

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.347, 349 and 350 to 352 of 2019
and

C.M.P.Nos.3437, 3440, 3453, 3454,
3459 to 3463 and 3467 of 2019

G.Krishnaraj .. Appellant in W.A.No.347 of 2019
Lalitha,
W/o.Krishnaraj. .. Appellant in W.A.No.349 of 2019
K.Velusamy .. Appellant in W.A.No.350 of 2019
K.Ethirajan .. Appellant in W.A.No.351 of 2019
K.Ramasundaram .. Appellant in W.A.No.352 of 2019

-vs-

- 1.The Secretary to Government,
Housing and Urban Development,
Fort St. George, Chennai-600 009.
- 2.The District Collector,
Kanchipuram.
- 3.The Special Tahsildar (Land Acquisition),
Mass Rapid Transit System - Phase II Extn.,
Thirumailai Station,
Mylapore, Chennai-600 004.
- 4.The Deputy Chief Engineer-I,
Metropolitan Transport Project (Railway-I)
Southern Railway,
Mylapore, Chennai-600 004. .. Respondents in all W.As.

APPEALS under Clause 15 of Letters Patent to set aside the order dated 21.12.2018 in W.P.Nos.43813, 43809, 43810, 43811 and 43812 of 2016 respectively.

Prayer in W.P.Nos.43809 to 43813/2016:

To call for the entire records in the impugned award No.1/2016 dated 20.9.2016 passed by the 3rd respondent and the consequent intimation letter in Na.Ka.No.2/2011/A dated 20.9.2016 passed by the 3rd respondent quash the same by issue Writs of certiorari or any other appropriate writ, order or direction in the nature of a Writ.

For Petitioner : Mr.D.Shivakumaran
(In all Appeals)

For RR1 to 3 : Mr.P.H.Aravind Pandian
(In all Appeals) Addl. Advocate General
: assisted by
Mr.V.Anandhamoorthy,
Addl. Government Pleader

For Respondent-4 : Mr.P.T.Ramkumar,
(In all Appeals) Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

Heard Mr.D.Shivakumaran, learned counsel for the appellants; Mr.P.H.Aravind Pandiyan, learned Additional Advocate General assisted by Mr.V.Anandhamoorthy, learned Additional Government Pleader for respondents 1 to 3; and Mr.P.T.Ramkumar, learned Standing Counsel for the 4th respondent.

2.These appeals have been filed against the common order passed in a batch of writ petitions, in W.P.Nos.37498 of 2017 and etc., batch dated 21.12.2018.

3.The appellants challenged the award passed by the third respondent, namely, the Special Tahsildar (Land Acquisition), Mass Rapid Transit System - Phase II Extension, Thirumailai Station, Mylapore, Chennai, dated 20.09.2016. The lands owned by the appellants are situated in Adambakkam Village, Alandur Taluk, Kanchipuram District and the Government of Tamil Nadu issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Central Act, 1894") stating that the lands are needed for a public purpose, to wit for the purpose of implementation of Mass Rapid Transit System (MRTS) alignment between Velachery to St.Thomas Mount. The notification states that in exercise of the powers conferred by sub-Section (2) of Section 4 of the Central Act, 1894, the Government authorizes the third respondent, Special Tahsildar

(Land Acquisition), MRTS, to exercise the powers conferred under the said sub-Section.

4. The acquisition proceeded and by proceedings dated 20.09.2016, the third respondent passed an award under Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act 30 of 2013"). Though, the third respondent referred to Section 23 of Act 30 of 2013, the award states that it is an "interim award". Prior to passing the interim award dated 20.09.2016, the third respondent passed an award on 15.09.2014 under the provisions of the Central Act, 1894. This award was challenged by the appellants and others in W.P.Nos.27550 of 2014 and etc., batch, which were partly allowed by common order dated 05.08.2015, quashing the award dated 15.09.2014 passed by the third respondent under the provisions of the Central Act, 1894. In fact, the said award was also titled as an "interim award". The Court further issued directions to the third respondent to follow Section 40(3) of Act 30 of 2013, and tender interim compensation to the appellants/property owners and thereafter, follow the other provisions of Act 30 of 2013 and complete the exercise as expeditiously as possible not later than three months' from the date of receipt of a copy of the Judgment. At the relevant time, the Government had not framed Rules under Act 30 of 2013, though power was conferred under Section 109 of Act 30 of 2013. Therefore, the Court made an observation that the Government shall endeavour to frame Rules and follow the relevant provisions regarding appointment of Administrator, Commissioner for Rehabilitation and Resettlement, Constitution of Rehabilitation and Resettlement Committee, etc. The operative portion of the order reads as follows:

"33. In the result, all the writ petitions are partly allowed and the interim award dated 15.09.2014 passed by the Special Tahsildar (Land Acquisition), MRTS Phase II Extension, Chennai-4 and the notices dated 18.09.2014 are set aside/quashed and the respondents are directed to follow Section 40(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and tender interim compensation to the respective land/property owners and thereafter, follow other Provisions of the new Act and complete the exercise as expeditiously as possible and not later than three months from the date of receipt of a copy of this order. The appropriate Government shall take every endeavour to frame rules and follow the relevant provisions regarding appointment of Administrator, Commissioner for rehabilitation and resettlement, constitution of

Rehabilitation and Resettlement Committee at project level, establishment of National and State Monitoring Committee for rehabilitation and resettlement, as expeditiously as possible to give complete effect to the benevolent provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

5. Accordingly, the Government vide G.O. (Ms).No.152, Housing and Urban Development (UD3(2)) Department, dated 12.12.2015, issued direction for payment of interim compensation in terms of the above directions issued in the above referred order. This is how the interim award dated 20.09.2016 was passed by the third respondent. This award was impugned in the writ petitions filed by the appellants.

6. The main grounds of challenge was that the interim award and the consequential notices issued by the third respondent are improper and opposed to the principles of natural of justice. Further, the third respondent was wrong in making an observation that the land owners have not raised any objection with regard to the details about the land for which they have to be compensated, when particularly, the land owners through their association have given detailed objection immediately after the notice of enquiry was issued. Further, it was contended that the respondents were wrong in taking into consideration the market value of the property for the period from 22.02.2008 to 21.02.2011 to fix the per square feet value and it is opposed to the clarification issued by the Government of India, Department of Land Resources, Ministry of Rural Development dated 26.10.2015, wherein, the Department of Land Resources, Government of India has opined that for calculating the market value under Section 24(1)(a) of Act 30 of 2013, the reference date should be 01.01.2014, the date of commencement of Act 30 of 2013.

7. Further, it was contended that even the guideline value prevailing during the year 2012 was nearly Rs.4,000/- per sq.ft. and the earlier guideline value was taken into consideration while passing the earlier award dated 15.09.2014, which was quashed by the above order fixing Rs.2273/- per sq.ft. and it is not known as to how the third respondent has fixed the value of the land at Rs.1912/- per sq.ft. Further, it was contended that there has been arbitrary exercise of power.

8. It was further contended that apart from tendering 80% of the compensation as determined by the third respondent, the land owners are entitled for an additional 75% of the total compensation as determined under Section 27, where the acquisition proceedings have been initiated under sub-Section (1) of Section 40 of Act 30 of 2013. Further, it was submitted

that in terms of Section 26(2) of Act 30 of 2013, the factors specified in the I Schedule has to be taken into consideration, which was not done. Thus, the appellants faulted the manner in which the interim award was computed.

9.The third respondent in their counter affidavit contended that the award and notice issued by him is legal and proper and principles of natural justice have not been violated. Further, it is stated that in the award enquiry, the land owners were permitted to be represented by their Authorized Representatives, by their Advocates or to express their views by sending the same by Registered Post.

10.After setting out the details regarding the acquisition proceedings and the earlier round of litigation initiated by the appellants, it is submitted that in terms of Explanation I in Section 26, the average sale price in clause (b) of Section 26 shall be determined taking into account of the sale deed or the agreements to sell registered for similar type of area and the village or vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

11.It is further submitted that in order to determine the market value of the lands, which were acquired, the sale deeds which were registered in Adambakkam Village, were gathered from the office of the Sub Registrar, Alandur for the preceding 3 years from 22.02.2008 to 21.02.2011, i.e., the date on which Section 4(1) notification was published in the Central Act, 1984. The sales occurring in the nearest vicinity area as defined by an area of 400 meters radius around the acquisition have been discarded as not being similar land sales for the reasons as shown in the Annexure-I in the Award No.5/2014, dated 15.09.2014. However, this award was quashed by the learned Writ Court.

12.It is further submitted that the value is used as the basis for arriving the prevailing market value of the land under acquisition even though the guideline value under the Stamp Act for the two sets of survey numbers in the current acquisition field are Rs.900/- and Rs.1250/- per sq.ft. and the sales which are not indicative of the actual prevailing market value have been discounted as per Explanation 4 of Section 26 of Act 30 of 2013 for the purpose of calculating market value as shown in Annexure II. Using the above procedure, 15 sales have been identified as sales of similar type of lands in the nearest vicinity of area (400 meters radius) for S.No.28 having guideline value of Rs.900/- per sq.ft. Taking one half of the total number of these sale deeds in which the highest sale price has been mentioned, the average sale price for the survey number works out to Rs.1738/- per sq.ft as shown in the Annexure III

(a). The guideline value for S.No.28 under the Stamp Act is Rs.900/- per sq.ft. Hence, the average sale price of Rs.1738/- per sq.ft. is fixed for S.No.28 which is higher than the value under the Stamp Act. Similarly, for the lands under acquisition in S.Nos.52, 66 & 73 having a guideline value of Rs.1250/- per sq.ft., sales have been taken into account for the sales of similar lands. Taking one half of these sale deeds in which the highest sale price have been mentioned, the average sale price for these survey numbers works out to Rs.1912/- per sq.ft. as shown in Annexure III(b). The value under Stamp Act is Rs.1250/- per sq.ft. Hence, the average sale price of Rs.1912/- per square feet is fixed which is higher than the value under the Stamp Act. It is, therefore, submitted that determination of value is in accordance with Sections 26(a), 26(b) and 26(c) read with explanation of Act 30 of 2013.

13.It is further submitted that the consolidated value per square feet as per the new award works out to Rs.4629/- per sq.ft. for S.No.28 and Rs.5092/- per sq.ft. for S.Nos.52, 66 and 73 as against the earlier value of Rs.3230/- per square feet fixed, which was quashed by the learned Writ Court.

14.With regard to handing over of possession, it is submitted that an extent of 15856 sq.ft. taken over from 26 land owners were already handed over to the Railways and an extent of 12028 sq.ft. from seven land owners are kept ready for handing over possession to the Railways and as per the direction of the Court, 80% of the compensation under Act 30 of 2013 will be paid before taking possession of the lands. Thus, it is submitted that the purpose for invoking the urgency clause has been thwarted for frequent litigation initiated by the appellants and a project of public importance has been stalled.

15.Before the learned Single Bench, there appears to have been an attempt to mediate and settle the matter and to the said effect, an order was passed by the Court on 04.10.2018, which was quoted in paragraphs 1 to 10 in the impugned order and though it appears that high level officers formed a three Member Committee and discussions were held, nothing appears to have fructified in such attempt. Thus, the Writ Court took up the case for consideration on the merits of the matter.

16.The two issues, which were framed for consideration before the Writ Court, were (i) whether the acquisition has lapsed in not passing the award within one year under Act 30 of 2013; and (ii) whether, the petitioners, except the petitioners in W.P.Nos.43809 to 43813 of 2016, the appellants herein, were denied fair right of hearing before passing the award.

17.To be noted that insofar as the appellants before us are concerned, question no.2 does not arise and the only issue was

whether the acquisition has lapsed and whether the amount of compensation, which was fixed was fair and reasonable. The reasons assigned by the learned Writ Court to hold that the acquisition has not lapsed is perfectly legal and valid. As rightly pointed out by the learned Writ Court, a conjoint reading of Section 24 along with Section 114 of Act 30 of 2013 makes it evident that the Parliament intended to keep alive only the right to have an award passed under Act 30 of 2013 in cases falling under Section 24. It does not stipulate a time limit within which an award in such cases should be passed and therefore, the learned Writ Court was right in holding that the period of two years stipulated in Section 11-A of the Central Act, 1894 cannot be read into the provisions of Act 30 of 2013.

18. We find that there is absolutely no error in the finding rendered by the learned Writ Court and consequently, the appellants have to fail. Thus, for the above reasons, we are of the clear view that the learned Writ Court was fully justified in dismissing the writ petitions filed by the appellants. It is not as if the appellants' rights have been foreclosed. The Court has specifically observed that the appellants are free to pursue the remedy available to them under Section 64 of Act 30 of 2013.

19. The learned Additional Advocate General would submit that the entire project is funded by the Railways and the Government of Tamil Nadu is only a requisitioning body and a small stretch of about 400 meters is required to be connected and if it is connected, the Velachery to St. Thomas Mount section will be fully serviced by the MRTS and there is also a move to link MRTS with Chennai Metro Rail. Therefore, it is submitted that the project is of at most importance and it has been unnecessarily dragged into litigation and the general public are put to irreparable hardship.

20. Mr. D. Shivakumaran, learned counsel for the appellants on the other hand would submit that the appellants are land owners; the respondents are exercising their right of compulsory acquisition of land, exercising their right of eminent domain, but such exercise should be in accordance with law; the land owners are entitled for just, fair and reasonable compensation; the compensation fixed in the interim award under Act 30 of 2013 is far below the compensation fixed under the Central Act, 1894, which award was quashed by the learned Writ Court; the opinion given by the Central Government with regard to the reference date for calculation of market value as on 01.01.2014 has been ignored by the third respondent; the appellants are not big pattadhars, but have purchased the property from their meagre earnings or inherited the property from their ancestors, who have toiled to acquire the property. Therefore, it is submitted that the appellants are entitled to agitate their rights in the manner known to law, which alone they have done and the

litigation cannot be termed to be either "unnecessary" or "frivolous".

21.It is further submitted that they are the appellants, who succeeded in the first round of litigation and the 3rd respondent accepted the order and passed an interim award under the provisions of Act 30 of 2013. The interim award under Act 30 of 2013 cannot be lesser than the award under the Central Act, 1894. If such interpretation is accepted, the purpose of enacting Act 30 of 2013 would be defeated.

22.Though the learned Writ Court had made an observation that the appellants are free to pursue the remedy available under Section 64 of Act 30 of 2013, we are of the opinion that certain specific directions be issued so that the fair and just compensation is computed, paid to the land owners and if they are still aggrieved, they should be permitted to pursue the remedy by seeking for a reference.

23.The learned counsel for the appellants requested the Court to fix specific time lines within which the authority should act, the appellants should file claims and when the Reference Court has to pass orders, etc.

24.The learned Additional Advocate General is also agreeable for time lines to be fixed considering the importance of the project and the plight of the land losers. The State Government did not frame Rules exercising the powers conferred under Section 109 of Act 30 of 2013.

25.As mentioned by us earlier, the Writ Court in the earlier round of litigation in W.P.Nos.27552 of 2014 and etc., batch, dated 05.08.2015, made a pointed observation to the State Government to frame Rules and constitute various authorities under Act 30 of 2013. Ultimately, the Government vide G.O.Ms.No.298, Revenue and Disaster Management Department dated 20.09.2017 notified the Rules, viz., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2017. The said Rules came into force on 21.09.2017. Now the Rules having been notified, there can be no difficulty for the land owners to agitate their claims and for the 3rd respondent to pass an award. For all the above reasons, the appeals are liable to be dismissed.

26.Though the lands fall within the jurisdiction of Adambakkam and the Revenue jurisdiction falls within Kanchipuram District, since the limits of Chennai has expanded and Adambakkam falls within the expanded limits, the powers exercisable by the District Collector, Kanchipuram are to be exercised by the District Collector, Chennai and this is why

even during the mediation, the District Collector, Chennai was a party to the mediation proceedings.

27. We had referred to the clarification/opinion given by the Department of Land Resources, Government of India dated 26.10.2015, as to what would be the date for calculation of market value under Section 24(1)(a) of Act 30 of 2013 and it was clarified that it shall be on 01.01.2014, the commencement of Act 30 of 2013.

28. Very recently, an identical issue came up for consideration before the Hon'ble Supreme Court in *Hori Lal vs. State of Uttar Pradesh & Ors.*, [Civil Appeal No.1462 of 2019: dated 05.02.2019]. In the said case also, as in the cases on hand, the power under the Central Act, 1894 was invoked for acquiring the appellant's land for construction of Varanasi Bye-Pass and urgency clause under Section 17 of the Central Act, 1894 was invoked and a declaration under Section 6 of the Central Act, 1894 was issued and the land was acquired. The Central Act, 1894 was repealed on 01.01.2014 and replaced by Act 30 of 2013, which came into effect on 01.01.2014. The Land Acquisition Officer passed an award on 30.06.2016, i.e., after the repeal of the Central Act, 1894. The land owner challenged the entire acquisition proceedings including the passing of the award dated 30.06.2016 on the ground that the acquisition proceedings stood lapsed consequent on the repeal of the Central Act, 1894. However, when the writ petition was heard by the High Court of Allahabad, the writ petitioner gave up the challenge to the acquisition proceedings and confined the challenge only to the matter in which the determination of compensation was done by the Land Acquisition Officer and, in consequence, to its quantum.

29. The State contended before the High Court of Allahabad that in terms of Section 113 of Act 30 of 2013, compensation payable to the appellant therein would be determined on the basis of market value, as it was prevalent on 01.01.2014. The writ petition was dismissed with liberty to the appellant to claim reference to the competent authority for determination of the compensation under Act 30 of 2013 in accordance with law. Aggrieved over which, the appellant approached the Hon'ble Supreme Court. The Hon'ble Supreme Court pointed out that the State having taken a stand that the compensation will be determined keeping in view 01.01.2014 to be the date as the basis, the appellant should have been satisfied with the stand. Consequently, the contention of the appellant therein, that the date for determining the compensation should be the date on which the Land Acquisition Officer passed the award, was rejected. Ultimately, the Court held that the appellant/land owner would be entitled to get the compensation re-determined by the competent authority in accordance with the procedure

prescribed under Act 30 of 2013.

30. In the above decision, though the land owner was ultimately unsuccessful before the Hon'ble Supreme Court, yet the important question, which was decided by the Hon'ble Supreme Court is with regard to the reference date for calculating the market value under Section 24(1)(a) of Act 30 of 2013 and it was held that it shall be 01.01.2014. This date should be the date to be fixed by the 3rd respondent while passing the final award. Further, as observed by the Hon'ble Supreme Court, the compensation should be re-determined by the Special Tahsildar (Land Acquisition), MRTS in accordance with the procedure prescribed under Act 30 of 2013.

31. In the light of the above, while confirming the order passed in the writ petitions, on the grounds raised by the appellants before us and dismissing the appeals, we issue the following directions:-

(i) The 3rd respondent, viz., the Special Tahsildar (Land Acquisition) MRTS, shall issue individual notices to the appellants in terms of Section 21(2) of Act 30 of 2013, to attend the award enquiry for passing the final award within a period of four weeks' from the date of receipt of a copy of this judgment;

(ii) In the enquiry to be conducted by the Special Tahsildar (Land Acquisition), MRTS, on the date fixed, the appellants should be permitted to be represented by their Authorized Representatives as done earlier and after considering all the materials that may be placed before, by the appellants, the Special Tahsildar shall pass final awards within a period of four weeks' from the date on which the personal enquiry is concluded;

(iii) The Special Tahsildar shall communicate the copy of the award so passed to the appellants within a period of two weeks' from the date on which the award is passed and the communication should be either personally handed over or sent by Registered Post with Acknowledgement Due;

(iv) The appellants are granted six weeks' time from the date of receipt of the award to file a representation before the Collector, Chennai, requesting for reference to the competent Court under Section 64 of Act 30 of 2013;

(v) The District Collector, Chennai, on receipt of such representation, shall refer the matter to the competent Court, viz., the Principal District Judge, City Civil Court, Chennai, within a period of two weeks' from the date of submission of the representation by the appellants;

(vi) The issue to be decided by the Reference Court being narrow, it would be advisable for the appellants to reduce the number of witnesses so that the trial of the proceedings can be concluded at the earliest.

(vii) It goes without saying that the Special Tahsildar (Land Acquisition), MRTS, and the respondents should extend the fullest cooperation to the Reference Court for an early disposal of the claim for enhanced compensation.

(viii) If the parties cooperate and the oral and documentary evidence are marked on time, the Reference Court is requested to conclude the proceedings and pass orders as expeditiously as possible preferably within a period of eight weeks' from the date on which the trial is concluded.

32.The learned Additional Advocate General referring to the counter affidavit filed in the writ petitions during January, 2017 submitted that an extent of 15856 sq.ft. of land from 26 land owners were already handed over to the Railways and an extent of 12028 sq.ft. from seven land owners are kept ready for handing over.

33.It appears that on account of certain interim orders passed in the writ petitions filed by the appellants, the possession could not be taken over, though 80% of the compensation as fixed by the Land Acquisition Officer has been received by the land owners without prejudice to their rights.

34.Considering the fact that we have confirmed the order passed by the learned Single Bench and issued certain directions which will enure in favour of the appellants, we direct that as soon as the compensation is determined and final award is passed by the competent authority, viz., the Special Tahsildar (Land Acquisition), MRTS and the amount is disbursed to the appellants, the appellants shall vacate and surrender vacant possession of the property, which is subject matter of acquisition.

35.It is made clear that the payment of this compensation to the appellants is without prejudice to their rights to seek reference for enhanced compensation. On payment of award, the appellants shall be granted four weeks' time to vacate and hand over vacant possession.

36.For the above reasons, these appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

abr/vkr

To

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

2.The District Collector,
Kanchipuram.

3.The Special Tahsildar (Land Acquisition),
Mass Rapid Transit System - Phase II Extn.,
Thirumailai Station, Mylapore, Chennai-600 004.

4.The Deputy Chief Engineer-I,
Metropolitan Transport Project (Railway-I)
Southern Railway,
Mylapore, Chennai-600 004.

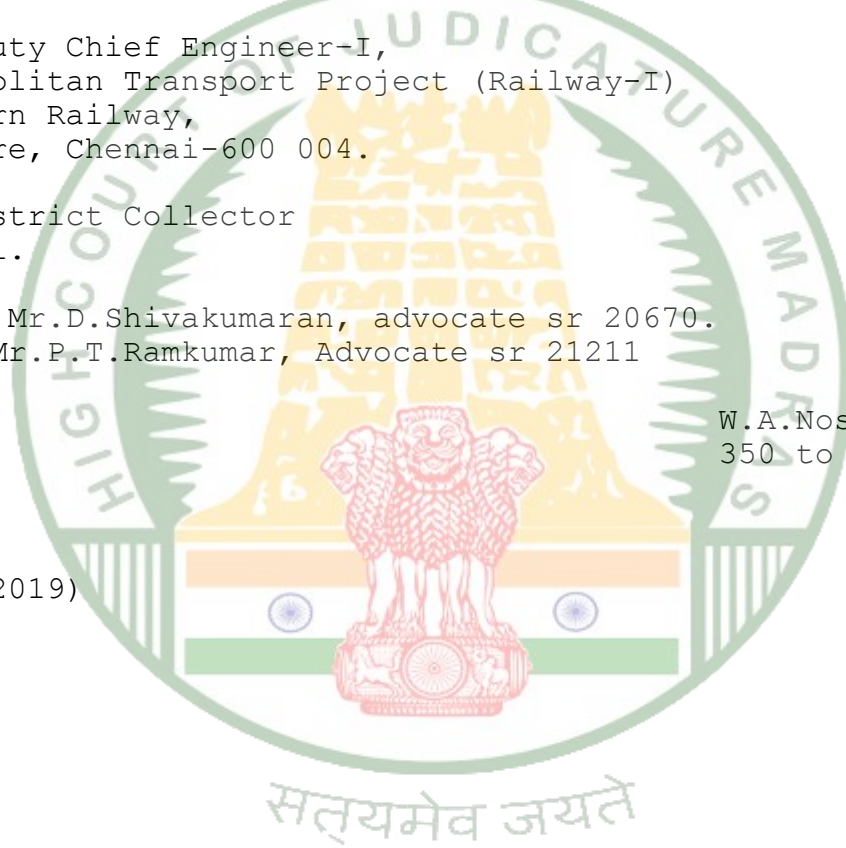
5. The District Collector
Chennai.

+5 Ccs to Mr.D.Shivakumaran, advocate sr 20670.

+1 CC to Mr.P.T.Ramkumar, Advocate sr 21211

W.A.Nos.347, 349 &
350 to 352 of 2019

AK(CO)
SP(08/04/2019)



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