

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
14.12.2018	080419

Dated : 08.04.2019

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

and

The Hon'ble Mrs. Justice **V.BHAVANI SUBBAROYAN**

Writ Petition Nos.16630, 16146, 16961, 19063, 19385, 20014, 20194, 20625 to 20627, 20647, 20764, 20969, 21242, 22334 & 22371 of 2018 & CrI.O.P.No.22714 of 2018 and W.M.P.Nos.19202, 19829, 19830, 20201, 20202, 22786, 23432, 23433, 24238 to 24246, 24268, 24619, 24907, 24908, 26170, 26203, 27143, 38839 & 38842 to 38844 of 2018

W.P.No.16630 of 2018:-

P.V.Krishnamoorthy

.. Petitioner

-VS-

- 1.The Government of India,
Rep., by the Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi -110001.
- 2.The Government of India,
Rep., by its Director,
Impact Assessment Division,
Ministry of Environment, Forest and Climate Change,
Indira Parayavaran Bhawan,
3rd Floor, Vayu Wing, Jor Bagh Road,
Aliganj, New Delhi - 110003.

3.The District Revenue Officer,
Dharmapuri District.

4.The Project Director,
Project Implementation Unit,
SRI Towers, 3rd Floor,
DP-34(SP) Industrial Estate,
Guindy, Chennai – 600 032.

.. Respondents

Prayer:- PETITION under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the 1st respondent's S.O.2063(E) dated 23rd May, 2018 under sub-section (1) of Section 3A of the National Highways Act, 1956 (48 of 1956) published in the Gazette of India Extraordinary No.1868, dated 24th May, 2018 and 3rd respondent's consequent notification in Na.Ka.No.4136/2018-u, dated 29.05.2018 in Daily Thanthi dated 31.05.2018 and quash the same.

For Petitioners

(i) In W.P.Nos.16146, 19063 and 20194 of 2018:-
Mr.M.L.Ravi,
For Mr.Santhosh Nagarajan
and Mr.T.Sivagnanasambandan

(ii) In W.P.Nos.22371, 20647 and 22334 of 2018:-
Mr.T.Mohan
For Mr.K.Balu,
Mr.M.R.Jothimanian
and Mr.M.R.Elavarasan

(iii) In W.P.No.20014 of 2018:-

Mr.N.L.Raja, Senior Counsel
assisted by Mr.K.Balu,
Mr.M.R.Jothimanian
and Mr.M.R.Elavarasan

(iv) In W.P.Nos.20625 to 20627 of 2018:-

M/s.D.Nagasaila assisted by Ms.S.Tanvi

(v) In W.P.No.16630 of 2018:-

Mr.K.Sakthivel

(vi) In W.P.No.16961 of 2018:-

Mr.V.Balu

(vii) In W.P.No.19385 of 2018:-

Mr.R.Thiyagarajan, Senior Counsel
assisted by Mr.P.Gurusamy

(viii) In W.P.No.20674 of 2018:-

Mr.A.Nagarathinam

(ix) In W.P.No.20969 of 2018:-

Mr.C.Kanagaraj

(x) In W.P.No.21242 of 2018:-

Mr.P.Raja
and Mr.Kabilan Manoharan

(xi) In W.P.No.22714 of 2018:-

M/s.A.Rajeswari Karthikeyan

For Respondents:

(i) For RR 1 to 3 and 5 in W.P.Nos.22371 and 20647 of 2018
R4 in W.P.No.16630, 19063 and 16961 of 2018

For R2 in W.P.No.20194 of 2018

For R1 in W.P.Nos.20625 to 20627 of 2018

For RR1, 2 and 5 in W.P.No.24764 of 2018

For RR1, 2 and 4 in W.P.No.20969 of 2018

For RR1, 2 and 3 in W.P.No.21242 of 2018

For RR1 to 3 and 5 in W.P.No.22334 of 2018:-

Mr.G.Rajagopalan, Additional Solicitor General of India
 assisted by Mr.G.Karthikeyan, Asst. Solicitor General of India

(ii) For R4 in W.P.Nos.20625 to 20627 of 2018
and for R7 in W.P.No.21242 of 2018

Mr.T.V.Ramanujam, Senior Counsel
 assisted by Mr.S.Akshay Ringe,
 Mr.M.Vivekanandan
 and Mr.R.Murali

(iii) For R3 in W.P.No.16146 of 2018
For RR4 and 7 in W.P.No.22371 of 2018
For R3 in W.P.No.16630 of 2018
For RR 5 to 9 in W.P.No.16961 of 2018
For RR1 to 3 and 5 to 9 in W.P.No.19063 of 2018
For R8 in W.P.No.19385 of 2018
For R1 in W.P.No.20194 of 2018
For RR2 to 4 in W.P.Nos.20625 to 20627 of 2018
For RR4 and 7 in W.P.No.20647 of 2018

For RR3, 4, 6 to 15 in W.P.No.20969 of 2018

For RR4 to 6 in W.P.No.21242 of 2018

For RR4 and 7 in W.P.No.22334 of 2018

Mr.Vijay Narayan, Advocate General
 assisted by Mr.V.Jaya Prakash Narayanan, Govt. Pleader,
 and Mr.C.Thirumaran, Special Govt. Pleader

(iv) For R6 in W.P.Nos.22371, 22334 and 20647 of 2018
R8 in W.P.No.20014 of 2018
M/s.G.Hema, Spl. PP

(v) For R3 in W.P.No.20969 of 2018:-
M/s.R.Maheswari
and Mr.N.Vijayakumar

(vi) In W.P.No.22714 of 2018:-
M/s.Krithika Kamal, Government Advocate (Crl. Side)

(vii) For RR1 and 2 in W.P.No.16630 of 2018:-
Mr.Venkata Swamy Babu, Senior Panel Counsel

COMMON ORDER

T.S.SIVAGNANAM,J.

In this batch of Writ Petitions, the challenge is to the notification issued under the provisions of the National Highways Act, 1956, (hereinafter referred to as the 'Act'), proposing to acquire lands for the Salem-Chennai Eight Lane Highway Green Field Project. The project is part of the 'Bharatmala Pariyojana', a project conceived by the Central Government. The project is termed as "Green Field Project", as it is a new road to be formed, while widening of existing highway is termed as 'Brown Field Project'.

2. The petitioners before us can be categorised into two, namely, those whose lands are sought to be acquired for the proposed project and public interest litigants who are opposing the land acquisition proceedings. The authorised officer for the project is the District Revenue Officer of the concerned District through which the proposed project is to be implemented. The authorised officer/s issued notification under Section 3A(1) of the Act stating that the Central Government is satisfied that for a public purpose the lands owned by the petitioners are required for development of a Green Field Highway Project and accordingly, declared its intention to acquire the lands of the petitioners/land owners.

3. This notification has been challenged by the petitioners, whose lands are sought to be acquired as well as the public interest litigants. The objections raised by the persons, whose lands are sought to be acquired could be summarised as follows:-

It is submitted that the Government of India has proposed the subject project at an estimated cost of about Rs.10,000 crores to develop a 276kms highway connecting Chennai and Salem. There are three highways between Chennai and Salem i.e., NH48 and NE2 passing through Chennai, Kancheepuram, Vellore, Krishnagiri,

Dharmapuri and Salem with the length of 352.70kms with 4/6 Lane configuration. The second route being NH48 and SH18 (New NH179A) passing through the same districts with the length of 331.89kms with 2/4 Lane configuration and the third route NH32, NH132, NH38, NH79 and NE-2 passing through Chennai, Villupuram and Salem Districts with the length of 334.28kms with 2/4Lane configuration. The petitioners would contend that the bottleneck lies between Chennai to Vandalur and Chennai to Kancheepuram in these three routes and if the said Section is widened, the same shall reduce the travelling time not only between Chennai and Salem, but also Chennai to other important cities and towns in Tamil Nadu and the neighbouring States. The petitioners would contend that the proposed project is in noway going to ease the congestion as the travel from Chennai outer ring road to end of Salem bye-pass by all the existing roads would take the same travel time and the newly proposed project highway will reduce the distance only by 40kms without taking into account distance from Chennai to Vandalur bye-pass and Salem town to Salem bye-pass and if these stretches are included, the distance is more or less as that of the other roads. It is further contended that the proposed route of the project highway passes through Forest land, hilly areas, fertile agriculture lands and

residential areas and therefore, the land owners and the public of the respective areas and the environmental activist have raised strong objections to the proposed project highway.

4. The petitioners would state that the Project Director of the National Highways Authority of India (NHAI) submitted terms of reference to the Ministry of Environment and Forest and Climate Change (MoEF) on 19.04.2018, the Expert Appraisal Committee for project of MoEF in its 189th meeting held on 07.03.2018, considered the terms of reference relating to the proposed project and recommended the Environmental Impact Assessment with project specific and the general terms of reference. While environmental clearance was pending, the Central Government authorised the competent authorities who are the District Revenue Officers of the Districts to initiate action under the provisions of the Act for acquiring the lands and accordingly notification under Section 3A(1) of the Act was published in the Gazette of India as well as in the dailies notifying the lands owned by the petitioners are proposed to be acquired for the subject project. The landowners filed their objection on 04.06.2018 in response to the paper publication, dated 31.05.2018 and they would state that the Police personnel did not

allow the petitioners in W.P.No.16630 of 2018 and other landowners/objectors to enter Dharmapuri town and the competent authority did not conduct any enquiry on 19.06.2018. Subsequently, the MoEF vide letter dated 08.06.2018, issued the terms of reference, which clearly shows that it does not mean to grant environmental clearance for the proposed project. Subsequently, the MoEF issued a revised notification thereby the length of the project stood reduced. Thus, the petitioners' contention is that without prior environmental clearance no activity can take place including land acquisition and if done, it will be against public interest. The petitioners would state that until the Central Government obtains the environmental clearance for the proposed project, the question of being satisfied that the lands are required for the public purpose would not arise and the same is contrary to the provisions of the Environmental Protection Act, 1986. However, contrary to this position, the land acquisition proceedings were initiated which necessitated the petitioners to approach this Court by filing the Writ Petitions challenging the notification issued under Section 3A(1) of the Act.

5. It is further submitted that the proposed project if allowed to be implemented without prior environmental clearance, it would be against the principles of sustainable development and would violate the provisions of Article 19, 47, 48A and 51A of the Constitution of India.

6. The other Writ Petitioners, whose lands are to be acquired submitted that the Collector of Salem made public announcement in the media by convening press meeting and stated that the Government will provide suitable compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as the 'Act 30 of 2013'), however the landowners will be deprived of their fertile agricultural lands and their livelihood would be affected. In order to justify their stand that there is no need for the proposed project highway, the details and statistics regarding the Passenger Car Units (PCUs) in the existing three highways were highlighted. It is submitted that there is a hidden agenda for the proposed project owing to rich iron ore deposits in Kanjamalai hills, bauxite deposits in Kalvarayon hills and platinum deposits in the hills in Namakkal district. The petitioners

would further state that they reliably understand that there are more than 2 lakh MTs of rich deposits of iron, bauxite, platinum in Salem, Namakkal and Tiruvannamalai Districts. Further, a company under the name and style M/s.J.S.W. Steels Ltd., in Mecheri in Salem District, are stated to have acquired about 4000 acres of land in and around Salem Steel Plant in order to exploit the available natural resources like iron ore, bauxite and platinum and the purpose of the proposed project is not for a public purpose, but with a hidden agenda. Further, it is submitted that identical Eight Lane Express Way project was to be implemented in the State of Kerala with an investment of Rs.26000 crores, has been opposed by public and the project is under way because impact assessment is required to be done prior to implementation of the project. Thus, it is contended that before implementing the proposed project, NHAI has to conduct a survey of Impact Assessment in a phased manner by ascertaining the road essentiality and this would require a minimum of six months period after which only other steps can be taken. Further, it is submitted that the project which was originally conceived by the Government of India scheme was between Chennai and Madurai but however, for reasons best known, it has been changed to Salem to Chennai. The impact of the proposed

project on the Forest land, water bodies, wildlife, flora and fauna were elaborately set out by the petitioners. Thus, it is the contention that only during the course of preparing the environmental impact assessment report as per the guidelines issued in the terms of reference, it can be ascertained as to whether the project could be implemented or not. Public hearing is a pre-requisite and it should precede any step that may be taken under the provisions of the Act. It is further submitted that from the counter affidavit filed by the NHAI, it is clear that the notification originally issued stands modified and consequently, the draft feasibility report prepared by the consultant has to be eschewed and if at all the Government decides to proceed it can do so only by initiating the process afresh from its inception. Further, by referring to portions of the draft feasibility report, it is submitted that the report has been prepared in great haste which is evident from the glaring errors which are apparent on the face of the report, such as, there is a reference to a road project in China, there is a reference to the terms of reference pertaining to a project in Bangalore, these would go to show that there has been no due application of mind by the consultant while preparing a draft feasibility report. Further, the consultant did not conduct a survey of the existing roads, there has

been no comparative cost or benefit analysis done. The Indian Highway Capacity Manual lays down guidelines which appear to have been ignored while preparing the draft feasibility report. Furthermore, the right of way has been reduced in non-Forest areas as well as Forest areas and consequently, the scope of the project stood totally amended and the respondents cannot proceed in the manner, they propose to do. Further, the environmental clearance notification dated 14.09.2006, uses the word "prior" which shall mean that prior approval is mandatory and failure to obtain prior approval will result in serious and disastrous consequences.

7. The public interest litigants in the challenge to the acquisition proceedings would contend that in the absence of an Environmental clearance, Forest clearance and final approval by the NHAI, the project is violative of Articles 14, 19 & 21 of the Constitution of India. It is submitted that the proposed project highway is still in the planning stages, the detailed project report including the environmental impact assessment is yet to be prepared and collection of data has commenced and therefore, to acquire vast tracks of land on the basis of unapproved alignment is arbitrary and shows complete non-application of mind on the part of

the official respondents. The notification issued under Section 3A(1) of the Act is not only arbitrary, but pre-mature, since the proposed alignment is yet to be approved. The action of the official respondents in proceeding with the acquisition proceedings has lead to failure of the constitutional duties cast upon them under Article 51A, which mandates them to protect and preserve environment. Further, as per the terms of reference issued by MoEF, dated 08.06.2018, the environmental impact assessment report should provide details of an alternate alignment from the proposed alignment and there is a very realistic chance that the proposed alignment on the basis of which the acquisition has commenced will be altered drastically.

8. The Environmental Impact Assessment Manual, 2010 directs that after identifying the transportation problem and all means of addressing such problems should be considered and only if it is determined that the only option is a new road, then they issue design to form the same and what would be its design, alignment, causing least damage to the environment and the local people. The report prepared by the consultant M/s.Feedback Infra Pvt., Ltd., contains plagiarized content from other reports, which is evident

from the fact, that it states that this project would benefit the woman of XI'AN a province of China and reference to how HIV prevention action was taken both of which are unconnected to the subject highway project. Thus, the feasibility report prepared by the consultant for Rs.10000 crores project was done in a grossly negligent manner which has been accepted by the NHAI, which shows complete non-application of mind. It is further submitted that in the absence of environmental impact assessment and social impact assessment, the authorities concerned would have no clear idea as to how to visualise likely environmental impact that the project would entail. The impugned acquisition will impact the rights of the landowners even before the environmental assessment is done. The terms of reference dated 08.06.2018, directs to reanalyse options of possible routes in respect of their suitability from environmental point of view; realignment from Chengam to Salem to avoid Kalvarayan hills and assessment of proposed road alignment on wet lands including tanks and reservoirs along the alignment and its mitigation strategy. By referring to this document, it is contended that alignment proposed by the NHAI has not been approved and is liable to change. The NHAI issued a request for proposal dated September 2017 for consultancy services

for preparation of DPR for development of economic corridors, inter corridors, feeder routes and national corridors to improve the efficiency of freight movement in India under Bharatmala Priyोजना (Lot No.6). In the said lot, the corridors which were notified were Chennai-Madurai NH132 NH32, NH38, Mumbai-Kanyakumari NH66 and Coimbatore-Trichy-Tanjore NH83. Thus, it is contended when the consultant was appointed, the proposed highway project was not even considered as a viable proposal and there is no explanation as to why the Chennai-Madurai Highway proposal was dropped and replaced by the proposed highway project. As per the scope of services for the consultant would consist of basically eight stages namely, inception, feasibility, land acquisition and clearances, detailed project report, technical schedules, land acquisition stage-2 and project clearances, land acquisition stage-3, award and determination of compensation and land acquisition stages-4 and taking over possession. Out of the above stages, stages 3, 5 & 6 are to be done simultaneously with stages 2 & 4 i.e., land acquisition and bids will be simultaneous with the statutory clearances of the project. It is submitted that the condition imposed by the NHAI is arbitrary and renders stages 2 & 4 as a mere paper work, if the project commences even before its feasibility is

established and clearances have been obtained. Therefore, assuming the project can be implemented, the land acquisition process can commence only after completion of stage 4 and any other interpretation would render the process of giving clearances meaningless. Further, it is submitted that in exercise of the powers conferred on the Central Government under the Environment Protection Act, 1986, the Environment Impact Assessment Notification 2016, was issued. This notification details the different types of project that would need to obtain environmental clearance prior to commencing the project. Regulation No.2 of the notification provides that prior environmental clearances is required for all projects provided in the schedule to the notification. Item No.7(f) of the schedule deals with highways and it states that if a new highway is being constructed when such a project is classified as category 'A' project. Regulation 4 states that there are two kinds of projects, category 'A' project which need environmental clearances from the Central Government and category B project which come within the purview of the respective States. Therefore, it is submitted that a new highway project needs to receive prior environmental approval from the Central Government before commencing construction work. It is further submitted that as per

EIA notification, dated 14.09.2006, there are four stages to the prior environmental clearances for new projects, namely, (1) screening (2) scoping (3) public consultation and (4) appraisal. The stage of screening is only required for category 'B' project and does not apply to category 'A' project. Thus, for the proposed project highway, the procedure for obtaining environmental impact assessment clearance commences with the process of scoping followed by public consultation and ultimately approval. The procedure for obtaining environmental clearance is to submit an application in form No.1 and this application is stated to have been submitted by the NHAI on 23.04.2018. In the said application, it has been stated that Forest clearance has to be obtained and the application for the same will be made and the area in the Forest land is yet to be finalised. Further the exact extent of the agriculture land has not been provided by the NHAI, but they would vaguely commit that the agricultural land is required without specifying the length, the extent, they intend to acquire. After referring to the various steps, which are mandated as per the procedure, it is submitted that the facts clearly show that the alignment provided in the draft feasibility report is not final and part of the mandatory requirement of the terms of reference is to

explore all alternatives including the possibility of not having the project altogether.

9. It is further submitted that upon finalisation of the terms of reference, the project proponent, NHAI has to collect data for EIA report on the basis of finalising the terms of reference. The said EIA report should contain detailed analysis of all alternatives including alternate transport option, alternate sites or alignments etc. Once a summary of EIA report is available, the next important step is conducting public consultation, which is a very important step and not an empty formality and it is indispensable. In terms of condition XXVI of the terms of reference mandates a social impact assessment to be conducted. Further, it is contended that the public consultation allow the authorities to gauge, the acceptability of the project and verification of EIA details and without such public consultation, a complete assessment is not plausible. There are two parts to the public consultation, the first being a public hearing at the site or in close proximity, district-wise, to determine the concerns of the local people. The second is when written responses are received from the concerned persons, who have a plausible stake in the environmental aspect of the project, a public hearing

must be conducted by the State Pollution Control Board or any other public agency or authority and to complete the same within 45 days. The draft EIA report and the summary EIA report have to be made available by NHA I in local language and they have to be widely publicized and made known to the local people, so that they can take an informed decision during public consultation. The entire proceedings are to be videographed and the officials of the NHA I have to be present at the venue and present the details of the project and answer the queries raised in the hearing. The entire proceedings are to be recorded in writing and the minutes have to be read out and only after the public agree to the recorded minutes, it can be signed by the relevant authorities of the Pollution Control Board. For the purpose of submission of objections, the authority should upload the details of the project including the summary EIA report and connected documents within seven days from the receipt of a request for public consultation. Once views from the public consultation and written views have been received, the NHA I has to address all the environmental concerns raised and make appropriate changes to the draft EIA report or submit a supplemental report addressing the issues. The EAC will appraise the project on the basis of the findings and the data collected and presented in the EIA

report including the concerns raised during public consultation. The NHAI could be asked to be present and provide clarification and the appraisal will have to be completed within 60 days from the receipt of the final EIA report. Thus, when an environmental clearance is provided at the end of the procedure, it would have been a fair appraisal of the merits of the project and the environmental harm cost. It is submitted that the impugned project highway has crossed the first stage of this project i.e., scoping and newspaper reports indicate that the NHAI through the competent authority has begun to collect the required information from EIA report. Therefore, it is clear that the alignment is still subject to change and the expenditure of acquiring lands for an unapproved alignment shows complete non-application of mind. It is further submitted that after obtaining environmental clearance, NHAI has to obtain Forest clearances under the Forest Conservation Act, for which application has to be submitted in form 'A', wherein NHAI has to provide a detailed justification as to why the project has to pass through Forest along with a purpose wise breakup of the total land required. Therefore, it is submitted that the Forest clearance has to be obtained in addition to environmental clearance and both are to be compulsorily obtained prior to commencing work. Therefore, it

is submitted that the acquisition of lands prior to forest clearance being provided for an alignment, that has not been approved shows complete non-application of mind. To implement the project highway, it is submitted that 6400 trees are to be cut without providing any data as to how they have determined this number and the assessment of 6400 trees is glaringly low and it would be much more. Further, it is submitted that the consultant, who has been appointed by NHAI, has been debarred by the World Bank and it is not clear as to how NHAI continues to utilise the services of the consultant.

10. Elaborate reference was made to the Environmental Impact Assessment Guidance Manual for Highway (2010) and the factors mentioned therein are to be considered at the stage of determining the project itself and failure to adhere to the same renders the action of the respondents as being wholly arbitrary. Further, the damage that may be caused to the flora and fauna were highlighted how endangered species are likely to become extinct and there has been no attempt to assess these aspects. It is further submitted that the original proposal was for widening of six lane Chennai-Madurai NH132 between Tindivanam and Trichy for a

length of 205kms. However, for reasons best known to the respondents, the proposal for road widening was changed to Chennai-Tiruvannamalai-Karur-Salem Green Field Highway. To this proposal, two additional proposals were included namely, Salem bye-pass of 22kms and 3 spurs on Chennai-Salem highway of 51kms. The respondents, instead of proceeding with the original proposal of widening the existing 6-lane highway, have opted for a Green Field Eight Lane Highway. The justification for the same is said to facilitate a fully access controlled highway and to eliminate bottlenecks which is existent in the present corridors and to reduce travel time between Salem and Chennai. The petitioner would contend that the draft feasibility report only superficially deals with comparative merits and demerits of the existing three roads and on a comparison of the merits and demerits, it is clear that there is no substantial merit in the proposed Green Field Salem Highway and there is no need for a completely access controlled corridor. The Green Field Highway requires acquisition of 2913 hectares of private land including vast tracks of agricultural lands. It will have to cut across Forest lands several rivers, water bodies, permanently altering the drainage pattern along with the proposed highway, affecting ground water level and killing the agriculture on the lands

along the highway. It will isolate smaller towns and villages along its proposed alignment and the project highway is no benefit to the common man and there are no industry along the proposed highway to be of any economic significance. A total of 854 villages fall along the express way alignment and since there is no free access to the proposed project highway, the residents of these villages will be barricaded by the proposed highway and will be put to great hardship as their movement will be curtailed. The draft feasibility report is bereft of any details with regard to why the expansion of the existing roads is not viable except stating that the existing roads are very congested and widening/expansion will lead to many socio-economic issues. The reasons assigned by the consultant are absolutely vague and speculative with no concrete facts or analysis provided anywhere in the report. The rigour of analysis that is expected by the NHA Manual, the EIA Manual for the Highways is conspicuously absent throughout the report. The report prepared by the consultant has been done in a casual manner and equally accepted in a casual manner. The incomplete data and information mentioned in the report has been accepted in a casual manner by the MoEF, which is the basis for issue of the final terms of reference. Further, it is submitted that there is a lack of clarity about the

source of funding for the project and despite the same, the respondents are going ahead with the acquisition of lands and in all probability, there are no funds to pay the necessary compensation. Thus, it is contended that the action of acquiring the lands is premature and implementing a proposal which is yet to be approved would result in irretrievable loss of resources and money and wholly violative of Article 48A of the Constitution, the proposed acquisition of lands prior to the final alignment of the project is illegal, arbitrary and discriminatory.

11. It is submitted that a declaration under Section 2(2) of the Act is an enabling provision only to declare an existing highway as a National Highway and not for creating a National Highway from a non-existent road and plain land. Therefore, it is submitted that the entire proceedings initiated by the respondents are wholly without jurisdiction and stands vitiated. It is further submitted that the declaration under Section 2(2) of the Act has been issued even before feasibility report was submitted and there cannot be a declaration of a new National Highway without a validly approved alignment plan, when the feasibility report has not been submitted and reviewed and approved before the declaration under Section

2(2) of the Act. It is further submitted that the declaration under Section 2(2) of the Act cannot precede the very approval of such a project and in-principle approval of the project is required from the Public/Private/Partnership Appraisal Committee (PPPAC) as mandated by the Controller and Auditor General, Audit Guidelines. It is further submitted that there are six existing routes between Chennai and Salem and the distance of these six routes were referred to. It is submitted that the data obtained from NHAI shows that the existing primary routes from Chennai to Salem are with vehicular traffic of only between 35% and 45% of designed capacity utilisation except for a 40kms stretch between Thoppur-Omalur-Salem (NH-7) ending at the north-west of Salem. Further, from the feasibility report dated 23.04.2018, submitted by the consultant shows that the vehicular traffic between Chennai and Salem on an origin-destination basis is only between 16000PCU to 19000PCU from major three roads from Chennai to Salem and much lesser than the greater than 50000PCU required for an express way under Bharatmala-I.

12. Further, it is submitted that the Chennai-Express Salem way proposal is not part of the original list of projects under

Bharatmala-I declared on 25.10.2017. The Government of Tamil Nadu having not agreed to bear at least 50% of the land acquisition cost for Chennai-Salem Express way, the condition prescribed for subsequent inclusion of project as prescribed under Bharatmala-I scheme approved by the Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister on 24.10.2017, has not been satisfied. The feasibility report submitted by the consultant, dated 23.04.2018, reflects the violation of policy by inclusion of Chennai-Salem Express way in the place of Chennai-Madurai Economic Corridor 6 laning project proposal that was part of the original self of projects under Bharatmala-I. Ironically, the data of the Ministry of Road Transport indicates that among the 44 economic corridors scientifically identified, Chennai-Trichy-Madurai Economic Corridors, has the highest vehicular traffic at an Annualised Average Daily Traffic (AADT) of 43671 PCU and the basis for dropping the high priority Chennai-Trichy-Madurai Economic corridor project in preference to Chennai-Salem Express is in contravention of the policy and scheme under Bharatmala-I approved by Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister on 24.10.2017. The details in this regard remained undisclosed. The project highway has not been approved by the

Cabinet Committee on Economic Affairs as required under policy of Bharatmala – I or by PPPAC as required by the guidelines issued by CAG, which is mandated by the statute. It is submitted that on 25.10.2017, Bharatmala-I shelf projects were announced and on 25.11.2017, the State Government presented a memo to the Ministry of Road Transportation seeking attention to a list of project sought to be implemented in Tamil Nadu. On 23.11.2017, Union Minister of MoRTH, announced a list of projects approved for Tamil Nadu to the tune of Rs.1 lakh crores. On 18.12.2017, with the Ministers of State of MoRTH replied to questions in Rajya Sabha, the project highway was not mentioned. On 24.01.2018, when Bharatmala-I was reviewed, the project was not mentioned and on 05.03.2018, when the Minister of State MoRTH replied to questions in Rajya Sabha about new projects under various stages including DPR stage, the project highway was not referred. Thus, it is submitted that there could not have been a consultant appointed for DPR for Chennai-Salem Project at least until 05.03.2018. Further on perusal of the list of tenders issued through Infraconportal, there was no reference to Chennai-Salem Express Way Project or NH179B. Thus, when there is no record of any tender regarding consultancy services for DPR relating to Chennai-Salem Express

Way Project, the consultant M/s.Feedback Infra Pvt Ltd., out of the blue has on 23.04.2018, presented a feasibility report to the NHAI. In the said report, the consultant mentions that they were appointed for consultancy services for DPR on 5 corridors under "LOT-6/Package-1", which turns out to be completely different scope of tender and did not cover Chennai-Salem Express Way and there has been no further or subsequent tender relating specifically to the project highway. Further, there is no reference to any approval from CCEA that formulated the policy, programme and projects under Bharatmala-I and thus, it is in contravention of the policy approved by the Cabinet Committee on Economic Affairs on 24.10.2017. It is therefore submitted that tender to award the consultancy services relating to Chennai-Salem Express Way was never called for by tender through infraconportal. Thus, without any record of the Chennai-Express Salem Highway being under stage of consideration until 05.03.2018 and without any record of any tender being called for consultancy services for preparation until then it is not known as to how the consultant, out of the blue submitted feasibility report on 23.04.2018 for Chennai-Salem Express way, in gross abuse of existing procedure, only as a *ex post facto* justification for the project proposal's approval and in an

exercise to suit a predetermined out-come expected by the MoRTH from the consultant. The consultant was blacklisted and debarred and could not have been entrusted the project.

13. The petitioner would further contend that non-application of mind is apparent considering the fact that MoRTH has totally relied on the feasibility report of the consultant which has no finding to support the need for Chennai-Salem Express Way and has not adequately analysed the publically available data and information in respect of the facts related to. To support such a contention, the following are pointed out by the petitioner to discredit the feasibility report:-

"Characteristic of the project

(i) *That Chennai – Salem is not one of the 44 economic corridors scientifically identified by the 1st Respondent but just an Inter-corridor Feeder Route connecting Chennai – Madurai economic corridor (at NH-45) and North – South Economic Corridor (NH-7)*

(ii) *That there are 6 existing routes from Chennai to Salem with 2 of them being the primary routes with dedicated 4/6 lane carriageway.*

Traffic Survey and Analysis

(iii) That even as per the 7th Respondent's Feasibility Report, the vehicular traffic between Chennai and Salem on a Origin – Destination basis is only between 16,000 PCU to 19,000 PCU from the major 3 Roads from Chennai to Salem and much lesser than the greater than 50,000 PCU required for an Expressway.

(iv) That the Feasibility Report has not studied the designed capacity of the existing 2 National Highway Roads between Chennai and Salem.

(v) That the Feasibility Report has not studied the capacity utilization as a percentage of designed capacity of the existing 2 National Highways between Chennai and Salem detailed supra.

(vi) That the Feasibility Report has failed to observe that there are no constraints is capacity augmentation on the 2 primary National Highways between Chennai and Salem when they are presently utilized way below designed capacity and many capacity augmentation works are underway as detailed supra.

(vii) That the Feasibility Report has failed to factor in the diversion in traffic that could be caused by the similarly proposed Chennai –

Bangalore Expressway as part of the Chennai – Bangalore Economic Corridor, leading to further lower capacity utilization in one of the 2 primary routes between Chennai and Salem (NH-4 and NH-46 before converging with NH-u leading to Salem).

Study of alternatives

(viii) That there are 6 existing routes and many improvement works on these 6 routes are under various stages of implementation and consideration including for capacity augmentation even when capacity utilization in most parts of the routes are far lower than designed capacity.

Economic Analysis

(ix) That the Feasibility Report has not correlated the connection between the proposed Expressway and Regional economic development with empirical data from previous projects in terms comparison of collection of Direct Taxes and Indirect Taxes in a 4-laning project region (say, a sub-circle within a tax circle) as against a region without a 4-lane Highway over a 10-year period from available public data.

Financial Analysis

(x) That the Feasibility Report has grossly failed to analyze the financial consequences of the Chennai – Salem Expressway becoming an

Additional Tollway or Competing Road to existing tollways (connecting the same points with a distance that is 20% longer than existing tollway, as per existing Concession Agreements) and thus triggering a series of contractual obligations under present Concession Agreements that would

(a) Extend existing concession periods by 50% to 100% of the remaining period from the time of operation of the Expressway thus burdening road users will longer toll paying periods to the benefit of existing Concessionaires.

(b) Make compensation payable by NHAI (2nd Respondent) to existing Concessionaires for loss of revenue thus burdening the public exchequer.

(c) Cause the toll rates in the proposed Expressway to be priced 25% to 33% higher than existing tollways (on a cost per KM basis) and thus burdening road users to the benefit of new Concessionaires.

(d) Take away the possibility of revenue accruing to the 2nd Respondent in the event of existing tollways being run at above 120% of designed capacity and thus a revenue loss for the public exchequer to the benefit of existing Concessionaires.

(e) Take away the possibility of exercising the right to terminate existing Concession Agreements in the event of existing tollways being run at above 100% capacity for 3 years and thus a revenue loss to public exchequer, burden on road users with longer toll period and benefiting existing Concessionaires.

(xi) The Feasibility Report has grossly failed to analyze the financial consequences of the Chennai - Salem Expressway delaying the recovery of capital cost to existing Concessionaires and thus taking away the possibility of toll rates being reduced to 40% of last existing toll rates in the event of recovery of capital cost, as per NHA I (2nd Respondent) Policy Matter "Technical 171/2014" taken on 27-11-2014 and notified to all existing tollway Concessionaires on 12-12-2014, thus burdening road users with longer than necessary toll period and benefiting existing Concessionaires.

Sensitivity Analysis

(xii) That the Feasibility study has not adequately addressed sensitivity over

(a) Impact of destruction of forest land

(b) Ecological imbalance caused by carriageway cutting through habitat for flora and fauna

- (c) *Loss of cultivable lands in fertile 2-crops per year regions*
- (d) *Felling of large number of trees*
- (e) *Destruction of water-bodies*
- (f) *Absence of public consultation/hearing to ascertain the very need for the project."*

14. Further it is contended that the project highway will benefit the existing toll way concessioner, as it will lead to extension of the concession period, which ultimately would lead to burdening the travelling public. Thus, it is contended that the Chennai-Salem sector does not qualify to have an express way; there is no need or request for the express way; it involves higher cost than some of the existing routes; burdens public exchequer, deprives the right to terminate concession agreements; burdens road users with longer toll paying period and serves no rational public purpose or any other valid purpose.

15. We shall now refer to the decisions cited by the learned counsel for the petitioners.

Mr.K.Sakthivel, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Bondu Ramaswamy & Ors.**

vs. Bangalore Development Authority & Ors., (2010) 7 SCC

129. The matter pertains to challenge of acquisition of lands for formation of a project by the Bangalore Development Authority and one of the contentions was the acquisition is vitiated as there were several discrepancies in the scheme. The scheme was not properly framed and there was no application of mind by the State Government on proper consideration of the scheme before according sanctioned under the provisions of the Bangalore Development Authority Act. In the said decision, it was pointed out that where arbitrary and unexplained deletion and exclusion from acquisition of large extension of notified lands, render the acquisition meaningless and totally unworthable and the Court will have no alternative, but to quash the entire acquisition. Referring to the decision of the Division Bench of the High Court of Bombay in **The Industrial Development and Investment Co. Pvt. Ltd., & Anr., vs. State of Maharashtra & Ors., AIR 1989 Bombay 156,** it was submitted that the public purpose specified in the declaration must continue to subsist until the land vest in the State and the public purpose seizing to continue subsequent proceedings for acquisition are void and not merely voidable. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **State**

of U.P. & Ors. vs. Babu Ram Upadhya AIR 1961 SC 751, to explain the meaning of the word "shall" to mean it is mandatory. This decision was cited to support the contention that prior environmental clearance as stipulated in the notification dated 14.09.2006 is a mandatory condition required to be followed. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Escorts Ltd., & Ors., (1986) 1 SCC 264** wherein the Hon'ble Supreme Court pointed out the distinction between permission simplicitor and previous permission. Reference was made to the decision of the Hon'ble Supreme Court in the case of **Karnataka Industrial Areas Development Board vs. C.Kenchappa, (2006) 6 SCC 371** to emphasize their contention that the impact of development on ecology and environment has to be necessarily carried out before acquisition of land. Referring to the decision of the Hon'ble Supreme Court in the case of **Ujjain Vikas Pradhikaran vs. Raj Kumar Johri & Ors., AIR 1992 SC 1538**, that if the statutory requirements are not complied with, then acquisition for any scheme cannot be carried out.

16. Mrs.D.Nagasaila, learned counsel referred to the decision of the Hon'ble Division Bench of this Court in the case of ***M.Velu vs. State of Tamil Nadu, 2010 SCC OnLine Madras 2736***, wherein the Division Bench held that before issuing notification for acquisition under Section 3(1), the authorities have to approach the statutory authority constituted under Environment (Protection) Act for environmental clearance. The report of the statutory authority must also be considered by the Government by dealing with the objections submitted by the landowners and other interested persons, pursuant to notice being issued. Reliance was placed on the decision of the High Court of Kerala in ***George Joseph and Ors. vs. Union of India, Manu/KE/0086/2008***, wherein it was held that public hearing should be conducted before deciding to issue notification under Section 4(1) of the Land Acquisition Act. Referring to the decision of the Hon'ble Supreme Court in ***Raghibir Singh Sehrawat vs. State of Haryana and Ors., (2012) 1 SCC 792***, it is submitted that the Hon'ble Supreme Court had come down heavily on the State for acquiring farm lands for industrialisation. The learned counsel also referred to the following decisions rendered by the various Courts in United States of America:-

(i) Opinion from John P.Kennedy, Associate General Counsel for Finance and Regulatory Enforcement, CF [Review (US), 26.02.2002];

(ii) Commonwealth of Massachusetts vs. James G.Watt [716F.2d.946 (1938)];

(iii) Lathan vs. Volpe [455F.2d1111 (1972)];

(iv) Arlington Coalition On Transportation vs. John A.Volpe, Secretary of Transportation [458F.2d.1323 (1972)];

(v) Jones vs. District of Columbia Redevelopment Land Agency [499F.2d.502 (1974)]; and

(vi) National Wildlife Federation vs. Robert F.Burford [835 F.2d 305 (1987)]

17. Mr.C.Kanagaraj, learned counsel emphasising the need for public hearing referred to the decision of the Hon'ble Supreme Court in the case of **Alaknanda Hydropower Company Limited vs. Anuj Joshi And Ors., (2014) 1 SCC 769**, with regard to the scope of judicial review in policy matters. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Jal Mahal Resorts Private Ltd., vs. K.P.Sharma And Ors., (2014) 8 SCC**

804. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Rajendra Shankar Shukla And Ors., vs. State of Chhattisgarh And Ors., (2015) 10 SCC 400*** wherein the validity of town planning scheme was tested and the same was set aside on account of various illegalities committed by the authorities including that there was no prior survey or assessment of the need for addition of the land to an area of a scheme undertaken by the Raipur Development Authority.

18. Mr.Kabilan Manokaran, learned counsel for the petitioner referred to the following decisions in support of his contention that Courts do have power of judicial review over policy decision

(i) Delhi Development Authority, N.D. & Anr. vs. Joint Action Committee, Allottee of SFS Flats & Ors., 2008 (2) SCC 672;

(ii) Secretary, Ministry of Chemicals & Fertilizers Government of India vs. M/s.Cipla Ltd.,&Ors., 2003 (7) SCC 1;

(iii) Col. A.S.Sangwan vs. Union of India & Ors., 1981 AIR (SC) 1545;

(iv) Indian Drugs & Pharmaceutical Ltd., vs. Famy Care & Ors., 2010 (6) SCC 401.

The learned counsel referred to three decisions of the Hon'ble Supreme Court dealing with the power of judicial review when public purpose is involved namely:-

(i) Jilubhai Nanbhai Khachar & Ors. vs. State of Gujarat & Anr., AIR 1995 SC 142;

(ii) Life Insurance Corporation of India vs. Escorts Limited & Ors., AIR 1986 SC 1370;

(iii) M/s.Dwarkadas Marfatia and Sons vs. Board of Trustees of The Port of Bombay, AIR 1989 SC 1642.

19. Mr.T.Mohan, learned counsel appearing for the petitioner submitted that the decision in the case of **M.Velu** (supra), had attained finality, furthermore in the light of the decision of the Hon'ble Supreme Court in the case of **C.Kenchappa & Ors.,** (supra), that being the general direction prior environmental clearance is required.

20. Mr.G.Rajagopalan, learned Additional Solicitor General of India assisted by Mr.G.Karthikeyan, learned Assistant Solicitor

General of India made their submissions on behalf of the Government of India and NHAI. It is submitted that as per Section 13 of the Act any land required by NHAI for discharging its function under the Act shall be deemed to be land needed for public purpose and such land can be acquired under the provisions of the Act. It is further submitted that Section 16 of the Act specifies the functions of the authority which includes to develop, maintain and manage National Highways and any other highways vested in or entrusted to it by the Government. Thus, it is the submission that Section 2 of the Act has to be read harmoniously with Section 13 & 16 otherwise NHAI cannot carry out its function mandated under the Act. Reference was made to the decision of the Division Bench in W.P.No.2353 of 2018, dated 18.04.2018 in which the challenge to Section 2 of the Act on the ground it does not enable the Central Government to declare a new highway as National Highway was rejected and the Special Leave Petition filed against the said judgment was dismissed. Therefore, it is submitted that challenge against Section 2 is not maintainable and the law relating to the power of the Central Government under Section 2 has already been settled.

21. The learned Additional Solicitor General raised objections contending that the Writ Petitions are pre-mature, since NHA has not even initiated further proceedings subsequent to the notification under Section 3A of the Act. Therefore, neither the Writ Petitioners/landowners or public interest litigants can have any legitimate grievance and if at all they have any grievance it can be raised only after issuance of notification under Section 3D of the Act or at the commencement of the construction of the road and not any time before that. It is submitted that as per the notification of MoEF and CC, NHA is bound to obtain environmental clearances and other statutory clearances such as Forest clearance, Wildlife clearance etc., before starting the construction of the road and not prior to the same. So far as the landowners are concerned, they can raise objections only on two grounds namely, that the land is not needed for public purpose and that fair compensation has not been given, both issues do not arise in this case and the stand taken by the respondents is fully supported by the decision of the Hon'ble Supreme Court in ***K.T.Plantation Pvt., Ltd., & Anr., vs. State of Karnataka (2011) 9 SCC 1***. It is further submitted that the contention advanced by the petitioners are mere apprehension and no relief can be granted on hypothetical claims. Further, it is

submitted that the Writ Petitioners cannot question the preliminary feasibility report prepared by the Competent Technical Experts and it is not for the Writ Petitioners to indulge in cherry-picking and insignificant errors with limited expertise in this area. Further, Courts also have a limited role/jurisdiction under judicial review in matters of technical reports prepared by the technical experts. Hence, it is best left for the technical experts to determine whether Chennai-Salem Green Field Corridors is required or not, if so in what form and which alignment. Further, by referring to the counter affidavit filed by the MoEF, more particularly, W.P.19385 of 2018 in paragraph 10 it is submitted that there is no requirement for obtaining prior environmental clearance for the purpose of land acquisition in terms of EIA Notification 2006 as amended from time to time. It is further submitted that the notification issued by MoEF and CC falls under subordinate legislation and even assuming without admitting that the said notification is binding on NHAI, such interpretation will lead to erroneous conclusion of rendering the substantial legislation subservient to the subordinate legislation in the form of notification. It is further submitted that the National Highways Act is a substantive legislation and it cannot be overridden or controlled by the notification issued by the MoEF and CC and the

National Highways Act, 1956 and the National Highways Authority of India Act, 1988 are substantive and stand alone legislation having their own sphere of authority governing the respective fields. Therefore, reading down into the NHAI Act from prism of the said EIA notification is impermissible.

22. It is further submitted that land acquisition and environmental clearance are two different and distinct activities at this stage of the project and therefore, challenge directed at land acquisition is pre-mature and not legally sustainable. Further in terms of EIA notification dated 14.09.2006., provides for securing of land and securing has been interpreted to mean fencing, in case of private lands, and in the instant cases, it means to complete the process of land acquisition as per law to acquire ownership of the land acquired for the project and keep the land ready for the project. Further, it is submitted that the judgments relied on by the petitioners stating that the prior environmental clearances is pre-requisite are not applicable to linear projects like highway projects. It is further submitted that this Court has upheld the constitutional validity of Section 105 of Act 30 of 2013, granting exemption to the National Highways Act except in relation to compensation,

rehabilitation and resettlement and provisions of the infrastructural facility as per Schedule I, II and III of the Act 30 of 2013. The Government is entitled to exercise its power of eminent domain and the landowners are entitled for fair compensation as per Act 30 of 2013. The lands which are to be acquired by the NHAI are for public purpose by virtue of Section 30 of NHAI Act 1988. It is further submitted that obtaining a feasibility report is not a statutory requirement, but it is only a facilitating process to expedite the implementation of the project to the technical experts. Since detailed project report which is the third and final stage of the report is received, the pre-feasibility report and final feasibility report have lost their significance. With regard to the change of scope of the consultant, it is submitted that it is the policy decision taken by the competent authority of MoRTH in January 2018 and the minutes of the meeting do provide adequate grounds for changing the project from 'Chennai to Madurai' to 'Chennai to Salem'. The Courts will normally refrain from interpreting in policy decisions of the Government. The arguments that the project was changed without any rhyme or reasons and the decisions was taken in opaque manner for mysterious reasons to benefit from unknown influential persons are not sustainable, this is evident from the

minutes of the meeting along with the connected files which have been submitted before the Court.

23. It is submitted that both Chennai-Salem Express Corridor, Chennai-Salem National Corridor are retained. The DPR study of 8 laning of Tambaram-Tindivanam Section is already under progress as a part of Chennai-Madurai corridor. Thuvankurichi-Madurai section is also under progress, which is also a part of Chennai-Madurai corridor. In order to decongest the Chennai-Tindivanam-Trichy corridor and Chennai-Bangalore corridor, the proposed Chennai-Salem Green Field corridor project is taken up. It is further submitted that MoRTH has identified express way between Chennai-Trichy-Tanjore in Phase-II of Bharatmala and this project also will be taken up at the earliest point. Highlighting upon the advantages of Green Field Project, it is submitted that most of the National Highways during the course of upgradation face challenges of poor geometrics and high engineering requirement lower standards of road safety and congestion due to increased traffic. It is submitted that worldwide highways/express way have been developed as Green Field Alignment/project to overcome these challenges. The Green Field Alignment aims at the advantage of reducing origin-

destination distance, improved geometrics which allow for higher vehicle carrying capacity with comparatively killing of less number of trees, reduction in fuel consumption and also reduces social displacement. It is submitted that by the present project, the original distance will be reduced by 17%, which will result in reducing emissions of green house gases. Thus, it is submitted that the Writ Petitions are pre-mature and filed on the basis of imaginary apprehensions and baseless fears inflated by vested interest and wrong assumptions and cannot be a ground for any proceedings before this Court. It is submitted that the grievances of the landowners are fully taken care of by NHAI as per the law and fair compensation will be provided as per law. Prior environmental clearances is not a pre-condition for acquisition of lands by NHAI under the Act, at this stage of the project, and it will be obtained before commencement of actual forming of the road. The challenge to the feasibility report is unwarranted, since it is not a statutory requirement and its life-cycle is short and temporary and it serves very limited purpose. Reliance was placed on the decision of the Division Bench of this Court in the case of **J.Parthiban & 14 Ors., vs. State of Tamil Nadu [2008-2L.W.989]**, wherein it was held that prior environmental clearance is not required. Reliance was

placed on the decision of the Division Bench of the High Court of Bombay in ***Madan Malji Kambli and Ors., vs. State of Goa and Ors., 2012 SCC OnLine Bom 694;*** and the decision of the High Court of Punjab and Haryana at Chandigarh in ***Prithvi Singh & Ors., vs. Union of India & Ors., CWP No.689 of 2012 (O & M), dated 16.05.2013*** for the same proposition. In support of the argument that NHA is a professionally managed statutory body having expertise in the field of development and maintenance of National highway, reliance was placed on the decision of the Hon'ble Supreme Court in ***Union of India vs. Kushala Shetty & Ors., (2011) 12 SCC 69.*** Explaining the doctrine of sustainable development, reference was made to the decision of the Division Bench of this Court in ***New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association vs. Union of India & Ors., (2012) 1 MLJ 207.*** For the same proposition, reliance was placed on the Division Bench of this court in the case of ***O.Fernandes vs. TNPCP and Ors., 2005-1-L.W. 13.*** Regarding the scope of judicial review especially in land acquisition matters, reliance was placed on the decision of the Hon'ble Supreme Court in ***Sooraram Pratap Reddy and Ors., vs. District Collector, Ranga Reddy District & Ors., (2008) 9 SCC 552.*** Reliance was placed on the

decision of the Three Judge Bench of the Hon'ble Supreme Court in ***State of Tamil Nadu & Ors. vs. L.Krishanan & Ors., (1996) 1 SCC 250***, which overruled the decision in the case of ***State of Tamil Nadu & Anr., vs. K.Mohammed Yousef & Ors., (1991) 4 SCC 224***, wherein it was held that there is no need for a scheme to be prepared and finalised by the Housing Board, will contemplating acquisition of land. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***K.T.Plantation vs. State of Karnataka*** (supra) to explain the power of eminent domain.

24. Mr.T.V.Ramanujam, learned Senior Counsel assisted by Mr.S.Akshay Ringe & Mr.M.Vivekanadan, learned counsels for M/s.Feedback Infra Pvt., Ltd., the consultant reiterated the submissions made by the learned Additional Solicitor General that the Writ Petitions are not maintainable. It is submitted that the objections raised by the Writ Petitioners to the draft feasibility report are all based on surmises and conjunctures, Writ Petitioners are attempting to make a roving enquiry, which is impermissible. The petitioners cannot raise disputed questions of fact in a Writ Petition. The NHA is an expert body and they produced records before this Court to substantiate their stand. It is submitted that the

consultant is among the most reputed companies in India involving in work of preparation of detailed project work and is fully competent to carry out such work. The learned counsel referred to the profile of the company and the projects undertaken by them, since its incorporation during 1990. It is further submitted that NHAI is an expert body and fully competent to review the work done by the consultant. The consultant is under contractual commitment to submit its work to NHAI in accordance with the terms and conditions of the contract entered into between it and NHAI. The work of the consultant is subject to review by NHAI only and not open to public scrutiny. The learned counsel elaborated upon the eight stages of work of the consultant under the contract and presently the stage (ii) has been reached, namely, stage (i) Inception Report (IR) and QAP to be done in 15 days (ii) alignment options report and feasibility report to be done in 60 days;

25. With regard to the environmental issues, it is submitted that utmost care has been taken to minimise environmental impact. It is submitted that number of water bodies impacted has come down to 38 from 54 for which NOC is being obtained from the respective Government departments. Apart from that sufficient

mitigating steps have been identified to minimise the environmental impact such as providing via-ducts over the ponds, water ways etc. Similarly impacts on Forest areas are also minimised by realigning certain portion of the proposed routes, as a result of which the extent of acquisition of Forest area has come down from 23kms [120hect to 8.8kms (42 hect)]. The services of IIT, Dhanbad, has been engaged for assessment of the impact of the project on local biodiversity and they have already submitted a draft report. Apart from that, other organisations of excellence have been engaged to gauge, the impact on the mountain eco system (hilly region). The services of Kitco, a reputed institution of Government of Kerala has been engaged to carry out comprehensive social economic assessment with emphasis of impact on ongoing land acquisition on the local people living around the proposed alignment. The comprehensive environmental impact assessment including the above items, as per contract, is under preparation. Explaining the reason for change of scope from Chennai-Madurai to Chennai-Salem, the stand taken by NHAI has been adopted. It is submitted that consultant was informed by NHAI to undertake studies for Chennai-Salem Green Field Road Project and as a consultant it complied with the order of NHAI. It is submitted that this Court,

exercising Writ jurisdiction will not sit in appeal over the reports submitted by the consultant under the contract with NHAI. However in order to satisfy the conscious of this Court, the consultant has responded to the allegations raised by the petitioners during the course of argument. According to the consultant, nearly 41 allegations were made, as against the correctness of the report submitted by the consultant to NHAI and for each of such allegations, the consultant has given their respective answers as contained in the written notes of arguments submitted by the consultant. Therefore, it is submitted that the Writ Petitions are liable to be dismissed. A copy of the contract entered into between consultant and NHAI, dated 22.02.2018 was placed before this Court.

26. The challenge in these batch of cases is to the proceedings initiated for acquisition of land under the provisions of the National Highways Act, 1956, commencing with the publication of notification under Section 3A(1) of the Act, dated 24.05.2018, and the consequential notification issued by the competent authority namely, the District Revenue Officers of the respective Districts, dated 29.05.2018. The project highway for which land acquisition

proceedings had been initiated is a new highway, hence called a "Green Field Project". The highway proposed is between Chennai-Salem with a total length of 277.300 kms, which stood subsequently reduced. The proposed alignment is to start near the Chennai Outer Ring Road at Mannivakkam, passes through the Districts of Kancheepuram, Thiruvannamalai, Krishnagiri, Dharmapuri to reach Salem and it terminates near Ariyalur in Salem District. The respondent namely, National Highways Authority of India justifies the need for the project on the ground that the traffic from the western districts such as Salem, Namakkal, Karur, Erode, Tiruppur, Pollachi, Coimbatore, Uthagamandalam and Kerala have to use two routes namely, (i) Chennai-Tindivanam-Ulundurpet-Salem and (ii) Chennai-Kancheepuram-Vellore-Krishnagiri-Dharmapuri-Salem. It is stated that by passage of time, these roads will become congested like the city roads and in several locations widening of existing roads will involve additional acquisition of land, which may require dismantling of several structures, which will include residential, commercial and industrial buildings. It is further stated that the study conducted by the consultant appointed by the NHA I would show that the traffic, which are leading to the western districts and the Kerala State are estimated as nearly 30% of the present traffic

on these two routes and expansion of the existing two routes to six laning will involve dismantling of number of structures and even after expansion, it would not be sufficient to cater to the needs of the traffic. Therefore, the respondent would justify the need for a Green Field Corridor to Salem, which will be able to take the increased traffic as well as de-congest the existing routes thereby improving the traffic flow of all routes.

27. It is further stated that the consultant appointed by the NHAI had studied various routes of the alignment along the existing routes and finalised the proposed alignment as being technically feasible. It is further stated that the proposed highway reduces travel time between Chennai-Salem to 2 hours 30 minutes from the existing 5 hours, it saves fuel of 15 litres for each truck, 6 litres for each car trip, thus nearly 200085 litres of the diesel will be saved every day amounting to 10.40 crore litres of diesel per year. Thus, it is stated that the total amount of Rs.700 crores will be saved every year on diesel alone. It is further stated that apart from savings, there will be reduction in carbon emission, saving natural resources, reduction of atmosphere pollution etc. They would further state that the proposed highway opens avenue for

industrialisation of some of the most backward Taluks of Tamil Nadu such as Vandavasi, Polur etc. The development of the area will benefit the common public living in and around the area in all aspects including financial development, apart from comfortable transportation. It is stated that during the times of medical emergency, this highway can be used to reach hospitals in Salem or Chennai and it will save substantial time and the highway will benefit the students and working community, as there is substantial reduction in travel time.

28. It is further stated that for the purpose of obtaining environmental clearances for the project, application was submitted to MoEF to get the approval for the Terms Of Reference (TOR). The Expert Appraisal Committee in its 189th meeting held on 07.05.2018, recommended for grant of TOR with specific conditions in addition to the standard TOR. It is further stated that the Ministry of Environment vide letter dated 08.06.2018, accorded approval for the TOR. Further NHAI has requested the Department of Environmental Science and Engineering, IIT, Dhanbad to make comprehensive assessment impact road on local biodiversity, Wild Life Corridors etc. This request has been accepted by the IIT,

Dhanbad and a sum of Rs.21,00,000/- has been deposited with the institution to carry out the aforementioned study. It is submitted that the consultant appointed by the NHA I namely, M/s.Feed Back Infrastructure Private Ltd., (Feed Back), has commenced the base line study, air quality monitoring etc and after the completion of the Environment Impact Assessment Study Report will be submitted to the State Pollution Control Board for public hearing, which will be conducted as per the provisions of the EIA Notification, 2006. It is thereafter the matter will be placed before MoEF for getting environmental clearance. It is stated that the proposed alignment passes through Reserve Forest for a length of 9.955kms and a request has been made to the Principal Chief Conservator of Forest as early as on 12.05.2018 for collection of necessary data and conducting necessary surveys in Forest areas. In response thereto, permission has been granted by communication dated 08.06.2018, pursuant to which field survey is in progress and proposals will be sent with the concerned Forest Department to get permission for diversion of the Forest land.

29. It is further submitted that the Principal Chief Conservator of Forests and Chief Wild Life Warden vide a letter dated

14.06.2018, have granted no objection for the alignment from Wild Life Angle as directed by the Ministry of Environment. It is submitted that the District Revenue Officer of the concerned districts is the competent authority to carry out the land acquisition for the project, who has been notified by the Central Government and land acquisition is being carried out as per the provisions of the Act. It is submitted that the notification under Section 3A(1) of the Act has been published with intention to acquire the land and further steps such as inspection, survey, measurement, valuation, setting out boundaries placing marks cutting trenches etc., can be carried out as per Section 3B of the Act, which can be done only after the publication of the notification under Section 3A(1) of the Act. Thus, the respondent would state that it is essential to publish the notification under Section 3A(1) to carry out the aforementioned studies. The NHA refers to an Office Memorandum dated 07.10.2014, issued by the Ministry of Environment to state that complete acquisition of land is required for consideration of environmental clearance and the notification issued under Section 3A(1) of the Act is only a threshold of the project and the petitioners cannot be stated to be aggrieved over the same and the Writ Petitions are pre-mature.

30. The learned counsels appearing for the Writ Petitioners who are the landowners and the Public Interest Litigants had focused before us varied points on which the acquisition is stated to be bad in law. We would cull out the salient objections, which were raised by the petitioners as well as the objections raised by the Union of India into points for consideration so as to answer the relevant issues, which were raised before us.

31. The learned Additional Solicitor General of India appearing for the NHAI raised preliminary objection with regard to the maintainability of the Writ Petition. It is contended that the Writ Petitions are pre-mature and therefore, they are liable to be dismissed. Thus, while framing the points for consideration, we propose to take note of the submission of the learned Additional Solicitor General with regard to the maintainability of the Writ Petitions as the first point. The points for consideration are:-

- (i) Whether the Writ Petitions are maintainable, since all that has been done by the respondents is to notify their intention to acquire the lands by publishing a notification under Section 3A(1) of the Act and the petitioners cannot be stated to be aggrieved;

(ii) Whether the entire land acquisition proceedings are wholly without jurisdiction as a declaration under Section 2(2) of the Act enables only to declare an existing highway, as a National Highway and not for creating a National Highway from a non-existing road or a plain land;

(iii) Whether if the project is allowed to be implemented without prior environmental clearance, would it be against the principles of sustainable development and would violate the provisions of the Articles 19, 46, 48A and 51A of the Constitution of India;

(iv) Whether there is a need for the proposed project Highway given the statistics regarding the Passenger Car Units in the existing three highways;

(v) Whether there is any hidden agenda for the proposed project and whether it was intended to benefit a chosen few;

(vi) Whether Chennai-Salem proposed highway project was not even considered as a viable proposal, when lots were invited under Bharat Mala Priyojana

and Chennai-Madurai proposal was found to be viable resulting in appointment of the consultant (Feedback), could there have been a change of the project after appointment of the Consultant for a different project;

(vii) Whether the respondents who had originally notified the project between the Chennai and Madurai could have changed the same after the tender for awarding the consultancy contract was finalised for Chennai-Madurai Section;

(viii) What would be the impact of the proposed project on Forest lands, Water Bodies, Wild Life, flora and fauna as admittedly the proposed alignment passes through all these areas;

(ix) Whether public hearing is a pre-requisite and should it precede any step that may be taken under the provisions of the Act;

(x) Whether public consultation which includes public hearing at site should have preceded the land acquisition proceedings or at what stage it is required to be done;

(xi) If the notification as initially notified by the

Central Government (Chennai-Madurai) was modified is the draft feasibility report liable to be scrapped, as the award of consultancy contract was entirely for a different project;

(xii) Whether the report prepared by the Consultant (Feedback) contains plagiarized contents, whether it was prepared in great haste, replete with errors apparent on the face of the record and should the report be held to be an outcome of non-application of mind;

(xiii) Whether guidelines prescribed in the Indian Highway Capacity Manual were ignored while preparing the draft feasibility report;

(xiv) Whether on account of the reduction of the right of way in various sections including the proposed alignment, which passes through Forest area, whether the scope of the project stood totally amended and whether the respondents can proceed in the manner they propose to do.

(xv) Whether the feasibility report has failed to analyse the financial consequences of the Chennai –

Salem express way becoming an additional toll way or competing road to the existing toll way and thus triggering a series of contractual obligations under the present concessional agreements that would get extended by 50 to 100% of the remaining period.

The above are the salient points for consideration in these batch of cases.

32. The learned Additional Solicitor General submitted that the Writ Petitions are pre-mature, as the respondents have issued notification under Section 3A(1), which is only an intention to acquire lands, which power has been given to the Government to acquire lands for the building, maintenance, management or operation of an National Highway. It is submitted that Section 3B(d) empowers the person authorised by the Central Government after issue of notification under sub-section (1) of Section 3A, set out boundaries and intended lines of work. Section 3C deals with hearing of objections and in terms of sub-section (1) thereof, any person interested in the land may within 21 days from the date of publication of the notification under sub-section (1) of Section 3A object to the use of land for the purpose or purposes mentioned in

that sub-section. It is submitted that if such objection is received, the same will be considered and only thereafter, a notification declaring that the lands should be acquired, will be published under Section 3D of the Act. It is submitted that if objections are found to be valid, there is every possibility of dropping the acquisition proceedings and if after considering the objections, a notification is issued under Section 3D of the Act, then the Court seldom interferes in such proceedings and this is all the more a reason to hold that the Writ Petitions are pre-mature. It is submitted that the decision making process is not yet over and hence question of going into the validity of the report submitted by the Consultant does not arise at this stage.

33. It is true that the petitioners are before this Court challenging the acquisition proceedings soon after the notification under Section 3A(1) of the Act was published. Under normal circumstances, Constitutional Courts seldom exercise their jurisdiction to interdict a land acquisition proceeding at the very inception, such as a notification issued under Section 4(1) of the erstwhile Land Acquisition Act 1894. However, there have been exception to this self-imposed restriction, when it has been found

that there is arbitrary exercise of power or there is serious error in the decision making process leading to issuance of the preliminary notification. Therefore, we are of the view that if the petitioners are able to make out a case that there are serious error at the very inception, then the petitioners should not be shut out from challenging the acquisition proceedings, which according to them is vitiated for certain valid reasons at the very threshold and it will be too harsh on the petitioners namely land owners/losers to state that they can approach the Court after the land acquisition proceedings are completed and after many of them are dispossessed from their lands. Therefore, a fine and delicate balance is required to be adopted in such matters.

34. The seriousness of the issue stood escalated on account of certain unsavoury incidents, which took place, while the Writ Petitions were pending and the hearing had commenced, initially during July 2018, when we took up for consideration the challenge to Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013).

35. Ever since August 2018, we had been continuously hearing the matters and at the first instance, we had reserved orders in the public interest Writ Petitions, which had challenged the constitutional validity of Section 105 of Act 30 of 2013. The orders were reserved in those Writ Petitions on 21.08.2018 and we pronounced orders on 04.09.2018, upholding the validity of Section 105 of Act 30 of 2013. Immediately thereafter, from 20.09.2018, we had been hearing the Writ Petitions virtually on a day today basis and in between the hearing could not proceed on account of one of us was notified to hold Court in Madurai Bench. Thereafter after obtaining permission, the hearing commenced through video conferencing with one of us in Chennai and other at Madurai and we concluded the hearing on 04.12.2018. The NHAJ was directed to circulate their files, the counsels appearing for the petitioners and the respondents were given sufficient time to file their written submissions, if any.

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36. Initially when we started hearing the Writ Petitions since August 2018, there were no interim orders granted. Subsequently, by turn of events, we found that the respective competent

authorities and the Revenue Administration of the respective districts where a law unto themselves, arbitrary action was initiated clearly exceeding the powers under the Act. However, we do not wish to over burden this order with the various interim directions, which we had issued from time to time in the batch of cases and propose to refer to only such of those interim orders, which would be relevant for the present, one such order being the order dated 14.09.2018. This order came to be passed since 109 fully grown trees were unauthorisedly fell and the trees were situated in a land classified as grazing ground adjoining the Forest area and in close proximity to the proposed alignment, that is, within distance of 30mtrs from the proposed alignment. The miscreants, who had done the felling, had in fact been granted permission to remove six wind fallen trees at a different location and it is not known as to how they had unauthorisedly fell 109 trees in Government lands adjoining the proposed alignment.

37. Thus, the land owners and the public interest litigants expressed their apprehension, more particularly, in the light of the stand taken by the Project Director, NHAI, Kancheepuram on the status of Environmental Impact Assessment Study and Feasibility

Study, dated 14.09.2018, and they made a prayer that the respondents should not proceed with acquisition proceedings by issuing notification under Section 3D of the Act. At that stage, the learned Additional Solicitor General submitted that nothing will happen as apprehended by the petitioners. This submission of the learned Additional Solicitor General of India was placed on record in our order dated 14.09.2018. Subsequently, we found that the miscreants, who had illegally fell the trees had not been prosecuted in the manner required to be done and the Court monitored the matter till the accused were brought to books. In the mean time, a case came up concerning an Engineer, who alleged that he had been picked up from his residence by the Police in the wee hours for no reason and false case has been foisted against him, as if, he was standing near the bus stand and speaking with persons to plan a protest against the proposed highway. A public interest Writ Petition in W.P.No.20532 of 2018, was filed on behalf of those persons and parallely the Court was monitoring the same. Since the investigation done by the jurisdictional Police was not proceeding in the right direction, we have transferred the case to CBCID and the Writ Petition is still pending.

38. On 20.09.2018, we had heard the submissions of the learned Additional Solicitor General of India with regard to the matters concerning the No Objections Certificate from the Wild Life angle and during the course of said hearing, we referred to our order dated 14.09.2018, where we recorded the submission of the learned Additional Solicitor General of India that nothing will happen as apprehended by the petitioners, as they apprehended that notification under Section 3D will be issued. In our order dated 20.09.2018, we observed that as we had commenced hearing of the Writ Petitions we deemed it appropriate that the submission made by the learned Additional Solicitor General of India, which was placed on record in our order dated 14.09.2018, shall continue and no further precipitative action shall be initiated by the department, pursuant to the notification issued under Section 3A(1) of the Act.

39. In the said hearing, it was brought to our notice that four persons had come to Cheyyar, which is also an area falling within the proposed alignment with a view to assist the local public who are likely to be affected by the acquisition and help them in preparing written objections and those persons were arrested. This was brought to the notice of this Court by the learned counsel

appearing for the petitioners in W.P.No.20194 of 2018. Subsequently, when we heard the matter on 26.09.2018, it was brought to our notice that one of the Writ Petitioners in W.P.Nos.20625 to 20627 of 2018, who was collecting signatures objecting to the proposed project was taken into custody and detained by the Police along with others. We directed the learned Government Pleader to get instruction in the matter who confirmed that several persons were detained in a marriage hall and subsequently were released. The conduct of the officials lead us to make an observation that if there is a peaceful protest, the State Police machinery should refrain from taking extreme steps of arrest and detention of the persons some of whom would be landlosers, if the project is implemented. We also pointed out that certain busy bodies may take advantage of the situation and the police are expected to know the difference between the genuine protester and a troublesome interlopers and indiscriminate arrest and detention for expressing democratic views should be avoided. We also reiterated that in our earlier orders, we had made an observation that State Government or its machinery should not precipitate things. We directed the learned Government Pleader to issue necessary instructions to all the authorities concerned that no form

of precipitative action should be initiated against persons who wants to express their views in peaceful and democratic manner, more particularly, the landowners who are entitled to do so. Parallely we had issued directions for planting of fresh saplings in the area where 109 trees illegally fell and directed the Forest officials to monitor the same.

40. As an offshoot of the happenings during the pendency of these cases we had also called for details from the State Government with regard to formation of Biodiversity Management Committee and as to whether the State Government proposes to enact the Tree Act. Appropriate response was given by the learned Advocate General.

41. The above facts have been placed on record to highlight the aspect that the land acquisition proceedings for the current project did not proceed on the lines, as it normally goes, but there appear to be a sense of haste on the part of the officials of the State Government in some how getting the project through. This haste was manifest from various high handed actions initiated by the officials. In such circumstances, need arose for this Court to

examine as to whether there is a gross error in the decision making process, which according to the petitioners arose at the very threshold of the project.

42. Reverting back to the preliminary objections raised by the learned Additional Solicitor General, are the Writ Petitions pre-mature, in other words, is this Court denuded of jurisdiction to determine the questions raised before us. We look for an answer in the decisions of the Hon'ble Supreme Court in ***State of Bombay vs. R.S.Nanji, AIR 1956 SC 294***, wherein the Constitutional Bench observed that *prima facie* the Government is the best Judge as to whether "public purpose" is served by issuing a requisition order, but it is not a sole Judge. The Courts have jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose. In ***Somawanti vs. State of Punjab AIR 1963 SC 151***, the Hon'ble Supreme Court held that if the purpose for which land is being acquired by the State is within the legislative competent of the State, the declaration of the Government will be final, subject, however, to one exception. That exception is that if there is a colourable exercise of power, the declaration will be open to

challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. Thus, when an acquisition proceedings is challenged on the ground of irrationality, unreasonableness, arbitrariness, it should be well open to the Court to decide the question. Thus, we get an answer from the aforementioned decisions that the Writ Petitions before us question the very initiation of the proceedings, as being arbitrary, unreasonable against the public interest and would not serve public purpose. Therefore, we are of the clear view that the Writ Petitions are maintainable and consequently, the preliminary objection raised by the learned Additional Solicitor General of India stands rejected.

43. Point No.(ii):-

It is the submission of the learned counsel for the petitioner that to invoke the provisions of the Act and to declare certain highways to be a 'National Highway', the pre-requisite is it should be a highway, in terms of Section 2(2) of the Act, the Central Government may, by notification in the official Gazette, declare any other highway to be a 'National Highway' and on publication of such

notification, such highway shall be deemed to be specified in the schedule. It is submitted that the Central Government is empowered to act in terms of the powers conferred under Entry 23 of List 1 of the 7th Schedule, which specifically states that the Parliament has exclusive power to make a law declaring highways to be a 'National Highway'. It is submitted that Entry 13 of List 2 empowers the State Legislature to enact laws concerning roads, bridges, harezes etc., not specified in List 1. Reference was also made to Article 257(2) of the Constitution and also the proviso under Article 257(2) and Article 254(4) and it is submitted that it is the State Legislature, which is empowered to declare a land or a road to be a highway, as defined under Section 2(12) of the Tamil Nadu Highways Act, 2001, read with Section 3 of the said Act. Thus, it is the submission of the learned counsel that a National Highway can come into existence only upon a declaration under Section 2(2) of the Act and going by the impugned notification issued under Section 2(2) of the Act, no land is available with the Government on the date of notification and no road or highway has been declared as a 'National Highway'. Further, by referring to the Schedule of the National Highways Act, list out the towns which are falling within the description of National Highway on the proposed

National Highways, however no such details are mentioned for the subject highway. Hence, it is submitted that there has to be highway to be declared as a 'National Highway', and plain lands cannot be declared as 'National Highway' and plain lands cannot be acquired by the Union Government for declaration as 'highway' and then as a 'National Highway'. Therefore, the respondents cannot invoke the powers under Section 3A of the National Highways Act for acquiring the vacant lands.

44. Identical contention was canvassed before the Division Bench of the Madurai Bench to which one of us (TSSJ) was a party, in the case of **B.Nambirajan & Ors., vs. District Collector, Kanyakumar District, Nagercoil & Ors., CDJ 2018 MHC 2862**. In the said case, there was a proposal for converting the existing National Highway NH47 between Kanyakumari to Trivandrum as a four way road. However, when the proposal was drawn, it was noticed that the road has to pass through thickly populated towns and therefore, a change of alignment was proposed. This change of alignment was objected to by the petitioners therein on various grounds and also on the ground that the alignment proposed was entirely a new alignment, a new road, not declared as a 'National

Highway' and unless a declaration is made to the said effect in terms of Section 2(1) of the Act, the question of terming it as a 'National Highway' does not arise. In the said case, the Court pointed out that the submission of the petitioners was devoid of merits, as the acquisition is for four laning is NHAI, which includes widening of the existing road. Further by interpreting Section 3 of the Act, it was pointed out that the Act provides for construction of Highway and also for maintenance and existing road can also be declared as State Highway and developed and for the purpose of giving effect to the Act, all Acts can be done by the competent authority, which includes the acquisition of lands also. It appears that the said decision has become final, as the appeal filed against the same was rejected. The correct way of interpreting the provision is to read Section 3A along with Section 2(2) of the Act. If the same is done, the position becomes clear, that is, where the Central Government is satisfied that for public purpose, any land is required for building, maintenance, management or operation of a National Highway or part thereof, it may, by notification in the official gazette declare its intention to acquire such land. The power under sub-section (2) of Section 2 deals with 'declaration of certain highways to be National Highways'. Therefore, the power

under Section 3A of the National Highway Acts, is wide enough to acquire the land for the purpose of building a National Highway or for the purpose of maintenance of National Highway or for management of National Highway or operation of National Highway or part thereof. Therefore, to contend that unless and until a highway is formed in terms of Section 3 of the Tamil Nadu Act read with Section 2 (12) of the Act, then only it can be notified as National Highway, is an argument which is stated to be rejected.

45. Section 3 of the Tamil Nadu Highways Act is the power to declare roads, ways or lands as "Highways". This provision gives power to the State Government to declare any road, it may be a village road or district road or a major road or a land to be a highway and can classify it, as a 'State Highway' or a major district road or other district road or a village road. This power is exercised by the State Government on the recommendation of the State Highways Authorities and if the road, way or land is owned by any local authority, the concurrence of the local authority is required before issuing notification in the Tamil Nadu Government Gazette. Therefore, we are of the considered view that the Central Government has sufficient power to acquire vacant lands for the

purposes of building, maintaining, managing or operating a National Highway or part thereof. Thus, the contention raised by the petitioners that the Central Government has no jurisdiction to acquire vacant land for the purpose of developing a highway, does not merit acceptance. Hence, for the above reasons, this question is answered against the petitioners.

46. Point No.(iii):-

The learned Additional Solicitor General submits that Section 3 of the Environmental Protection Act gives power to the Central Government to take measures to protect to improve the environment which is an enabling provision to issue notification and one such notification being the notification, dated 14.09.2006, regarding prior environmental clearance. It is submitted that the power under the National Highways Act and the National Highways Authority of India Act to acquire lands is unconditional. Therefore, unless and until the National Highways Act or the National Highways Authority of India Act specifically provide for an Environmental Impact Assessment prior to acquisition, the question of such approval to precede the declaration under Section 3D of the NH Act does arise. The notification issued under the Environmental

Protection Act is a subordinate legislation and cannot prevail over the statutory provisions of the Highways Act. Therefore, it is the submission that securing a land for the purpose of implementing the National Highway Project does not require prior environmental clearance and therefore, there is no inconsistency between the two enactments.

47. To decide this question, we may straightaway refer to two decisions of the Hon'ble Division Bench of this Court. In the case of **J.Parthiban & Ors., vs. State of Tamil Nadu [2008-2-L.W.989]**. The challenge was to the acquisition proceedings initiated by the State Government under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, for the expansion of the Chennai Airport. One of the grounds of challenge was that environmental clearance is a must for the proposed project and the same ought to have been obtained before the acquisition proceedings are initiated. In this regard, the petitioners placed reliance on the decision of the Hon'ble Supreme Court in the case of **Karnataka Industrial Areas Development Board vs. C.Kenchappa & Ors., (2000) 6 SCC 371 (ASG TSP)** wherein the Hon'ble Supreme Court set aside the direction given by the

Karnataka High Court to leave a land of 1 km as buffer zone from the outer periphery of the village in order to maintain a 'green area'. The Court directed that in future, before acquisition of lands for development, the authority must properly comprehend the consequences and adverse impact on the environment and that the land acquired for development do not gravely impair the ecology and the environment. This decision was pressed into service by the petitioners to state that it is a general direction issued and prior environmental clearance is necessary. The Division Bench pointed out that the Hon'ble Supreme court has not given general direction that in all projects, the authorities are duty bound to obtain prior environmental clearance before initiation of the acquisition proceedings. In this regard, para 2 of notification, dated 14.09.2016, was referred and it was submitted that except for securing land, the other matters required prior permission.

48. The second decision, in ***M.Velu vs. State of Tamil Nadu & Others, 2010 SCC Online Madras 2736***, the petitioner sought for a direction to forbear the respondents therein from converting the use of lands covered by lakes etc., from agricultural to industrial use and to protect the same. In the said case, the State had

proposed to acquire the lands for industrial purposes and after taking note of the various decisions, the Division Bench directed that prior environmental clearance should be obtained before proceeding further in the matter of issuance of notice under Section 3(1) of the Tamil Nadu Industrial Purposes Act.

49. The respondents by referring to clause 2 of the notification contend that prior environmental clearance may be required for other purpose and not for securing the land, which is being done by the impugned notification which is to be followed by notification under Section 3D of the National Highways Act.

50. The "Public Trust Doctrine" as propounded by the Hon'ble Supreme Court in the celebrated decision in the case of ***M.C.Metha vs. Kamal Nath (1997) 1 SCC 388***, is part of our jurisprudence. The State and the society have become alive to the need to protect environment for the posterity. Times are changing. There is a paradigm shift in the needs and expectation. Technology has advanced in leaps and bounds. There is a quest for perfection and accuracy. Citizen have become quality conscious. Citizen question State action and seek to strike them down, if it smacks of

arbitrariness. Right to Information Act has made information accessible to the public. Therefore, we need to be alive to these situations, while we ponder upon what is required to be done in the instant case bearing in mind the larger public interest. We cannot be mistaken, as if we are propounding a theory oblivious of the economic interest of the State. Undoubtedly, a balance has to be struck between protecting environment and protecting the economic interest of the State. The Hon'ble Supreme Court while dealing with this issue has observed that protection of environment would have precedence over the economic interest (***M.C.Mehta vs. UOI, AIR 2004 SC 4016***). In the said decision, it was pointed out that the harm can be prevented even on a reasonable suspicion, and it is not always necessary that there should be a direct evidence of harm to the environment.

51. The counter affidavits filed by the respondents speak of reducing travelling time between Chennai and Salem. It claims that very backward areas, such as Vandavasi and Polur would stand to be benefited, there would be a substantial saving on diesel, thereby avoiding carbon footprints and would lead to environmental preservation. What has been lost sight of is the fact that agriculture

is the main part of the economy and source of livelihood of rural India. The land of an agriculturist is vital to sustain his livelihood. India being predominantly an agricultural society, there is a strong bond between the land owner and his land. The land provides dignity for the person. It provides a source of livelihood. Therefore, any dent on this source of livelihood should be viewed with utmost seriousness. If the State fails to do so, it will be failing in the public trust reposed on it. The State being the trustee is bound to protect life and livelihood of agriculturists. It is bound to protect the natural resources, the forest, flora and fauna. If there is failure to do so, it will result in disastrous consequences much of which will be irreversible. Therefore, in our view, the issue as to whether prior or post, environmental clearance is required to be decided on a case to case basis. The subject highway is a Rs.10,000 crores project. Large sums of public money is to be invested. Therefore, the project of this magnitude requires to be processed with utmost dexterity. Therefore, the respondents can hardly take a plea that the Hon'ble Division Bench in **Karnataka Industrial Areas Development Board** (supra) did not give a general direction and therefore, it cannot be applied as a binding precedent for other cases.

52. We opine that this is not the correct manner of interpreting a decision, which considered the manner in which the environmental protection laws are to be implemented. These set of laws are to be put at a higher pedestal than other procedural laws. Therefore, we are out-rightly reject the plea of the respondents that the notification issued under the Environmental Protection Act cannot take precedence over the National Highways Act or the National Highways Authority of India Act. As pointed out earlier, protection of environment stands in a higher pedestal when placed on scale with that of the economic interest. Environmental Protection Act was enacted pursuant to the decision taken at the United Nations Conference on Human Environment in 1972 in which India participated and agreed to take appropriate steps for the protection and improvement of human environment. The legislative framers were conscious of the decline in environmental quality evidenced by increasing pollution, loss of vegetal cover and biodiversity. The world community resolved to protect and enhance environmental quality. The legislative framers were conscious of the fact that there are existing laws dealing directly or indirectly with several environmental matters, yet enacted, the Environmental Protection Act, 1986, as it was found that these exists uncovered

gaps in areas of major environmental hazards. This Act seeks to protect and preserve the fundamental right enshrined under Article 21 of the Constitution. Viewed from this angle, the interpretation that is to be given to a notification issued under Section 3 of the Environmental Protection Act, undoubtedly, should rule supreme, over other procedural laws including the National Highways Act, which provides for procedure for acquiring land to build, maintain or develop a National Highway.

53. We do not agree with the learned Additional Solicitor General that prior clearance is not required in terms of para 2 of the notification, dated 14.09.2006, for securing the land. The National Highways Act does not define the word "secure" nor defines the expression "securing the land". According to the respondents 'securing the land' would mean upto the stage of issuance of notification under Section 3D of the Act or even up to taking possession under Section 3E of the Act. In our considered view this is an incorrect interpretation of the expression 'securing the land' as contained in para 2 of the notification, dated 14.09.2006. In 'securing the land', in terms of the National Highways Act can at best be up to the stage of issuance of notification under Section

3(A)(1) of the Act, where the Government notifies that it is satisfied that for a public purpose any land is required for building, maintaining, managing or operating a National Highway or part thereof, any subsequent step cannot fall within the exclusion as provided for in clause (2) of the notification, dated 14.09.2006.

54. The decisions which have been referred to by the respondents to sustain their argument that prior environmental clearance is not required for securing the land are distinguishable for yet another reason. In those decisions, the project which was subject matter of consideration was not a Green Field Project, a project where a new road is formed through virgin land. Therefore, the degree of sensitivity with which a Green Field Project has to be approached is different from a road widening project of an existing road. Admittedly, there is no village road, municipal road, state highway or national highway in the proposed alignment. Agricultural lands, farm lands, residential properties, water bodies, forest lands etc., are required to be acquired to form this new road. Therefore, to state that Environmental Impact Assessment is required to be done only when the road is to be formed is virtually amounting to "putting the cart before the horse". The counter

affidavits filed by the respondents do not disclose as to what are the plans which are in the pipeline for rehabilitation and resettlement of the persons, who are likely to be displaced. The only stand taken by the respondents is by contending that the time has not come to consider those aspects. We are not convinced with these answers given by the respondents. The entire project i.e., commencing with the appointment of the consultant is subject matter of these cases. Therefore, the respondents owe a duty to the Court to disclose the plans which are in the pipeline for rehabilitation and resettlement as admittedly several persons are likely to be displaced from their residential homes, evicted from their agricultural lands, which is the only source of their livelihood. Peaceful protest were stifled, unwritten gag orders were promulgated, police force was used to handle the peaceful protesters, who were making a request to spare them and their lands. Only after this Court intervened these high handed actions had subsided.

55. Thus, considering the peculiar facts of the instant case, magnitude of the project, the proposed alignment, which admittedly cuts across the Forest land, water bodies, big and small fertile agricultural lands etc., it is necessary that prior environmental

clearance is required before the respondents proceed further, pursuant to the notification under Section 3A(1) of the Act.

56. Having taken note of the two decisions of the Division Benches of this Court, we also take note of the decision of the Hon'ble Supreme Court in the case of **Raghubir Singh Sehrawat vs. State of Haryana And Others, (2012) 1 SCC 792**. The judgment begins with quoting "John Stuart Mill", "Pt. Jawahar Lal Nehru" and "Dr. M. S. Swaminathan" on the following lines:-

"2. More than 16 decades ago, John Stuart Mill wrote:

"Land differs from other elements of production, labour and capital in not being susceptible to infinite increase. Its extent is limited and the extent of the more productive kinds of it more limited still. It is also evident that the quantity of produce capable of being raised on any given piece of land is not indefinite. These limited quantities of land, and limited productiveness of it, are the real limits to the increase of production."

3. In 1947, the first Prime Minister of India Pt. Jawahar Lal Nehru said "everything else can wait, but not agriculture". In its fifth and final report, the National Commission on Farmers headed by Dr. M. S. Swaminathan observed that prime farmland must be conserved for agriculture

and should not be diverted for non-agricultural purposes, else it would seriously affect the availability of food in the country where 60% of the population still depends on agriculture and people living below poverty line are finding it difficult to survive."

57. The Hon'ble Supreme Court lamented that the above words of wisdom appear to have become irrelevant for the State apparatus which has used Land Acquisition Act, 1894 in the last two decades for massive acquisition of agricultural land in different parts of country which has not only adversely impacted the farmers, but also generated huge litigation, adjudication, which consumes substantial time of the Courts. The Hon'ble Supreme Court was testing the correctness of a judgment of the Division Bench of Punjab and Haryana High Court, which upheld acquisition of agricultural lands. One of the grounds raised by the land owner is that there was no justification to acquire his land, which was the only source of livelihood for him and his family. The Hon'ble Supreme Court noted that the appellant had been non-suited by the High Court only on the ground that possession of the acquired land had been taken by the officers concerned and the same will be

deemed to have vested in the State Government free from all encumbrances. The Court tested the legality of the mode and manner of taking possession of the acquired land and noted decisions on the said point. Ultimately, it was held that the record prepared by the Revenue Authorities showing delivery of possession of the acquired land has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and vested in the State Government in terms of Section 16 of the Land Acquisition Act, 1894.

58. Before concluding, the Hon'ble Supreme Court observed that it is difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without complying with the mandate of the statute. It was further pointed out that acquisition of agricultural land in the name of planned development or industrial growth would seriously affect the availability of food in future. The following observations of the Hon'ble Supreme Court, in our considered view, would be apt for the cases on hand:-

"42..... After independence, the

administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide."

59. Ms.D.Nagasaila assisted by Ms.S.Tanvi learned counsels had referred to decisions from the United States of America. The exposition of law by the Law Courts in United States were considered by us. After going through the decisions, we found that the principles laid down therein are on the same plane and latitude as that of erudite decisions of our superior Courts and the wisdom of our legislative framers.

60. The first of the decisions, which we would like to refer to is that of the United States Court of Appeals, First Circuit in the case of **Commonwealth of Massachusetts vs. James G. Watt, 716 F.2d.946 (1983)**. The Government was on appeal before the Court to set aside a preliminary injunction stopping it from

auctioning rights to drill for oil on 488 tracts near Georges Bank, a fishing area. The District Court issued the injunction on the ground that the proposed sale of "right to drill oil" was likely to violate four separate statutes, viz., the National Environmental Policy Act; the Endangered Species Act; the Coastal Zone Management Act; and the Outer Continental Shelf Lands Act. The appeal filed before the Court of Appeals was rejected and the order passed by the District Court was affirmed stating that the National Environmental Policy Act requires the Department, before auctioning its oil lease, prepare a statement that describes the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided and alternatives to the proposed auction. In the said case, after the Department prepared its Final Environmental Impact Statement, it radically revised its estimates of oil likely to be found on the tracts it intended to lease and it lowered its estimation by 97%. The question was whether on account of this reduction, which is a significant new circumstance sufficient to require an Environmental Impact Statement (EIS) supplement. The Department took a decision not to supplement the EIS and this decision was held to be not reasonable, as without a supplement, the Final EIS did not describe the likely environmental harms while

enough to allow the Secretary to impact an environment decision. It was further pointed out that after reading the Final EIS, the authority would have no clear idea as to how to visualize the environmental harms under the new mean estimates, as the entire Final EIS is couched in terms of the old mean, the new document merely says that the harm is "not as great", but the crucial question for a rational decision-maker is by how much the likely environmental harm will be reduced.

61. Referring to a decision in the case of ***California vs. Watt, 683 F.2d 1253 (9th Cir.1982)***, it was held that the Court considered the environmental significance of the new information, the probable accuracy of the information, the degree of care with which the agency considered the information and evaluated its impact and the degree to which the agency supported its decision not to supplement with a statement of explanation or additional data.

62. With regard to whether prior clearance is required, it was pointed out that it is appropriate for the Courts to recognise the type of injury in a National Environmental Policy Act case, for it

reflects that the very theory upon which the Act is based – a theory aimed at presenting governmental decision makers with relevant environmental data before they commit themselves to a course of action. It was pointed out that the plaintiffs would suffer harm, if they are denied an injunction, if the lease sale then took place, and if the Court then held that a supplemental Environment Impact Statement was required and in that event, the Oil Companies who have committed time and efforts to planning the development of the blocks, they had leased and the relevant State agencies would have begun to make plans based on the leased tracts and this is a chain of bureaucratic commitment that will become progressively harder to undo the longer continues. Thus, it was pointed out that the National Environmental Policy Act's purpose is to require consideration of environmental factors before project momentum is irresistible, before options are closed and before agency commitments are set in concrete.

63. In the decision of the United States Court of Appeals, Ninth Circuit in ***Roosevelt Lathan and Pearline Lathan, his wife, vs. John A. Volpe, Secretary of the United States Department of Transportation, 455 F.2d 1111***, the plaintiffs

appealed against the denial of their motion for preliminary injunction to halt all further acquisition of property by the State Highway Officials for proposed interstate highway until statutory, administrative and constitutional requirements are met. Interestingly, the preliminary study for the interstate highway began in 1944 and continued into 1960 (*in the case on hand, the Consultant is stated to have completed the study and submitted draft feasibility report within 60 days*). The plaintiffs were residents of the portion of the corridor area and they sought to prevent continued progress on the planning and construction of the highway. The Court discusses about the statutory scheme which governs those proceedings and it appears that the procedure is some what similar to the National Highways Manual published by the Government of India.

64. In the said case also, the provisions of the National Environmental Policy Act, 1969, was taken into consideration. The Highway Administration did not argue that the Highway Act or the National Environment Policy Act does not apply to the case and while conceding their applicability, they stated that the time to apply them is yet to arrive. The trial Judge agreed with them. (The

defence raised before us in these Writ Petitions by NHA is more or less identical, as they say the Environmental Impact Assessment is not required at this stage, as NHA is in the process of securing the land, which does not require prior environmental clearances). Thus, the only question which the Court of Appeals was to decide is when and how the admittedly applicable statutes must be applied. The purpose of the statute was analysed on the following terms:-

"The policies behind the enactment of Chapter 5 point to the same conclusion. The purpose of the chapter is to protect all persons who will be displaced from their homes because of a federal-aid highway program. Nothing in its language, or in the legislative history cited to us, suggests that it is to become fully operative only when the final design is approved and actual condemnation proceedings are authorized. If the purpose of the statute is to be accomplished, it must be fully implemented not later than the approval of the "corridor" or "route" of the highway under section 106. At that point, the route is known, although the precise location of the right of way within it is not. At that point all of the pressures leading to displacement come into play. Unless the state is then in a position to give the statutory assurances as defined by the Secretary, there is danger that displacements will proceed

without anyone's knowing whether the requirements of the statute can be fully met. "Hardship" displacements may use up all of the available housing that meets statutory requirements, leaving the project stalled and the remaining residents of the corridor trapped in a deteriorating area, because at the time of design approval the necessary assurances cannot be given."

65. The effect of the National Environmental Policy Act was discussed as follows:-

E.....“Given the purpose of NEPA to insure that actions by federal agencies be taken with due consideration of environmental effects and with a minimum of such adverse effects, it is especially important with regard to federal-aid highway projects that the Sec. 102(2) (C) statement be prepared early. If defendants' contention were accepted-that no environmental impact statement is required until the final approval stage-then it could well be too late to adjust the formulated plans so as to minimize adverse environmental effects.

Once the highway-planning process has reached these latter stages, flexibility in selecting alternative plans has to a large extent been lost.

To paraphrase the District of Columbia Circuit, "In the language of NEPA, there is likely to be an 'irreversible and irretrievable commitment of resources,' which will inevitably restrict the [highway officials'] options. Either the [highway planners] will have to undergo a major expense in making alterations in a completed [plan] or the environmental harm will have to be tolerated. It is all too probable that the latter result would come to pass." Calvert Cliff's Coordinating Committee v. U. S. Atomic Energy Commission, D.C.Cir., 1971, 449 F.2d 1109 (1971). This was clearly not the intent of Congress when it enacted NEPA."

Ultimately, the Court ordered the Environmental Impact Statement to be prepared in consultation with the appropriate Government Agency as required under the said enactment.

66. In ***Arlington Coalition on Transportation vs. John A. Volpe, Secretary of Transportation***, 458 F.2d.1323 (1972), the United States Court of Appeals, Fourth Circuit while considering the effect of National Environmental Policy Act, held as follows:-

Given the purpose of NEPA to insure that actions by federal agencies be taken with due consideration of environmental effects and with a minimum of such adverse effects, it is especially

important with regard to federal-aid highway projects that the Sec. 102(2)(C) statement be prepared early. If defendants' contention were accepted-that no environmental impact statement is required until the final approval stage-then it could well be too late to adjust the formulated plans so as to minimize adverse environmental effects.(emphasis supplied)

Once the highway-planning process has reached these latter stages, flexibility in selecting alternative plans has to a large extent been lost. To paraphrase the District of Columbia Circuit, "In the language of NEPA, there is likely to be an 'irreversible and irretrievable commitment of resources,' which will inevitably restrict the [highway officials'] options. Either the [highway planners] will have to undergo a major expense in making alterations in a completed [plan] or the environmental harm will have to be tolerated. It is all too probable that the latter result would come to pass."(emphasis supplied)

67. In **Jones vs. District of Columbia, 499 F.2d.502 (1974)**, the issue was as to when environmental clearance had to be obtained and it was held that environmental impact assessment

is to be done at the stage of planning itself and not after approval and thus, rejected the argument that the case was pre-mature. The relevant portion of the judgment is quoted as hereunder:-

"In short, unless defendant agencies were about to take, or were taking, physical steps to carry out the action year program, a preliminary injunction requiring compliance with NEPA could not issue.

"We think that the District Court defined too narrowly the kind of harm that, under NEPA, may be sufficient to warrant the intervention of a court of equity, even at a preliminary stage. The harm against which NEPA's impact statement requirement was directed was not solely or even primarily adverse consequences to the environment; such consequences may ensue despite the fullest compliance. **Rather NEPA was intended to ensure that decisions about federal actions would be made only after responsible decision-makers had fully adverted to the environmental consequences of the actions, and had decided that the public benefits flowing from the actions outweighed their environmental costs. Thus, the harm with which courts must be concerned in NEPA cases is not, strictly speaking, harm to the**

environment, but rather the failure of decision-makers to take environmental factors into account in the way that NEPA mandates. And, for purposes of deciding whether equitable relief is appropriate, we think that this harm matures simultaneously with NEPA's requirements, i. e., at the time the agency is, under NEPA, obliged to file the impact statement and fails to do so.”

The above decisions will come to the aid and assistance of the petitioners.

68. The respondents, being a welfare State, while implementing the project which, in the opinion of the Government, is in public interest, cannot close its eyes to reality and forget that protecting agriculture is equally in public interest.

69. As pointed out earlier, the balance between agricultural development and economic development is delicate may at times very difficult for the bureaucrats and policy decision makers to perceive. Thus the interpretation, insofar as India is concerned, should lean towards agriculture. Therefore, we are of the clear view that if the project is allowed to be implemented without prior

environmental clearance, it would be grossly in violation of the principles of sustainable development and would violate the provisions of Articles 19, 21, 46, 48A and 51A of the Constitution of India.

70. Point Nos.(iv), (v) and (vi):-

These questions hinges upon quasi technical data. We say so because until we heard this matter, we had no inkling of what PCU stands for. We were enlightened by the counsels that it denotes "Passenger Car Units". Mr.Kabilan Manokaran, learned counsel appears to have done an elaborate exercise on this issue. He argued that the project is vitiated on four major grounds. The Bharatmala policy evolved by the Union Government lays down detailed criteria for bringing a highway project into the Bharatmala Scheme. The Chennai – Salem project was not included in Bharatmala Program 2017. The conditions required for inclusion of the project subsequently which is provided for, have not been fulfilled in the Chennai – Salem Green Field Project. The Cabinet Committee and the Committee of Ministers are required to approve such projects and the Chennai – Madurai project was approved in October, 2017. This approval was unilaterally dropped by the

Ministry without the permission of the Cabinet Committee. It is submitted that there are eleven criteria to declare a "Highway" as a "National Highway" and none of the criteria has been followed. Referring to Clause II F of Bharamala Pariyojana – Phase I, it is submitted that Green Field Express way are certain sections of National and Economic Corridors have traffic exceeding 50000 PCUs and have also developed several choke points. About 1900 kms of these structures have been identified for development of Green Field Express ways. Around 800 kms are being taken up under this category in Phase I of Bharatmala. It is the submission of the learned counsel that this criteria has not been met. Furthermore, the list of economic corridors given in annexure-I of the project does not include the subject express way, however, in serial no.19, Chennai – Madurai Economic Corridor finds place. It is submitted that Chennai – Salem Express way was never shown to be under any stage of consideration as per records. On 25.10.2017, when Bharatmala - I self projects were announced; on 25.11.2017, when the State of Tamil Nadu presented a memorandum to the Central Government seeking attention to a list of projects sought to be implemented in Tamil Nadu; on 23.11.2017, when Hon'ble Union Minister of MoRTH announced a list of projects approved for Tamil

Nadu to the tune of Rs.1 Lakh Crore; on 18.12.2017, from Minister of State – MoRTH replied to questions in Rajya Sabha; on 24.01.2018, when Bharatmala – I was reviewed; and on 05.03.2018, when Ministers of State – MoRTH replied to questions in Rajya Sabha about new highway projects under various stages including DPR stage.

71. Thus, the petitioner's contention is that the question of appointing a Consultant – M/s.Feed Back could not have been done at least until 05.03.2018, as in the said list of new projects, the Chennai – Salem project did not find place. Furthermore, in the representation given by the Government of Tamil Nadu on 23.11.2017, nothing has been stated about the traffic congestions etc., warranting a need for a Green Field Express way between Chennai and Salem. The petitioner submits that the traffic congestion is in Tambaram and Paranur and at the entry point in Salem and nothing is clear as to how the project highway will help de-congestion.

72. Nextly, the learned counsel explained what is LoS – Level of Service. In this regard, the Highway Capacity Manual was referred to and elaborate submissions were made on the designed

capacity of multi-lane highways etc. These submissions are to substantiate the petitioner's contention that there is no excess traffic flow, than the designed capacity in the existing roads.

73. The project is also stated to be vitiated for violation of the guidelines stipulated by the Central Government. It is submitted that the Public Investment Board's clearance has not been obtained, in-principal approval of Ministry of Finance and Comptroller and Auditor General (CAG) not obtained; audit of project formulation by CAG not done; alignment report and approval should be as per DPR guidelines of Ministry of Road Transport, the same has not been complied with; change of scope of consultation, that is, Chennai – Madurai changed to Chennai – Salem in violation of DPR guidelines; and guidelines of tendering process as per Ministry of Transport and Post Award Portal Guidelines have been violated. To substantiate the above contentions, the learned counsel had referred to the CAG guidelines, the guidelines for procurement, preparation, review and approval of DPR etc.

74. The next contention is that there has been abuse of process commencing from the manner of appointment of Consultant. The Consultant has been debarred and such Consultant

ought not to have been chosen. It is further submitted that there has been non-application of mind at all levels. The characteristics of the project have never been taken into consideration, more particularly, when there are six existing roads, this is probably why, this was not considered as a priority in Bharatmala. It is submitted that there has not been proper or no study of the alternatives which is primordial; there has been no proper study of the traffic survey and analysis, as origin – destination basis is the requirement for traffic analysis, which has not even been mentioned in the final feasibility report. Furthermore, no reasons have been assigned for dropping Chennai – Madurai Project and there is no rational basis for doing so. Further, the Consultant – M/s.Feedback did not factor Chennai – Bangalore Express way, which is sought to be implemented. Further, it is submitted that there has been absolutely no economic analysis done before approval of the project.

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75. The respondents justified the project on three grounds, viz., (i) existing capacity is fully utilized; (ii) there will be economic development in general; and (iii) there will be reduction in carbon

foot print.

76. According to the petitioners, all these three reasons are absolutely without any basis. It is submitted that none has factored the financial consequences of additional toll road and the existing concessioner of the toll ways will be benefited, as their concession period has to be extended by minimum 50% of the time and in some cases, it has to be extended by 100%.

77. Rebutting the contention of the Consultant that all National Highways have exceeded full capacity, that is, 120% and if it is so, the concessioner has to pay money to NHAI. The learned counsel for the petitioners submits that if that is the factual position, NHAI has to accept the same, but if they failed to accept the same, then the data and statistics relied on them is wrong. Thus, on several grounds, the final feasibility report was faulted.

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78. The Central Government has not filed any counter affidavit on the issues pertaining to as to how the project was included in Bharatmala Scheme. The Counter affidavit of NHAI also does not

touch upon the same, except to state that it is a policy decision. The Consultant seeks to justify the stand, but nevertheless his role is limited, as he had been appointed as a Consultant for preparing the report. The faults which were pointed out by the petitioner with regard to the draft feasibility and the final feasibility report are sought to be rebutted by the Consultant in their written submissions, firstly by contending that NHAI is an expert body and is fully competent to review the works done by the Consultant.

79. As pointed out by us, at the very inception, these are quasi technical issues, but whether the project did form part of the Bharatmala Scheme at the first instance, is a question of fact which needs to be answered. The first respondent, namely, MoRTH has not filed a counter affidavit. In the absence of a counter affidavit, we are constrained to go by the records, which are placed before us. The records clearly demonstrate more particularly, annexure-I to Bharatmala Pariyojana Phase – I, which is a press release by the Government. Annexure-I contains the list of economic corridors and the Chennai – Salem Economic Corridor does not find place, but Chennai – Madurai finds place in serial no.19. Therefore, what is clear from the above is that the subject project was not included in

the list of projects approved under the Bharatmala Scheme. It is for the Central Government to take a decision in the matter as to whether a particular highway project should be brought under the Bharatmala Scheme, which appears to be need based depending upon various factors. Undoubtedly, the decision to include a particular project under a particular scheme may be a policy decision. However, such decision cannot confer unfettered discretion on the executive. The exercise of discretion should be guided on certain principles.

80. So far as the Bharatmala Scheme is concerned, it lays down certain guidelines which were elaborated before us. In terms of the scheme formulated by the Union of India to include a road project in the Bharatmala-I Scheme, the approval of the Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister is mandated. In fact, the Committee took a decision on 24.10.2017 with regard to the projects which have to be brought under Bharatmala Scheme. Admittedly, the Government of Tamil Nadu has not agreed to bare at least 50% of the land acquisition cost. In such circumstances, it has to be seen as to how a project could be included in the Bharatmala Scheme subsequently. No

record has been placed before us to show as to how this project was included subsequently in the Bharatmala Scheme, that is, after 24.10.2017. The data made available by MoRTH mentions 44 economic corridors scientifically identified and the Chennai-Trichy-Madurai Economic Corridor is stated to have higher vehicular traffic at an annualised average daily traffic of 43671 PCU and there is nothing placed on record by the respondents to show as to why such a higher priority project should be dropped and a project which was never in the pipeline to be included. The respondents have not placed any material to show that the subject project has been approved by the Cabinet Committee or by the PPPAC as mandated in the guidelines issued by the Comptroller and Auditor General.

81. As noticed above, the Consultant, M/s.Feed Back Infra was not appointed for the Chennai-Salem project up to 05.03.2018. Further, the tender issued by NHAI calling for bids to offer consultancy services for DPR was for the Chennai-Trichy-Madurai Economic Corridor. Therefore, such a consultant who was appointed for a different project and never given any written orders for conducting a feasibility study, has submitted a feasibility report on 23.04.2018 citing that they were directed by NHAI to make a study

and submit a report. Therefore, it is manifestly clear that there has been serious flaws in the decision making process and those flaws goes to the root of the matter affecting the entire proceedings.

82. It was argued by the learned Additional Solicitor General that the writ petitioners are indulging in cherry picking, pointing out insignificant errors when they do not have any expertise in the area. We do not agree with the submission, since the endeavour of the petitioners is to point out the flaws not only in the acquisition proceedings, but the steps taken preceding the acquisition and those done after the notification issued under Section 3A(1) of the Act. One other argument put forth by the learned Additional Solicitor General is that there is no statutory requirement for obtaining a feasibility report. NHAI cannot take such a stand having decided to call for tenders for appointing a consultant for preparation of a feasibility report. It might have been a different matter if NHAI themselves had carried out the exercise, but having not done so and thought fit to outsource the work to a private agency by calling for tenders, the work which has been outsourced is deemed to be a work which ought to have been done by NHAI. If there are flaws in the work done by the consultant so appointed, the

Court is not powerless to test the correctness of the procedure which has been followed if not the ultimate decision. One other argument was advanced by contending that after the detailed project report had been received, the pre and final feasibility report loses its significance. Such an argument cannot be put forth by NHAI because, the writ petitions were filed when the draft feasibility report was submitted. The draft feasibility report has been faulted on several grounds and when the same was being tested, the consultant proceeded to prepare the final report and ultimately the detailed project report. Thus, if an error had occurred at the first instance, not rectified at the subsequent stage, it is deemed that such an error stood perpetuated. Therefore, we are well within our jurisdiction to test the correctness of the entire proceedings commencing from the appointment of the consultant. The respondents cannot take umbrage by contending that the change from Chennai-Madurai to Chennai-Salem is a policy decision. It is submitted that the minutes of the meeting of MoRTH shows adequate grounds for change of the project to Chennai-Salem. A policy decision is not always immune from challenge. If there has been arbitrariness in the decision making process, Courts are entitled to exercise their power of judicial review. The minutes of

the meeting relied on by the respondents would, in fact, go to strengthen the case of the petitioner that there was a change of the project midway, that is, much after the consultant was appointed for the Chennai-Madurai project.

83. Shri T.V.Ramanujam, learned Senior Counsel appearing for the consultant submitted that the work of the consultant is subject to review by NHA I and not open to public scrutiny. We do not agree with the submission for more than one reason. Firstly, the work done by the consultant is a work which was required to be performed by NHA I who took a decision to outsource the work by calling for tenders from consultants. Having done so, the work executed by the consultant so appointed is subject to judicial review on stated parameters, as it is work performed on behalf of a wholly owned Government agency having special powers and expertise. Secondly for the reason that public funds are employed to meet the expenditure of the consultancy firm. Thus, the work of the consultant is subject to judicial review.

84. Thus, the decision to make a project to fall under Bharatmala Scheme may be a policy decision, but to implement such policy decision, necessarily, the guidelines have to be

scrupulously followed, as the Bharatmala Scheme provides for priority for certain projects over others. Therefore, if project 'B' is to be prioritised over project 'A', then project 'B' should meet the criteria and satisfy the basic requirements and should have distinguishing features to surpass project 'B'. In the absence of any counter affidavit and no proper explanation given by NHAI except to state that it is a policy decision and they are experts, we are of the considered view that the entire matter was executed in a great haste and much of the required settled parameters to be followed, have been ignored. Therefore, we are of the view that there has been no proper scrutiny of all details, more particularly, the alternatives before a decision was taken to implement this project.

85. There is an allegation that there is a hidden agenda for the proposed project. One of the Writ Petitioners has named a Public Limited Company manufacturing Steel stated to have garnered about 2000 acres of land in Salem district with a view to exploit the natural resources. However, there is no material placed before us to show that the project has had a hidden agenda. Nevertheless, we may observe that there has been great haste in notifying the project and one fails to understand as to why there is

such a hurry in doing so, when the State is still grappling about the after-effects of two cyclonic storms in last four years. We deem it appropriate to say nothing more on this.

86. Point No.(vii)

To answer this question, we need to look into the basic facts which establish that "the cart has been put before the horse". Nothing more is to be stated except to hold that the award of the consultancy contract was wholly illegal. The NHAI invited bids for various projects on 06.09.2017 with bid due date as 23.10.2017, which was extended up to 03.11.2017. We are concerned with lot – 6 which pertains to consultancy services for preparation of DPR for development of economic corridors, inter-corridors, feeder routes and national corridors to improve efficiency of freight movement in India under Bharatmala Project. The original files which were circulated for the Court's perusal show (Volume I page 18) that there were 18 consultancy firms, who submitted their bids via e-portal. The committee recommended for evaluation of the bids on the basis of eligibility/evaluation criteria. The files disclose that up to the stage of acceptance of the bids submitted by the consultant, the project for which Consultant – Feed Back had quoted is for

Chennai – Madurai, as a consequence of which the other bidders obviously stood disqualified. If such was the admitted factual position, could there been a draft feasibility report prepared and submitted by the Consultant for a totally different project with regard that the project for which tenders were invited. The only answer to the question should be in the negative. A bid which is offered by a bidder is for the work called for and cannot be extended in respect of a different work. If there is a change in scope of work, one of the two options would be available, that is, to scrap the tender and invite fresh bids or to issue a supplemental notification and invite all the bidders intending to participate, that is, those who were short listed as well as those who were not short listed. In the instant case, the second option cannot be done, because the project is a new project; the parameters are different; the considerations are different; the data and statistics are different; above all, the project which was dropped was an approved project under the Bharatmala Scheme, whereas, there is nothing on record to show that the subject project was approved as part of the Bharatmala scheme in terms of the procedure required to be followed. The facts are not in dispute because, the Consultant himself states that he was directed to prepare a report to be

discussed in a meeting. This oral direction appears to have been issued much prior to the written contract between the parties, which was much later. Therefore, there has been a serious error in the decision making process.

87. One of the arguments on behalf of the Consultant was that none of the other bidders have challenged it. We are at a loss to understand as to why there has not been any challenge. Probably, it is a small group of Consultants who regularly carry out such consultancy assignments to NHAI. We are not aware of what are the "internal economics" or "internal chemistry" between those bidders, yet that can never in any manner sanctify an illegality committed by the authorities in permitting the Consultant to proceed on oral directions to conduct a survey and collect data in respect of a project, which was never approved under the Bharatmala. Therefore, we have no hesitation to hold that the project originally notified in lot no.6 was different from the project now sought to be implemented and the Consultant having been declared as "successful bidder" for the Chennai – Madurai project, could not have been permitted to proceed with the Chennai – Salem project except for inviting fresh tenders and offers.

88. Point No.(viii):-

The respondents do not deny the fact that the subject project if implemented, will pass through Forest lands, lakes, ponds, water bodies, agricultural lands, part residential accommodation, farm lands etc. The impact of the project on the eco system is yet to be studied. In-principle approval has been granted to study the impact in Forest area. In the meantime, there has been realignment and it is reported that the project will pass through Forest area only to an extent of less than 10 kms. The petitioners have stated about the rich flora and fauna in the area, the rare type of birds and animals, insects and worms which are found exclusively in that area. The counter affidavits filed before us does not in any manner render any assistance in arriving at a decision as to what has been done in this angle. Presumably, nothing has been done. Reducing the distance in Forest area may be appreciable, but it cannot be taken to be a laudable idea. The endeavour should have been to avoid Forest area. Elsewhere in the country, where in the yester years, roads were laid through wildlife sanctuaries and Reserve Forest, when the traffic was minimal and by efflux of time, these roads virtually have become city roads and many at times, Forest officials find it very

difficulty to regulate traffic on those roads, especially during night time, when the wild animals move around freely. This has resulted in the human-animal conflict. Who is to be blamed? It is none other than the humans, who treaded into their territory for personal gains and comforts.

89. Earlier we have held that the reports submitted by the Consultant is required to be scrapped. Even going by the draft feasibility report, we find the merits of the three existing routes and the proposed alignment has been discussed. The report states that since the existing roads are already present, there is no structure affecting and land acquisition unlike the proposed Green Field Highway. It has been further stated that all the existing routes are either no access/partial access control, and the connectivity is much higher to the villages/towns along its pathway. The average travel time in these three routes from Chennai to Salem is 5 hours 45 minutes and with improvement to the existing routes, it can be reduced. Further, there is no forest land acquisition, which is a very difficult and lingering process required for proposed Green Field Highway. Further, the proposed Green Field Highway with closed toll policy system is difficult to access for a common man. When we

compare the merits of the three existing routes with that of the proposed alignment, we find that the object is to connect industrial area and special economic zone present along Chennai and Salem district and it is claimed that the access control Green Field Highway will pave the way for economic development of the region and ensure shorter travel time and distance compared to the existing routes. However, we find that the merits in the existing three routes are far superior and higher than the merits in respect of the proposed alignment, more particularly when the Consultant themselves have stated that by improving the existing routes the average travel time can be reduced. Furthermore, it is admitted that acquisition of forest land is very difficult and it is a lingering process and the proposed access controlled Green Field Highway is difficult to access for a common man. The report has analysed the seismicity and it has been stated that the proposed highway will be located in very high damage risk zone as per wind and cyclone hazard classification of India. Further the report while considering the Surface Water Impact states that the proposed Green Field Alignment is crossing rivers namely, Palar Pennaiyar etc., and also many irrigation lakes/tanks etc.

90. The lessons learnt elsewhere should be an eye opener for the State while designing any project which is near Forest area or intended to pass through a Forest area. In other words, prevention is better than cure. Two of the popular hill stations in the State of Tamil Nadu is crumbling with large scale encroachments and unregulated constructions. The authorities have not been able to make any significant progress, despite directions and orders issued by this Court. Should we permit that to happen again. If the road passes through a Reserve Forest to an extent of 10 kms, will it not only pave way for establishments in the near vicinity, it would also pave way for poaching of endangered species of birds and animals in the hill area. It will pave way for illicit felling and transportation of valuable timber. Obviously, the National Highway cannot build a compound wall on both sides of the highway nor post armed security guards 24 X 7 to prevent any ingress or egress into the Forest area.

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91. During the pendency of these Writ Petitions, it was brought to our notice that more than 100 trees were unauthorisedly felled from the lands in close proximity with the proposed

alignment. The persons who had unauthorisedly felled those trees had been granted permission only to remove the wind fallen trees numbering about 8 or 6 trees at different location several kilo meters away. However, the persons had trespassed into Government land and unauthorisedly felled more than 100 trees. Thus, if the project highway is to pass through the reserve forest area, even it is to a distance of about 10 kms, it will undoubtedly pave way for the forest poachers and will facilitate easy access to the forest area. We can take judicial notice of the fact that in a village called Thengumarada, the villagers are required to cross the Moyar river to reach their residence. The only way to cross the river is by availing the services of coracle and when the water level is bit low, the villagers avail the services of the four wheel drive Jeeps. For several years, the villagers have been representing to the Government for constructing a bridge to enable them to easily access their village. It is stated that the Forest Department has not given permission to put up the bridge on the ground that it will pave way for illegal felling of trees in the area. Therefore, the stand taken by the department in the instant case appears to be rather surprising by justifying their action contending that they have minimised the length of the road within the Forest area to 10kms.

It is common knowledge that in all places throughout the country where roads have been formed through forest area, there has been always human-animal conflict. Those roads which were formed decades ago was for different purpose, but the same roads have become a great nuisance to the Wild Life in the area. Very recently, the Government sought to relocate tribal settlements in forest areas to avoid poaching and to avoid human-animal conflict. We wonder as to how these issues will be tackled if a new road is to be formed inside a Reserve Forest regardless of the distance proposed.

92. Therefore, we are of the clear view that a more thorough study was required in the matter and it defies logic that in such a sensitive project, study could have been made within 60 days, when in the United States of America, study commenced in 1944 and went on till 1960 for linking two highways. We are not stating that the project should take such long, but the seriousness with which the study should be conducted should be appreciated at all levels. The Consultant appointed is paid consideration for the work to be done, he has a duty to protect the rights enshrined under the Constitution of India. Therefore, the report should be balanced, as the Consultant states before us that the report is not binding on

NHAI. Therefore, the report need not suit the needs of NHAI, nor be doctored to suit any other requirements. The report should report the true and correct facts, as it is with no rounding off or making concessions. Obviously, within 60 days, nothing could have been done. Nothing worthwhile could have been done, given the length of the project and the sensitivity of the area through which, it passes through the different terrain and other cultural and social factors. It may be true that the contract between NHAI and the Feed Back provides for 60 days time to submit a report. Nothing prevents a Consultant, who claims to be the one of the best in the field doing several projects, to seek for additional time. It is admitted by the consultant that google maps were referred to and relied on for preparing report. This will go to show that the entire length of the proposed alignment has not been physically verified or visited. Sample surveys are stated to have been conducted. It is not clear as to whether personnel were deputed for collecting the data of PCUs or the data available in the toll plazas were collated. There is a serious dispute raised by the petitioner as to how the PCU is required to be computed whether the traffic on one way of the road alone should be taken into consideration or both ways. In any event, given the distance to which the proposed highway is to be

formed and considering the terrain in which it is proposed to be formed, consultant could not have made any justifiable study to reflect the true picture within less than 60 days.

93. The procedure adopted by NHAI in asking the Consultant to carry out a work which was never the scope of the bid document by an oral arrangement is unheard of. Therefore, unless a proper study is made, the impact on the Forest lands, water bodies, wildlife, flora and fauna cannot be assessed and therefore, if the Central Government still is of the opinion that the subject project is required to be implemented and it passes through the required procedural formalities, then it is well open to the respondents to make a comprehensive study of the environmental impact.

94. Point Nos.(ix) & (x):-

While deciding issue no.3 regarding prior environmental clearance, we have pointed out that the facts demand a prior environmental clearance, that is, prior to issuance of the notification under Section 3D of the National Highways Act. Prior environmental clearance would undoubtedly require a thorough study of the area through which the project is proposed to be implemented. The

agriculturists in the area have raised protest and some of them have approached this Court by filing Writ Petitions. It does not matter that some section of people for reasons best known are agreeable to be part of the project and surrendered their lands for the project without being well informed as to what would enure to them upon such surrender. We are not concerned with those people who are willing to run the risk and it is up to them to seek sane advice. We are more concerned about the innocent people who are not aware of their rights, all that they know is that they will not be able to survive without their agricultural lands. The nature of attachment to the land is inseparable. Therefore, to understand the impact of the project *vis-a-vis* the object with which NHAI is said to have conceived the project, it is essential that the people who are likely to be affected, if not all, at least few of them should be heard in the matter. This procedure, if adopted, will ensure fairness and reasonableness and this so called delay is not going to hamper the project, which even as per the report will be fully implemented in the year 2025. Therefore, before seeking prior environmental clearance, it is necessary that a public hearing is held before any such project is implemented.

95. Point No.(xi)

While deciding issue no.6, we have held that the award of tender was for a different project and the report has been prepared pursuant to oral directions issued to the Consultant for a different project. If this is so obvious, the report can have no sanctity, as there has been an error at the very inception which goes to the root of the matter. However, good may be the report, the award in favour of the Consultant being for a different project, unless a fresh bid is invited and proposal was made with due inputs, the draft feasibility report or the final feasibility report submitted by the Consultant cannot be accepted. We decide this issue, accordingly.

96. Point No.(xii)

In one place, the draft feasibility report speaks of a town in China and in other about Bangalore. The petitioners would state that the report prepared by the Consultant-Feed Back contains plagiarized content. The Consultant, nor the NHAI, deny the fact that there is a reference to a town in China and there is reference to Bangalore, which are in no way concerned about the subject project. However, they say that this is a mistake and this cannot be taken to discredit or totally reject the entire exercise done by the

Consultant. We are not convinced with the answer given by the NHAH or by the Consultant.

97. To be borne in mind, the project is Rs.10,000 Crore project. Therefore, utmost seriousness and dedication is required at all levels. The copies of the draft feasibility report, its annexures etc., were produced before us. They contain volumes and volumes of papers with tabulated statements, narrations and various facts and figures. Presumably, the person who prepared the report had earlier prepared similar reports and some of the materials which according to him would have been "stock" materials which were "cut & pasted" from earlier report. Even if that had been done, before the Consultant/their authorized signatory affixes their seal and signature, utmost care should have been taken to ensure that the report contains details concerning the project. Assuming that we condone the same by ignoring it as an inadvertent mistake, the resultant position would be to approve a report which can contain several materials in different places which may not be relevant for the subject project highway. Therefore, it will be putting a premium on the report, if it is allowed to be accepted. We may not agree with the contention of the learned counsel for the petitioner that the

report is plagiarized, but what is evident is that there has been non-application of mind and presumably, the report was required to be prepared within a short period for reasons best known. Therefore, the report prepared by the Consultant needs to be scrapped.

98. Point No.(xiii)

Having held that the report of the Consultant needs to be scrapped for the reasons assigned by us, while answering question Nos.6 and 11, it may not be necessary for us to go into the question as to whether the guidelines prescribed in the Indian Highways Capacity Manual were ignored or not and leave the issue open.

99. Point No.(xiv)

While deciding issue no.3, we had noted decisions rendered by the Court of Appeals in United States of America and in particular, the decision in **Commonwealth of Massachusetts** (supra). The original project in the said case was on auctioning the rights to drill oil for 488 tracks. Subsequently, the numbers of rights to be auctioned got substantially reduced. The question was whether this needs to be placed before the competent authority while considering the impact in terms of National Environmental Policy Act. The Court

held that the matter requires to be considered afresh, though there is a reduction in number of oil fields. The above decision will apply with full force to the cases on hand because, there has been a change of alignment, reduction of area, supplemental notification has been issued during the course of hearing of the writ petition etc. Therefore, the so called report which was relied upon by the respondents can no longer be of assistance and they cannot be relied upon.

100. Point No.(xv)

This is a very important issue pointed out by the petitioner as regards the impact of the subject highway on the existing toll way. One of the existing concessioners of the tollway has impleaded themselves in the Writ Petition. They have projected a case that there will be severe dent on their collection, consequently, they will be put to prejudice. It is brought to our notice by the learned counsel for the petitioner that there is a condition in the concessionaire agreement between the Concessioner and NHAI that on account of a new road, if the collection of toll is affected, then the concessionaire agreement is liable to be extended for a period up to 50 to 100% of its original period. Therefore, the existing toll

operators on the three toll roads will continue to collect toll far beyond their original period, which will ultimately affect the travelling public. The NHAI has stated that the road is an access control road to mean that the road is accessible only at designated spots which appears to be in four to six places between Chennai and Salem. Therefore, it is hard to believe that a small businessman in Vandavasi or Polur would stand benefited on account of this express way, where the traffic is zipping in speeds over 120 kms and to reach the small towns and villages, one has to travel several kilometres to take a spur and drive back to these small towns. Therefore, the projection made by NHAI, as to the benefits of the project highway appears to be illusory. The financial consequences were not analysed by the Consultant and the prejudice, which will be caused to the common man using any of the existing roads was never factored by the respondents.

101. For all the above reasons, we are of the considered view that the project highway as conceived and sought to be implemented is vitiated on several grounds as mentioned above and consequently, the notifications issued for acquisition of lands under Section 3A(1) are liable to be quashed.

102. In the result, the Writ Petitions are allowed and the land acquisition proceedings are quashed.

103. In view of the above, Crl.O.P.No.22714 of 2018 is closed. Consequently connected Miscellaneous Petitions are closed. There shall be no order as to costs.

104. During the pendency of these Writ Petitions, when we heard the cases, the learned counsel for the land owners pointed out that the revenue records were mutated and stood transferred as Government lands. This had happened even much prior to issuance of the Notification under Section 3D of the Act. We had pointed out that such an action could not have been initiated, as, by issuance of a Notification under Section 3A of the Act, the Government only conveyed its intention to acquire the lands.

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105. The learned Government Pleader sought to explain by contending that those entries were only temporary in nature and that in the event of the lands get excluded from the project, the

entries would stand reverted back.

106. We do not agree with the said stand taken by the learned Government Pleader at that juncture itself. Now that we had allowed the writ petitions, all the entries in the revenue records, which stood mutated, shall be reversed in the names of the respective land owners and fresh orders be issued and communicated to the respective land owners within two weeks thereafter. This direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this judgment.

(T.S.S., J.)

(V.B.S., J.)

08.04.2019

Index:Yes/No

Speaking/Non-Speaking Order

pbn/abr

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To

1. The Government of India,
Rep., by the Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi -110001.
2. The Government of India,
Rep., by its Director,
Impact Assessment Division,
Ministry of Environment, Forest and Climate Change,
Indira Parayavaran Bhawan,
3rd Floor, Vayu Wing,
Jor Bagh Road, Aliganj,
New Delhi – 110003.
3. The District Revenue Officer,
Dharmapuri District.
4. The Project Director,
Project Implementation Unit,
SRI Towers, 3rd Floor,
DP-34(SP) Industrial Estate,
Guindy, Chennai – 600 032.

सत्यमेव जयते

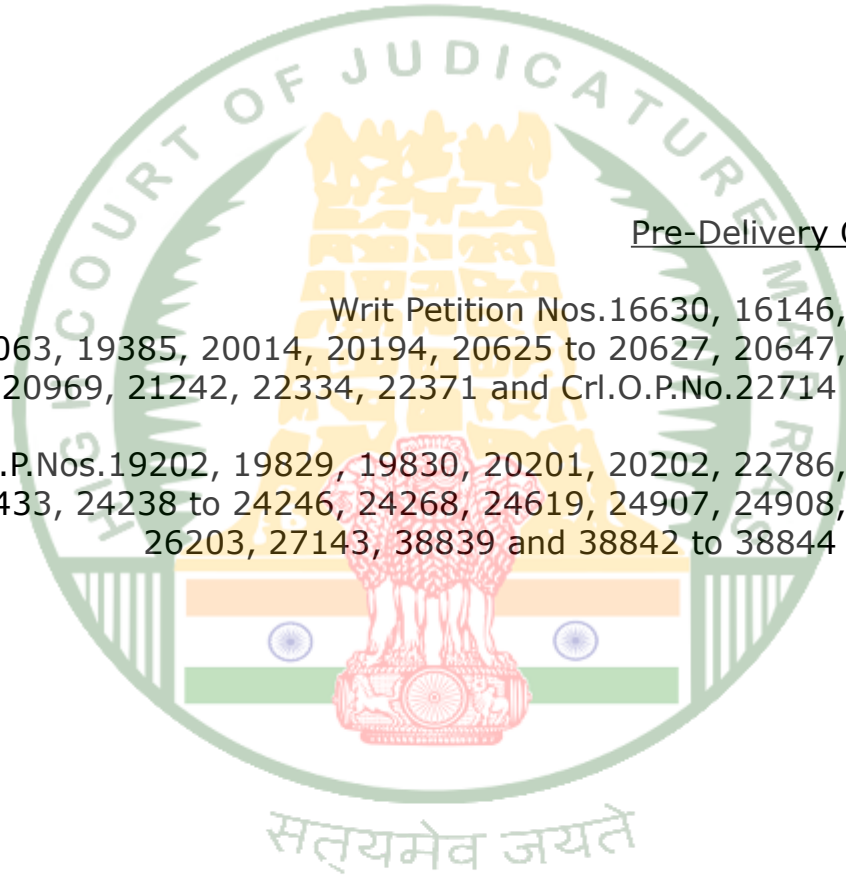
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**T.S.SIVAGNANAM, J.
AND
V.BHAVANI SUBBAROYAN, J.**

pbn/abr

Pre-Delivery Order in

Writ Petition Nos.16630, 16146, 16961,
19063, 19385, 20014, 20194, 20625 to 20627, 20647, 20764,
20969, 21242, 22334, 22371 and Crl.O.P.No.22714 of 2018
and
W.M.P.Nos.19202, 19829, 19830, 20201, 20202, 22786, 23432,
23433, 24238 to 24246, 24268, 24619, 24907, 24908, 26170,
26203, 27143, 38839 and 38842 to 38844 of 2018



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