

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 13.03.2018

Order Delivered : on 28.03.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.33576/13 & 27822/14

and

W.M.P. Nos.2348/16 & 2433/17

W.P.No.33576 of 2013:-

Sudharsan Charitable Trust,  
Representing President

Mr.O.Elia Reddy,  
Shalom HS School Premises,  
G.S.T. Road, Vandalur,  
Chennai-48.

... Petitioner

vs.

1. The Government of Tamilnadu,  
rep. by its Secretary,  
Highway and Smaller Ports Department,  
Fort St. George, Chennai-9.

2. The District Revenue Officer,  
Land Acquisition,  
Outer Ring Road,  
CMDA, Koyambedu,  
Chennai-92.

3. The Special Tahsildar (LA),  
Chennai Outer Ring Road Project,  
Thambaram (E),  
Poonthamalli,  
Near Government High School.

4.The Tamil Nadu Road Dev.  
Co. Ltd.,  
Rep. By its Managing Director,  
No.171, 2<sup>nd</sup> Floor,  
Tamil Nadu Maritime Board Building,  
South Kesava Perumalpuram,

Pasumpon Muthuramalinga Road,  
Raja Annamalaipuram,  
Chennai-28.

(R-3 & R-4 impleaded as per  
court orders dated 03.11.2014 in  
M.P. No.1 of 2014 and 18.01.2016 in  
M.P.3/2014)

... Respondents

W.P. No.27822 of 2014:-

M.Chinnasamy

... Petitioner

vs.

1. The Government of Tamilnadu  
Rep. By its Secretary,  
Highway and Smaller Ports Department,  
Fort St. George,  
Chennai-9.

2. The District Revenue Officer,  
Land Acquisition,  
Outer Ring Road,  
CMDA, Koyambedu, Chennai-92.

3. The Special Tahsildar (LA),  
Chennai Outer Ring Road Project,  
Tambaram (Location) Poonamallee,  
Near Government High School.

4. The Tamil Nadu Road Dev.  
Co. Ltd.,  
Rep. By its Managing Director,  
No.171, 2<sup>nd</sup> Floor,  
Tamil Nadu Maritime Board Building,  
South Kesava Perumalpuram,  
Pasumpon Muthuramalinga Road,  
Raja Annamalaipuram,  
Chennai-28.

(R-4 impleaded as per  
court orders dated 18.01.2016 in  
M.P.3/2014 in W.P.27822/2014

... Respondents

Writ Petitions filed under Article 226 of the Constitution of  
India for the issuance of

(i) Writ of Certiorari calling for the entire records on the  
files of respondents viz. from the first respondent in respect  
of impugned G.O.Ms.No.68 Highways and Small Ports (HN2)  
Department dated 18.04.2013 and in respect of the notice issued  
u/s 15(1) of the Tamilnadu Highways Act 2001 published in

Tamilnadu Government Gazetted No.36 dated 17.09.2014 from pages 631 to 637; from the office of second respondent in respect of 4 Notices all bearing same no.Viz. Na.Ka.No.2/2013/Ve.Va.Saalai/Kanchipuram even dated 04.11.2013 and from the office of the 3rd respondent in respect of four notices all bearing same no.Viz. Na.Ka.No.2/2013/Se.Ve.Va.Saalai/ Kanchipuram even dated 18.09.2014 issued u/s 16(1) of Tamilnadu Highways Act 2001, all respectively in respect of lands situated in Survey Nos. 194/1B1, 194/1B2, 194/1B3 and 194/1B3 pt. No.2 Vandalur Village, Chengalpet Taluk, Kanchipuram District and quash the same and any/all consequential proceedings.

W.P.27822/2014:

Writ of Certiorari Calling for the entire records on the files of the respondent viz. from first respondent in respect of impugned G.O.Ms.No.68 Highways and Small Ports (HN2) Department dated 18.4.2013 and in respect of the Notice issued U/s.15(1) of the Tamil Nadu Highways Act 2001 published in Tamil Nadu Government Gazetted No.36 dated 17.9.2014 from Pages 631 to 637 and from the office of 3rd respondent in respect of two notices both bearing same No.Viz. Na.Ka. No.2/2013/Se.Ve.Va.Saa/ Kancheepuram even dated 18.9.2013 in so far as the lands of the petitioner situated in Survey No.238B/7A and 238/7B (actually 238B/7B) is concerned and quash the same.

For Petitioner in  
WP No.33576/13 : Mr.N.Subramaniyan

For Petitioner in  
WP No.27822/14 : Mr.AR.L.Sundaresan  
Sr. Counsel for Mr.D.Saikumaran

For R1 to R3 in  
both the W.Ps. : Mr.M.Elumalai,  
Government Advocate.

For R4 in both cases: Mr.V.Ayyathurai,  
A.A.G., assisted by Mr.M.Sivavarthan

COMMON ORDER

In W.P. No.33576 of 2013, the petitioner-Mr.O.Eliah Reddy/representing President of Sudharsan Charitable Trust seeks for the issuance of a writ of certiorari to call for the entire records on the files of the respondents viz., from the 1<sup>st</sup> respondent in respect of impugned G.O. Ms.No.68, Highways and Small Ports (HN2) Department, dated 18.04.2013, and in respect of the notice issued under Section 15 (1) of the Tamilnadu

Highways Act, 2001 published in Tamilnadu Government Gazette No.36, dated 17.09.2014, from pages 631 to 637; from the office of the 2<sup>nd</sup> respondent in respect of 4 Notices, all bearing same Number viz., Na. Ka. No.2/2013/Ve.Va.Saalai/Kanchipuram, even dated 04.11.2013; and from the Office of the 3<sup>rd</sup> respondent in respect of four notices all bearing same Number viz., Na. Ka. No.2/2013/Se.Ve.Va. Saalai/Kanchipuram, even dated 18.09.2014, issued under Section 16(1) of the Tamilnadu Highways Act, 2001, all respectively in respect of lands situated in Survey Nos.194/1B1, 194/1B2, 194/1B3pt and 194/1B3pt of No.2, Vandalur Village, Chengalpet Taluk, Kanchipuram District and to quash the same.

In W.P. No.27822 of 2014, the petitioner-Mr.M.Chinnasamy seeks for the issuance of a writ of certiorari to call for the entire records on the file of the respondents viz., from first respondent in respect of impugned G.O.Ms. No.68, Highways and Small Ports (HN2) Department, dated 18.04.2013, and in respect of the Notice issued under Section 15 (1) of the Tamil Nadu Highways Act, 2001, published in Tamil Nadu Government Gazette No.36, dated 17.09.2014, from pages 631 to 637 and from the office of the 3<sup>rd</sup> respondent in respect of two Notices both bearing same Number viz., Na.Ka.No.2/2013/Se.Ve.Va.Saa/Kanchipuram, even dated 18.09.2014 insofar as the lands of the petitioner situated in Survey No.238B/7A and 238/7B (actually 238B/7B) is concerned and to quash the same.

2. Inasmuch as both the writ petitions are interconnected and the subject matter of challenge is the same, they have been heard together and are disposed of by this Common Order.

3. Arguing the case of the petitioner in W.P. No.33576 of 2013, Mr.N.Subramaniyan, learned counsel appearing for the petitioner, would submit that, in the year 1986, the petitioner's family members started a School called "Shalom School" on the western side of GST Road near Vandalur with 1200 students and 50 Teaching & Non-Teaching Staff. Since the said school buildings are covered by the impugned notices issued by the 2<sup>nd</sup> respondent for acquisition, the present writ petition has been filed not only to safeguard the interest of the School but also the Charitable Trust running it and the children of the locality who get education from there.

Proceeding further, learned counsel would submit that R2/District Revenue Officer-Land Acquisition, Koyambedu, had served the impugned notices on the petitioner on 09.11.2013 through a Messenger and as the said Notices failed to exhibit the actual extent of land required for acquisition, the petitioner had addressed the authorities to furnish the Land Plan Schedule to know the exact portion of the land sought to be acquired, before making his objections. Since the purpose of

giving objections is to point out the incorrectness in the project and to demonstrate that there is a flaw in the acquisition proceedings, due to denial of a copy of the project report and also the information about the actual extent of land sought to be acquired, the petitioner was unable to understand as to how the respondents have come to the conclusion that the land in question was also really required for the Project. If the extent of the land is known and the same is found to be meager, suggesting that it is a bona fide requirement, then, the petitioner would not even object to the acquisition and would even happily hand over his land. But the second respondent, without even informing the actual extent sought to be acquired and without furnishing a copy of the Project Report to the land owner, wrongly issued the impugned Notices including G.O.Ms.No.68, dated 18.04.2013. The School of the petitioner lies on the Right Side (western side) of National Highway-45-GST connecting Chennai and Trichy between Tambaram and Vandalur Zoo about 1200 feet south from Perungalathur Grade Separator-Flyover and about 1185 feet North from the upcoming Grade Separator at Otteri. The buildings of the petitioner-school are located 85 feet away (on the western side) from the Central Median of NH-45, whereas, on the eastern side, the width of the road way is only 38 feet. On the eastern side, there lies government vacant lands. Therefore, logically speaking, any acquisition should be done only on the eastern side free of cost making use of the Government lands. Further, the impugned G.O.Ms.No.68 itself would show that R-1 has been represented by the District Collector, Kanchipuram, to the effect that the lands sought to be acquired are only vacant punja lands whereas the fact remains that the lands of the petitioner and the adjoining lands abutting the GST Road is a pucca built-up neighborhood in existence for decades. According to the learned counsel, because of misrepresentation of facts made by the District Collector, the first respondent, acting upon the same, wrongly issued G.O.Ms.No.68, dated 18.04.2013. As such, the said impugned G.O. is vitiated due to fraud. Also, it is stated with emphasis that the exercise of acquisition so far taken up had been done under the Land Acquisition Act, 1894, but, for the additional extent of lands including that of the petitioners, the Tamilnadu Highways Act, 2001, (hereinafter referred to as 'State Act') has been wrongly invoked.

It is submitted that, due to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act No.30/2013) coming into effect from 01.01.2014, the State Act was repealed and the State Amendment (hereinafter referred to as Act No.1/15) incorporating Section-105A to Central Act No.30/2013 would not revive the State Act. He would refer to Act No.1 of 2015, published in the Tamilnadu Government Gazette (Extraordinary) on 05.01.2015, which reads as follows:-

"105-A 'provisions of this Act not to apply

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

(2) the State Government shall, by notification, within one year from the date of commencement of the Act (namely, from 01.01.2014), direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

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

As regards the V Schedule mentioned therein, Clause-3 thereof provides as follows:

"3. After the Fourth Schedule to the Principal Act, the following Schedule shall be added, namely,

" The Fifth Schedule

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

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978)
2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999)
3. The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002).

After reading out the entire text of Act No.1/2015 (State Amendment), learned counsel would submit that Sub-Section (3) of

Section-105-A makes it clear that a copy of the Notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and, if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the Notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly. While so, the respondents have nowhere made it clear that such notification proposed to be issued under sub-section (2) has been in fact laid before the State Assembly. Therefore, when the conditions mentioned under sub-sections(2) and (3) of Section 105-A are not complied with till date, resorting to the State Act for acquiring the lands in respect of the Chennai Outer Ring Road Project (in short CORR) is illegal and ultra vires of the Central Act. In other words, even if it is taken as an exemption to the already repealed State Act by way of V Schedule, it would be of no use, for, the conditions stipulated in Act No.1 of 2015 have not been complied with, within one year from 01.01.2014 and hence, the amendment itself is still-born. Also, he referred to Article 254 (1) of the Constitution to make a submission that it is made clear therein that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void. In view thereof, the impugned notices having been issued under the repealed Act are void ab initio. As a matter of fact, there is no law known as 'Tamil Nadu Highways Act, 2001' in force after 01.01.2014 from when Central Act No.30/13 came into effect. In this regard, learned counsel would cite the decision in Ameer-un-nissa Begum & Others vs. Mahaboob Begum and Others (AIR 1955 SC 352), wherein, the Honourable Apex Court had referred to the common law doctrine that the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary. Therefore, in the case on hand, when the State Act stood repealed on 01.01.2014 with the enactment/coming into effect of Central Act No.30/2013, revival of the State Act through a State Amendment by inserting Section-105A to the Central Act would have no legal sanctity since the essential conditions for revival/exemption as provided under sub-sections(2) and (3) of Section 105-A have not been complied with and hence, any acquisition proceeding initiated under the repealed State Act would get vitiated in its entirety.

Learned counsel would proceed further to contend that, even otherwise, the power to acquire the land that has been given under Section-15(1), (2) & (3) of the State Act, can never be made applicable to the lands in question, for, it is not a Highway as defined under the said Act. For the sake of argument, it is pointed out that even the conditions mentioned in Section-15(1), (2) & (3) of the said Act have not been complied with. It is elaborated that, while Section 15 (1) provides that the State Government may acquire any land by publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required, Section 15 (2) runs to the effect that the State Government, before publishing a notice under sub-Section (1), shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired, and Section 15(3) runs to the effect that the Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1) as they may deem fit. That being so, in the present case, after issuance of the impugned notices by the 2<sup>nd</sup> respondent on 09.11.2013 through a Messenger, the petitioner had asked for the Land Plan Schedule to know the exact portion/extent of the land sought to be acquired, but, there was no reply. The petitioner had also requested for providing a copy of the Project Report, if any, enabling him to make objections, because, without the Project Report involving the technical aspects, the petitioner would not be able to make valid objections. It is stated that although Section 15(1) of the State Act is explicit that a Notice, specifying the description of such land and the purpose for which the land is required, should be published in the Government Gazette, such condition has not been complied with. Secondly, when the petitioner, after receipt of the Notice, dated 09.11.2013, sought for a copy of the Project Report, the same was not furnished enabling him to make valid objections. Thirdly, no order has been passed under sub-section(1) as provided under Section 15 (3) of the T.N. Highways Act. Further, the first respondent had no authority or power to delegate his power to issue the impugned notices to acquired the lands in question. Thus, the entire exercise taken up, being a clear deviation from the provisions of the State Act itself, the acquisition proceedings are rendered void ab initio.

Learned counsel would further submit that when the petitioner had raised a specific legal plea that the first respondent even failed to comply with the provisions under Section-15(1), (2) and (3) of the T.N. Highways Act, the first respondent, till date, has not filed any counter affidavit meeting that issue; on the other hand, the said authority has simply adopted the counter affidavit filed by R-2/Revenue

Divisional Officer, Land Acquisition, Chennai. Therefore, the only presumption would be that there was no compliance of the mandatory provisions, as aforementioned, on the part of the said authority. Similarly, R2 having taken an emphatic stand in the counter affidavit to the effect that the approved estimate or the technically sanctioned plan or project report will not be given to the petitioner, the said authority is not justified in claiming that the petitioner should be aware of the alignment which is not disclosed to him. In other words, when the 2<sup>nd</sup> respondent stated in the counter affidavit that the Plan and Project Report cannot be furnished to the petitioner, they cannot expect the petitioner to be aware of the alignment, whether it is correct or wrong, so as to make any valid objection.

In addition thereto, when the miscellaneous petition in W.M.P. No.2433 of 2017 has been filed seeking this Court to direct the respondents to produce the detailed Project Report/Estimate technically sanctioned by the State Highways Authority in respect of the work, and the file relating to the issue of G.O.Ms.No.102, Highways and Minor Ports Department, dated 01.09.2014 and consequently, to permit the petitioner to peruse the same so as to make submission in respect of the same, again, neither a reply has been filed nor any of the technically sanctioned reports/estimate furnished, disclosing the basis for the decision of the Highways Department requiring the Down Ram for CORR, warranting acquisition of the petitioner's land for the purpose mentioned in the impugned G.O. It is further submitted that, on 17.02.2017, even though a direction was issued by this Court in the above Miscellaneous Petition, directing the respondents to produce the Detailed Project Report (DPR), learned counsel for the 3<sup>rd</sup> respondent produced only a Detailed Feasibility Report (DFR) and a perusal of the said Report would show that there is no contemplation of land acquisition for CORR to Chennai Arm and there was no Origin or Destination Traffic Study conducted to ascertain even the feasibility or requirement of CORR. When the petitioner raised several objections, nowhere, any of those objections had been dealt with. Although at Page Nos.101 and 104 of the File relating to the DFR, a reference has been made regarding the objections of the petitioner, no discussion thereon has been made by the respondents. Therefore, it is clear that the respondents have never considered the objections and it is implicit that they did not pass any order under Section 15 (3) of the State Act.

Learned counsel would vehemently contend that no citizen can be deprived of his properties in the absence of any law enacted by the Legislature and, even if there is an enacted law, it cannot be done without following the mandate in Article 300-A of the Constitution of India. Yet, the abstract doctrines of eminent domain or public purpose overriding private rights that are applicable to common law countries are not applicable

to India governed by a written Constitution. This is for the reason that the moment the respondents deviate from the statutory provisions, they lose their authority/jurisdiction to proceed further. In the present case, resorting to the provisions of the repealed State Act for the purpose of acquiring the petitioner's property relating to the project in question is illegal and ultra vires of the Constitution of India.

Taking support from Article 300-A of the Constitution of India which says that no person shall be deprived of his property save by authority of law, Mr.N.Subramaniyan, heavily asserted before me that an individual could not be deprived of his property except in accordance with law and even if the lands of the petitioner were to be acquired for a public purpose, the same can be done only by following the procedure established by law and, in the absence of following the prescribed procedure, the acquisition itself must be deemed to have been made in violation of the constitutional rights given under Article 300-A of the Constitution. He would refer to the Ruling of the Apex Court reported in Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd., v. State of Rajasthan (2013-11-CC-1), for the proposition that the procedure contemplated under the Acquisition Act is liable to be followed in matters pertaining to governmental acquisitions of private land and, in the absence of compliance therewith, the process of acquisition made thereunder would be liable to be set aside.

By ultimately stating that the entire land acquisition proceedings are vitiated on the following four major grounds,

a) the conditions mentioned in sub-sections(2) and (3) of Section 105-A of Act No.1 of 2015 are not complied with;

b) even otherwise, the requirements under Section-15(1), (2) and (3) of the State Act has not been followed;

(c) entire acquisition proceedings have been vitiated due to the fraud played by the District Collector, Kanchipuram;

and

(d) copy of the documents sought for, in particular DPR, have not been furnished, thereby, the opportunity to make valid objections against the acquisition proceedings is virtually taken away,

learned counsel pleaded for setting aside the entire land acquisition proceedings by allowing the Writ Petition.

4. Almost in the same lines, Mr.A.R.L.Sundaresan, learned Senior Counsel, while arguing the case of the petitioner in W.P. No.27822 of 2014, would submit that when the State Act became void on Act No.30 of 2013 coming into effect by virtue of constitutional mandate, all proceedings initiated under the repealed/State Act are rendered void ab initio. Therefore,

invoking the said Act is beyond the powers of the first respondent and consequently, issuing the impugned G.O. thereunder is impermissible in law. Although Section-105A inserted through State Amendment came into effect from 01.01.2014, making it clear that the provisions of the Central Act shall not apply to the enactments relating to the land acquisition specified in the Fifth Schedule which included the State Act (T.N. Highways Act, 2001), the said provision (Section 105-A) has been made subject to sub-section (2) running to the effect that the State Government shall, by notification, within one year from the date of commencement of the Act (that is from 01.01.2014), direct that any of the provisions of this Act shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule. Sub-section(3) of Section-105-A also makes it clear that a copy of the Notification proposed to be issued under sub-section (2) shall be laid in draft before the State Assembly, but, till date, no such Notification as proposed under sub-section (2) seemed to have been laid in draft before the Assembly. Therefore, Section-105-A cannot be relied upon, to save or revive the State Act. Further, the CORR project has not been technically sanctioned by a Chief Engineer having expertise in Highways Engineering as mandated by the Tamil Nadu Financial Code and, on that score also, the land acquisition proceedings got vitiated.

Proceeding further, learned Senior Counsel would submit that the land of the petitioner to an extent of 18 cents was already acquired for widening the NH-45 and only the remaining 12 cents is used for running a Petrol Bunk. Now, the respondents are attempting to take away the only source of livelihood of the petitioner by resorting to the provisions under the State Act and further, no order has been passed under Section 15(3) thereof, therefore, the impugned proceedings may have to be quashed by allowing the Writ Petition.

5. Per contra, Mr.V.Ayyathurai, learned Additional Advocate General, at the first instance, would submit that acquisition of land by the State Government exercising its power of eminent domain for any good public purpose does not offend Article 300-A of the Constitution or the right to livelihood, right to shelter or dignity of person. Reliance is made by him upon Sooraram Pratap Reddy v. District Collector, Renga Reddy District (2008-9-SCC-552), wherein, it has been held that 'Eminent domain' may be defined as the right or power of a sovereign State to take private property for public use without the owner's consent upon payment of just compensation. It is highlighted therein that the term 'eminent domain' is said to have been originated by Grotius, a legal scholar of the seventeenth century, who believed that the State possessed the power to take or destroy property for the benefit of the social unit, and when the State so acted, it was obligated to compensate the injured property owner for his losses. According

to Blackstone and others also, the power of eminent domain does not depend for its existence on a specific grant. It is inherent and exists in every sovereign State without any recognition thereof in the Constitution or in any statute. It is founded on the law of necessity. The power is inalienable. Learned Additional Advocate General referred with emphasis to the following paragraphs in the above Ruling:-

"It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner".

62. In Deputy Commissioner & Collector, Kamrup & Ors. v. Durganath Sarma, (1968) 1 SCR 561; drawing distinction between police power and power of eminent domain, this Court observed;

"In the exercise of its eminent domain power, the State may take any property from the owner and may appropriate it for public purposes. The police and eminent domain powers are essentially distinct. Under the police power many restrictions may be imposed and the property may even be destroyed without compensation being given, whereas under the power of eminent domain, the property may be appropriated to public use on payment of compensation only".

63. In Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Taxes, Karnataka & Ors., (1988) 3 SCC 263, referring to American authorities, Mukharji, J. (as His Lordship then was) stated;

"It is trite knowledge that eminent domain is an essential attribute of sovereignty of every state and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just

compensation".

64. In *Scindia Employees' Union v. State of Maharashtra & Ors.*, (1996) 10 SCC 150, this Court observed;

"The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose".

65. In *Sharda Devi v. State of Bihar & Anr.*, (2003) 3 SCC 128, this Court said;

"The power to acquire by State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned".

Learned Additional Advocate General also relied upon one another decision of the Apex Court reported in 1996-1-SCC-731 (*New Riviera Coop. Housing Society v. Special Land Acquisition Officer*), wherein, it is held that acquisition of land by the State in exercise of its power of Eminent Domain does not offend the right to livelihood or right to shelter or dignity of person. According to the learned Additional Advocate General, the above mentioned case laws of the Apex Court on the doctrine of Eminent Domain are undoubtedly persuasive enough for this Court to hold the contention made by the petitioners to the effect that the State cannot exercise the doctrine/powers of Eminent Domain, as wholly misconceived.

By referring to the counter affidavit in both the cases filed by the District Revenue Officer (Land Acquisition), he would submit that the Government of Tamil Nadu decided to form an Outer Ring Road connecting the southern, western and northern parts of Chennai City for a total length of 60.15 Kms. Road to be constructed in 2 phases around Chennai Metropolitan Area in

Tamil Nadu. The proposed road will connect the GST Road starting from Vandalur Village in Kanchipuram District and ending at Minjur Village in Tiruvallur District. The object of the Project is to allow heavy vehicles to journey outside Chennai City, thereby, to minimize the traffic congestion within the City's Central Areas. Accordingly, the land for the project was acquired in two phases. The Chennai Metropolitan Development Authority acquired the land for the first phase and took possession of lands to a length of 29.65 Kms. from Vandalur Village in Kanchipuram District to Nemilichery Village in Tiruvallur District crossing NH-45 at Vandalur Village in Kanchipuram District, NH-4 at Poonamallee and NH-205 at Nemilichery Village in Thiruvallur District. The additional lands proposed to be acquired for this project is comprised in 14 villages in Kanchipuram District and 11 villages in Thiruvallur District. The land required to be acquired for the second phases is for the length of 30.5 Kms. from Thiruninravur to Minjur Village in Thiruvallur District covering 28 villages. In view thereof, the Government of Tamil Nadu issued G.O.Ms.No.32, Highways and Minor Ports (HF-2) Department, dated 25.02.2009, according necessary administrative sanction for the development of Chennai Outer Ring Road Project Phase-I on Design, Build, Finance, Operate and Transfer (DBFOT) annuity basis under Public Private Partnership mode with Government contribution of Rs.300 crores as Project Support Fund at a cost of Rs.864.22 crores and the same was revised for Rs.1081.40 crores in G.O.Ms.No.200, Highways & Minor Ports (HN-2) Department, dated 08.10.2009. In this connection, the District Revenue Officer (LA), CORR Project, CMDA, Koyambedu, Chennai, has been empowered to perform the functions of the Land Acquisition Officer under the State Act, 2001. Subsequently, the work was awarded to M/s.GMR CORR Pvt. Limited and the development work including the provision of project facilities such as construction of Interchanges, Bus Bays, Wayside Amenities, Major and Minor Junction improvement, etc. was commenced on 03.06.2010. In fact, 94.85% road formation work was already over and the only pending work is provision of project facilities. Replying to the allegation of illegality in acquiring the petitioner's land, it is argued that when the lands already acquired under the provisions of the Land Acquisition Act, 1894, on the right hand side were fully utilized, for providing project facilities on the left hand side, additional lands are required to be acquired as per the terms and conditions of concession agreement executed between the Government of Tamilnadu and the concessionaire under the provisions of the State Act. Therefore, the contention of the petitioners that the entire lands required for CORR having been acquired through the Land Acquisition Act, 1894, on the request of CMDA, the action of the authorities in invoking the provisions under the State Act for the small portion of lands stated in the impugned notices is mala fide and colorable

exercise of powers, is wholly misconceived.

Answering the allegation that the project report approved by the competent authority was not furnished to the petitioners, as a result, they were not able to make valid objections to the acquisition proceedings, it is stated that the Project Report approved by the competent authority is not meant to be given to all the land owners. The point is that the information such as reason and cause of acquisition is duly furnished to the land owners in the Notice issued to them under Section 15 (2) of the T.N. Highways Act, 2001. Since the actual extent proposed for acquisition was also intimated to the petitioner, the allegation that project report approved by the competent authority was not furnished is wholly untenable. In other words, when the entire land acquisition proceedings have been initiated based on the procedure laid under the State Act and the Rules framed thereunder, no complaint of deviation from the principles of natural justice would arise. However, learned Additional Advocate General would also submit that when there are two components in the Project - one is for formation of Outer Ring Road connecting the southern, western and northern parts of Chennai City and the other is for the provision of project facilities like construction of Interchanges, Bus-bays, Wayside Amenities, etc., the land acquisition work relating to first phase has already been mostly completed and, with regard to the second part, the work is at the stage of Notification under Section-15 of the State Act. Adding further, it is stated that, at the time of acquisition of lands for formation of Outer Ring Road, lands required for formation of the Road alone were actually acquired. Consequently, it was felt necessary to provide additional project facilities such as interchanges, bus-bays, wayside amenities and junction improvements due to fast-growing habitats on both sides of the Outer Ring Road. Therefore, it has become inevitable now to acquire the additional lands for provision of project facilities to cater to the need of the public at large. In these circumstances, the petitioners were served with notices under Section 15 (2) of the T.N. Highways Act read with Rule 5(1) of the Highway Rules, 2003. According to the learned Additional Advocate General, the provisions under Section-15(1), (2) and (3) nowhere mandate for furnishing a copy of the Project Report to the land owner/petitioner. In fact, the Project Report is also not available with the 2<sup>nd</sup> respondent, therefore, the petitioner cannot insist the authorities to furnish a copy of such Report to them. He also subsequently produced the relevant File to impress upon this Court that no illegality had taken place as alleged by the petitioners in respect of the provision under Section-15(3) of the T.N. Highways Act.

Countering the contentions raised by the petitioners' side to the effect that the first respondent has no authority to delegate his power to the 2<sup>nd</sup> respondent-DRO (Land Acquisition) for issuance of Notice under Section 15(2) of the State Act to

acquire the land, by placing on record G.O.Ms.No.206, Highways (HN2) Department, dated 29.09.1993, learned Additional Advocate General would submit that the said G.O. has been issued by the Government of Tamilnadu in exercise of the powers conferred by sub-section (1) of Section 56 of the State Act, authorizing the District Collector concerned to exercise the powers of the Government vested in them under sub-section (2) of Section 15 of the said Act. Subsequently, the Government, by G.O. Ms. No.78 (Highways and Minor Ports (HF.1) Department, dated 22.06.2011, in supersession of the Highways Department Notification No.II (2)/Highways/656/2003, authorized the District Revenue Officer of the District concerned to exercise the powers of the Government vested in them under sub-section (2) of Section 15 of the said Act. Accordingly, by way of G.O.Ms.No.68, Highways and Minor Ports (HN-2) Department, dated 18.04.2013, the District Revenue Officer (LA), CORR Project, has been empowered to perform the functions of the Land Acquisition Officer under the State Act and also, administrative sanction was accorded for acquisition of 127185.91 sq. mtrs. of patta lands and transfer of Government lands measuring an extent of 10634.57 sq. mtrs. in 15 villages of Chengalpattu, Tambaram and Sriperumbudur Taluks in Kanchipuram District. Thus, the contrary submissions made by the other side in regard to delegation of powers have to be just brushed aside, he stated.

Meeting the legal submissions made by the other side relating to Central Act No.30/2013 in the light of Article 254 of the Constitution of India, learned Additional Advocate General would proceed to state that the said Act came into force with effect from 01.01.2014 and the time-limit for passing the Award was extended upto 31.12.2014 vide G.O. Ms. No.59, Highways and Minor Ports (HF-1) Department, dated 29.05.2014. Consequently, as per the scheme, with the lands acquired for the CORR, the Road was formed and since additional lands were required for providing project facilities, after duly obtaining the technical sanction from the competent authorities of the Highways Department, the petitioners' land came to be acquired. In this regard, one has to look at the amendment brought in by the State Government with Presidential assent, inserting Section 105-A (Act No.1 of 2015) after Section-105 in the Central Act, making it clear that the provisions of the Central Act shall not apply to enactments relating to Land Acquisition specified in the 5<sup>th</sup> Schedule which included "T.N. Highways Act, 2001". Therefore, the contention of the petitioners that the State Act cannot be invoked, has to be just watered down. Inasmuch as the acquisition proceedings involving larger public interest are absolutely in order, both the writ petitions may have to be dismissed, he pleaded ultimately.

6. Before proceeding further, let me make it clear at the first instance as to the relevance of the concept 'eminent domain' in the matters of land acquisition. The law is well

settled that eminent domain is an essential attribute of sovereignty of every State and, in the exercise of its eminent domain power, the State may take any property from the owner and may appropriate it for public purposes on payment of compensation, as otherwise, no beneficial project involving larger public interest/public utility would come into existence. Hence, the contention that the petitioners cannot be deprived of the property by exercising the power of eminent domain has to be repelled.

7. Now, let me examine as to whether the property/land of the petitioners has been acquired, as stated by the petitioners, in the absence of any valid law enacted by the Legislature, more particularly, the State Act.

8. It is the argument advanced by the petitioners that, after introduction of the new Central Act (Act No.30 /2013) which came into effect from 01.01.2014, Section-114 thereof repealed the Land Acquisition Act. According to them, the State Act which was enacted for acquiring lands for formation and development of the State Highways also stood repealed due to the enactment of the new Central Act. As regards the State Government incorporating Section-105-A to revive the State Act by providing the 5<sup>th</sup> schedule, it is the stand of the petitioners that the said Section does not revive the T.N. Highways Act, for, the conditions mentioned under sub-sections-2 & 3 thereof have not been fulfilled. It is pointed out that a close reading of the very State Amendment would show that the provisions of Act No.30 of 2013 shall not apply to the Tamil Nadu Acts relating to land acquisition including the "T.N. Highways Act" falling under the V Schedule, provided the State Government, within one year from the date of commencement of the Act viz., 01.01.2014, issues a Notification as specified therein. Of course, the Act received the assent of the President on 01.01.2015, but, till now, within one year, no such Notification, as stipulated under sub-section-2 of Section 105-A, has been issued. Also, a copy of the Notification proposed to be issued under sub-section (2) was not even laid before the State Assembly and no decision has been taken with regard to approving or disapproving the issue of Notification. Therefore, according to the learned counsels, the impugned notices issued under the repealed Act of the year 2001 are void ab initio.

Although learned Additional Advocate General supported the impugned notices by advancing arguments to the effect that Section 105-A already got the assent of the President on 01.01.2015 to have its effect from 01.01.2014, neither a comprehensive counter affidavit nor any document has been filed

before this Court to show that the State Government either issued a Notification relating to determination of compensation or placed it before the State Assembly. As a matter of fact, except filing the adoption counter affidavit, the first respondent did not come forward to file a separate affidavit with details covering all points, specifically about compliance of the mandatory conditions under sub-sections-2 and 3 of Section-105-A. In a case of this nature, as held by the Apex Court in Hindustan Petroleum Corporation Ltd. V. Darius Shapur Chennai (2005-7-SCC-627), failure to file the counter affidavit may, subject to just exceptions, be treated as Government's admission to the allegations made against it. In other words, the counter affidavit filed on behalf of the Collector cannot be taken as sufficient compliance with the requirements of law. It would be apt to reproduce the following text from the above decision:-

" In view of the fact that the action required to be taken by the State Government is distinct and different from the action required to be taken by the Collector; when the ultimate order is in question it was for the State to satisfy the court about the validity thereof and for the said purpose the counter-affidavit filed on behalf of a Collector cannot be held to be sufficient compliance of the requirements of law. The job of the Collector in terms of Section 5-A would be over once he submits his report. The Land Acquisition Collector would not know the contents of the proceedings before the State and, therefore, he would be incompetent to affirm an affidavit on its behalf.

Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the Report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefore, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation production of records by the State is necessary. "

Thus, as per the settled legal position, the respondents are duty bound to file a counter affidavit meeting each and every

allegation raised by the land owner as to why the project report was not made available and answering as to whether the competent authority under the Act accorded the technical approval to carry out the work and more particularly, whether the conditions mentioned in sub-sections 2 & 3 of Section 105-A have been complied with or not. Since no such counter has been filed nor any document produced before this Court in the form of answer to the allegations, this Court has no choice but to hold that the State Act stood repealed on 01.01.2014 when the Central Act No.30 of 2013 came into force and that the State Act could not be revived in the absence of fulfilling the mandatory conditions mentioned under sub-sections (2) and (3) of Section 105-A of Act No.1 of 2015. It follows that, legally, the respondents are not entitled to proceed with the acquisition proceedings by resorting to the process adumbrated in Section 15 of the State Act.

9. Even though the matter was argued by Mr.V.Ayyathurai in the capacity of Additional Advocate General and this Court, after reserving the cases for orders on 13.03.2017, recorded the above submissions advanced on either side, subsequently, the cases were taken up for clarification and, in that course, by orders dated 15.03.2018, Mr.V.Ayyathurai (learned Senior Counsel & the then Additional Advocate General), has been requested to assist this Court as amicus curiae to clarify as to whether the State, which have the power of eminent domain to acquire any land for public purpose, can exercise the power to acquire the lands in question, without fulfilling the mandatory conditions specified under sub-Sections-2 and 3 of Section 105-A of Act No.1 of 2015.

10. On the above aspect, Mr.A.R.L.Sundaresan, learned Senior Counsel, would submit that, although by virtue of Section 114 of Act No.30 of 2013, the Land Acquisition Act, 1894, came to be repealed, Section-105 of Act No.30 of 2013 makes it clear that the said Act shall not apply to enactments relating to land acquisition specified in the fourth schedule, subject to sub-section(3). After reading out Sub-section (3), which is extracted below,

" 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.”,

learned Senior Counsel would state that the Government of Tamil Nadu, in an endeavor to save the land acquisition proceedings under the three Acts (one of which is the T.N. High Ways Act) specified in the V Schedule, enacted Section 105-A (Act No.1 of 2015). The said provision has already been extracted at paragraph No.3. According to him, by virtue of Section 107 of Act 30 of 2013, which empowers the State Governments to enact any law more beneficial to affected families, the State Government of Tamil Nadu enacted Section-105-A, which received the Presidential assent on 01.01.2015 stating that it deemed to have come into force on/from 01.01.2014. Secondly, the new provision specifies under sub-section-2 that, for making the provisions of Act No.30 of 2013 not to apply to the State Acts mentioned in the V Schedule, the State Government shall, by notification, within one year from 01.01.2014, direct that any of the provisions of Act No.30 of 2013 relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of Act No.30 of 2013 relating to compensation or rehabilitation and resettlement. Thirdly, it is clearly specified in sub-section (3) that a copy of such proposed Notification shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly. While so, the aforesaid two mandatory conditions have not been complied with by the Government. In other words, the Notification as mentioned under sub-section-2 of Section-105-A has not been drafted. No copy of such Notification has been produced before this Court to show that the conditions mentioned under sub-sections-2 and 3 have been complied with, even though the matter was heard for quite a long time. Therefore, the entire proceedings are vitiated, he pleaded once again.

11. Per contra, Mr.V.Ayyathurai, learned Senior Counsel, would reply that, to fill up the lacuna arose over non-complying with the said two mandatory conditions, the State Government, by exercising powers under Article-162 of the

Constitution of India, issued G.O. Ms.No.59, Highways & Minor ports (HF1) Department, dated 29.05.2014, substituting the above mentioned conditions. The said reply by the learned Senior Counsel cannot be endorsed by this Court, for, the learned Senior Counsel has not produced any material to show that, during the relevant time, the State Legislative Assembly was not in session or it was in suspension. Further, the said G.O. was issued regarding interim compensation for all cases where acquisition of land is taken up under the State Act based on the procedure already in vogue subject to additional compensation being paid as per the provisions of Act No.30 of 2013. One another G.O. referred to by Mr.V.Ayyathurai, Senior Counsel, that is, G.O.(2D) No.12, Highways & Minor Ports (HN2) Department, dated 31.12.2014, has no relevance to the present subject matter covered by the State Act, since it deals with the land covered by the World Bank Funded Project; therefore, both the two G.Os. referred to and relied upon by Mr.V.Ayyathurai cannot fill up the lacuna arose due to non-compliance of the conditions specified in sub-sections-2 and 3 of Section-105-A.

12. Thus, undoubtedly, non-compliance of the said mandatory conditions would adversely affect the entire acquisition proceedings. However, this Court is alive to the real situation regarding the acute need for more infrastructural facilities including better, wider and broader roads giving easy traffic movement and linkage to various destinations including Railway Stations, Hospitals, Airports, etc. The present area acquired for the Project-cum-facility at Vandalur village, where the traffic congestion is frequent and worst in its kind, would definitely serve the greater public cause as the broadening and widening of the Road along with facilities, with the acquired space would definitely ease the traffic congestion and pave the way for smooth flow of vehicular movement. It is stated that the project road will connect the GST Road starting from Vandalur village in Kanchipuram District and ending at Minjur Village in Tiruvallur District. The project would also allow heavy vehicles to run outside Chennai City, thereby, the traffic congestion within the Central areas of the City would also get minimized. Therefore, looking at the factual position on ground reality that 95% of the project work is over and that this project is ultimately going to serve a greater public cause, ordinarily, this Court shall not interfere with the project, that too, at this remote point of time. But, the dilemma is that the State has no authority to acquire the lands in question by invoking the provisions of the T.N. Highways Act, since the mandatory conditions specified under Section 105 of Act No.1 of 2015, in particular sub-sections (2) and 3 thereof, have not been complied with. Not only a mere non-compliance of the above said mandatory conditions, but also various defects and reasons as highlighted above, this Court is of the considered view that the power of eminent domain to acquire the

lands in question by the State Government under any law is not available. Hence, this Court finds itself helpless to support the stand of the respondents/State.

13. Another striking issue needs to be dealt with is the allegation of fraud in the matter of issuing G.O. Ms. No.68, Highways and Minor Ports (HN2) Department, dated 18.04.2013. It is relevant to extract below paragraph No.3 of the said Government Order:-

" The Collector of Kancheepuram District has reported on the issue of land acquisition in wet/dry lands that, there is no historical monuments/Trees, buildings, worshipable temple and graveyard etc., in the proposed acquisition of lands to an extent of 141266.22 sq.mts lands in Tambaram, Sriperumbudur and Chengalpattu Taluks. The total estimated value of the said lands will be Rs.184.81 crore. ...."

While so, the case of the petitioners is that the lands sought to be acquired is a Petrol Bunk and a school building constructed in the year 1986 on the western side of the GST Road near Vandalur and it has now grown as a Full-fledged Higher Secondary School with 1200 students and 50 Staff, both Teaching and Non-Teaching. That being the case, the District Collector, concealing the existence of a school - leave alone petrol bunk, is said to have made a fraudulent representation to the first respondent stating as if the lands sought to be acquired are punja lands without building, whereas, the fact remains that there exist buildings/school premises. This Court, on closely verifying the File submitted before it containing the Original Gazette carrying G.O. Ms. No.102, Highways and Minor Ports (HF2) dated 01.09.2014, could see the mentioning of land therein as the one consisting of Terraced Building, School Administration Building and 3 shops. The said details available in the Gazette would falsify the report of the District Collector, Kanchipuram, and would reveal that he willfully concealed the existence of school premises/building/shops and deliberately misrepresented in his report to the first respondent as though no building/premises was in existence.

14. Now, it has to be examined as to what would be the impact of such misrepresentation having the trait of fraud. The basic governing principle is, in a matter of fraud, one gains at the loss of another. In many case laws, it has been held to the effect that even the most solemn proceedings stand vitiated if they are actuated by fraud, for, fraud is an extrinsic collateral act which vitiates all judicial acts, whether in rem

or in personam. While dealing with the issue of fraud vitiating all official acts, the Apex Court, in A.V.Papayya Sastry and others v. Government of A.P. & Others (2007-4-SCC-221), by following the decision in S.P.Chengalvaraya Naidu v. Jagannath (1994-1-SCC-1), wherein, the concept of fraud was broadly discussed, ruled that once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. It is relevant to quote below paragraph No.39:-

" 39. .... Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior."

Thus, it goes without saying that the Collector, being an administrative head, should have made a proper inquiry and submitted a report, containing the objections of the land owner to the Government. But, he has neither referred to the objections given by the petitioner nor has he mentioned the existence of school buildings. On the other hand, he has apparently concealed the facts by stating that no building was existing in that area. Had the report mentioned the existence of school buildings where many children pursue their education, probably, the Government might have taken a different view. But, such a situation could not arise because of the misrepresentation made by the District Collector. It follows that the impugned G.O. issued by the first respondent on the basis of the wrong report of the District Collector misrepresenting to the first respondent that there was no school building over the land in question, is adversely affected by the element of fraud.

15. Also, one more aspect needs a mention here. It is the contention of the petitioners that their lands were not earmarked for the project originally and, after the impugned notice was issued under the State Act, by letter dated 16.11.2013, the petitioner in W.P. No.33576 of 2013 had addressed the second respondent, specifically seeking for furnishing a copy of the Project Report. Admittedly, the 2<sup>nd</sup> respondent did not reply to the said letter of the petitioner. The counter affidavit also emphatically proceeds that the

Project Report of the Technical Authority need not be given to the land owners for the reason that the information such as the reason & cause for the acquisition was duly informed to the landowner in the Notice itself. Therefore, the stand of the respondents makes it clear that they did not furnish a copy of the Project Report to the landowners. In a way endorsing the stand of the petitioners that their lands were not originally earmarked for acquisition, the counter affidavit filed in W.P. No.33576 of 2013 states that the lands already acquired under the provisions of the Land Acquisition Act, 1894, on the right hand side were fully utilized and, for providing Project Facilities on the left hand side, additional lands were required to be acquired as per the terms and conditions of the concession agreement executed between Government of Tamilnadu and the concessionaire, under the provisions of the State Act, 2001 and hence, the exercise to acquire the additional lands including the land owned by the petitioner in Vandalur Village was taken up. In such circumstances, in order to know the real requirement or correctness of the project details, when the landowner, by way of written correspondence, had sought for copy of the Report, the 2<sup>nd</sup> respondent did not come forward to give any reply, leave alone supplying a copy of the Technical Report. If such report had been furnished to the land owner, indicating the actual extent of the land required to be acquired, probably, the affected land owner might not even have any objection for the acquisition and, even according to the petitioner, in that case, he would have willingly spared the land if everything is made clear to him technically that his land was actually required for a good/public purpose. But here, the petitioner has not been informed about the actual extent sought to be acquired. Without furnishing a report, a total misrepresentation, as mentioned previously, was made by the District Collector to the first respondent. When the petitioners' valuable properties consisting of a Higher Secondary School with other buildings and a Petrol-Bunk are going to be acquired, there cannot be any justification whatsoever for the 2<sup>nd</sup> respondent to deny furnishing of a copy of the Technical/Project Report. Even the feasibility report does not mention the lands of the petitioners and that shows the respondents proceeded whimsically without a proper assessment. Though the right to property is no longer a fundamental right, inasmuch as the constitutional protection continues under Article 300A which provides that no person shall be deprived of his property save by authority of law, if the State intends to appropriate the private property without the owner's consent by acting under the statutory provision for compulsory acquisition, the procedure authorized by law has to be mandatorily and compulsorily followed. Useful reference can be had from Laxman Lal V. State of Rajasthan [(2013) 3 SCC 764]; Nandeshwar Prasad V. U.P.Government [AIR 1964 SC 1217]; Hindustan Petroleum Corpn. Ltd. V. Darius Shapur Chennai [(2005) 7 SCC 627]; Anand Singh V. State of Uttar Pradesh [(2010) 11 SC

242]. While so, in the present case, because of the wrong report placed by the District Collector, Kanchipuram, the State Government could not properly appreciate the case of the land owners.

In the light of the foregoing discussion, the Writ Petitions are disposed of, by holding that although the impugned proceedings are vitiated for the reasons mentioned, considering the fact that 95% of the project work is already over and that the project is ultimately going to serve a greater public cause by easing the routine traffic congestions experienced day-to-day on the National Highways at Vandalur, the State is granted liberty to proceed further in accordance with law, subject to the condition that the State shall take initiatives for fixing/paying suitable compensation through private negotiations (in terms of G.O.Ms.No.281, Revenue & Disaster Management Department, Land Administration Wing, LA-I (1) Section, dated 07.09.2017, or the latest G.O. on the point) and such exercise shall be completed preferably within four months from the date of receipt of a copy of this order, else, it is made clear that the entire acquisition proceedings shall stand quashed. For the reasons recorded supra, this Court is constrained to impose a cost of Rs.25,000/- to be 'personally' payable by the then District Collector, Kanchipuram, to the Mediation and Conciliation Centre, Madras High Court, Chennai. Regarding the assistance rendered by Mr.V.Ayyathurai, learned Senior Counsel, if any bill is presented by him, the State shall honour the same. Connected Miscellaneous Petitions stand closed.

s/d-  
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1. The Secretary, Highway  
and Smaller Ports Department,  
Fort St. George, Chennai-9.

2. The District Revenue Officer,  
Land Acquisition,  
Outer Ring Road, CMDA,  
Koyambedu, Chennai-92.

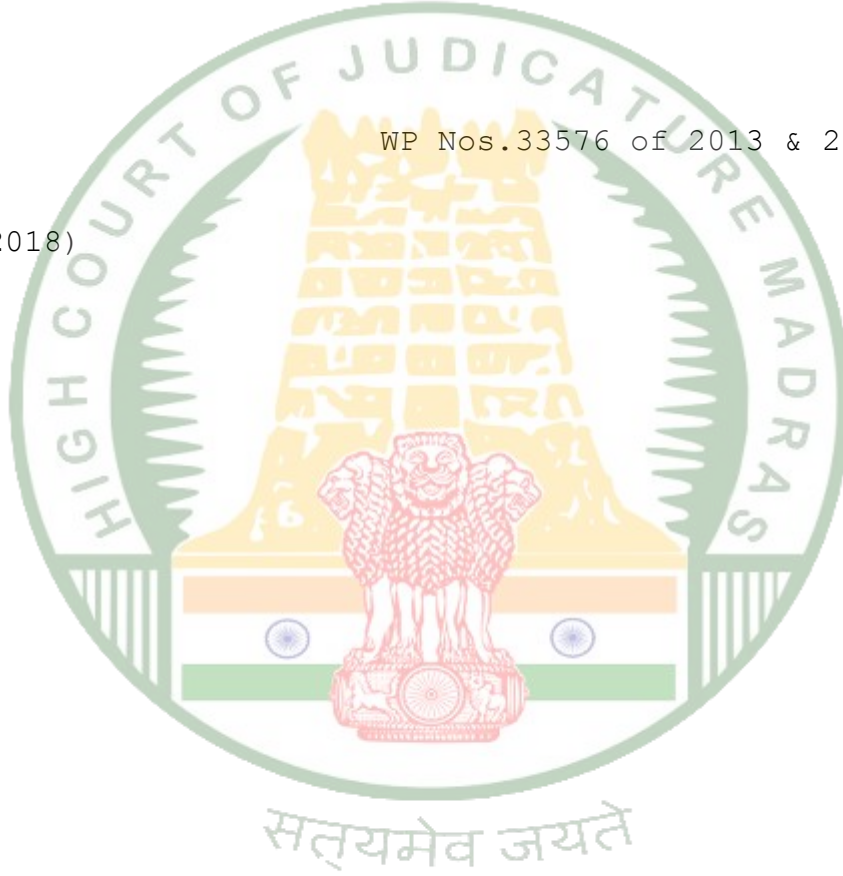
3. The Special Tahsildar (LA),  
Chennai Outer Ring Road Project,  
Thambaram (E), Poonthamalli.

Copy to  
The Director,  
Mediation and Conciliation Center  
High Court, Madras.

+2 Ccs to Mr.D. Srinivasa Raghavan, Advocate sr 23675.  
+1 CC to Mr.N. Subramanian, Advocate sr 23706.  
+1 CC to Mr.D. Saikumaran, Advocate sr 23545.

WP Nos.33576 of 2013 & 27822/2014.

VGII (CO)  
SP(28/03/2018)



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