

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

Date of Reserving the Order	Date of Pronouncing the Order
21.08.2018	04/09/18

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM
&
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

Writ Petition No.15889 of 2018

G.Sundarrajan

.. Petitioner

Vs

1.Union of India,
Rep., by the Secretary,
Ministry of Rural Development,
Government of India,
Krishi Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2.Union of India,
Rep., by the Secretary,
Ministry of Road Transport and Highways,
Government of India,
Transport Bhavan,
1, Parliament Street,
New Delhi -110 001.

3.State of Tamil Nadu
Rep., by the Chief Secretary to Govt.,
Secretariat, Chennai - 600 009.

.. Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare that Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Fourth Schedule to the said Act as well as the entire land acquisition proceedings initiated under the National Highways Act, 1956 in respect of the proposed Green Field Chennai Salem Highway (From Chennai Outer Ring Road to end of Salem Bypass) in Tamil Nadu are unconstitutional, null and void.

For Petitioner .. Mr.M.Radhakrishnan

For Respondents .. Mr.G.Rajagopalan
Addl., Solicitor General of India
Assisted by
Mr.G.Karthikeyan
Asst. Solicitor General of India for RR1&2
Mr.Vijay Narayan Advocate General
Assisted by
Mr.T.N.Rajagopalan Government Pleader
& Mr.C.Thirumaran,
Special Government Pleader(LA)

ORDER

This Writ Petition styled as a Public Interest Litigation has been filed by G.Sundarrajan, stated to be one of the trustees of a registered public Trust under the name and style 'Poovulagin Nanbargal', created for spreading awareness to the public about sustainable development, energy conservation, safe food and environmental protection. The petitioner states that this Public Interest Litigation is initiated in discharge of his fundamental duties under Article 51A(g) and (j) of the Constitution of India.

2. The petitioner prays for issuance of a Writ of Declaration to declare Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCT Act), and the Fourth Schedule to the RFCT Act as well as the entire land acquisition proceedings initiated under the National Highways Act, 1956 (NH Act) in respect of the proposed Green Field Chennai-Salem Highway (subject Highway) in Tamil Nadu as unconstitutional, null and void.

3. The petitioner would state that he recently came to know that the second respondent namely, the Ministry of Road Transport and Highways, Government of India, had commenced land acquisition proceedings by issuing notification, dated 11.06.2018, under Section 3A(1) of the NH Act in respect of the subject Highway and that persons likely to be affected by the acquisition of the land for the proposed project have been directed to file their objections within 21 days from the date of publication of the notification and the project is likely to affect people in Kancheepuram, Tiruvannamalai, Dharmapuri, Krishnagiri and Salem Districts. The petitioner would further state that even before the objections are received from the persons likely to be affected by the land acquisition, the

competent authorities have already started proceedings pursuant to Section 3A(1) of the NH Act, much to the detriment of the agriculturists in the above Districts. The petitioner would further state that the RFCT Act came into force on 01.01.2014 with a laudable object, providing for consultation with the institutions of local government and Grama Sabha for a participative, informed and transparent process for land acquisition with least disturbance to the owners of the land and other affected families. It is further stated that contrary to the very object of the RFCT Act, Section 105 has been inserted in the said Act, which provides that the provisions of the RFCT Act, shall not apply to the land acquisition under the enactments specified in the fourth Schedule. The fourth schedule contains 13 enactments and one of them is the NH Act. It is further submitted that Section 105(3) of the RFCT Act, provides that the Union of India shall apply the provisions of the Act relating to the determination of compensation and rehabilitation and resettlement to the land acquisition made under NH Act and other enactments, however Section 105 operates against the application of Chapters II, III & IV of the RFCT Act to the land acquisitions effected under any of the enactments mentioned in the Fourth Schedule including the NH Act.

4. The petitioner's case is that there is no rationale whatsoever for excluding the provisions of the Chapter II, III & IV, from the purview of acquisition under the enactments mentioned in the Fourth Schedule. By including the 13 enactments, it would be destructive to the very objective of the RFCT Act, which is a comprehensive legislation with regard to land acquisition for any public purpose.

5. Mr.M.Radhakrishnan, learned counsel appearing for the petitioner submitted that the preamble of the RFCT Act states that it is an Act to ensure, in consultation with the institutions of self Government and Grama Sabha established under the Constitution, a human, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructure facilities and urbanisation with a least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families, whose lands have been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that cumulative out come of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto. It is submitted that by virtue of Section 105, 13 enactments have been included in the Fourth Schedule,

which includes NH Act and excludes the applicability of Chapter II, III & IV, which is irrational, especially when the object of the NH Act is for provision of infrastructural requirements. The learned counsel referred to the statements of objects and reasons of RFCT Act.

6. Next, referring to Chapter II of the RFCT Act, which contains Section 4 to 9, it is submitted that the Act provides for a consultation with the concerned Panchayat, Municipality or Municipal Corporation as the case may be, whenever the appropriate Government intends to acquire land for a public purpose. Further, Section 4(1) mandates a social impact assessment study in consultation with the Panchayat, Municipality etc., in the manner specified by the Government by notification. Further sub-section (2) of Section 4 mandates that the notification and the social impact assessment study should be made available in local language and it should be published in the affected areas. Thus, by inclusion of the NH Act in Section 105, this very important requirement has been done away with. Similarly, by referring to other sub-sections of Section 4, Section 5 and Section 7, the learned counsel stressed the need and object of the social impact assessment study. Further, it is submitted that the objects for enacting the RFCT Act, has been clearly spelt out and having proposed the same, the Parliament has inserted the Section 105, which is diametrically opposed to achieving the objects of the RFCT Act. It is submitted that there is absolutely no rationale for excluding the provisions of Chapter II, III & IV of the RFCT Act from the purview of land acquisition proceedings made under the 13 enactments mentioned in the fourth schedule. Therefore, it is submitted that Section 105 and the fourth Schedule are arbitrary, irrational, unfair, unreasonable and violative of Articles 14 & 21 of the Constitution of India. Further it is submitted that the land is acquired for public purpose either under the RFCT Act or under any one of the 13 enactments mentioned in the Fourth Schedule, the procedure in relation to such acquisition should be one and the same and the procedure prescribed in Chapter II, III & IV of the RFCT Act is required to be followed mandatorily. Further, it is submitted that there is no intelligible differentia as to why the procedure prescribed under Chapters II, III & IV of the Act should not be followed in respect of the acquisition of land under enactments mentioned in the Fourth Schedule. Therefore, it is the submission of the learned counsel that Section 105, perpetuates discriminatory treatment on the owners of the land acquired under the 13 enactments mentioned in the Fourth Schedule. Though the owners of the lands acquired under the RFCT Act and the owners of the land acquired under the enactments mentioned in the Fourth Schedule are similarly placed, they are treated discriminatorily in the sense that the mandatory provisions of

the Chapter II, III, & IV of the Act would be non-existent to those whose lands are acquired under the enactments mentioned in the Fourth Schedule. Therefore, it is submitted that Section 105 and the Fourth Schedule are not only arbitrary, but discriminatory and violative of Articles 14 & 21 of the Constitution. It is submitted that Section 105 of the Act and the Fourth Schedule are to be declared as unconstitutional and consequently, the entire land acquisition proceedings in respect of the subject Highway is to be declared as null and void.

7. It is further submitted that if the RFCT Act invites discrimination and perpetuates discrimination, it is ultra vires. It is further submitted that the petitioner's challenge is to the exclusion of Chapters II, III & IV of the RFCT Act to the land acquisition proceedings for the subject Highway under the NH Act and what is required to be considered is whether there is a rationale to exclude the said provision. Further, it is submitted that in view of Section 4 of the RFCT Act, the definition of public purpose requires to be redefined and public purpose can be determined only in consultation with the concerned Panchayat, Municipality, Municipal Corporation in the affected areas and not in any other manner. Further, by referring to Section 6(1) of the RFCT Act, with a view to stress upon the importance of the social impact assessment study, it is submitted that the social impact management plan must be made available in the local language to the local bodies and shall be published in the affected areas. Further, it is submitted that the validity of the enactment as challenged by the petitioner should be looked into by considering the purpose of enacting RFCT Act and not to be tested upon the decisions of the Courts, which were rendered prior to the RFCT Act coming into force. Thus, it is submitted that the RFCT Act is a comprehensive enactment and as of now 13 enactments have been included in the Fourth Schedule and several may be included in the Fourth Schedule and ultimately, it will affect the very object of enacting the RFCT Act. Further by referring to Section 7 & Section 8 of the Act, it is submitted that the social impact assessment is not a formality. It is the soul of the land acquisition and the petitioner is well justified in approaching this Court by way of this Public Interest Litigation, since one of the factors, which is required to be considered is ecology, which affects everybody. It is the further submission of the learned counsel that the proviso contained in Section 10 will be applicable only to sub-section (4) of Section 10 and not to other sub-sections in Section 10. It is submitted that the respondents cannot apply two enactments to the same land, which is sufficient to prove that there is discrimination. In support of his contention, the learned counsel referred to the decision of the Hon'ble Supreme Court in Keshavan Madhava Menon vs. State of State of Bombay, AIR 1951 SC 128 and the decision in the case

of Dr.Subramanian Swamy vs. Director, Central Bureau of Investigation & Anr., AIR 2014 SC 2140.

8. Mr.G.Rajagopalan, learned Additional Solicitor General of India appearing for the Union of India submitted that the Writ Petition is pre-mature and the petitioner does not have locus-standi to maintain the Writ Petition. It is submitted that in terms of Article 300A, the requirement is that there should be a law in place for acquisition and for the subject acquisition, the relevant law is the NH Act. After referring to Section 105 of the RFCT Act, it is submitted that a notification has been issued by the Central Government under sub-section (3) of Section 105, by virtue of which, the benefits under the RFCT Act, insofar as it relates to compensation, rehabilitation and resettlement has been extended to the present acquisition proceedings and the land owner is in no way affected by the acquisition, as his interest has been sufficiently safeguarded and he will receive adequate compensation in terms of the RFCT Act. Referring to the decision in the case of K.T.Plantation Pvt. Ltd., & Anr., vs. State of Karnataka (2011) 9 SCC 1, it is submitted that Article 21 does not apply to acquisition under Article 300A. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Union of India vs. Kushala Shetty, (2011) 12 SCC 69, to emphasise that National Highways Authority of India is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. Reliance was placed on the decision of the High Court of Rajasthan at Jodhpur in the case of Phool Kanwar & Ors.,vs. Union of India in W.P.No.9577 of 2015, wherein a challenge was made to Section 105 of the RFCT Act, which challenge was rejected by the Division Bench and the Writ Petition was dismissed. Reliance was placed on the Judgment of the High Court of Punjab & Haryana in the case of Prithvi Singh & Ors., vs. Union of India & Ors., in CWP 689 of 2012, dated 16.05.2013, which also related to an acquisition proceedings under one of the 13 enactments listed in the Fourth Schedule for an Atomic power project. Further, it is submitted that the definition of public purpose under the RFCT Act, if looked into, in terms of Section 2(1) of the Act, it is an exclusive definition and the answer to the query raised by the petitioner lies in Section 3A of the NH Act. Further, it is submitted that the scheme of the NH Act provides for an opportunity to any person interested in the land to submit his objection and the stage is yet to come and the present attempt of the petitioner is not sustainable. Further, it is submitted that the basis of the land losers' right to get higher compensation flows from Section 105 of the RFCT Act and if as sought for by the petitioner, Section 105 of the RFCT Act is to be struck down, it will tantamount to praying for issuance of a Writ of Mandamus to the Government to implement the provisions of the RFCT Act to a

National Highways Project, which is impermissible. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of M.P., vs. G.C.Mandawar AIR 1954 SC 493.

9. Mr.Vijay Narayan, learned Advocate General assisted by Mr.T.N.Rajagopalan, learned Government Pleader submitted that the State Government is contesting this Writ Petition for primarily two reasons. Firstly, the result which will flow from the challenge to Section 105 of the RFCT Act will have an impact on Section 105A of the RFCT Act, which has been inserted in the Act by the State Government and received the Presidential assent. The second reason is that the subject Highway project is located in Tamil Nadu and hence the State is interested. It is further submitted that in the instant case, the question of repugnancy does not arise, since all enactments in the Fourth Schedule are Central Enactments. It is submitted that sub-section (3) of Section 105, clearly states that the Central Government can make modifications to any of the provisions of the Act, but should ensure that such modification does not reduce the compensation or dilute the provisions of the RFCT Act relating to compensation or rehabilitation and resettlement. It is submitted that only two principles are required to be fulfilled to sustain a land acquisition proceedings, namely, the acquisition should be for a public purpose, which cannot be doubted in the instant case and the compensation should be fair and reasonable, which will be so since Section 105 provides for compensation at the rates prescribed under the said Act. Thus, Section 105(3) is a clear protection for the land owners, because the compensation cannot be less than what is prescribed under the RFCT Act, though the acquisition is under the NH Act. It is submitted that the proviso contained under sub-section (4) of Section 10 clearly states that the provision of Section 10 shall not apply in case of projects that are linear in nature like that of the subject Highway. Further, it is submitted that there is no challenge to the provisions of the Section 10 of the RFCT Act. It is submitted that Section 105 of the Act makes it clear that what is important to the land owner is compensation, resettlement and rehabilitation, which has been sufficiently taken care of. It is submitted that when there are two enactments enacted for the same purpose, one of the enactments cannot be challenged as being violative of Article 14, merely because it prescribes a more stringent procedure. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. Anathi Ammal & Ors., 1995 1 CTC 465 and the decision of the Hon'ble Supreme Court in Maganlal Chhaganlal (P) Ltd., vs. Municipal Corporation of Greater Bombay & Ors., (1974) 2 SCC 402.

10. It is further submitted that all the benefits under the RFCT Act, sofar as it relates to the compensation, resettlement

and rehabilitation will be extended to the individual land owners and their rights are in no manner prejudiced. Further, it is submitted that the Environment Impact Assessment Report will cover the social impact assessment and the terms of reference, dated 08.06.2018 for the subject project clearly prescribes a condition regarding social impact assessment in condition No.xxxvi and the petitioner cannot be aggrieved. Further, it is submitted that merely because the NH Act does not mandate a social impact assessment, enactment cannot be stated to be discriminatory and in this regard, reliance was placed on the decision of the Hon'ble Supreme Court in *Power Machine India Ltd., vs. State of M.P.*, (2017) 7 SCC 323. It is submitted that though several decisions, which were referred to in *Power Machine India Ltd.*, were relating to a Central enactment vis-a-vis a State enactment, the case of the respondents is placed on a much better footing because both the enactments are central enactments. Further, it is submitted that Section 103 of the Act states that the provisions of the RFCT Act are to be in addition to the existing law and not in derogation of any other law for the time being in force. Thus, it is submitted that even assuming the case of the petitioner is to be accepted and Section 105 is to be struck down the land owners will in no way be benefited, since the NH Act will survive and the other benefits such as compensation, rehabilitation and resettlement flowing from the RFCT Act will not be extended to the land owner. Therefore, it is submitted that the challenge to the Section 105 is misconceived.

11. We have heard the learned counsels appearing on either side and carefully perused the materials placed on record.

12. Before we proceed to examine the submissions made on either side with regard to the validity of Section 105 of the RFCT Act, it will be necessary for us to first take note of the preliminary objection raised by the learned Additional Solicitor General with regard to the petitioner's locus standi to file this Writ Petition as a Public Interest Litigation. The petitioner has stated that he is one of the trustees of a registered public trust which is stated to have as one of its objects to sensitise the public with regard to ecological impact and other matters. Counter affidavit filed by the respondents 1 & 2, does not dispute or deny the status of the petitioner, that is to say, as a trustee of a registered public trust. The petitioner has set out certain reasons as to why he has filed this Writ Petition challenging Section 105 of the Act. There is no allegation that the petitioner is a busy body or a troublesome interloper or that this Public Interest Litigation is filed with an oblique motive or for other malafide or extraneous considerations. In such circumstances, we are not inclined to reject the Writ Petition seeking for a declaratory

relief to declare Section 105 of the RFCT Act as unconstitutional on the ground of lack of locus-standi. In other words, we hold that the petitioner would be entitled to maintain the Writ Petition as a Public Interest Litigation challenging the constitutional validity of Section 105 and the Fourth Schedule of the RFCT Act. We are conscious of the fact that the prayer sought for in the Writ Petition is two fold, the first limb of the prayer challenges Section 105 and Fourth Schedule of the RFCT Act; the second limb of the prayer is to declare the acquisition for the subject Highway as null and void.

13. Mr.M.Radhakrishnan, reiterated that the petitioner is not only questioning the inclusion of NH Act in the Fourth Schedule of the RFCT Act, but he is challenging the inclusion of all 13 enactments in the Fourth Schedule on the ground that it is discriminatory and there is no intelligible differentia as to why the procedure prescribed under Chapter II, III, & IV of the Act, should not be followed in respect of acquisition of land under the 13 enactments mentioned in the Fourth Schedule. In the background of the stand taken by the petitioner, if we examine the second limb of the prayer sought for in the Writ Petition, we find that it is restricted only to the land acquisition for the subject Highway and not under any of the other 12 enactments listed in the Fourth Schedule of the RFCT Act. Thus, we find that the contention of the petitioner is self contradictory and therefore, we are of the view that the petitioner would not be entitled to maintain the Writ Petition for the purposes of the second limb of the prayer in the Writ Petition to declare the subject acquisition as null and void, as the petitioner seeks for a much larger relief in the main and substantive portion of the prayer in the Writ Petition. Therefore, while holding that the petitioner has locus-standi to maintain the Writ Petition challenging Section 105 and Fourth Schedule of the RFCT Act, the second limb of the prayer to declare the acquisition for the subject Highway as null and void is not maintainable. This is more so because of the submission of Mr.M.Radhakrishnan that the petitioner seeks for a larger relief covering all 13 enactments listed in the Fourth Schedule and the prayer to declare the subject acquisition alone as null and void does not flow from the substantive relief sought for by the petitioner.

14. Therefore, the Writ Petition is entertained only with regard to the challenge to Section 105 and the Fourth Schedule of the RFCT Act. We make it clear by stating that in this Writ Petition, we confine ourselves to the challenge to the constitutional validity Section 105 and the Fourth Schedule of the RFCT Act. Arguments have been advanced by both sides only on the constitutional validity and we are not dealing with the validity of acquisition proceedings for the subject Highway,

which is the subject matter of challenge in a batch of Writ Petitions. With this caveat, we proceed to decide the validity of Section 105 and Fourth Schedule of the RFCT Act.

15. In the preceding paragraphs, we have elaborately referred to with the submission of Mr.M.Radhakrishnan, who has taken us through the provisions of the Act, object and reasons for which the Act was enacted, etc. Mr.M.Radhakrishnan, contended that the RFCT Act is a comprehensive legislation regarding land acquisition for public purpose and there cannot be two different sets, of procedures for acquiring a land viewed from their point of the land owner and there is no intelligible differentia as to why few chapters of the RFCT Act should be excluded in respect of the land acquisition under the 13 enactments listed in the Fourth Schedule. Therefore, it is the submission that there is no rationale behind enacting Section 105 read with Fourth Schedule and Section 105 perpetuates discrimination and therefore, it is ultra vires.

16. In State of A.P. & Ors., vs. Mcdowell and Ors., (1996) 3 SCC 709, the Hon'ble Supreme Court pointed out that the power of Parliament or for that matter the State Legislature is restricted in two ways. A law made by Parliament or legislature can be struck down by Courts on two grounds and two grounds alone, namely; (i) lack of legislative competence & (ii) violation of any of the fundamental rights guaranteed in part III of the Constitution or of any other constitutional provision. It was held that there is no third ground on which a law can be struck down. It was further pointed out that no enactment can be struck down by just saying that it is arbitrary or unreasonable, an enactment cannot be struck down on the ground that the Court thinks it is unjustified. Further, Parliament and the legislatures, composed as they are of representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them and the Court cannot sit in judgment over their wisdom.

17. In the case of Union of India and Anr., vs. G.Ganayutham (1997) 7 SCC 463, after referring to the decision in Mcdowell case, it has held that a statute can be struck down, if the restrictions imposed by it are disproportionate or excessive having regard to the purposes of the statute and that the Court can go into the question whether there is a proper balancing of the fundamental right and the restriction imposed.

18. In K.T.Plantation Pvt., Ltd., vs. State of Karnataka, Civil Appeal No.6520 of 2003, dated 09.11.2011, the Court after taking note of the decisions in the case of Mcdowell and G.Ganayutham, held that plea of unreasonableness, arbitrariness, proportionality etc., always raises an element of subjectivity

on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. It was pointed out that if done so, the Court will be substituting its wisdom to that of the legislature, which is impermissible in the Constitutional democracy.

19. In *Ashok Kumar Thakur vs. UOI & Ors.*, (2008) 6 SCC 1, it was held that ordinarily, the grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. It was further held that a legislation could also be challenged as unreasonable, if it violates the principles of equality adumbrated in the Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground.

20. As noted by the Hon'ble Apex Court in *K.T.Plantation Pvt., Ltd.*(supra), Hugo Grotius is credited with the invention of the term "eminent domain", which implies that public rights always overlap with the private rights to property and in case of public utility, public rights take precedence. Two conditions were set on the exercise of the power of eminent domain; the first requisite is public advantage and then compensation from public funds be made, if possible, to the one who has lost his right. In *K.T.Plantation Pvt., Ltd.*, (supra), one of the argument advanced was that the concept of eminent domain and its key components be read into Article 300A and if a statute deprives a person of his property unauthorizedly, without adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of rule of law, which is the basic structure of the Constitution. It was further held that Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. Answering the question, whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution, it was held that deprivation of property within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. Any law, which deprives a person of his private property for private

interest, will be unlawful, unfair and undermines the rule of law and can be subjected to judicial review and the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. It was further held that the concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation and public purpose is, therefore, a condition precedent, for invoking Article 300A. Thus, the power of eminent domain being inherent in the Government, is excisable in public interest and for public purpose. The acquisition of private property by the State for public interest or public purpose is enforcement of the right of "eminent domain". Though right to property is no longer fundamental right, but Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law.

21. The land acquisition for the subject project is under the provisions of the NH Act, which is a Central enactment. Thus, the acquisition has to be in terms of the provisions of the said Act. The petitioner has not alleged that the land owners are deprived of their property without authority of law. The endeavour of the petitioner is to state that the RFCT Act, having been enacted in the year 2013 and having come into force on 01.01.2014 is a comprehensive legislation with an avowed object involving a participatory approach, land owner friendly and the provisions of the Act cannot be made inapplicable to a chosen few enactments, which have been listed in the Fourth Schedule to the RFCT Act and one such enactment being the NH Act. The question would be as to whether on the grounds raised, Section 105 can be struck down as being unconstitutional. Section 105 of the RFCT Act reads as follows:-

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.-(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of Section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and

Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

22. The Government of India, Ministry of Rural Development, by order dated 28.08.2015 in SO 2368(E) in exercise of the powers conferred under sub-section (1) of Section 113 of the RFCT Act, has ordered that the provisions of the RFCT Act relating to the determination of compensation in accordance with First Schedule, Rehabilitation and Resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCT Act. This order has been passed in exercise of the powers of the Central Government to remove difficulties and provides for applicability of the procedure for determination of compensation, rehabilitation and resettlement and infrastructural amenities as contained in the RFCT Act to acquisition under the NH Act or for that matter, all acquisitions under 13 enactments listed in the Fourth Schedule. Thus, so far as the interest of the land owners is concerned, the procedure for determination of compensation, rehabilitation and resettlement and provision of infrastructural amenities as envisaged under the RFCT Act has been made applicable mutandis mutandis to the acquisition under the NH Act. There is no quarrel on this aspect, but the petitioner's case is that

provision of Chapter II, III & IV of the RFCT Act should be made applicable. According to Mr.M.Radhakrishnan, non-applicability of these chapters is discriminatory and there is no reasonable classification nor any intelligible differentia to include 13 enactments in the Fourth Schedule and make these three Chapters inapplicable. The question would be whether Section 105 of the Act, can be struck down as being unconstitutional on the aforementioned ground.

23. The learned Additional Solicitor General of India and the learned Advocate General are right in their submission that if the prayer sought for by the petitioner to declare Section 105 as unconstitutional is granted, the land owners would be gravely prejudiced. This is so because, the manner of determination of compensation is more advantageous to the land owner under the RFCT Act. The NH Act does not provide for the procedure for rehabilitation and resettlement nor setting up of infrastructural facilities as envisaged in Schedule 1, 2 & 3 of the RFCT Act. Thus, if Section 105 is struck down, the NH Act will govern the field and the acquisition will proceed under the NH Act and the compensation will have to be determined under the said Act. This undoubtedly would be prejudicial to the interest of the land owners. Therefore, we fail to understand as to what benefit would accrue to the land owners by declaring Section 105 as unconstitutional. Parallely, the important question would be, "can this being a ground to declare Section 105 as ultra vires, irrational with no intelligible differentia". At this stage, we may point out that the petitioner in this Writ Petition is not a land owner/land loser.

24. In the case of Phool Kanwar & Ors., (supra), the prayer sought for in the Writ Petition was to declare Section 105 of the RFCT Act, as discriminatory, arbitrary and violative of Article 14 of the Constitution of India and it is against the principles of reasonable classification and there is irrational. The petitioner's in the said case, were tenants/owners of lands comprised in the vicinity of the National Highway No.758. The respondents published a notification under Section 3A of the NH Act followed by declarations under Section 3D during the year 2013, in order to determine the compensation payable. The claim from the affected land owners were invited under sub-section (3) of Section 3G of the NH Act. While the proceedings of the land acquisition was going on, the RFCT Act was enacted by the Parliament and came into effect from 01.01.2014 and the compensation was accordingly being accorded to the sufferers of the land acquisition. The petitioner contended that the respondents failed in not issuing the mandatory notification as mandated under sub-section (3) of Section 105 of the RFCT Act, within the stipulated time, which resulted in deprivation of the petitioner in terms of compensation in the light of the

provisions of the RFCT Act. Thus, it was contended that sub-section (3) of Section 105 is arbitrary, discriminatory and ambiguous. The challenge to the said enactment was rejected by the Court and the operative portion of the judgment reads as follows:-

41. It is not in dispute between the parties that such Ordinances and Bills followed as a consequence of giving effect to the Act of 2013 and the bridge was crossed in its own scheme and framework strictly in accordance with law.

42. The arguments of learned counsel for the petitioners were self contradictory, as on one side, it is stated that Section 105 of the Act of 2013 was bad in the eye of law, as it created a difference amongst the original beneficiaries of the Act of 2013 and the thirteen separate enactments being brought under the purview as per Section 105 of the Act of 2013.

42. The answer to the questions raised by the petitioners lies in themselves, as it is not disputed by them that these thirteen enactments had to be described independently as legislation, and thus, if they would have prevailed and Section 105 of the Act of 2013 would not have been there, then the petitioners and other beneficiaries would have been entitled only for the benefit under the Act of 1956.

43. The inclusive ambit of the beneficial legislation, namely, the Act of 2013 in fact had a bridge in the shape of Section 105 of the Act of 2013, which was waiting to be crossed for more than half a century. Thus, the combination of the thirteen enactments for the purpose of expanding the scope of the beneficial legislation had to be done within the stipulated framework of Section 105 of the Act of 2013 and without such framework, the original existence of the Act of 2013 would render the benefits only to the constituency of the Land Acquisition Act, 1894. Thus, the classification was not amongst one class, but was between different schools of legislation, which was operating for different subjects, as the thirteen enactments were having a separate entity in

law, until they were consciously brought into the purview of the Act of 2013. The legislative intention was that the framework ought to be fixed in the shape of Section 105 of the Act of 2013 to ensure a lawful merger of the thirteen enactments in the broad perspective and purview of the compensation law, which gained significance, in light of the Act of 2013.

45. The statutory mechanism of the Act of 2013 was to operate in a particular manner, as mandated by the legislature, and such integration has taken place, but on a subsequent date, than the one when the award impugned was passed. The date of integration of the laws is strictly in accordance with the statutory framework intended by the legislature, and therefore, cannot be questioned merely because there are some beneficiaries, who fall before the date when the benefit was accrued as per the law prevailed before that date and some shall enjoy better benefits as the new law has come into vogue.

25. Essentially, the challenge to Section 105 of the RFCT Act is on the ground that similarly placed land owners cannot be treated differently under two different enactments, especially when, the proceedings are initiated for acquiring lands for a public purpose. The Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978, was struck down by the Division Bench of this Court as ultra vires the constitution, did not enjoy the protection under Article 31C or 31A and violative of Articles 14, 19 & 300A of the Constitution. The said decision was appealed against by the State before the Hon'ble Supreme Court, which upheld the validity of the Act and reversed the decision of the Division Bench in the case of State of Tamil Nadu vs. Anathi Ammal & Ors., (supra). The contention of the respondents / land owners therein was that the State Act was much harsher, in so far as the land owners are concerned and did not enjoy the protection conferred by Article 31C, notwithstanding the declaration in that behalf contained in Section 2 thereof. The Hon'ble Supreme Court by referring to the decision in the case of State of M.P., vs. G.C.Mandawar AIR 1954 SC 493, held that Article 14 does not authorise the striking down of the law of one State on the ground that in contrast with the law of another State on the same subject, its provisions are discriminatory nor it contemplates the law of the centre or the State dealing with the similar subject being held to be unconstitutional by a

process of comparative study of the provisions of the two. Thus, it was held that when a statute is impugned under Article 14 what the Court has to decide it is whether the statute is so arbitrary or unreasonable, but that it must be struck down. It was further held that at best, a statute upon a similar subject which derives its authority from another source can be referred to, if the provisions have been held to be reasonable, or have stood the test of time only for the purpose of indicating what may be said to be reasonable in the context. In the light of the said legal principles, the Court examined the validity of Harijan Welfare Schemes Act and it was held that except for the provision as to instalments Section 11 of the said Act, the other provisions were held to be not violative of provisions of Article 14 of the Constitution of India.

26. In Maganlal Chhaganlal (P) Ltd., (supra), one of the question which fell for consideration is whether the availability of two procedures, one more onerous and harsher than the other would lead to discrimination. The Court considered various decisions, where argument was based on availability of two procedures one more onerous and harsher than the other and it was argued that therefore, it is discriminatory. After taking note of the various decisions in paragraph 14 of the judgment, the legal issue was summarised as hereunder:-

14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Ali Sarkar case and Suraj Mall Mohta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in Suraj Mall Mohta case a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in Saurashtra case and Jyoti Pershad case the statute will not be hit by Article 14. Then again where the statute itself covers only a class of cases as in Haldar case and Bajoria case the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute.

Therefore, the contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority.

27. Therefore, the contention raised by the petitioner that merely because of availability of two sets of procedures under two statutes, will by itself not make one of the statutes as discriminatory or hit by Article 14 of the Constitution. As noticed above in the instant case, both the RFCT Act as well as the NH Act are Central enactments and the question of repugnancy does not arise.

28. In Power Machine India Ltd., (supra), a challenge was to a judgment of the High Court of Madhya Pradesh at Jabalpur, declaring Rule 5 of the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006, as ultra vires, as it provides for recovery of the amount for which the award is passed under Section 18(3) of the 2006 Act, as arrears of land revenue thereby providing additional remedy for recovery of the awarded sum within the one provided under Section 36(1) of the Arbitration and Conciliation Act, 1996. While answering the question as to whether providing plurality of remedies was ultra vires or arbitrary, it was pointed out that providing of plural remedy is valid when two or three remedies are available to a person; even if inconsistent, they are valid. Further, it was held that harmonious construction has to be adopted and the principle that special provision excludes the application of general provision is not to be applied when two provisions deals with the remedies for the reason that the validity of plurality of remedies cannot be doubted, that even if the two remedies are inconsistent, the Court has to harmonise the provision. Further the submission that recovery procedure as arrears of land revenue is harsh, was rejected and held to be neither illegal nor arbitrary. In the said decision, one of the contention was that the impugned Rule therein was ultra vires, the parent statute that is beyond the rule making power, which has been held to be not sustainable, though the Court held that under the provision of the Code of Civil Procedure, detailed procedure is prescribed and providing a speedy recovery by way of arrears of land revenue was the need of the day and Rule 5 has been rightly enacted to ensure speedy recovery.

29. We find the case on hand is placed on a little higher pedestal than what was dealt with in Power Machine India Ltd., (supra). In the instant case, there is no case of repugnancy pleaded, since both the statutes are Central Legislatures. The case of the petitioner itself is that Section 105 invites discrimination, it perpetuates discrimination and therefore, it is ultra vires. In the earlier part of this order, we have

referred to sub-section (3) of Section 105 as well as the notification issued by the Government of India in SO No.2368, dated 28.08.2015, by which the procedure for determination of compensation, rehabilitation, resettlement and infrastructural amenities were made applicable to the acquisition under the NH Act as well as the other 12 enactments listed in the Fourth Schedule of the RFCT Act.

30. Section 10 of the RFCT Act falls in Chapter III. It deals with special provision to safeguard food security. It is the submission of Mr.M.Radhakrishnan, that sub-section (1) of Section 10, there is a total prohibition for acquisition of non irrigated multi-cropped land. Sub-section (2) of Section 10 deals with cases, where the acquisition is for exceptional circumstances as a demonstrable last resort. Sub-section (3) deals with the cases where multi-crop irrigated land is acquired equivalent area of cultivable wasteland should be developed. Sub-section (4) of Section 10, deals with total extent that can be acquired under sub-section (1) of Section 10. Proviso states that the provisions of Section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

31. Mr.M.Radhakrishnan argued that the proviso in Section 10 is only for sub-section (4) of Section 10 and not for the entire Section 10. We are unable to accept the said submission on account of the plain language adopted in the proviso. The proviso states that the provision of "this Section". "This section" would mean Section 10 of the RFCT Act and cannot mean sub-section (4) of Section 10. In fact, it is the argument of Mr.M.Radhakrishnan, that it should be read as "sub-section" and not "the Section". Unfortunately, we are not persuaded to accept the said submission as we are not called upon to act as a legislature to draft a legislation. Thus, in the absence of any challenge to Section 10(4) of the RFCT Act, it is evidently clear that the RFCT Act, even while it was enacted, was conscious of certain enactments to be kept outside the purview and procedure of the RFCT Act and one such project pertains to Highways, which falls within the meaning of projects that are linear in nature. Thus, the legislative framers were conscious of the fact that certain projects require certain expertise. If one has a glimpse of the various enactments listed in the Fourth Schedule to the RFCT Act, it can be easily seen that all the enactments are special enactments for a particular purpose which is public purpose. The enactments deal with ancient monuments, archaeological sites and Atomic power stations, the Damodar Valley project, Tramways, acquisition for land for mines, Construction of Metro Rails, construction of National Highways, Acquisition of Land for Laying of Pipelines for

Transport of Mineral and Petroleum, Resettlement of displaced persons (Land Acquisition) Act, 1948, Coal Bearing Areas (Acquisition and Development) Act, Electricity Act and Railways Act. Thus, certain enactments have been kept out of the purview of the entire procedure to be adopted under the RFCT Act. The legislative framers were further conscious of the fact that it is time to have a comprehensive legislation, since the Land Acquisition Act, 1894, was found to be inadequate in addressing certain issues related to the exercise of statutory powers of the State for involuntary acquisition of private land and property. Further, it was noted that the Land Acquisition 1894 Act does not address the issues of rehabilitation and resettlement to the affected persons and their families. Furthermore, the definition of the expression "public purpose" as given in the 1894 Act, is very wide and a necessity has come to redefine it, so as to restrict its scope for acquisition of land for strategic purposes, vital to the State and for infrastructural projects where benefits accrue to the general public. Thus, it was proposed to have a uniform legislation dealing with acquisition of land, providing for just and fair compensation and make adequate compensation, rehabilitation and resettlement mechanism for the affected persons and their families. Thus, the bill which was introduced in the Lok Sabha provided for repealing and replacing 1894 Act with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families. Thus, while enacting the new law, certain enactments which deal with acquisition of land stood preserved. As noticed above, those enactments are specialised in character and the common feature in most of the enactments is that they are for linear projects and the projects are of public importance. There can be no denial to the fact that the subject acquisition is for linear project.

32. Thus, when the Government of India had issued the order dated 28.08.2015, in SO No.2368, extending the procedures for determination of compensation, rehabilitation and resettlement to the acquisition under the National Highways Act, we find that there is no discrimination meted out to the land loser. Article 14 of the Constitution prohibits the State from denying any person's equality before any law or equal protection of laws within the territory of India. What the law prohibits is class legislation. If the legislature takes care to reasonably classify persons for legislative purposes, so long as the classification is founded on an intelligible differentia which lays down a perceptible differentiation between two groups and the differentiation has a rational relation with the object sought to be achieved, such classification cannot be struck down as violative of Article 14 of the Constitution of India.

33. As held by the Hon'ble Supreme Court in the case of Ashutosh Gupta vs. State of Rajasthan (2002) 4 SCC 34, Article 14 guarantees the similarity of treatment and not identical treatment. Therefore, when a law is challenged as violative of Article 14, it is necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. Thus, the Court is required to be apply the dual test whether (i) the classification is rational and based upon an intelligible differentia (ii) whether the basis of classification has any rational nexus or relation to the policy and objects.

34. We had seen the list of 13 enactments which have been placed in the Fourth Schedule, from which we find the public purpose in each of those enactments is on a higher pedestal than the public purpose as defined under Section 3(za) of the RFCT Act, wherein it has been defined to mean activities specified under sub-section (1) of Section 2. Section 2(1) is inclusive in nature, because, it states that the provision of the RFCT Act relating to land acquisition, compensation, rehabilitation and resettlement shall apply when the appropriate Government acquires land for its own use, hold and control including public sector undertakings and for public purpose and shall include the purposes mentioned in clauses contained therein.

35. Thus, the intention of the legislature is not to bring about a differential treatment so far as the land owner is concerned, but adopt specified and specialised procedure to be followed, when acquisition is made for the purposes of any one of the 13 enactments listed in the Fourth Schedule. Undoubtedly, such power is exercisable by the State in exercise of the doctrine of "eminent domain". Furthermore, Section 103 of the RFCT Act states that the provision of the RFCT Act shall be in addition to and not in derogation to any other law for the time being in force. Furthermore, sub-section (3) of Section 105 confers power on Government to issue notification extending the provisions of the RFCT Act relating to determination of compensation, rehabilitation and resettlement and this has been done by the Government. Therefore, the petitioner cannot plead inequality in the same legislation or under the same set of laws, which are essentially to be treated as one enactment.

36. As pointed out by the Hon'ble Supreme court in the case of K.T.Plantation Pvt., Ltd., (supra), right to property no more remains and overarching guarantee in our Constitution, then is it the law, that legislation enacted under the authority of law as provided in Article 300A is immune from challenge before a Constitutional Court for violation of Articles 14, 21 or overarching principle of Rule of law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300A, unlike Article 30(1A) and the

second proviso to Article 31A. While answering the said question, the Court pointed out that there are only two grounds on which the legislature can be struck down.

37. Admittedly, the challenge to Section 105 is not on the ground of lack of legislative competence. Therefore, first ground is not a ground of challenge; secondly the challenge is by contending that the Act invites, perpetuates discrimination that there is no intelligible differentia. We wholly disagree with such an argument, because essentially both enactments have to be treated together and essentially to be read as a same piece of legislation. This is more so on account of Section 105 (3). The scheme of the Act by itself including the proviso in Section 10 excludes certain categories of projects and we found from the Fourth Schedule, the statutes are specialised statutes. Thus, we find that there is absolutely no discrimination and the differentiation sought to be made with regard to the procedure for acquisition is a reasonable classification and the differentiation being the nature of the project involved and in particular linear projects, has clearly brought out the intelligible differentia.

38. We find from Section 3A of the NH Act that where the Central Government is satisfied that for a public purpose any land is required for building, maintenance, management or operation of a National Highways or part thereof, it may, by notification in the official Gazette, declare its intention to acquire such land. Under Entry 23 of the Union list the Parliament has exclusive power of legislation with respect to Highways which are declared to be National Highways by or under law made by Parliament. This declaration was found to be helpful to the Central Government in exercising its power with respect to the development and maintenance of the Highways more effectively. This being the object of the enacting NH Act, 1956. Thus, we find that the term "public purpose" as used in Section 3A is undoubtedly on a higher pedestal than the definition of public purpose as defined under the RFCT Act under Section 3(za) read with Section 2(1) of the said Act. Furthermore, one more issue, which strikes our mind is the purposes for which lands are acquired in respect of the 13 enactments listed in the Fourth Schedule and we find that all the enactments form a different class, when compared to the provisions of the RFCT Act, which has replaced the 1894 Land Acquisition Act. What is interesting to note is that the use of the land in each of the 13 enactments listed in Fourth Schedule is different and any challenge to those on the ground it is discriminatory in the matter of payment of compensation would necessarily fail as the land loser has been sufficiently safeguarded by issuance of the order in SO 2368 and in exercise of powers conferred Section 113 RFCT Act.

39. Mr.M.Radhakrishnan, referred to the decision in the case of Dr.Subramanian Swamy vs. Director, CBI, AIR 2014 SC 2140 and in particular to paragraph 59 of the said judgment, wherein the Hon'ble Supreme court took note of the observation of the Mathew J in State of Gujarat & Anr., vs. Ambica Mills Ltd & Anr., (1974) 3 SCR 760] wherein it was pointed out that a reasonable classification is one which includes all who are similarly situated and none who are not . While explaining the meaning of the words, 'similarly situated' it was held that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a 'public mischief' or achievement of some positive public good. We find the decision would support the case of the respondents. We disagree with the argument of Mr.M.Radhakrishnan stating that the same set of land owners are treated differently. The land owners or land losers are in no way prejudiced by the inclusion of the 13 enactments in the Fourth Schedule as their interest with regard to compensation, rehabilitation and resettlement, has been fully safeguarded as the relevant provision of the RFCT Act has been made applicable to the NH Act.

40. Therefore, when we interpret the words 'similarly situated persons' in the instant case, we must look beyond the classification and look into the purpose of the law. The purpose of the NH Act is for a linear project, a public purpose for maintenance and formation of National Highways. Thus, we find that there is no discrimination nor violation of Article 14 of the Constitution of India and the intelligible differentia for including 13 enactments in the Fourth Schedule, is writ large on the face of the enactments, the purpose for which those enactments were enacted, the objects, they seek to achieve and the land acquisition under those legislation form a different class than the lands acquired for public purpose as defined under the RFCT Act.

41. As mentioned by us above, Section 105 of the RFCT Act has integrated the thirteen enactments listed in the Fourth Schedule, and if it were to be struck down, the benefits extended with the applicability of the RFCT Act to those 13 enactments will go away and each of the thirteen enactments would operate separately thereby defeating the need and purpose of enacting RFCT Act to bring about an uniform procedure for compensation, rehabilitation and resettlement. To be noted the NH Act has been in force since 1956; similarly the other 12 enactments have been in force for considerable length of time. The NH Act was enacted much after the 1894 Land Acquisition Act and acquisitions under the NH Act were outside the purview of the 1894 Act, so also the other 12 enactments. Thus, by introducing sub-section (3) to Section 105 of the RFCT Act, the

13 enactments have been brought under the umbrella of RFCT Act by extending the benefits of adequate compensation, rehabilitation and resettlement.

42. Thus, for the above reasons, we hold that Section 105 and Fourth Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, is neither unconstitutional nor null and void and are held to be valid piece of legislation.

For all the above reasons, the Writ Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

pbn

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,Union of India
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+lcc to Government Pleader SR.NO.60997

+lcc to Mr.G.Karthikeyan, Advocate SR.NO.60937

+lcc to Mr.M.Radhakrishnan, Advocate SR.NO.61845 dt.30.10.2018

sm:10.9.2018

Writ Petition No.15889 of 2018