did not deal with the same as there was no challenge to it. A challenge to the validity of Section 48-B was made by a non-Governmental organization but the challenge was rejected recently by the first Bench of this Court in Anti-Corruption Movement v. The Chief Secretary to Government of Tamil Nadu [2015 (2) CTC 225].

121. The decision in Keeravani Ammal was quoted with approval in Tamil Nadu Housing Board v. L.Chandrasekaran [(2010) 2 SCC 786]. In para 28 of the report, the Supreme Court observed in this case that "the Government cannot be compelled to re-convey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired".

122. On the question whether the land once vested in the Government could be divested, the Supreme Court held in para 26 of the report in V.Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133], that a land once acquired cannot be restored to the owners, even if it is not used for the purpose for which it was acquired or for any other purpose either.

123. Therefore, it is clear that the original land owners do not acquire a right merely because the acquired land is not used for the purpose for which it was acquired or for any other purpose either. This is the general rule. The exception to this rule is in Section 48-B. But this exception also, as we have pointed out earlier, does not apply to all types of cases where the acquired land is not used for the purpose for which it was acquired or for any other purpose. The exception under Section 48-B applies only to cases where the acquired land is not at all required either for the purpose for which it was acquired or for any other purpose.

124. Keeping the above principles in mind, let us now come back to the facts of the case.

125. It is seen from the judgment of the learned single Judge, out of which the writ appeals on hand arise, that the learned Judge took up for consideration, six questions that he thought, had arisen for consideration in the writ petition seeking re-conveyance. The questions that the learned Judge framed for consideration were as follows:-

(i) Whether there was a need for invoking Section 16-B of the Act?

- (ii) Whether the subject land was not utilized for the specific purpose for which it was acquired till date?
- (iii) Whether the writ petition was liable to be dismissed on the ground of delay and laches?
- (iv) Whether the writ petition is maintainable even after passing of the award and after receipt of the compensation by the original owners, as the petitioners have not challenged the acquisition proceedings?
- (v) Inconsistent reasons assigned for non-utilization of the subject land for the specific purpose for which it was acquired- whether can be accepted? and
- (vi) Whether the contention of the learned Additional Advocate General that the subject land is already vested with the Government and so the petitioners cannot seek the relief of re-conveyance under Section 48-B of the Act is sustainable?

126. But unfortunately, none of the above six questions, has anything to do with, what is actually required to be considered in a petition for enforcement of a right, if there is a right, under Section 48-B. In a writ petition seeking a mandamus to direct the Government to re-convey the land, the only questions that would arise for consideration are:

- (i) Whether the land had vested in the Government?
- (ii) Whether the land is not required either for the purpose for which it was acquired or for any other public purpose?
- (iii) Whether the original owner is willing to repay the amount paid under the Act?

127. But unfortunately, these three questions, which are the only relevant questions, were neither raised nor considered by the learned Judge, before issuing a positive mandamus directing the Government to re-convey the land. Therefore, even at the outset, we are constrained to point out that the order under appeal is vitiated, in as much as the 3 actual issues arising in terms of Section 48-B were not raised and/or considered, but 6 issues which were not germane to Section 48-B alone were taken up for consideration.

128. On the first question relating to the need for invoking Section 16-B, the learned Judge recorded a finding in paragraph 7 that reads as follows:-

".....on the other hand it is all along contended by the learned Additional Advocate General that the subject land was already vested with the Government and the Government is scheme in utilizing the subject land for the specific purpose for which it

was acquired, viz., for the purpose of constructing hostel and buildings for the Central Co-operative Institute. Therefore, as far as the case on hand is concerned, this court is only required to find out whether the petitioners have made out grounds for seeking the relief of re-conveyance of the subject land by invoking the provision u/s 48-B of the Act".

129. Though the first question relating to Section 16-B had no relevance to a case where the acquisition is not for any independent body or Corporation but for the benefit of the Government itself, the learned Judge framed such a question in a writ petition seeking relief under Section 48-B. But the learned Judge rightly recorded both (i) the stand taken by the Government that the Government was keen in utilizing the land for the purpose for which it was acquired and (ii) the fact that what falls for consideration in such cases was only the existence of grounds for seeking reliefs under Section 48-B.

130. On the second question namely whether the subject land was utilized for the specific purpose for which it was acquired, the learned Judge recorded a finding in paragraphs 8 to 10 of his order that though the land was originally acquired for the purpose of establishment of a co-operative institute, the land was actually used by the Highways Department and that in a portion of the land, the Association of Highways Engineers had put up a construction. The learned Judge found fault with the Government (i) for taking inconsistent stands (ii) for not being able to find out how the land went into the possession of the Highways Department, when the acquisition was for the Co-operative Department and (iii) for allowing the Association of Highways Engineers to claim to be in unauthorized occupation, from a date even prior to the date of acquisition.

131. But as we have stated earlier, the second question framed by the learned Judge for consideration, was also a question wrongly framed. For invoking the power under Section 48-B, what is required is to see whether the land is required for any public purpose and not whether the land was utilized for the specific purpose for which it was acquired. Therefore, it is clear that the court addressed itself to a wrong question.

132. For a moment, we shall assume that the second question is a relevant question. Even then the findings recorded by the learned Judge on this question do not appear to be correct. The Association of Highways Engineers was never alleged by the Government to be in

unauthorized occupation of a portion of a land on which they had even constructed a pucca building. It appears that in the counter affidavit filed by the Government before the learned Judge, a reference was made to a Government Order in G.O.Ms.No.1814 Public Services dated 21.5.1956, under which recognition was granted to the said association, as a service association, entitled to take up the cause of its members relating to service matters. The reference to this Government Order was made in a wrong place, in a manner that conveyed a wrong meaning as though the Association was put in possession of the land under the said Government Order of the year 1956. Therefore, the learned Judge recorded a finding in para 10 that in as much as the acquisition itself was in 1961, the statements in the counter affidavit were full of infirmities and inconsistencies.

133. But we do not think that a wrong reference at a wrong place in a wrong language, can be taken advantage of by the respondents to allege that the Government was guilty of taking inconsistent pleas. Even now, the respondents/land owners do not dispute the very existence of a building constructed by the Association of Engineers and occupied by them. Once it is found that the land had been put to actual use, even if by the Highways Department or partly by the Highways Department and partly by the Association of Highways Engineers, the very basis for invocation of Section 48-B will evaporate in to thin air. But unfortunately, the learned Judge went into the question whether the land was put to use for the specific purpose for which it was acquired and answered the same in the negative.

134. It must be pointed out at the cost of repetition that the Land Acquisition Act provides for two situations. One is in cases where possession of the land is taken and as consequence, the land vests in the Government under Section 16. The other is in cases where possession is yet to be taken. In cases arising under the first contingency, Section 48-B can be invoked and in cases arising under the second contingency, Section 48 can be invoked.

135. But in none of the above two situations, it is open to the land owners to question the nature of the use to which the land is put or the legality or otherwise of the use to which the land is put. Once the land vests with the Government under Section 16, it is open to the Government to put it to any use. Section 48-B does not state that if the land is not used by the Government for the specific purpose for which it was acquired, but put to use for a different purpose, the land owners will have a right to seek re-conveyance. If Section 48-B is construed in such a manner as to confer a right upon

the land owners to seek re-conveyance, in all cases where the land is not put to the specific purpose for which it was acquired, it will lead to disastrous consequences. For instance, if a land is acquired for locating the Collectorate and the land is actually put to use for the purpose of locating a court complex, the same may also be found fault with, if Section 48-B is construed in the manner in which the respondents projected the same and also succeeded before the learned Judge. Such a disaster cannot be permitted. Therefore, both the second question that the learned Judge framed for consideration and the findings recorded on the said question, in our considered view, have no relevance to the application of Section 48-B.

136. The third question framed by the learned Judge for consideration was as to whether the writ petition was liable to be dismissed on the ground of delay and laches.

137. To answer this question in favour of the land owners, the learned Judge drew support from a few decisions of the Supreme Court. But unfortunately, the decisions relied upon by the learned Judge, were not on the point as to whether the re-conveyance can be sought after 50 years or not. One decision cited by the learned Judge arose out of the question of condonation of delay. Another decision arose out of a challenge to the validity of the acquisition proceedings under the Emergency Clause, when there was delay on the part of the Government in proceeding with the process of acquisition both before the Notification and after Notification. The third decision cited by the learned Judge related to a challenge to the acquisition made for the benefit of a private body and hence the Court held that the challenge cannot be thrown out solely on the ground of delay. The fourth decision also related to the power of the Government to acquire the land by invoking the Emergency Provisions. Therefore, the decisions on the basis of which the learned Judge answered the third question in favour of the land owners are not at all applicable to the case on hand.

138. In the case on hand, the Notification for acquisition was issued on 31.8.1960. The declaration under Section 6 was made on 16.11.1960. The award was passed on 16.3.1961. The first ever application made by the land owners seeking re-conveyance, even according to the land owners was on 19.6.2005. By this time a period of 45 years had gone.

139. It may not be out of context to mention here that this Court, of late, is flooded with writ petitions seeking similar reliefs under Section 48-B, at the behest of persons engaged in real

estate. They actually set up the land owners or their Legal Representatives as a shield and indulge in proxy litigation, due to enormous increase in the value of real estate over the years.

140. Even in the litigation on hand, one important fact appears to have been completely lost sight of, at all levels and on all sides including the petitioners and the respondents. The prayer made in the writ petition actually described the property of which re-conveyance was sought, as a piece of land in Pymash No.72/part, Survey No. 19, present T.S.No.22/part in Block No.5, Venkatapuram Village in the Taluk of extended areas of Madras District, Registration sub-District of Saidapet. The land owners have described the property as such due to the fact that the entire acquisition proceedings also described the property only as such.

141. But what is hidden behind such a description of property is the fact that this property is actually in Sardar Patel Road, which runs from Adayar up to Guindy. In this stretch of the road, is located several landmarks of the Madras City such as (i) Guindy Engineering College (now housing Anna University), (ii) Gandhi Mandapam, (iii) Adayar Cancer Research Centre and (iv) The Raj Bhavan. In fact, the land, of which re-conveyance is sought by the respondents, is located just opposite to the Raj Bhavan (the residential complex of the Governor of the State).

142. The extent of land of which re-conveyance is sought is about 1.62 Acres, which when converted into square feet, would come to about 70,632 square feet. The Guideline Value of the property, which we know cannot be taken to be an indicator of the market value, is nevertheless Rs.14,000/- per square feet. Therefore, even by a modest estimate, the land of which the respondents are seeking re-conveyance, is worth more than Rs.100 Crores.

143. But unfortunately, the respondents projected their case, as though some land in some village known as Venkatapuram Village was acquired by the Government more than four decades ago and they did not put it to use, thereby enabling them to make a claim for re-conveyance. We are conscious of the fact that the respondents described the property, in the same manner in which it was described in the acquisition proceedings. But due to efflux of time, such a description virtually became a mis-description and the learned Judge did not take note of the fact that the respondents were seeking re-conveyance of a huge extent of land right opposite to the Raj Bhavan valued at over Rs.100 Crores even by any modest estimates. It is in such a context, the learned Judge ought to have considered the

objection relating to delay and laches. But the objection relating to delay and laches was not appreciated in that perspective.

144. The fourth question taken up for consideration by the learned Judge, was as to whether the writ petition was maintainable after the passing of the award and after the receipt of compensation.

145. We do not need to spend much time on this question, as the very provisions of Section 48-B are intended to flow only after the passing of the award and after receipt of compensation by the land owners. Otherwise the pre-requisite for the land owners to repay the amount of compensation would not have been there. Therefore, except stating that the fourth question was of no relevance, to the issue on hand, we do not find fault with the finding recorded by the learned Judge on the fourth question.

146. The fifth question taken up for consideration by the learned Judge was whether inconsistent reasons stated by the Government for non-utilization of the land could be accepted or not.

147. On this question, the learned Judge recorded a finding that in the first order of rejection, the Government merely pleaded that they were in possession for more than 40 years; that in the second order of rejection passed in pursuance of the first order of rejection being set aside by this Court with a direction to reconsider the matter, the Government took a stand that the owners did not have a vested right to seek re-conveyance and that in the third order of rejection, the Government has stated that the Highways Department was in occupation of the land by mistake and that due to financial constraints, the land could not be put to use for the purpose for which it was acquired. The learned Judge also held that as per the counter affidavit, the Government had available with them a sum of Rs.6 Crores for the purpose of construction of a hostel. Therefore, the learned Judge came to the conclusion that the Government was guilty of taking inconsistent pleas.

148. First of all, we are not convinced that there were inconsistent pleas. Let us assume, for the sake of arguments that there were inconsistent pleas. Even then we fail to understand as to how the mere non-utilization of the land by the Government for the purpose for which it was acquired, would entitle the land owners to seek re-conveyance. As we have pointed out earlier, non-utilization of the land by the Government is not the test to be applied. The test to be applied is whether the land is required for any purpose at all.

149. The sixth question framed for consideration by the learned Judge was whether the petitioners can seek re-conveyance after the land had vested with the Government.

150. It is only while answering the said question, the learned Judge held that the land owners are entitled to seek re-conveyance. But unfortunately, the learned Judge recorded a factually wrong finding in paragraph 17 of his judgment that the Association of Highways Engineers had no right to put up construction in the subject land and that they were in unauthorized occupation of land. Such a finding was recorded by the learned Judge on the basis of G.O.Ms.No.24 dated 17.3.2009. But it was nowhere stated in G.O.Ms.No.24 dated 17.3.2009 that the Association had no right to put up construction.

151. The decision of the Supreme Court in Keeravani Ammal, though cited before the learned Judge, was distinguished on the ground that the entitlement of the land owners to re-conveyance was left open in Keeravani Ammal. But the learned Judge ought to have taken note of the very strong observations made by the Supreme Court in paragraph 15 of its decision in Keeravani Ammal. Though the learned Judge took note of the strong observations contained in para 16 of the decision in Keeravani Ammal, he did not choose to follow the decision in Keeravani Ammal, but to follow three unreported decisions of the Division Bench of this Court, in paragraph 18 of the impugned judgment. Therefore, the decision of the learned Judge cannot stand the test of scrutiny on the parameters laid down by the Supreme Court.

152. First of all, as we have indicated earlier, the learned Judge was not apprised either by the writ petitioners/land owners or by the opposite parties that what land owners were seeking, was not re-conveyance of some land in some Venkatapuram Village, but a prime land located just opposite to the State Raj Bhavan and adjoining the campus of the Guindy Engineering College, now housing the Anna University, valued even by a modest estimate at over Rs.100 Crores. Therefore, we are of the considered view that the judgment of the learned Judge cannot be sustained.

153. Since the Judgment of the learned Judge was also confirmed by a Division Bench of this Court, by a considered order, we will also deal with the petition for Review filed by the Government. As we have pointed out earlier, the Division Bench dismissed the writ appeal W.A.No.180 of 2013 by a detailed order. But this order was passed, even at the stage of admission, without putting on notice (i)

the Chief Engineer of the Department of Highways (ii) the District Collector (iii) the Tahsildar and (iv) the Association of Highways Engineers. This is why, we have held earlier that the writ appeals filed by the Chief Engineer of the Highways Department and the Association of Highways Engineers are maintainable, despite the fact that on the question of merger, the land owners may be right to some extent, at least with regard to the order passed by the Division Bench.

154. The ground on which the State of Tamil Nadu seeks a review of the order of the Division Bench in W.A.No.180 of 2013, is that some of the documents that would throw light upon the questions involved in the writ petition, were not available at the time when the writ appeal was argued and that those documents could be retrieved from the State Archives only later.

155. It is an admitted fact that the Notification under Section 4 (1) was issued on 31.8.1960, the declaration under Section 6 was made on 16.11.1960 and the award was passed on 16.3.1961. The purpose of acquisition was for the construction of hostel and buildings for the Central Co-operative Institute.

156. In addition to the above admitted facts, the files retrieved from the State Archives show that a proposal was made in a "Note for Circulation" sent from the Deputy Secretary to the Secretary to the Minister to the then Chief Minister, for leasing out the land that was acquired for the Co-operative Department to the extent of 1.60 Acres, to the Highways Department for laying a test track. This Note File bears the signature of all the officials right from the level of the Deputy Secretary up to the level of Thiru.K.Kamaraj, the then Chief Minister, who had approved it on 13.4.1963.

157. Pursuant to the approval of the above Note, the Government issued G.O.Ms.No.1682, Public Works Department, dated 29.6.1964, transferring the land acquired for the construction of Central Co-operative Institute and hostel, to the Highways and Rural Works Department for the purpose of laying a test track.

158. It was only thereafter, that the Association of Highways Engineers were granted permission by the proceedings of the Chief Engineer, in Proceeding No.48185/Salai-3/94 dated 25.5.1995, to enter upon land of the extent of 1550 square meters to put up a construction. This sequence of events was not available either before the learned Judge or before the Division Bench, which compelled them to think that the Government was taking inconsistent pleas.

159. Due to the absence of the documents now retrieved from the State Archives, the learned Judge as well as the Division Bench arrived at two obviously wrong findings namely: (a) that the Highways Department, even according to the Co-operative Department was in unauthorized occupation and (b) that the Association of Highways Engineers were also in unauthorized occupation. These two findings are demonstrated now to be incorrect. Therefore, the order of the Division Bench is liable to be reviewed.

160. In Kamlesh Verma v. Mayawati [(2013) 8 SCC 320], the Supreme Court summarised the principles of law regarding the maintainability of a review, in para 16 of the report as follows:-

"16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason. The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275. 16 (B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

161. If tested in the light of the principles summarised as above, it will be clear that the State of Tamil Nadu has made out a clear case for review of the Judgement of the Division Bench. As we have pointed out earlier, neither the learned single Judge nor the Division Bench was apprised of the fact that what the respondents were seeking by way of reconveyance is a prime property in the heart of the city of Chennai, now valued even as per the Government guidelines, at more than Rs.100 crores, measuring an extent of Acres 1.62 (or about 70,632 sq.feet), located in Sardar Patel Road, running from Adyar upto Guindy and situate just opposite to the State Raj Bhavan and adjoining the famous Guindy Engineering College (now known as Anna University). By the order assailed in these appeals and review, the said land has been directed to be reconveyed to the original land owners, after more than 45 years of acquisition and receipt of compensation, on the only condition that the land owners re-pay a pittance of Rs. 33,947.60 that they received as compensation 4 decades ago. Therefore, sustaining the order for re-conveyance of the land would make justice, a casualty and allow Section 48B to be used as a weapon that could cause serious damage to public interest. Hence, R.A.No.195 of 2015 filed by the State of Tamil Nadu is allowed and the Judgment of the Division Bench in W.A.No.180 of 2013 dated 23.1.2013 is recalled.

162. Under normal circumstances, whenever a petition for review is allowed and an order is recalled, the petition on which such an order was passed, will stand revived for a fresh hearing. But in this case, there is no scope for a fresh hearing of W.A.No.180 of 2013, in view of the fact that we have found that the writ appeals on hand, challenging the order of the learned single Judge out of which W.A.No.180 of 2013 arose, are liable to be allowed. Moreover, the petition for review of the order in W.A.No.180 of 2013 was made on the basis of fresh material unearthed from the State Archives. Since we were dealing with writ appeals arising out of the original order

of the learned Judge, the learned senior counsel for the respondents advanced arguments even on those fresh materials. In other words, the respondents had an opportunity not only to oppose the petition for review but also to argue in support of the decision of the learned single Judge that was assailed in W.A.No.180 of 2013.

163. Therefore, in the result----

(i) W.A.No.826 of 2013 is dismissed.

(ii) W.A.No.847 of 2013 and W.A.No.1366 of 2014 are allowed and the order of the learned Judge dated 27.8.2012 in W.P.No.19228 of 2008 is set aside.

(iii) R.A.No.195 of 2015 is allowed and the order of the Division Bench dated 23.1.2013 in W.A.No.180 of 2013 is recalled and the writ appeal stands allowed.

(v) Consequently, the contempt petition in Cont. Petition No. 915 of 2013 is dismissed.

The parties are directed to bear their respective costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gr/kpl

To

1.The Secretary,
The Co-Operation Food and Consumer
Protection Department,
Fort St.George, Chennai - 600009

2.The District Collector,
Chennai Singaravelar Maligai
Rajaji Salai, Chennai-600 001.

3.The Tahsildar,
Mambalam Guindy Taluk,
Chennai - 600 078.

4.The Chief Engineer (General)
Highways Department,
Chepauk, Chennai - 600 005.

5.The Secretary,
Association of Tamil Nadu Highways Engineers,
Saidapet, Chennai - 600 015.

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.48896
+6cc's to Mr.R.Syed Mustafa, Advocate, S.R.No.48740
+1cc to the Government Pleader, S.R.No.48942
+1cc to the Special Government Pleader(HR & CE), S.R.No.48943

W.A.Nos.826 of 2013,
847 of 2013,1366 of 2014,
R.A.No.195 of 2015 and
Cont.P.No.915 of 2013

MSM(CO)
CA(11/09/2015)



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