

W.P.(MD).Nos.6727, 16710 and 16711 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.07.2024
Pronounced on : 30.01.2025

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

**W.P.(MD).Nos.6727, 16710 and 16711 of 2021
and W.M.P.(MD).Nos.13609, 13610, 13611, 13614
and 5185 of 2021 and 21310 of 2022
and 1235, 1239 and 11333 of 2024**

W.P.(MD).No.6727 of 2021

1. G.Kesavan
2. S.G.Seenivasagan
3. Vijayalakshmi
4. Amutha

... Petitioners

Vs.

1. The Union of India
Rep. by its Secretary,
Ministry of Shipping,
Road Transport and Highways,
New Delhi.
2. The Competent Authority and
District Revenue Officer,
(Road Transport Highways)
Thirumangalam-Rajapalayam Four Lane Project,
Madurai Collectorate Office,
Madurai.
3. The Project Director
Project Implementation Unit,



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National Highways Authority of India,
Madurai.

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4. National Highway Authority of India
Rep. by its Chairman,
G5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking (i) to issue a writ of declaration, declaring the provisions of the NH Act, 1956 in so far as relating to Land Acquisition are concerned and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015, dated 28.08.2015 issued by the first respondent u/s 113(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are unconstitutional and void.

(ii) to issue a writ of certiorari calling for the records relating to the issue of the impugned orders, viz., Notification issued u/s 3-A(1) of NH Act, 1956 issued in S.O.No.3280(E) dated 24.09.2020 by the first respondent and published in Government of India Gazette Extraordinary No.2932 Part-II-Sec.3(ii) dated 24.09.2020 and the Declarations u/s 3-D (1&2) of NH Act, 1956 issued by the first respondent in Notification dated 29.01.2021 issued in S.O.470(E) published in Government of India Gazette Extraordinary Part-II Sec.3(ii) No.433, dated 29.01.2021 and the Notice u/s. 3-G(3) of NH Act, 1956, dated 19.02.2021 issued by the second respondent and published in the Hindu News Paper dated 19.02.2021 and quash the same.

(iii) consequently to issue a writ of mandamus directing the respondents to accord proper technical approval to the detailed estimate for the proposal of



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4 lane widening of NH744 as per the technical standards as per Rule 3 of NH Rules, 1957 and thereafter to initiate the Land Acquisition process as per 2013 Central Act.

W.P.(MD).No.16710 of 2021

S.Seetha

... Petitioner

Vs.

1. The Union of India
Rep. by its Secretary,
Ministry of Shipping,
Road Transport and Highways,
New Delhi.
2. The Competent Authority and
District Revenue Officer,
(Road Transport Highways)
Thirumangalam-Rajapalayam Four Lane Project,
Soolakkarai, Virudhunagar.
3. The Project Director
Project Implementation Unit,
National Highways Authority of India,
Madurai.
4. National Highway Authority of India
Rep. by its Chairman,
G 5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking (i) to issue a writ of declaration, declaring the provisions of the NH



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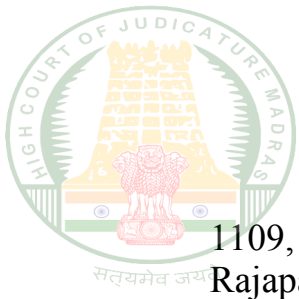
Act, 1956 in so far as relating to Land Acquisition are concerned and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015, dated 28.08.2015 issued by the first respondent u/s 113(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are unconstitutional and void.

(ii) to issue a writ of certiorari calling for the records relating to the issue of the impugned orders, viz., Notification issued u/s 3-A(1) of NH Act, 1956 issued in S.O.No.3279(E) dated 24.09.2020 published in Government of India Gazette Extraordinary No.2931 Part-II-Sec.3(ii) dated 24.09.2020 by the first respondent; and consequent 3D notification issued in its Notification No.127 published on 13.01.2021 under notification_id=40032 in the fourth Respondent's website and Notification u/s. 3-G(3) of NH Act, 1956 published in Dinakaran News Paper dated 24.02.2021 and quash the same.

(iii) consequently to issue a writ of mandamus directing the respondents to accord proper technical approval to the detailed estimate for the proposal of 4 lane widening of NH744 as per the technical standards as per Rule 3 of NH Rules, 1957 and thereafter to initiate the Land Acquisition process as per 2013 Central Act.

W.P.(MD).No.16711 of 2021

Subburaaj Cotton Mill (P) Ltd.,
Rep. by its Manager,



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1109, Srivilliputtur Road,
Rajapalayam - 626 117,
Virudhunagar District.

... Petitioner

Vs.

1. The Union of India
Rep. by its Secretary,
Ministry of Shipping,
Road Transport and Highways,
New Delhi.
2. The Competent Authority and
District Revenue Officer,
(Road Transport Highways)
Thirumangalam-Rajapalayam Four Lane Project,
Soolakkarai, Virudhunagar.
3. The Project Director
Project Implementation Unit,
National Highways Authority of India,
Madurai.
4. National Highway Authority of India
Rep. by its Chairman,
G 5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking (i) to issue a writ of declaration, declaring the provisions of the NH Act, 1956 in so far as relating to Land Acquisition are concerned and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015, dated 28.08.2015 issued by the first respondent u/s 113(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation



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and Resettlement Act, 2013 are unconstitutional and void.

(ii) to issue a writ of certiorari calling for the records relating to the issue of the impugned orders, viz., Notification issued u/s 3-A(1) of NH Act, 1956 issued in S.O.No.3279(E) dated 24.09.2020 published in Government of India Gazette Extraordinary No.2931 Part-II-Sec.3(ii) dated 24.09.2020 by the first respondent; and consequent 3D notification issued in its Notification No.127 published on 13.01.2021 under notification_id=40032 in the fourth Respondent's website and Notification u/s. 3-G(3) of NH Act, 1956 published in Dinakaran News Paper dated 24.02.2021 and quash the same.

(iii) consequently to issue a writ of mandamus directing the respondents to accord proper technical approval to the detailed estimate for the proposal of 4 lane widening of NH744 as per the technical standards as per Rule 3 of NH Rules, 1957 and thereafter to initiate the Land Acquisition process as per 2013 Central Act.

For Petitioners : Mr.N.Subramaniyan
in W.P.(MD).No.6727 of 2021
Mr.R.Vidhya
in W.P.(MD).Nos.16710 and 16711
of 2021

For Respondents : Mr.AR.L.Sundaresan, ASG
for Mr.S.Jeyasingh for R1
in W.P.(MD).No.6727 of 2021
and for Mr.M.Ashok Kumar for R1
in W.P.(MD).Nos.16710
and 16711 of 2021

Mr.N.Satheesh Kumar, AGP



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for R2 in all the writ petitions

Mr.K.Govindarajan, DSG
for Mr.P.Karthick for R3 and R4
in all the writ petitions

COMMON ORDER

R.SURESH KUMAR, J.

Though these three writ petitions were filed independently by three different writ petitioners, in view of the prayer that has been sought in these writ petitions which is one and the same and the issue raised in these writ petitions is a common one, all these three writ petitions were heard together and are disposed of by this common order.

2. The facts in nutshell which are required to be noticed for the disposal of these writ petitions are as follows :

(i) The first respondent had issued a notification under Section 3-(A)(1) of the National Highways Act, 1956, in short “the Highways Act” in the Gazette of India Publication, dated 24.09.2020 for the intention of the Government to acquire land for laying or expansion of four lane in National Highways 744.



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WEB COPY (ii) Subsequently, notification under Section 3-(D)(1) and (2) of the Highways Act was published in the Gazette of India dated 29.01.2021 and the notice under Section 3-(G)(3) of the Highways Act also have been published in the newspaper on 19.02.2021.

(iii) In order to challenge all these notifications, these writ petitioners had chosen to file these writ petitions, however with the prayer primarily to seek to declare the various provisions of the Highways Act insofar as relating to land acquisition are concerned as well as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015, dated 28.08.2015 issued by the first respondent under Section 113(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, herein after referred to as “the 2013 Act” are unconstitutional and void.

(iv) Therefore with these prayers of writ of declaration to seek declaration of those provisions of the Highways Act as well as the



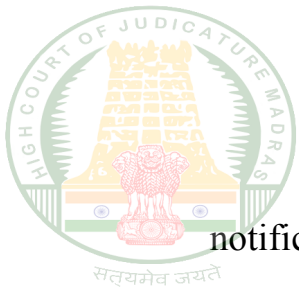
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28.08.2015 order issued by the Central Government as null and void and also the consequential prayers to quash the notification issued by the first respondent under Section 3-(A)(1) and the notification issued under Section 3-(D)(1) and (2) and Section 3-(G)(3) under the Highways Act of the first respondent all these writ petitions were filed.

3. The challenge that has been made in these writ petitions, according to the petitioners counsel Mr.N.Subramaniyan and Ms.R.Vidhya, are in two fold.

4. In the first fold, the challenge is in respect of the provisions of the Highways Act, i.e., from Sections 3-A to 3-J which are all the provisions relates to land acquisition available in the Highways Act. The second fold of the challenge relates to various notifications issued by the first respondent under Section 3-A(1), 3-D(1) and (2) and 3-G(3) of the Highways Act.

5. In respect of the first fold of the challenge, the ground raised by the petitioners is that, Section 3-A to 3-J of the Highways Act get lapsed or repealed on 01.10.2015 as the first respondent failed to place any draft

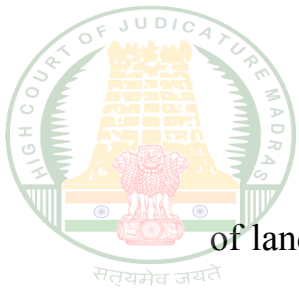


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notification before Parliament, got it approved and notified as amended provided under Section 105(3) r/w 105(1) of the 2013 Act.

6. The grounds urged on behalf of the petitioners to make the challenge of the first fold is that, Section 105(3) of the 2013 Act provided for issuing notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the 2013 Act.

7. Such a notification since have to be issued by the Central Government within a period of one year from the date of the 2013 Act, comes into force and the 2013 Act came into force from 01.01.2014, therefore on or before 31.12.2014, such a notification under Section 105(3) of the 2013 Act should have been issued. Since the same has not been issued and even the 2013 (Amendment) Ordinance 2014, i.e., Ordinance (9 of 2014) though was promulgated on 31.12.2014, amending Section 105 of the 2013 Act to extend the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement to cases



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of land acquisition under the enactments specified in Fourth Schedule of the 2013 Act and the 2015 Ordinance, i.e., Ordinance (4 of 2015) also was promulgated and the 2015 (Amendment) Second Ordinance, 2015, i.e., Ordinance (5 of 2015) also was promulgated respectively on 03.04.2015 and 30.05.2015 to give continuity to the provisions Act 4 of 2015 and the bill replacing such an Ordinance was referred to the Joint Committee of Parliament for examination and since the same was pending with the Joint Committee and in view of the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance 2015, i.e., (5 of 2015) since would be lapsed on 31st day of 2015, thereby the land owners would be put under disadvantageous position thereby resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule of 2013 Act as extended to the land owners under the said Ordinance. The first respondent had come forward to extend the benefits available to the land owners under the 2013 Act to the similarly placed land owners, whose lands are acquired under the 13 enactments specified in the Fourth Schedule of the 2013 Act.



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8. Therefore in exercise of the powers conferred under sub-section (1)

of Section 113 of the 2013 Act, the Central Government made the order to remove the difficulties, thereby the order issued in this regard on 28.08.2015 by the first respondent / Central Government under the removal of difficulties provision, i.e., Section 113(1) of the Act would not in any way rectify the defect of mandatory requirement of issuance of notification under Section 105(3) of the 2013 Act. Therefore the provisions of the Highways Act, 1956, which is one of the 13 legislation in the Fourth Schedule would get automatically repealed, thereby the acquisition proceedings that has been taken by issuance of notification under Section 3-A(1) as well as the notification issued under Section 3-D(1) and (2) and the notice issued under Section 3-G(3) of the Highways Act all become void ab initio and therefore these land acquisition proceedings shall be declared as unconstitutional, was the case projected on behalf of the petitioners by Mr.M.Subramaniyan, learned counsel appearing for the petitioners.

9. In support of his contention, he has further stated that, the power to remove difficulties could be invoked only to remove unforeseen difficulties that may arise in implementation of the provisions of the Act and

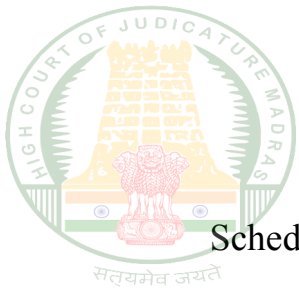


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that too not to be inconsistent with any provisions of the Act. The difficulty shall be the one arising by giving effect to the provisions of the Act and not for the extraneous difficulty. In support of this contention, he relied upon *Madeva Upendra Sinai v. Union of India*, reported in (1975) 3 SCC 765.

10. He would also submit that, the power under Section 113 shall not be used to violate any provision of the Act as well as to conjure or overcome its omission it had committed. In support of his contention, he relied upon *State of West Bengal v. Anindya Sundar Das and others*, reported in 2022 SCC Online SC 1382.

11. He would also submit that, Section 105(1) of the 2013 Act mandates the Central Government to issue, within one year, a notification under sub-section (3) of Section 105 following the procedure under Section 105(4). According to which, a draft notification was to be presented before each house of the Parliament who may reject it or modify it, of course by not diluting the provisions relating to compensation or rehabilitation and resettlement as mandated under Section 105(3). Therefore the ultimate decision is left to be taken by the Parliament either to continue the Fourth



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Schedule Acts independently or to apply 2013 Act for the land acquisition for the public purposes coming under the Fourth Schedule Acts with even enhancing the compensation but not diluting the compensation provisions. Therefore according to him, the power to take a decision in this regard vest with the Parliament and not with the Executive who even may provide still higher compensation.

12. He would also urge the point that, Section 105(4) of the 2013 Act mandates the Parliament to decide the notification required under Section 105(3) but by the impugned notification under Section 113, the first respondent usurped the power of the Parliament which is a colourable exercise of power by the first respondent invoking Section 113 unlawfully.

13. He would also submit that, as the first respondent / Central Government failed to issue the notification as mandated under Section 105(3) of the 2013 Act within one year, i.e., before 01.01.2015, from which date, the land acquisition provisions of all the Fourth Schedule Acts stand wiped out or repealed as per Section 105(1) of the 2013 Act and henceforth all the provisions of the 2013 Act became applicable to the land acquisition for the public purposes coming under the Fourth Schedule.



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14. Therefore he would submit that, after one year since the impugned order, dated 28.08.2015 was issued under Section 113 of the 2013 Act seeking to undo the mandate of Section 105(1) of the Act, which infact had already wiped out the land acquisition provisions under the Fourth Schedule Act. Therefore the impugned order is to undo the result of the implementation of the main provision of the 2013 Act, thereby the notification became ultra vires of Section 113 of the 2013 Act.

15. He would also submit that, it is a rudimentary principle of law that power to remove difficulties clause cannot be used to violate the provisions of the Act or to undo the result of the implementation of the main provisions of the Act and hence, the notification dated 28.08.2015 is ultra vires to Section 113 of the Act. Therefore it is a colourable exercise of power by the first respondent with whom such a power since has not been vested with, therefore it is ab initio, void, hence it is liable to be declared so.

16. Apart from these main grounds urged by him, the learned counsel appearing for the petitioners would also canvass the point that, a detailed project report has not been received by the first respondent before issuing



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the notification and when the wide and width of the proposed four lane road project since has been reduced, no statistics has been taken as to how much of land now is required for the expansion of the four lane by reducing the width and wide of the road and whether such a reduction is in consonance with the technical feasibility as provided under the Indian Road Congress are all the matters to be gone into. Therefore technically the entire project is not in consonance with law and therefore for the purpose of such a project, the proposed land acquisition made by the first respondent by issuing notifications under the provisions of the 1956 Highways Act is totally unlawful, hence the learned counsel appearing for the petitioners would canvass the point that, for all these reasons the combined prayer sought for in these writ petitions are to be considered and allowed.

17. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondents assisted by Mr.K.Govindarajan, learned Deputy Solicitor General would submit that, the 2013 Act came into effect from 01.01.2014, therefore within one year, i.e., before 01.01.2015 notification under Section 105(3) of the 2013 Act should be issued. However, the Central Government has expressed in detail in its order, i.e.,



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the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015, in short, “the 2015 Order”, the reasons as to why the Central Government has invoked the power under Section 113 of the Act instead of 105(3) of the Act for issuance of such a notification.

18. The learned Additional Solicitor General would also submit that, the 2015 Order issued under Section 113 of the Act infact has fulfilled the obligation on the part of the Central Government to issue notification under Section 105(3) of the Act. This position has been supported by the law declared by the Hon'ble Supreme Court in the matter of Mahanadhi Coal Fields Ltd., and others V. Mathias Oram and others reported in AIR 2022 SC 5723. He would also rely upon the decision of the Hon'ble Supreme Court in (2019) 9 SCC 304 in the matter of Union of India and another v. Tarsem Singh and others.

19. The learned Additional Solicitor General would further submit that, insofar as Section 105 of the 2013 Act under sub-section (1), it makes very clear that, the entire provisions of the 2013 Act shall not apply to the



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enactments relating to the land acquisition specified under Fourth Schedule.

There are 13 enactments inserted in the Fourth Schedule and in respect of those 13 Acts, the provisions of 2013 Act would not be applied, however, it is subject to sub-section 3.

20. Sub-section (3) mandates that the Central Government shall by notification within one year from the date of commencement of the Act direct that, any of the provisions of these Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules being beneficial to the affected families shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of the Act relating to compensation or rehabilitation and resettlement as may be specified in the notification as the case may be.

21. Therefore he would submit that, Section 105(1) is the rule, where sub-section (3) is an exemption. If a notification is issued under sub-section (3), insofar as the provisions of 2013 Act with regard to determination of



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compensation, rehabilitation and resettlement are concerned, the provisions of 2013 Act would apply. In this context, he would further submit that, even if such a notification is issued under Section 105(3) of the 2013 Act, that would not replace the entire provisions of the 13 enactments including the Highways Act 1956 from the purview of 2013 Act. Only in respect of determination of compensation, rehabilitation and resettlement are concerned that could be saved by applying the provisions of 2013 Act.

22. In respect of acquisition are concerned, the Fourth Schedule Acts would prevail upon. In other words, for instance, the 1956 National Highways Act is concerned, the land acquisition provisions of the said Act would continue to prevail. However, the determination of compensation under First Schedule, rehabilitation and resettlement specified in Second and Third Schedules alone would be saved by provisions of sub-section 3 of Section 105 by issuance of such notification.

23. Therefore the learned Additional Solicitor General would submit that, if this purpose is fulfilled by issuance of notification under Section 113 of 2013 Act, that would serve the entire purpose, which position has been

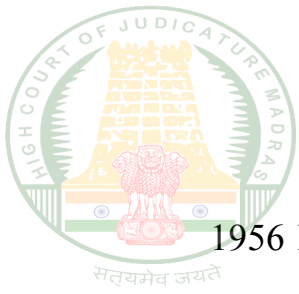


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clearly supported by the decision of the Hon'ble Supreme Court in Mahanadi's case (*cited supra*). Therefore the learned Additional Solicitor General would contend that, the entire grounds that has been urged on behalf of the writ petitioners that, the provisions of the Highways Act with regard to the land acquisition and the notification dated 28.08.2015 issued by the first respondent under Section 113 of the 2013 Act are to be declared void and unconstitutional and consequently, set aside the land acquisition notification, will have no legs to stand as the grounds urged by the petitioners side would not stand in the legal scrutiny in view of the clear provisions which are available both under the 2013 Act as well as the 1956 Highways Act, hence the learned Additional Solicitor General would contend that, the writ petitions are liable to be rejected.

24. We have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

25. We have shown our anxious consideration to the points that has been raised in these writ petitions mainly on the ground that, whether the



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1956 Highways Act would get lapsed or stand repealed because of the non issuance of the notification under Section 105(3) of the 2013 Act of the Central Government or not ?

26. In order to delve into the issue which is the core issue that has been raised in these writ petitions, first let us look at the provisions of the relevant enactments.

27. The National Highways Act, 1956 has come into effect from 15.04.1957, since then, it has been in the field, where the land acquisition for the purpose of National Highways are being undertaken only under the provisions of the Highways Act, 1956.

28. Though various aspects have been provided under the Highways Act, 1956, we are concerned only with the relevant provisions relates to the land acquisition, which has been dealt with from Sections 3-A to 3-J.

29. Section 3-A deals with the power to acquire land etc., whereas Section 3-B deals with the power to enter for survey, etc. Section 3-C



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provides for hearing of objections and Section 3-D provides for declaration of acquisition. Like that, Section 3-E deals with the power to take possession and Section 3-F deals with the right to enter into the land where land is vested in the Central Government. Section 3-G enables the determination of amount payable as compensation and Section 3-H deals with the deposit and payment of amount. Section 3-I deals with the provision of competent authority to have certain powers of Civil Court and Section 3-J makes it clear that 1894 Land Acquisition Act shall not apply to acquisition under the 1956 Act.

30. Therefore these are all the provisions which are available in the National Highways Act, 1956 relates to land acquisition. Now the challenge seeking such a declaration in these writ petitions is to declare all these provisions of the 1956 Act as void and unconstitutional.

31. For seeking such a declaration on behalf of the petitioners, the ground urged by them is that, the 2013 Act has come into effect from 01.01.2014, where under Section 105(1), it has been declared that, the provisions of the 2013 Act shall not apply to the enactments relating to land



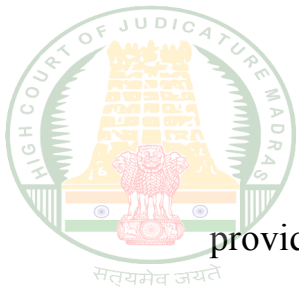
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acquisition specified in the Fourth Schedule. This is subject to sub-section

(3). What has been stated in sub-section (3) has already been discussed, where the Central Government shall issue a notification within one year from the date of commencement of the Act, whereby the provisions of the 2013 Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in Second and Third Schedules respectively being beneficial to the affected families shall apply to cases of land acquisition under the enactments specified in the Fourth Schedule.

32. What are all the enactments that has to be specified have been given in the Fourth Schedule. The Fourth Schedule consist of 13 enactments which includes the National Highways Act, 1956.

33. Therefore as per Section 105(1) of the 2013 Act, the provisions of 2013 Act would not apply to any of these 13 enactments which are form part of the Fourth Schedule of 2013 Act. However, if a notification is issued by the Central Government under sub-section (3) of Section 105, insofar as the determination of compensation, rehabilitation and resettlement as



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provided under First, Second and Third Schedule of 2013 Act would be saved.

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34. Here in the case in hand, whether such a notification has been issued in the eye of law or not. Admittedly no such notification under Section 105(3) of the Act 2013 has been issued, as, such a notification ought to have been issued within one year period, i.e., on or before 31.12.2014.

35. In order to overcome this difficulty, the Central Government has taken various steps legislatively which has been stated in the 2015 order, dated 28.08.2015. The first step that was taken by the Central Government is to issue an Ordinance, i.e., called RFCTLARR (Amendment) Ordinance 2014 (9 of 2014) which was promulgated on 31.12.2014, thereby *inter alia* amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactment specified in the Fourth Schedule to the RFCTLARR Act.



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36. Subsequently, the RFCTLARR (Amendment) Ordinance, 2015

(4 of 2015) was promulgated on 03.04.2015 to give continuity to the provisions of RFCTLARR (Amendment) Ordinance, 2014. Thereafter, RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30.05.2015 to give continuity to the provisions of RFCTLARR (Amendment) Ordinance 2015, i.e., (4 of 2015). The replacement bill relating to RFCTLARR (Amendment) Ordinance, 2015, i.e., (4 of 2015) was referred to joint committee of the House of Parliament for examination and report and the same was pending with the Joint Committee. However, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance 2015, i.e., (5 of 2015) since would be lapsed by 31.08.2015 and in such a case, it would place the land owners at the disadvantageous position which result in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance.



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37. Therefore the Central Government considered it necessary to extend the benefits available to the land owners under the 2013 Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule. Therefore the Government in exercise of the powers conferred by sub-section (1) of Section 113 of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 issued the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015, which came into force with effect from 01.09.2015, thereby the provisions of the 2013 Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule of the 2013 Act.

38. Whether this notification or order issued by the Central Government on 28.08.2015, w.e.f., 01.09.2015 under Section 113 (1) of the Act, would validate the applicability of the 2013 Act provisions insofar as



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the determination of compensation, resettlement, rehabilitation etc., to all other acquisition that has been made under the provisions of various enactments of the Fourth Schedule of the 2013 Act or not is the question.

39. In this context, even though it was argued on behalf of the petitioners that, if a power is vested with the authority, i.e., Central Government to exercise by issuance of a notification under Section 105(3) of the Act, such a notification must have been issued within one year period as mandated under sub-section (3) of Section 105 and in failure to make such a notification would render that, the Fourth Schedule enactments would be lapsed or repealed by inherent repealing, was the main contention of the learned counsel appearing for the petitioners.

40. The said contention of the petitioners side is palpably wrong. The reason being that, Section 105(1) makes it very clear that provisions of 2013 Act shall not apply to the enactment relating to the land acquisition specified in the Fourth Schedule, that means, none of the provisions of 2013 Act would apply to the 13 enactments which are form part of the Fourth Schedule. However, there is one exception under which if Central



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Government issues a notification under sub-section (3) of Section 105 making the applicability of the provisions of the 2013 Act relating to determination of compensation, rehabilitation and resettlement being the beneficial to the affected families, that aspect of the 2013 Act shall be applied to the land acquisition proceedings being made under the provisions of various enactments of Fourth Schedule which includes the 1956 National Highways Act.

41. Assuming that there has been no notification under Section 105(3) of the 2013 Act, all the provisions of the 1956 Act would get repealed would be an absurd argument made on behalf of the petitioners side because, if no notification is issued under sub-section (3) of Section 105, the 1956 Highways Act which is one of the 13 enactments also would get saved without being affected by any provisions of the 2013 Act, thereby the higher compensation, the provisions for rehabilitation and resettlement, nothing would be made applicable to the land owners whose lands are acquired under the 1956 Act.



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42. In this context, it is to be looked into the very objects and reasons that has been stated for bringing 2013 Act.

43. The elaborate objects and reasons has made it clear that, in order to give a complete, full and adequate compensation and also to make the scheme for resettlement and rehabilitation of those land owners whose lands are acquired under the 2013 Act these are all the provisions which are required in the modern days in the land acquisition arena, that is the reason why 2013 Act has been brought into force by replacing the 1894 Land Acquisition Act.

44. While that being so, under the Fourth Schedule, 13 enactments though had been exempted by sub-section (1) of Section 105 of the Act stating that the provisions of the Act shall not apply to the enactments relating to the land acquisition specified in the Fourth Schedule, the legislature thought it fit to make it very clear that, notification under sub-section (3) shall be issued by the Central Government within one year period from the date of commencement of the Act, whereby the First Schedule provisions, Second Schedule provisions and Third Schedule



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provisions relates to determination of compensation as well as rehabilitation and resettlement shall be made applicable as a beneficial to the affected families of land acquisition under the enactments of the Fourth Schedule.

45. This is the main object of the legislature, thereby, they though had given an exemption to the 13 enactments which are provided under the Fourth Schedule, very consciously about the determination of compensation, rehabilitation and resettlement which are beneficial in nature shall be equally extended to the similarly placed persons whose lands have been acquired under the various enactments under the Fourth Schedule other than the 2013 Act to get such benefits which are equal to the beneficiaries of 2013 Act. These are the prime objects under which the provisions of Section 105 was made in the 2013 Act which cannot be defeated by simply stating that the Central Government has not issued a notification under Section 105(3) of the Act within a one year period.

46. Even though in this context, the Central Government has made sincere attempts to issue Ordinances as has been detailed above, such of those Ordinances since have lapsed in view of the constitutional provision



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and since the issue had been referred to the joint committee of the Parliament where the issue was pending and in the meanwhile since the exemption period under the Ordinance was going to be lapsed, the Central Government thought it fit to remove the difficulty, has invoked the provisions of 113(1) of the 2013 Act which makes it very clear that, if any difficulty arises in giving effect to the provisions of this part, the Central Government, may by order makes such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it necessary or expedient for the removal of the difficulty, but even such exercise shall be made within two years period.

47. Therefore it was a compulsory situation under which the Central Government must have invoked the provisions of Section 113(1) of the 2013 Act and thereby to issue an order to save the provisions of the 2013 Act to be made applicable to the land acquisition proceedings made under various enactments of the Fourth Schedule.

48. This exercise is an inevitable one and such a mandatory exercise should have been undertaken by the Central Government and it has rightly



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exercised by issuing the order under Section 113(1) of the Act on 28.08.2015.

49. In this context, whether such a exercise of the Central Government in invoking Section 113(1) of the Act for issuance of the order 2015 instead of issuing a notification under Section 105(3) of the Act would be a justifiable one or not also has already been answered by the Hon'ble Apex Court.

50. To delve into the issue further, the relevant decisions of the Hon'ble Supreme Court can be usefully referred to hereunder.

51. In Union of India v. Tarsem Singh reported in (2019) 9 SC 304, the Hon'ble Supreme Court has held so in paragraph 46 to 48 which reads thus :

"46. It is worthy of note that even in acquisitions that take place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. In fact, with



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effect from 1-1-2015, Amendment Ordinance 9 of 2014 was promulgated amending the 2013 Act. Section 10 of the said Amendment Ordinance states as follows:

“10. In the principal Act, in Section 105—

(i) for sub-section (3), the following sub-section shall be substituted, namely—

‘(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;’

(ii) sub-section (4) shall be omitted.”

47. It is only when this Ordinance lapsed that the Notification dated 28-8-2015 was then made under Section 113 of the 2013 Act. This notification is important and states as follows:

“MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, 28-8-2015



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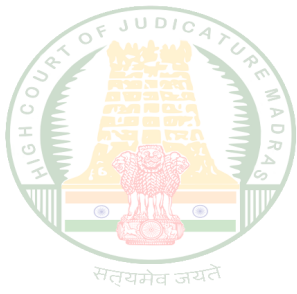


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S.O. 2368(E).—Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as “the R_{FCTLARR} Act”) came into effect from 1-1-2014;

And whereas, sub-section (3) of Section 105 of the R_{FCTLARR} Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the R_{FCTLARR} Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the R_{FCTLARR} Act was not issued, and the R_{FCTLARR} (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31-12-2014, thereby, inter alia, amending Section 105 of the R_{FCTLARR} Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the R_{FCTLARR} Act;



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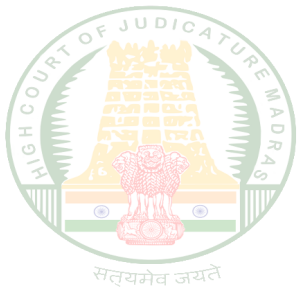


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And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3-4-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;
And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30-5-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

And whereas, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the landowners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as



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extended to the landowners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the R_{FCTLARR} Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the R_{FCTLARR} Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes



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the following Order to remove the aforesaid difficulties, namely:

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

[F. No. 13011/01/2014-LRD]

K.P. Krishnan, Addl. Secy.”

48. It is thus clear that the Ordinance as well as the notification have applied the principle contained in *Nagpur Improvement Trust* [*Nagpur Improvement Trust v. Vithal Rao*, (1973) 1 SCC 500] , as the

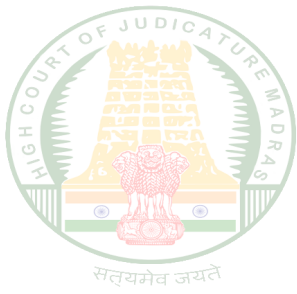


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Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to *similarly placed* landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of *Nagpur Improvement Trust* [*Nagpur Improvement Trust v.Vithal Rao*, (1973) 1 SCC 500] would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore,



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require a re-look in the light of this development. [The Defence of India Act, 1971, was a temporary statute which remained in force only during the period of operation of a proclamation of emergency and for a period of six months thereafter — vide Section 1(3) of the Act. As this Act has since expired, it is not included in the Fourth Schedule of the 2013 Act.] In any case, as has been pointed out hereinabove, *Chajju Ram* [*Union of India v. Chajju Ram*, (2003) 5 SCC 568] , has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court [*Union of India v. Tarsem Singh*, 2018 SCC OnLine P&H 6036], [*Jang Bahadur v. Union of India*, 2018 SCC OnLine P&H 6034], [*Union of India v. Abhinav Cotspin Ltd.*, 2016 SCC OnLine P&H 19319] is correct, whereas the view of the Rajasthan High Court [*Banshilal Samariya v. Union of India*, 2005 SCC OnLine Raj 572 : 2005-06 Supp RLW 559] is not correct."

52. Whether the 2015 order issued under Section 113(1) of the Act would be construed as a notification issued under Section 105(3) of the 2013 Act has been answered by the Hon'ble Supreme Court in *Mahanadi*



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Coal Fields Ltd., and Ors. v. Mathias Oram and Ors., reported in AIR 2022

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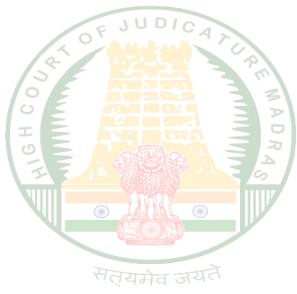
SC 5723. The relevant portion of the order reads thus :

"23. Section 105 of the R&R Act 2013 reads as follows:

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

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

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the



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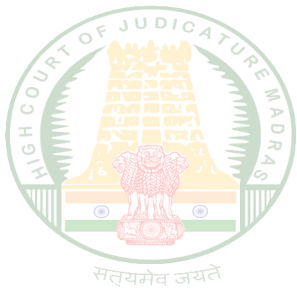
compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

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

Entry 11 to the Fourth Schedule of the said Act, read as follows:

“11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957)”

24. By virtue of Section 105, read with the Fourth Schedule, therefore, the R&R Act 2013, was not applicable to acquisitions made under the CBA Act.



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However, by Section 105(2), the Central Government had issued a notification:

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

25. The Ministry of Coal, Central Government issued a clarification dated 04.08.2017 on the applicability of First, Second and Third Schedules of the R&R Act, 2013 in cases of acquisition of lands under the CBA Act. The clarification stated as under:

“1....That consequent upon the announcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter 'RFCTLARR Act') and Order SO No. 2368(E). notified on



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28.08.2015 by Ministry of Rural Development, Coal India Limited and its subsidiaries have sought clarifications regarding payment of compensation for land acquired prior to 01.09.2015 under Coal Bearing Areas (Acquisition and Development Act. 1957(hereinafter the 'CBA Act')

2. As multiple stages are involved in the land acquisition process, including that of determination of compensation, this Ministry sought advice from Ministry of Law and Justice. Ministry of Law and Justice has given their advice that if the compensation has not been determined before 01.09.2015 under Section 13(5) of the CBA Act, then the provisions of First Schedule, Second Schedule and Third Schedule of the RFCTLARR Act will be applicable. In remaining cases where the compensation has already been determined under Section 13(5) of the CBA Act before 01.09.2015, then such cases will not be reopened.

4. In view of the above clarifications, previous order letter no. 430200/26/88-LSW dated 12.05.1989 issued by the. Ministry of Energy, Department of Coal shall stand modified. The above clarifications may be followed in



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determination of compensation for land acquired under CBA Act. This is issued with the approval of the competent authority.

s/d R.S. Saroj Under Secretary to the Govt. of India".

26. The above relevant facts reveal that Section 105 excluded application of the R&R Act, 2013 to acquisitions made and eminent domain exercised, under the enactments specified in its Fourth Schedule, such as the CBA Act. It was under this enactment, that the acquisitions which are the subject matter of the present proceedings, were notified in favour of MCL.

27. *When the R&R Act, 2013 was brought into force with effect from 01.01.2014, the acquisitions in favour of MCL continued to be under the CBA Act. By Section 105(3) of the R & R Act, 2013, the Central Government was obliged to issue the notification within one year from the date of commencement of that Act to ensure that its provisions relating to the determination of compensation, were in accordance with the provisions in the First Schedule and rehabilitation and resettlement in accordance with the Second and Third Schedules of that Act. It was pursuant to this mandate, that on 28.08.2015 the Central Government issued a notification in terms of Section 105(3). However, the*



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Central Government chose to exercise its power to remove difficulties, under Section 113. This seems to be because the notification was issued on 28.08.2015—beyond the period prescribed in Section 105(3). Nevertheless, the spirit of the statutory injunction to make the beneficial provisions of the R&R Act, 2013 applicable to compensation determination and resettlement or rehabilitation measures, was complied with in effect and substance."

(Emphasis supplied)

53. Ultimately, the Hon'ble Supreme Court has made it clear in unequivocal terms in paragraph 27 of the order as extracted herein above that, the order issued by the Central Government on 28.08.2015 is in terms of Section 105(3) of the Act. It has been made further clear by Hon'ble Supreme Court that, the Central Government chooses to exercise its power to remove difficulties under Section 113. This seems to be because the notification was issued on 28.08.2015 beyond the period prescribed in Section 105(3). Nevertheless, the spirit of the statutory injunction to make the beneficial provisions of the R&R Act, 2013 applicable to compensation, determination and resettlement or rehabilitation measures, was complied with in effect and substance.



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54. With these words of the Hon'ble Supreme Court, a complete

answer has been given to the question raised on the petitioners side that, whether the 2015 order issued on 28.08.2015 would be treated as a notification within the meaning of Section 105(3) of the 2013 Act or not.

55. The Central Government has been given the power both under Section 105(3) as well as under Section 113(1) of the Act. Within Section 105(3), such a notification should be issued within a one year period, however, if a notification could not be issued within a one year period, it cannot be stated that, it can never be issued in any other form, thereby all the 13 enactments under the Fourth Schedule would get relieved from the clutches of Act 2013 provisions. If that being so, it would be beneficial to land acquisition authorities, i.e., the requisition body to acquire the land under the 13 enactments of Fourth Schedule but not in advantage or beneficial to the land owners.

56. The very purpose of 2013 Act is to give more benefits to land owners, thereby determination of compensation, rehabilitation and resettlement everything has been specifically stated under the provisions of



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the 2013 Act by having the Schedules like First Schedule, Second Schedule and Third Schedule. If this is the main object of the 2013 Act, as per the objects and reasons which we have traced herein above, such an object cannot be defeated by giving an interpretation to state that, once a notification has not been issued by the Central Government under Section 105(3) of the Act that the entire thing get lapsed, thereby the 13 enactments of Fourth Schedule would completely get separated from the purview of the applicability of the provisions of the 2013 Act.

57. If that arguments advanced by the learned counsel appearing for the petitioners is accepted, that would be detrimental even to the petitioners as they would not get proper compensation, rehabilitation and resettlement if any as provided under the provisions of the 2013 Act.

58. That is the reason why the Hon'ble Supreme Court in Mahanadi's case (*cited supra*) has made it very clear in unequivocal terms by making a declaration that the spirit of the statutory injunction to make the beneficial provisions of the R&R Act 2013 applicable to compensation, determination and resettlement or rehabilitation measures, was complied with in effect and substance.



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WEB COPY 59. If it is complied with in effect and substance, as has been declared by the Hon'ble Supreme Court, the same can be the law which cannot be stretched upon or to be interpreted to the whims and fancy or the desire of the litigant as that would be detrimental to the very purpose of the 2013 Act as well as the provisions namely Section 105(3) as well as Section 113(1) which are enabling provisions to make it clear that, the determination of compensation, rehabilitation and resettlement provisions of the 2013 Act mandatorily to be made applicable to the land acquisition proceedings made under the 13 enactments of the Fourth Schedule.

60. Therefore at no stretch of imagination, the petitioners can put forth the case to state that because of non-issuance of notification under Section 105(3) of the Act, the provisions relates to land acquisition of the 1956 Highways Act becomes void and unconstitutional. Absolutely there has been no scope for making such a declaration in view of the discussion herein we have made.



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WEB COPY 61. Since the provisions of 1956 Highways Act relates to land acquisition are valid and the provisions of 2013 Act relates to determination of compensation, rehabilitation and resettlement of the land acquisition proceedings initiated and concluded by the provisions of the 1956 Highways Act since has been saved by making the provisions of 2013 Act, on all these three aspects applicable to the land acquisition proceedings under 1956 Act, the petitioners would be the beneficiaries and therefore they cannot seek for such a declaration as sought for including the quashment sought for by the petitioners against the notification issued under the provisions of the 1956 Act.

62. Therefore the challenge that has been made against the provisions of the 1956 National Highways Act and consequential notification issued under various provisions of the said Act for land acquisition proceedings are held to be valid and therefore all these writ petitions have to fail accordingly, they are liable to be rejected.



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WEB COPY 63. In the result, all these writ petitions are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (G.A.M., J.)
30.01.2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

1. The Secretary
Union of India
Ministry of Shipping,
Road Transport and Highways,
New Delhi.
2. The Competent Authority and
District Revenue Officer,
(Road Transport Highways)
Thirumangalam-Rajapalayam Four Lane Project,
Madurai Collectorate Office,
Madurai.
3. The Project Director
Project Implementation Unit,
National Highways Authority of India,
Madurai.

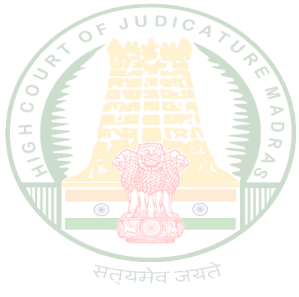
50/53



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4. The Chairman

WEB COPY National Highway Authority of India
G5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.



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**R.SURESH KUMAR, J.
AND
G.ARUL MURUGAN, J.**

tsvn

**Common Order in
W.P.(MD).Nos.6727, 16710
and 16711 of 2021**

30.01.2025